

General Terms and Conditions of Purchase of Negele Messtechnik GmbH, last updated 09/2019

I. General information

1. These General Terms and Conditions of Purchase (Terms) apply to all orders and quantity contracts of Negele Messtechnik GmbH (hereinafter "Negele") with its business partners and suppliers (hereinafter "Vendors"). These Terms only apply if the Vendor is a contractor (as defined in Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special public fund under public law.
2. Only the present Terms shall apply. Any general terms and conditions of the Vendor which are contrary to or deviate from these Terms are not acknowledged by Negele unless Negele has expressly approved the validity of such terms and conditions in writing. The Terms also apply in the event that Negele accepts or pays for deliveries of goods and services from the Vendor in the knowledge that the Vendor's terms and conditions conflict with or deviate from the Terms.
3. In their respective version, the Terms are also valid as a framework agreement for future contracts with the same Vendor without Negele having to refer to them again in each individual case.
4. Legally relevant declarations and notifications by the Vendor must be in writing in order to be valid.

II. Conclusion of contract and contractual amendments

1. Orders, conclusions of contracts, quantity contracts and delivery call-offs for these, including any amendments and changes related thereto, require the written form. These documents may be submitted electronically.
2. Verbal agreements before or upon conclusion of the contract shall only be valid if Negele has provided its express written confirmation.
3. Verbal agreements after conclusion of the contract, in particular subsequent amendments and additions, as well as ancillary agreements of any kind, also require the written confirmation of Negele in order to be valid.
4. Cost estimates are binding and are not subject to a charge, unless otherwise expressly agreed.
5. If the Vendor does not accept the order within three days of receipt, Negele is entitled to cancel its order. Delivery call-offs are binding if the Vendor fails to object to the same within three working days of receipt. The Vendor is obliged to submit an order confirmation within three days in written form.

III. Performance determination right

1. Negele reserves the right to change the time and place of delivery of the goods, as well as the type of packaging, at its own discretion by notification in writing with a notice period of at least five working days before the agreed delivery date. The same applies to changes to product specifications of the goods, insofar as these can be implemented within the framework of the Vendor's normal production process without considerable additional expense. The provisions governing goods expressly pre-produced at Negele's request shall be subject to individual agreement between the parties.
2. Subject to the following Section III.3, Negele shall reimburse the Vendor for the proven and reasonable additional costs incurred as a result of the change. If such changes result in delays in delivery that are unable to be avoided with reasonable effort in the Vendor's normal production and business operation, the originally agreed delivery date is postponed accordingly.
3. The Vendor shall notify Negele in writing of the expected additional costs and/or delays in delivery without undue delay, but at the latest within three working days of receipt of Negele's notification of the change.

IV. Delivery time and delays

1. The agreed deadlines and dates are binding. The decisive factor for compliance with the date of delivery or the delivery deadline shall be receipt of the goods by Negele. In the event of non-compliance, the Vendor shall be liable in accordance with the statutory provisions.
2. The Vendor shall be obliged to inform Negele without undue delay of any expected delays in delivery.
3. The Vendor is deemed to be in default of delivery without the need for a reminder.
4. If delivery is made earlier than agreed, Negele reserves the right to return the goods at the Vendor's expense. If the goods are not returned in the event of early delivery, they shall be stored by Negele at the expense and risk of the Vendor until the delivery date. Only the agreed delivery date shall apply for payment.
5. In the event of a delay in delivery, Negele is entitled to the statutory claims. In particular, Negele is entitled to claim damages instead of performance and to withdraw from the contract if delivery is not made within a reasonable grace period. If Negele claims damages, the Vendor shall be entitled to furnish proof that it is not responsible for the breach of duty.

V. Provision

The materials, parts, containers and special packaging provided by Negele shall remain the property of Negele. These may only be used for their intended purpose. The processing of materials and the assembly of parts are carried out for Negele. It is agreed that Negele is co-owner of the products manufactured with the materials and parts provided by Negele in proportion to the value of the materials or parts provided in relation to the value of the whole product, which, in this respect, are used by the Vendor for Negele.

VI. Performance, delivery, transfer of risk, default in accepting delivery

1. Without Negele's prior written consent, the Vendor may not use third parties to provide the goods or services it owes.
2. Unless otherwise agreed in writing, the goods shall be delivered to Negele's place of business. The respective delivery address is the place of fulfilment (obligation to fulfil).
3. The delivery must be accompanied by a delivery note stating the date of dispatch, the item to be delivered, the item number, the respective quantity of the goods, Negele's order reference (date and order number) and, in the case of drawing parts, information on the revision status (drawing index).
4. If the Vendor has not enclosed a delivery note or has enclosed an incomplete delivery note, Negele shall not be responsible for any delays in processing the invoice and its payment resulting from this.
5. The Vendor bears the risk of accidental loss and accidental deterioration of the goods until the time of delivery at the place of fulfilment.
6. Contrary to the statutory provisions on default of acceptance (Section 296 BGB), default of acceptance shall require the written offer of performance, even if a defined or definable time has been agreed in the calendar for action or cooperation by Negele.
7. Negele shall be entitled to withhold payments which are due for as long as it has claims against the Vendor from orders which have not yet been executed in full or which are defective.
8. The Vendor shall only be entitled to make partial deliveries with Negele's written consent.
9. The Vendor must package the goods as agreed. If there is no agreement on the packaging of the goods, the Vendor shall package the goods in the customary manner. In any case, the Vendor must ensure that the goods are protected from damage.
10. If the Vendor requires the return of the packaging materials, this must be specified by the Vendor on the delivery note. In this case, Negele shall return the packaging materials to the Vendor at the Vendor's expense.

VII. Prices and payment terms

1. The price listed in the order is binding. All prices are exclusive of the statutory value added tax, even if this is not itemised separately.
2. Additional services of the Vendor, as well as all additional costs (e.g. proper packaging, customs duties, import duties, transport costs, including possible transport and third-party insurance) must be itemised separately on the written order confirmation, excluding the statutory value added tax. At Negele's request, the Vendor shall take back packaging materials free of charge.
3. Original invoices shall be sent, stating the invoice number, order number, quantity, price and other classification features (in particular, the Negele item number).
4. In the case of deliveries from areas outside the customs territory of the EU, a copy of the invoice or a pro forma invoice must be enclosed with the delivery of the goods.
5. Payments shall be made in accordance with the terms of payment agreed in the individual case. In the case of bank transfers, payment shall be deemed to have been made on time if Negele's transfer order is received by Negele's bank before the expiry of the payment deadline; Negele shall not be responsible for delays caused by the banks involved in the payment transaction. The payment shall be subject to invoice verification.

VIII. Retention of title

If the Vendor reserves title to the goods until the agreed remuneration has been paid in full, this retention of title shall only apply until the claims arising from the delivery of the respective goods have been fulfilled.

IX. Company tours

The Vendor undertakes to grant Negele access to the Vendor's premises by prior arrangement during normal business hours during the term of the supply relationship between the Vendor and Negele so that Negele can carry out audits in order to verify and secure the viability of the business relationship, quality and innovative strength. Negele shall receive adequate support from the Vendor in carrying out the audit.

X. Defective delivery

1. The statutory provisions (Sections 377, 381 Commercial Code (HGB)) apply to Negele's commercial duty of inspection and notification of defects, with the following proviso: The obligation to inspect the goods shall be limited to defects that are obvious upon the conduct of an external examination on receipt of the goods, including an examination of the delivery papers and during random quality control testing (e.g. transport damage, delivery of the wrong items or of less than the agreed quantity).
2. If the Vendor fails to meet its obligation of supplementary performance – at Negele's discretion, by remedy of defects (subsequent improvement) or by shipping an item that is free of defects (substitute delivery) – within an appropriate period of time specified by Negele, then Negele may remedy the defect itself and may require compensation from the Vendor for the necessary expenses or may require an appropriate advance payment.
3. If supplementary performance has failed due to the Vendor or is unreasonable for Negele (e.g. due to particular urgency, a threat to operating safety or pending occurrence of excessive damage), no deadline is required; the Vendor must be informed without undue delay.
4. The Vendor shall bear the expenses necessary for the purpose of supplementary performance, in particular transport, travel, work and material costs. If Negele has installed the defective item in another item or attached it to another item in accordance with its type and intended use, the Vendor shall also be obliged, within the framework of supplementary performance, to reimburse Negele for the expenses necessary for removing the defective item and installing or attaching the repaired item or item which is delivered without any defects.

XI. Supplier recourse

1. Negele shall be entitled without restriction to the statutory rights of recourse within a supply chain (supplier recourse pursuant to Sections 478, 479 BGB) in addition to the claims based on defects. Negele shall, in particular, be entitled to require the type of supplementary performance (subsequent improvement or substitute delivery) from the Vendor which Negele owes to its customer in the individual case. This does not limit the legal right of choice (Section 439 (1) BGB).
2. Claims under recourse to the supplier shall also apply in case the goods have been further processed before they were sold by Negele to a customer or by one of Negele's customers, e.g. by being integrated into another product.

XII. Producer liability

1. The Vendor shall be liable for all claims asserted by third parties for personal injury or damage to property and shall indemnify Negele against such claims unless the Vendor is not responsible for the damage.
2. The Vendor shall bear all costs incurred by Negele in connection with a recall of the goods required under the Product Liability Act.
3. The Vendor shall take out and maintain product liability insurance with lump sum coverage of at least EUR 5 million per case of personal injury/property damage. The Vendor shall send Negele a copy of the liability policy at any time upon request

XIII. Delivery capacity and discontinuation

1. The Vendor must inform Negele without undue delay in writing if it or one of its suppliers plans to discontinue the goods, but at least one year in advance.
2. Negele shall be given the opportunity to place a final order without undue delay. The Vendor shall propose solutions to ensure that Negele is provided with competitive prices and specifications that are as unaltered as possible with regard to the supply.
3. In addition, the Vendor undertakes to ensure that Negele is supplied with individual parts for the products for a period of two years after the respective delivery and to supply individual parts to Negele at reasonable prices.
4. If, after the expiry of this period, the Vendor is no longer in a position to continue supplying the individual parts, it shall inform Negele in writing and give Negele the opportunity to place a final order.

XIV. Industrial property rights

1. The Vendor guarantees that no industrial property rights of third parties are infringed in connection with the contractual performance.
2. The Vendor shall indemnify Negele against all claims by third parties asserted in connection with an infringement of industrial property rights, including all costs incurred by Negele in connection with defence against claims by third parties (in particular, legal costs)
3. Negele shall inform the Vendor without undue delay on becoming aware of any claims by third parties.
4. The Vendor shall support Negele to the best of its ability with defence against third-party claims.

XV. Regulation on conflict minerals and REACH/RoHS

1. The Vendor undertakes to comply with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), as amended, even if the Vendor itself is not obliged to do so in accordance with Section 1502 of the Dodd-Frank Act.
2. The Vendor shall verify whether products contain conflict minerals as defined in Section 1502 of the Dodd-Frank Act (currently tantalum, tin, gold, tungsten).
3. If this is the case, the Vendor shall notify Negele without undue delay of the use of conflict minerals and establish the origin of the conflict minerals.
4. In accordance with Sentences 1 to 3, the Vendor shall ensure that its suppliers are obliged to investigate and, if necessary, notify the Vendor.
5. Before initial delivery, the Vendor must confirm that its products comply with the current provisions of the REACH regulations and RoHS directive.
6. If Negele's drawing requirements do not comply with the current valid guidelines, the Vendor is obliged to inform Negele proactively of this.
7. The Vendor is also obliged to proactively provide Negele with an updated declaration of conformity in the event of changes to the REACH regulations and RoHS directive.
8. In the event of non-conformity, the Vendor must inform Negele without undue delay in writing.

XVI. Confidentiality

1. The Vendor is obliged to maintain confidentiality with regard to the contractual terms and conditions and the information and documents obtained in connection with the performance of the contract (with the exception of publicly accessible information), including beyond the period of the contractual relationship, and to use these for the performance of the contract only.
2. The Vendor shall return the confidential information and documents to Negele without undue delay upon request as soon as the Vendor no longer requires these for the performance of the contract.
3. The Vendor may not refer to the business relationship with Negele in advertising material, brochures etc. without Negele's prior written consent.
4. The Vendor shall ensure that its suppliers are obliged to maintain confidentiality accordingly.

XVII. Assignment

The Vendor is not entitled to assign its claims from the contractual relationship to third parties. The above does not apply in the case of monetary claims.

XVIII. Limitation period

1. The parties' mutual claims are subject to statutory limitation, unless otherwise agreed. In deviation from Section 438 (1) No. 3, Section 634a (1) No. 1 BGB, the general limitation period for defect claims is 3 years.
2. Claims arising from supplier recourse shall expire by limitation at the earliest two months after the expiry of the limitation period of the respective third-party claim asserted against Negele.
3. For non-contractual claims for damages, the statutory regular limitation period pursuant to Sections 195, 199 BGB shall apply unless a longer limitation period results in individual cases from a corresponding application of the extension of the limitation period.

XIX. Hierarchy Regulation

1. These Terms, any supply and QA agreement which may have been concluded and individual orders have the following hierarchy:
 - Individual agreements between the parties
 - Supply and QA agreement or tool contracts
 - Supplementary agreements regulated in the individual order (unless these consist of individual agreements)
 - These Terms.
2. In the event of contradictions between the above documents, the regulations and provisions of the respective priority document shall take precedence.

XX. Compliance

1. Negele, as a subsidiary of Fortive Corporation ("Fortive"), is committed to a standard of excellence in all aspects of its business, which includes conducting all business with integrity, respecting the rights of all individuals and protecting the environment.
2. The Vendor (including approved subcontractors) which has a business relationship with Fortive and its subsidiaries shall maintain the same standards.
3. Negele takes into account a Vendor's compliance with these standards when deciding whether it should/can grant or continue the Vendor's preferential position.
4. Vendors which do not comply with these standards may be excluded from preferential treatment and/or their relationship with Fortive or a subsidiary of Fortive, e.g. Negele, may be terminated.
5. The Vendor shall comply with all laws and regulations applicable to the Vendor's sector or industry and with the standards of the Vendor's sector, including those relating to the manufacturing, pricing, sale, distribution, labelling, transportation, import and export of goods and services.
6. Without affecting this requirement, the Vendor does not participate in:
Violation, misappropriation or infringement of the intellectual property rights of any natural or legal person, including Fortive or its subsidiaries; or activities in breach of any applicable laws or regulations relating to
 - Bribery, corruption or illegal payments,
 - Unfair competition and deceptive trade practices,
 - The environment,
 - Health and safety,
 - International trade, including exports and imports,
 - Data protection and data security,
 - Money laundering,
 - Employment relationships and appointments,
 - Conclusion of contracts with government authorities or
 - Healthcare and medical equipment.

The Code of Conduct which applies to all Vendors and their subcontractors can be found at <http://www.fortive.com/suppliers>.

XXI. Changes to these Terms

Negele shall be entitled to change the terms and conditions at any time. The Vendor shall be notified in writing about any changes which are made and shall be referred to the amended version which is available online. If Negele does not receive any objections from the Vendor in writing within one month of sending of the notification, the changes shall be deemed to have been approved by the Vendor, irrespective of any signatures/confirmations by the Vendor.

XXII. Final provisions

1. These Terms and all legal relationships between Negele and the Vendor shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The exclusive, also international, place of jurisdiction for all disputes arising from the contractual relationship shall be Negele's place of business. Negele shall, however, be entitled to take legal action at the Vendor's place of business.
3. Insofar as these Terms conflict with the individual contractual provisions of the parties, the individual contractual provisions shall take precedence.
4. In the event of the invalidity of individual provisions, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a provision that comes as close as possible to the economic interests of both parties in terms of content.
5. No verbal ancillary agreements have been concluded. Any additions and/or amendments to the contract must be made in writing. This also applies to any waiver of the written form requirement.
6. The Vendor shall only be entitled to offset rights to the extent that its claim has been legally established or is undisputed. The same applies to the right of retention, the effective exercise of which also depends on whether the Vendor's counterclaim is based on the same supply relationship.