

General Business Terms and Sale Conditions

1. Scope of General Business Terms and Conditions

Our general business terms and conditions shall apply exclusively to all agreements concluded by us, including any to be concluded in the future. We shall only be bound to other general business terms and conditions of our customers or other contractual partners (hereinafter "Customer") if we have expressly consented thereto in writing. These terms and conditions shall be deemed to have been accepted at the latest on receipt of our delivery or service (hereinafter jointly referred to as "Delivery"). They shall also apply even if we execute Delivery or the order without reservation in the knowledge that the Customer's general terms and conditions do not concur with our own.

2. Conclusion of Contract, Written Form

- a) Our offers are non-binding and subject to confirmation. A contract has not been concluded until we have confirmed it in writing.
- b) If we have stated that an offer is binding we shall be bound by such offer for four weeks after it has been submitted.

3. Content of Contract

- a) We solely owe contractually agreed Deliveries as agreed with the Customer in the specifications, in the functional specifications list, in the contracts and/or in any other agreements.
- b) In as far as delivery of goods is not owed and no express contractual agreement has been made to the contrary we do not owe the success of the mutually agreed Delivery.
- c) Drawings, sketches, measurements, weights or other delivery data provided by the Customer shall only form a binding basis for the Delivery if the parties have expressly agreed thereon in writing.
- d) We are entitled to involve or engage third parties to execute the order.
- e) All deliveries and their components, such as prototypes, additional materials, data carriers, CAD models, software, programs or other materials which we have provided to the Customer (including those for testing and demonstration purposes) shall remain our property (= reserved goods) until all claims arising from the contractual relationships with the Customer have been satisfied.

4. Copyrights

- a) We are owner of all copyright and realisation rights to the Delivery, for example software, designs, etc. We grant the Customer the non-exclusive and non-transferable right to use the Delivery. The rights to copy and use the Delivery are only transferred to the Customer in as far as this has been agreed in these Terms and Conditions and/or in other contractual provisions. The Customer's rights under §§ 69d and 69e Copyright Act remain unaffected hereby.
- b) The Customer is only entitled to the utilisation right granted pursuant to these general business terms and conditions if it has paid the contractually agreed remuneration in full.
- c) The scope of use is agreed as follows: The Customer may copy the Delivery in as far as the respective copy is necessary for use. Necessary copying includes in particular installation of the software from the original data carrier to the mass memory of the hardware used and loading onto the main memory. The Customer may also make a copy for back-up purposes. Pursuant to § 69d (2) Copyright Act however, only one back-up copy may be made and kept. The back-up copy shall be marked accordingly and be provided with a copyright mark ("© FTI Group"). The Customer may not make any further copies, including issue of the program code and photocopies of the entire manual or significant parts thereof. Furthermore, the Customer is not permitted to grant sub-licences and to allow the Delivery in whole or in part or the respective documentation to become available or otherwise accessible to a third party.
- d) Products supplied for evaluation and test purposes (e.g. hardware, software, data carriers, documentation, etc.) are provided free of charge for a fixed period of time and remain our property and are provided to the Customer on loan or for rent in accordance with the contract. We reserve the right to configure these products in such a manner that they can no

longer be used to their full capacity after expiry of the agreed test period. The Customer cannot derive any rights herefrom.

5. Price

- a) The prevailing rate of value added tax on the date the invoice is issued shall be added to our prices.
- b) Unless expressly agreed to this effect, our prices for Deliveries are not fixed or lump-sum prices in as far as services or works are supplied.
- c) If goods are supplied our prices are "ex works" excluding packaging which will be invoiced separately.
- d) If more than six weeks elapse between conclusion of the contract and the delivery date provided for the entire Delivery or parts thereof and if our expenses with respect to the Delivery increase after conclusion of the contract for reasons for which we are not responsible, we shall be entitled to demand from our Customers the extra costs incurred in addition to the contractual price. This shall apply irrespective of whether such extra costs are based on statutory or other provisions and/or actual circumstances.

6. Terms of Payment

- a) If not expressly agreed otherwise, our invoices shall be due for immediate payment and payable without discount. Payment is not considered to have been executed until the amount has been entered into one of our accounts. If, subject to our prior consent, payment is made by bill of exchange or cheque, payment shall only be regarded as having been made once the bill of exchange or cheque has been cashed in completely and finally. Collection and discount charges shall be borne by the Customer (bills of exchange and cheques).
- b) Objections to our invoices will be considered only if made within 14 days of receiving the invoice.
- c) If payment is delayed or in case an unfavourable financial situation or unfavourable loan relationships of the Customer become known - unfavourable information shall be sufficient - we shall be entitled to demand reasonable security payment for all claims from the business relationship, including those which may arise in the future, and in the event that such security payment cannot be provided, this claim shall become due for payment and we shall demand immediate payment irrespective of any other agreement. We are also entitled to make outstanding Deliveries only in return for cash payment, to take back goods already delivered as collateral and to sell all pending unfulfilled contracts for the account of the Customer or to rescind the agreement after having made a relevant announcement. Damage claims against the Customer shall remain unaffected thereby.
- d) We may defer actions required to fulfil our own obligations until outstanding payments have been made. In this event, the deadlines by which our Deliveries and services are due shall be extended – irrespective of our rights regarding default – by the period by which the Customer is in default with its payment obligations to us.

7. Offsetting and Right of Retention

Any set-off or retention of payments shall be admissible only in the case of counter-claims recognised by us or established by non-appealable judgement. Furthermore the Customer is entitled to a right of retention only in so far as his counterclaim is based on the same contractual relationship.

8. Supply Deadlines

- a) Agreed delivery deadlines shall be considered to be approximate unless they are confirmed by us expressly as fixed dates. If the delivery deadlines under sentence 1 are considered to be approximate we may exceed delivery deadlines by up to two weeks. If a fixed delivery date has been agreed, the Customer shall set a reasonable deadline of in general two weeks in the event of a delay in delivery.
- b) An agreed delivery period begins on the date of our order confirmation, but not before finalisation of all details for the order, provision of the documents to be provided by the Customer, permits including permits and certificates from German and foreign authorities, finalisation and approval of the drawings, plans, other documents, fulfilment of other cooperation duties and compliance with the agreed terms of payment by the Customer.
- c) The delivery deadline is complied with if we have made Delivery to the Customer within the deadline or, if the

Customer is obliged to pick up the Delivery, when we have informed the Customer thereof accordingly.

- d) In the event of *force majeure* and/or other unforeseeable or unusual circumstances for which we are not responsible, in particular shortage of raw materials, war, natural catastrophes, fire, delay in or lack of self-supply, disruption to operations and traffic, strikes, lock-outs, intervention by public authorities, energy supply problems – including if a supplier is affected by the occurrence of such circumstances – the term of Delivery shall be extended by the duration of such hindrance. If, owing to the above circumstances, Delivery is impossible or cannot be reasonably expected, in particular if it has been made substantially more difficult or expensive or the delivery deadline has been exceeded by more than eight weeks, both parties are entitled to rescind. We must report disruptions of this type immediately.
- e) If the term of Delivery is extended or if we are no longer obliged to make Delivery for reasons cited in the previous paragraph the contractual partner cannot derive damage claims therefrom.

9. Part Deliveries

- a) We are entitled to make part deliveries to a reasonable extent, in particular if these part deliveries can be used independently of one another by the Customer and if no specific delivery date was agreed for the entire Delivery.
- b) In the case of part deliveries each Delivery shall be considered to be a separate transaction. A defective or late Delivery shall have no influence on part deliveries already carried out or outstanding.
- c) In as far as the part Delivery is of no interest to the Customer the latter is entitled to rescind the entire agreement or demand damages owing to non-fulfilment of the entire agreement.

10. Acceptance

- a) In so far as work or services are owed, acceptance of the Delivery shall take place on our premises, unless expressly agreed otherwise. The Customer may only demand acceptance tests if these have been expressly agreed upon in the contract.
- b) The Customer is obliged to accept parts of the Delivery if service phases have been agreed in the contract and if a service phase has been concluded.
- c) The Customer is obliged to accept the Delivery as soon as it has been informed that the Delivery is on our premises in the contractually agreed form. If it has been contractually agreed that the Delivery shall take place on the premises of the Customer the above sentence shall apply accordingly in the event of notification that Delivery shall take place on the premises of the Customer in the contractually agreed form.

11. Default of Customer

- a) If the Customer is in default with acceptance of an order or culpably breaches other obligations to cooperate with us we are entitled to demand compensation for any damage that we may suffer, including any additional expenses. We reserve the right to make further claims over and above this.
- b) If the Customer is in default in accordance with paragraph a) we shall be entitled after setting of a reasonable deadline which has not been observed, subject to proof of higher damages or increased expenditure, to rescind the agreement and demand compensation instead of performance in the amount of 15% of the order amount of the Delivery not accepted. The Customer may prove that no damage or minor damage was incurred.

12. Delivery / Passing of Risk

- a) To the extent that we dispatch the goods this shall be at the expense of the Customer. This shall also apply if we follow a dispatch requirement from the Customer. Even after conclusion of the contract the Customer shall bear any increases in freight rates, extra costs for diversions, storage costs, etc.
- b) The risk of accidental deterioration or accidental loss shall pass to the Customer upon delivery of the goods to the person in charge of transport. This shall also apply in the case of transport by our employees at the beginning of transport and, if the goods are picked up by employees of the Customer, upon delivery of the goods to such persons.
- c) If the Customer is in default when accepting the goods or if it culpably breaches other cooperation duties the risk of accidental loss or accidental deterioration of the Delivery or

goods shall transfer to the Customer on the date on which the latter was first in default of acceptance.

13. Warranty

- a) We shall not be liable for public statements made by us, the manufacturer or its agents, if and in as far as the Customer is unable to prove that the statements have influenced its decision to purchase from us, if we did not know and could not be expected to know the statements or if the statement had already been corrected when the Customer made its decision to purchase.
- b) An insignificant reduction in the value or suitability of the Delivery shall not constitute a defect. An insignificant reduction shall be, in particular slight deviations from the specification or the functional specifications list and defects disappearing of their own accord in a short time or if the defect can be removed by the Customer itself with very little expense and/or effort. Deviations lying within the usual commercial limits shall also be considered to be insignificant.
- c) In commercial transactions the Customer shall inspect the Delivery provided without undue delay, at the latest within seven days after receipt, and shall inform us in writing without undue delay, at the latest within three further days after discovery of the defect, of any complaints by sending evidence and samples and stating the invoice number and date. If the Customer fails to notify us of complaints this shall be deemed to be unconditional approval. Warranty for latent defects which could not be ascertained despite careful inspection is excluded if the Customer does not report these in writing without undue delay, at the latest however within three days after discovery.
- d) Beyond the provision under c) warranty claims are excluded if, as a result of forwarding or processing the goods delivered by us or similar events, we can no longer inspect whether the goods are in fact defective.
- e) Warranty claims directed against us inure only to the direct Customer and cannot be assigned.
- f) The transport costs required for replacement performance shall only be borne by us in as far as they are incurred for replacement performance at the agreed place of Delivery. Defective goods may only be returned to us after obtaining our express consent.
- g) We are not liable for the suitability of the Delivery made by us for the purpose intended by the Customer unless it has been expressly agreed that we owe such advice.
- h) The Customer is solely responsible for the suitability of the hardware and software environment.

14. Liability

We are liable only subject to the following provisions:

- a) We accept liability for wilful actions or gross negligence on the part of our executive bodies, legal representatives and key employees.
- b) We will not accept any damage claims – irrespective of the legal ground – for slightly negligent breach of nonmaterial contractual duties by our executive bodies, legal representatives, key employees or simple agents. Sentence 1 above applies accordingly to wilful or grossly negligent breach of non-material contractual duties by our simple agents. Material contractual duties are those duties the fulfilment of which is indispensable for proper performance of the agreement and on the observance of which the Customer is able to rely.
- c) In the event of a slightly negligent breach of material contractual duties by our executive bodies, legal representatives, key employees and simple agents we are liable only for foreseeable damages that are typical for the contract, not however for remote consequential damage, irrespective of the legal aspects which may be applicable. Sentence 1 above applies by analogy to wilful or grossly negligent breach of material contractual duties by simple agents.
- d) Contractual or non-contractual claims of the Customer over and above this are excluded.
- e) Liability under the German Product Liability Act (Produkthaftungsgesetz), liability for damage arising from culpable injury to life, body or health or the provision under § 444 of the German Civil Code and liability arising from other warranties is not affected by the above provisions.

- f) The Customer is liable to us for all damage arising from any breach of duties of cooperation.

15. Limitation period

- a) The claims of the Customer owing to defects shall become statute-barred one year after acceptance.
- b) Compensation claims of the Customer for other legal reasons shall become statute-barred 18 months after acceptance.
- c) The statutory regulations on limitation periods apply to any liability on our part under the provisions of 13. above for gross negligence, damage arising from injury to life, body or health and liability arising from warranties assumed and liability under the Product Liability Act.

16. Reservation of Title

- a) All deliveries of goods will remain our property until all our existing and future claims under the business relationship with the Customer, including any ancillary claims and current account balances and the cashing of cheques and bills of exchange, have been settled.

- b) The Customer has the right to use, mix, or process the reserved goods in the ordinary course of business. The goods shall be processed for us as manufacturer in the meaning of § 950 of the German Civil Code.

If reserved goods are combined or mixed with items which do not belong to us we acquire co-ownership in direct application of or by analogy with §§ 947, 948 of the German Civil Code in the proportion of the value of the reserved goods to the value of the other processed items at the time of processing. In the event that the combining or mixing is done in a manner whereby the Customer's item is regarded as the principal item, the parties hereby agree that the Customer shall transfer sole title or co-ownership to us *pro rata* according to the above-mentioned value ratio. The Customer shall keep the items in which we acquire sole title or co-ownership pursuant to the above provisions for us free of charge; it shall not have any claims against us either as a result of the mixing, processing or safe-keeping.

Otherwise the same shall apply to any item which is newly created through processing as applies to the reserved goods. Title or our share in title in the newly created good shall pass to the Customer subject to full payment pursuant to a).

- c) The Customer is entitled to re-sell the good and any items which have arisen from the processing thereof in the usual course of business subject to reservation of title. The reserved goods and assigned claims may not be pledged or transferred by way of security.

The Customer hereby assigns to us all claims from the sale of reserved goods including the items set out under b) in our ownership with all ancillary/security rights and current account balance claims in the amount of our claims as collateral for all our claims as defined in a). We accept such assignment. For the resale of goods in which we have co-ownership assignment is restricted to that portion of the claim which corresponds to our share in title. If reserved goods are sold for a total price along with items which are not our property assignment is restricted to the *pro rata* amount of our invoice including VAT for the reserved goods which have also been sold. The above provision applies by analogy to the claim for remuneration for work rendered if the Customer uses the reserved goods to fulfil a contract for work and services (*Werkvertrag*) or a work supply agreement (*Werklieferungsvertrag*).

- d) If the Customer's purchasers have excluded assignment of claims against them the reserved goods may not be resold. The Customer must exclude offsetting and rights of reservation by its contractual partner to the maximum extent permitted by law. At our request the Customer is obliged at all times to provide us with the name and address of the debtors of claims assigned to us.
- e) The Customer is obliged to treat the reserved goods and any other items in which we acquire sole title or co-ownership pursuant to the above provisions with due care and to keep these for us free of charge. It shall insure them against the usual risks and hereby assigns to us claims for compensation vis-à-vis insurers or other parties who are obliged to make compensation in the amount of the invoice amount. We accept such assignment.
- f) The Customer is also obliged to inform us without undue delay of any impairment of or danger to our risks associated with the goods in which we hold title, in particular by seizure

or other third-party intervention, and to take all temporary security measures which cannot be postponed. The Customer shall reimburse us any costs which we incur in asserting our title and our rights in the claims.

- g) The Customer shall be authorised to collect the claims irrespective of our authority to also collect the claims. The Customer may only carry out other disposals with regard to goods in which we have title and claims assigned to us with our prior written consent. We will only revoke this authority to dispose if the Customer is in default of a payment due to us, if it materially infringes its obligations to us under the reservation of title clause, if an application for insolvency, enforced execution or composition proceedings is filed on its assets or if such proceedings are instituted or if there is another material deterioration in the Customer's financial position. The Customer must forward to us any amounts received immediately in as far as our claims are due. Otherwise it shall keep these amounts on our behalf separately.

- h) If we have revoked authority in accordance with the above g) the Customer is obliged at our request to inform us of all goods in which we have title and the customers to whom it has sold such goods, to make it possible for us to take possession of the goods in which we have title subject to the exclusion of any right of retention, to inform its purchasers of the claims assigned to us and to provide us with whatever information and documents necessary for us to assert our claims.

- i) In the event that the Customer should act contrary to the terms of the contract, in particular in the event of default in payment, the Customer is obliged at our request to return the goods. If we take back or seize the goods pursuant to sentence 1 this shall not constitute rescission of the agreement. If the goods are taken back we are entitled to realise the goods at our discretion in the best possible manner, following prior warning and setting of a reasonable deadline. The proceeds from such realisation shall be offset against our claims after deduction of reasonable realisation costs. If we rescind the agreement we can demand a reasonable remuneration for the duration of provision of use of the goods.

- j) If the value of our security exceeds the claims secured by more than 20 % we will release security – at our discretion - at the request of the Customer.

17. Place of Performance

Place of performance for all obligations of either side under all contracts with the Customer shall be Blankenfelde-Mahlow.

18. Packaging

If the Customer has a right to have the packaging taken back by us then we shall take back the packaging in such a way that after agreement with us the Customer sends us freight-free the packaging material which came from us, giving us due prior warning and providing details about packaging units, size, weight and type, to a central collecting point to be nominated by us on request.

19. Miscellaneous

- a) Collateral agreements, additions and amendments to this contract are only binding subject to our express written confirmation.
- b) The exclusive place of jurisdiction for all disputes arising from this contract and/or the business relationship with us, including claims filed with regard to cheques and bills of exchange, shall be Blankenfelde-Mahlow; however we may also file claims at the registered seat of the Customer. This shall not apply to disputes with Customers who are not merchants.
- c) The law of the Federal Republic of Germany shall apply, excluding private international law and the application of the Hague Conventions relating to a uniform law and the United Nations Convention on Contracts for the International Sale of Goods dated 11.04.1980.
- d) If a provision of these conditions should be or become invalid this shall not affect the validity of the other provisions. In such an event the parties undertake to agree to a provision which, as far as possible, reflects the desired purpose of the invalid provision.