

General Terms and Conditions of Delivery of fiwa)group (Status December 2006)

I. General provisions

1. The declarations of each of the parties shall be decisive in determining the extent of the deliveries (hereafter, the "Deliveries"). The General Terms and Conditions of the Orderer shall only apply insofar as the Supplier (hereafter, the "Supplier") has expressly consented to them in writing.
2. The Supplier unconditionally reserves its ownership rights and rights of use under copyright to any cost proposals, diagrams and other documentation (hereafter, "Documentation"). The Documentation may only be made accessible to third parties with the prior consent of the Supplier, and shall be promptly returned to the Supplier if the order is not placed with the Supplier. Clauses 1 and 2 apply *mutatis mutandis* to the Documents of the Orderer; these may however be made accessible to third parties which the Supplier has permissibly commissioned with deliveries.
3. The Orderer shall have the non-exclusive right to use on-site software with the agreed performance specifications unchanged. The Orderer may create a back-up copy without express agreement. Transmission of the software or a copy of the software is prohibited. Any further use on undelivered machines or system parts of the manufacturer is not permitted either.
4. Partial deliveries are admissible, provided they are acceptable to the Orderer.

II. Prices and payment terms

1. Prices are quoted ex works excluding packaging plus the relevant statutory VAT.
2. If the Supplier has accepted responsibility for installation or assembly and unless agreed otherwise, the Orderer shall bear all the necessary incidental costs in addition to the agreed fee, including transportation costs for the tools and personal baggage, as well as accommodation.
3. Payments shall be made at the point of payment of the Supplier.
4. The Orderer may only offset such claims that are not disputed or have been legally established.

III. Retention of title

1. The objects delivered (goods subject to retention of title) shall remain the property of the Supplier until all the claims it may have against the Orderer under the business relationship have been settled in full. If the value of all the security rights to which the Supplier is entitled exceeds the value of all the secured claims by more than 20%, the Supplier shall waive a corresponding portion of the security rights at the request of the Orderer.
2. For the duration of the retention of title, the Orderer shall be prohibited from pledging or transferring the goods as security, and resale will only be permitted to distributors in the ordinary course of business and only on condition that the distributor has obtained payment from its customers or makes the reservation that ownership shall not pass to the customer until the latter has fulfilled his payment obligations.
3. The Orderer shall promptly notify the Supplier of any attachment, seizure of any other orders or interventions by third parties
4. In the event of a breach of duty by the Orderer, including late payment in particular, the Supplier shall be entitled to withdraw from the Agreement and reclaim the goods where no action is taken to remedy such a breach; this shall not affect the statutory provisions on the superfluosity of setting a deadline. The Orderer is obliged to return the goods.

IV. Delivery deadlines: delays

1. Compliance with delivery deadlines is dependent upon the timely receipt of all the Documents to be provided by the Orderer, the necessary approvals and clearance, in particular of plans, as well as compliance with the agreed payment terms and any other obligations by the Orderer. If these requirements are not met in a timely manner, the deadlines will be extended by a reasonable period; this shall not apply if the Supplier is responsible for the delay.
2. If the failure to meet the deadlines is due to force majeure, e.g. mobilisation, war, insurrection or similar events, e.g. strikes or lockouts, the deadlines shall be extended by a reasonable period.
3. Both claims for damages by the Orderer due to late delivery as well as claims for damages due to failure to perform, including after expiry of a deadline set for the Supplier for delivery, are excluded. This shall not apply in the event of strict liability incurred in

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cases involving malicious intent, gross negligence or loss of life, personal injury or damage to health. The Orderer may only withdraw from the Agreement in accordance with the statutory provisions, insofar as the Supplier is responsible for the late delivery. The above provisions shall not entail any change to the burden of proof to the detriment of the Orderer.

4. The Orderer is obliged, at the request of the Supplier, to state within a reasonable time limit whether it intends to withdraw from the Agreement or insist on delivery in the event of a delay in delivery.
5. If dispatch or delivery are delayed by more than one month at the wishes of the Orderer after notification that the goods are ready for dispatch, the Supplier may charge a storage fee of 0.5% of the price of the goods to be delivered for each month or part thereof, up to a maximum of 5%. The parties to the Agreement shall be at liberty to provide evidence of higher or lower storage costs.

V. Transfer of risk

1. Risk shall be transferred to the Orderer upon delivery carriage paid as follows:
 - a) for deliveries without installation or assembly, on the date on which they are surrendered or collected for dispatch. Deliveries shall be insured by the Supplier against the usual transport risks at the request and cost of the Orderer.
 - b) for deliveries with installation or assembly, on the date of transfer to the Orderer' own operation or, where agreed, after a fault-free trial run.
2. If the dispatch, delivery, start, completion of installation or assembly, transfer to the Orderer's own operation or trial run are delayed on grounds for which the Orderer is responsible or if the Orderer is late in accepting delivery on other grounds, the risk is transferred to the Orderer.

VI. Installation and assembly

Unless agreed otherwise in writing, the following terms and conditions shall apply to installation and assembly:

1. The Orderer shall at its own expense assume responsibility for and provide in a timely manner:
 - a) all earthworks, construction and other non-sectoral ancillary work, including the necessary technical and auxiliary staff, construction materials and tools;

- b) the objects and materials necessary for assembly and placing into service, such as scaffolding, lifting gear and other equipment, fuel and lubricants;
- c) energy and water to the places where they are to be used, including connections, heating and lighting;
- d) at the place of assembly, suitably sized, appropriate, dry and lockable premises for the storage of machine parts, apparatus, materials, tools, etc.; appropriate workrooms and common rooms for assembly staff, including sanitary facilities that are appropriate for the circumstances. In addition, the Orderer shall take all the measures that are required to protect the property of the Supplier and the assembly staff on the building site that it would take in order to protect its own property;
- e) protective clothing and protective equipment that is required by the specific conditions on the assembly site;

2. Prior to the start of assembly work, the Orderer shall be responsible for providing the necessary information about the site, hidden electricity, gas and water pipes or similar devices, as well as the necessary statistical information.
3. Prior to the start of installation or assembly, the preparations and objects that are necessary to commence the work must be made available at the installation or assembly site and all the preparatory work prior to the start of assembly must be sufficiently advanced to enable the installation or assembly to start as agreed and to be completed without interruption. Access roads and the installation or assembly site must be levelled and cleared and be ready for use.
4. If the installation, assembly or placing into service is delayed by circumstances for which the Supplier is not responsible, the Orderer shall bear the costs of the waiting period and the additional necessary journeys by the Supplier or the assembly staff up to a reasonable level.
5. The Orderer shall certify the duration of the working time of the assembly staff on a weekly basis, and the termination of installation, assembly or placing into service immediately upon conclusion.
6. If the Supplier requests collection of the Delivery once it is ready, the Orderer shall collect the material within two weeks. If he fails to do so, collection shall be considered to have been carried out. Collection shall also be considered to have been carried out if the Delivery is used – at the end of an agreed test period, if applicable

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VII. Acceptance

The Orderer may not refuse acceptance of Deliveries on the grounds of minor defects.

VIII. Quality defects

The Supplier shall be liable as follows for quality defects:

1. all parts or services which prove to be faulty within a warranty period – irrespective of the duration of the operation – shall, at the choice of the Supplier, be repaired free of charge, replaced or carried out again, provided that the causes already existed at the time of transfer of the risk.
2. The warranty period for quality defects is 12 months. This shall not apply insofar as, pursuant to Sections 438(1)(ii) (Construction and objects used in construction), 479(1) (Claim for reimbursement) und 634a(a)(ii) (Construction defect) of the German Civil Code, the law provides for longer periods as well as in cases involving loss of life, personal injury or damage to health, an intentional or grossly negligent breach of duty by the Supplier or fraudulent failure to disclose a defect. The foregoing shall be without prejudice to the statutory regulations on the suspension of expiry, suspension and the re-commencement of the deadline.
3. The Orderer shall report quality defects to the Supplier promptly in writing.
4. If a report of a quality defect is made, payments by the Orderer may be discontinued in reasonable proportion to the quality defects that have emerged. The Orderer may only withhold payment if a report of a quality defect is made; if the report is made in error, the Supplier shall be entitled to claim for any costs it has incurred from the Orderer.
5. The Supplier shall initially be given the opportunity to remedy the defect within a reasonable period.
6. If the remedial work is unsuccessful, the Orderer may – without prejudice to any claims for damages pursuant to Article XI – withdraw from the Agreement or reduce the fee.
7. Claims for faults may not be brought in the event of negligible deviation from the agreed quality, negligible impairment of usability, or natural wear and tear or damage arising after the transfer of risk as a result of misuse or careless use, excessive use, inappropriate production equipment, defective construction work, an inappropriate construction site or on the basis of specific external influences

that were not contemplated under the Agreement, and if inappropriate changes or maintenance work are carried out no claims for faults may be brought for such changes or work or the resulting consequences.

8. Claims by the Orderer for the expenditure incurred as a result of remedial performance, including in particular transport, handling, the costs of work and materials are excluded insofar as the expenditure increased because the material supplied was subsequently brought to different place to the establishment of the Orderer, unless the transfer was due to its intended use.
9. Recourse claims by the Orderer against the Supplier pursuant to Section 478 of the German Civil Code (Recourse by the entrepreneur) shall only be available insofar as the Orderer has not reached any agreements with its customer in excess of the statutory claims for faults. Paragraph 8 above shall apply *mutatis mutandis* in determining the extent of the Orderer's claim for recourse against the Supplier pursuant to § 478(2) of the German Civil Code.
10. Article XI (Other claims for damages) shall also apply to claims for damages. Claims for damages by the Orderer against the Supplier and its agents due to a quality defect further to or different from those regulated under Article VIII are excluded.

IX. Industrial property rights and copyright; lack of title

1. Unless agreed otherwise, the Supplier is obliged to make delivery in the country of delivery free from third party industrial property rights and rights under copyright (hereafter, "intellectual property rights"). If a third party brings justified claims against the Orderer based on the infringement of intellectual property rights by services provided by the Supplier and used under the Agreement, the Supplier shall be liable to the Orderer for the duration of the period specified under Article VIII(2) as follows:
 - a) The Supplier shall at its choice and at its own expense either obtain a right of use for the Deliveries concerned, change them in such a manner that the intellectual property right is no longer infringed or replace them. If this is not possible for the Supplier under reasonable conditions, the Orderer may exercise its statutory right of withdrawal or a price reduction.
 - b) The Supplier's duty to pay damages shall be determined pursuant to Article XI.

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- c) The obligations of the Supplier specified above are only valid if the Orderer promptly informs the Supplier in writing of the claims brought by the third party, does not acknowledge an infringement and the Supplier reserves all rights of defence s and settlement negotiations.

If the Orderer stops using the material delivered in order to reduce the damage or on other just and proper grounds, the Orderer is entitled to advise the third party of the fact that the discontinuation of use is not associated with an acknowledgement of an intellectual property infringement.

2. The Orderer may not bring any claims if the Orderer is responsible for the infringement of the intellectual property right.
3. Claims by the Orderer shall further be excluded if the infringement of the intellectual property right was caused by specific action on the part of the Orderer, use that was not foreseeable by the Supplier or by the fact that the products delivered in error by the Supplier are used.
4. In the event of infringements of intellectual property rights, any claims by the Orderer against the Supplier and its agents due to a lack of title, and which fall under paragraph 1(a), shall be excluded.

X. Impossibility; amendment of the Agreement

1. If delivery is impossible, the Orderer shall be entitled to claim compensation, unless the Supplier is not responsible for the impossibility. However, the Orderer's claim to damages shall be limited to 10% of the value of the relevant part of the delivery which cannot be put to its intended use as a result of the impossibility. This limitation shall not apply in cases involving strict liability for malicious intent, gross negligence or loss of life, personal injury or damage to health; the above provisions shall not entail a change to the burden of proof to the detriment of the Orderer. The foregoing shall be without prejudice to the Orderer's right to withdraw from the Agreement.
2. Insofar as unforeseeable events pursuant to Article IV (2) significantly change the economic effect or content of the Delivery or significantly impair the Supplier's business, the amount shall be adjusted in a reasonable manner in good faith. Insofar as performance cannot be reasonably expected from a financial perspective, the Supplier shall have the right to withdraw from the Agreement. Should the Supplier wish to exercise this right of withdrawal, the Supplier shall promptly inform the Orderer of after the Supplier becomes aware of the extent of the

event, even if an extension of the delivery deadline was initially agreed to with the Orderer.

XI. Other claims for damages

1. Claims for damages and for expenses brought by the Orderer (hereafter, "claims for damages"), irrespective of their legal basis, including in particular breach of obligations arising under contract or tort, are excluded.
2. This shall not apply to cases involving strict liability, e.g. under the German Law on Product Liability, or involving malicious intent or gross negligence, loss of life, personal injury or damage to health as a result of the breach of material obligations under the Agreement. However, a claim for damages for the breach of material duties under the Agreement shall be limited to typically foreseeable damages, unless liability is incurred by malicious intent or by gross negligence, or results in loss of life, personal injury or damage to health. The above provisions shall not entail a change to the burden of proof to the detriment of the Orderer.
3. Insofar as the Orderer is entitled to bring any damages claims under this Article, these shall be time barred upon expiry of the relevant period applicable to claims for qualify defects pursuant to Article VIII(2). Damages claims under the German Law on Product Liability shall be governed by the statutory provisions on time barring.

XII. Jurisdiction and applicable law

1. If the Orderer is a trader, all disputes arising either directly or indirectly under the contractual relationship shall be settled exclusively before a competent court at the place of the registered office of the Supplier. However, the Supplier shall also be entitled to sue at the place of the registered office of the Orderer.
2. The legal arrangements associated with this Agreement are governed by German substantive law, excluding the United National Convention on Contracts for the International Sale of Goods (CISG)

XIII. Binding nature of the Agreement

Should any individual of its terms be legally unenforceable, the remaining clauses of the Agreement shall remain in force. This shall not apply if adherence to the Agreement would entail undue hardship for either party.