

General Terms and Conditions of Business / Conditions of Sale and Delivery 09/2016 of FIMA Maschinenbau GmbH

1. General

Our Conditions of Sale and Delivery shall apply exclusively. Differing conditions of the customers shall not be recognised by us unless consented by us in writing. Our Conditions of Sale and Delivery shall also apply even if we delivery unconditionally in awareness of the contradictory terms and conditions of purchase.

2. Offers

(1) Our offers are non-binding. However, they do not constitute an offer within the meaning of Article 145 of the German Civil Code (BGB). The offer within the meaning of Article 145 of the German Civil Code (BGB) is deemed the order of the customer.

(2) If the offer is drafted on the basis of the customer's documents (figures and drawings including measurements), the latter shall only be binding if explicit reference is made to them in the offer. Each piece of information provided by the customer shall be considered individually unless the documents refer to such information in general. This means that reference to one or several pieces of information shall not include the remaining pieces of information.

(3) We reserve the intellectual property and copyrights to the documents belonging to the offer, in particular to drawings, calculations etc. They may not be reproduced or disclosed in any way to third parties unless we have supplied our prior written consent.

4) Side agreements and amendments to the order or these conditions shall be subject to our written confirmation.

3. Prices and payment

(1) Unless agreed otherwise, our prices shall always be "ex works" ("EXW" in accordance with Incoterms 2010).

(2) Prices shall exclude the cost of packaging. Packaging shall be billed separately. These packaging costs shall be itemised on the bill.

(3) Neither do the prices include any shipping costs. The shipping costs shall be billed separately. They shall be itemised on the bill.

(4) If the customer wishes shipping insurance, we shall take out insurance on their behalf and in their name and bill them for the costs.

(5) Statutory value added tax is not included in our prices; it shall be itemised on the bill at the statutory rate on the day of billing.

(6) Unless agreed otherwise, payments shall be due without deduction within a period of 30 days from the billing date.

(7) If foreclosure measures are initiated against the customer, insolvency or bankruptcy proceedings initiated or if they have ceased payment, any target payment agreements shall be voided. We may then demand immediate fulfilment and also declare our withdrawal from the contracts concluded with the customer and not yet completely discharged or demand compensation for non-fulfilment. The same shall apply if the customer defaults on part payments.

4. Default by the customer

(1) The customer shall be deemed to have defaulted

(a) if they fail to duly render payment on the final day of the payment deadline
 having received a reminder after payment has fallen due or

(b) if they fail to render payment on a contractually set calendar date or specific due date
 once we have granted them a reasonable period of grace or

(c) if they do not accept the goods on the envisaged date or

(d) in the cases prescribed by law.

(2) If the customer fails to accept the goods, we shall be entitled to demand reimbursement for any damage incurred, including any additional and warehouse costs. The right is reserved to assert further compensation claims.

(3) In the case of default, and reserving the right to assert further damage claims of a verified amount, interest shall be charged at a rate of 8 % p.a. above the European Central Bank base interest rate in line with Article 288 II of the German Civil Code (BGB).

5. Delivery and delivery dates

(1) The delivery dates we offer are specified to the best of our knowledge, however they remain non-binding, with the exception of fixed dates agreed in writing.

(2) The beginning of the delivery date offered by us shall be subject to clarification of all technical, commercial and logistical details and the availability of any official permissions. If the

customer culpably breaches their cooperation duties, we shall be entitled to demand reimbursement for any damage incurred, including any additional costs incurred. The right is reserved to assert further compensation claims.

(3) The delivery deadline shall be deemed honoured if the customer can dispose of the delivery item by its expiry or has been notified of its readiness for shipping.

(4) Compliance with the delivery and service obligations shall be subject to the due and proper fulfilment of the customer's duties.

(5) Default of delivery or service shall not be constituted if a delay occurs due to a force majeure, important operational matters or events over which we have no control. We shall be liable for any faults committed by our agents or representatives.

(6) Default of delivery and service shall also not be constituted if the customer has selected our supplier or sub supplier and they have not delivered. In this case our delivery period shall be extended by the period of the delivery delay caused by the supplier or sub supplier.

(7) We shall be entitled to perform part deliveries and services.

6. Transfer of risk, place of performance

(1) Unless otherwise agreed, the risk shall be transferred to the customer on supplying or notification of supplying the delivered items for EXW acceptance.

(2) If the customer defaults on acceptance, we shall be entitled to demand compensation for any damage incurred by us; the risk of accidental impairment and destruction shall pass to the customer on commencement of their being in default of acceptance.

(3) In the case of part deliveries the risk shall pass to the customer on their supplying.

(4) In all cases, place of performance for delivery and payment shall be Obersontheim-Oberfischach.

7. Liability for defects

(1) Our information on the properties of the delivery item correspond to the results of our measurements and calculations, the agreed specifications and specifications of the customer (also in respect of the necessary operating parameters) and shall be deemed as agreed properties, but not as promised properties or guarantees within the meaning of Article 433 of the German Civil Code (BGB).

(2) Claims for defects by the customer are subject to the latter having duly fulfilled their duty of inspection and objection in line with Article 377 of the German Civil Code (BGB).

(3) If 10 days elapse after receipt of the goods without the customer lodging a complaint, the goods shall be deemed free of any defects and approved, unless the customer can prove that the defect in question was not obvious and was notified immediately on discovery.

(4) The customer may demand supplementary performance in the case of defects. We shall decide on the manner of supplementary performance (new delivery or rectification of the defect) as we see fit. On communication, the customer shall grant us the necessary time and opportunity to perform rectification of the defect. Replaced parts shall pass into our ownership.

(5) If supplementary fulfilment fails twice, the customer may demand cancellation or reduction. Further claims shall be excluded.

(6) The required return of goods in the case of a defect shall be subject to our prior consent. We shall not be obliged to accept goods returned without our prior consent. In this case, the customer shall bear the cost of returning the goods.

(7) The limitation period for defect claims shall be twelve months after transfer of risk. This shall also apply for spare parts that were included in the initial package for commissioning. The warranty for spares and repairs is twelve months; however, it runs at least until the expiry of the original warranty period for the delivery item.

(8) These contractual statutory limitation periods do not generally apply in the case of intent or fraudulent concealment of a defect, or insofar as we have afforded a guarantee for the quality of the delivery item or in the case that the law according to Articles 438, Paragraph 1, No. 2, 479 Paragraph 1 and 634a, Paragraph 1, No. 2 of the German Civil Code (BGB) envisages longer periods. Statutory provisions regarding suspension, limitation and recommencement of the statutory periods shall remain unaffected by this.

(9) The statutory limitation period shall apply to compensation claims of any nature asserted against us that are not related to a defect.

8. Disclaimer

(1) In particular, no warranty shall be afforded for damage incurred on the delivery item due to following reasons:

(a) Inappropriate or improper use, incorrect assembly or commissioning by the customer or third party, natural wear and tear, the customer's deviation from the agreed operating parameters, incorrect or careless treatment, unsuitable operating media, replacement materials, chemical, electrochemical and comparable influences unless attributable to a fault on our part.

(b) No warranty shall be afforded for wearing parts in the event of a defect occurring through usage after transfer of risk.

(c) Our warranty shall be voided if the set-up and/or commissioning of the machine/plant is not performed by our personnel, unless the customer can prove that the defects are not a consequence of set-up or commissioning by a third party.

9. Liability

(1) We accept liability in cases of intent or gross negligence on our part, or that of our representative or agent and in the case of injury to life, limb or health in line with statutory provisions.

(2) The same shall apply to damage caused by negligence resulting in injury to life, limb or health. In the case of property damage and financial losses caused by negligence, we shall only be liable if a fundamental contractual obligation is breached. The extent of our liability shall however be limited to the predictable damage typical for the nature of contract on its conclusion.

(3) The provisions of Paragraph 2 above shall apply to all compensation claims, specifically compensation in addition to performance or compensation in lieu of performance, irrespective of the legal grounds, in particular due to defects, breach of obligations arising from the contractual relationship or unlawful acts. They shall also apply to the reimbursement of fruitless expenditure.

(4) Otherwise, we shall only be liable according to the German Product Liability Act on account of culpable breach of fundamental contractual obligations, or insofar as we fraudulently conceal defects or have afforded a guarantee for the quality of the delivery item.

(5) Fundamental contractual obligations include those whose infringement jeopardizes the contractual purpose, for instance in the case of substantial delay, significant breach of cooperation or information duties or significant breach of duties on which the contract hinges.

(6) Insofar as liability for damage on our part is excluded or the compensation amount is capped, this shall also apply in respect of the personal liability of our salaried employees, workers, associates, representatives and agents.

(7) Unless stipulated otherwise in the foregoing provisions, our liability shall be excluded.

10. Retention of title

(1) The delivery item shall remain our property until all payments arising from or in connection with the business relationship with the customer have been rendered in full. If the customer has purchased the delivery item in order to resell it, they shall only be permitted to dispose over it within their ordinary course of business. In anticipation of this event, they shall now already assign to us all future claims on their customers arising from the resale. We accept this assignment.

(2) If titles of retention are not effective in a foreign country in the event that its law is applied, or if registration is required in addition to the contractual agreement, the customer shall at their own cost participate in all measures, in particular that of providing all the necessary declarations on their part to ensure effectiveness of the retention of title or to procure us securities equivalent to that of a retention of title.

(3) The customer shall handle their purchased item with due care; in particular they shall insure it appropriately against damage caused by fire, water, breakage at their own expense to cover the replacement value. If the customer is unable to provide proof of insurance at our request, we shall be entitled to insure the delivery item at their cost against theft, breakage, fire, water and any other damage until the insurance is paid in full. The customer must duly perform any maintenance and inspection work required at their own cost.

(4) The customer may neither pledge nor assign the delivery item as security. The customer shall notify us immediately of any seizures, confiscations or other dispositions by third parties. If the third party is unable to reimburse us for the court and out-of-court costs arising from a lawsuit in line with Article 771 of the German Code of Civil Procedure (ZPO), the customer shall be liable for the loss incurred by us.

(5) In the case of wrongful breach of contract by the customer, in particular that of default, we shall be entitled to assert our right to retention of title regarding the delivery item following prior warning. The customer shall surrender the delivery item. We shall be entitled to dispose of the delivery item on its return, the proceeds from which shall be deducted from the amount owed by the customer, minus appropriate disposal costs.

(6) Our assertion of right of retention and seizure of the delivery item shall not be deemed as a withdrawal from the contract.

11. Force majeure

(1) Each party shall be entitled to suspend fulfilment of their contractual duties should fulfilment be precluded or rendered unreasonable by a force majeure, including in particular: labour disputes and circumstances beyond the parties' control such as fire, war, mobilization of military forces, strike, insurrection, embargo, export restrictions, epidemics, natural disasters, extreme natural phenomena, acts of terrorism.

(2) The party that invokes force majeure shall immediately notify the other party in writing of the beginning and end of such a circumstance. If a party fails to notify the other party, the latter shall be entitled to demand reimbursement of all additional costs incurred by them on account of not having received due notification.

12. Copyright

We reserve the intellectual property and copyrights to all figures, drawings, sketches, calculations and other documents submitted to the customer as part of an offer and during

contract processing. Said documents may not be used, reproduced or their content disclosed to third parties beyond the necessary bounds of contract fulfilment without our prior written consent. They shall be returned immediately on demand.

13. Assignment

Any assignment of the customer's rights and/or duties arising from this contract shall be subject to our prior written consent.

14. Right to offset and withhold payments

(1) The customer shall not be entitled to offset any amount due us unless the said receivables are undisputed or have been upheld in a court of law.

(2) The customer shall only be entitled to assert the right to withhold payment if it pertains to the same contractual relationship.

15. Applicable law, place of jurisdiction

(1) German substantive law shall apply to the exclusion of German international private law and the UN Convention on Contracts for the International Sale of Goods.

(2) The place of jurisdiction shall be Stuttgart, however we shall be entitled to bring legal action against the customer at their general court of jurisdiction.

Oberfischach, 22.09.2016