

FMS Terms of Sale and Delivery

1. **Preliminary remarks:** Any and all deliveries and services are effected and rendered exclusively on the basis of our terms of sale and delivery. By accepting the goods delivered by us, the Customer acknowledges its agreement to our terms. Any deviations therefrom shall be made in writing. Any of the Customer's terms that deviate from or are a supplement to these terms of sale and delivery do not become part of the contract, even if we fail to object to such terms or if the Customer declares its intention to conclude and execute the order only on its own terms.

2. **Offers,** in particular prices and delivery times, are subject to change until final acceptance of the order and not binding for reorders. Minor deviations in delivery from our offers, samples or drawings are not regarded as defects to the extent this is reasonable for the Customer. Any subsequent modification initiated by the Customer will be subject to a surcharge.

3. **Acceptance of the order:** As a rule, orders and obligations do not take effect before they have been confirmed by us in writing. Any order placed in writing are binding for the Customer unless expressly refused by us.

4. **Prices:** As a rule, our prices are ex works, excluding packaging, transport, freight and assembly. Our prices are based on the particular prime cost. Should the basis of our calculation be altered through official measures, results of collective bargaining or similar, or through changes to volumes or dimensions, then we are entitled to charge the price valid or calculated on the day of delivery. If agreed free works or construction site, with or without assembly, prices apply only if the vehicles commissioned by us can drive to and/or on the construction site or other unloading place without any difficulties.

5. As a rule, information on **delivery times** are not binding and represent to the Customer only an approximate basis with regard to the date of delivery. Unforeseen stoppages, Acts of God and other circumstances beyond our control entitle us to cancel a delivery contract or to postpone the delivery for the duration of such impairment, to the exclusion of the Customer's claim for damages. The Customer shall be informed of such circumstances as quickly as possible. Any agreed penalty for nonperformance of contract only comes into force if the Customer furnishes evidence that we are to blame for the delay in delivery. However, the time of delivery is regarded as kept if the goods have left our factory on expiry of said delivery time or if we have informed the Customer that the goods are ready for shipment. Should we fail to complete within contract time, the Customer – provided it proves to our satisfaction that it sustained a loss – has the right to claim compensation, amounting to a maximum of 5 percent of the price, for that part of the delivery which, owing to the default, it cannot use as per agreement. Any Customer's claims for delayed delivery or claim in place of performance beyond the above maximum are excluded for all cases of delayed delivery, even after expiry of any deadline for delivery set to us. This does not apply as far as liability is compulsory by operation of law, for example in cases of intent, gross negligence, pursuant to the Product Liability Act, or for wrongful death or personal injury.

6. **Withdrawal:** In case of Customer's violation of duties, in particular in case of delayed payment, we have the right to take back the goods and the Customer shall hand them over after fruitless expiry of a reasonable extension granted to the Customer for performance of its duties. The legal regulations on superfluity of setting a time limit remain unaffected. We furthermore reserve the right to withdraw from the contract and to immediately call back the delivery item as soon as circumstances come to our knowledge which make the Customer's solvency appear doubtful.

7. As a rule, **shipment** is effected at Customer's expense and risk. We choose the type of shipment. Packaging is invoiced at cost price and cannot be returned to us. As a rule, any and all demurrage, connection fees and other ancillary costs are at Customer's expense.

8. **Acceptance:** As far as the ordered goods require acceptance, the respective acceptance procedures shall be performed in due time. Unless the Customer legitimately refused acceptance, the agreed Acceptance Date is decisive, or else our announcement that the goods are ready for acceptance procedures. Goods which are not called on in due time may be invoiced and shipped. If we store finished goods, we have to right to invoice them and charge interest after expiry of the period of payment. If shipment or acceptance of goods is delayed for reasons within the Customer's control, it will be charged the storage costs caused by such delay after 1 week following our announcement of readiness for shipment or acceptance procedures. The utilization of the goods ordered by the Customer is considered to be equivalent with acceptance procedures.

9. **Retention of title** applies to all goods delivered by us until full payment of our total receivables including interest and expenses. The Customer has the right to process and resell our conditional commodities in the frame of its regular business activities. The Customer shall herewith assign to us in advance any and all claims against third parties arising from such processing or resale to the amount of the respective invoice value (including VAT). Irrespective of this assignment, the Customer continues to be entitled to collect its receivables until revoked by us. The Customer shall process and transform the goods delivered by us exclusively for our benefit. If

processed together with other goods not belonging to us, we are entitled to co-ownership in the new product in the ratio of the invoice value of our conditional commodity to the purchase price of the other processed goods (at the time of processing). The Customer shall inform us immediately of any attachments effected by its creditors.

10. **Complaints** for defective and incomplete delivery shall be brought to our attention in writing not later than 5 days after receipt of the consignment. Failing timely inspection or notice of defects, the goods delivered by us are considered accepted. We shall correct free of charge any defects confirmed by us. Our representatives are not authorized to make binding statements in case of complaints. We do not take liability for corrections or substitute performance effected by the Customer or by third parties by order of the Customer, nor for alterations to the goods made without our previous approval.

11. **Warranty:** Compensation for defects cannot be claimed for minor deviation of the delivery or service rendered from the agreed characteristics, in particular from our offers, samples or drawings, for minor impairment of the serviceability of the goods, for natural wear, or for damages arising after passing of risk following incorrect or negligent handling, excessive operational demands, or by reason of extraordinary external influences not specified in the contract. If the item delivered by us is a used object, and if the recipient is a merchant, warranty is likewise generally excluded. We warrant for defects as to quality by correcting or substituting - at our discretion - such parts that have been found to be defective as a result of circumstances prevailing at the time of acceptance or transfer of the goods and brought to our attention by the Customer in writing immediately after detection. Title to substituted parts passes to us. The Customer shall allow us by arrangement the necessary time and occasion to effect all corrections and/or substitute deliveries we deem necessary. Otherwise, we are exempt from any and all liability for any consequences which may arise. Only in urgent cases, to protect its operational safety or to prevent any disproportionately large damage, and after immediate announcement to us, has the Customer the right to remedy a defect itself or have it remedied by others and to demand us to compensate it for the respective expenses. In the frame of the legal regulations, the Customer is furthermore entitled to withdraw from the contract if a reasonable period granted to us for correction or substitute delivery has expired fruitlessly or unsuccessfully, unless in the presence of Acts of God or other circumstances beyond our control. Insofar, the right to reduction of the contract price is excluded. Any claims by our Customer for damages are excluded. However, this does not apply to damages arising from personal injury or wrongful death caused by the deliberate or negligent violation of obligations by us or the deliberate or negligent violation of the obligations by our legal representatives or vicarious agents; furthermore, exclusion of liability generally does not apply to other damages caused by the deliberate or negligent violation of obligations by us or the deliberate or negligent violation of the obligations by our legal representatives or vicarious agents.

Otherwise, exclusion of liability for simple negligence in respect of other damages does not apply if we violate major contractual obligations; in this case, however, our liability is limited to the typically foreseeable damage, unless deliberation or gross negligence prevails, or liability is compulsory anyway for personal injury or wrongful death. In any case, claims by our Customer pursuant to the Product Liability Act and other claims based on producer's liability remain unaffected.

As a rule, all claims for compensation for defects become time-barred after 12 months. This does not apply insofar as longer periods are prescribed by operation of law, in particular in case of wrongful death or personal injury, as well as in case of deliberate or grossly negligent violation of obligation by our legal representatives or vicarious agents, and in case of a slightly negligent violation of major obligations, or in case of malicious silence with regard to a defect. The statutory time limits also apply to defects in a building, or for goods that, corresponding to their customary utilization, have been used in constructing a building and have caused such building to be defective. In respect of bought-in components, we take liability only in the frame of the warranty claims we can assert against our subcontractors and suppliers. We waive liability for components provided by third parties. Customer's claims for recourse against us pursuant to the regulations on purchase of consumer goods in respect of recourse by the entrepreneur apply only insofar as the Customer and its buyer have not agreed on compensation beyond the statutory compensation for defects.

12. **Terms of payment:** Unless agreed otherwise, any and all goods and services are payable without any deduction within 30 days after invoice date. In case of excess of the time allowed for payment, the non-merchant will be charged default interest in the amount of 9%, and the merchant in the amount of 9 % above the base interest rate. Counterclaims not acknowledged by the supplier in writing entitle the Customer neither to set off nor to retain payments. We have the right to submit proof of higher damage at any time.

13. Unless specified otherwise in the order confirmation, the **place of performance** for all goods, services and payments is our place of business. The place of jurisdiction for any and all claims arising from the business connection is our place of business. Optionally, we have the right to bring suit against the Customer at the court of its place of business or residence.

Effective as of 17 May 2017