

General Terms and Conditions of Sale and Delivery of fiwa)group (as from 1/5/2019)

1. General

All deliveries shall be exclusively governed by these General Terms and Conditions. Other terms shall not become part of the contract, in particular terms and conditions of the Customer, even if we do not expressly object to them.

All agreements, ancillary agreements, assurances and contract amendments must be made in writing. This shall also apply to the waiver of the written form requirement. The priority of individual agreements remains unaffected. There are no ancillary oral agreements.

For cost estimates, drawings and other documents, we reserve the right to use our ownership and copyright exploitation rights in full. These documents may only be made available to third parties after prior approval by us and, if no contract is concluded with us, must be returned to us without delay upon request. Our names, trademarks and business reference numbers may only be used vis-à-vis third parties with our express consent.

2. Offers, orders

Our offers are generally non-binding, unless they are expressly marked in writing as binding.

Orders shall only become binding for us upon acceptance of the order by written confirmation or by sending the goods.

3. Delivery

The delivery periods or delivery dates stated by us are not binding unless it was expressly agreed upon otherwise in individual cases.

In the case of non-binding delivery periods and deadlines, we shall not be in default before the unsuccessful expiry of a reasonable grace period for delivery set by the Customer in writing. The Customer may not set the expiry of such a period to an earlier date than 4 weeks after expiry of the non-binding delivery period or the non-binding delivery date. We shall not be in default of delivery if suppliers are not able to deliver accurate or timely delivery for reasons outside our sphere of influence.

Adherence to agreed delivery periods and deadlines presupposes the timely receipt of all documents, information and the fulfilment of any other preconditions required for the execution of the contract by the Customer, such as the effecting of agreed advance payments or provision of a security. Should these conditions not be met, the deadlines shall be extended accordingly. Agreed delivery periods and deadlines shall also be extended if we are hindered from making deliveries by circumstances that we are not responsible for. The same shall apply to force majeure; this shall be the same as strikes, lock-outs, action by public authorities, energy and raw material scarcity, transport bottlenecks or disruption beyond our control, unforeseen operational disruptions, for example by fire, water, and machine damage. The delivery periods and deadlines shall be extended accordingly, without us being required to point this out separately if and to the extent the Customer is obliged to pay in advance, but no payment is made. Subsequent changes requested by the Customer shall interrupt and,

where necessary, extend the delivery periods and deadlines until the agreement on the desired change.

The Customer shall be obliged, upon our request, to declare within a reasonable time period whether it will withdraw from the contract due to the delay in delivery or whether it still desires delivery.

We shall be entitled to make partial deliveries, insofar as their acceptance is not unreasonable for the Customer, especially if the delivery of the remaining ordered goods is ensured and if this does not result in a considerable additional expense or additional costs for the Customer. Each partial delivery may be invoiced separately.

The Customer shall be in default of acceptance if it does not accept the goods on the agreed delivery date. In the case of non-binding delivery periods or delivery dates, we may inform the Customer with a period of notice of 3 weeks that the goods are ready for collection; if the Customer does not collect the goods upon expiry of the period, it shall be in default of acceptance.

If dispatch or delivery is delayed at the Customer's request for more than one month after notification of readiness for dispatch, we may charge storage fees in the amount of 0.5% for each month of delay or part thereof, however, in no case more than 5%. The contracting Parties are free to produce evidence of higher or lower storage costs.

Even if it should be agreed on a case-by-case basis that we take over the dispatch of the goods, the place of performance shall be the place of delivery of the goods by us to the person responsible for transport.

4. Installation and assembly

In the event that the purchase contract also provides for the installation and assembly, the following provisions shall apply, unless otherwise agreed in writing:

a. The Customer shall be obliged to assume responsibility for and provide in due time:

- all excavation, construction and other sector ancillary works, including technical and auxiliary staff, building materials and tools required for this purpose;
- the required goods and materials required for assembly and commissioning, such as scaffolding, hoists and other devices, fuels and lubricants;
- energy and water at the place of use including the connection, heating and lighting;
- sufficient spaces for the storage of the machine parts, equipment, materials, tools, etc., at the site of installation which are suitable, dry and lockable; suitable working and social spaces for the assembly personnel including sanitary facilities suitable to the circumstances on site;
- all safeguards required for the protection of the equipment, the delivery personnel and the installer at the construction site;
- protective equipment and protective devices required due to special circumstances at the site of installation;
- insurance cover for materials and tools against theft and damage of any kind.

b. Before the installation works, the Customer shall provide the required information on the location also in regard to concealed power, gas, water lines or similar installations as well as the required static information without being requested.

c. Prior to the start of the installation or assembly, the materials and objects to be provided by the Customer and which are required for the start of the work shall be located at the installation or assembly site and all preparatory works shall be completed prior to the start of the construction to permit the installation or assembly to start and to carry out assembly operations without interruption. The transport routes and installation or assembly site must be even, clear and usable.

d. If the installation, assembly or commissioning is delayed due to circumstances beyond our control, the Customer shall bear our costs for waiting time and additionally required travels to a reasonable extent.

e. The Customer shall immediately certify to us the duration of the working time of the installation personnel as well as the completion of the installation, assembly or commissioning.

f. After completion of the installation or assembly, the Customer shall certify the completed installation and assembly according to the contractual agreements on our request.

5. Prices

The prices are ex works prices exclusive of packaging plus the applicable value added tax.

We reserve the right to adjust prices accordingly if costs change after conclusion of the contract and up to the time of delivery, in particular due to collective agreements, changes to the prices of raw materials, changes to wage and non-wage labour costs, social security contributions as well as energy costs and costs due to environmental standards, other price changes of the suppliers, changes in customs charges, freight rates, public levies or exchange rate fluctuations, which are beyond our control and which could not be foreseen with a reasonable degree of certainty. Upon request, we shall provide the Customer with proof of the reasons for the adjustment of prices.

Insofar as we take over the installation or assembly, and unless agreed otherwise, the Customer shall bear all ancillary costs required for this in addition to the agreed price, such as travel expenses, accommodation costs, costs for transporting the tools and the personal meetings as well as any required per diem payments.

6. Payment conditions

Unless agreed otherwise, invoices shall be paid within 14 days after delivery and receipt of the invoice without deduction by transfer to the account specified by us.

If the payment term is exceeded, the Customer shall be in default without further reminder. The timeliness of the payment shall be determined by the time in which the amount is credited to the specified account. In the event of a default in payment, we shall be entitled to demand default interest at the rate of 9 percentage points above the base rate. The right to claim further damages, such as payment order costs and legal fees, shall remain reserved.

Any granted discounts as well as any agreed binding delivery periods and deadlines shall become obsolete in the event of default of payment.

Any right of retention or set-off of the Customer shall only apply to such counter-claims that are not contested or have been determined in a final judgment. Claims shall only be deemed to be undisputed if they were expressly accepted by us in writing. The Customer can only exercise a right of retention insofar as its counter-claim is based on the same contractual relationship.

7. Retention of Title

The delivered objects (Reserved Goods) shall remain our property until the payment has been made in full.

In the event of any breach of contract by the Customer, particularly in the event of default in payment, we shall be entitled to take back the goods delivered under retention of title. In the event of a delay in payment, a prior period of notice is not required. For the purpose of reclaiming the Reserved Goods, we or a third party appointed by us may enter the business and storage rooms of the Customer at the usual business hours. The Customer shall be obliged to allow us or a third party designated by us to access the Reserved Goods to the extent required to remove them. After reclaiming the Reserved Goods, we shall be entitled to make reasonable use of them after declaring our intention to do so. The proceeds of such exploitation shall be offset against the liabilities of the Customer less any reasonable exploitation costs.

If the Customer resell the Reserved Goods for financing purposes or in the ordinary course of business, it undertakes to maintain our retention of title in relation to the purchaser. The Customer shall already now assign all claims arising from the resale in the amount of the invoice amount including value added tax to its customers or third parties with all ancillary rights, irrespective of whether the Reserved Goods have been resold without or after processing. The Customer shall inform its purchaser of the assignment of the claims to the supply price upon the resale. The Customer shall not be entitled to sell the Reserved Goods to customers who have excluded or limited the assignment against them. If the Reserved Goods have been further processed with other objects not belonging to the Customer, the assignment shall only be made in the ratio of the co-ownership shares in the further processed object.

The Customer shall remain authorised to collect the receivables after assignment. Our authorisation to collect the receivables ourselves shall remain unaffected by this. However, we will not collect the receivables as long as the Customer meets its payment obligations from the proceeds collected, is not in default of payment or, in particular, no application for the opening of insolvency proceedings has been filed or as long as the Customer has not ceased to make payments. In the event that one of these cases applies, we may demand that the Customer make known the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and notify the debtors of such assignment. Upon the occurrence of such a case, the Customer's right to collect the claims shall lapse.

Apart from that, the Customer may neither sell nor pledge the Reserved Goods nor to provide them as security without our prior written consent. In the event of attachment, seizure or other dispositions regarding the Reserved Goods by third parties, the Customer must point out our ownership of the goods and notify us thereof without delay. If the third party is not able to reimburse us for the judicial and extra-judicial costs of an action pursuant to Sec. 771 of the ZPO [German Code of Civil Procedure], the Customer shall be liable for the losses incurred.

The Customer shall be obliged to handle the Reserved Goods with care and, in particular, to insure them sufficiently for the replacement value against damage caused by fire, mains water, storm/hail, burglary steel, sprinklers and elemental damage. Any claims against the insurance arising from a damage to the Reserved Goods are already now assigned to us in the amount of the value of the Reserved Goods.

If the Reserved Goods are processed, changed, mixed or connected with other objects which do not belong to us, we shall acquire co-ownership in the new object in proportion to the value of the Reserved Goods to the other processed, changed or connected objects.

8. Deterioration in the assets

After the conclusion of the contract with the Customer, It becomes apparent that due to its financial situation, the Customer may not be able to fulfil its contractual obligations, especially in the case of cessation of payments, application for the opening of insolvency proceedings, attachment or compulsory execution measures and direct debits, namely vis-à-vis and/or to third parties, we shall be entitled at our discretion to withhold delivery until the prepayment of purchase price or the payment of a reasonable security. This shall also apply if there are reasonable grounds for doubts regarding the liquidity or creditworthiness of the Customer due to a default in payment of the Customer. In this case, we shall also be entitled to withhold deliveries until the receipt of all payments from outstanding claims against the Customer or until the provision of a reasonable security. If the advance payment or security is not provided by the Customer within 2 weeks, we shall be entitled to withdraw from the contract.

9. Defect notification, warranty

The Customer's claims for defects shall require that it immediately inspect the goods and report defects pursuant to Sec. 377 HGB [German Commercial Code]. Complaints must be made in writing stating the defect as precisely as possible. Visible material defects shall be reported no later than 5 days after collection upon delivery ex works or storage, otherwise after delivery. A late complaint shall result in the loss of the defect-related rights.

As far as defective goods are concerned, we will carry out subsequent performance by remedying the defect or delivering a defect-free object at our own discretion.

The limitation period for claims for defects amounts to one year from delivery. However, this limitation shall not apply if a defect was fraudulently concealed or if a guarantee has been accepted for the quality or in the cases set forth in Sec. 438 para. 1 no. 2 BGB [German Civil Code]. In the event of claims for damages, this limitation shall not apply in the event of injury to life, limb or health, as well as in case of wilful intent or gross negligence.

Liability for damage caused by simple negligence shall be limited to damage arising from the violation of essential contractual duties, the fulfilment of which enables the proper performance of the contract in the first place and on the fulfilment of which the contractual partners can regularly rely upon and does rely; in this case, liability shall be limited to the typical foreseeable damage. The amount be limited to the purchase price of the delivery in question. This limitation of liability shall equally apply to damage caused by employees or agents of our company, which are not organs or executives, due to gross negligence. The above limitation of liability shall not apply in the event of wilful intent, in the case of claims according to the Produkthaftungsgesetz [German Product Liability Act], due to defects with regard to which a quality guarantee has been accepted and in case of injury to life, limb or health or due to gross negligence by the bodies or executive employees of our company.

10. Applicable law, place of jurisdiction, miscellaneous

German law shall apply to all legal relations between us and the Customer, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

The exclusive place of jurisdiction for all disputes arising from or in connection with a delivery shall be our place of business. However, we are also entitled to sue the Customer at the court at its domicile.

In the event of a legal invalidity of individual provisions, these provisions shall remain effective; the invalid provision shall be replaced by such a provision that comes closest to the economic intent.

As at 01/05/2019