

Standard Terms and Conditions of Sale and Delivery of FAWO GmbH Fahrzeugtechnik (valid from: 1 July 2018)

§ 1 General provisions, scope

- (1) These Standard Terms and Conditions of Sale and Delivery (STCSDs) of FAWO GmbH Fahrzeugtechnik (hereinafter referred to as "Seller") shall apply to all business relationships with our customers (hereinafter referred to as "Buyer"). They shall also apply to all future contracts with the Buyer, even if they are not separately agreed upon once more. The STCSDs shall only apply if the Buyer is a businessman within the meaning of § 3:10.1 BGB (German Civil Code).
- (2) Our STCSDs shall apply exclusively. Any deviating, conflicting or supplementary terms and conditions of the Buyer shall only become an integral part of the contract if and to the extent that we have expressly agreed to their validity. This requirement for consent shall apply in every case, even if we are aware of the standard terms and conditions of the Buyer while we carry out the delivery to the latter without reservation.
- (3) Any contracts between us and the Buyer shall only be binding if they are confirmed by us in writing, unless they are based on individually agreed terms within the meaning of § 305b BGB. In the event of framework contracts, individual requests for delivery shall be exempted from the requirement concerning the written form.
- (4) Any declarations and notifications of legal relevance, which have to be made following the conclusion of the contract by the Buyer to us (e.g. setting of deadlines, notification of defects, declaration of rescission or reduction of the purchase price), must be made in writing or text form (e.g. email, telefax). Any compulsory stricter statutory requirements concerning form shall not be affected.
- (5) Any references to the application of statutory provisions shall only have a clarifying significance. Even without such a clarification, the statutory provisions shall apply insofar as they are not directly amended or expressly excluded in these STCSDs.

§ 2 Offer and conclusion of contract

- (1) Our offers shall be subject to confirmation and have no binding force. This shall also apply if we send catalogues, offers, price lists, circular letters or general offers to the Buyer.
- (2) The placement of an order by the Buyer shall be deemed to be a binding offer to enter into a contract. Unless otherwise stipulated by the order, we shall be entitled to accept this offer to enter into a contract within 14 days of its receipt by us.
- (3) The acceptance may be declared either in writing within the meaning of § 1 (4) of these STCSDs (e.g. by confirmation of the order) or by delivery of the goods to the Buyer.
- (4) The Seller shall retain the ownership and copyright of all offers and cost estimates submitted by him as well as all designs, catalogues, brochures, price lists, circular letters, illustrations and other documents made available to the Buyer. The Buyer may not make these items available as such or in terms of content to third parties, may not disclose them or use or reproduce them himself or through third parties. At the request of the Seller he shall return these items completely to him and destroy any copies made thereof, provided that they are no longer needed by him in his ordinary course of business or if negotiations do not lead to the conclusion of a contract.

§ 3 Prices and terms of payment

- (1) Unless otherwise agreed upon in individual cases and except as otherwise provided for in § 3 (2) of these STCSDs, our current prices at the time of the conclusion of the contract shall apply in each case. The prices shall apply to the scope of services and delivery specified in the confirmation of order. The prices shall be quoted in Euro (EUR) ex works plus packaging, statutory value-added tax, customs duties in the event of export deliveries as well as fees and other public charges.
- (2) We reserve the right to increase our prices accordingly if after the conclusion of the contract cost increases occur, more particularly following collective bargaining agreements or material price increases. These shall be evidenced to the Buyer at the latter's request.
- (3) In the event of small orders, we must charge minimum amounts which take the special charges involved in the execution of these orders into account.
- (4) In the event of a sale to destination, the Buyer shall bear the transport costs ex works and the costs of a transport insurance policy possibly requested by the Buyer. The Seller points out that a corresponding transport insurance policy shall only be taken out at the request of the Buyer.
- (5) The purchase price shall be due and payable within 30 days of invoicing and delivery and/or acceptance of the goods.
- (6) Upon the expiry of the afore-mentioned payment deadline the Buyer shall be deemed to be in default. If the Buyer is in default, the Seller shall be entitled to demand default interest in the amount of nine percentage points above the respective base interest rate. We reserve the right to assert any more extensive damage caused by default. In the event of businessmen our claim to the commercial default interest (§ 353 HGB – German Commercial Code) shall remain unaffected.
- (7) Unless otherwise agreed upon in individual cases, we shall grant 2% discount based on the pure goods value, if the invoices are paid within 10 days of the invoice date and if all due payment obligations from previous contracts have been fulfilled.
- (8) Any advance and/or instalment payments shall not bear interest.
- (9) The Buyer shall only be entitled to rights of off-setting or retention insofar as his claim has been established with a final and binding effect or if they are uncontested. In the event of defects concerning the delivery, the counter-rights of the Buyer, more particularly those in accordance with § 7 para 6 sentence 2 of these STCSDs, shall remain unaffected.
- (10) We do not accept any bills of exchange; cheques are only accepted with a view to performance. Any fees incurred shall be borne by the Buyer.
- (11) If after the conclusion of the contract it turns out that our claim to the purchase price is at risk due to a lack of financial capacity of the Buyer (e.g. application to initiate insolvency proceedings), we shall be entitled in accordance with the statutory provisions to refuse performance and to rescind the contract – subject to the setting of a deadline (§ 321 BGB).

§ 4 Delivery and delivery period/restriction of liability

- (1) The delivery period shall be agreed upon individually and/or specified by us upon acceptance of the order. Compliance with our obligation to deliver shall be subject to a timely and orderly fulfilment of the obligations of the Buyer.
- (2) The Seller shall not be liable for impossibility of delivery or delays in delivery if these are caused by force majeure or other events not foreseeable at the time of the conclusion of the contract (e.g. disruptions of operations of any kind whatsoever, difficulties in material procurement, transport delays, strikes, lack of labour, energy or raw materials, difficulties in obtaining the necessary official authorisations, conditions imposed by public authorities or a default in delivery or incorrect or untimely delivery by suppliers), for which the Seller is not responsible. The Seller shall inform the Buyer about the unavailability of the service without delay. If such events make the delivery or performance essentially more difficult or impossible for the Seller and the impairment is not of a temporary nature, the Seller shall be entitled to rescind the contract; any consideration already given by the Buyer shall be refunded without delay by the Seller. In the event of obstructions of a temporary nature, the periods of delivery or performance shall be extended or the dates of delivery or performance shall be postponed by the period of the impairment plus an appropriate lead time. If the Principal cannot be reasonably expected to accept the delivery or performance following the delay, he can rescind the contract through immediate written declaration within the meaning of § 1 (4) of these STCSDs to the Seller.
- (3) The Seller shall be entitled to make partial deliveries if
 - the partial delivery can be used by the Principal within the framework of the contractual purpose,
 - the delivery of the remaining ordered goods is secured and
 - the Buyer does not incur any considerable additional expenditure or supplementary costs (unless the Seller is ready to take over such costs).
- (4) If the Seller defaults in respect of delivery or performance or if delivery or performance becomes impossible for him for any reason whatsoever, the liability of the Seller to damages shall be restricted in accordance with § 7 of these STCSDs.

§ 5 Place of performance, passing of risk, default in acceptance

- (1) The delivery shall be made ex works, which shall also be the place of performance for the delivery and a possible supplementary performance. At the request and expense of the Buyer the goods shall be dispatched to another place of destination (purchase to destination). Unless otherwise agreed upon, we shall be entitled to determine the type of dispatch (in particular the transport company, transport route, packaging) after due assessment of the circumstances.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer no later than upon the handover. In the event of purchase to destination, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass with the delivery of the goods to the forwarder, the carrier or any other person or organisation appointed to carry out the dispatch.
- (3) The shipment shall only be insured by the Seller at the express request of the Buyer and at the latter's expense against theft, breakage, transport, fire and water damage or any other insurable risks.
- (4) If the Buyer is in default of acceptance, if he refrains from an act of co-operation or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the damage caused including extra expenses (e.g. storage costs).

§ 6 Reservation of title

- (1) Pending full payment of all our current and future claims under the purchase contract and a current business relationship (collateralised claims), we shall reserve the title to the sold goods.
- (2) The Buyer must treat the goods subject to reservation with care and must comply, more particularly, with the relevant DIN Standards. He must take out sufficient insurance based on the replacement value against fire, water and theft damage.
- (3) The goods under a reservation of title may not be pledged to third parties or assigned by way of security pending full payment of the collateralised claims. The Buyer must inform us without delay in writing within the meaning of § 1 (4) of these STCSDs if an application for the opening of insolvency proceedings is filed or insofar as there is any access of third parties to goods which belong to us.
- (4) In the event of conduct not in conformity with the contract by the Buyer, in particular failure to pay the purchase price due, we shall be entitled to rescind the contract in accordance with the statutory provisions and to demand the surrender of the goods by virtue of the reservation of title and the rescission. If the Buyer fails to pay the purchase price due, we may only assert these rights if we have set the Buyer an appropriate period for payment without success or if the fixing of such a period is dispensable in accordance with the statutory provisions. The Buyer shall be entitled to sell and/or process the goods placed under a reservation of title during his ordinary course of business. In this case the following terms and conditions shall apply in addition.
 - a) The reservation of title shall also apply to the full value of the products arising from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If in the event of a processing, mixing or combining with goods of third parties, the latter's ownership right is maintained, we shall acquire co-ownership in the proportion of the invoice values of the process, mixed or combined goods. As for the rest, the arising product shall be subject to the same terms and conditions as the goods delivered with a reservation of title.
 - b) The claims against third parties arising from the reselling of the goods or products shall be assigned by way of security to us already at this stage as a whole and/or in the amount of any co-ownership share of us in accordance with the foregoing paragraph. We accept the assignment. The obligations of the Buyer referred to in paragraph 2 shall also apply in respect of the assigned claims.
 - c) The Buyer shall be empowered to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer fulfils his payment obligations in our respect, is not in default of payment, has not applied for the initiation of insolvency proceedings and if there is no other defect in respect of his ability to perform and pay. If this is, however, the case, we may demand that the Buyer discloses to us the assigned claims and their debtors, submits all the data necessary for collection, hands over the corresponding documents and informs the debtors (third parties) about the assignment.
 - d) If the realisable value of the collaterals exceeds our claims by more than 10%, we shall release collaterals at our discretion at the request of the Buyer.

§ 7 Claims of the Buyer based on defects

- (1) The rights of the Buyer in the event of material defects and defects of title shall be governed by the statutory provisions unless otherwise agreed upon herein below. The statutory special provisions for final delivery of the goods to a consumer shall not be affected, even if the latter has processed them further (supplier recourse in accordance with §§ 478 BGB). Any claims under supplier recourse shall be excluded, if the defective good has been e.g. processed further into another product by the Buyer or another company.
- (2) The claims of the Buyer based on defects presuppose that he has fulfilled his statutory obligations in respect of inspection and notification of defects (§§ 377, 381 HGB). If during the inspection or later a defect is detected, it must be immediately notified to us in writing within the meaning of § 1 (4) of these STCSDs. The notification shall be deemed to have been made immediately, if it is made within two weeks whereby the compliance with the deadline is dependent on the timely sending of the notification. Regardless of this obligation to inspect and notify defects, the Buyer must notify in writing within the meaning of § 1 (4) of these STCSDs any obvious defects (including wrong delivery and short delivery) within two weeks of delivery; in this case, too, the deadline shall be deemed to be complied with if the notification has been sent in due time. If the Buyer fails to properly inspect and/or notify defects, our liability for the defect not notified shall be excluded.
- (3) In the event of material defects of the delivered goods, the Seller shall be obliged and entitled according to his choice to be made within an appropriate period of time initially to remedy the defect or make a substitute delivery. In the event of failure, i.e. impossibility, unreasonableness, refusal or inappropriate delay of the remedying of the defects or substitute delivery, the Buyer may rescind the contract or reasonably reduce the purchase price.
- (4) We shall be entitled to make the owed remedying of defects dependent on the Buyer paying the purchase price due. The Buyer shall, however, be entitled to retain an appropriate part of the purchase price in proportion to the defect.
- (5) The Buyer shall provide us with the necessary time and opportunity for remedying of the defects, and in particular to hand over the goods objected to for inspection purposes. In the event of substitute delivery, the Buyer must return the defective goods in accordance with the statutory provisions. The remedying of defects shall neither include the removal of the defective goods nor the new installation if we were not originally obliged to do the installation.
- (6) The expenses necessary in connection with the inspection and the remedying of the defects and more particularly transport, travel, labour and material costs (not: removal and installation costs) shall be borne or refunded by us depending on the statutory provisions, if there is an actual defect. If the request for removal of defects by the Buyer turns out, however, to be unjustified, we may demand compensation for the costs incurred from the Buyer, unless the lack of defectiveness was not discernible for the Buyer.
- (7) If the remedying of the defects fails or if a period to be fixed for the remedying of the defects by the Buyer expires without success or is dispensable in accordance with the statutory provisions, the Buyer may rescind the purchase contract or reduce the purchase price. In the event of a minor defect, there is, however, no right of rescission. Claims of the Buyer to damages and/or replacement of wasted expenditure shall only exist in accordance with the provisions of § 8 of these STCSDs and shall, as for the rest, be excluded.

§ 8 Other liability

- (1) Unless otherwise agreed upon in these STCSDs as well as the provisions herein below, we shall be liable for any infringement of contractual and extra-contractual obligations in accordance with the applicable statutory provisions.
- (2) We shall be liable for damages – regardless of the legal grounds – in the event of intention and gross negligence. In the event of simple negligence we shall only be liable
 - a) for damages to life, limb or health,
 - b) for damages due to the infringement of a material contractual obligation (an obligation whose fulfilment actually allows for the proper execution of the contract and in whose compliance the contracting partner regularly trusts and may trust); in this case our liability shall, however, be restricted to the replacement of the foreseeable, typically occurring damage.
- (3) The restrictions of liability resulting from paragraph 2 shall not apply insofar as we have maliciously concealed a defect or taken over warranty for the condition of the goods. The same shall apply to any claims of the Buyer under the German Product Liability Act.
- (4) The afore-mentioned exclusions of liability shall apply to the same extent for the benefit of the bodies, statutory representatives, employees and other vicarious agents of the Seller.
- (5) If an obligation has been infringed which does not consist in a defect, the Buyer may only rescind or terminate the contract, if we are responsible for the infringement of the obligation. As for the rest, the statutory prerequisites and legal consequences shall apply.

§ 9 Statute of limitations

- (1) By deviation from § 438 para 1 No. 3 BGB, the general period of limitation for claims under material defects and defects in title shall be one year from delivery.

§ 10 Choice of law and place of jurisdiction

- (1) These STCSDs and all legal relationships between us and the Buyer shall be governed by the law of the Federal Republic of Germany, to the exclusion of the international uniform law and more particularly the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the reservation of title in accordance with § 6 of these STCSDs shall be subject to the law at the respective storage place of the goods if according to that law the choice of law for the benefit of German law is inadmissible or ineffective.
- (2) For all disputes arising directly or indirectly out of this contractual relationship, the place of jurisdiction Mainz, which is relevant for our registered office, shall be the relevant, exclusive – also internationally – place of jurisdiction, insofar as the Buyer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a fund under public law. The same applies to business relations with non-merchants, if they have no general place of jurisdiction in Germany. We shall, however, be entitled to file actions at the general place of jurisdiction of the Buyer. Overriding statutory provisions, more particularly relating to exclusive jurisdiction, shall not be affected.

§ 11 Severability

- (1) Should one or more Clauses of these Standard Terms and Conditions be invalid as a whole or in part, the validity of the remaining provisions shall not be affected.