


Form		
<b>Title: General Terms of Supply “Green Terms of Supply” ZVEI</b>	<b>Document: FB 7.4 - 08</b>	
	Date: 23/10/13	
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#### Article I: General provisions

1. These General Terms of Supply apply exclusively to legal relations between the Supplier and the Customer in connection with supplies delivered and/or services provided by the supplier (hereinafter referred to as: Supplies). Customers' General Terms of Supply only apply if the Supplier has expressly agreed to them in writing. Written, concurrent declarations from both parties determine the extent of the Supplies.
2. The Supplier retains unrestricted ownership and copyright exploitation rights to cost quotations, drawings and other documents (hereinafter referred to as: Documents). The Documents may only be made accessible to third parties after prior agreement of the Supplier and, if the order is not placed with the Supplier, they must be returned immediately on request. Sentences 1 and 2 apply correspondingly for Documents of the Customer; however these may be made accessible to such third parties to whom the Supplier has legitimately transferred deliveries.
3. The Customer has the non-exclusive right to utilisation of standard software and firmware with the agreed performance characteristics in unchanged form on the agreed devices. The Customer may make a backup copy of the standard software without an express agreement to this effect.
4. Partial deliveries are permitted in as far as reasonable for the Customer.
5. The term "compensation claims" in these General Terms of Supply also covers claims to compensation for futile efforts or expenditures.

#### Article II: Prices, payment conditions and offsetting

1. Prices are ex works, excluding packaging, plus the statutory VAT applicable in each case.
2. If the Supplier has assumed responsibility for erection or assembly and unless otherwise agreed, the Customer pays not only the agreed remuneration for this, but also all necessary auxiliary costs such as travel and transport expenses as well as severance allowances.
3. Payments must be made free payment point of the Supplier.
4. The Customer may only set off claims which are undisputed or have been legally established.

#### Article III: Reservation of ownership

1. The items supplied (reserved goods) remain the property of the Supplier until all claims due to the Supplier from the Customer as a result of the business relationship have been met. If the value of all security rights to which the Supplier is entitled exceeds the value of all secured claims by more than 20 %, the Supplier will release a corresponding part of the security rights at the request of the Customer; the Supplier may choose at its own discretion which of the various existing security rights it releases.
2. During the existence of the reservation of ownership, the Customer may not pledge the reserved goods or use them for security and may only resell them to resellers under the condition that the reseller receives payment from his customer or makes the transfer of ownership to the customer dependent on the customer fulfilling his payment obligations.

3. If the Customer resells reserved goods, it hereby as a precaution assigns to the Supplier all its future accounts receivable from its customers accruing from the resale, along with all auxiliary rights – including any current account balance claims – without the need for any further declarations. If the reserved goods are resold without a unit price being agreed for them, the Customer assigns to the Supplier the part of the total accounts receivable which corresponds to the price of the reserved goods charged by the Supplier.

4. **a)** The Customer is permitted to process the reserved goods or to mix or combine them with other goods. Such processing is deemed to take place for the Supplier. The Customer stores the resulting new goods for the Supplier with the due care of a diligent businessman. The new goods are considered reserved goods.

**b)** The Supplier and Customer hereby agree that in the event of combination or mixing with other goods not belonging to the Supplier, the Supplier will in all cases acquire co-ownership of the new goods in the same proportion as the ratio of the value of the combined or mixed reserved goods to the value of the other goods at the time of the combining or mixing. To this extent, the new item is considered reserved goods.


**c)** The provision relating to the assignment of claims under No. 3 also applies to the new goods. However, the assignment applies only up to the amount which corresponds to the value of the processed, combined or mixed reserved goods invoiced by the Supplier.

**d)** If the Customer combines the reserved goods with real estate or movable assets, it also, as a precaution, hereby assigns to the Supplier its accounts receivable as payment for the combined goods along with all auxiliary rights in the same proportion as the ratio of the value of the combined reserved goods to the value of the other combined goods at the time of the combination, without the need for any further declarations.

5. The Customer is authorised to collect assigned claims from the resale until such authorisation is revoked. For important grounds, in particular in the event of default of payment, suspension of payment, commencement of insolvency proceedings, bill protest or grounds which suggest the Customer has excessive debts or faces imminent insolvency, the Supplier is entitled to revoke the Customer's collection authority. Furthermore, after prior warning and observation of a reasonable period of time, the Supplier can disclose the assignment of security, utilise the assigned claims and demand that the Customer disclose the assignment of security to its customer.

6. The Customer must immediately notify the Supplier of any attachments, seizures or other dispositions or interventions by third parties. If evidence is provided of a legitimate interest, the Customer must immediately provide the Supplier the information required to assert its rights against the Customer's customer, and must hand over the necessary documents.

7. In the event of a breach of obligation by the Customer, in particular default of payment, the Supplier is entitled, after unsuccessful expiry of a reasonable deadline for performance by the Customer, to demand return of the goods and to withdraw from the contract. This does not affect the statutory provisions concerning the dispensability of setting a deadline. The Customer is obliged to surrender the goods. The repossession or enforcement of the reservation of ownership or the seizure of the reserved goods by the Supplier does not

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constitute a withdrawal from the contract unless the Supplier expressly declares this.

#### Article IV: Deadlines for deliveries, delays

1. The observation of deadlines for deliveries requires that the Customer submits in good time all the necessary documents, authorisations and approvals, in particular relating to plans, as well as that the Customer complies with the agreed payment conditions and other obligations. If these conditions are not met on time, the deadlines are extended to a corresponding extent; this does not apply if the Supplier is responsible for the delay.
2. If the failure to observe the deadline is a result of the following
  - a) Force majeure, e.g. mobilisation of troops, war, terrorist actions, riots or similar events (e.g. strike, lockout)
  - b) Virus and other attacks by third parties on the Supplier's IT system, in as far as they occurred despite compliance with protective measures implemented with due care
  - c) Obstacles due to German, US or other applicable national, EU or international provisions of export law or due to other circumstances for which the Supplier is not responsible
  - d) Delayed or incorrect supplies made to the Supplier

then the deadlines are extended appropriately.

3. If the Supplier is in default of delivery, the Customer – providing it can plausibly argue that it has suffered a loss as a consequence – can demand compensation of 0.5 % for each full week of delay, however a maximum of 5 % of the price of the part of the Supplies which could not be used for the intended purpose due to the delay.
4. In all cases of delayed delivery, compensation claims by the Customer due to default of delivery and compensation instead of delivery which go beyond the limits stated in No. 3 are excluded, also after expiry of any deadline for delivery set for the Supplier. This does not apply in cases of liability due to intent, gross negligence or injury to life, limb or health. The Customer can only withdraw from the contract in compliance with legal provisions if the Supplier is responsible for the delay in delivery. The above provision does not change the burden of proof to the detriment of the Customer.
5. The Customer is obliged on demand by the Supplier to declare within a reasonable period of time whether it wishes to withdraw from the contract due to the delay in delivery or whether it insists on delivery.
6. If shipping or delivery are delayed on the request of the Customer by more than one month after notification of readiness for shipping, the Supplier can charge the Customer storage fees for each further month commenced to the amount of 0.5 % of the price of the delivery items, however up to a maximum amount of 5 %. The contracting parties are at liberty to provide proof of higher or lower storage costs.

#### Article V: Transfer of risk

1. Also in the case of carriage-paid delivery, the risk is transferred to the Customer as follows:
  - a) In the case of delivery without erection or assembly, when the goods have been shipped or collected. At the request and cost of the Customer, the Supplier will insure the shipment against normal transport risks.


b) In the case of delivery with erection or assembly, on the day of transfer at the works or, in as far as agreed, after successful trial operation.

2. If shipping, delivery, commencement, the performance of erection or assembly, the integration into own production or the trial run are delayed for reasons for which the Customer is responsible, or if the Customer for other reasons delays acceptance, the risk is transferred to the Customer.

#### Article VI: Erection and assembly

Unless otherwise agreed in writing, the following provisions apply to erection and assembly:

1. The Customer is responsible for and must provide in due time:
  - a) All earthworks, construction work and auxiliary work not related to the industry, including providing the necessary qualified and unqualified workers, construction materials and tools
  - b) The items and materials required for assembly and commissioning such as scaffolding, hoists and other devices, fuels and lubricants
  - c) Power and water at the place of use including connections, heating and lighting
  - d) Sufficiently large, dry and lockable rooms at the place of assembly for storing the machine parts, apparatus, materials, tools etc. and suitable working and rest rooms for the assembly personnel including appropriate sanitary facilities; furthermore, for the protection of the Supplier's property and the property of the assembly personnel, the Customer must take the same measures at the construction site which it would take for the protection of its own property
  - e) Protective clothing and equipment made necessary by special circumstances at the place of assembly.
2. Prior to commencement of the assembly work, the Customer must receive, without request, the necessary details of the location of electricity lines, gas and water pipes or similar infrastructure as well as the necessary static stability information.
3. Prior to commencement of the erection or assembly, the auxiliary supplies and items necessary must be located at the place of erection or assembly and all preparatory work must be advanced to such a degree before the start of construction that the erection or assembly can be started as agreed and performed without interruption. The access routes and the erection or assembly areas must be levelled and cleared.
4. If the erection, assembly or commissioning are delayed due to reasons for which the Supplier is not responsible, the Customer must bear the costs to a reasonable extent for waiting time and necessary additional travel expenses of the Supplier or the assembly personnel.
5. The Customer must submit to the Supplier weekly certificates stating the working times of the assembly personnel as well as immediately stating the completion of the erection, assembly or commissioning.
6. If the Supplier requests approval of the Supplies after completion of the work, the Customer must perform this approval within two weeks. Approval is deemed to have been

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granted if the Customer allows the two-week period to expire or if the Supplies – if appropriate after the end of an agreed test phase – have been put to use.

#### Article VII: Receipt

The Customer may not refuse receipt of deliveries due to insignificant defects.

#### Article VIII: Material defects

The Supplier is liable for material defects as follows:


1. All parts or services that have a material defect must be repaired or the items replaced or services re-performed free of charge at the discretion of the Supplier in as far as the cause of the defect already existed at the time of the transfer of risk.
2. Claims for re-performance expire 12 months after the start of the statutory limitation period; the same applies correspondingly to withdrawal and reduction of payment. This limitation period does not apply if the law according to §§ 438 Subs. 1 No. 2 (Buildings and Objects Used in Buildings), 479 Subs. 1 (Right of Recourse) and 634a Subs. 1 No. 2 (Construction Defects) of the BGB (German Civil Code) specifies longer periods, in case of intent, fraudulent concealment of the defect or on failure to comply with a quality guarantee. This does not affect the statutory regulations on suspension of expiry, suspension and recommencement of periods of limitation.
3. The Customer must place claims for defects without delay and in writing.
4. In case of claims for defects, the Customer may retain payments to an extent that is in reasonable proportion to the material defects. The Customer can only retain payments if a claim for defects has been made whose justification can not be doubted. The Customer is not entitled to retain payment if the period of limitation for its rights to claim has expired.
1. If the claim for defects is unjustified, the Supplier is entitled to demand payment from the Customer for the expenses incurred.
5. The Supplier must be granted the opportunity for supplementary performance within a reasonable period of time.
6. If the supplementary performance fails, the Customer can withdraw from the contract or reduce payment – without prejudice to any claims for compensation according to No. 10.
7. The right to claims for defects does not exist in the case of an insignificant deviation from the agreed quality, insignificant impairment of utility, natural wear or damage incurred after the transfer of risk due to incorrect or careless handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable construction substrate or due to special external influences which are not foreseen in the contract as well as in the case of non-reproducible software errors. Similarly, no right to claims for defects exists if the Customer or third parties perform inexpert modifications or repairs.
8. Customer claims for expenses necessary for subsequent performance, in particular transport, travel, labour and material costs, are excluded in as far as the expenses are higher because the subject of supply has been moved to a location other than the Customer's branch, unless the relocation corresponds to its use for the intended purpose.
9. Customer's right to claims against the Supplier for recourse according to § 478 BGB (Recourse of Customer) only exist to the extent that the Customer did not agree with its customer on

rights that go beyond the statutory rights to claim for defects. Furthermore, No. 8 applies correspondingly for the extent of the recourse of the Customer against the Supplier according to § 478 Subs. 2 BGB.

10. Customer claims for compensation due to material defects are excluded. This does not apply in the case of fraudulent concealment of defects, failure to comply with a guarantee of quality, injury to life, limb or health and in case of deliberate or grossly negligent breach of obligations by the Supplier. The above provision does not change the burden of proof to the detriment of the Customer. Any claims by the Customer due to a material defect which go beyond or are other than those dealt with in this Art. VIII are excluded.

#### Article IX: Industrial property rights and copyrights; defects of title

1. Unless otherwise agreed, the Supplier is obliged to perform the delivery only in the country of the delivery location free of industrial property rights and copyrights of third parties (hereinafter referred to as: property rights). In as far as a third party lodges justified claims due to the violation of property rights by items supplied by the Supplier and utilized according to this contract, the Supplier is liable towards the Customer within the period specified in Art. VIII No. 2 as follows:
  - a) At its discretion and expense, the Supplier will for the items in question either obtain a right of use, modify the items so that the property right is not violated, or replace them. If this is not possible at reasonable conditions for the Supplier, the Customer is entitled to the statutory rights of withdrawal or reduction of remuneration.
  - b) The Supplier's obligation to pay compensation is according to Art. XII.
  - c) The aforementioned Supplier's obligations only apply to the extent that the Customer immediately notifies the Supplier in writing of claims lodged by third parties, a violation is not recognised, and the Supplier's right to undertake all defensive actions and conduct all settlement negotiations is retained. If the Customer suspends use of the Supplies for reasons of damage limitation or other important grounds, the Customer is obliged to inform the third party that the suspension of use does not constitute admission of a violation of property rights.
2. Customer claims are excluded if the Customer is responsible for the violation of property rights.
3. Customer claims are further excluded if the violation of property rights is due to special instructions of the Customer, use not foreseeable by the Supplier, or is caused by modification of the Supplies by the Customer or use together with products not supplied by the Supplier.
4. In the event of violations of property rights, the terms of Art. VIII Nos. 4, 5 and 9 apply correspondingly for the rights of the Customer according to No.1a).
5. In the case of other defects of title, the provisions of Art. VIII apply correspondingly.
6. Further-reaching claims by the Customer against the Supplier and its vicarious agents or other claims than those dealt with in this Art. IX due to a defect of tile are excluded.

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**Article X: Reservation of fulfilment**

1. Fulfilment of the contract is subject to the reservation that it is not hindered by obstructions due to German, US or other applicable national, EU or international provisions of export law as well as embargos or other sanctions.
2. The Customer is obliged to provide all information and documents necessary for export, shipment and/or import.

**Article XI: Impossibility, contract amendment**

1. If the supply is not possible, the Customer is entitled to demand compensation unless the impossibility is not the fault of the Supplier. However, the Customer's compensation claim is limited to 10% of the value of that part of the Supplies which can not be used as intended due to the impossibility. This limitation does not apply in cases of liability due to intent, gross negligence or injury to life, limb or health; this does not change the burden of proof to the detriment of the Customer. The Customer's right to withdraw from the contract remains unaffected.
2. If events in the sense of Art. IV No. 2 a) to c) substantially alter the economic value or content of the supplies or have a significant impact on the Supplier's business, the contract will be suitably amended in good faith. If this is not economically reasonable, the Supplier has the right to withdraw from the contract. The same applies if necessary export permits are not granted or are not usable. If the Supplier wishes to exercise this right of withdrawal, it must immediately inform the Customer upon recognising the impact of the event, even if an extension of the delivery period was initially agreed with the Customer.

**Article XII: Other rights to compensation**

1. Unless otherwise specified in these General Terms of Supply, rights to compensation claims by the Customer, for whatever legal reason, in particular due to infringement of contractual obligations and non-permitted actions, are excluded.
2. This does not apply in the case of liability as follows:

- a) According to product liability law
  - b) In case of intent
  - c) In case of gross negligence by owners, legal representatives or senior staff
  - d) In case of fraudulent action
  - e) In case of non-compliance with an agreed guarantee
  - f) Due to culpable injury to life, limb or health
  - g) Due to culpable infringement of major contractual obligations
- However, rights to compensation for the infringement of major contractual obligations are limited to foreseeable damage typical for the contract, unless one of the aforementioned cases applies.
3. The above provision does not change the burden of proof to the detriment of the Customer.

**Article XIII: Place of jurisdiction and applicable law**

1. The sole place of jurisdiction, if the Customer is a businessman, for all conflicts arising directly or indirectly from the contractual relationship is the seat of business of the Supplier. However, the Supplier is also entitled to lodge a suit at the seat of business of the Customer.
2. This contract including its interpretation is subject to German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**Article XIV: Binding nature of the contract**

Even in the case of legal invalidity of individual provisions, the other provisions of the contract remain binding. This does not apply if adherence to the contract would represent an unreasonable hardship for one of the parties.