

FIMA Maschinenbau GmbH
Oberfischacher Straße 58, D-74423 Obersontheim - Oberfischach

General Business Terms and Conditions / Terms and Conditions of Supply 09/2003

I. Validity, Application

The General Business Terms and Conditions set out hereinafter apply towards any and all deliveries and services by Supplier. Any general business terms and conditions of Orderer's inconsistent herewith apply only if they have been acknowledged by Supplier explicitly and in writing. No ancillary agreement and no alteration is valid unless confirmed by Supplier in writing.

II. Offer

Offers are non-binding until accepted. If the offer has been prepared on the basis of documents of Supplier's (images and drawings inclusive of specifications of measurements), then those documents are only binding if they are referred to in that offer. Supplier hereby retains its property right and copyright in any cost estimates, drawings and other documents. They must not be made accessible to any third party without Supplier's approval.

III. Scope of Delivery

The scope of the delivery is determined by Supplier's written order acknowledgment; if an offer by Supplier is temporarily binding and if that offer is accepted within the time limit stated therein, then that offer is binding unless the order is acknowledged in time. No ancillary agreement and no alteration is valid unless confirmed by Supplier in writing.

IV. Prices and Payment

Unless specifically agreed otherwise, the prices apply ex works and do neither include packaging, nor freight, nor value insurance. Prices are formed exclusive of value added tax. Payments may only be withheld or set-off on the basis of claims that are either uncontested or declared to be meritorious by a final and unappealable judicial decision. Orderer will be held to be in default if, subsequently to FIMA's respective claim having become due, it fails to make payment after receiving a dunning letter from FIMA. Irrespective thereof, however, Orderer is held to be in default if any payment is not made at the payment time determined under the agreement either by reference to the calendar or by contractual stipulation. The legal provision under which, subsequently to the expiration of 30 days following receipt of an invoice, any debtor is at the latest and automatically held to be in default, remains unaffected hereby. In any case of its default of payment, Orderer will be charged with default interest in the amount provably incurred, no less, however, than 8 % above the basic interest rate of the European Central Bank (ECB), and without prejudice to the right to claim damages in excess of such amounts of interest.

Orderer is not entitled to set-off any opposing claim unless such claim is either uncontested or declared to be meritorious by a final and unappealable judicial decision.

V. Time of Delivery

The term of delivery commences upon the dispatch of the acknowledgment of the order, in no case, however, prior to the submission of all documents, licenses, and releases to be produced by Orderer, nor prior to receipt of any stipulated down payment. The term of delivery is kept if Orderer has the delivery item at its disposal until the term of delivery expires or if it has been given notice of the readiness for dispatch. Supplier is not held to be in default of delivery or performance if Supplier is not responsible for a delay; this shall apply in any case of force majeure, and of unforeseeable, unavoidable and serious events such as labor disputes at Supplier's business or at the business of any of its suppliers, in any case of a shortage of raw materials, of breakage in transit, of emergency losses as well as in any case of delayed or defective delivery by Supplier's suppliers. In these cases Supplier may render its performance with a correspondent delay at later dates, and it may also render partial performances. If any such extension becomes unreasonable for Orderer and if partial deliveries are without interest for it, then Orderer is entitled to rescission to the extent the contract has not yet been fulfilled. In these cases, Supplier cannot be made liable for any damages. Possible claims for damages against third parties are assigned to Orderer.

VI. Passing of Risk

The risk passes to Orderer at the latest upon the dispatch of the respective delivery items; and that applies even when partial deliveries are made or when Supplier has agreed to bear additional expenses, e.g., freight charges, or to perform additional services, e.g. cartage and installation. Upon Orderer's request, any shipment will be insured against theft, breakage, damages in transit, damages by fire and by water as well as against other insurable risks by Supplier at Orderer's expense. In any case of delay of a shipment due to circumstances Orderer is responsible for, the risk will already pass to Orderer on the day Supplier is ready for dispatch, provided, however, that Supplier shall, upon Orderer's request and at Orderer's cost, obtain the insurance coverage Orderer demands. Orderer shall accept the items delivered even if they show non-material defects, without prejudice, however, to any of its rights under section VIII hereof. Partial deliveries are permitted.

VII. Retention of Title

FIMA retains its property right in the delivery item until having received all payments due from Orderer under or in connection with the parties' business connection. If Orderer has purchased any delivery item for the purpose of its resale, Orderer may only dispose of that delivery item through lawful business dealings which Orderer engages in on a regular basis. As a provision for that case, Orderer now and hereby assigns all of its future claims arising against its customers from the resale of that delivery item to FIMA.

If property rights cannot be validly retained in a foreign country or state, provided that the laws of that country or state are applicable, or if their retention requires, e.g., a registration in addition to the contractual stipulation, then Customer shall be bound to cooperate in taking all measures, including without limitation to give any declaration required from its side, for making that retention of property rights valid or for providing FIMA with securities equivalent to a retention of property rights.

FIMA may buy insurance covering damages to the delivery item caused by theft, breakage, fire, water and other circumstances at Orderer's cost, unless Orderer furnishes proof of having itself bought such insurance.

Orderer may neither pledge the delivery item nor transfer any property rights therein as a security. Orderer must give Supplier immediate notice of any attachment, seizure or other disposition made by any third party.

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FIMA is entitled to assert its retained property rights in the delivery item if Orderer culpably commits a breach of contract, notably when it defaults in payment, provided that FIMA has priorly given Orderer notice of its intent to assert those rights. Orderer shall then surrender the respective delivery item.

FIMA is neither deemed to have rescinded the contract upon asserting its retained property rights, nor upon distraining the delivery item.

VIII. Warranty

To the exclusion of any and all other claims, FIMA's liability for defects, including any lack of any warranted quality, shall be as follows:

Any and all parts proving to be unfit for use or of only substantially reduced use within 1 year following their commissioning due to any circumstance given before the risk passed to Orderer, especially when due to faulty design, defective construction materials or faulty workmanship, shall at FIMA's reasonable discretion either be repaired or replaced by a substitute item. FIMA must be given immediate written notice of any discovery of any such defect. Any replaced part shall become FIMA's property.

If the shipment, the installation, or the commissioning is delayed without FIMA's fault, then FIMA's liability expires no later than 1 year following the passing of the risk, however. The period of limitation for warranty claims is limited to 1 year. The delivery is deemed approved unless FIMA has received a notice of any obvious defect within 10 weekdays following arrival of the delivery at its place of destination at FIMA's. Hidden defects shall be complained of in the same manner within 3 days following their discovery, no later, however, than 1 year after the risk has passed.

The period of limitation for defective delivery items shall be reduced to 6 months if multiple shift operations have been agreed upon in any agreement.

In any case of timely notice of a defect, Orderer's right to assert claims arising from defects shall expire after 6 months, no sooner, however, than upon the expiration of the warranty. No liability is accepted for any damages to the delivery item due to the following events:

Inappropriate or improper use, faulty assembly or faulty commissioning by Orderer or any third party, natural wear and tear, faulty treatment or negligent mistreatment, improper operating materials, improper substitute materials, chemical, electrochemical and any like effects, unless such circumstances are caused by a fault of FIMA's.

Upon arrangement with FIMA, Orderer shall allow FIMA the time and opportunity needed for completing all repairs and replacements FIMA will in its reasonable discretion consider necessary; otherwise, FIMA is exempt from any liability for any consequence resulting from such repairs and replacements. Provided that Orderer's complaint proves to be meritorious, the share to be borne by FIMA of the immediate cost arising from any repair, replacement and installation of spare parts performed under any warranty consists of the expenses for the respective spare part including the freight of its shipment, and the cost for any disassembly and assembly work (provision of a service technician), which the parties shall come to an agreement on before any disassembly or assembly work is performed. Any other costs and expenses are borne by Orderer.

The warranty period for any spare part and any repair is three months; it will, however, not expire before the initial warranty period for the delivery item expires. There will be no warranty liability for any defect of any expendable part coming up after the risk has passed and brought about by its use.

FIMA will be exempt from any warranty if the machine / machinery is not installed and / or commissioned by FIMA's personnel – the parties agreeing that such installation and commissioning services will be at Orderer's expense.

IX. Orderer's Right of Rescission

Orderer may rescind the agreement if full performance by FIMA becomes impossible before the risk passes. The same applies in any case of FIMA's incapability to perform its obligations under the agreement. Orderer may also rescind the agreement if items of the same kind have been ordered and if the performance of a part of the delivery becomes impossible as to the number of delivery items and if Orderer has a justified interest in rejecting a partial delivery. If this is not the case, then Orderer may reduce its counter-performance correspondingly.

X. FIMA's Right of Rescission

The agreement shall be reasonably adjusted in any case of an unforeseeable event, provided that event materially changes the economic importance or the subject matter of the performance due under that agreement, or provided that event considerably affects FIMA's business, and in any case in which performance of the agreement turns out to be impossible subsequently to the formation of the agreement. FIMA may rescind the agreement in whole or in part if adjusting that agreement is economically unreasonable. Orderer is not entitled to collect any damages caused by such a rescission.

XI. Place of Jurisdiction and Applicable Law

The place of jurisdiction is at the court of venue and subject matter jurisdiction over Obersontheim-Oberfischach and this also applies to summary draft enforcement proceedings, summary check enforcement proceedings, and summary proceedings restricted to documentary evidence. All legal relations between FIMA and Orderer are exclusively governed by the laws of Germany. The United Nations Convention on the International Sale of Goods (CISG) is excluded from being applied. If Orderer desires the ordered items to be adjusted according to provisions differing from the German legal provisions, it shall give notice hereof when placing the order. At the same time, it shall communicate the provisions differing from the German legal provisions either in German or in English. FIMA reserves the right to reasonably adjust the price and delivery time to the extent required by such a desire of Orderer's.