

FAUN – TERMS AND CONDITIONS OF SALE AND DELIVERY
for business transactions with entrepreneurs and public sector customers

I. General Information

§ 1 Scope of Application

- (1) These Terms and Conditions of Sale and Delivery apply to all sales or deliveries made by **FAUN Umwelttechnik GmbH & Co KG, FAUN Expotec GmbH, FAUN Novatec GmbH, FAUN Viatec GmbH and FAUN Services GmbH** (hereinafter – also each of the aforementioned companies individually – referred to as “**FAUN**”) to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 in conjunction with Section 14 of the German Civil Code (BGB) (hereinafter referred to as “**Customers**”). Words printed in **bold type** in these Terms and Conditions are meant only to improve reader orientation and do not have any contextual significance.
- (2) These Terms and Conditions are part of all offers, contract acceptances and purchase contracts made by FAUN. They represent the **exclusive** contractual provisions arranged with each Customer, unless special individual provisions are provided in the contract.
- (3) FAUN does not acknowledge **general terms and conditions of business of the Customers**, even if in a particular case FAUN does not explicitly object, unless FAUN has approved the application of these Customers’ terms and conditions explicitly and in writing. The Terms and Conditions of Sale and Delivery of FAUN shall apply exclusively even if FAUN performs delivery to the Customer without any special reservation despite being aware of terms and conditions of the Customer that conflict with or deviate from these Terms and Conditions.
- (4) These Terms and Conditions of Sale and Delivery shall also apply to all **future transactions** with the Customer, even if FAUN does not explicitly point them out, and shall be valid until new terms and conditions come into force upon being sent to the Customer by FAUN.

- (5) With the exception of the managing directors, the authorised signatories and the proxies, the employees of FAUN are not entitled to enter into **agreements deviating from** the present terms and conditions.

§ 2 Offers and conclusion of contracts

- (1) Offers made by FAUN are, as a matter of principle, not offers in the legal sense, but merely invitations to prospective customers to make offers (“*invitatio ad offerendum*”) unless they are expressly designated in writing as binding. If the Customer places an order, the contract shall subsequently be formed only if FAUN confirms the Customer’s order in writing, starts production or delivers the goods. The Customer waives the receipt of a declaration of acceptance by FAUN. If FAUN submits a legally binding offer, this is solely on a revocable basis, i.e. FAUN is entitled to revoke the offer until acceptance by the Customer unless an explicit commitment period is specified in the offer. The Customer is bound to its orders/offers for two weeks unless a longer commitment period has been agreed or is common practice or the Customer has expressly declared a shorter **commitment period** in the order/offer.
- (2) Only the **written order confirmation by FAUN** is relevant for the scope of the delivery and the terms of contract. Collateral agreements must always be approved in the form provided in § 20, (4) of these Terms and Conditions of Sale and Delivery.
- (3) FAUN reserves all rights, especially the title and copyright, to cost estimates, drawings, plans or other **technical documentation** submitted to the Customer before or after the conclusion of the contract. Without the approval of FAUN, the Customer is not allowed to utilise, copy, duplicate, deliver to third parties or otherwise divulge them. These documents shall be returned to FAUN immediately on request.

§ 3 Prices

- (1) Unless otherwise agreed, all of FAUN's prices are quoted "**net ex works**", i.e. exclusive of costs of packaging, loading, insurance (especially transport insurance), customs duties and taxes, transport costs and valued added tax.
- (2) All prices are in **EURO**, unless a different currency has been expressly stated by FAUN in the order confirmation.
- (3) The price quotations for the delivery by FAUN are based on the circumstances prevailing at the time of the order confirmation. In the event of any subsequent unforeseeable substantial cost increases beyond the control of FAUN, e.g. resulting from price increases by FAUN's suppliers, an increase in taxes, customs or other public levies, increases in the price of raw materials or currency fluctuations, FAUN is entitled to pass the cost increase on to the Customer as a price increase. In the case of price increases exceeding 15% of the net price, the Customer is entitled to withdraw from the contract. At the latest, such withdrawal must be declared without undue delay by registered letter within five working days following notification of the price increase. Otherwise the withdrawal has no effect. In the event of withdrawal, the Customer shall have to pay adequate remuneration for the services rendered by FAUN up to this point in time insofar as they cannot be repaid in kind.

§ 4 Foreign transactions

- (1) In case of deliveries to foreign countries, these Terms and Conditions for Sale and Delivery shall be applicable together with the "International Commercial Terms" ("**Incoterms**") published by the International Chamber of Commerce in the respective current version provided that in the confirmation of the order by FAUN, or in the binding offer, FAUN refers to one of the Incoterms concerned (e.g. by means of the clauses "cif", "ex work", "fob", etc.).
- (2) Import duties, consulate fees and any other **duties/fees** charged under the regulations of the country of destination are not included in the prices stated by FAUN in accordance with the equally valid Section 3 (1) of these Terms and Conditions. If, in exceptional circumstances, such a fee is expressly included in

the price, then the agreed price shall be increased accordingly if the fee rates have been increased since the agreement was made due to unforeseeable circumstances beyond the control of FAUN.

- (3) FAUN is only obliged to conform to the **requirements specified for packaging, weights and customs regulations in the respective export country** if the Customer has previously provided FAUN with the exact details on these.

§ 5 Export and import licences

The goods and technical know-how supplied by FAUN are intended for use in the country of destination stipulated by the Customer, and they must remain there. The re-export of the contractual goods - individually or in an integrated form - is always subject to the Foreign Trade Regulations of the Federal Republic of Germany and any other country of destination arranged with the Customer. For the delivery of products which are subject to a resale price fixing and/or a distribution restriction, the specific terms and regulations for export (e.g. embargo) of the manufacturer concerned shall be also applicable in addition to these Terms and Conditions of Delivery. The buyer is obliged to **obtain information independently** about the corresponding regulations. According to the German provisions it should be obtained from the Federal Office of Economics and Export Control (BAFA), Frankfurter Strasse 29 – 35, 65760 Eschborn/Taunus, Germany, and, according to the US provisions, from the US Department of Commerce, OEA, Washington DC 20230. Irrespective of whether the buyer states the final country of destination of the delivered goods, it is the buyer's own responsibility to obtain any necessary licences from the respective export authorities responsible before it exports the goods. The buyer shall be responsible for adherence to the relevant stipulations through to delivery to the end consumer.

II. Contractual obligations

§ 6 Payment

- (1) The receivables of FAUN are **payable immediately** and without deductions upon delivery of the goods. The Customer is in **arrears** if it does not make payment within 14 days of the due date and receipt of the invoice. If the date on which the invoice was received is uncertain, the Customer shall be in default of payment no later than 30 days after the due date and receipt of the delivery. An earlier delay for payment based on the statutory regulations, especially after receipt of a reminder, shall be unaffected.
- (2) Unless otherwise expressly agreed, FAUN is not liable to make payment in advance. If, in exceptional circumstances, it has been expressly agreed that FAUN is to make **payment in advance**, then Section 321 BGB applies with the provision that these provisions are also applicable if, after conclusion of the contract, justified doubts arise as to the Customer's ability or willingness to pay or the Customer, after conclusion of the contract, has infringed upon any agreed terms of payment in this or any other contracts within the business relationship.
- (3) FAUN reserves the right to refuse **cheques and bills of exchange** from the Customers. The acceptance of such surrogate means of payment is always on account of performance. Bills of exchange are in each case only accepted on condition of eligibility for discount. Discounting, collection fees and bill of exchange taxes as well as any other costs connected with the acceptance of such payment surrogates are to be charged to the Customer. Credits for bills of exchange or cheques are always effective subject to receipt of the invoice amount and occur at the value on the date on which FAUN can dispose of the proceeds.
- (4) If, after the conclusion of the contract, FAUN issues its invoice to a person other than its contract partner (the Customer), generally no alteration of the contract partner and in particular no discharge of the Customer from its obligation for payment should be acknowledged in it. If FAUN issues the invoice to a third party, this should be acknowledged as FAUN's consent for a cumulative assumption of the debt and not as consent for the contract to be taken over.

- (5) For each reminder sent after default occurs, the Customer will be charged €5.00. The right to assert any additional damage claims is reserved.
- (6) In the event of arrears, cheque or bill of exchange protest or circumstances entitling FAUN to demand advance payments or security deposits, or if FAUN should become aware of any circumstances after the conclusion of the contract that call into question the creditworthiness of the Customer, for example, delay of payment on the part of the Customer with other claims based on the business relation, cessation of payments by the customer or non-payment of cheques issued by the Customer, any **deferment of payment agreement and credit terms granted** to the Customer concerning the entire business relationship between FAUN and the Customer may be terminated by FAUN without any further requirements.
- (7) During the default in payment, FAUN shall charge interest on arrears on the claims at the rate then being charged on average by German banks for unpaid overdrafts. The Customer shall be entitled to prove that no damage or substantially smaller damage has resulted from the delay. The right to assert higher claims for damages is reserved. The legal provisions on minimum interest rates remain unaffected.

§ 7 Offset, retention, assignment

- (1) The customer only has a **right of offset and retention** if its counterclaims are undisputed by FAUN or have already been finally established in law. This also applies to the plea of non-performance of the contract pursuant to Section 320 BGB.
- (2) The Customer is not entitled to **assign** claims from the contracts to third parties without the written consent of FAUN.

§ 8 Delivery

- (1) Delivery by FAUN shall take place as quickly as possible. Specified **delivery periods/delivery dates** are always **non-binding**, unless the stipulated

period/date has been expressly confirmed by FAUN in writing as being binding. The time of the dispatch ex works or ex warehouse or the notification for the readiness for dispatch shall be authoritative for the determination of the adherence with the period of delivery in case the goods are not dispatched in due time without FAUN being at fault. Compliance with delivery periods will be dependent on the Customer providing in a timely manner all the acts of cooperation required of it, in particular the timely provision of all the necessary information and documents, permits and releases to be provided by the Customer, as well as on the Customer complying with the agreed payment terms. If these requirements are not met, without this being attributable to FAUN, the deadlines shall be extended by the period which corresponds to the delay.

- (2) In the case that the parties have not agreed to binding delivery or performance dates, FAUN shall only be in delay with its obligation to deliver and to perform, when the Customer sends a reminder to FAUN indicating a reasonable **grace period** and when the period has unsuccessfully expired and the further legal conditions for delayed performance have been met.
- (3) Deliveries by FAUN are always **subject to the correct and timely delivery** by FAUN's suppliers and the timely receipt of the goods. A delay of delivery or non-performance of delivery that results from a failure of our suppliers (without any cooperative fault of FAUN) shall not be considered a fault of FAUN.
- (4) In the case of supply and performance delays due to **force majeure or other circumstances** occurring after the conclusion of the contract for which FAUN is not responsible, such as labour disputes, official directives, even when taking place at the suppliers or subcontractors of FAUN, the delivery period will be prolonged by the duration of the obstruction, plus a reasonable start-up period, but in total by a maximum period of up to six months. At the end of this period, both parties shall be entitled to withdraw from the contract. If, as a result of the delay, one of the parties cannot be expected to continue to adhere to the contract, it shall also be entitled to withdraw.

- (5) FAUN is entitled to make **part deliveries**, as long as it is appropriate for the Customer. Should partial deliveries be permitted, FAUN is also permitted to issue partial invoices.
- (6) Should the Customer fail to meet its obligations to cooperate (e.g. delivery of fittings, modifications or extensions) or fail to meet such in accordance with the contract, or if the Customer fails to make an agreed call-off or at the Customer's arranging or due to circumstances for which it is responsible, the merchandise is not dispatched or is dispatched later than provided for by the delivery date (for instance because the customer fails to meet its payment obligations), or if the customer is in default of acceptance due to other circumstances, then FAUN shall be entitled to require compensation for the damage and any additional expenditures incurred as a result. FAUN shall be entitled to charge lump sum compensation in the amount of 0.5% of the invoice amount for each month, however, 5% of the invoice amount at the most. The Customer is entitled to prove to FAUN that no damage was incurred or that the damage incurred was considerably less. FAUN reserves the right to prove that greater damage has occurred. Any other rights, in particular the right to withdraw from the contract or to require payment of damages instead of performance, shall remain unaffected. In this case, the risk shall pass to the Customer with notification of readiness for shipment.
- (7) Should FAUN find itself in default of delivery, the grace period set for its performance shall, in case of doubt, amount to four weeks, unless there are special circumstances due to which a shorter time period appears appropriate.
- (8) In the case of delayed delivery or the impossibility of delivery, FAUN is only liable for damages in accordance with § 14.

§ 9 Duties/obligations of the Customer to cooperate

- (1) Where special **permits, licences** (e.g. import or export licences) or similar are necessary for the effectiveness of the sales contract or the performance of the contract, the Customer shall obtain these, unless expressly agreed otherwise.

- (2) The Customer is furthermore obliged to provide all the **cooperation** that it is obliged to provide in a timely manner in accordance with the contract and in good faith, in particular to obtain the required permissions and to provide the fittings, modifications or extensions to be supplied by it.
- (3) FAUN is entitled to set the Customer a reasonable **time limit** for the performance of the act of cooperation (e.g. applications for the necessary permits). After the unsuccessful expiry of the deadline, FAUN is entitled to withdraw from the contract. When the required licences or permissions are not provided at the latest before the expiry of twelve months after the conclusion of the contract, FAUN is entitled without prior notice to withdraw from the contract. In these cases, FAUN can claim damages for non-performance. Further rights remain unaffected.
- (4) In the case of call-off orders the Customer shall be obliged to make the call-off within the periods agreed. If no deadline has been fixed, FAUN is entitled to set the Customer a reasonable time limit for the call-off if no call-off has taken place by the Customer within one month from the provision for call-off. If this period is abortive, FAUN may assert its rights provided under the legal provisions.

§ 10 Passing of risk

- (1) Provided that nothing else has been expressly agreed upon, FAUN shall provide the delivery "ex works". In this case, the risk shall pass to the Customer when the delivery item is handed over by FAUN to the **party responsible for transport** for loading (e.g. hauler, carrier, or similar), and with commencement of the shipping activity in the event that FAUN is responsible for transport, however, with departure from the plant of the place of performance at the latest (cf. § 20 (2) of these Terms and Conditions). This applies even if FAUN bears the costs of the transport or has agreed to perform other services such as installation. The Customer is exclusively responsible for the transport, including loading and proper transport insurance, at its own expense.

- (2) If FAUN performs the dispatch of the products later than the first possible date of delivery upon request of the Customer or on similar grounds deriving from the Customer's sphere, then the risk shall pass to the Customer at the moment when the Customer is **notified of the readiness for dispatch**.
- (3) **Insurance** of the consignment, whether it be against theft, breakage, transport, fire and water damage or any other risk is only taken out by FAUN when expressly requested by the Customer and then always at the Customer's expense.
- (4) Unless expressly agreed otherwise, **return deliveries** to FAUN are made at the cost and risk of the Customer.

§ 11 Retention of title

- (1) FAUN retains **ownership of the delivered goods** until full payment of the purchase price as well as all other existing or (at the time of the conclusion of the contract) future claims against the Customer resulting from the business relationship. If a running account exists with the Customer, the entire retained property serves to secure the claim for the balance of the account. Ownership of the merchandise shall pass to the Customer as soon as the purchase price has been paid and no further claims resulting from the business relationship exist (current account reservation). If the validity of this retention of title depends on specific prerequisites or formal provisions (e.g. from a registration) according to the law of another country, the Customer shall undertake to fulfil the prerequisites and formal provisions for validity of the retention of title at its expense.
- (2) The Customer is entitled to **dispose of or process the reserved goods in the ordinary course of business**. The authorisation shall lapse when an application has been filed for the opening of insolvency proceedings with respect to its assets or it is obliged to file for the opening of insolvency proceedings or it defaults on payment.

- (3) In case of resale of the reserved goods on credit, the Customer is obliged to sell the goods only against the provision of sufficient collateral which also covers the buyer's insolvency risk (agreement of retention of title for the benefit of the buyer of title). Pledges, transfer by way of security, resale to finance the purchased goods (e.g. to leasing companies) or the transfer of their use to third parties may only be performed by the Customer with prior written consent by FAUN.
- (4) Any **treatment or processing of goods under a retention of title** by the Customer shall always be effected for FAUN as processor within the meaning of Section 950 BGB. If the goods are processed, converted, inseparably compounded or joined with any other items that are not FAUN's property, FAUN will acquire joint ownership of the new item in proportion to the value of the reserved goods (invoice amount including value added tax) compared with the value of the other processed items at the time of processing, conversion, amalgamation or joining. If joining or compounding takes place with a product of the Customer which is considered to be the main item so that the Customer acquires sole ownership, it is hereby agreed that the Customer shall transfer co-ownership of the end product to FAUN on a pro rata basis according to the value of the source materials at the time of the compounding or joining. FAUN hereby accepts the transfer of title. The Customer shall act as custodian of FAUN's (joint) property free of charge. For products resulting from processing, compounding or joining, the rules on reserved goods apply accordingly.
- (5) The Customer shall hereby assign to FAUN, by way of security, its claim from the resale of reserved goods in the amount of the share which corresponds to our ownership or joint ownership share of the reserved goods. The **assignment** is also limited to a maximum of the amount of the claim (including value added tax) which the Customer owes FAUN from the business relationship at the time of the resale, plus a security surcharge of 20%. Said assignment shall apply

irrespective of whether the reserved goods were resold without or after processing or amalgamation.

- (6) The Customer is entitled to **collect the assigned claims** in the ordinary course of business. FAUN is entitled to demand that the Customer notify its clients of the advance assignment of the claims.
- (7) Should the Customer default on payment, FAUN is entitled to withdraw from the contract without the setting of a deadline for payment being required.
- (8) Should the Customer fail to duly meet its obligations resulting from the business relationship, or should it especially default on payment or breach its obligations as a conditional buyer or if there are reasonable indications due to circumstances that become known after the conclusion of the contract that the payment claims of FAUN resulting from the business relationship with the Customer are at risk,
 - a) FAUN is entitled to revoke the resale and reprocessing authorisation and/or the collection authorisation and collect the claims assigned to FAUN itself and
 - b) the Customer's right of possession of the reserved goods shall expire. FAUN is then entitled to retake possession of the purchased item at the Customer's expense, and in particular to demand return of the goods from the Customer or a third party. FAUN is entitled to realise the best possible price for the reserved goods through sale by private contract or by way of auction after expiry of a reasonable time limit set for the Customer, irrespective of the payment and other obligations of the Customer. The proceeds from such sale shall be

offset against the Customer's liabilities after deducting the incurred disposal costs. Any surplus shall be paid to the Customer.

- (9) In the event of revocation of the collection authorisation, the Customer shall provide FAUN with the information required for collection of the respective claim and support FAUN with the recovery of such if required.
- (10) The Customer is obliged to treat the items which are co-owned by FAUN with care, store them diligently and insure them appropriately against the usual risks (theft, breakage, fire, water) at its expense and provide verification of such insurance cover upon request. The Customer is also obliged during the retention of the property to **keep** the purchased item **in a proper condition** and to have the necessary repairs performed immediately in one of FAUN's authorised qualified workshops. FAUN may demand at any time that the Customer take an inventory of the goods delivered by FAUN to its respective storage location and labels the goods as the property of FAUN. The Customer hereby assigns insurance claims and claims against third parties as a result of damage, destruction, theft or loss of the goods to FAUN by way of security. FAUN hereby accepts this assignment.
- (11) The Customer shall report seizures by third parties of the reserved goods to FAUN in writing immediately after the Customer becomes aware of such and provide FAUN with all the information and documents required for an intervention. The Customer shall be liable for the costs incurred in halting the seizure, in particular those incurred in instituting a third-party appeal, provided that they cannot be acquired from the creditor instituting legal proceedings.

III. Defect-related rights, withdrawal and compensation

§ 12 Defects and defect-related rights

- (1) Subject to the special provisions on used vehicle sales in § 19 of these Terms and Conditions, FAUN shall guarantee that the supplied goods are not affected by fundamental defects when risk is passing.

- (2) The facts and figures stated in the descriptions of the goods sold which were valid upon conclusion of the contract and relate to the scope of delivery, appearance, performance, dimensions and weight etc., do not represent a guarantee but simply descriptions of the product. Unless otherwise expressly agreed, only these product descriptions constitute the contractually agreed condition. Any illustrations, drawings, specifications concerning quality, quantity, weight, dimensions or performance included in our offers or our publications are mere approximations. Official statements, recommendations or advertising by FAUN or by a third party do not constitute any contractual statement as to the condition/quality of the goods. A guarantee in the legal sense exists only if FAUN has referred to it explicitly and in writing as such.
- (3) If **after the contract has been concluded, modifications** are made to specific items with regard to their type, involving the design, material and model, form, colour and/or weight, and these modifications are taken into account in the delivered goods, these modifications do not represent a defect of the purchased goods, provided their usefulness is not impaired and the modification is reasonable for the Customer. Provided the modifications have not yet been included in the supplied purchased goods, the Customer has no right to the implementation of such changes.
- (4) FAUN is not liable for **public statements** of third parties (including the suppliers of FAUN or the manufacturer) if FAUN did not know or was not obliged to know about these statements. FAUN is not liable for public statements made by FAUN or third parties named by FAUN if the statement at the time of the conclusion of the contract was already corrected or if the Customer cannot prove that the respective statement has influenced its decision to purchase.
- (5) The **guarantee** for defects and damages **is excluded** when they arise
- because a certain construction or a certain material for the purchased product was chosen on the instructions of the Customer,

- because the Customer has installed the purchased product or put it into operation incorrectly,
 - because the Customer operates the purchased product incorrectly or does not use appropriate operating instruments,
 - because the Customer has not observed the operating instructions or maintenance requirements,
 - because the Customer did not treat the purchased product properly or subjected it to excess use,
 - because the Customer installed foreign parts (products of other manufacturers), even though they were not approved in the operating instructions or by a written declaration from FAUN,
 - because the Customer has dismantled or modified the purchased product without having had approval from FAUN,
 - because the Customer has incorrectly installed the purchased product in another item (the installation in the other item may have been according to the regulations).
- (6) The customer shall be obliged to immediately examine the merchandise for defects, including deviations in both quality and quantity, for all services rendered by FAUN, including factory services. The service by FAUN is deemed to have been performed as stipulated in the contract if any defects are not reported in accordance with the following provisions:
- defects which are recognisable when examining the goods must be reported to FAUN in writing at the latest within five working days after receipt of the goods and before further working, processing, usage,
 - any hidden defects which could not be discovered during the inspection of the goods have to be reported in writing to FAUN within five working days after the defect is discovered.

The date on which the notification of the defects is sent shall determine compliance with the deadline. Remarks on delivery notes shall not be deemed a notice of defects. Transport personnel shall not be authorised to accept notices of defect.

- (7) Complaints do not nullify the **acceptance and payment obligations of the Customer**, unless the defectiveness of the product is undisputed or has already been finally established in law. In this case, the Customer may only withhold payment to an extent which is in reasonable proportion to the defects which have occurred. An appropriate sum is the anticipated costs for removal of defects plus a surcharge of 20%, but no more than the purchase price for the respective product.
- (8) In the case of a defect in the purchased product, FAUN is initially entitled **to remedy the defect** at its **discretion**, whether through reworking/improvement of the contractual item, replacement of the part which is the subject of the complaint or delivery of another defect-free product. If one of these forms of subsequent performance involves considerable disadvantages for the Customer, the Customer is entitled to request another type of subsequent performance. FAUN is entitled to request that the Customer return the product for the purposes of remedying the defect. The required transport costs for returning the goods shall (only) be borne by FAUN in the case of justified complaints.
- (9) In the case of defects for which FAUN is liable under the warranty, the remedying of the defect shall take place at the expense of FAUN. Any exchanged used parts become the property of FAUN when they are removed.
- (10) Should FAUN establish upon inspection the goods that the defect does not fall under the warranty, FAUN is entitled to invoice the Customer for all expenses incurred up to that point, in particular transport, material and labour costs, according to its usual general hourly rates. In this case, FAUN is entitled to charge the Customer for the work involved to check the legitimacy of notices of defects with a lump sum of €200.00 without concrete proof of incurred damage being required. The right to assert a higher damage amount is reserved. The Customer is at liberty to demonstrate that FAUN did not incur any damage at all or that the damage was significantly less. If the case does not fall under the warranty, FAUN shall inform the Customer accordingly. If the Customer still wishes the work to be carried out, all further work by FAUN will be carried out

and billed as a repair order in return for payment on the basis of FAUN's repair conditions. There is no obligation to carry out the work. FAUN may refuse to carry out the work.

- (11) When handling warranty transactions with **foreign customers**, FAUN shall not generally bear the customs fees and other specific expenses which are connected with the place of usage or the export country of the purchased items.
- (12) The Customer may withdraw from the contract or reduce the purchase price if no attempt at subsequent performance is undertaken by FAUN within an appropriate prescribed period or subsequent performance is not possible, is refused, fails or is unreasonable. The deadline for subsequent performance must be at least four weeks, unless the legitimate interests of the Customer preclude it. In the case of doubt, it shall be assumed that subsequent performance has failed only after the third failed attempt at subsequent performance. The Customer has no right of withdrawal due to minor defects. In the case of **partial performance**, the Customer may only withdraw from the entire contract if it can provide evidence that it has no interest in such a partial performance and that the breach of obligation is serious. In addition to the statutory requirements, the special provisions in § 14 apply for the **right to withdrawal and claims to compensation on the grounds of defects**.
- (13) For the **limitation** of claims for defects, § 16 applies.
- (14) The buyer's **rights of recourse** under Sections 478, 479 BGB remain unaffected.

§ 13 Withdrawal

- (1) The **Customer's right to withdraw** from the contract is governed by statutory provisions, with the proviso that any right of withdrawal based on a breach of obligation not resulting from a defect can only be accepted if FAUN can be held responsible for that breach of obligation.

- (2) FAUN is entitled in case of withdrawal to calculate a monthly lump sum of 3% of the purchase price for the realised **profits from the use**, as far as the buyer does not prove a smaller value of the emerged profits. FAUN's right to provide evidence of a higher value of the benefit gained remains unaffected.

§ 14 FAUN's liability for damages

- (1) As a rule, FAUN shall be liable for damage insofar as the other prerequisites for a claim are given if FAUN is **culpable of intent or gross negligence**. In the event of simple negligence, FAUN is liable in the case of a breach of obligation, the fulfilment of which is essential for due implementation of the contract and on which the contractual partner can reasonably expect to be able to rely ("cardinal duties"). In all other respects, liability for compensation for damages of any kind whatsoever, regardless of the basis for claim – including liability for default on conclusion of the contract – shall be excluded.
- (2) If FAUN is liable for negligent conduct, liability shall be limited to the extent of damage which FAUN could **typically** expect upon the conclusion of the contract based on the circumstances known at that time.
- (3) If FAUN is liable on account of simple negligence or on account of gross negligence on the part of employees or representatives who are not business managers or senior employees, liability shall be limited to double the amount of the remuneration (i. e. the purchase price or the compensation for work. In addition, FAUN shall in these cases not be liable for indirect losses, secondary damages or loss of profits.
- (4) If FAUN has undertaken to provide a guarantee, the aforementioned exclusions of liability and limitations of liability shall not apply for damage which has to be compensated according to the laws on product liability, damage to life, limb or health or in the event of malicious intent.

- (5) The aforementioned exclusions of liability and limitations of liability shall also apply in favour of the **employees of FAUN, vicarious agents and other third parties** which FAUN uses to fulfil the contract.
- (6) The **proof of a fault** on the part of FAUN within the scope of the liability to compensate for damage has to be conducted by the Customer who requests the compensation for damage.
- (7) FAUN is not liable for claims of defective products which are based on a defectiveness of **supplied parts**, unless FAUN has given a guarantee referring to the supplied part or the defect of the supplied part is obvious. FAUN is not obliged to inspect supplied parts.
- (8) The Customer is obliged to **give notice** immediately and in writing to FAUN of the damage for which it wishes to make FAUN liable, and if necessary to allow an inspection of the damage.

§ 15 Customer's liability for damages

Insofar as FAUN is entitled to request from the Customer compensation for damage instead of performance, FAUN is entitled to request a **lump sum for compensation for damage in the amount of 15% of the purchase price**, as long as the Customer does not prove less damage. FAUN reserves the right to claim for higher damages according to the statutory provisions of law.

§ 16 Statutes of limitation

- (1) The term of limitation for claims due to defects is one year. The limitation period commences in accordance with the statutory provisions.
- (2) Any other contractual claims of the Customer due to the breach of obligation shall become statute-barred within one year. This shall not apply to the Customer's right to withdraw from the contract on account of a breach of

obligation for which FAUN is responsible that does not consist of a defect.

- (3) By way of derogation, the statutory limitation periods shall apply for the following Customer's claims:
- claims to damages based on product liability, on account of loss of life, bodily injury or damage to health, or due to breaches of a substantial contractual obligation, and on account of other damage resulting from a deliberate or grossly negligent breach of obligations by FAUN or persons engaged to perform FAUN's obligations,
 - claims to reimbursement of expenses pursuant to Section 478 (2) BGB,
 - claims resting on malicious concealment of a defect.
- (4) Claims of FAUN against the Customer shall become statute-barred in accordance with the statutory provisions.

IV. Miscellaneous

§ 17 Industrial property rights and copyrights of third parties

- (1) There are no claims by the Customer relating to industrial property rights violations where the violation of the property right is based on the fact that the delivered goods have been manufactured according to designs or instructions provided by the Customer, the Customer has modified the goods or used them in combination with devices that were not delivered by FAUN or in a manner not anticipated by FAUN. In these cases, the Customer shall **indemnify** FAUN against all claims which are asserted by third parties due to the breach of industrial property rights or copyrights.
- (2) For deliveries of goods to other countries, FAUN is only liable for the purchased goods manufactured in its own factories for a **breach of patents** which are licensed in Germany. In such a case, FAUN is only obliged to support the Customer in out-of-court and judicial proceedings against the patent holder, and to compensate the Customer for the expenses for proceedings and to

indemnify it against the damages awarded in favour of the owner of the patent through legally binding and non-appealable judgment. In respect of the purchased goods, or parts of them, which FAUN has not manufactured in its own factories, liability is limited to the assignment of the claims to which FAUN is entitled from its own suppliers.

- (3) If a third party makes justified claims against the Customer due to the infringement of property rights by goods delivered by FAUN and used according to the terms of the contract, FAUN shall at its discretion and at its expense either arrange for a right of use for the relevant delivery, modify the delivered goods so that the industrial property right is not infringed or replace the goods. FAUN shall be given sufficient opportunity to do this. If the measures by FAUN are unsuccessful, the Customer may assert its rights in accordance with Section III. of these Terms and Conditions.
- (4) The Customer is obliged to inform FAUN in writing without undue delay of any claims asserted by third parties. It may not recognise breaches. Defence measures or negotiations for a settlement are exclusively reserved for FAUN. Should the Customer discontinue the use of the delivery on the grounds of loss mitigation or for other good reason, it shall be obliged to notify the third party that the discontinuation of use does not constitute acknowledgement of infringement of a property right.

§ 18 Replacement parts

- (1) The special provisions outlined in Paragraphs 2-4 below also apply to the delivery of loose spare parts and accessories in exchange for used parts at a specially agreed exchange price ("Exchange Delivery").
- (2) The used parts must be delivered to FAUN totally free of charge and free of freight costs and must be free of defects, particularly of welded or non-welded cracks, so that they can be reworked by FAUN.

- (3) If the replacement part is supplied by FAUN before the Customer has provided the used part, FAUN shall initially charge the price valid for new spare parts in lieu of the replacement price. The difference between the new price and the replacement price shall only be credited to the Customer after the used part has arrived.
- (4) The used parts shall become the property of FAUN upon delivery. By delivering such used parts, the Customer declares that it is the owner of that used part or that it is entitled to transfer the ownership of this part and there are no third party rights on this used part.

§ 19 Special rules for the sale of second-hand vehicles

- (1) The Customer is **obliged to take delivery of** the second-hand vehicle on the agreed transfer date. If such a date has not been set, the Customer is obliged to take delivery of the second-hand vehicle without undue delay, but at the latest within eight days after notification by FAUN that the vehicle is ready for collection.
- (2) The Customer is also obliged to **reregister** the second-hand vehicle immediately after taking delivery of it.
- (3) By way of derogation from § 12 (1) of these Terms and Conditions, the sale of second-hand vehicles shall take place as seen and, subject to Section 444 BGB, to the **exclusion of any kind of liability for material defects**. FAUN is also not obliged to examine the second-hand vehicle or individual parts thereof for material defects, unless otherwise expressly agreed by the parties.

§ 20 Final provisions, choice of law, jurisdiction

- (1) The **law of the Federal Republic of Germany** applies. The applicability of the unified UN law pertaining to the sale of goods (CISG) is expressly excluded.

- (2) **The place of performance** for all performances arising from this contract is the respective plant designated by FAUN in the order confirmation. If in accordance with the agreements reached by the contracting parties dispatch should be from the plant of a third party, then this plant shall be the place of performance.
- (3) **The place of jurisdiction** for all disputes arising from this contractual relationship is Bremen. FAUN also has the right to institute proceedings against the Customer at the location of its registered office.
- (4) Any contractual changes, amendments and collateral clauses must be **in text form** (Section 126b BGB) in order to be valid. This applies also and in particular to this text form form clause.
- (5) Should one or several provisions of these Terms and Conditions of Sale and Delivery be or become invalid or impracticable, or should the contract contain any omissions, the **validity of the remaining provisions shall not be affected thereby**. The invalid, impracticable or incomplete provision shall be replaced by such a provision that comes closest economically to the purpose and objective of the desired provision.

As at: October 2016