

# General Terms of Business and Delivery Conditions of the fiwa)group, hereinafter referred to as the Contractor (effective 01/01/2019)

## **1. Validity of the General Terms and Conditions**

1.1 The fiwa)group consists of Finze und Wagner Holding GmbH, Finze & Wagner EMSR Ingenieurgesellschaft mbH, Finze & Wagner Ingenieurgesellschaft UDI mbH, Finze & Wagner EMSR Ingenieurges. Sachsen mbH, FIWA RO S.R.L., FIWA Group Asia Ltd., FIWA Group (Shanghai) Engineering and Trade Ltd., ICA SYSTEM S.R.L. and PRE-VENT GmbH. All contracts, deliveries and other services, including consulting services take place exclusively on the basis of these General Terms and Conditions. Other conditions, particularly the general terms and conditions of the customer, do not become a component of the contract, even if we do not expressly reject them.

1.2 These General Terms and Conditions apply strictly to companies as defined in § 310 para. 1 of German Civil Code [BGB] and do not apply for consumers.

1.3 All agreements, supplementary agreements, assurances and contractual amendments require the written form. This also applies for the rescission of the written form requirement. The precedence of individual agreements remains unaffected. Verbal supplementary agreements do not exist.

## **2. Periods, time of performance, place of fulfilment**

2.1 Binding delivery dates and periods are only valid if they have been agreed up on in writing. Any agreed period for the beginning of work does not begin until receipt of all documentation and information to be provided by the Customer, as well as all other requirements to be fulfilled by the Customer for implementation of the contract, such as orders, agreed payments or securities.

2.2 Any agreed delivery and performance period shall be extended if the Contractor is prevented from providing services due to circumstances for which they are not responsible. The same applies for force majeure, which equates to strikes, lock-outs, official interventions, energy and raw material shortages, transport bottlenecks or obstacles for which the Contractor is not responsible, operational hindrances for which the Customer is not responsible, such as damage due to fire and water or machinery damage. The delivery and performance period shall be extended accordingly without the Contractor having to provide special notification if and to the extent that the Customer is obligated to payment in advance,

but does not provide payment. Subsequent changes desired by the Customer interrupt and, if applicable, extend the delivery period until agreement on the desired change.

- 2.3 The place of performance and fulfilment for deliveries and services of the Contractor is Burghausen. If the works are shipped to a different location at the request of the Customer, the risk shall transfer to the Customer as soon as the item has been handed over to the freight carrier or the person intended for implementation or shipment. If the shipment is delayed because the Contractor has asserted a right of retention as a consequence of a payment default of the Customer or for other reasons for which the Customer is responsible, the risk transfers to the Customer no later than the time that notification of readiness for shipment and/or performance is received by the Customer.
- 2.4 If the Customer fails to collect the works on time or shipment or delivery is delayed for more than a month at the instigation of the Customer, the Contractor can demand a storage fee of 1 % of the net remuneration for each new month. Both parties reserve the right to prove that the expense is lower or higher.

### **3. Assembly, duty of cooperation of the Customer**

- 3.1 As a basic rule, the Contractor is not required to perform assembly work. If assembly work is agreed by contract, it shall be billed separately.
- 3.2 The assembly work comprises, in particular, travel expenses, daily work hours of the assembly personnel according to the relevant valid billing rates of the Contractor, including additional charges for overtime (additional 25 %), work at night (additional 50 %) and Sundays and holidays (additional 100 %). Normal work hours are Monday to Friday from 7:30 to 16:30.

Preparation, travel, waiting and wave travel times are considered work hours and billed as such. If the setup or commissioning is delayed for reasons for which the Contractor is not responsible, the Customer must bear all expenses for the waiting time and additional necessary travel. Agreed flat rates for assembly do not include surcharges for necessary overtime, night, Sunday and holiday work. This is billed separately. Assembly applies as complete with the trial commissioning.

The assembly price is indicated without the additional statutorily prescribed value-added tax and is due for payment 14 days after the invoice date.

Retention and offsetting against the claim of the Contractor are only permissible if claims are undisputed or ruled legally valid. The Customer is only entitled to exercise a right of retention if the counter-claim is based on the same contractual relationship.

3.3 If assembly is agreed upon, the Customer must carry out the following at their own expense and in good time:

- all excavation, construction and other ancillary work from other industries, including the qualified employees and assistances, construction materials and tools,
- the materials and items required for assembly and commissioning, such as scaffolding, lifting equipment and other devices, fuel and lubricants,
- energy and water at the place of use, including the connections, heating and lighting,
- adequately large, suitable, dry and lockable rooms at the assembly location for storage of machine parts, apparatuses, materials, tools, etc., suitable work and break rooms for the assembly personnel, including the necessary sanitary facilities according to the circumstances. The Customer must also take the same precautions to protect the property of the Contractor and the assembly personnel on the construction site as they would to protect their own property,
- protective clothing and protective equipment required due to the circumstances at the assembly location.

3.4 The Customer must provide the necessary information about the location of concealed power, gas and water lines or similar systems no later than two (2) weeks before the beginning of the assembly work and provide the necessary structural engineering specifications without being requested to do so.

3.5 The necessary provisions and items for acceptance of the work must be at the setup or assembly location prior to the beginning of setup or assembly and all preliminary work must, prior to the beginning of setup, have progressed to the extent that the setup or assembly can begin as agreed upon and can be carried out without interruption. Approach routes and the setup and assembly location must be level, clear and usable.

3.6 The Customer must provide weekly signed certification of the duration of work hours of the assembly personnel and the completion of the setup, assembly or commissioning.

3.7 § 4 applies with respect to acceptance of the assembly work.

#### **4. Acceptance**

4.1 The Customer is obligated to accept the works provided according to contract. Acceptance can only be refused in case of significant defects. Acceptance has taken place if the Contractor gives the Customer a reasonable period for acceptance and the Customer has not refused acceptance specifying at least one defect within the period.

4.2 If no acceptance is required, the performance applies as accepted 12 work days after written notification about the completion of the performance. If no acceptance is required and the Customer has utilised the performance or part of the performance, the acceptance applies as having taken place six (6) work days after the beginning of the use, insofar as nothing different has been agreed upon.

#### **5. Prices, payment**

5.1 Unless otherwise agreed, all prices are specified ex works or warehouse without freight and delivery costs and the applicable statutorily prescribe value-added tax.

5.2 The Contractor is entitled to adjust the remuneration accordingly if, after conclusion of the contract and before the time of delivery, changes in costs, particularly due to labour agreements, changes in raw material prices, other prices changes of suppliers or currency exchange fluctuations, statutory increases of wages and incidental labour costs, social insurance contributions and energy costs arise for reasons for which the Contractor is not responsible and were not foreseeable with adequate certainty. Insofar as the Contractor is contractually obligated to bear freight costs, the Customer shall bear the additional costs arising from increases in freight rates arising after the conclusion of contract. On request, the Contractor will provide the Customer with proof of the reasons for the price adjustment.

5.3 Payments must be made such that the account of the Contractor is credited within 14 days after the invoice date.

- 5.4 Incoming payments are applied initially for coverage of costs, then the interest and finally for the primary claims according to their maturity.
- 5.5 Any agreed discount shall not be granted if the Customer falls into default with the payment of earlier invoices.
- 5.6 The Customer only has a right of retention or offsetting if such counter-claims are not undisputed or have been determined to be legally valid. The Customer can only exercise a right of retention if the counter-claim is based on the same contractual relationship.

## **6. Warranty, liability**

- 6.1 The warranty period for defects is 12 months from the time of acceptance. The abbreviation of the limitation period does not apply in the case of fraudulent concealment of defects, intent or gross negligent and in case of an injury to the life, limb and health.
- 6.2 Liability of the Contractor is excluded from wear parts, natural wear, unsuitable or improper use, faulty assembly and commissioning by the Customer or third parties, improper or negligent handling, improper maintenance, use of unsuitable operating materials, chemical, electrical or electrochemical influences, insofar as the Contractor is not responsible for them.
- 6.3 The Contractor is only liable for intent and gross negligence. They are only liable for slight negligence if they breach cardinal contractual duties or cause injury to the life, limb or health. Cardinal contractual duties are the basic, elementary duties from the contractual relationship, the fulfilment of which is necessary for implementation of the contract and a breach of which endangers achievement of the purpose of the contract and observance of which the Customer can normally expect.
- 6.4 The amount of the Contractor's liability is limited to the foreseeable damages typical to this type of contract upon conclusion of contract. The liability is limited to a maximum liability equal to the order value for each individual damage case. This does not apply if the Contractor is guilty of fraudulent intent or gross negligence, for claims based on an injury to the life, limb or health, or in the case of a claim based on a tortious act or an expressly assumed guarantee or assumption of a procurement risk or in cases of statutorily-mandated higher liability amounts. Further liability is excluded. The aforementioned liability exclusions and limita-

tions apply to the same extent for the benefit of the managing bodies, employees, other vicarious agents and subcontractors of the Contractor.

## **7. Non-disclosure**

- 7.1 The Customer is obligated to maintain strict confidentiality with respect to the business and operational secrets (such as figures, drawings, calculations, specifications and other documents) disclosed by the Contractor, as well as the resulting knowledge and outcome for the Customer (hereinafter: Information), even after termination of the contractual relationship, to refrain from disclosing the Information from third parties, to use the Information strictly for implementation of this Contract and to refrain from exploiting said Information either directly or indirectly, in part or wholly or in any form.
- 7.2 The Customer shall likewise obligate their employees, legal representatives and vicarious agents to this obligation.
- 7.3 These obligations do not apply for information which obviously already was or became accessible before the time of notification by the Contractor or thereafter without participation of the Customer or was provided by an independent third party without violating the duty of non-disclosure.

## **8. Applicable law, jurisdiction**

- 8.1 The law of the Federal Republic of Germany applies exclusively for all legal relationships between the Customer and Contractor.
- 8.2 The place of fulfilment and court of jurisdiction for deliveries and payments, as well as all disputes arising between the parties is the location of the registered office of fiwa)group in Burghausen. However, the Contractor is also entitled to file suit against the Customer in the location of their registered office.
- 8.3 If individual provisions of these General Terms and Conditions are or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision will be replaced by a provision that comes as close as possible to the economic purpose of the invalid provision.

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