1 General Terms and Conditions of Business

Clause 1 Scope

(1) These Terms and Conditions of Sale shall apply solely in relation to companies, legal persons under public law or special funds under public law within the meaning of section 310(1) of the Bürgerliches Gesetzbuch (German Civil Code - BGB). Our recognition of any terms and conditions of the Buyer that conflict with, or diverge from, our Terms and Conditions of Sale shall be conditional upon our giving our express consent to their applicability in writing.

(2) These Terms and Conditions of Sale shall also apply to all future transactions with the Buyer, providing these involve legal transactions of a similar nature. They shall also be deemed to have been accepted by the Buyer if the Buyer, in full knowledge of terms and conditions that conflict with, or diverge from, these Terms and Conditions, takes receipt of our services or itself provides services.

Clause 2 Offer and Contract Formation

(1) All offers shall be subject to change and non-binding unless we have expressly designated them as binding.

(2) The offer to enter into a contract shall be made subject to punctual and correct delivery to us by our supplier.

Clause 3 Submitted Documents

We reserve ownership rights and copyrights as well as other proprietary rights to all documents, such as costings, drawings etc., submitted to the Buyer in connection with the sale. These documents must not be made accessible to third parties unless we give the Buyer our express consent thereto in writing. The documents must be returned on request.

Clause 4 Prices and Payment

(1) Unless otherwise agreed in writing, the Seller's prices shall apply ex works inclusive of loading at the factory, but exclusive of packaging, freight and any installation, plus the statutory amount of value added tax. Any acceptance of bills of exchange or cheques that may be agreed shall be subject to full performance.

(2) Payment of the purchase price shall be made solely to the account specified overleaf. Any deduction of discount shall be permitted only if there is a special agreement in writing to this effect.

(3) Payment of the purchase price shall fall due upon delivery.

(4) If the Buyer defaults on payment, the Seller shall, without prejudice to other statutory claims, be entitled, pursuant to section 247 of the BGB, to demand annual interest of 8 percentage points above the corresponding base interest rate. The Seller shall, in particular, reserve the right to claim higher damages arising from the default.
Clause 5 Set-Off and Rights of Retention

The Buyer shall, even in the event of its assertion of notices of defects or counterclaims, be entitled to set off only if the counterclaims have become res judicata, have been recognized by the Seller or are undisputed. The Buyer shall be authorized to exercise a right of retention only if its counterclaim is based on the same contractual relationship.

Clause 6 Delivery Period

(1) Commencement of the delivery period indicated by us shall be contingent upon timely and proper fulfilment of the Buyer's obligations. We reserve the right to put forward the defence of non-performance.

(2) If the Buyer defaults on acceptance or if it culpably violates other obligations to co-operate, we shall be entitled to demand compensation for any damages that we incur in this respect, including any additional expenditure. We reserve the right to assert further claims. Where the foregoing conditions exist, the risk of accidental destruction or accidental deterioration of the object of sale shall pass to the Buyer at the moment at which it defaults on acceptance or payment.

(3) Our liability, in the event of any delay in delivery that we have not caused wilfully or by gross negligence, shall be limited to lump-sum compensation for delayed performance in the amount of 1% of the delivery value for each complete week of the delay but, in any case, no more than 5% of the delivery value.

(4) This shall not affect the Buyer's further statutory claims and rights on account of delayed delivery.

Clause 7 Transfer of Risk upon Shipment

If, at the Buyer's request, the goods are shipped to the Buyer, the risk of accidental destruction or accidental deterioration of the goods shall pass to the Buyer upon shipment to the Buyer, at the latest when the goods leave the plant/warehouse. This shall apply regardless of whether the goods are shipped from the place of performance or who bears the freight costs, and shall also apply to partial deliveries.

Clause 8 Retention of Title

(1) The delivery item shall remain the property of the Seller until such time as all receivables that have arisen in connection with the Contract have been settled in full. This shall also apply to all future deliveries even if we do not always explicitly refer thereto.

a) Any machining and processing of the delivery item subject to retention of title and its combination with third-party objects performed by the Buyer or third parties shall be carried out on behalf of the Seller. The Seller shall be entitled to co-ownership of any newly created objects in proportion to the value of the delivery item.

b) The Buyer shall hereby assign to the Seller its receivables from any onward sale of the delivery item by way of security for the Seller's claims up to this amount.

c) The Buyer shall be authorized to collect its receivables. The Seller reserves the right to carry out said collection.
d) In the event that the Buyer breaches the Contract, such that the Seller is entitled to rescind same, the Buyer shall be obliged to surrender the delivery item to the Seller. The Seller's assertion of retention of title and seizure of the delivery item shall not be deemed to be rescission from the Contract unless the Seller expressly declares such in writing.

e) The Buyer shall be liable for any damage or loss incurred as a result of the Seller's repossession of the delivery item.

(2) The Buyer shall, until such time as ownership has passed to it, be obliged to handle the object of sale with care. In particular, it shall be obliged, at its own expense, to insure said object adequately to replacement value against theft, fire and water damage (note: valid only in the event of the sale of high-value goods). If maintenance and inspection work needs to be carried out, the Buyer shall perform said work in a timely manner at its own expense. The policy and premium receipts shall be submitted to the Seller on request.

(3) Until such time as ownership has passed to the Buyer, the Buyer may neither pledge the delivery item nor assign it as collateral. In the event of seizure or other impairments of the owner's interests, the Buyer shall notify the Seller without delay. Where the third party is unable to reimburse us for the judicial and extra-judicial costs of a lawsuit pursuant to section 771 of the Zivilprozessordnung (Code of Civil Procedure - ZPO), the Buyer shall be liable for any loss that we may incur.

Clause 9 Warranty, Notice of Defects and Recourse/Redress against the Manufacturer

(1) The Buyer's warranty rights shall be conditional upon its having properly complied with its inspection and notification obligations required under section 377 of the Handelsgesetzbuch (German Commercial Code - HGB).

(2) Claims for defects shall become time-barred 12 months after completion of delivery of the goods supplied by us to the Buyer. The foregoing provisions shall not apply where the law prescribes longer periods pursuant to section 438(1) no. 2 of the BGB (Buildings and Materials for Buildings), and section 634a(1) of the BGB (Construction Defects). Prior to any return of the goods, our consent must be obtained.

(3) If, despite all care exercised, the supplied goods have a defect, which already existed at the time the risk passed, we shall, at our option, repair the goods or supply replacement goods, subject to timely notification of the defect. We must always be afforded an opportunity to provide supplementary performance within a reasonable period. The applicability of claims to recourse shall not be restricted by the foregoing provision.

(4) Claims for defects shall be excluded in the event of only insignificant divergence from the agreed quality, in the event of only insignificant impairment of usability, in the event of natural wear and tear and in the event of damage caused, after the transfer of risk, due to incorrect or negligent handling, excessive load, inappropriate equipment, defective construction work, unsuitable foundation soil or due to particular external influences that were not assumed to impact on the supplied goods under the Contract. If inappropriate repair work or modifications are carried out by the Buyer or a third party, claims for defects shall likewise be excluded in relation to said repair work or modifications and any consequences arising therefrom.
(5) Claims of the Buyer on account of expenses required for the purpose of supplementary performance, particularly transport, travel, labour and material costs, shall be excluded to the extent that the expenses increase as a result of the goods supplied by us being subsequently transferred to a location other than the Buyer's place of business, unless such transfer complies with the intended use of the goods.

(6) The Buyer shall have claims to recourse against us only insofar as the Buyer has not entered into any agreements that go beyond the statutorily mandatory claims for defects with its purchaser. Furthermore, paragraph 6 shall apply accordingly to the extent of the Buyer's claim to recourse against the Supplier.

Clause 10 Limitation of Liability

(1) The Seller shall be liable without limitation only in the event of wilful intent and gross negligence on the part of its executive bodies and senior management.

(2) Liability for ordinary and slight negligence on the part of executive bodies and senior management and liability on the part of vicarious agents, pursuant to section 276 of the BGB, of whom the Seller avails itself to perform its contractual obligations shall be limited, in accordance with the following paragraphs, to the extent of cover provided by its business liability insurance. The business liability insurance of FMI Systems GmbH, Heilbronn, is based on the "General Terms and Conditions for Liability Insurance (AHB)":

FMI's liability for material damage for which it is responsible and any resulting consequential damage shall be limited, on whatever legal grounds, to an amount of 5,000,000.00 euro per damage event and, in the case of financial damage, to a maximum amount of 500,000.00 euro. Several damage events arising

  o from the same cause, unless there is no inherent connection between the several same causes or
  o from deliveries of such products that have the same defects

shall be deemed to be one damage event. Liability for consequential damage in excess thereof - on whatever legal grounds (defective performance, delay, tort etc.) shall be excluded.

(3) The foregoing provisions shall not affect the regulations of the Produkthaftungsgesetz (German Product Liability Act).

(4) In the event of personal injuries, the statutory provisions shall apply. The aforementioned limitations of liability shall not apply hereto.

(5) The aforementioned limitations of liability shall not apply to the violation of material contractual obligations ("cardinal obligations"). In such cases, liability shall be limited to compensation for damages that are foreseeable at the time the contract is entered into.
Clause 11 Miscellaneous

(1) This Contract and the entire legal relationships between the Parties shall be governed by the law of the Federal Republic of Germany, without giving effect to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) Unless otherwise provided for in the order confirmation, the place of performance and sole place of jurisdiction for any disputes arising from this Contract shall be our business domicile.

(3) All agreements made between the Parties for the purpose of executing this Contract shall have been set out in writing in this Contract.

(4) If individual provisions in this Contract are or become invalid or contain a lacuna, this shall not affect the other provisions. In place of the invalid provision, the Parties shall undertake to adopt a legally valid provision that comes closest to the economic intent of the invalid provision or fills said lacuna.