

## **GENERAL TERMS OF BUSINESS**

### **I. GENERAL INFORMATION**

1. These GENERAL TERMS OF BUSINESS are used as a basis for all contracts of Farymann Diesel Engines GmbH, Lampertheim – hereinafter referred to as FARYMANN. They shall also apply for future business relations, even if they are not expressly agreed once again. These terms and conditions are deemed as accepted no later than with acceptance of the goods or service. Counter confirmations of the customer with reference to his terms and conditions of business or purchase are hereby opposed.

2. Any divergent terms from these business terms shall only be effective if FARYMANN confirms these in text form.

### **II. OFFERS**

1. Any offers of FARYMANN are based on the respective applicable price list. Offers are not binding to FARYMANN with regard to price and delivery possibility.

2. Details in brochures, offers and other documents, in particular those of a technical kind, are non-binding even if they can be derived from plans, sketches, tables, specifications, etc. if they have not been expressly declared as part of the contract in writing by FARYMANN.

3. The right is reserved to make technical changes and improvements.

4. If not otherwise determined in writing in our offers, our offers shall not apply if they have not been accepted towards FARYMANN by our customer within eight weeks from the date of the offer. The receipt of the customer's declaration of acceptance at FARYMANN shall be decisive for the timely receipt of the acceptance.

### **III. CONCLUSION OF CONTRACT**

The contract between the customer and FARYMANN shall be accomplished including our GENERAL TERMS OF BUSINESS:

1. In the event of a prior offer by FARYMANN through – oral – also telephone – acceptance of the offer towards FARYMANN, no later however than with the acceptance of the offered goods which are delivered in line with the offer.

2. In the event of the order by the customer without prior offer with receipt of the order confirmation, no later however than through the acceptance of the despatched goods; the conditions contained and / or confirmed in the order confirmation / delivery note shall become a part of the contract including these GENERAL TERMS OF BUSINESS with the acceptance of the delivered goods.

3. In the event of the purchase on trial (delivery for test purposes) through non-return of the delivered or test object to FARYMANN within the deadline stated in the delivery note. The conditions contained in the delivery note and/or confirmed shall become a part of the contract which is materialized through the expiry of the deadline including these GENERAL TERMS OF BUSINESS with expiry of the deadline for return. The receipt at FARYMANN shall be decisive for the timely return of the goods to FARYMANN.

### **IV. PRICES – PRICE ADJUSTMENTS – PAYMENT**

1. All prices are deemed from the registered seat of FARYMANN without packaging, freight, insurance, etc. and plus the respective applicable rate of value added tax. The goods are despatched packaged and non-insured as customary for the trade. Packaging and despatch costs are charged to the customer. FARYMANN is only obliged upon written request of the customer to take out transport insurance for the goods; costs incurred thereby shall be borne by the customer.

2.

If the list prices are changed to compensate for personnel or other cost increases at FARYMANN, FARYMANN can demand a price adjustment from the customer according to the actual list prices insofar as the goods or services are not to be delivered within 4 months from conclusion of the contract.

3.

Claims of FARYMANN are due and payable immediately without any deductions, cash discount, etc. Payments must principally be made through transfer onto one of the accounts of FARYMANN. Bills of exchange and cheques are only accepted with prior express agreement and only in payment; all costs incurred from the acceptance of such means of payment shall be borne by the customer.

4.

It is deemed as agreed between the customer and FARYMANN that after expiry of the 21<sup>st</sup> day which follows the date of the invoicing by FARYMANN, default on payment shall occur without this requiring a reminder. From this time FARYMANN shall be entitled to demand interest in the amount of 8 percentage points above the base lending rate. The right is reserved to prove higher interest on default and further damages.

5.

The customer can only set-off against claims, which are undisputed or have been declared final and absolute. The customer may only assert a right of retention insofar as the claims ensue from this contract.

6.

In the event that the customer does not fulfil satisfy his payment obligations or if circumstances become known which give cause to doubt the customer's solvency (non-encashment of bills of exchange or cheques, enforcement measures of creditors of the customer, etc.) FARYMANN shall be entitled to deem all still outstanding receivables due from the customer payable immediately and demand reasonable advance payments for current orders. This shall also apply in case of doubts concerning the credit-worthiness of another company of the group to which the customer belongs.

7.

The customer declares that he agrees with the set-off of his possible receivables due from FARYMANN against claims to which FARYMANN is entitled; to the same extent outstanding receivables can be set off against claims which group companies of the customer are entitled.

## **V. DELIVERY – PASSING OF RISK**

1.

The risk of accidental loss or deterioration of the goods shall pass to the customer with the hand-over of the customary packaged goods to the commissioned transport or conveyance company (rail, post, carrier, etc.).

2.

FARYMANN is entitled to make part deliveries if not otherwise agreed in writing.

3.

FARYMANN shall if possible deliver immediately; stated delivery dates or delivery deadlines shall only be deemed as expected dates or deadlines which FARYMANN makes an effort to observe; such dates or deadlines are not binding for FARYMANN unless such an expressly designated date is agreed in writing in an individual case.

4.

FARYMANN shall in no way be responsible – even in case of binding agreed dates – for delays in delivery and service owing to force majeure or as a result of events which make the delivery or service considerably more difficult or render this partly or completely impossible for FARYMANN, also subsequently occurring material procurement difficulties, operation trouble, strike, lock-out, shortage of personnel, deficiencies in means of conveyances, official orders, etc.; this shall also apply if such impediments occur at a supplier of FARYMANN or his sub-suppliers. The – binding or non-binding – applicable delivery time shall be extended in these cases by the duration of the impediment plus a reasonable operational start-up and organisation time.

5.

If the impediment lasts longer than 3 months the customer shall be entitled, after setting a reasonable final deadline, to cancel the contract with regard to the not yet satisfied part. The customer may not derive any claims for damages if the delivery time is extended or if FARYMANN is released from its obligation, insofar as the impediment was not caused by FARYMANN acc. V Par. 4 and the customer was informed of the delay immediately.

6.

Insofar as FARYMANN is responsible for the non-observance of binding promised deadlines and dates or is in default, the customer is entitled to default damages in the amount of 0.2% for each completed week of



the default, a maximum total however of up to 5% of the invoice value of the deliveries and services affected by the default. Claims beyond these are excluded unless the default is due to at least gross negligence of FARYMANN.

7.

If the customer is in default in acceptance, refuses to satisfy the contract or if he omits an act or declaration, which renders impossible, impedes or makes difficult the performance of the agreed delivery or service by FARYMANN, the delivery or service as per contract by FARYMANN is deemed as performed with all ensuing legal consequences; in particular the risk of accidental loss or deterioration shall pass to the customer on the date upon which the customer is in default in acceptance, refuses to satisfy the contract or omits the owed assistance; default in acceptance shall occur no later than on the date upon which the customer is notified that the contractual object is ready for despatch.

8.

In the event that the pre-requisites acc. V.7 exist FARYMANN shall alternatively be entitled to demand satisfaction of the contract from the customer or demand 20% of the net invoice value of the service affected by the non-performance within the meaning of V.7. as flat rate damages.

## **VI. RESERVATION OF TITLE**

1.

Until satisfaction of all claims (including all balance claims from current account) to which FARYMANN is entitled from all legal grounds against the customer either now or in future, FARYMANN is granted the following securities, which FARYMANN shall release upon request at its choice insofar as their value exceeds the claims by more than 20% in the long term.

2.

The goods shall remain the property of FARYMANN. Processing and conversion shall always be carried out for FARYMANN as manufacturer, however without obligation for FARYMANN. If the (co) ownership by FARYMANN lapses through combination then it is hereby agreed now already that the (co) ownership of FARYMANN to the uniform object passes to FARYMANN pro rata of the value (invoice value). The customer shall safeguard the (co) ownership of FARYMANN free of charge. Goods, to which the customer is entitled to (co) ownership, are hereinafter referred to as reserved goods.

3.

The customer is entitled to process and sell the reserved goods in proper business transactions as long as he is not in default. Pledges or transfer of ownership by way of security are not permitted. The customer hereby now already assigns all claims incurred from the resale or any other legal grounds (insurance, illicit act) with regard to the reserved goods (including all balance claims from current account) in full to FARYMANN as a precautionary measure. The assignment is accepted by FARYMANN. The customer is revocably authorized to collect the assigned claims in own name and for the account of FARYMANN. This direct debit authorization can only be revoked if the customer does not properly satisfy his payment obligations.

4.

In case of access of third parties to the reserved goods the customer shall refer to the property of FARYMANN and inform FARYMANN thereof immediately.

5.

In case of conduct of the customer contrary to the contract – in particular default of payment – FARYMANN shall be entitled to take the reserved goods back or if applicable demand assignment of the customer's claims for return against third parties. Taking back and seizure of the reserved goods by FARYMANN is not deemed as withdrawal of the contract.

## **VII. WARRANTY**

1.

The warranty period for newly produced goods and products is 24 months, for new spare parts 12 months, for used goods or spare parts, in particular for replacement motors overhauled in the plant, 3 months. This shall not apply insofar as a defect was maliciously not disclosed.

2.

Incomplete deliveries and/or obvious defects are to be reported to FARYMANN immediately, no later however than within 5 workdays after receipt of the delivery, hidden defects after their discovery within the statutory period of limitations.

3.

A breach of the afore-mentioned obligation excludes all warranty claims towards FARYMANN.

4.

In the event of defects to the delivered object, this shall also include the absence of warranted qualities, FARYMANN is alternatively entitled to improve the faulty delivered object or make a replacement delivery. In the event that three subsequent improvements fail or failure of the replacement delivery the customer shall be entitled to demand reduction (reduction of the remuneration) or reverse transaction of the contract. The customer undertakes to permit FARYMANN to inspect the faulty delivered object at the choice of FARYMANN either at the customer or at FARYMANN. If the customer refuses the inspection FARYMANN is released from the warranty.

5.

If the customer does not exercise his right to reduction or reverse transaction of the contract after the failure of three attempts at subsequent improvement within a reasonable period of time then FARYMANN on its part may cancel the contract.

6.

The assignment of warranty claims to third parties is excluded.

7.

If the customer sells the objects delivered by FARYMANN to third parties the customer is principally prohibited from referring to FARYMANN due to the thus associated statutory and/or contractual warranty claims.

8.

Complaints of defects do not affect the due date of the purchase price claim unless their entitlement has been acknowledged by FARYMANN in writing or declared final and absolute.

9.

A further guarantee remains unaffected thereby.

## **VIII. OPERATING INSTRUCTIONS/CHANGES TO CONSTRUCTION**

FARYMANN reserves the right to make changes to the construction at all times even without prior announcement; a claim of the customer to make such changes to already delivered products does not exist.

## **IX. LIABILITY**

Claims for damages from the impossibility to provide the service, positive breach of claims, fault in case of conclusion of contract and illicit act are excluded both against FARYMANN as well as against his employees and vicarious agents, insofar as there is no wilful or grossly negligent act and insofar as the claims for damages do not affect the injury to life, body or health.

## **X. MISCELLANEOUS**

1.

Place of performance is 68623 LAMPERTHEIM, GERMANY; exclusive place of jurisdiction for all claims and rights ensuing from the contractual relationship is MANNHEIM, GERMANY; this shall also apply for claims and rights which a customer asserts against FARYMANN.

2.

The law of the FEDERAL REPUBLIC OF GERMANY shall apply exclusively to legal relations between the customer and FARYMANN, independent of where the contract was concluded or is to be executed. The applicability of the convention of the United Nations concerning contracts for the international sale of goods (CISG) is excluded.

3.

Should one provision of the contract between the customer and FARYMANN or one provision of these GENERAL TERMS OF BUSINESS be invalid or become invalid in future, the contractual relationship on the whole shall remain effective; the customer and FARYMANN hereby approve such an interpretation of the provision which may be invalid, which shall as far as possible and effectively satisfies the commercial intention of this provision.