



FTS GROUP GMBH EUPENER STR 159 E1 50933 KOELN-GERMANY



**FTS GROUP GMBH**

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## **FTS Group GmbH General Conditions and of Sales and Trading**

In entering into the Contract the Buyer acknowledges and confirms that: - it has satisfied itself as to the fitness for purpose of any of the Goods - Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### **DELIVERY**

Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, the Seller delivering the Goods to that place.

### **PRICE OF THE GOODS**

The price of the Goods shall be the price quoted to the Buyer at the date of acceptance of the order. The price of the Goods is exclusive of any value added tax, carriage or packing costs which the Buyer shall be additionally liable to pay to seller.

### **TERMS OF PAYMENT**

Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods. If the Buyer wrongfully fails to take delivery of the Goods the Seller shall be entitled to invoice the Buyer at any time after the Seller has notified the Buyer the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

The Buyer shall pay the price of the Goods by wire transfer in advance or by Credit Card Payment. The merchant fee for credit card payment is 3.5%. The time of payment of the price shall be of the essence of the Contract.

No payment shall be deemed to have been received until the Seller has received cleared funds.

The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid Court Order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- reserve the right to cancel the Contract and suspend further trading and/or deliveries to the Buyer;
- demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer;
- appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
- charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of euribor at six months plus 5% until payment in full is made.

## **EXPORT TERMS**

Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be ex works. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

## **RISK AND PROPERTY**

Risk of damage to or loss of the Goods shall pass to the Buyer in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.

Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## **LIEN**

The Seller retains a general lien on any of the Buyer's Goods in its possession for any unpaid balance the Buyer may owe to the Seller.

The Seller shall be entitled to sell such Goods in the event that payment is not made in full within 30 days of notice given to the Buyer by the Seller or its exercise of the lien.

The proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance, and the Seller shall account for any surplus.

## **WARRANTIES AND LIABILITIES**

Subject to the conditions set out below and subject to the applicability of warranties to the specific sale, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 6 months from the date of delivery (the "Warranty Period").

The above warranty is given by the Seller subject to the following conditions:

- the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration or repair of the Goods without the Seller's approval;
- the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

Any warranty claim by the Buyer must be notified to the Seller in Writing within 28 days of becoming apparent (including a description of the fault), the Seller must be allowed to inspect the Product and any part thereof and (should the Seller request) the Goods must be returned to the Seller's service department (carriage paid) within the Warranty Period.

Where any valid warranty claim is made in accordance with these Conditions, the Seller at its sole discretion shall either replace the Goods (or the part in question)

free of charge or refund to the Buyer the price of the Goods and cost of delivery and packing (or a proportionate part of the price in respect of the part in question), but the Seller shall have no further liability to the Buyer. If a warranty claim is not valid the cost of return of the Goods to the Buyer shall be paid by the Buyer.

The Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performance or failure to perform any of the

Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

- act of God, explosion, flood, tempest, fire or accident; - war or threat of war, sabotage, insurrection, civil disturbance or requisition;

- acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; - import or export regulations or embargoes; - strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)

- difficulties in obtaining raw materials, labour, fuel, parts or machinery; - power failure or breakdown in machinery.

## **CONFIDENTIALITY**

The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Seller, its employees, agents, consultants or subcontractors and any other confidential information concerning the Seller's business or its products which the Buyer may obtain.

The Buyer shall not use such information for any purpose other than to perform its obligations under the Contract.

## **ASSIGNMENT**

The Seller may assign the Contract or any part of it to any person, firm or Company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

## **GENERAL**

Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may any the relevant time have been notified pursuant to this provision to the party giving the advice.

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same of any other provision. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.

A person who is not a party to the Contract shall not have any rights under or in connection with it. The Contract shall be governed by the laws of Federal Republic of Germany and the parties shall submit to the sole jurisdiction of the court of Koeln Germany.