

# FAM GmbH

## General Terms and Conditions for the Supply of Products and Services

### I. Scope

These General Terms and Conditions for the Supply of Products and Services (hereinafter "**GTC**") shall apply to all business relations between FAM GmbH including its current and future affiliated companies pursuant to Art. 15 et seq AktG (German Stock Corporation Act) (hereinafter individually or together referred to as "**FAM**") and FAM's customers (hereinafter referred to as "**Customer**"). The GTC shall not apply if Customer is a consumer.

### II. General

1. FAM delivers products, including but not limited to opencast mining systems, stockyard systems, facilities for mineral processing, port technology, conveying systems, and loading systems, machines, parts of the aforesaid and spare parts (any and all of these hereinafter "**Product**"). For purposes of these GTC "**Engineering**" shall refer to all services regarding the consulting, planning, designing, engineering and construction of the Product as well as any supervision services, "**Manufacturing**" shall refer to all services regarding the manufacturing of the Product including the manufacturing and/or delivery of parts and spare parts, "**Assembly**" shall refer to all services regarding the assembly and erection of Products, "**Commissioning**" shall refer to all services regarding the commissioning, installation, implementation and introduction of the Product as well as the supervision of such services if performed by Customer or a third party, "**Maintenance**" shall refer to all services regarding the maintenance and the repair of a Product. Any and each Engineering, Manufacturing, Assembly, Commissioning and Maintenance performed by FAM shall be referred to as "**Service**" or "**Services**".
2. All contracts (including but not limited to purchase and confirmation orders, agreements, amendments and/or settlements) between FAM and the Customer regarding Products and Services (the contractual Products and Services together and separately hereinafter referred to as "**Delivery Item**" or "**Delivery Items**") shall be subject to these GTC. To become valid, any deviations from these GTC shall require FAM's express written confirmation. Unless expressly recognized by FAM, any deviating, conflicting or additional general terms and conditions of business of Customer - even if known - shall not be considered part of the contract and shall therefore not apply.
3. Any offers from the Customer must be submitted with binding content. FAM can confirm such offer within two (2) weeks. If FAM confirms the offer a binding contract is concluded when Customer receives the confirmation, unless otherwise provided in the offer or the confirmation. If FAM deviates from Customer's offer this shall be considered a new offer and FAM shall be bound to such offer for a maximum of two weeks from the date of the offer, unless expressly stated otherwise in the offer. The same applies if FAM and not Customer submits the initial offer. If Customer accepts FAM's (counter-) offer in time, a binding contract is concluded upon acceptance. If Customer does not accept FAM's (counter-) offer in time but only later, FAM's renewed written confirmation is necessary and a binding contract is concluded when Customer receives such confirmation, unless otherwise provided in the offer. In order to prevent the conclusion of a binding contract, Customer must lodge any objections whatsoever regarding any of FAM's confirmations immediately after receipt. Any subsequent correspondence by the Customer, in particular any subsequent order confirmations, does not change the content of the contract that has already been concluded unless FAM confirms such changes explicitly in writing.
4. The Delivery Items are listed exhaustively in the contract and – if applicable – any amendments thereto. Reasonable technical changes or improvements of the Delivery Items by FAM are permissible without consent of Customer.
5. Unless agreed otherwise in writing, FAM

- a) delivers in accordance with the technical standards, laws and regulations applicable in Germany,
  - b) shall not be obligated to insure the Delivery Items, and
  - c) does not assume any guarantees whatsoever.
6. FAM reserves its rights of title and copyrights to all samples, quotations, drawings and any other information in physical and intangible form, including electronic form, that has been produced solely or in part by FAM. These must not be reproduced or made accessible to any third party without explicit prior written approval of FAM.

### III. Prices

1. All prices are net prices in EURO. Value-added tax (if applicable) at the relevant statutory percentage will be added.
2. Unless the remuneration for Services has been expressly agreed otherwise, FAM shall receive time remuneration for Services according to the usual hourly rates of FAM applicable at the time of the performance of the Services.
3. Unless otherwise agreed, fixed prices do neither include Assembly nor Commissioning nor Maintenance of the Delivery Items.
4. In case that a software in connection with or embedded in Products is being provided by FAM (hereinafter "**Software**"), the price does neither include any modifications, customisations, or alterations of the Software, nor any works necessary to connect the Software with any machines, software and/or other products or operating systems of Customer unless expressly agreed otherwise in writing.

### IV. Terms of Payment

1. Payment shall be made without any deduction by bank transfer to a bank account of FAM denominated in EURO. Bills of exchange and cheques shall only be accepted on the basis of special agreements and only on account of payment.
2. Payment is due immediately upon receipt of the invoice unless otherwise agreed in writing. The Customer defaults if he does not pay within fourteen (14) days after receiving the invoice. An additional reminder is not necessary. If a different payment date has been agreed, the Customer defaults if the payment has not been credited to a FAM bank account by this date.
3. The invoice is sent electronically. For this purpose, the Customer shall provide FAM with the email address to which the invoice shall be sent to at the time of the conclusion of the contract, but at the latest immediately after being requested by FAM. If the Customer does not provide a specific email address, FAM can use any of Customer's email addresses known to FAM.
4. If it is exceptionally not possible to send the invoice electronically and FAM therefore sends the invoice by fax, it is assumed that the Customer received the invoice on the date and time stated in the delivery report.
5. If it is exceptionally not possible to send the invoice electronically or to send it by fax and FAM therefore posts the invoice, it is assumed that the Customer received the invoice as follows:
  - a) in case of a domestic dispatch: three days after the invoice has been posted,
  - b) in case of a dispatch to European countries: five days after the invoice has been sent;
  - c) in case of an international dispatch: one week after the invoice has been posted.
 It is assumed that FAM sent the invoice on the day the invoice was issued (invoice date).
6. In deviation from para. 2 instalments are only possible if expressly agreed upon in writing.
7. The Customer can only offset payment claims from FAM with claims that are undisputed or that have been established as legally and finally binding.
8. The Customer may only exercise a right of retention against payment claims from FAM if the claim on which the right of retention is based is undisputed or has been established as legally and finally binding.
9. In the case of default in payment FAM shall be entitled to charge the Customer interest and commission according to the relevant applicable bank rates for short-term loans, however, at least damages in the amount of nine (9) percentage points above the base interest rate (according to Art. 288 BGB, German Civil Code).

## **V. Delivery**

Unless agreed otherwise, all deliveries shall be EXW Incoterms 2020. If Customer is not able to export the Product without the assistance of FAM (e.g. only FAM is able to issue an export declaration), FAM shall provide such assistance.

## **VI. Time of delivery and default in delivery**

1. The delivery dates of Services shall be set forth in the contract between FAM and Customer. Unless expressly agreed otherwise, any delivery dates are non-binding.
2. Observance of any (binding or not binding) delivery dates by FAM presumes that all commercial and technical issues between the contracting parties are clarified and that Customer has fulfilled all obligations to cooperate with FAM, in particular by providing all necessary specifications, official certifications or permits, but also by making the down payment and any other payments without delay. If this is not the case, any delivery dates shall be extended accordingly.
3. Any (binding and non-binding) delivery dates are subject to appropriate and timely delivery by FAM's subcontractors and suppliers. FAM shall inform Customer of any delays as soon as possible. Any delivery dates shall be extended accordingly and FAM shall not be liable for any delays caused by its subcontractors or suppliers.
4. Release from the obligation to observe a binding delivery date shall not be granted if Customer shows that FAM has culpably caused his own non-delivery.
5. In the case that delivery or acceptance are delayed for reasons that are due to Customer, Customer shall reimburse the costs and damages caused by such delay (including but not limited to additional working hours, loss of profit, and costs for appropriate storage of the Delivery Items of at least 0.5% of the outstanding price). FAM may, after setting an appropriate period of time, dispose of the Delivery Items.
6. In the event that non-observance of a delivery time or date is due to force majeure, industrial action or other events or situations that are beyond FAM's control (hereinafter "disruption of operations without fault"), the time of delivery shall be extended accordingly. In order to prove a disruption of operations without fault, it is sufficient if FAM shows that a respective event took place or is taking place and that this event has an impact on FAM's business. It is not required that FAM proves that the event has affected the work regarding the Delivery Items in particular. However, Customer shall have the right to show, that the work on the Delivery Items has not been affected by the event. FAM shall inform Customer of the beginning and the end of such an event as soon as possible. FAM is not liable for any delays caused by a disruption of operations without fault, even if such a disruption appears at a time when FAM is already (culpably) in default. If the Customer wants FAM to mitigate any negative effects of the disruption of operations without fault Customer and FAM have to reach an agreement about such measures and Customer has to pay for any additional costs resulting from such measures.
7. In case of a disruption of operations without fault, which makes an amendment of the underlying agreement(s) necessary, FAM shall have the right to rescind the contract if the parties were not able to agree on such an amendment within a reasonable time. Customer has to reimburse FAM for the Services already performed and FAM has to deliver Customer the respective Delivery Items.
8. In the event that FAM is culpably in default and such delay causes damages to Customer, the latter shall be entitled to claim damages under the conditions laid down in Clause XIII.3 to XIII.7.

## **VII. Impossibility and inability to perform**

1. In case that it is or it becomes impossible to perform services or parts thereof, either party can rescind the contract regarding such impossible services or parts. Notwithstanding Clause VII.4, the contract price is to be reduced insofar as performance becomes or became impossible.
2. In case that FAM is obliged to perform several Services and that FAM has either already completed one or more of such Services or that it is not impossible to complete one or more of such Services, Customer cannot withdraw from possible Service(s), even if performance of the whole contract becomes impossible (for example FAM might be obliged to perform Engineering and Manufacturing and has completed Engineering but Manufacturing became impossible, Customer cannot withdraw from Engineering).
3. Regarding parts of Services that have already been completed and/or that can be completed still, Customer can only withdraw from such possible Services if (1) Customer has no interest in

such parts and (2) it is FAM's fault that performance of the rest of the contract became impossible.

4. If services become impossible Customer shall remain obliged to pay (1) for the possible Services or parts thereof and (2) for the impossible Services or parts thereof (a) if the impossibility to perform occurs whilst Customer is in default of acceptance or (b) if Customer is solely or predominantly responsible for the circumstances that led to the impossibility.
5. Clause VII.1 to VII.4 apply accordingly in case of FAM's inability to perform, meaning that it is generally possible to perform service(s), but FAM is not able to perform the respective Service(s).

## **VIII. Transfer of risk, acceptance**

1. The risk shall transfer to Customer once the Delivery Item has left FAM's works, even if partial deliveries are made in regard to the respective Delivery Items, or if FAM has taken on additional Services, e.g. freight costs, delivery, Assembly or Commissioning.
2. In the event that shipment is delayed or not performed due to circumstances beyond the responsibility of FAM, the risk will transfer to Customer from the date of notification of readiness for shipment. FAM undertakes to take out insurance coverage for the item(s) as requested by Customer at the latter's expense.
3. To the extent that the Delivery Items are subject to acceptance, acceptance has to be performed immediately after delivery but not before Customer has had reasonable time to examine the Delivery Items. Customer shall not be entitled to reject acceptance in case of a minor/non-substantial defect. In case that Customer refuses delivery the Delivery Items are deemed to be accepted one (1) week after notification of readiness for acceptance. In case that Customer refuses acceptance without justification (also in case Customer neither accepts nor objects to the Delivery Items), the Delivery Items are deemed to be accepted one (1) week after delivery.
4. Partial deliveries shall be allowed, provided they are reasonable.

## **IX. Lack of adequate financial capacity**

If it becomes apparent after conclusion of the contract that the claim to the contract price is in jeopardy due to Customer's lack of adequate financial means (e.g. due to an application to open insolvency proceedings in respect of the Customer's assets, or similar proceedings in the country of Customer's place of business, or if Customer does not meet agreed payment due dates), FAM may pause its work and/or hold back the Delivery Items (all without getting into default) until full payment is made or until Customer has supplied sufficient security. Further, FAM shall be entitled to rescind the contract and to demand the immediate return of the Delivery Item(s).

## **X. Retention of title**

1. FAM reserves his property right(s) on all Delivery Items, especially supplied Products and equipment, including equipment parts, until (i) receipt of the full payment of the contract price and other ancillary costs, if any, resulting from the contract and until (ii) any and all of FAM's claims resulting from any other business relation with Customer or Customer's affiliates have been fulfilled.
2. If Customer processes or reshapes the Delivery Items (hereinafter "**Processed Item**"), this is always done for FAM. In this case, the Customer's expectant right continues with the Processed Item. If the (co-) ownership of FAM ceases to exist, the Customer's ownership of the Processed Item shall pass to FAM in proportion of the value of FAM's entire claim as specified in Clause X.1 to the value of the Processed Item. The Customer stores the property of FAM free of charge.
3. Customer shall not be entitled to sell nor pledge nor assign the Delivery Item(s) as security until title has passed to Customer.

In case the parties agreed on an extended retention of title, this applies under the following conditions:

- a) Customer is entitled to sell the Delivery Items in the normal course of business only and only if Customer is not in default of payment.
- b) Customer hereby assigns any claims arising from the resale of the Delivery Items to FAM up to the open amount (including value added tax). This assignment applies regardless of whether the Delivery Item was processed before resale.

- c) Customer shall be authorised to collect the claim for FAM. FAM's right to collect the claim remains unaffected. However, FAM will not collect the claim as long as Customer meets his payment obligations, in particular as long as Customer is not in default of payment and no application for opening insolvency proceedings (or similar proceedings in the country of Customer's place of business) has been filed.
- 4. If retention of title is not permitted by the law of the state in which the Delivery Item is located, FAM shall be entitled to any equivalent right of the respective state to secure its ownership of the Delivery Items. Customer shall assist FAM to take all necessary measures to secure its ownership or equivalent rights (such as liens).
- 5. Upon requests of Customer, FAM shall be obliged to release securities insofar as their value exceeds the value of FAM's outstanding claims against Customer by more than 10 %, whereby FAM may select the securities to be released.
- 6. Until title has passed to Customer, Customer is obliged to handle the Delivery Items with good care. FAM shall be entitled to insure the Delivery Item(s) at Customer's expense against theft, breakage, fire, water and other damage, unless Customer has provided proof that Customer has insured the Delivery Items accordingly. If maintenance and inspection work has to be carried out, Customer has to carry it out in good time at his own expense. In case of seizure, confiscation or other dispositions or interventions by third parties, Customer shall notify FAM immediately in writing and via e-mail. Customer shall indemnify FAM from any costs arising from such seizure or intervention, in particular costs resulting from a claim under Art. 771 of the German Code of Civil Procedure or any equivalent claim under the law of the state in which the seizure or intervention took place
- 7. In the event of any violation of the contract by Customer, in particular of this Clause X, or in the case of a delayed payment, FAM shall, subsequent to submitting a reminder, be entitled to take back the Delivery Item(s) and Customer shall surrender it. Any shipping costs (including packaging and insurance) have to be borne by Customer.
- 8. Notwithstanding Clause X.7, based on the retention of title, FAM may only claim ownership of the Delivery Item(s) after FAM has rescinded the contract.

## **XI. Warranty claims**

FAM can only be held liable if provided for under statutory law. However, liability under statutory law is limited in accordance with these GTC, in particular as follows and as set out in Clause XIII below.

- 1. FAM cannot be held liable for any services not performed by FAM. If a Product turns out to be not operating properly, or if there are problems in connection with the Assembly or Commissioning of a Product, in order for FAM to be liable Customer has to prove that such a malfunction was caused by a Service performed by FAM. This applies in particular if FAM does only perform Engineering, if FAM does not manufacture all the parts of the Product, and if FAM is not or not fully responsible for Assembly, Commissioning and Maintenance.
- 2. FAM cannot be held liable if the Delivery Item does not meet any technical standards, laws and regulations not applicable in Germany.
- 3. FAM shall be liable for defects of quality and deficiencies in title only as follows:

### **Defects of quality**

- a) Insofar as FAM has supplied parts all parts that are found defective due to circumstances that occurred before transfer of risk shall – at FAM's choice – either be repaired or replaced free from defects. FAM shall be immediately informed in writing upon detection of such defects. Replaced parts shall become the property of FAM.
- b) After coordination with FAM, Customer shall allow for sufficient time and opportunity for FAM to perform the repair and deliver replacement(s) as deemed necessary; otherwise FAM shall be exempted from liability for any resulting consequences.
- c) FAM reserves the right to rectify at least two (2) times. If rectification fails, Customer is entitled to rescind or to reduce the price. Rescission is not permitted in case of a minor defect.
- d) Customer is neither entitled to remedy the defect itself or have such defect remedied by a third party, nor to claim reimbursement for any respective costs from FAM, unless otherwise provided for under statutory law.  
FAM shall not be liable for any damages resulting from Customers attempts to remedy the defect itself or to have it remedied by a third party, in particular, FAM is not liable for any inappropriate repair measures or replacements performed by Customer or a third party. Also, Customer cannot claim reimbursement under this Clause XI.3.d and, in addition, repair or

replacements measures from FAM for the same defects in case that the Delivery Item is still not operating properly after the measures carried out by Customer or a third party.

- e) Within the scope of statutory regulations, Customer shall have the right to rescind the contract if, in the case of a material deficiency, FAM - taking into account exceptional cases as defined by law - let pass a reasonable respite granted to FAM for repair or replacement without taking any action. In case of minor defects, Customer shall only be entitled to reduce the contract price. Any further claims shall be subject to the conditions laid down in Clause XIII of these GTC.

#### **Deficiencies in title**

- f) If the use of the Delivery Item(s) results in a violation of industrial property rights or copyrights in Germany, and therefore is impaired or prohibited by a final and binding decision of a court, FAM shall - at his expense - procure for Customer the right to continue using the Delivery Item(s) or modify the Delivery Item in a reasonable manner so that the violation of an industrial property right is remedied. If this is impossible under economically reasonable conditions or within a reasonable period of time, Customer and FAM shall be entitled to rescind the contract. Furthermore, FAM shall indemnify Customer against all undisputed claims by the relevant holders of the property rights or claims resulting from final and absolute findings of a court.
- g) Notwithstanding Clause XIII, the rights and obligations set out in Clause XI.3.f shall be deemed final in cases of infringement of property rights or copyrights. However, such rights and obligations shall exist only if:
- (1) Customer informs FAM immediately of any asserted violations of property rights or copyrights in writing;
  - (2) Customer does not recognize alleged violations;
  - (3) Customer assists FAM in a reasonable manner in averting any asserted claims or enables FAM to perform modification measures pursuant to Clause XI.3.f;
  - (4) Customer does not enter into court proceedings, settlements and alike singlehandedly – all defence measures, including out-of-court settlements, are reserved to FAM;
  - (5) Customer suspends the use of the Delivery Items for reasons of mitigation or other severe reasons without informing the third party that the cessation of use does not entail an acknowledgment of the infringement of property rights;
  - (6) the deficiency in title is not due to an instruction given by Customer and
  - (7) the infringement of rights has not been caused by an unauthorized modification of the Delivery Item(s) by Customer or a third party and/or that Customer has used the Delivery Item(s) in a manner not in accordance with the contract.

## **XII. Customer's complaints**

1. To preserve any claims for defects, Customer shall be obliged to carefully examine the Delivery Item(s) immediately after receipt. If a defect is discovered during inspection or at a later time, FAM shall be notified immediately in writing. A notification shall be deemed to have been made immediately, if it is made within a period of one (1) week after discovery.
2. Irrespective of these duties of inspection and lodging complaints, Customer must notify FAM in writing of any obvious defects (including false and short delivery) within one (1) week after delivery.
3. If Customer does not notify FAM in due time and form, the Delivery Item is deemed free of defects and any warranty rights expire. Incomplete or too general reports will not be accepted to the extent that, if FAM does not have complete documentation at the expiry of the notification period, any claims for defects will expire. The timeliness of the notification is subject to receipt by FAM.

## **XIII. FAM's liability, Disclaimer of liability**

1. No liability is accepted in the following cases:
  - a) Unsuitable or improper use, incorrect Assembly or Commissioning by Customer or third parties, normal wear and tear, faulty or negligent handling, improper Maintenance, unsuitable operating materials, unsuitable base/subsoil, chemical, electrochemical or electrical influences - unless these are the fault of FAM.
  - b) Any problems or difficulties regarding the connection or integration of a Delivery Item into Customer's plant or operation, in particular regarding the interface of the operating

systems/Software unless a customised solution is expressly included in the contract and the contract price respectively.

- c) The Customer is responsible for compliance with any regulations concerning import, transport, storage and use of the goods. No liability is accepted if such regulations are not met, in particular if and insofar as the Delivery Item cannot be imported into the country of destination or operated there due to legal or official regulations. Notwithstanding exclusion of FAM's liability, any corresponding documents and information as well as any necessary permits must be made available to FAM in good time.
  - d) When Customer or a third party performs inappropriate repair measures, FAM shall not be liable for any consequences resulting therefrom. The same shall apply to modifications of the Delivery Item(s) performed without prior written approval of FAM.
  - e) For defects that Customers is aware of or that Customer is gross negligently not aware of at the time the contract is concluded.
2. Customer may only rescind or terminate the contract in case of an infringement of duties for which FAM is responsible. In particular Customer shall not be entitled to terminate the contract on the basis of Art. 648 BGB (German Civil Code).
  3. Notwithstanding Clause XIII.1 and unless otherwise specified in these GTC, FAM shall be liable for damages only as follows (Clause XIII.4 to XIII.7):
  4. FAM shall be liable for any damages - on whatever legal basis - in the case of intent and gross negligence.
  5. In case of ordinary negligence, FAM shall only be liable for:
    - a) damages regarding injury to life and limb, physical injury or damage to health;
    - b) damage resulting from any infringement of an essential contractual duty (obligation whose fulfilment is a precondition for the proper performance of the contract and that the contractual partner can normally trust and expect to be complied with). However, in this case liability shall be limited to compensation for the foreseeable damage that typically occurs.
  6. The limitations of liability shall not apply if FAM has maliciously concealed a defect. The same shall apply to Customer's claims according to the Product Liability Act.
  7. FAM is not liable for any consequential losses, e.g. for loss of production or loss of profit.

#### **XIV. Period of limitation**

1. The general period of limitation for claims arising from defects of quality and deficiencies in title shall expire twelve (12) months from the date of delivery. If acceptance has been agreed, limitation commences upon notification of readiness for acceptance.
2. However, provided the subject matter of the contract is a building structure or a Delivery Item which has been used - according to its customary usage (building material) - for such structure and has caused the building's defectiveness, the statutory period of limitation shall be five (5) years from delivery. This shall not affect the statutory special regulation in case of malicious intent.
3. The periods of limitation under the German Product Liability Act shall remain unaffected.
4. The limitation period is not renewed or extended if FAM remedies a defect. In the case that FAM remedies a defect using spare parts the period of limitation for claims for defects of spare parts expires twelve (12) months after transfer of risk of such spare parts.

#### **XV. Software, machine data**

1. If FAM provides a Software, especially if the Software is integrated into the Product, this Software is a part of the Delivery Items and FAM is only responsible for the Software and the Delivery Items running together smoothly. However, FAM is not responsible for the connection of the Software with plants, operations and/or any operating systems of Customer respectively unless expressly agreed otherwise in writing.
2. Customer shall be granted a non-exclusive and non-transferable right to use the supplied Software including the pertaining documentation. Such Software shall be permitted for use in the defined Delivery Item(s) only. Use of such Software in more than one (1) system shall not be allowed.
3. Customer may transfer the right to use the Software only in case of a legitimate interest, in particular if Customer resells the respective Delivery Item to a third party. In such case Customer has to ensure that the third party complies with this Clause XV. Customer undertakes not to

remove any of FAM's data - in particular copyright notices - or modify such information without FAM's express prior approval.

4. All other rights to the Software and the pertaining documentation, including copies, shall remain with FAM or the Software supplier. Granting of sublicenses is not permitted.
5. FAM is not liable for any damages that occur because Customer fails to update the Software.
6. Unless otherwise agreed with the Customer, it shall be deemed agreed with respect to the quality of the products to be delivered by FAM that FAM may, at its own discretion, equip these products upon delivery with a data logger by means of which FAM can permanently collect, store, process and use operating data occurring during the operation of the product by remote access. The data logger collects no personal data. FAM is entitled to use the data collected by the data logger permanently for internal statistical purposes at FAM and for benchmarking the services of FAM. If agreed with the Customer, FAM shall monitor the functionality of the product via the data logger and provide remote maintenance services for the Customer.

## **XVI. Confidentiality**

1. The contracting parties undertake to keep confidential information of the other contracting party secret.
2. Confidential information is information that is either expressly designated as such or where the circumstances indicate that it is confidential information.
3. FAM may disclose confidential information to third parties insofar as this is necessary in connection with the performance of the contract. In this case, FAM will oblige the third party to secrecy in accordance with its own obligation.
4. Neither party will make the received confidential information subject of patent applications, nor use them against any application for industrial property rights by the other party.
5. The confidentiality requirement shall not apply to such information (i) that is generally known, (ii) that demonstrably has been known to the receiving party beforehand, (iii) that demonstrably has been independently developed or lawfully obtained by the other party, (iv) that became publicly available without a breach of either party's duty of confidentiality, or (v) that has to be disclosed because of an order of a court or another relevant authorities or because disclosure is required by law.
6. Any obligation of confidentiality expires three years after completion of the contract.

## **XVII. Compliance**

Customer takes all necessary and appropriate measures to guarantee compliance with all applicable laws, regulations and rules, including (but not limited to) all child protection and anti-corruption laws and regulations. Customer, its board members, employees, and/or agents have not, and will not directly or indirectly engage in any prohibited activity in connection with any agreements made between FAM and Customer. Prohibited activities include in particular: (i) making contributions or giving benefits or advantages to FAM, its board members, employees, and/or agents (e.g. money, gifts, invitations of a predominantly non-operational nature, such as sporting events, concerts, cultural events), as well as (ii) receiving such contributions, benefits or advantages. Any violation of this Clause XVII entitles FAM to rescind or terminate the contract without notice.

## **XVIII. Applicable law, Arbitration**

1. All legal relations between FAM and Customer shall be governed by the law of the Federal Republic of Germany whereby the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly and entirely excluded.
2. All disputes arising out of or in connection with the contract between FAM and Customer, or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.
3. The arbitral tribunal shall be comprised of three members.
4. The seat of the arbitration is Leipzig, Germany.
5. The language of the arbitration shall be English, whereby exhibits may also be presented in German without translation, in case all arbitrators are capable of the German language.



## **XIX. Severability clause**

If any provision of these GTC is or becomes invalid in full or in part, this shall not affect the validity or enforceability of the remaining provisions.