

# General Terms and Conditions of Delivery and Service of FRIMO Innovative Technologies GmbH - hereafter referred to as "FRIMO" (status as of August 1, 2023)

## § 1 General

1. All deliveries and services by FRIMO to the purchaser will be carried out solely on the basis of these General Terms and Conditions of Delivery and Service. FRIMO will not recognise conditions on the part of the purchaser that run counter to these Terms and Conditions of Delivery and Service, deviate from them or supplement them unless FRIMO has explicitly acknowledged that they apply in writing and with the signatures of the company's authorised representatives. FRIMO'S Terms and Conditions of Delivery and Service shall also apply without restriction if FRIMO implicitly carries out the delivery and provision of service to the purchaser in the knowledge of conditions on the part of the purchaser that run counter to these Terms and Conditions of Delivery and Service, deviate from them or supplement them. Our General Terms and Conditions of Delivery and Service will also apply to future transactions with the purchaser.  
FRIMO is entitled to amend the General Terms and Conditions of Delivery and Service in whole or in part at any time, if this becomes necessary as a result, in particular, of changes to the law, case-law or actual circumstances. German is the contractual language. If texts in other languages are used before, when or after the contract is concluded, these will only serve to optimise the information provided to the purchaser. They will not constitute the basis of a contract and will not offer any connecting factor under international private law either. All errors resulting from texts drafted in other languages will be charged to the customer.
2. These Terms and Conditions of Delivery and Service shall only apply to legal entities incorporated under public law, special funds under public law and companies in the sense of § 310 Paragraph 1 of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code).
3. All agreements between FRIMO and the purchaser for the purpose of carrying out this contract are laid down in writing in this contract. The contracting parties undertake to confirm any verbal agreements in detail in writing without delay.
4. The Purchase Conditions of FRIMO currently in force, which are not a component of these Terms and Conditions of Delivery, apply to business relationships between FRIMO and its suppliers.

## § 2 Quotation/order/award of contract

1. Unless they are limited in time, quotations by FRIMO are always without obligation.
2. Orders placed by the purchaser are to be deemed as a binding offer of a contract and considered accepted when the order has been confirmed in writing by FRIMO.
3. FRIMO will not recognise the receipt of data records by electronic means as an order by the purchaser. A contract will only materialise with a quotation sent by FRIMO, an order by the purchaser and a subsequent written confirmation of the order by FRIMO.
4. The order confirmation will contain the final and comprehensive description of the services to be rendered by FRIMO, in particular, it provides the basis for the technical performance factors, the technical and commercial details as well as the regulations on use and safety.
5. The documentation handed to FRIMO by the purchaser before the contract is awarded, such as drawings, specifications, materials, samples, tools, models and the like provide the binding basis for preparing and drawing up the quotation. The purchaser has to draw FRIMO's attention to any subsequent amendment in writing when it places the order.

## § 3 Documents/samples/drawings

1. Inasmuch as FRIMO encloses documents such as drawings, specifications, materials, samples, tools, models and the like with its quotations, FRIMO shall reserve the rights of title and copyright thereto.
2. If requested by the purchaser, FRIMO will provide it with information and drawings, which will allow the purchaser to commission, use and maintain the item that has been supplied. The purchaser and FRIMO will agree on the extent on an individual basis.

However, FRIMO is not obliged to procure workshop drawings for the item that has been supplied or for spare parts.

3. Diagrams, drawings, calculations and other documents to which FRIMO has reserved rights of title and copyright, may not – without FRIMO's explicit written consent – be duplicated or made accessible to third parties. This primarily applies to those written documents that are designated as "confidential".
4. FRIMO reserves the right to make design changes as well as other changes to technical data and performance factors if they are in the interests of technical progress.
5. Obvious mistakes, misprints, arithmetic errors, typographical errors and calculation errors are not binding on FRIMO.
6. Documentation handed to FRIMO by the purchaser will remain its property. FRIMO is not entitled to use this without the consent of the other party unless it is to prepare the quotation or to develop, construct, assemble and commission the item to be supplied.

## § 4 Deadlines/deliveries

1. Compliance with deadlines by FRIMO presupposes that all the components to be supplied and delivered by the purchaser as well as any permits and approvals arrive in good time and, in particular, that the agreed payment terms and other obligations are complied with.
2. A delivery deadline will begin at the earliest when the contract is concluded. If subsequent amendments to the contract are agreed, a new delivery deadline must be agreed at the same time, if necessary.
3. The delivery deadline is a so-called *circa* deadline according to the normal, reasonable degree of care i.e. the deadline is not binding unless a fixed transaction was explicitly agreed in writing.  
If it becomes apparent to FRIMO in the course of fulfilling the order that compliance with a deadline is endangered because information has not been provided by the purchaser, FRIMO will draw the purchaser's attention to this. FRIMO reserves the defence of breach of contract.
4. FRIMO will not be responsible for exceeding a delivery deadline if this is due to purchaser or could not have been foreseen by FRIMO, as in the case of force majeure (§ 11), for example:
  - if the information needed to carry out the order does not reach FRIMO in good time or if it is subsequently amended by the purchaser;
  - if payment periods are not complied with, letters of credit are issued too late;
  - if essential import licences are not received on time by FRIMO;
  - if obstacles arise that FRIMO cannot overcome despite applying the necessary care, irrespective of whether these occur at FRIMO, with the purchaser or a third party. Obstacles of this kind are, in particular, force majeure such as epidemics, mobilisation, war, insurgency, substantial disruption to operations, accidents, industrial disputes, delays or mistakes in the delivery of the requisite raw materials, semi- or finished goods, the scrapping of substantial amounts of work, official measures or omissions or natural phenomena. In these cases the delivery deadline will be extended accordingly – even within any existing delay in delivery.
5. The delivery deadline will be deemed to have been complied with if the item to be purchased has left the plant before it expires or the purchaser has been notified that it is ready for dispatch. If a non-binding delivery deadline is exceeded by four weeks, the purchaser may ask FRIMO in writing to deliver within an appropriate period. FRIMO will be in default when the period set in this request expires.
6. FRIMO will only answer for losses resulting from a delay in delivery by FRIMO if a corresponding grace period has been set and FRIMO has been put in default in writing by the purchaser before the final delivery and informed about the liability

claims and their possible extent. The restriction of liability specified in § 12 will apply. Liability here is limited to 0.5% of the value of the respective delivery per completed week that delivery is delayed subject to a maximum of a lump sum of 5% of the value of the respective delivery. FRIMO reserves the right to demonstrate to the purchaser that the purchaser incurred no loss as a consequence of the delay in delivery or that the loss was smaller than that claimed by the purchaser.

However, in the case of binding interim deadlines with a final deadline agreed in writing, the above regulation of a lump-sum compensation for delay will only apply once, if the final deadline or the last interim deadline with a set grace period could not be complied with either. Compliance with a final deadline of this kind will remedy previous delays, the service will be deemed to have been supplied on time overall.

The above-mentioned lump-sum compensation for loss has to be claimed by the purchaser at the latest, in the case of preclusion, on payment of the relevant invoice.

7. Additional statutory claims and rights on the part of the purchaser because of a delay in delivery, such as withdrawal having set a grace period involving the threat of repudiation in vain, will remain unaffected.

If requested, the purchaser is obliged to explain within an appropriate period whether it will withdraw from the contract because of the delay in delivery or whether it will insist on delivery. The claim to fulfilment is excluded in cases where a grace period involving the threat of repudiation has expired in vain.

8. If nothing else arises from the confirmation of the order, delivery/performance "ex works" (EXW) as per INCOTERMS 2010 is agreed. If FRIMO is obliged to supply the delivery/performance other than "ex works", the customer is obliged to carry out the requisite preliminary work and preparations to ensure the agreed type of consignment in good time.
9. Partial and premature deliveries by FRIMO are permissible if they are acceptable to the purchaser.

#### § 5 Packaging

FRIMO will package the goods as it sees fit in the customary manner and at the expense of the purchaser. FRIMO has not agreed to take back the packaging. The purchaser is obliged to dispose of the packaging at its own expense.

#### § 6 Place of performance/transfer of risks/acceptance/decline

1. The place of performance for deliveries/services by FRIMO is – unless agreed otherwise explicitly in writing – the registered office of the respective FRIMO branch in the Federal Republic of Germany concluding the contract and supplying the service that is characteristic of the contract.
2. The purchaser has to accept or decline the goods without delay at the place of performance following a prior written request by FRIMO.
3. FRIMO will only dispatch the goods if this is explicitly required by the purchaser. Dispatch and transportation will take place, unless otherwise agreed in writing, for the account and risk of the purchaser as FRIMO thinks best. In this case, FRIMO will insure the freight at the request and expense of the purchaser. Unless anything else emerges from the confirmation of the order, delivery "ex works" (EXW) as per INCOTERMS 2010 is agreed.
4. Unless goods have already been accepted or declined, every risk will pass to the purchaser at the latest when the item to be delivered is handed to the hauler or carrier. This will also apply to partial deliveries and in the case of carriage paid delivery, CIF, FOB and transportation clauses as per INCOTERMS 2010. If goods are transported using our vehicles and staff, every risk will pass to the purchaser once the goods have been loaded.
5. In the event of a delay in delivery for which FRIMO is not responsible, every risk will pass to the purchaser on the day it receives notification that the goods are ready for dispatch.
6. Point 3 will also apply mutatis mutandis in the event that notification of readiness of dispatch is provided for an agreed preliminary acceptance of the items to be supplied.
7. Incidentally, preliminary or final acceptance is deemed to have been given if, despite FRIMO announcing in writing that the goods were ready for acceptance, a deadline for a preliminary or final acceptance on the part of the purchaser does not materialise within 2 weeks of the date of the announcement that the goods were ready for

acceptance or if delivery has taken place or the item to be supplied has already been commissioned by the purchaser.

8. In the case of any delay in acceptance on the part of the purchaser, FRIMO is entitled to demand fulfilment or, having set an appropriate grace period, to declare its withdrawal from the contract. If FRIMO insists on fulfilment, it can store the goods at the expense of and risk to the purchaser, however, if FRIMO stores the goods itself, FRIMO will be entitled without compulsory insurance to demand a storage fee of 0.5% of the gross invoice value per commenced week from the purchaser from the tenth day following the delay in acceptance. FRIMO is not obliged to consign the stored goods before the accrued storage fees and other delivery claims have been settled even if other payment agreements may have previously existed.
9. Delay in acceptance on the part of the purchaser will entitle FRIMO to call in its contractual claims immediately without taking account of payment agreements reached previously.

#### § 7 Payments

1. Payments are to be made by the purchaser, unless otherwise agreed explicitly, to FRIMO's payment office, in EURO, within 30 days of the invoice being dispatched (invoice date) without any deductions. If the purchaser fails to pay by then, it will be in default without any further reminder. The amounts will be invoiced as follows:

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|-----|---|
| 30% | when the order is placed; with 10 days time for payment   |
| 30% | with release of design data   |
| 30% | when the goods are ready for dispatch, even for preliminary acceptances,  |
| 10% | following final acceptance by the purchaser, however, at the latest within 2 weeks of being notified that the goods are ready for acceptance. |

Extensions and amendments will be invoiced 100% following completion (delivery).

If the purchaser is domiciled outside the Federal Republic of Germany, FRIMO is authorised as an alternative to the above mentioned method to have the purchaser issue an irrevocable, confirmed documentary credit in favour of FRIMO through its bank. It is essential that the purchaser's bank is of first class, international standing.

2. If the purchaser defaults, FRIMO will be entitled under the statutory provisions to claim default interest for the year amounting to 8 percentage points above the basic interest rate as well as any further losses. If the purchaser fails to pay when payment is due and is in default, FRIMO will be entitled to due date interest of 2 percentage points above the basic interest rate, but of at least 5% for the year.
3. If FRIMO becomes aware of facts after the contract is concluded, in particular, relating to default by the purchaser with regard to earlier deliveries, which its mandatory commercial discretion leads it to conclude that its claim for payment is in jeopardy because the purchaser is unable to pay, FRIMO will be entitled to call in outstanding payments immediately and to refuse to supply its services until payment is effected or collateral is provided for it. If payment is not effected or collateral provided within a period set by FRIMO, FRIMO will be entitled to withdraw from the contract and demand compensation for damages. Partial deliveries that have already taken place will be due for payment irrespective of any withdrawal. The additional rights to which FRIMO is entitled by force of law shall remain unaffected by this.
4. The purchaser will only be entitled to offset claims if its counterclaims have been established by law, are undisputed or recognised by FRIMO. The purchaser is not entitled to retain payments on account of disputed counterclaims either.
5. The purchaser is not entitled to assign its claims against FRIMO in whole or in part or dispose over them in any other way without the prior written consent of FRIMO. Any collection of partial amounts by third parties is excluded.

#### § 8 Retention of title

1. The items to be supplied will remain the property of FRIMO (goods subject to the retention of title) until all claims by FRIMO against the purchaser arising from the business relationship have been settled. If there is a current account relationship, the retention of title refers to the acknowledged balance.
2. Should a retention of title like that in the Federal Republic of Germany or a comparable regulation in the purchaser's country be ineffective, insufficient or absent under the applicable law, FRIMO may demand a corresponding bank guarantee or

similar collateral equal to the amount of the order in question when it confirms the order.

If requested by FRIMO, the purchaser has to provide it with comprehensive support in its efforts to protect ownership of the item to be supplied in the country in question or to arrange in other ways for FRIMO's interests in the payment to be adequately secured.

3. The purchaser shall undertake any processing and treatment of the goods subject to retention of title for FRIMO. If the goods subject to the retention of title are treated with other items that do not belong to FRIMO, FRIMO will acquire joint ownership of the new item in the ratio of the invoice value (including sales tax) of the goods subject to the retention of title to the values of the other items at the time the treatment took place. If the goods subject to retention of title are combined with other movable items to form a unitary item or the other item is to be viewed as the main item, the purchaser will assign pro rata joint ownership to FRIMO inasmuch as the main item belongs to it.

The purchaser shall also assign the claims to FRIMO, which accrue to it through the possible combination of the purchase item with a property against a third party, to secure its claims against it.

The purchaser will preserve the ownership or joint ownership for FRIMO. Incidentally, the same regulations will apply to the item resulting from treatment or combination as to the goods subject to retention of title.

4. The purchaser is entitled to sell the purchase item in the ordinary course of business; however, it is already assigning all claims and security interests amounting to the final invoice amount (including sales tax) of its claim which accrues to it against its purchasers or third parties from the onward sale, and irrespective of whether the purchase item has been sold without or after treatment, to FRIMO. The purchaser must note the assignment in its books. The purchaser remains authorised to collect this claim even after the assignment. FRIMO's authority to collect the claim itself will remain unaffected by this. However, FRIMO undertakes not to collect the claim as long as the purchaser complies with its payment obligations from the income it receives, does not default and, in particular, no application is made to open composition or insolvency proceedings or payments are suspended. If, however, this is the case, FRIMO may demand that the purchaser discloses the assigned claims and their debtors to FRIMO, provides all the information needed for collection, hands over the relevant documentation and notifies the debtors (third parties) of the assignment.
5. The purchaser is obliged to treat the goods subject to retention of title with care, to store them separately from other goods and to insure them adequately at their replacement value against fire, water and theft at its expense and to provide FRIMO with evidence of this insurance if requested. The purchaser must carry out the necessary servicing and inspection work at its own expense in good time.
6. The purchaser has to inform FRIMO of foreclosure measures by third parties relating to the goods subject to retention of title without delay and hand over all the documentation needed for an intervention. This is also true for damage of any kind. The purchaser shall bear the costs of extrajudicial efforts to release the goods and reobtain them. This shall also apply to the costs of a justified judicial intervention if these cannot be recovered from the third party.
7. If the purchaser behaves in a way that is contrary to the contract or culpably breaches its contractual obligations, in particular, if it defaults, FRIMO will be entitled to withdraw from the contract once an appropriate grace period has expired in vain and to demand the return of the goods subject to retention of title. The statutory provisions regarding the dispensability of setting a grace period shall remain unaffected. FRIMO is also entitled to withdraw from the contract if an application is made to open insolvency proceedings against the purchaser's assets. If FRIMO takes back the goods subject to retention of title, it will be deemed to have withdrawn from the contract. For the purposes of taking the goods back, FRIMO is entitled to record the existence and condition of the goods subject to retention of title or have them recorded as well as to visit the premises of the purchaser for this purpose and for the purpose of taking back the goods. The purchaser shall bear the costs of collecting and taking back the goods.
8. If the realisable value of the existing collateral exceeds the claims to be collateralised by more than 20%, FRIMO will be obliged, if requested by the purchaser, to release collateral of its choice to this extent. The purchaser will be obliged, if requested by

FRIMO, to furnish additional collateral, if the realisable value of the collateral that it has already provided falls short of the amount of FRIMO's claims to be collateralised.

#### **§ 9 Assembly**

FRIMO will only assemble or install machinery if this has been agreed separately in writing and on special assembly terms.

#### **§ 10 Warranty**

1. FRIMO warrants that the item to be supplied complies with the agreed properties and condition at the point risk is transferred; these are measured solely by the concrete agreements reached between the parties regarding the goods' characteristics, features and performance characteristics as per the order confirmation.
2. It is not the intention of FRIMO and the contract between the parties is not aimed at assuming an obligation to meet claims (guarantee) vis à vis the purchaser that exceeds the properties and condition agreed in clause 1 for the properties and condition of the goods to be supplied.  
A reference to DIN or other comparable norms only serves to describe the goods and does not constitute a guarantee.
3. In line with clause 2, details in product information, price lists and other information provided to the purchaser by FRIMO is not to be understood in any way as guarantees of this kind for the particular properties and condition of the items to be supplied.
4. FRIMO shall not assume any guarantee for damage that is attributable to unsuitable or improper use, defective assembly, commissioning or repair of the items to be supplied by the purchaser or by a third party tasked by it, to amendments to the item to be supplied by the purchaser or a third party tasked by it without the written consent of FRIMO, to natural wear and tear, defective or negligent treatment, to the use of unsuitable operating resources or substitute materials, to defective building work or unsuitable foundations at the purchaser's premises or to chemical, electrochemical or electrical influences, unless FRIMO is responsible for these. Furthermore, FRIMO shall not assume any liability for defects that occur from non-compliance with the instructions for use. If goods are supplied in accordance with drawings, specifications, samples etc. provided by the purchaser or third parties, the purchaser shall assume the risk of the goods being suitable for the purpose envisaged unless FRIMO has confirmed the suitability of the goods to be supplied for this purpose in writing.
5. FRIMO shall be liable for damage to the goods to be supplied that occurs before the transfer of risks to the purchaser unless the purchaser is responsible for the damage or it is based on a defect in the material provided by the purchaser or on an instruction issued by the purchaser regarding the execution of the order.
6. The fact that the purchaser has duly complied with its duties to investigate and make a complaint immediately the goods are received in accordance with § 377 HGB is a precondition for any rights relating to defects. The purchaser has to complain in writing about obvious defects without delay, however within a maximum of one week of the goods being handed over or of the goods and services being accepted previously. The purchaser must make a complaint in writing about hidden defects immediately after they are discovered.
7. FRIMO may demand at its choice and its expense that the purchaser returns the rejected delivery to FRIMO for inspection or subsequent performance. The purchaser may reimburse FRIMO the costs it incurs because of the complaint if it becomes clear that the goods or performance contained no defects for which FRIMO provides a warranty.
8. FRIMO is entitled to choose to supply replacement goods or to rectify defects in the items to be supplied. If FRIMO opts for subsequent performance, it has to take into account the type of defect and the purchaser's justified interests. FRIMO shall bear the expenses incurred in subsequent performance. FRIMO will not have to bear the costs that arise from the fact that the goods were brought to a place other than the place of performance unless bringing them there corresponds with the intended use of the items to be supplied.
9. Should subsequent performance be impossible or unreasonable for FRIMO or should it fail twice after an appropriate grace period has been set, the purchaser may choose to reduce its order, withdraw from the contract or demand compensation for damages. If the purchaser withdraws from the contract, it will not be entitled to any

additional compensation for damages because of the defect. If only part of the delivery is defective, the purchaser may only withdraw from the entire contract if it can demonstrate that it has no use for the other part of the delivery and service. If the purchaser chooses compensation for damages, the goods will remain with it if this is reasonable. The compensation for damages will be limited to the difference between the purchase price and the value of the defective goods unless FRIMO is responsible for the breach of contract through bad faith.

10. If the purchaser would be entitled by law (§ 637 BGB) to rectify the defect at FRIMO's expense itself or have it rectified by third parties once an appropriate grace period set for subsequent performance has expired in vain, the purchaser will be entitled to exercise this right only after it has notified FRIMO of this in good time, in writing giving details of the costs to be anticipated.
11. The purchaser can only assert the claims and rights relating to a defect in the items to be supplied within a warranty period of 12 months from the transfer of risks. This does not apply to claims and rights, for which the law specifies longer mandatory periods (five years) in accordance with § 438 (1) 2 BGB for construction and items for construction (building materials) and in accordance with § 634 a (1) 2 BGB for construction and planning and monitoring services related thereto.
12. Rights of recourse on the part of the purchaser against FRIMO only exist inasmuch as the purchaser has made no agreements with its customer above and beyond the statutory mandatory rights relating to defects. In addition to § 12, the above points 4-11, in particular, shall apply *mutatis mutandis* to the extent of the purchaser's right of recourse against FRIMO.

#### § 11 Force majeure

1. In cases of force majeure and other unforeseeable or unavoidable harmful events, for which FRIMO is not responsible, in particular, in the event of riots, military disputes, terrorism, insurgency, embargo, sequestration or restrictions on the consumption of energy, the period for delivery will be extended accordingly by the duration of the disruption plus an appropriate start-up time if these disruptions can be shown to be of considerable influence on the delivery of the goods. This shall also be the case if these circumstances occur at FRIMO's suppliers.
2. FRIMO will notify the purchaser immediately and in writing of the occurrence and end of circumstances of this kind. If the disruption lasts longer than six months after the expiry of the originally agreed period for delivery, each contracting party may withdraw from the contract. The withdrawal will extend to the part of the contract that has not yet been fulfilled unless the partial deliveries and performance can be shown to be unusable for the purchaser.
3. If force majeure prevents the purchaser from fulfilling its contractual obligations, it must reimburse FRIMO for the expense of securing and protecting the items to be supplied.

#### § 12 Limitation of liability

The above paragraphs and these Terms and Conditions of Delivery and Service comprise FRIMO's final liability and warranty for the deliveries, services and duties under the order and exclude other warranty claims and claims for compensation for damages of any kind and without regard for the legal nature of the claim asserted, in particular for breach of duty under the contractual obligation, for unauthorised action and for claims for reimbursement of lost profit or because of other financial losses on the part of the purchaser such as from production downtimes suffered by the purchaser or its customers. This also applies if the purchaser demands reimbursement of futile expenditure instead of its claim for compensation for damages in place of performance.

This limitation of liability as well as any other contained in these Terms and Conditions of Delivery and Service shall not apply to a case where a guarantee or procurement risk has been assumed, to liability under the product liability act for liability for losses resulting from the culpable injury to life, limb, health or the breach of major contractual obligations. In the case of culpable breach of major contractual obligations, FRIMO will be liable – apart from in cases of intent, gross negligence and liability for losses from injury to life, limb or health – only for losses that are typical of the contract and reasonably foreseeable.

No change in the burden of proof to the detriment of the purchaser is associated with this. This and any other limitation of liability in these Terms and Conditions of

Delivery and Service also apply to the personal liability of FRIMO's employees, legal representatives and vicarious agents.

#### § 13 Special provisions for the cession of software

1. The provisions of these General Terms and Conditions of Delivery and Service apply to software that is assigned or ceded to the purchaser in connection with other services and supplies or alone unless determined otherwise below or unless a separate software licence agreement was concluded with the purchaser.
2. The software products mentioned in the order confirmation may be both third parties' standard software, software developed in-house or software applications developed in-house and are acquired from the customer on the data carriers specified there. For FRIMO software and software applications, application guidelines and operational help for specifically trained specialist staff are contained in the scope of supply but not an instruction manual or handbook to be classified below this presumed expert level.
3. Software will be ceded and assigned in accordance with the provisions of §§ 69 a et seq. of the *Urhebergesetz* (UrhG – German Copyright Act). Unless explicitly agreed otherwise, FRIMO shall not assign any rights of use or exploitation to the purchaser, which extend beyond use of the software package received in the goods and services supplied by FRIMO. The purchaser may make unrestricted use of the existing functions of the software as a closed, homogenous system and adjust it to its operational needs. Any type of programming above and beyond that permitted by §§ 69 a et seq. of the UrhG, such as further adjustments of the software to the purchaser's intended use, the extraction of individual program components and use thereof as well as the development or retrogression of the software or its original elements by the purchaser or third parties is forbidden, in particular, the retrogression of software to get around technical copy protection mechanisms. Unless the purchaser was granted a separate licence to make copies, it may only make three (3) copies of each specimen of the software for back-up purposes.
4. The purchaser may only sell the software on to third parties with the explicit, written consent of FRIMO. In principle, this consent will also extend to copies of the software or parts of the same. If the purchaser sells the software, it has to delete the software sold on its remaining hardware and destroy every back-up copy.

In the case of a sale, the purchaser has to take account of the fact that software and/or the documentation related thereto may require an export licence under the German Foreign Trade and Payments Law (because of its type or intended use) and has to obtain the export licences required each time in its own name and for its own account as well as only carrying out the relevant deliveries in accordance with the provisions of this licence.

5. Unless explicitly agreed otherwise, the purchaser is not entitled to be given the source codes for the software.
6. Rights of use and exploitation under copyright law, which are granted in perpetuity (ongoing software licence for a one-off fee), are freely revocable until payment in full of the purchase price, the licence fee and additional claims by FRIMO resulting from the order and the business relationship as a whole. The purchaser is entitled to sell on FRIMO's deliveries including software in the ordinary course of business. For this case the purchaser is authorised to grant the customer those rights of use and exploitation that would attach to the purchaser when the purchase price, the licence fee and FRIMO's claims under the business relationship were paid in full. This is subject to the condition that just these rights and duties (particularly provisions relating to trademark rights) are explicitly imposed on the customer by the purchaser by means of a written contract. The purchaser now assigns all claims equal to the amount of the final invoice (including value added tax) for FRIMO's claims, which will accrue to it from the onward sale against its purchaser or third parties, irrespective of whether the goods supplied have been sold on without or after processing. The purchaser will remain authorised to collect these claims even after the assignment. The provisions in § 8 also apply *mutatis mutandis*.
7. The purchaser is aware that software programs cannot be devised without any errors. FRIMO shall not assume any warranty with regard to the supply of software for the fact that the software will work in every respect without interruption and within errors and that the functions contained therein can be executed in every conceivable combination, inasmuch as the capability of the software for normal use or that envisaged by contract is only impaired to a minor extent by these restrictions.

Substantial, reproducible deviations from the specification in the relevant confirmation of order demonstrated by the purchaser within the warranty period are regarded as errors in the software. FRIMO will rectify errors of this kind by supplying a new edition of the software (update). If the relevant expenditure by FRIMO is proportionate to the urgency and materiality of the problem on the part of the purchaser, FRIMO will provide an interim solution until it supplies an update of this kind. In the case of software errors that only impair use in accordance with the contract to a minor extent, the defects can also be dealt with by information on rectifying or avoiding the effects of the error. The warranty does not encompass – with reference to the relevant provisions of § 12 of these General Terms and Conditions of Delivery and Service – the rectification of errors that occur as a result of external influences, servicing or maintenance errors or non-reproducible errors outside the programme function and claims arising from the loss of information and data.

The user has no claim to have programme extensions or amendments carried out free of charge following the transfer of risks even if these should become necessary because of statutory amendments.

8. The diagnosis and rectification of errors by FRIMO as part of the warranty will take place at the latter's choice either at the purchaser's premises or at FRIMO's. In this respect the purchaser is obliged to back-up and maintain its data on a regular basis. If the diagnosis and rectification of errors takes place at the purchaser's premises, it will make available the hardware and software needed directly for this as well as specialist personnel free of charge on the agreed date, failing which – if it is otherwise impracticable – the purchaser will have to pay the full costs of the time spent travelling and working to no avail. The above obligation on the part of the purchaser to bear costs shall also apply to unnecessary delays in any collaboration required as part of FRIMO's warranty related activities for which the purchaser is responsible.
9. FRIMO shall not be liable for damage to the software and the other items and services to be supplied, which arises because of amendments or adaptations to the source code or the software carried out by the purchaser or by third parties not commissioned by FRIMO.

#### **§ 14 Other copyrights and rights of use**

1. The purchaser warrants that the reports, plans, drafts, drawings, lists, analyses and calculations produced by FRIMO as part of the order will only be used for its own purposes and the purposes envisaged in the contract and will not be made public other than as envisaged in the contract. Inasmuch as results can be protected by copyright, FRIMO will remain the originator.
2. Inasmuch as deliveries and services by FRIMO encompass the granting of rights of use and exploitation, these will only be granted inasmuch as this is agreed for the order or is clear from the visible circumstances and the contractual purpose of the orders.
3. Inasmuch as use is made of third parties' services and results for FRIMO's supplies and services, FRIMO will acquire the rights of use to them to the extent described in the above paragraph and assign them to the customer to the extent that this is required for the order. If the rights of use cannot be acquired to this extent or there are restrictions on the rights of use or other third parties' rights, FRIMO will draw the purchaser's attention to this. The purchaser undertakes to comply with these restrictions – even in the event of an onward sale to third parties – and to indemnify FRIMO in this respect. This shall also apply to the costs of extrajudicial legal proceedings.
4. If a third party asserts claims against the purchaser because of a breach of industrial property rights or copyrights (hereinafter abbreviated to "property rights") through the goods and services supplied by FRIMO and as a result significantly interferes with or forbids its use of the products in accordance with the contract, FRIMO will – at its option and its expense – either change or replace these products to the effect that they no longer breach the property right but nevertheless meet the agreed specification in essence or indemnify the purchaser from the relevant licence fees with regard to the third party. If this is impossible for FRIMO because the terms are inappropriate, FRIMO will take back the respective products in return for reimbursement of the purchase price paid less possible compensation for use.

5. The prerequisites for FRIMO's liability under the above clause 4 are that the purchaser notifies FRIMO without delay in writing with respect to a breach of property rights asserted in this way, that these are not recognised and that any dispute regarding this, whether judicial or extra-judicial, is only conducted in consultation with FRIMO. Should the purchaser suspend use of a product of this kind whether to minimise losses or for other good cause, it will be obliged to do this with the clear provision that this is not associated with any acknowledgement of a breach of industrial property rights whatsoever.
6. If the purchaser is responsible for the breach of property rights itself, the above claims as per point 4 are excluded with additional reference to point 3.
7. FRIMO is not obliged to secure possible rights of use and exploitation for services and works which the purchaser makes available, for services and supplies which are produced in accordance with drawings, models or other instructions by the purchaser or third parties nor for the application or changes to / combination of its services or products with non-FRIMO products that is not foreseeable by FRIMO and FRIMO is not liable for any breaches of third parties' property rights. In this respect, the purchaser is obliged to indemnify FRIMO against third parties' claims and against the costs of extrajudicial legal proceedings.
8. Further claims on the part of the purchaser based on the breach of third parties' property rights are – notwithstanding the right of withdrawal and the relevant restrictions on liability in this agreement, particularly in § 12 of the same – excluded.

#### **§ 15 Non-disclosure**

The purchaser is obliged to treat all information, expertise and other business secrets, that it has learnt from or about FRIMO, strictly confidentially and not to pass on any information, documents/documentation, programme descriptions, drawings, sketches or other documentation to third parties, to duplicate them or make them accessible to third parties otherwise without the explicit, written consent of FRIMO and to impose these duties on employees, staff, agents, people tasked by the purchaser or companies associated in any way with the purchaser in full.

#### **§ 16 Concluding provisions**

1. Should individual provisions of the order or these General Terms and Conditions of Delivery and Service be or become ineffective, this will not affect the effectiveness of the other provisions.
2. Solely the law of the Federal Republic of Germany applies to this contract and the entire legal relationship. Application of UN Sales Law (CISG = UN Convention on Contracts for the International Sale of Goods) and Conflict of laws is excluded. Unless agreed otherwise, Osnabrück in the Federal Republic of Germany is the sole place of jurisdiction. However, FRIMO is authorised to take action against the purchaser at any other general or particular place of jurisdiction. If the purchaser's registered office is located outside the Federal Republic of Germany, FRIMO is entitled alternatively to choose to have disputes that arise under this agreement or about its effectiveness finally decided by one or more arbitrators appointed by these rules of arbitration in accordance with the Arbitration Rules of the International Chamber of Commerce, Paris, to the exclusion of the ordinary courts. The court of arbitration should be in Germany.