

## § 1 General, Scope of Application

- (1) The following general business terms and conditions (hereinafter "Terms and Conditions") apply to all business relationships between F&S and its customers. However, they only apply where the customer is an entrepreneur within the meaning of Sec. 14 German Civil Code (*Bürgerliches Gesetzbuch*), a legal entity under public law or a special public fund (*öffentlich-rechtliches Sondervermögen*).
- (2) Any terms and conditions used by the customer are expressly ruled out. They shall not even become a component of the agreement if F&S makes delivery to the customer unconditionally in the knowledge that there are conditions of the customer which contradict or depart from these Terms and Conditions.
- (3) The word "goods" shall be used in the following generally for hardware (e.g. armStone™, DCUx, efus™, NetDCUx or customer-specific component groups) and software (compilers or customer-specific developed software).

## § 2 Offer, Conclusion of Contract, Reservation of Right to make Changes

- (1) Offers from F&S are non-binding unless they are expressly marked as binding or they contain a binding deadline by which the offer must be accepted.
- (2) The customer's order is a legally binding offer to enter into a contract. If not set out otherwise in the order F&S can accept this offer within 14 working days (Monday to Friday, irrespective of public holidays at the registered office of F&S) with effect from receipt of the order. F&S shall accept such offer in writing (e.g. by order confirmation or dispatch advice/advice that goods are ready for collection).
- (3) If F&S advises the customer in connection with the conclusion of the purchase agreement this shall be subject to best knowledge of F&S and does not give rise to a consultancy agreement. Data and information with respect to the suitability and area of application of the goods are non-binding and do not discharge the customer from its obligation to inspect and carry out tests with regard to the suitability of the goods delivered for the procedures and purposes intended by it.
- (4) F&S reserves the right to undertake slight changes customary in the trade to the construction and specification, provided they are in the interests of technical progress and the customer can be reasonably expected to accept them.
- (5) Offer Documents, specifications and prototype groups made available by F&S as a rule will only be considered to be approximate values unless it is stated expressly in writing that they are binding.
- (6) Offer documents, specifications and prototype groups shall remain in the ownership of F&S. F&S reserves ownership rights and copyrights in documents (logos, photos, expert reports, presentations) and such documents may not be used without written consent from F&S.

## § 3 Payment Conditions, Arrears

- (1) All prices of F&S shall apply "ex-works" plus packaging costs and postage and other taxes, customs duties, fees and charges, unless agreed otherwise. Statutory VAT is not included in the prices of F&S and shall be recorded separately on the invoice.

- (2) F&S reserves the right to amend the prices accordingly if, once the contract has been concluded, costs increase or decrease, in particular owing to changes in the price of the materials and energy or changes in transport costs, unless delivery is to be made within two months of conclusion of the contract. F&S shall give due notice of corresponding price changes.
- (3) Unless agreed otherwise, the respective remuneration shall be due for payment within 30 days of the invoice being issued and of delivery or acceptance of the goods. In the case of new customers, F&S is entitled to demand a downpayment of 30% of the respective remuneration due for payment within 14 days of the invoice being issued.
- (4) Requests for modification from the customer which result in additional costs shall be invoiced.
- (5) As a rule, payments shall be made by bank transfer. Any transfer charges shall be borne by the customer. Payment by bills of exchange may only be made after obtaining prior written consent from F&S; in any event, bills of exchange are only accepted on account of performance.
- (6) If the customer negligently fails to meet the above payment deadline, it is in default of payment, in particular without the need for a reminder. During default, interest shall accrue on the purchase price at the applicable statutory default interest rate. F&S is also entitled to the standard default amount pursuant to Sec. 288 (5) sentence 1 German Civil Code. F&S reserves the right to assert any further default damage. If payment by instalments has been agreed and if the customer defaults on payment of an instalment, the residual debt from the contractual relationship shall be due for payment immediately. In business with entrepreneurs, this has no effect on F&S's entitlement to default interest (Sec. 353 German Commercial Code (*Handelsgesetzbuch*)).
- (7) Setoff shall be permissible only in the event of claims which are undisputed or final and absolute.
- (8) If the asset situation of the customer deteriorates after conclusion of the contract or if a deterioration in assets only becomes noticeable to F&S once the contract has been concluded so that the payment claim of F&S is in jeopardy F&S may, subject to any further claims, revoke payment targets granted and make further deliveries dependent on advance payment or the grant of other securities. The same shall apply in the event of default in payment.

#### **§ 4 Delivery Terms, Delivery Dates and Delay in Delivery**

- (1) Delivery shall be ex-warehouse which is also the place of performance. At the request of the customer, the goods shall be sent to a different final destination specified by the customer. This shall be done – also with regard to the packaging - at the customer's expense (cf. § 3 (1)). The mode and means of dispatch shall be at F&S's discretion unless otherwise agreed. The risk of accidental loss or accidental deterioration of the goods shall transfer to the customer when the goods are handed over to the forwarder, carrier or other transporting entity. At the request of the customer, F&S shall take out transport insurance at its own cost. Any transport damage must be reported in writing to F&S and the transport company upon delivery and if the loss or damage was not externally visible, within seven calendar days of delivery.
- (2) Part deliveries are permissible, provided this is reasonable for the customer.
- (3) If the customer is in default of acceptance, F&S is entitled to store the goods at the expense and risk of the customer. Fixed compensation of EUR 100 per shelf space and full week will be paid starting from the delivery date - or in the absence of a delivery date - when notification is issued that the goods are ready to be shipped. However, the customer retains the right to prove that the actual costs are lower.
- (4) A delivery date will be specified at the due discretion of F&S and is only approximate unless a fixed delivery date has been expressly promised or agreed.

- (5) Delivery dates shall be deemed to have been met if, by this date, the goods have left the works or are ready for dispatch and the customer has been notified accordingly.
- (6) Observance of the delivery dates and deadlines is contingent on proper and punctual fulfilment of all obligations incumbent upon the customer and shall also be subject to F&S having being supplied in a correct and timely manner. Should it become apparent that delays are likely, F&S will notify the customer as soon as possible.
- (7) Events caused by force majeure (e.g. any disruption to operations, fire, natural disasters, weather, flooding, strikes, lockout, war, insurgency, terrorism, transport delays, lawful lockouts, shortage of energy, raw or human resources, delays in the issue of necessary official permits, official/sovereign measures, embargoes) or other events not foreseeable on the date the contract was concluded for which F&S is not responsible shall entitle F&S to delay the delivery. If such events occur, even if they are temporary, the delivery dates shall be extended automatically by the duration of the event, plus a reasonable start-up period. These shall apply irrespective of whether these events were caused by force majeure at F&S, a supplier or another subcontractor of F&S. If a force majeure event lasts for more than eight weeks, each party to the contract may withdraw from the contract. F&S is also entitled to withdraw from the contract if such events make it substantially more difficult or impossible for F&S to perform the obligations under the contract and if such occurrences are more than just temporary. Alterations requested by the customer or a delay in cooperation by the customer shall also entitle F&S to delay the delivery.
- (8) Default on delivery is determined according to the statutory regulations. In any event, the customer must send a reminder. If F&S is in default with delivery (*Lieferverzug*), the customer may demand reimbursement of any loss incurred owing to the delay in accordance with statutory provisions besides the delivery. However, provided F&S has not acted with intent or gross negligence, this claim is restricted to 0.5 % of the delivery value of the delivery concerned per week of delay and to a maximum of 5 % of the value of the goods to be delivered. F&S has the right to prove that the customer did not suffer any loss or that any loss suffered was substantially less. This has no effect on the customer's right to withdraw from the contract after a reasonable period has elapsed and/or to compensation for non-fulfilment in accordance with § 8.

## § 5 Cancellation and Postponement

The customer may postpone a delivery date confirmed by F&S for up to seven weeks before dispatch. The new delivery date may not be more than twelve months after the order was placed. Cancelling an order which was confirmed by F&S is subject to consent by F&S. Customer-specific PC boards (with a release paper) and discontinued PC boards (last time buy) may not be cancelled. If F&S agrees to cancel an order, the following cancellation costs will be incurred:

0 – 6 weeks before dispatch	no cancellation possible
7 – 12 weeks before dispatch	50% of sales price
13 weeks or more before dispatch	20% of sales price

## § 6 Customer Warranty Claims

- (1) The customer's rights in the case of material or legal defects (including incorrect delivery and insufficient quantities, faulty assembly or instructions) are subject to statutory requirements unless otherwise stated or qualified in these Terms and Conditions. In any event, this has no effect on the specific statutory provisions covering final shipment of the goods to a consumer (supplier's recourse pursuant to Sec. 478, 479 German Civil Code).
- (2) Unless otherwise agreed, the quality of the goods owed under contract shall be solely as set out in the product specifications of F&S which were valid at the time the contract was concluded; for standard products these are derived from F&S's data sheet applicable at the time and for other products these are derived from the "Production Release Agreement" or the "Production Release Approval".

- (3) The goods of F&S are not intended to be installed as a component in life support devices or systems which in the event of a malfunction could cause personal injury or death. If the customer uses the goods contrary to this express exclusion clause, the customer shall hold F&S harmless and all its employees, branches, affiliated enterprises and distributors with regard to any claims, costs (including reasonable lawyers' fees), losses and charges which are directly or indirectly related to the unauthorised use of the goods. A claim for indemnity shall also apply if it is argued that F&S did not exercise the necessary care when manufacturing the goods.
- (4) The customer shall inspect the goods immediately after receipt provided this is possible in the due course of business and the customer shall inform F&S in writing of any obvious defects without undue delay at the latest however within seven working days after delivery. The customer must notify F&S in writing of any defects, which cannot be recognised in the context of its due course of business, at the latest within three working days after discovery of the defect. Otherwise the delivery shall be deemed to have been accepted unless defects were fraudulently concealed by F&S. The goods must be inspected to determine whether they comply with the specifications laid out by F&S.
- (5) The warranty shall lapse if changes are made to the goods by the customer itself or by third parties unless the customer proves that there is no causal link between the changes carried out and the defect which occurred.
- (6) Claims as to defects shall not exist if the defect results from inappropriate or unsuitable use or storage, inappropriate or unsuitable transport, faulty or negligent handling.
- (7) If F&S has supplied defective goods, F&S has the right and the obligation to choose to either render subsequent fulfilment by remedying the defect (improvement) or supplying a good free of defects (replacement). If F&S supplies a replacement, the customer must return the defective goods to F&S as provided for by statute.
- (8) The customer is entitled to rescind the contract or to reduce the purchase price if the subsequent fulfilment unsuccessful, would be unreasonable for the customer, is refused by F&S without justification or is not executed within a reasonable deadline set by the customer. In the event of minor defects the contract may not be rescinded.

## **§ 7 Legal Defects**

- (1) In as far as rights of third parties prevent the contractual use of the goods, the customer shall inform F&S in writing without undue delay of the assertion of such rights of third parties and shall give F&S all powers of attorney and grant all authorities required to defend the goods against the rights of third parties at its own expense.
- (2) In as far as the rights of third parties prevent the contractual use of the goods, F&S shall, at its own discretion, introduce appropriate measures to eliminate the rights of third parties or the assertion thereof, procure the rights of use from the third party at its own expense or replace the goods (= subsequent fulfilment) in such a manner that it no longer infringes the rights of third parties if and to the extent that the compliance of the goods with the contract is not impaired.
- (3) The customer is entitled to rescind the contract or to reduce the purchase price if the customer cannot be reasonably expected to accept subsequent fulfilment, if it is refused by F&S or is not executed within a reasonable deadline set by the customer. In the event of a minor disruption to the contractual use of the goods, the contract may not be rescinded.
- (4) A claim for compensation in accordance with statutory regulations and the regulations set out in § 8 can only be made if F&S knew or should have known of the contradictory third party rights.

## **§ 8 Liability for Damages**

- (1) F&S shall be liable for intent and gross negligence and the intent and gross negligence of its legal representatives and vicarious agents. However, if F&S, its legal representatives or

vicarious agents (has) have not acted with intent, liability is restricted to foreseeable damage typical for this type of contract.

- (2) F&S has unlimited liability for negligent injury to life, limb and health caused by F&S, its legal representatives or vicarious agents and for wilful failure to disclose a defect or if F&S has assumed a guarantee which – if breached – renders it liable for compensation. In the latter case, the extent of liability is based on the wording of the guarantee.
- (3) F&S shall also be liable if F&S, its legal representatives or vicarious agents negligently breach duties which must be fulfilled before the contract can be executed in the first place and which the customer relies or is entitled to rely on being fulfilled. However, if F&S, its legal representatives or vicarious agents (has) have not acted with intent, liability is restricted to foreseeable damage typical for this type of contract.
- (4) F&S shall also be liable in instances of mandatory statutory liability, for example under the German Product Liability Act (*Produkthaftungsgesetz*).
- (5) In all other respects liability is excluded irrespective of the legal reason.
- (6) If F&S's liability is excluded or limited under the above provisions, this also applies to the personal liability of its directors and officers, legal representatives, employees, workers and other vicarious agents.

## **§ 9 Limitation Period**

- (1) Claims as to defects become statute-barred after 12 months starting with dispatch from F&S pursuant to Sec. 438 (1) no. 3 German Civil Code. This limitation period shall apply to all contractual and non-contractual compensation claims by the customer which are incurred as a result of defects in the goods, unless application of the statutory limitation period would mean a shorter limitation period in an individual case. This does not affect the limitation periods of the German Product Liability Act (*Produkthaftungsgesetz*).
- (2) The limitation period defined in § 9 (1) does not apply to the cases described in § 8 (1 - 4). These compensation claims of the customer are governed exclusively by the statutory period of limitation.

## **§ 10 Software Licences**

- (1) F&S grants the customer the non-exclusive right to use, i.e. install, load and run the software in accordance with the provisions below. The right of use is limited to the agreed period, or - in absence of such an agreed period - the software may be used for an indefinite period.
- (2) The software may be used exclusively in machine-readable form (object code). The source code is not subject of the agreement and shall not be supplied with the software.
- (3) The customer may only make one copy of the software which may be used exclusively for backup purposes (backup copy).
- (4) Apart from cases under Sec. 69e of the German Copyright Act (UrhG) (decompiling), the customer shall not modify, reverse engineer, translate or extract parts of the software. The customer may not remove alphanumeric or other markings from the data carriers and shall transfer them to each backup copy without change.
- (5) The above right of use shall only be transferred to the customer. The customer is not entitled to transfer the right of use to third parties or to grant third parties corresponding sub-licences. A separate contractual provision is required for all cases in which the software or individual components thereof are to be used by third parties.

## **§ 11 Reservation of Title**

- (1) F&S shall reserve title in any goods which it supplies until all payments due from the business relationship have been paid in full; all supplies shall be treated collectively as one single

contract for supply. Where F&S supplies on current account, reservation of title shall serve as security for the amounts due to F&S.

- (2) The customer shall treat the goods with care; in particular it shall insure it sufficiently against fire, water and theft at its own cost and with the insured sum being adequate to cover the replacement value.
- (3) In the event of seizure or any other third-party intervention, the customer shall notify F&S in writing without undue delay so that F&S can initiate legal proceedings pursuant to Sec. 771 Code of Civil Procedure (*Zivilprozessordnung*) in order to prevent execution of a court order. If the third party is unable to reimburse the court and out-of court costs of legal action pursuant to Sec. 771 German Code of Civil Procedure incurred by F&S, the customer is liable for the shortfall incurred hereby.
- (4) If the customer combines or mixes any goods (co)-owned by F&S with other items, to form a new single item in such a way that one of the new items must be regarded as the principal item, F&S shall have pro rata co-title in the new item thus created, such co-title being the ratio of the value of the merchandise (co-)owned by F&S to the value of the combined or mixed items at the time of such combining or mixing, and the customer shall transfer title and possession therein here and now. F&S hereby accepts this assignment and transfer. The customer shall hold the item created by combination or mixing in safekeeping for F&S free of charge. If the customer or a third party acting on behalf of the customer processes or modifies the goods which F&S (co-)owns, this shall be deemed to have been carried out for us. If the customer acquires sole title in the new item created by way of such processing or modification, the parties shall be deemed to have agreed that the customer shall transfer to F&S the title therein in the ratio of the value of goods which F&S owns to the value of the combination or modification and we shall accept such transfer. The customer shall hold goods in which we have sole or co-title which have been thus created in custody for F&S free of charge. If the goods in which F&S has title have not been inseparably combined or mixed with other items or otherwise processed or modified since supply, its value at the time of combining, mixing, processing or modification shall be deemed to be the amount which F&S billed for the goods including at the applicable statutory rate.
- (5) The customer has the right to resell the goods in the ordinary course of business. The customer hereby assigns to F&S any claims which may arise against its customers from resale of the goods supplied by F&S together with all ancillary rights until such time as all claims have been satisfied in full. F&S hereby accepts this assignment. If the customer and its own purchasers operate a current account, the customer shall assign to F&S the acknowledged balance in order to secure F&S's claims and, in the event that the customer's purchasers should become insolvent, the "causal" balance from the current account. F&S accepts this assignment. This clause on the assignment of claims also applies to the item newly created by processing, modification, combination or mixing. The assignment applies to the customer's entire claim against its purchasers in each case. The customer has a revocable right to collect any claims assigned. On request from F&S, the customer shall notify its purchasers of the assignment to third parties and provide F&S with any information and documents which it needs to assert its rights.
- (6) At the customer's request, F&S shall release what securities it sees fit in as far as the realisable value of the securities exceeds the value of the claims to be secured by more than 10%.
- (7) If the reservation of title is invalid or unenforceable under the law of the country in which the goods are located, the parties shall be deemed to have agreed to whatever security corresponds most closely to the law of that country. The customer shall assist and support F&S in arranging the security. If the reservation of title is not valid under the law of the country in which the merchandise is located, unless it has been duly registered, the customer shall arrange for or assist with such registration in F&S's favour without undue delay as soon as the goods have arrived in that country and shall notify F&S thereof unbidden.

## § 12 Export

The customer undertakes to export the goods and technical information supplied by F&S only in compliance with the relevant export conditions.

## § 13 Place of Jurisdiction

The registered office of F&S in Stuttgart shall be the exclusive place of jurisdiction for all disputes arising from or in connection with this agreement and its validity. However, F&S is also entitled to file action at the main registered office of the customer.

## § 14 Final Provisions

- (1) This agreement shall be subject to the laws of the Federal Republic of Germany and shall exclude the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (2) Unless otherwise expressly agreed, the place of performance for payment shall be F&S's registered place of business.
- (3) If a provision in these terms and conditions and any further agreements concluded should be or become invalid, this shall not affect the validity of the remaining provisions in the agreement. If any provisions are invalid or have not become an integral part of the agreement, the content of the agreement shall be based primarily on statutory provisions (Sec 306 (2) German Civil Code). Only in other respects and if no supplementary interpretation of the agreement is possible or has priority, the parties shall effect an arrangement for the void and/or nullified passage which reflects as closely as possible the original economic purpose.
- (4) In order to execute the agreement, F&S shall collect personal data and save it for processing exclusively for the execution of this agreement.

**The authority of F&S's employees to represent is restricted to the extent that individual agreements are dependent upon written confirmation from the user. The restriction of the authority to represent shall not apply to representatives with standard authority to represent.**

Stuttgart, February 2015