I. General

(1) These General Terms of Delivery and Payment (hereinafter referred to as “GTD/DP”) apply to all purchasing, work, and/or service contracts concluded between Fluid Automation Systems GmbH (hereinafter referred to hereinafter as “we” or “us”) in its capacity as a seller, work contractor, or service provider concludes with a purchaser, ordering agency, or service receiver (hereinafter as hereinafter as “Customer”) when this Customer is a contractor as defined under section 14 of the German Civil Code (BGB).

(2) These GTD/DP apply exclusively to the contracts concluded with us. We do not accept any of the Customer’s general terms and conditions to the contrary and/or in addition. These do not apply unless we have declared our agreement thereto explicitly and in writing.

(3) These GTD/DP apply to all present and future contracts, also when these future contracts do not refer to the Customer explicitly to the GTD/DP.

(4) In all cases, any individual agreements reached separately (including collateral agreements, supplements, and amendments) take priority over oral agreements without written confirmation. Any oral agreements without written confirmation shall be deemed not to exist.

(5) Any written form agreed in these GTD/DP also extends to communications. In all other cases, telecommunication methods, specifically email, suffice.

II. Offer and contract conclusion

(1) If not specified otherwise, our offers, cost estimates, and other price calculations are to be interpreted as a request to the Customer to submit an offer (invitation to tender). Accordingly, the contract is concluded when we accept or confirm the Customer’s offer in writing or through performance. The same also applies analogously when we have submitted to the Customer catalogues, technical documentation (e.g. drawings, planning, calculations, references to DIN standards), or other product descriptions or material, including their digitised versions.

(2) Purchase orders or jobs awarded by the Customer must take the written form to become effective. This written form includes fax and email. Also, supplementary agreements, supplements, and/or amendments to the purchase order must be submitted in writing (including fax and email). The same applies to material statements and charges that the Customer must submit to us after completion of contract (e.g. deadlines, defect reports, declaration of withdrawal, price reductions).

(3) If the Customer wishes to accept an offer after modifications to the content (e.g. based on a purchasing order process or job), this declaration is interpreted as a new request that requires our approval. Before submitting this modified purchase order or awarding this modified job, the Customer must point out in writing that the offer to be accepted in the modified form.

(4) Any oral agreements reached with our personnel will only become effective, subject to a condition precedent, when we have submitted our written confirmation.

III. Prices, transport costs

(1) Unless agreed otherwise with the Customer, our remuneration is based on our respective applicable price lists. These price lists are those specified in advance to the Customer or those applying on the date of the submitted offer and (for documentation purposes) to the job confirmation.

(2) If not agreed otherwise, all prices are in euros ex works Bad Oeynhausen, plus packaging and the statutory VAT, if levied, and customs duties. Fees and other charges are based on our respective applicable price lists. These price lists are subject to the statutory period of limitation. Furthermore, this does not affect our rights as set down under sections 642, 643 BGB.

(3) If delivery/performance requires the Customer’s collaboration and this collaboration is not provided within the period specified in the purchase order, the delivery dates and periods specified in the purchase order are extended accordingly. The calculations of the delay and the corresponding extension to the delivery period require the date the Customer was to provide collaboration. When the contract agrees that the Customer provides collaboration at a third party location, evidence of successful collaboration is provided by the date we receive the written confirmation (including fax and email). Additional statutory rights (sections 280 et seq., 333 et seq. BGB) based on omission or violation of collaboration duties remain unaffected. These rights are subject to the statutory period of limitation. Furthermore, this does not affect our rights as set down under sections 642, 643 BGB.

(4) If delivery/performance requires the Customer’s collaboration and this collaboration is provided before expiration of the period specified in the purchase order, the delivery dates and periods specified in the purchase order shall not be shortened.

(5) We are entitled to deliver before the due date and to deliver partial quantities if we have informed the Customer thereof in writing and in good time beforehand. This does not apply if the delivery/performance before the due date is unacceptable to the Customer and the Customer has reported this without undue delay on receipt of the written notification.

(6) If we are unable to observe binding delivery dates for reasons for which we are not responsible (nonavailability of performance), we shall inform the Customer immediately thereof, at the same time providing information on the expected new delivery date. If performance cannot be provided before the new delivery deadline either, we are entitled to withdraw from the contract either in full or in part. The Customer’s performance provided up to this date will be reimbursed without delay. This does not affect our statutory rights to rescind or terminate the contract or the statutory provisions governing the settlement of contracts on nonfulfillment of performance obligations (e.g. impossibility or unacceptability of the performance and/or rectification). The rights accorded to the Customer under IX 8 hereof remain unaffected.

(7) We may refuse delivery/performance when manufacture, procurement, or delivery is rendered impossible or unacceptable by events of force majeure or other extraordinary or excusable circumstances (e.g. malfunctions of any kind; difficulties in procuring materials and power; transport delays; industrial action; legitimate lockouts; shortages of labour, power, or raw materials; difficulties in procuring essential licences granted by public bodies for us, our suppliers, or carriers, etc.).

The Customer may only exercise its rights under sections 281, 284, 285 BGB when a suitable extension has expired to no avail, unless timely delivery has been agreed as of essence.

(8) If the Customer is not a merchant and does not run a shop or warehouse as defined under section 56 HGB, the Customer shall provide us, within an appropriate time before delivery of the goods, with the names of one or more persons who are authorised to receive the delivery/performance and to sign the delivery note. If none of the persons the Customer has named are present for the delivery and the Customer has not found replacements at short notice, the Customer shall be in default of acceptance.

(9) When the Customer defaults on acceptance, fails to provide collaboration, or if our delivery is delayed at the Customer’s request for other reasons for which the Customer is responsible, we are entitled
to demand compensation for the damage incurred as a result, including any additional expenses (e.g. storage costs). In this case, we shall charge liquidated damages corresponding to 0.5% of the value of the stored goods or 1% of the invoiced price. If no more than 5% of the goods have been received on the date of delivery or – if no delivery date has been agreed – on the date of notification that the goods are ready to ship. If sales contract law applies, and the Customer does not accept our delivery before the deadline, we may withdraw from the contract after an unsuccessful extension of this deadline and demand compensation for damages. In this event, we are entitled to invoice liquidated damages corresponding to 5% of the agreed price. This does not affect the right of the Customer or the guarantor to demand delivery and to invoke our statutory rights to claims (in particular compensation for additional expenditure, appropriate recompense, termination). The liquidated damages, however, shall be credited to other pecuniary claims. The Customer may choose to submit evidence to the contrary that we have not suffered any losses or the damage is far less.

VI. Passage of risk
(1) According to INCOTERM 2010, the risk of accidental loss or destruction of the delivery is passed to the Customer “ex works”, which means that the Customer is responsible for the risk of loss or damage in the event of industrial accidents, on-site storage, on-site transport, or the process of loading the goods. The risk of accidental loss or destruction of the delivery is passed to the Carrier if the Customer requests the goods to be shipped to a different place of destination (contract of sale involving delivery of goods). If not agreed otherwise, we are entitled to define the shipping mode (specifically the carrier, shipping route, packaging). If the Customer requests the goods to be shipped to a place other than the place of performance, the risk of accidental loss or destruction of the goods and the risk of delay when the goods have already been delivered to the carrier is passed to the carrier or the third party appointed to perform the delivery. If the acceptance has been agreed, such acceptance shall be relevant for the passage of risk. If the Customer is in delay with receipt of the goods, this shall not affect the right of the Customer to demand compensation for damages. If the delivery contract has been cancelled, we are entitled to invoice liquidated damages corresponding to 0.5% of the value of the delivered goods. Such damage may be expected as typical during the intended use of the delivered goods.

(2) We are entitled to dispose of reserved goods as we see fit. If not agreed otherwise, we are entitled to dispose of reserved goods as we see fit. If the Customer requests the goods to be shipped to a different place of destination (contract of sale involving delivery of goods). If not agreed otherwise, we are entitled to define the shipping mode (specifically the carrier, shipping route, packaging). If the Customer requests the goods to be shipped to a place other than the place of performance, the risk of accidental loss or destruction of the goods and the risk of delay when the goods have already been delivered to the carrier is passed to the carrier or the third party appointed to perform the delivery. If the acceptance has been agreed, such acceptance shall be relevant for the passage of risk. If the Customer is in delay with receipt of the goods, this shall not affect the right of the Customer to demand compensation for damages. If the delivery contract has been cancelled, we are entitled to invoice liquidated damages corresponding to 0.5% of the value of the delivered goods. Such damage may be expected as typical during the intended use of the delivered goods.

IX. Liability
(1) We reserve the right of title on the goods supplied until all of the accounts receivable from the delivery contract have been paid in full. These goods are referred to hereinafter as “reserved goods”.

(2) It is agreed that the risk of accidental loss or destruction of the delivery is passed to the Customer “ex works”, which means that the Customer is responsible for the risk of loss or damage in the event of industrial accidents, on-site storage, on-site transport, or the process of loading the goods. The risk of accidental loss or destruction of the delivery is passed to the Carrier if the Customer requests the goods to be shipped to a different place of destination (contract of sale involving delivery of goods). If not agreed otherwise, we are entitled to define the shipping mode (specifically the carrier, shipping route, packaging). If the Customer requests the goods to be shipped to a place other than the place of performance, the risk of accidental loss or destruction of the goods and the risk of delay when the goods have already been delivered to the carrier is passed to the carrier or the third party appointed to perform the delivery. If the acceptance has been agreed, such acceptance shall be relevant for the passage of risk. If the Customer is in delay with receipt of the goods, this shall not affect the right of the Customer to demand compensation for damages. If the delivery contract has been cancelled, we are entitled to invoice liquidated damages corresponding to 0.5% of the value of the delivered goods. Such damage may be expected as typical during the intended use of the delivered goods.

(3) The liability limitations resulting from para. 2 do not apply when we have withheld information on a deficiency with intent to deceive or have accepted an explicit guarantee for the condition of the goods. The same applies accordingly to the Customer’s claims as set down in the German Product Liability Act (ProdHaftG).

(4) Our liability is limited to EUR 2,000,000.00 for compensation claims with respect to the violation of cardinal obligations that cannot be put down to intent or gross negligence by us or one of our statutory representatives, employees, or vicarious agents.

(5) All exclusions and limitations of our liability also apply to the personal liability of our statutory representatives, our employees, and our vicarious agents.

(6) The Customer has no recourse against us arising from the forwarding of deliveries to a third party when the Customer has reached with this third party agreements extending beyond the mandatory warranty claims under the law (in particular contract penalty agreements), unless we have agreed explicitly and in writing to our liability beyond the mandatory warranty claims under the law.

(7) If we receive a third party compensation claim with respect to the delivery, the Customer exempts us, our statutory representatives, our employees, and our vicarious agents completely including appropriate prosecution and defence costs, expenditure, fees, taxes, etc., and appropriate advances) when the grounds of this claim (with respect to us) are set in the Customer’s domain and organisation.

X. Warranty
(1) If not specified otherwise in the following, the statutory provisions apply to the Customer’s rights with respect to material defects and defects of title (including wrong and inadequate delivery, improper assembly, or deficient assembly instructions).

(2) Material defects: Our liability for material defects is based primarily on the agreement reached on the condition of the goods. Agreements on the condition of the goods are written agreements designated as such and, in all other cases, exclusively our product descriptions or specifications that were provided to the Customer prior to our incorporation in the contract in the same manner as these General Terms of Delivery and Payment. The details specified in the above condition agreements and product descriptions do not constitute a guarantee (in particular for quality attributes (quality guarantees), but descriptions or identifications of the delivery or performance. Details on the subject matter (e.g. weight, length, dimensions, values in use, load bearing capacities, tolerances, and technical data) are decisive only to an approximate extent except when the warranty is used to reserve precise computations for a contractual purpose. Permitted are deviations usual for the sector and deviations arising from legal provisions or serving as technical improvements as well as the replacement of components with equivalent parts, except when these prove detrimental to the usability
General Terms of Delivery and Payment

Page 3 of 4

of the goods for a contracted purpose. Without prejudice to the above regulations, we accept no liability for the goods’ suitability for any of the Customer’s particular purposes. In this respect, therefore, the details specified in the contract and the manufacturer’s information do not exempt the Customer from conducting its own tests on its own responsibility. If a condition has been agreed or if a price has been named, then no liability exists for public statements (section 434 para. 1 BGB). If a condition has not been agreed, the statutory provisions must be consulted to determine the existence or absence of a defect. In this respect, we accept no liability for public statements (e.g. advertising slogans) by the manufacturer (e.g. of a subproduct or basic material), subcontractor, or other third party.

(3) Defects of title: If the usage of the delivered goods leads to a violation of industrial property rights or copyrights in the home country, we will procure for the Customer at our own expense the right to further use or modify the delivered goods to such a reasonable extent that they no longer violate property rights.

If this is not possible under appropriate economic conditions or within an appropriate period, the Customer is entitled to withdraw from the contract. Under the above conditions, we too have the right to withdraw from the contract.

Furthermore, we exempt the Customer from undisputed or other claims of legal force submitted by the affected owners of the property rights.

Subject to the provisions set out under IX of these General Terms of Delivery and Payment, our above named obligations are definitive in the event of any violation to property or copyrights. These obligations apply only when the Customer informs us immediately of claims on the grounds of violations to property or copyrights; the Customer as- sists us to an appropriate extent to prove the claim or help us to implement modification measures; we are provided with all countermeasures including extrajudicial arrangements; that defect of title has not been removed before the delivery by the Customer; and the legal violation was not caused by the Customer’s handling of the delivered goods on its own responsibility or using them for a purpose not set down in the contract.

(4) If sales contract law applies, the Customer must first fulfill its duties to examine and report defects under sections 377 et seq. HGB before the Customer can exercise its warranty rights, withdrawal, re- ductions, compensation for damages; obvious defects must be reported immediately in writing; at the latest within five working days after the acceptance of the delivery/performance; concealed defects must be reported immediately in writing after their discovery. The deadline is met when the report is submitted in good time. If the Customer reports defects belatedly and/or not according to form, this leads to the loss of its warranty rights.

(5) If the delivered goods are defective, we may first choose whether to provide subsequent performance by remedying the defect in the goods (repair) or to deliver defect free goods (replacement delivery). This does not affect our right to refuse rework observing statutory prerequisites.

(6) We are entitled to make the subsequent performance we owe dependent on the Customer’s payment of the due purchase price. However, the Customer is entitled to retain an appropriate sum from the purchase price corresponding to the defect.

(7) The Customer must grant us the opportunity and time needed to provide the subsequent performance we owe in the best possible way. This does not apply where the defect is of such a character that it would be unreasonable for us to provide the subsequent performance.

(8) In urgent cases, e.g. when there is a risk to operational reliability or for averting excessive damage, the Customer has the right to remedy the defect itself and to demand from us reimbursement of the objectively assessed expenses incurred thereby. We must be informed immediately, if possible beforehand, of such measures. There is no right to remedy defects oneself when we would have been justified in refusing the appropriate rework under the statutory provisions.

(9) If rework fails, an appropriate deadline fixed by the Customer expires to no avail, or the statutory provisions render this rework superfluous, the Customer may withdraw from the sales contract or reduce the purchase price. A trivial defect, however, does not justify any right to withdraw.

(10) The Customer may claim damage compensation or reimbursement of unsuccessful expenditure only as provided under section 288 BGB and in all other cases such claims are excluded.

(11) If our rework includes the delivery of a defect free product, the Customer must hand over the defective product at our request. In all cases, our agreement must be granted before the goods are returned.

(12) If the situation of derogation from the conditions under section 438 para. 1(3) BGB, the Customer’s warranty claims fall under the statute of limitations twelve months after delivery. If acceptance has been agreed, the Customer’s warranty claims fall under the statute of limitations twelve months after acceptance. If the subject matter of the contract is a building or an object whose customary purpose renders it suitable for use for a building and whose e.g. construction materials have been found defective, or if it relates to works in result in the provision of planning and monitoring services for a building, the statute of limitations under the law is five years from the date of delivery or acceptance (cf. sections 438 para. 2(2), 634a para. 6(1) BGB). This does not affect the Customer’s rights under sections 475, 479 BGB (recourse claims against previous suppliers).

(14) The statute of limitations is suspended for the duration of the required repair. It does not recommence.

(15) The above limitations also apply to the Customer’s contractual and extracopyright compensation for damages caused by a defect in the goods, unless application of the regular statutory limitation period (sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.

The Customer may not submit any warranty claims when the defect in our delivery or performance has been incurred to a not inconsiderable extent by the Customer, or by our changing our delivery or performance and/or the Customer’s failure to follow operating instructions. The same applies to an unsuitable or improper use or use or storage other than that specified; defective assembly or startup by the Customer or third party; unauthorized repair attempts; natural wear and tear; erroneous or negligent handling; unsuitable resources or replacement materials; chemical, electrochemical, or electrical effects outside of our influence; and failure to observe our operating instructions and catalogue sheets, specifically with respect to the conditions of use for our pneumatic components.

XI. Use of software

(1) If delivery includes software, the Customer is granted a nonexclusive right to use the delivered software including its documentation. It is handed over for use on the delivered claims provided for this. The software may not be used on more than one system.

(2) The Customer may duplicate, revise, translate, or decompile the software only to the extent permitted under the law (sections 63a et seq. of the German Copyright Act (UrhG)). The Customer pledges neither to remove any of the manufacturer’s specifications, specifically the copyright notices, nor to change them without our prior explicit consent.

(3) All other rights to the software and its documentation including all copies remain with us or the software supplier. No sublicences may be granted.

(4) An intentional violation of these conditions entails an immediate contract penalty in an amount that we determine to be just and that, when disputed, must be assessed by the District Court (Landgericht) of Stuttgart. This contract penalty must be offset against any compensation claim for damage.

The software and its documentation must be returned immediately.

(5) The above provisions do not apply to exclusively custom software de- veloped on the basis of the specifications provided by the Customer. This software, developed within the limits of a contracted complete control system, we have compiled into a custom solution from multipurpose software modules (standard software modules) and modified to reflect the contracted performance requirements (custom application). On full payment of the purchase price for the custom application, we shall transfer to the Customer the exclusive right of use, without geographical or temporal constraints. At the same time, the Customer does not have any rights of whatever kind to any of the standard software modules providing the basis for the custom modifications. Inseparably these provisions, we retain the right to generate and offer custom software solutions based on this development and on the requirements of other customers. In all cases, we retain the simple right of use to the custom solution for internal purposes.

XII. Offsets

Offsets in form of the Customer’s counterclaims or exercised rights of retention are permitted only when the Customer’s claims are due and undisputed or have been established with res judicata effect.

XIII. Documents and secrecy

(1) Samples, test examples, brochures, illustrations, drawings, cost esti- mates, and other documents and computer software that we provide to the Customer for contract initiation and that the Customer has not paid for separately must be returned to us on demand (including all copies). We reserve our proprietary rights, copyrights, and other industrial property rights on these products and documents. They may not be utilised in any other manner, specifically they may not be duplicated and/or communicated to third parties without our consent issued in writing. Any products and documents remaining in the Customer’s possession require an agreement on indirect possession (section 868 BGB). No rights of retention may be exercised on these products and documents.

(2) The Customer pledges to handle with strict confidence all informa- tion, at any time and under any circumstances, and other trade secrets while performing obligations under the contract and not to communicate any information, documents, documentation, drawings, diagrams, or other materials to third parties without our explicit consent. This does not apply when the Customer is obliged by law to disclose this information. We shall handle the Customer’s documents with the same confidentiality.
General Terms of Delivery and Payment

XIV. Withdrawal and termination

We are entitled to withdraw from or terminate the contract for cause.
In addition to the cases agreed specifically in these General Terms of Delivery and Payment, the term "cause" refers specifically to a scenario in which:
- the Customer defaults for longer than fourteen (14) days on the payment of two agreed instalments and does not settle fully the outstanding sum within fourteen (14) days of a written reminder;
- the Customer has made an affirmation in lieu of an oath under section 807 of the German Code of Civil Procedure (ZPO);
- there is compulsory execution on the Customer’s assets, and this action has not been revoked within eight (8) weeks;
- the Customer has filed a petition to instigate insolvency proceedings on the Customer’s assets, the competent insolvency court has appointed a preliminary liquidator in response to a third party petition to instigate insolvency proceedings on the Customer’s assets, or the instigation of insolvency proceedings has been rejected due to insufficient assets.

XV. Supplementary provisions for assembly, repair, and maintenance services

(1) The risk of loss to the delivery/performance or parts thereof is passed to the Customer when they have been introduced to the Customer’s business premises. This is the case when the risk is passed in compliance with the work and services contract laws, the loss or damage originated from the Customer’s sphere of influence, and the partners have not agreed otherwise explicitly and in writing.

(2) Even without a separate agreement, the Customer is obliged implicitly to collaborate in our assembly, repair, and maintenance services and to provide us with heating, lighting, electricity, water, and other supply installations, including the requisite connections, free of charge. The Customer is moreover obliged to inform us in detail of the safety regulations that must be observed and to obtain all official permissions needed for the assembly, repair, and maintenance services.

(3) If the Customer fails to discharge or violates one of its (explicit or implied) collaboration duties, we shall exercise our statutory rights to the full extent (sections 280 et seq., 323 et seq. BGB). These fall under the statute of limitations according to the statutory provisions. This does not affect our rights under sections 842, 843 BGB.

(4) On conclusion of contract, the Customer must appoint to us a contact person and a delegate, both of whom are authorised to answer questions and make decisions in connection with the contracted deliveries/performance.

(5) The contact person and/or representative appointed on conclusion of the contract retains incontrovertibly his authorisation to answer with binding effect all of our questions in connection with the contracted deliveries/performance until the Customer provides us with the name of a new contact person and/or delegate. This does not affect the Customer’s right to revoke immediately for cause the authorisation of a contract person and/or delegate.

XVI. Compliance

(1) The Customer pledges to satisfy all anticorruption laws in connection with its business with us. The Customer shall inform us immediately if it learns that one of its executive bodies, employees, or representatives is under suspicion of corruption.

(2) The Customer is aware that we uphold a Code of Responsible Business (known as the “IMI Way”). The IMI Way can be consulted at www.imiplc.com. The Customer pledges to ensure that its executive bodies, employees, and representatives perform their business activities in compliance with the IMI Way.

(3) The Customer is obliged, each and every time we request it to, to provide verification that the Customer is discharging its duties under this section “Compliance”. This includes our right to inspect all sites used to perform work for us. This does not affect any other of our rights. If the Customer fails to discharge its duties under this section “Compliance”, we have the right to terminate the contract for cause.

XVII. Applicable laws and venue

(1) These Sales and Delivery Terms are subject to the laws of the Federal Republic of Germany.


(3) In the absence of any provisions to the contrary herein, the Incoterms published by the International Chamber of Commerce apply in the wording in force at the time of contract conclusion.

(4) Waiblingen is the exclusive venue for all disputes arising from legal purposes and to communicate this data to third parties if necessary for the fulfilment of the contract. If data must be communicated to sales partners, these sales partners are obliged to observe our data protection standards.

Data protection

The Customer is aware that the GDPR accords us the right to store data collected from the contractual relationship for data agreement purposes and to communicate this data to third parties if necessary for the fulfilment of the contract. If data must be communicated to sales partners, these sales partners are obliged to observe our data protection standards.