



## FARO Europe GmbH & Co. KG

### General Terms and Conditions of Business

#### 1. General

- 1.1. Goods shall be delivered and services rendered by FARO on the basis of the the following terms and conditions of business. These shall apply to all business dealings with the customer, even if they are not mentioned in subsequent agreements. Divergent, conflicting or supplementary General Terms and Conditions of Business of the customer shall not become part of the contract, even if FARO has knowledge thereof, unless FARO has expressly consented in writing to the applicability of such General Terms and Conditions of Business.
- 1.2. All agreements that are reached between FARO and the customer for the purpose of this contract shall be set down in writing. Any change to the general terms and conditions of business as well as any ancillary agreements must be confirmed in writing by FARO in order to be effective.
- 1.3. Claims of the customer against FARO arising from and in connection with this contract can only be transferred with prior written consent.

#### 2. Offer and conclusion of contract

- 2.1. FARO's offers are without obligation and non-binding. FARO's specially-prepared offers are valid for a period of six weeks starting from the date of the offer. Orders are binding for FARO only if they are confirmed by FARO in writing. By ordering, the customer declares in a binding manner that it wants to purchase the ordered products. FARO shall have the right to accept the offer contained in the order within 2 weeks, either by delivery or by order confirmation electronically or in writing.
- 2.2. Drawings, illustrations, measurements, weights and other performance data shall be binding only if they are confirmed by FARO in writing. Oral ancillary agreements shall only be effective when confirmed in writing by FARO. FARO reserves the right to make changes in form, colour or weight as well as changes required for technical reasons. The contract is concluded on the condition that FARO itself is supplied in a timely and proper manner; this shall apply only in the event that FARO is responsible for non-delivery. The customer shall be informed immediately about a possible non-delivery.
- 2.3. The sales persons of FARO shall not be authorised to reach oral ancillary agreements or to give oral warranties that extend beyond the content of the written contract.

#### 3. Prices

- 3.1. The prices specified in FARO's order confirmation shall apply. The prices are stated ex works. The respective statutory VAT as well as freight, customs, indirect charges on imports and packaging are not included in the price. Additional services and deliveries shall in each case be charged separately.
- 3.2. Price changes shall be permissible if more than six weeks elapse between the conclusion of the contract and the agreed delivery date or if more than six weeks elapse between the conclusion of the contract and actual delivery and FARO is not responsible for this. Should the wages, material costs or market cost prices increase by the time the delivery is completed and/or should new duties and charges be introduced, FARO shall have the right to increase prices appropriately in line with the cost increases. The customer shall have the right to cancel if the price increase significantly exceeds the increase of the general cost of living between the time of the order and the delivery.
- 3.3. In the case of new orders (follow-up orders), FARO shall not be bound to previous prices.

#### 4. Payment terms

- 4.1. Payments shall become payable immediately upon receipt of the invoice without any deductions, unless otherwise agreed on in writing in specific cases. FARO shall have the right, in spite of provisions of the customer stating otherwise, to first set off payments against the latter's older debts and shall inform the customer about the manner of such set-off. If costs and interest have already been incurred, FARO shall have the right to set off the payment against the costs first, the interest second and finally the main service.
- 4.2. A payment shall not be deemed to have been made until FARO can dispose of the amount. In the case of checks, the payment shall not be deemed to have been made until the check has been irrevocably cashed and credited to FARO's account.



- 4.3. 4.3 Should the customer default on payment, FARO shall be entitled, from the relevant point in time on, to demand default interest of 8 percentage points above the base rate. Insofar as the customer is in default with payments, FARO reserves the right to instruct a debt collection agency to collect the outstanding payments. The Customer shall bear all costs caused hereby. FARO's right to assert further damage caused by default shall remain unaffected in every case.
- 4.4. If FARO becomes aware of circumstances that call into question the customer's creditworthiness, particularly if a bank does not cash a check or the customer ceases making its payments, FARO shall have the right to demand payment of the entire balance due, even if it accepted checks. FARO shall also have the right, in this case, to demand prepayments or the provision of security.
- 4.5. The customer shall have rights of set-off or retention – even if it gives notice of defects or asserts counterclaims – only if the counterclaims have become res judicata, are ready for decision or are undisputed. However, the customer shall continue to have a right of retention with respect to counterclaims from the same contractual relationship.
- 5. Liquidated Damages**  
If the Customer, without being entitled to do so, cancels an order which FARO already has accepted the Customer shall pay FARO liquidated damages (pauschalierten Schadensersatz) in an amount of 20% of the order value.“
- 6. Duties of the customer**
- 6.1. The customer shall set up the installation room in a timely manner in accordance with FARO's instructions. The customer shall ensure that at least one of its employees is always present during the performance of any work by FARO.
- 6.2. Should the customer not comply at all, or should it only comply in part and/or belatedly with the obligations arising from para. 1, it shall bear the resulting costs on its own.
- 7. Delivery**
- 7.1. Delivery dates and periods shall be non-binding unless otherwise agreed in writing in individual cases.
- 7.2. FARO shall not be deemed responsible for delays in delivery and performance due to force majeure or other unforeseeable, unavoidable, exceptional events that, not only temporarily, make delivery considerably more difficult or impossible for FARO – these include strikes, lockouts, orders by authorities, etc., even if they occur at suppliers of FARO or their sub-suppliers – even where binding delivery dates have been agreed. They entitle FARO to postpone the delivery or service by the duration of the impediment plus a reasonable start-up period or to fully or partially rescind the contract due to the part thereof that has not yet been performed. FARO shall, without undue delay, inform the customer about such delays in delivery and performance. To the extent that FARO rescinds the contract, the customer shall, without undue delay, be reimbursed for consideration that it has already paid.
- 7.3. If the impediment lasts longer than three months, the customer shall have the right, after a reasonable extension period set by it has elapsed, to rescind the contract with respect to the part thereof that has not yet been performed. Should the delivery period be extended or should FARO be released from its obligation, the customer shall not be able to derive any claims for damages herefrom unless FARO is responsible for this.
- 7.4. FARO shall at all times be entitled to effect partial deliveries and performance unless such partial deliveries or performance are not of interest for the customer.
- 7.5. Compliance with FARO's delivery and performance obligations requires the timely and proper fulfilment of obligations, pursuant to section 5 among others, on the part of the customer.
- 7.6. Should the customer get into default of acceptance, FARO shall be entitled to claim compensation for the loss it incurs; upon the occurrence of default of acceptance, the risk of accidental deterioration or accidental loss shall pass to the customer.
- 7.7. Insofar as, in individual cases, the delivery is made carriage paid on the basis of a written agreement, the risk shall pass from FARO to the customer upon handover to the forwarding agent. Should the customer be responsible for a delay in dispatch, such risk shall pass upon dispatch of the notification of readiness for shipment. Upon request by the customer the products will be insured, at its expense, against the risks to be specified by it.



## **8. Installation**

Unless otherwise agreed in writing in individual cases, the unpacking and installation shall be performed by the customer.

## **9. Customer's rights due to defects**

- 9.1. The products shall be delivered free of production and material defects; there is a one-year period for asserting claims based on defects starting from the date of delivery of the products.
- 9.2. Should operating or maintenance instructions of FARO be disregarded, changes made to the products, parts replaced or consumables used that do not comply with the original specifications, there shall be no claims due to product defects if the customer does not refute a corresponding substantiated assertion that one of these circumstances caused the defect.
- 9.3. The customer must notify FARO's customer service in writing of defects without undue delay, however within one week of receipt of the delivered item at the latest. Defects that cannot be detected within this period, even after careful examination, must be notified to FARO without undue delay after their detection.
- 9.4. FARO will, at its own option, remedy defects by repair or replacement (supplementary performance). To this end, the customer must, at FARO's choice and expense, either send the defective product (component) to FARO or keep it available on site. Should products (components) sent in prove to be defective, FARO shall return the repaired product (component) or a replacement therefor to the customer.
- 9.5. Should the customer keep the defective product (component) available for repair, a service technician from FARO will repair it on site or replace it. Acceptance of products (components) returned by the customer shall not constitute acknowledgement of the notified defects.
- 9.6. Should the customer's notice of defects be unfounded, it shall reimburse the costs incurred by FARO for the supplementary performance.
- 9.7. Should the supplementary performance fail, the customer can, at its option, lower the price or rescind the contract.
- 9.8. Replaced parts shall become the property of FARO.
- 9.9. Any liability for normal wear and tear is excluded.

## **10. Design changes**

FARO reserves the right to make design changes at any time; however, it is not obliged to also make such changes to products already delivered.

## **11. Customer's rights to the software**

- 11.1. The software (program and user manual) is protected by law. Within the contractual relationship, only FARO shall be entitled to the copyright, patent rights, trade mark rights and all other ancillary copyrights to the software as well as to other objects that FARO provides or makes available to the customer within the scope of the contract formation process and the performance of the contract. To the extent that third parties are entitled to the rights, FARO shall have corresponding exploitation rights.
- 11.2. All data processing equipment (e.g. hard disks and central processing units) onto which the programs are copied or transferred, in full or in part, for the short-term or long-term, must be kept on the premises of and directly owned by the customer. The installation of the software in a system other than the one specified in the contract shall require FARO's consent and may only be performed by FARO. Use shall be limited in each case to the contractually agreed number of workstations. FARO hereby grants the customer authorisation to use the programs necessary for these purposes, including the right to copy the programs to main memory and hard disks, as well as the right to correct errors. The customer shall be permitted to create back-up copies of the programs that are necessary to ensure secure operation. To the extent it is technically possible, the back-up copies must include the copyright notice of the original data carrier. Copyright notices must not be removed, altered or obscured. The copies shall become the property of FARO.
- 11.3. The user manual and other documents provided by FARO may only be copied for in-house purposes.
- 11.4. The rights of use are not transferable.



11.5. The software will only be provided in machine-readable form (object code). The customer may not, outside of the scope of section 69e German Copyright Act, decompile the software and, in particular, its interface information. The assembling procedure may not be reversed by the customer.

11.6. Section 11 shall govern when the customer's rights begin and expire.

11.7. All other acts of exploitation, in particular the leasing, lending and dissemination in physical and non-physical form, shall not be permitted without FARO's prior written consent.

11.8. Specified goods, documents, proposals, test programs, etc. of FARO that become accessible to the customer before or after conclusion of the contract shall be deemed intellectual property and business and trade secrets of FARO, and must be kept secret pursuant to section 12.

## **12. Beginning and expiration of the customer's rights**

12.1. The rights pursuant to section 10 shall not transfer to the customer until the full purchase price has been paid. Prior thereto the customer shall have a right of use that is only provisional, only contractual and revocable pursuant to para. 2.

12.2. FARO can revoke the rights pursuant to section 10 for good cause. Good cause is present, in particular, if the customer does not pay the remuneration or if it substantially breaches section 10 in spite of having received a written warning.

12.3. If the right of use pursuant to section 10 does not arise or expires, FARO can demand from the customer the immediate and complete return of the software with all copies and documentation as well as written confirmation that the return is complete, or written assurance that the software, together with all copies and documents, has been completely destroyed.

## **13. Secrecy**

13.1. The parties to the contract shall undertake to treat confidentially all items which, in connection with the performance of the contract, they receive from the other respective party to the contract or become aware of (e.g. software, documents, information), which are legally protected or contain business or trade secrets – even if they are not expressly designated as confidential – also beyond the expiration of the contract, unless they are publicly known without a breach of the duty to observe secrecy having been committed. The parties to the contract shall store and safeguard these items in such a way that they cannot be accessed by third parties.

13.2. The customer shall make the specified goods accessible to employees and other third parties only to the extent that such persons require access in order to carry out the tasks assigned to them. The customer shall, in writing, oblige each of these persons to secrecy in a manner similar to its own duty to observe secrecy.

13.3. FARO shall store the data of the customer required for business purposes in compliance with the provisions under data protection law.

## **14. Retention of title**

14.1. The following provisions shall apply in favour of FARO until all present and future claims that FARO has against the customer, regardless of the legal ground therefor (including all balance claims from the current current account as well as the claims from repairs and training sessions), are satisfied.

14.2. The delivered products shall remain the property of FARO ("Products subject to Retention of Title"). The customer shall store the Products subject to Retention of Title free of charge.

14.3. The customer shall have the right to process and sell the Products subject to Retention of Title in the course of proper business transactions, provided that it is not in default in performance of obligations towards FARO. The customer already, by way of security, fully transfers to FARO the claims arising from the resale or as compensation for the damage or loss (insurance benefit, claims for damages) of the Products subject to Retention of Title (including all balance claims from the current account). FARO revocably authorises the customer to collect, in its own name, the receivables assigned to FARO for the account of the latter. This collection authorisation can only be revoked if the customer does not properly comply with its payment obligations.



14.4. Where third parties have access to the Products subject to Retention of Title, in particular, attachments, the customer shall refer to the property of FARO and notify it, without undue delay, so that FARO can enforce its property rights.

14.5. If the customer acts in breach of contract – in particular if it is in default in payment – and if the customer's assets have deteriorated substantially, FARO shall have the right to rescind the contract and to demand the return of the Products subject to Retention of Title. In this case FARO shall also have the right to cease its training activities without undue delay.

14.6. Insofar as the value of the Products subject to Retention of Title exceeds the secured claims by more than 20% for the long term, FARO shall, at the customer's request, release securities at the latter's choice.

## **15. Liability**

15.1. FARO shall not be liable for direct or indirect damage (e.g. due to an interruption of operations or lost profit), regardless of the legal grounds therefor.

15.2. The above exclusion of liability shall not apply:

- in the case of intentional or grossly negligent breaches of duty by its bodies, employees or vicarious agents.
- in the case of an injury to life, limb or health
- in the case of breach of substantial contractual duties.

However, in the last-mentioned case FARO's liability is limited to damage that is typical and foreseeable at the time the contract is concluded.

15.3. The above restrictions and limitations shall not be applied to liability provisions required by law, such as those of the German Product Liability Act.

## **16. Place of jurisdiction**

The exclusive place of jurisdiction for all disputes between FARO and the customer shall be FARO's registered office.

## **17. Others**

17.1. The place of performance is Stuttgart.

17.2. This contract shall be subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

17.3. Should a provision of this contract be or become invalid or impracticable, this shall not affect the validity of the remaining provisions of the contract. In such a case, FARO and the customer shall undertake to replace the invalid or impracticable provision with a valid or practicable one that corresponds as far as possible to the spirit and purpose of the provision to be replaced.

17.4. Should the contract contain an unintended gap, this shall be replaced by a provision that FARO and the customer would have agreed on had they considered the need to regulate the respective issue at the time the contract was concluded.

*As of: December 2011*