



# **GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT OF FRONIUS U.K. LIMITED**

Applicable since **04.04.2023**

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## A. GENERAL SECTION

### 1. VALIDITY; DEVIATING PROVISIONS; WRITTEN FORM

- 1.1 These Terms and Conditions of Delivery and Payment shall apply to any contract (“**Contract**”) between us and you (“**Customer**”) for the sale and purchase of goods and/or services from time to time to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing..
- 1.2 For contractual relationships with our parent company Fronius International GmbH (Austria) and contractual relationships with other subsidiaries of Fronius International GmbH their own General Terms and Conditions of Delivery and Payment apply respectively in each case. An overview with links to the terms and conditions of the individual Group companies can be found at <https://www.fronius.com/en/overview-terms-and-conditions>.
- 1.3 Our Terms and Conditions apply only to businesses, legal entities under public law and special funds under public law. A business is a natural or legal person or a partnership with legal capacity who, when concluding a legal transaction, acts in the exercise of their commercial or independent professional activity.
- 1.4 Deviating or additional terms and conditions of business of the Customer are only binding on ourselves if we expressly acknowledge them in writing; in this case they shall only apply to the respective individual contract.
- 1.5 Agreements concerning deviations from these General Terms and Conditions of Delivery and Payment or concerning addenda thereto are not valid unless agreed to expressly in writing. Any variation to the requirement for deviations to be expressly agreed in writing must be agreed in writing.
- 1.6 Where in these Terms and Conditions the written form is required and unless otherwise stipulated, this requirement shall also be met in the case of communications sent via fax or e-mail. However, individually negotiated contracts whose content is formed by these General Terms and Conditions of Delivery and Payment must always be agreed to in writing.

### 2. OFFERS; CONCLUSION OF CONTRACT

- 2.1 Our offers are nonbinding and subject to alteration, unless the offer makes express mention of a period where the offer is fixed.

- 2.2 Information we provide concerning the object of the delivery or service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) contains only approximations, unless usability for the contractually intended purpose requires exact conformity. They are not guaranteed quality features, but rather descriptions or indications of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal requirements or that represent technical improvements as well as the replacement of components with equivalent parts are permissible provided they do not impair usability for the contractually intended purpose.
- 2.3 Orders and changes to orders are only accepted by us when we have confirmed them. Confirmation shall include either receipt of a delivery note or invoice and the performance of the delivery or performance of services. If the Customer has objections to the content of a confirmation, the Customer must object to it immediately, at latest within five working days; otherwise the content of the confirmation shall be deemed to be accepted. The contract shall be deemed upon receipt of the delivery in accordance with our confirmation.
- 2.4 It is the Customer's responsibility to check the order and all contractual documents to ensure they are complete, correct and suitable for their intended purpose.
- 2.5 In the case of blanket order contracts, we agree a delivery quantity with the Customer which the Customer calls off within the agreed period. Call-offs must be received by us no later than six weeks before the beginning of the respective delivery month.

### 3. PRICE AND PAYMENT CONDITIONS; OFFSETTING; RETENTION

- 3.1 Our prices are quoted in pounds sterling (GBP) plus the applicable statutory sales tax and excluding packaging and transport costs ex works. Any customs duties, fees and other public charges shall be borne by the Customer.
- 3.2 The prices apply to the scope of services and deliveries stated in the order confirmations. Additional or special services will be charged separately.
- 3.3 Our invoices are due and payable in cash or by bank transfer, without any deduction, free of charges and within 30 days from the invoice date. We reserve all our rights (statutory and/or other rights and remedies) in the event of default in payment.
- 3.4 The Customer shall only be entitled to rights of set-off or retention insofar as its counter-claim has been legally established or is undisputed or the counter-claim is based on the same contractual relationship.
- 3.5 We are entitled to offset our claims against the Customer's claims at any time.

3.6 For the performance of works (assembly, repairs, maintenance and similar), we charge the hourly rates and material prices applicable at the time the services are completed; in the case of overtime and work performed at night, on Sundays and on public holidays, we also apply the surcharges applicable at our company; travel and waiting times are deemed to be working times. Travel expenses and daily and overnight allowances shall be invoiced separately. We will send price lists on request.

3.7 We are entitled to send you an electronic invoice (e.g. as a PDF document) via e-mail unless otherwise agreed. At our sole discretion we may also send a paper invoice.

#### 4. DELIVERY; TRANSFER OF RISK; DELAY IN DELIVERY; NON-AVAILABILITY OF SERVICE; DELAY IN ACCEPTANCE

4.1 We deliver free carrier (FCA) at our registered office (Incoterms 2020).

4.2 Even if we undertake to ship at our own expense in individual cases, shipment shall always be at the Customer's risk. We will only arrange transport or breakage insurance on behalf of and for the account of the Customer. If shipping or delivery is delayed for reasons beyond our control, the risk shall pass to the Customer as soon as the Customer has been notified that the goods are ready for delivery.

4.3 The delivery period commences with the mailing of the order confirmation, while the performance period for installation, maintenance or repair work commences when the equipment is available for performance.

4.4 The observance of dates and deadlines is always on condition that all commercial and technical issues between the parties have been clarified and that the Customer has met all its cooperation and performance obligations, including payment of an agreed down-payment. Otherwise, dates and deadlines shall be extended accordingly. We shall only be in default if we receive a written reminder from the Customer after the due date.

4.5 If we are unable to meet binding delivery times for reasons beyond our control (including, but not limited to the non-availability of service), we shall inform the Customer of this without delay and at the same time, insofar as possible, notify the Customer of the expected new delivery time. If a new delivery time is not foreseeable or if the service is also not available within a notified new delivery time, we will inform the Customer of this immediately and are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already paid by the Customer. A case of non-availability of service in this context shall be deemed to be the incorrect or late delivery of goods to ourselves by our supplier if we have concluded a congruent covering transaction, neither we nor our supplier are at fault, or we have no procurement obligation in the individual case.

- 4.6 We are entitled to make partial deliveries if (a) the partial delivery can be used by the Customer within the scope of the contractual purpose, (b) delivery of the remaining ordered goods is assured and (c) the Customer does not incur any significant additional effort or costs as a result (unless we agree to bear these costs).
- 4.7 We may withhold deliveries until such time as the Customer has paid all due claims arising from all business transactions.
- 4.8 The Customer is obliged to accept the delivery item on the agreed delivery date or, if a delivery date has not been agreed, within one week of notification of readiness for shipping. If it has been agreed that delivery of the goods requires a blanket order by the Customer, the Customer must call off and accept the goods within three months of conclusion of the contract, unless otherwise agreed.
- 4.9 If the Customer delays acceptance or fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For storage, we charge a flat rate of €50.00 per week or part thereof for each pallet required to store the delivery items, starting from the agreed delivery date or, if a delivery date has not been agreed, after the expiry of one week from notification of readiness for shipping. We reserve the right to claim higher damages and assert our legal claims (in particular, compensation for additional expenses, withdrawal, termination); however, the flat rate shall be offset against further monetary claims. The Customer shall be entitled to demonstrate that we have incurred no damage whatsoever or significantly less damage than the aforementioned flat rate.
- 4.10 If the Customer does not comply with its obligation to accept the goods even after setting a deadline, we are entitled to withdraw from the contract. Claims for damages remain unaffected by a withdrawal.
- 4.11 For the performance of works, the Customer shall provide us with the necessary auxiliary materials (e.g. electricity) in good time and free of charge, even if installation is included in the price or a lump-sum price has been agreed for this. Any necessary arrangements to be made by the Customer for the installation, e.g. structural measures, shall be completed before our installers arrive. If any transport required in this context cannot be carried out at ground level, the Customer shall provide the necessary aids and equipment (including, without limitation, counter-balanced lift truck, ramps, rails, winches) at its own expense. Furthermore, the Customer shall take the necessary safety precautions to protect persons and property.



## 5. FORCE MAJEURE

- 5.1 If our deliveries or services are prevented, hindered or disturbed by force majeure, we shall be released from our performance obligations for the duration and to the extent of its effect, even if we are in default.
- 5.2 Force majeure is any event beyond our control which impairs our ability to fulfil all or part of our obligations; this includes, in particular, fire damage, flood, epidemics, industrial disputes, riots, acts of war or terrorism as well as operational disruptions or official orders for which we are not responsible. Force majeure also includes any instance where we do not receive, in good time, approvals from third parties required for the performance of deliveries despite these approvals having been applied for in good time.
- 5.3 If such events make the delivery or service significantly more difficult or impossible and the hindrance is not only of temporary duration, we are entitled to withdraw from the contract. In the case of hindrances of temporary duration, the delivery or service times shall be extended or the delivery or service times shall be postponed to the extent of the period of the hindrance plus a reasonable restart period. If the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract by means of an immediate written declaration.

## 6. TITLE AND RISK, RETENTION OF TITLE

- 6.1 Risk of damage to or loss of the goods (reserved goods) shall pass to the Customer:
- 6.1.1 in the case of goods to be delivered at the Customer's premises, at the time when we notify you that the goods are available for collection; or
- 6.1.2 in the case of goods to be delivered otherwise than at the Customer's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, the time when the Customer has tendered delivery of the goods.
- 6.2 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Terms & Conditions, the property in the goods shall not pass to the Customer until we have received payment in full of the price of the goods and all other goods agreed to be sold by us to the Customer for which payment is due, subject to clause 6.3 below.
- 6.3 Until such time as the property of the goods passes to the Customer, the Customer shall hold the goods as our fiduciary agent and bailee, shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as our property.



- 6.4 Until such time as the property of the goods passes to the Customer, we may at any time require the Customer to deliver up the goods to us and, if the Customer fails to do so forthwith, we reserve the right to enter any premises of the Customer or any third party where the goods are stored and repossess the goods.
- 6.5 The Customer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the goods which remain our property, but if the Customer does so, all the moneys owing by the Customer (without limiting any any right or remedy that is applicable to us) that becomes due and payable.
- 6.6 The costs of repossessing and reselling the goods shall be borne by the Customer. The costs amount to a flat rate of 5% of the resell proceeds including sales tax, unless we demonstrate higher costs or the Customer demonstrates that no or lower costs were incurred.

## 7. WARRANTY

### 7.1 SCOPE

- 7.1.1 We warrant the quality and properties of our deliveries and services in accordance with the information provided in our offers or the technical specifications agreed in writing.
- 7.1.2 If a service is provided on the basis of a specification and requirements of the Customer, we warrant only that the service has been carried out in accordance with the details supplied by the Customer, but not the correctness of the corresponding design, composition and construction.
- 7.1.3 Deviations in dimensions, weight or quality which are customary in the trade or which are to be tolerated in accordance with Austrian, European (EN) standards and UK (ISO) shall be deemed to be in accordance with the contract and shall not constitute a defect. Lack of suitability for a purpose desired by the Customer shall only constitute a defect if we have expressly confirmed the suitability for this purpose in advance.
- 7.1.4 We warrant the correctness of our processing instructions as well as our usage and operating instructions and our advice to the Customer. However, the Customer is alone responsible for compliance with statutory or other regulations when using the delivery item and for testing it for the intended purpose. We shall only be liable for instructions deviating from our written processing instructions and from our usage and operating instructions if we have expressly confirmed them to the Customer in advance in writing or via fax or e-mail.

- 7.1.5 Our products comply, insofar as necessary, with legal requirements in the European Union (EU) and UK. We warrant compliance with legal requirements in states outside the EU and UK only if this has been expressly agreed.
- 7.1.6 In the case of corrective and preventive maintenance work, our warranty shall be limited to the services actually rendered.
- 7.1.7 We only warrant the correct overall functioning of an installation, machine, software or similar whose components were not all supplied by ourselves if we have undertaken – despite the provision of certain components by the Customer or by third parties – to manufacture the overall installation, machine, software or similar, and if faulty functioning is not attributable to incorrect or incomplete information from the Customer.
- 7.1.8 In the case of goods with digital elements or where we supply digital products, we are under no obligation to the Customer to update the digital product or element. However, where the Customer has resold goods with digital elements or digital products to a consumer, we shall see to it that the consumer is provided with updates necessary to ensure that the digital product or goods with digital elements satisfy the contract during the period that the consumer can objectively expect; the Customer shall be obliged to inform the consumer of such updates in an appropriate manner.
- 7.1.9 For software, moreover, the provisions relating to software set out contained in the Special Section apply (see **B. I** below).

## 7.2 NOTIFICATION OF DEFECTS; BURDEN OF PROOF

- 7.2.1 The Customer shall carefully inspect the delivery items or services immediately after delivery or upon acceptance; they shall be deemed to have been approved by the Customer with regard to obvious defects if the Customer does not notify us in writing immediately, or at the latest within five working days (Monday to Friday excluding public holidays at the Customer's registered office) after delivery. With regard to other defects, the delivery items or services shall be deemed to have been approved by the Customer if the Customer does not notify us in writing without delay, or at the latest within five working days after the time at which the defect became apparent; if the defect was already apparent at an earlier time during normal use, this earlier time shall, however, be decisive for the commencement of the period for notification of defects. In the case of goods intended for installation or other further processing, an inspection must in any case take place immediately prior to installation or processing.
- 7.2.2 The notice of defects must set out contain the number and date of the order confirmation, delivery note or invoice as well as the serial and commission numbers.

The notice must set out which delivered items or services are affected by the defects, what the defects consist of in detail, and under what accompanying circumstances these defects occurred. Every single defect must be exactly described.

- 7.2.3 If the notice of defect is unfounded and the Customer knows or should have known or negligently failed to recognise this, the Customer is obliged to compensate us for the expenses incurred for the inspection.
- 7.2.4 Obligations under commercial law to carry out inspections and notify defects remain unaffected.
- 7.2.5 The Customer has to prove that defects coming to light during the warranty period were already present at the time of the transfer of risk.

### 7.3 WARRANTY PERIODS

- 7.3.1 Unless different periods are specified in part **B. Special Section** of these terms or otherwise separate agreements have been executed, claims of the Customer due to a defect shall be subject to a limitation period of twelve months from delivery or, where acceptance is required, from acceptance; this shall not apply to the claims referred to in Clause 7.3.3.
- 7.3.2 For a period of a further twelve months (from the beginning of the 13th month to the end of the 24th month from delivery or acceptance), we will voluntarily provide the Customer with the materials needed to rectify any defects free of charge. The provision of materials according to Sentence 1 shall neither suspend nor restart the limitation period for the claims covered by Clause 7.3.1.
- 7.3.3 Claims for damages by the Customer arising from injury to life, limb or health or health or from intentional or grossly negligent breaches of duty of duty by us or our vicarious agents shall be time barred in accordance with the applicable law including, but not limited to the Consumer Protection Act 1987.

### 7.4 WARRANTY CLAIMS

- 7.4.1 In the event of defects, we shall, at our discretion, remove the defect (through rectification or improvement) or carry out a new delivery (subsequent delivery or replacement), together referred to as subsequent performance. Our right to refuse subsequent performance in accordance with statutory requirements remains unaffected. If subsequent performance fails, is unreasonable or refused, the Customer may lower the price or – in the case of not insubstantial defects – withdraw

from the contract; if we are responsible for the defect, the Customer may claim damages within the limits of Clause 9.

7.4.2 The Customer shall provide the time and opportunity necessary to effect subsequent performance. The Customer shall send or transport the rejected goods to us for inspection and any necessary rectification after consultation with us. In the case of a replacement delivery, the Customer shall return the defective item to us in accordance with the applicable statutory provisions.

7.4.3 We are entitled to make subsequent performance dependent on the Customer paying the purchase price due. However, the Customer shall be entitled to retain a reasonable part of the purchase price proportionate to the defect.

## 7.5 WARRANTY EXCLUSIONS

7.5.1 Warranty claims of the Customer are excluded or invalid if the installation instructions or usage and operating instructions provided by us or to be requested from us have not been observed, if the installation has not been carried out correctly and in compliance with relevant standards, in particular if it has not been carried out by a specialist company, if repair or other work has been carried out on the object of delivery or service without our consent, if it has been operated or used improperly, operated despite faulty protection devices or used contrary to our instructions or for purposes for which it is not intended, and furthermore if defects are attributable to the effects of foreign bodies, chemical influences, overvoltage, the behaviour of third parties or force majeure.

7.5.2 No warranty is given for material defects of used goods delivered by agreement with the Customer in individual cases.

## 7.6 RIGHTS OF RECOURSE

7.6.1 The Customer's statutory rights of recourse against us remain unaffected.

7.6.2 The Customer can only assert rights of recourse insofar as no agreements have been made between the Customer and its Customer that extend beyond the statutory rights relating to defects.

## 8. SPECIAL PROVISIONS FOR GUARANTEE

8.1 For some of our delivery items and services, we issue a guarantee to end-customers or end-customers are able to register for them or obtain warranties against payment. This neither affects nor restricts our statutory warranty obligations under these Terms and Conditions.

8.2 The guarantee options available in the individual business units Solar Energy, Perfect Welding (including and excluding Automation) and Perfect Charging as well as the associated guarantee conditions are set out in part **B. Special Section** of these Terms and Conditions.

## 9. LIABILITY

9.1 Except in the case of liability for death or personal injury caused by our negligence, liability for defective products under the Consumer Protection Act 1987 or liability under section 12 of the Sale of Goods Act 1979, we shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit, loss of reputation, or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the our negligence, or the negligent of our employees, agents or otherwise) which arise out of or in connection with the supply of the goods and/or services (including any delay in supplying or any failure to supply the goods and/or services in accordance with the Contract or at all) or their use or by the Customer, and our entire liability under or in connection with the Contract shall not exceed the price of the goods, except as expressly provided in these Terms and Conditions.

9.2 Subject to clause 7.3.3 and 9.1, any claim for any loss and/or damage against us shall become time barred unless such claim has been issued in a court of competent jurisdiction within 6 months from the date on which the Customer has become aware and/or ought to have become aware of event that has caused the loss and/or damage, but in any event any claim shall be deemed time barred after three years following the date of the last partial delivery of the goods and/or in the case of services, the last date of performance of such services.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 All intellectual property rights, such as, copyrights, trademark rights, design rights, patent rights, utility model rights and know-how, as well as, non-protected inventions, industrial experience, trade secrets, to our delivery items and services as well as to manufacturing processes and all processes related thereto, their application, to components, to software (including source and object code as well as user documentation, algorithms, user interface, etc.), to processes, plans, sketches, descriptions, drawings, manuals, instructions and installation instructions, calculations, offers, quotations, other technical documents as well as samples, prototypes, catalogues, brochures, illustrations and the like – irrespective of the time at which they are disclosed to the Customer – belong exclusively to ourselves or our licensors. The Customer is granted the right only to use the subject matter of the contract for its intended purpose.

10.2 We reserve unrestricted title and copyright to offers, quotations, drawings and all other documents and supporting items; they must not be made accessible to third parties nor used for their or other purposes. If an order is not placed, the aforementioned documents and supporting items shall be returned or destroyed immediately at our request.

10.3 We are exclusively and fully entitled to claim rights to services, developments, findings, inventions and the like which arise within the context of services provided by us, even if a delivery or service is made on the basis of a Customer specification or the Customer otherwise contributes thereto. Any rights arising on the side of the Customer are automatically transferred to us when they arise, so that we become the sole legal and beneficial owner of the rights and the party entitled to exercise them.

## 11. CONFIDENTIALITY

11.1 The contents of our offers are to be kept confidential. Any form of active or passive disclosure of all or part of the content requires our prior express written approval. The same applies to all contents of the contractual relationship with ourselves.

11.2 The Customer grants us permission to list the Customer as a reference Customer in publicly accessible media (particularly the Internet), until such permission is withdrawn.

## 12. HEALTH AND SAFETY

12.1 The Customer undertakes to comply with all statutory and other legally or contractually prescribed regulations with regard to the protection of the health and safety of all persons deployed within the scope of the execution of the order. Furthermore, the Customer shall remove hazards to our personnel and the personnel of any subcontractors or suppliers used for the entire duration of the service provision at the Customer or within the Customer's area of responsibility.

12.2 We expressly reserve the right to withdraw our personnel and/or the personnel of our subcontractors/suppliers from the locations of the respective service provision, at short notice if need be, if the above-mentioned requirements cease to be met or in the event of a foreseeable, direct or indirect hazard. Any forms of such hazard constitute a hindrance and/or interruption attributable to the Customer. For the duration of the hindrance/interruption, we shall be released from our contractual obligations and fully indemnified and held harmless.

### 13. DATA PROTECTION

We process personal data in accordance with our Data Privacy Statement (<https://www.fronius.com/en-gb/uk/data-privacy-statement>).

### 14. APPLICABLE LAW; DISPUTE RESOLUTION

14.1 The law of England and Wales shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

14.2 If the Customer has its registered office in the United Kingdom, this contract and any dispute or claim (including non-contractual disputes or claims) arising out of in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract.

14.3 If the Customer has its registered office outside the United Kingdom, this Contract and any dispute or claim (including non-contractual disputes or claims) arising out of in connection with it or its subject matter or formation, shall be referred to and finally determined by arbitration under the LCIA Arbitration Rules. The seat of arbitration shall be London, the law governing this arbitration agreement shall be English law; and the language of the arbitration shall be English.

### 15. SEVERABILITY CLAUSE

If individual provisions of these Terms and Conditions of Delivery and Payment are legally ineffective, invalid or unenforceable, the effectiveness, validity and enforceability of the remaining provisions shall remain unaffected. In such a case, the parties agree that the provision in question shall be replaced by a provision which comes as close as possible to it in terms of its economic outcome and which is not ineffective, invalid or unenforceable and which comes as close as possible to the intention of the contracting parties at the time the contract was concluded. The same shall apply to any loopholes in the contract.

### 16. TERMINATION

16.1 Without limiting our other rights or remedies, we may terminate this Contract with immediate effect by giving written notice to the Customer if:

16.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;



- 16.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 16.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 16.1.4 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 16.2 Without limiting its other rights or remedies, we may suspend provision of the goods under the Contract or any other contract between the Customer and us if the Customer becomes subject to any of the events listed in *clause 16.1.1 to clause 16.1.4*, or we reasonably believe that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 16.3 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 16.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of goods and/or services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 16.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **B. SPECIAL SECTION**

This Special Section of these Terms and Conditions of Delivery and Payment applies to the special areas contained therein in addition to the General Section.

## I. SPECIAL PROVISIONS FOR SOFTWARE

### 17. SCOPE OF SERVICES; SYSTEM REQUIREMENTS; CONTRACT PROCESSING

- 17.1 The functional scope of the software is conclusively defined in the respective service description and/or user documentation.
- 17.2 We provide the Customer with software exclusively in object code. We may also provide the Customer with the associated user documentation in purely digital form (e.g. as a PDF document or online help) at our sole discretion. Unless otherwise agreed, we shall provide software and user documentation in the English language only.
- 17.3 The software is standard software. It shall be adapted to special requirements of the Customer only in exceptional cases and only after express written agreement.
- 17.4 We provide installation and configuration services only in exceptional cases and only by separate agreement.
- 17.5 The system requirements for use of the software result from the respective service description and/or user documentation. It is the Customer's responsibility to ensure that the Customer has a suitable and adequate hardware and software environment in line with the system requirements.
- 17.6 If we process personal data on the Customer's behalf in connection with the software provided by us, we shall conclude a separate data processing agreement with the Customer in this regard.

### 18. COPYRIGHT NOTICES; SOFTWARE PROTECTION

- 18.1 Copyright notices, serial numbers or other features intended to identify the program may not be removed from the software or changed.
- 18.2 The Customer shall take suitable measures to secure the software and, if applicable, the access data for online access against access by unauthorised third parties. In particular, all copies of the software as well as the access data shall be kept in a protected location.

### 19. SOFTWARE PURCHASE

If it is agreed that the Customer acquires the software on a permanent basis, this clause 19 shall also apply.

## 19.1 GRANTING OF RIGHTS

- 19.1.1 After the agreed fee has been paid, we grant the Customer a simple, non-exclusive right to use the software for the intended purpose for an unlimited period of time. The right of use is limited to the agreed number of users or number of devices. Depending on the type of licence agreed, the software may only be used by a maximum number of natural persons or on a maximum number of devices corresponding to the number of licences purchased by the Customer. Permitted use includes the installation of the software, loading into main memory and the intended use by the Customer. The number of licences and the type and scope of use shall otherwise be determined by the agreement reached, where applicable.
- 19.1.2 The Customer is entitled to make a backup copy if this is necessary to secure future use. The Customer shall visibly affix the note "Backup copy" as well as a copyright notice of the maker on the created backup copy. If software is provided with technical copy protection, the Customer shall receive a replacement copy at short notice upon request in the event of damage to a supplied data medium or the transmitted files.
- 19.1.3 The Customer may permanently transfer the acquired copy of the software to a third party, handing over the user documentation, if the Customer stops using the software entirely, removes all installed copies from its computers and deletes all copies on other data media or hands them over to us, unless it is legally obliged to retain them for a longer period. Upon request, the purchaser shall confirm to us in writing that the aforementioned measures have been carried out in full or, where applicable, explain the reasons for longer retention. The purchaser shall expressly agree with the third party to observe the scope of the rights of use in accordance with the provisions of this Clause 19 and shall provide us with evidence of this upon request.
- 19.1.4 The Customer is only entitled to otherwise copy or decompile the software to the extent that this is provided for by law. For decompilation, however, this shall only apply on condition that we have not made the necessary information available to the Customer upon request within a reasonable period of time.
- 19.1.5 Furthermore, the Customer is not entitled to reproduce, distribute, rent out (in particular not as software as a service), make available to the public (e.g. via the Internet), sub-license or modify, translate, edit or otherwise rework the software in whole or in part. The Customer's right to transfer use of the software for a limited period of time for neither direct nor indirect profit-making purposes (lending) remains unaffected.
- 19.1.6 If we provide the Customer with updates, upgrades and/or new versions of the software under the warranty or for any other reason, the following shall apply:

There will be an automatic transfer of rights to the Customer in respect of any new version of the software from time to time. The Customer shall receive rights of use to this newer software version to the same extent as to the previous software version; the rights to the previous software version shall expire at the same time; however, we will allow use of the previous version until the software provided has been installed or, in the event of defects in the software most recently provided, until these defects have been remedied.

## 19.2 WARRANTY

- 19.2.1 Our warranty upon sale of software shall be governed – subject to the deviations and additions in this Clause 19.2 – by Clause 7. In particular, Clauses 7.1.5 (compliance with legal requirements), Clause 7.1.8 (updates) and Clause 7.2 (notification of defects) shall apply.
- 19.2.2 We warrant the agreed quality and warrant that the Customer can use the software without infringing rights of third parties.
- 19.2.3 Our warranty does not apply to errors that are due to the software being used in a hardware and software environment that does not meet the requirements specified by us or to the fact that the purchaser has made changes and modifications to the software without being legally entitled to do so or other than on the basis of prior consent declared by us at least in text form.
- 19.2.4 In the case of updates, upgrades and deliveries of new versions, claims for defects shall be limited to the new features provided by the update, upgrade or new version compared to the previous version. If we provide the Customer with updates, upgrades or new versions free of charge without being legally obliged to do so, warranty and liability shall be governed by Clause 22. In this case, the Customer is free to use the previous version (downgrade); we will make this available to the Customer again if required. Claims of the Customer due to defects of the previous version are excluded to the extent that these defects would be eliminated by installing the current version provided by us.
- 19.2.5 We shall also meet our obligation to remedy defects by providing reasonable and acceptable workarounds, providing updates with an automatic installation routine available to download from a website, informing the Customer about these and offering the Customer telephone support to solve installation problems. In the case of subsequent delivery, the Customer will accept any new version of the software unless this has unreasonable negative effects. In the event of defects of title, we will, at our own discretion, enable the Customer to use the contractual software in a legally

unobjectionable manner or modify the software in such a way that the rights of third parties are no longer infringed.

- 19.2.6 Warranty claims of the Customer become time-barred after twelve months. Where a data carrier is provided, the limitation period shall begin at the time of its delivery. Where data is provided via download from the Internet, it shall begin after notification and activation of the access data for the download area. Where updates, upgrades and new versions are delivered, the limitation period for these items shall commence at the time each is provided. The foregoing is without prejudice to Clause 7.3.3.
- 19.2.7 If we have concluded a software maintenance agreement with the Customer, the period for removal of defects shall be as set out in such software maintenance agreement.

## 20. SOFTWARE MAINTENANCE

If it is agreed that we will provide the Customer with updates, upgrades and/or new versions of a sold software for a certain period of time, this Clause 20 shall also apply, unless a separate software maintenance agreement is executed.

### 20.1 SCOPE OF SERVICES; GRANTING OF RIGHTS; WARRANTY

- 20.1.1 We continuously develop the software and provide the Customer with the latest version of the software for download via the Internet during the term of the software maintenance agreement.
- 20.1.2 Wherever technically possible, we will eliminate any software errors within a reasonable period of time by providing updates, upgrades and/or new versions for download via the Internet. An error is deemed to exist if the software does not fulfil the functions specified in the service description, delivers faulty results or does not function properly in any other respect, such that use of the software is impossible or restricted. We provide our services based on the latest and immediately preceding versions of the software and on the interests of all software users. We do not provide troubleshooting for earlier versions of the software.
- 20.1.3 Concerning the granting of rights and the warranty for updates, upgrades and/or new versions, Clauses 19.1 and 19.2 apply *mutatis mutandis*. If we have granted the Customer rights to use software which is the subject of the software maintenance agreement to an extent that differs from the scope of Clause 19.1, we will grant the Customer rights to use updates, upgrades and/or new versions which we provide to

the Customer under the software maintenance agreement to such different agreed extent.

## 20.2 FEES; DURATION; TERMINATION

- 20.2.1 The amount and due date of the fees shall be determined by the respective contract.
- 20.2.2 If the contract is concluded for a fixed period, it ends at the end of that period without notice of termination being required.
- 20.2.3 If the contract is concluded for an indefinite period, it may be terminated by either party at six (6) weeks' notice to the end of any calendar quarter.
- 20.2.4 The foregoing is without prejudice to the right of either party to terminate the contract with immediate effect for good cause.
- 20.2.5 Notice of termination must be served in writing.

## 21. SOFTWARE LEASING

If it is agreed that the Customer may use the software for a limited period, this Clause 21 shall additionally apply.

### 21.1 GRANTING OF RIGHTS

- 21.1.1 After payment of the agreed fee, we will grant the Customer a non-exclusive, non-transferable and non-sublicensable right for a limited period of time to use the software as intended. In all other respects, Clause 19.1.1 shall apply *mutatis mutandis*.
- 21.1.2 Clauses 19.1.2 and 19.1.4 shall apply *mutatis mutandis*. Furthermore, the Customer is not entitled to reproduce, distribute, lend, rent out (in particular not as software as a service), make available to the public (e.g. via the Internet), sub-license or modify, translate, edit or otherwise rework the software in whole or in part.
- 21.1.3 Clause 19.1.6 applies *mutatis mutandis*.

### 21.2 SCOPE OF SERVICE

- 21.2.1 Wherever technically possible, we use reasonable endeavours to develop the software and provide the Customer with the latest version of the software during the agreed period.

21.2.2 Wherever technically reasonably possible, we will eliminate any software errors within a reasonable period of time. An error is deemed to exist if the software does not fulfil the functions specified in the service description, delivers faulty results or does not function properly in any other respect, such that use of the software is impossible or restricted.

### 21.3 SPECIAL CONDITIONS FOR PROVISION VIA THE INTERNET

21.3.1 In the event that the software is provided via a server operated by us or on our behalf (Software as a Service, SaaS), this Clause 21.3 shall additionally apply.

21.3.2 The Customer requires an Internet connection in order to use the software. Further requirements result from the service description, the user documentation and the system requirements.

21.3.3 We are not responsible for the permanent availability of the application and are entitled to restrict or terminate its use in whole or in part if necessary with regard to capacity restrictions, security or integrity. Furthermore, the application is wholly or partially unavailable during maintenance periods (e.g. when new software is being installed); we will endeavour to schedule planned maintenance periods at times of low use if possible.

21.3.4 We shall provide the Customer with the storage space on a server required for the intended use of the software. The Customer is not entitled to make this storage space available to a third party. The Customer undertakes not to store any unlawful content or content that is in breach of laws, official requirements or the rights of third parties on the storage space provided.

21.3.5 The Customer is itself responsible for the entry and maintenance of its data and information required in order to use SaaS services. The Customer is obliged to check its data and information for viruses or other harmful components before entering them and to use state-of-the-art virus protection programs for this purpose.

21.3.6 It is the Customer's responsibility to back up its data on a regular basis. We shall not be liable for loss of data where such loss is due to the Customer's failure to carry out regular data backups so as to ensure that lost data can be restored with reasonable effort. The foregoing is without prejudice to Clause 9.

### 21.4 FEES; DURATION; TERMINATION

21.4.1 The amount and due date of the fees shall be determined by the respective agreement.



- 21.4.2 If the contract is concluded for a fixed period, it expires at the end of that period without notice of termination being required.
- 21.4.3 If the contract is concluded for an indefinite period, it may be terminated by either party at six (6) weeks' notice to the end of any calendar quarter.
- 21.4.4 The foregoing is without prejudice to the right of either party to terminate the contract with immediate effect for good cause.
- 21.4.5 Notice of termination must be served in writing.
- 21.4.6 In the event of termination, the Customer shall cease using the software and remove all installed copies of the software from its computers and destroy any backup copies of the software that have been made.

## 21.5 WARRANTY (MAINTENANCE)

- 21.5.1 Where software is leased, our warranty shall be governed – subject to the deviations and additions in this Clause 21.5 – by Clause 7.
- 21.5.2 Notwithstanding Clause 7.1.8, we warrant that the software will remain compliant with the contract (through updating) during the term of the contract and that no third party rights will prevent use of the software in compliance with the contract.
- 21.5.3 For defects already existing at the time the contract was concluded, we are only liable for compensation if we are found to be at fault through an adjudication process. The foregoing is without prejudice to Clause 9.
- 21.5.4 Clause 19.2.3 applies *mutatis mutandis*.

## 22. PROVISION OF SOFTWARE FREE OF CHARGE

If we provide the Customer with software free of charge, whether for an unlimited period of time (gifted) or for a limited period of time (lent), this Clause 22 shall additionally apply.

### 22.1 GRANTING OF RIGHTS

For the granting of rights, the provisions in Clause 19.1 and or Clause 21.1 apply *mutatis mutandis*.

## 22.2 WARRANTY; LIABILITY

- 22.2.1 In the event of material defects, we shall be liable for direct damage caused to the Customer because a defect in the software was fraudulently concealed from the Customer, and for consequential damage caused by defects due to intent or gross negligence on our part. Any further warranty for material defects is excluded. The Customer shall have no right or claim to the rectification of errors.
- 22.2.2 In the event of defects of title, we shall only be liable for damages incurred by the Customer because a defect of title to the software was fraudulently concealed from the Customer. Any further warranty for defects of title is excluded.
- 22.2.3 We are only liable for intent and gross negligence, any further liability being excluded. However, liability under the Consumer Protection Act 1987 remains unaffected.

## II. SPECIAL PROVISIONS FOR OUR BUSINESS UNIT SOLAR ENERGY

### 23. WARRANTY

The warranty for deliveries and services of our Business Unit SOLAR ENERGY shall be governed by the provisions of the General Section (Clause 7).

### 24. GUARANTEE

End-Customers (both consumers and businesses) may be entitled to a guarantee for products of our Business Unit SOLAR ENERGY by separate agreement. The respective Fronius guarantee conditions apply, available at [www.fronius.com/solar/warranty](http://www.fronius.com/solar/warranty). The guarantee period can be extended by the end-customer against payment in accordance with the Fronius guarantee conditions.

## III. SPECIAL PROVISIONS FOR OUR BUSINESS UNIT PERFECT WELDING (EXCLUDING AUTOMATION)

### 25. WARRANTY

- 25.1 The warranty for deliveries and services of our Business Unit PERFECT WELDING (excluding AUTOMATION) shall be governed – subject to the deviations and additions in this Clause 25 – by the provisions of the General Section (Clause 7).

25.2 Clause 7.3.2 only applies to:

25.2.1 Welding systems and components that are marked with a serial number and not custom-made;

25.2.2 Virtual Welding welding and peripheral devices; and

25.2.3 Accessories: welding equipment (e.g. helmets, AirSystems, mobile extractor units).

25.3 Notwithstanding Clause 7.3.1, a warranty period of 6 months shall apply to welding torches and torch bodies (e.g. TIG, Mig/Mag, MMA, Push & Push/Pull robot torches, LaserHybrid and special versions, Twin, CMT Twin, CMT Hand, Push/Pull & Pull MIG torches, hosepacks) of gas-cooled or water-cooled design, as well as consumables and wearing parts (e.g. fuses, inner liners, feed rolls, contact tips). This excludes CMT Robacta Drive of gas-cooled or water-cooled design, to which A.7.3.1 applies.

25.4 Notwithstanding Clause 7.5.2, a warranty period of 6 months applies to used goods.

## 26. GUARANTEE

For products of our Business Unit PERFECT WELDING (excluding AUTOMATION), end-customers (both consumers and businesses) can obtain guarantees against payment or activate them by registering, subject to a separate agreement. The respective Fronius guarantee conditions apply, available under <https://www.fronius.com/en/welding-technology/products/services/support/extended-warranty/extended-warranty>

## IV. SPECIAL PROVISIONS FOR AUTOMATION IN THE BUSINESS UNIT PERFECT WELDING

The following provisions apply to our deliveries and services and payments to us in the Automation field (Business Unit PERFECT WELDING) in addition to the provisions in the General Section:

## 27. DELIVERY

27.1 Subject to the agreement of a different delivery date, we shall deliver at the earliest 20 weeks after the contract is concluded.

27.2 We deliver FCA at our registered office (Incoterms 2020). Clause 4 remains unaffected in all other respects.

## 28. ACCEPTANCE; OPERATIONAL HANDOVER

- 28.1 As soon as the object of sale is ready for collection, we shall notify the Customer accordingly. If agreed, preliminary acceptance (Factory Acceptance Test, FAT) will then take place in our factory within two weeks of notification of readiness for collection.
- 28.2 The Customer shall collect the object of sale or have it delivered within two weeks after notification of readiness for collection or within one week after successful preliminary acceptance.
- 28.3 Within 45 days after collection or other delivery, final acceptance (Site Acceptance Test, SAT) will take place at the Customer's place of business or any other agreed place of use of the object of sale.
- 28.4 The Customer may not refuse either preliminary acceptance or final acceptance due to non-material defects.
- 28.5 The object of sale shall also be deemed to have been accepted if final acceptance has not taken place within the period specified in Clause 28.3, without our being responsible for this and without the Customer having refused acceptance within this period indicating at least one significant defect.
- 28.6 The object of purchase shall be put into operation as part of final acceptance. The parties will draw up a joint record of final acceptance. Final operational handover to the Customer shall only take place if the object of purchase is of satisfactory quality; in this case we shall hand over a signed Declaration of Conformity to the Customer. The Customer may not operate the object of purchase without a corresponding operational handover and Declaration of Conformity issued by us. The Customer shall only allow the object of purchase to be operated by trained personnel.
- 28.7 If final acceptance does not take place immediately through no fault of our own, the final partial payment shall become due upon use of the delivery item by the Customer, but the unit shall be deemed to have been accepted no later than 45 days after delivery.

## 29. PRICE AND PAYMENT CONDITIONS; RIGHT OF RETENTION

- 29.1 Unless otherwise agreed and subject to Clause 29.2, the following payment conditions shall apply:
- 29.1.1 50% of the agreed purchase price shall be paid by the Customer as a down-payment immediately after conclusion of the contract within 14 days after receipt of the down-payment invoice.

29.1.2 40% of the agreed purchase price shall be paid by the Customer within 14 days after notification of readiness for collection or – if preliminary acceptance has been agreed – within 14 days after successful preliminary acceptance, but at the latest before the object of purchase is commissioned in the Customer’s works. If we still must carry out non-significant rework after preliminary acceptance, this shall not entitle the Customer to withhold this purchase price instalment. Rework is non-significant if the intended use of the object of sale does not depend on the performance of this rework.

29.1.3 10% of the agreed purchase price shall be paid by the Customer within 14 days after final acceptance, or implied final acceptance pursuant to Clause 28.5.

29.2 The payment conditions shall apply subject to a positive cover check by our credit insurer, failing which full payment in advance shall be deemed to be agreed immediately after the contract is concluded.

### 30. WARRANTY

30.1 The warranty for deliveries and services in the AUTOMATION area of our Business Unit PERFECT WELDING is based on the provisions of the General Section (Clause 7) with the following deviations and additions in this Clause 30.

30.2 For the components, namely:

30.2.1 Automation and mechanisation components,

30.2.2 Orbital welding systems and orbital spare parts and

30.2.3 Orbital units (in particular FCH, FOH, FPH 3020, FPH 3030)

the warranty period stipulated in Clause 7.3.1 applies exclusively. Clause A.7.3.2 does not apply.

30.3 Where products of the Business Unit PERFECT WELDING (excluding AUTOMATION) are sold, the restrictions set out in Clause 25 apply.

30.4 The limitation period for warranty claims shall commence upon final acceptance or implied final acceptance pursuant to Clause 28.5.

## V. SPECIAL PROVISIONS FOR OUR BUSINESS UNIT PERFECT CHARGING

### 31. WARRANTY

The warranty for deliveries and services of our Business Unit PERFECT CHARGING shall be governed by the provisions of the General Section (Clause 7).

### 32. GUARANTEE

For products of our Business Unit PERFECT CHARGING, end-customers (both consumers and businesses) can obtain guaranties against payment or activate them by registering, subject to a separate agreement. The respective Fronius guarantee conditions apply, available at <https://www.fronius.com/en/battery-charging-technology/warranty-extension>.