

General Terms and Conditions for International Sales of FotoFinder Systems GmbH

1. General Provisions

- (1) For all contractual relations between customer residing abroad and FotoFinder Systems GmbH the General Terms and Conditions for International Sales- hereinafter "Terms and Conditions"- set forth herein below shall apply exclusively. Any terms and conditions of customer conflicting with or deviating from the Terms and Conditions shall not be recognized by FotoFinder Systems GmbH unless the FotoFinder Systems GmbH explicitly consents to the application thereof in writing. The Terms and Conditions of the FotoFinder Systems GmbH shall apply even if the FotoFinder Systems GmbH performs delivery to Customer without reservation notwithstanding his knowledge of terms and conditions of the Customer conflicting with or deviating from these Terms and Conditions. The FotoFinder Systems GmbH shall be entitled to withdraw from the Agreement in the event the customer disagrees with the Terms and Conditions. In such a case all claims on the part of the Customer shall be excluded.
- (2) Place of performance for any obligation of FotoFinder Systems GmbH is Bad Birnbach.
- (3) All agreements reached between the Customer and the FotoFinder Systems GmbH and for the purpose of executing this Agreement shall be laid down in the Agreement in writing.
- (4) The Terms and Conditions of the FotoFinder Systems GmbH shall also apply to all future business transactions with the Customer.

2. Offers

- (1) Agreements shall only come into effect through an order confirmation of the FotoFinder Systems GmbH transmitted in writing. Until then, the offers of the FotoFinder Systems GmbH, especially but not limited to design, prices and deadlines, shall be subject to confirmation and not binding unless expressly defined as "binding". For the scope of the delivery or performance only the order confirmation shall be relevant.
- (2) The documents on which the offer of the FotoFinder Systems GmbH is based like illustrations or drawings are established with care but are only approximate unless otherwise specified. Indicated specifications and units are not binding unless they are expressly defined as binding. Changes that only slightly modify or improve the performances shall be reserved as far as they can be reasonably expected from the Customer. The FotoFinder Systems GmbH shall not be liable to the Customer for the suitability of goods and performances for an intended application presented by the Customer.

3. Customer's obligation to cooperate

- (1) The Customer shall name a technically Professional who will be available to the FotoFinder Systems GmbH to supply any necessary information, and who will take the decisions that are necessary for realizing the order or obtain them without delay. The FotoFinder Systems GmbH shall involve the contact person of the Customer wherever necessary for executing the order.
- (2) The Customer shall create all prerequisites necessary for a proper completion of the order. In particular, the Customer shall guarantee that all necessary cooperation of the Customer shall be rendered in time, in the necessary scope and free of charge for the FotoFinder Systems GmbH.
- (3) The Customer-specific documents needed for the execution and any other necessary in-house information must be provided by the Customer to the FotoFinder Systems GmbH even without special request.

- (4) The Customer shall be liable for delays or errors in the order fulfillment if these result from performance data submitted by him, wrong or incomplete indications or any other circumstances for which he is responsible.

4. Supplies and Performance

- (1) Supply and/or performance times shall be deemed observed when the FotoFinder Systems GmbH notifies the Customer about his readiness for dispatch within the agreed deadlines and/or coordinates a date with him for rendering the performance. Adequate part deliveries or part performances and customary or acceptable deviations from the order quantities are permissible unless the part delivery or part performance is of no interest to the Customer.
- (2) For supply and performance delays due to force majeure and to further events, which not only essentially complicate the delivery for the FotoFinder Systems GmbH temporarily or make it impossible – this especially includes break downs, strike, lockout, official instructions, shortage of raw materials, difficulties in the energy supply, mobilization, riots, etc, even if they occur at the suppliers of the FotoFinder Systems GmbH or their sub-suppliers – the FotoFinder Systems GmbH shall not be liable, even for bindingly agreed deadlines and dates. They entitle the FotoFinder Systems GmbH to respectively postpone the supply and/or performance by the duration of the interference plus an appropriate starting-up time or to withdraw from the Agreement completely or partially because of the not yet fulfilled part.
- (3) As far as the event of force majeure takes more than three months, following the setting of an adequate period of grace the Customer shall be entitled to withdraw from the Agreement as regards the not yet fulfilled part. In the event the delivery period is extended or in the event the FotoFinder Systems GmbH is released from his obligation, Customer shall not be entitled to any claims for damages. FotoFinder Systems GmbH can only refer to the abovementioned circumstances if he immediately notifies the Customer.
- (4) Provided that the FotoFinder Systems GmbH is responsible for the noncompliance of bindingly agreed deadlines and dates or if he is in delay Customer shall be entitled to a delay compensation amounting to 0,5% for every completed week of the delay; in total, however, a maximum of 5% of the invoice value of the supplies and performances affected by the delay.
- (5) Customer's claims for damages due to delayed supplies as well as claims for damages instead of performance exceeding the limits specified in No 3 (4) above shall be excluded in all cases of delayed supplies even upon expiry of a time set to the FotoFinder Systems GmbH to effect the supplies. This shall not apply in cases of mandatory liability based on intention, gross negligence, or due to injury of life, body or health. Cancellation of the Agreement by the Customer based on statute shall be limited to cases where FotoFinder Systems GmbH is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.
- (6) Customer shall declare within a reasonable period of time whether the Customer cancels the Agreement due to the delayed supplies or insists on the supplies to be carried out.
- (7) FotoFinder Systems GmbH shall render his services acc to state-of-the-art pursuant to the performance requirement. Specifications by the Customer need to be

in writing and have to be made known to the FotoFinder Systems GmbH before the conclusion of the Agreement.

- (8) The services shall be carried out, to the degree necessary for the proper execution of the order, at the Customer or the FotoFinder Systems GmbH. If the services are carried out at the Customer he shall provide sufficient working means and work places to the employees of the FotoFinder Systems GmbH. Customer has no competence to issue instructions to the employees of the FotoFinder Systems GmbH. The employees of the FotoFinder Systems GmbH shall not be included in the business operations of Customer.
- (9) FotoFinder Systems GmbH shall be entitled to render the performance in adequate parts as long as this does not lead to unacceptable additional expenses for the Customer.
- (10) If dispatch or shipment is delayed at the Customer's request by more than one month after notice of the readiness for dispatch was given, the Customer may be charged, for every month commenced, storage charges amounting to 0,5 % of the price of the items of the supplies; but in no case more than a total of 5%. The contractual parties may prove that higher or, as the case may be, lower storage costs have been incurred.

5. Prices, Shipment, Transfer of Risks

- (1) Prices, fees as well as incidental expenses shall be calculated according to the written agreements.
- (2) Shipment shall be effected FCA Bad Birnbach according to INCOTERMS 2000.
- (3) Even where delivery has been agreed freight free, the risk shall pass to the Customer as follows:
 - a) if the supplies do not include assembly or setup by FotoFinder Systems GmbH, at the time when the supplies are shipped or picked up by the carrier. Upon request and costs of Customer, the FotoFinder Systems GmbH shall insure the supplies against the usual risks of transport;
 - b) if the supplies include assembly or setup by FotoFinder Systems GmbH, at the day of after a fault free trial run.
- (4) Customer may not refuse the acceptance of deliveries due to minor defects.

6. Invoicing, Payment and Assignment of Claims

- (1) Invoices shall become due within 8 days after invoicing and delivery to FotoFinder Systems GmbH
- (2) Agreed payment periods shall be deemed observed when the amount to be paid is available to FotoFinder Systems GmbH at the due date. Cheque and bills shall only be accepted on account of performance. There is no entitlement that the FotoFinder Systems GmbH accepts the aforementioned payment means.
- (3) Customer shall only have a retention right as regards claims from the same contractual relationship that are uncontested or against which no legal recourse is possible. In the latter case, he may retain the payment of compensation with defects of parts of the delivery or performance only to the amount that corresponds to the value of the defect delivery or performance.
- (4) Payments shall first be used by FotoFinder Systems GmbH to clear older debts of Customer. In the event that interest has already been incurred the FotoFinder Systems GmbH shall be entitled to set-off the payments, first with the interest and finally with the principal claim.
- (5) If Customer delays payment FotoFinder Systems GmbH shall be entitled to charge interest to the legal amount valid at the time.
- (6) An assignment of the claim or collection through third parties shall be permissible.
- (7) Customer shall only have the right to set-off claims that have become final or are uncontested.

7. Retention of Title

- (1) Until the fulfilment of all claims (including any balance claims from account current) which FotoFinder Systems GmbH is entitled to for any cause in law against Customer now or in future, the FotoFinder Systems GmbH shall be granted the following securities which he will release on demand at his discretion as far as their value sustainable exceeds the claims by more than 10%.
- (2) The goods shall remain property of FotoFinder Systems GmbH. Processing or transformation is always executed for FotoFinder Systems GmbH as manufacturer, however, without obligation for him. If the (co) property of FotoFinder Systems GmbH lapses by connection, it is agreed now already that the (co) property of FotoFinder Systems GmbH in the uniform matter passes to Customer ad valorem (invoice value). Customer keeps the (co) property of FotoFinder Systems GmbH without charge. Goods in which FotoFinder Systems GmbH is entitled in (co) property shall in the following be referred to as Reserved Goods.
- (3) Customer shall be entitled to process and sell the Reserved Goods in the ordinary course of his business dealings as long as he is not in arrears. Pledging or collateral assignments are inadmissible. The claims resulting from further sale or a further legal justification (insurance, unlawful act) with regard to the reserved goods (including any balance claims from account current) Customer now already assigns as security to the full extent to FotoFinder Systems GmbH. FotoFinder Systems GmbH shall revocable authorize him to collect the claims assigned to FotoFinder Systems GmbH for him on his behalf. This authorization for collection can be revoked only when Customer does not properly fulfil his payment obligations.
- (4) On access of third parties to the reserved goods, especially pledging, Customer shall point out the property of FotoFinder Systems GmbH and immediately inform him so that FotoFinder Systems GmbH can enforce his property rights. As far as third parties are not able to reimburse FotoFinder Systems GmbH for legal or extrajudicial costs generated in this connection, Customer shall be liable for this.
- (5) On behaviour of Customer contrary to the Agreement – in particular default in payment – FotoFinder Systems GmbH shall be entitled to withdraw from the Agreement and to demand the reserved goods.

8. Withdrawal / Cancellation

- (1) If the delivery or performance is subsequently rendered impossible for reasons FotoFinder Systems GmbH is responsible for Customer shall be entitled to withdraw from the Agreement. In the event of partial impossibility he shall be entitled to withdraw as regards the part of the contractual performance whose fulfilment has become impossible. If the partial fulfilment of the Agreement is no longer of interest to Customer he may withdraw from the Agreement as a whole. In such cases, Customer shall only be entitled to compensation in damages under the conditions stipulated in item 11.
- (2) In the event FotoFinder Systems GmbH is not responsible for the impossibility of fulfilling the Agreement, the Agreement shall be adjusted by mutual consent as far as economically reasonable. Otherwise both contractual parties may withdraw from the Agreement fully or partially.
- (3) If the expiry of usage rights is connected with the withdrawal from the Agreement or the cancellation Customer shall undertake to immediately return to FotoFinder Systems GmbH the original as well as all copies and partial copies of software as well as any other products. This shall not apply as far as there are legal obligations as regards their retention. Customer shall

immediately point this out to FotoFinder Systems GmbH in writing. When software is returned, these "General Terms and Conditions" shall be expanded by the provisions of the End User License Agreement (EULA) of the FotoFinder Systems GmbH. In case of conflicts between the provisions of EULA and these "General Terms and Conditions" the provisions of EULA shall take priority.

- (4) If the delivery or performance becomes subsequently impossible for reasons the Customer is responsible for; if he cancels the Agreement without the right to cancel or without a reason to cancel; or if Customer withdraws from the Agreement he shall replace FotoFinder Systems GmbH any incurred expenses, costs and any other direct and indirect damages.

9. Provision of Materials and Parts

- (1) Products, software or any other accessories provided to Customer on loan or on hire shall remain the property of FotoFinder Systems GmbH. They must be clearly identified by Customer as property of FotoFinder Systems GmbH and may only be used for the agreed purposes.
- (2) Customer shall treat them with care and protect them against the access of third parties. Customer shall immediately inform FotoFinder Systems GmbH in writing in case of loss or damage as well as with seizure or other impairments through third parties. In cases of seizure or impairments Customer shall indicate the property of FotoFinder Systems GmbH.
- (3) Customer shall replace FotoFinder Systems GmbH all damages and costs that are generated by a possible violation of this obligation and hence necessary investment measures against accesses of third parties.

10. Warranty

- (1) This limited warranty covers defects in materials and workmanship in FotoFinder Systems GmbH branded hardware products as well as defects in FotoFinder Systems GmbH branded Software. This limited warranty does not cover the software of the operating system and third-party software, or the reloading of the software as well as hardware or software added to the FotoFinder Systems GmbH branded hardware products. It also does not cover non-FotoFinder Systems GmbH branded products and accessories. Moreover, it does not cover problems that result from external causes such as accident, abuse, misuse, or problems with electrical power, servicing that is not authorized by FotoFinder Systems GmbH, usage that is not in accordance with product instructions, failure to follow the product instructions or failure to perform preventive maintenance.
- (2) The product is free from defects as to quality if, upon the passing of the risk, the product is in the agreed quality. If the quality has not been agreed, the product is free from defects as to quality if it is fit for the use specified in the agreement, and otherwise if it is fit for the normal use and its quality is such as is usual in things of the same kind and can be expected by the customer by virtue of its nature.
- (3) WITHIN JUSTIFIED COMPLAINTS ALL THOSE PARTS OR PERFORMANCES HAVE TO BE REMEDIED, NEWLY DELIVERED OR NEWLY RENDERED FREE OF CHARGE AT THE DISCRETION OF FOTOFINDER SYSTEMS GMBH THAT DISPLAY A QUALITY DEFECT PROVIDED THAT ITS CAUSE ALREADY EXISTED AT THE TIME THE RISK WAS PASSED. THE EXPIRY OF THE FIXED TERM FOR NEWLY DELIVERED GOODS OR NEWLY CREATED WORKS WITH APPROPRIATE USE SHALL BE TWELVE MONTHS AFTER TRANSFER OF RISK TO CUSTOMER, WHEN THE LATTER IS A

MERCHANT UNLESS ANOTHER PERIOD IS STIPULATED BY MANDATORY LAW.

11 Liability

- (1) LIABILITY FOR ANY DAMAGES SHALL BE EXCLUDED TO THE EXTENT THEY ARE NOT EXPRESSLY DETERMINED IN THE AFOREMENTIONED PROVISIONS, ALSO TO THE EXTENT THEY DID NOT OCCUR ON THE DELIVERY ITEM ITSELF. FOTOFINDER SYSTEMS GMBH DO NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY (No. 10) OR FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. FOTOFINDER SYSTEMS GMBH LIABILITY WILL BE NO MORE THAN THE AMOUNT CUSTOMER PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM.
- (2) EXCLUDED FROM THIS SHALL BE DAMAGES CAUSED BY INTENTION OR GROSS NEGLIGENCE OF OWNER; EXECUTIVE OR VICARIOUS AGENTS OF FOTOFINDER SYSTEMS GMBH OR RESULTING FROM CULPABLY INFRINGEMENT OF RELEVANT CONTRACTUAL DUTIES. IN THE LATTER CASE, HOWEVER, LIABILITY SHALL ONLY BE ASSUMED FOR THE TYPICALLY OCCURRING, PREDICTABLE DAMAGE. FURTHERMORE, THE EXCLUSION OF LIABILITY SHALL NOT BE APPLICABLE IN CASES IN WHICH WITH DEFECTS OF THE DELIVERY ITEM, LIABILITY IS ASSUMED FOR INJURIES TO LIFE, BODY OR HEALTH OR FOR DAMAGES OF THINGS CAUSED BY PRIVATELY USED ITEMS.

12. Product modifications and descriptions

- (1) FotoFinder Systems GmbH reserves the right to modify the products at any time; however, it is not obligated to carry out such modifications to products already delivered.
- (2) The illustrations, dimensions, descriptions, technical details as well as packaging units indicated in the respective documents are not binding; FotoFinder Systems GmbH expressly reserves the right for modifications.

13. Software Copyrights and data storage

- (1) As far as software is built in the products of FotoFinder Systems GmbH, Customer shall receive from FotoFinder Systems GmbH a non-exclusive right for using the programs (licence).
- (2) In case that the order includes FotoFinder software these "General Terms and Conditions" shall be expanded by the provisions of the End User License Agreement (EULA) of the FotoFinder Systems GmbH. In case of conflicts between the provisions of EULA and these "General Terms and Conditions" the provisions of EULA shall take priority.
- (3) In case that the order includes software from other software manufacturers the customer is obliged to observe the licence condition of the respective software manufacturer.
- (4) The customer shall be responsible for data storage and data backup policy (eg. for regular backup jobs , backup consistency, backup recovery) in his own account. FotoFinder Systems GmbH shall not be liable for the loss of data neither to the customer nor to third parties.

14. Regulations on export

- (1) Customer is informed that the export of the supplied products, information, software and documents (jointly

referred to as Products) according to the relevant valid export regulations of the Federal Republic of Germany, the European Union and/or the United States of America – e.g. on the basis of their nature or intended use or end destination– may be subject to authorization or excluded and violations may be prosecuted. Therefore Customer shall guarantee that all national or international relevant export regulations are strictly observed and that any necessary authorizations are obtained. FotoFinder Systems GmbH shall label information, software and documentation in relation to obligations to obtain authorization pursuant to German and EU export control lists and U.S. Commerce Control List.

- (2) In the event the aforementioned obligations are violated by the Customer he shall indemnify FotoFinder Systems GmbH upon the initial request from any claims and compensate any damages which supplier or licensor of FotoFinder Systems GmbH, third parties or governmental and/or international authorities and/or organisations claim towards the FotoFinder Systems GmbH. On request, FotoFinder Systems GmbH shall name Customer the relevant contacts for further information.

15. Partial invalidity/ Place of jurisdiction/ applicable law

- (1) Should parts of these General Terms and Conditions be or become invalid, the validity of the remaining provisions shall not be affected; the same shall apply to the filling of loopholes of these General Terms and Conditions.
- (2) Exclusive place of jurisdiction shall be Passau, Germany. However, FotoFinder Systems GmbH shall reserve the right to assert his claims at any other permissible place of jurisdiction.
- (3) In addition, exclusively non-unified German law shall be applicable, notably the BGB/HGB. The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN Sales Convention) shall be excluded.