

**General Terms & Conditions of FELDBINDER UK Limited**  
for the Sale, Supply and Rental of New and Used Vehicles, including Railway Wagons  
for Service and Repair Work as well as for the Supply of Spare Parts and Services  
Update: 16 May 2011

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### 1. General

- 1.1 All contracts/work orders shall be accepted and performed only in accordance with the following Terms and Conditions to the exclusion of any other terms that the CUSTOMER seeks to impose or incorporate, or which are implied by trade, custom, practice or cause of dealing. The following Terms and Conditions also apply, without the need for an express agreement, to all future transactions between the parties as well as when FELDBINDER makes deliveries or performs services without any reservation in view of opposing or deviating terms and conditions by CUSTOMERS.
- 1.2 Documents containing trade and business secrets of FELDBINDER (e.g. price estimates, construction plans) may not be made accessible to third parties, in particular competitors, and must be returned upon demand; where applicable. FELDBINDER reserves any and all intellectual property rights and copyrights which may exist. A right of retention on the part of the CUSTOMER to these documents is excluded.
- 1.3 To the extent that FELDBINDER processes or employs any materials, spare parts or other items ordered by the CUSTOMER, the CUSTOMER shall provide FELDBINDER with written instructions regarding the proper use and handling of any such materials. The inspection of said materials by FELDBINDER upon their receipt does not relieve the CUSTOMER from its duty to ensure that said materials are suitable for their intended use nor from its general responsibility for such materials, spare parts or other items. The submission of a service and / or repair work order automatically authorises FELDBINDER to carry out test drives.
- 1.4 To the extent that these Terms and Conditions provide for the written form, this requirement shall also be satisfied by transmission using fax or electronic means.
- 1.5 The road vehicles (tanks and trailers, semi-trailers, container chassis), containers, railway vehicles (wagons), spare parts and any other deliveries and services of FELDBINDER which are the subject matter of the contract with the CUSTOMER, shall be referred to as **Subject Matter(s)** in these Terms and Conditions.

### 2. Offers and Prices

- 2.1 FELDBINDER's offers are non binding and subject to change without notice unless otherwise confirmed in writing.
- 2.2 All prices are understood to be the price charged for delivery ex FELDBINDER's works, with no prompt payment discount or any other such discounts, plus value added tax. Additional services (for example, transit costs) and any other costs (for example for transportation or packaging, loading, shipping and customs duties, bank charges) shall, if no other agreement exists, be borne entirely by the CUSTOMER.
- 2.3 Prices quoted by FELDBINDER are based upon the material and labour costs prevailing at the time an order is confirmed. In the event of a change of such costs between the time an order is placed and the scheduled delivery of that order, FELDBINDER shall retain the right to undertake the appropriate price adjustment after the expiration of four weeks after receipt of the order confirmation. FELDBINDER will prove the changes of such costs to the CUSTOMER upon its request. In the event that this adjustment leads to a price increase which exceeds either the general cost of living index or the current market cost of similar items by a significant amount, the CUSTOMER shall have the right to withdraw from the contract. Following acknowledgement of any such price increase, the CUSTOMER must inform FELDBINDER

of their intention to withdraw from the contract immediately in writing by registered post with a return receipt for proof of delivery. Failure to do so shall render the CUSTOMER's withdrawal null and void. The CUSTOMER's withdrawal from the contract shall also be deemed to be null and void if FELDBINDER, upon receipt of the CUSTOMER's withdrawal notice, promptly declares its intent to perform under the contract's originally agreed-upon price terms. This price adjustment clause shall not apply for railway vehicles.

- 2.4 Should performance under the contract commence more than four months after contract closing, and should FELDBINDER's list prices have changed during that interim period, FELDBINDER shall be permitted to request payment of a price which reflects the percentage change in FELDBINDER's price list without the CUSTOMER obtaining the right of withdrawal - that is, unless the parties had already agreed differently. This price adjustment clause shall not apply for railway wagons.
- 2.5 Price calculations have to be paid for according to the effort necessary to prepare such proposals.

### 3. Contract Conclusion and Content

- 3.1 The CUSTOMER is bound by the terms of its order for a period of four weeks.
- 3.2 The order shall only be deemed to be accepted by FELDBINDER if FELDBINDER has either confirmed their acceptance of the order in writing, or they have completed supply within the designated period at which point a binding contract shall come into existence. Any requirement of FELDBINDER for a signed copy of the confirmation of order to be returned shall only be for purposes of evidence.
- 3.3 The written order confirmation from FELDBINDER shall determine the nature and scope of FELDBINDER's duties, provided the CUSTOMER does not promptly contradict in writing the terms of the order confirmation. FELDBINDER shall separately point this out to the CUSTOMER when it sends the confirmation of order. In any case oral declarations are non-binding.
- 3.4 Particular specifications regarding vehicle performance, weight, capacity and payload, etc. shall govern as approximations within general industry tolerances. FELDBINDER reserves the right to make modifications and deviations respectively until delivery with respect to design, construction, material, colour and format as is customary in the trade.
- 3.5 All documents in connection with the deliveries and services of FELDBINDER (for example packing lists, instructions for use etc) shall only be in the English language unless otherwise expressly agreed in writing.
- 3.6 In the event it is discovered during manufacture, repair, assembly or modification work that the scope of work necessary exceeds that of the original offer, or additional structural components must be exchanged, the CUSTOMER's consent shall be obtained unless the additional costs are minor as compared with the amount of the original offer. In the event that the CUSTOMER does not consent to the additional measures recommended, the customer shall be obliged to compensate FELDBINDER only for work carried out and for all costs required to restore the Subject Matter to its original condition or to a generally road worthy condition, calculated in accordance with their hourly service rates and material costs.
- 3.7 FELDBINDER retains the right to request advance payment or provision of security in the event that, following contract closure, facts become known which question the CUSTOMER's reliability, in particular with respect to the CUSTOMER's ability to pay. FELDBINDER shall be entitled to rescind the contract if the CUSTOMER has provided false information regarding its credit worthiness, or when, based upon reliable information, the CUSTOMER's credit worthiness is objectively found not to exist. Any and all claims for compensation by the CUSTOMER arising from FELDBINDER's rescission from the contract are excluded.
- 3.8 If, at the request of the CUSTOMER after the conclusion of contract, FELDBINDER agrees to the cancellation of a contract, this shall only take place upon the payment of compensation in the amount of 20% of the net value of the contract by way of exception, which FELDBINDER and the CUSTOMER agree is a genuine pre-estimate of the loss suffered as a result

of such cancellation. Such cancellation may only take place on a goodwill basis and at the discretion of FELDBINDER; the CUSTOMER has no claim to the amicable cancellation of a contract.

#### 4. Legal Provisions for Exports

4.1 If a necessary export licence is not granted or the pre-requirements for an export licence which has already been granted subsequently fall away, without FELDBINDER being responsible for this, or if the CUSTOMER appears on a national or international sanctions list or appears after the conclusion of the contract, FELDBINDER is entitled to a right of rescission or cancellation of the contract. The CUSTOMER shall immediately inform FELDBINDER in writing of such relevant circumstances in this connection. The scheduling shall be reasonably postponed in proportion to the period of delay resulting from the subsequent examination of the pre-requirements.

4.2 If FELDBINDER makes use of its right of rescission or right of cancellation pursuant to **clause 4.1**, the CUSTOMER is liable for any direct and indirect damages (including but not limited to loss of profit, penalties, costs of litigation etc), arising to FELDBINDER as a result of the early termination of the contract. In this case, the CUSTOMER is not obliged to provide any consideration and shall receive back from FELDBINDER any payments already made, as far as FELDBINDER does not set-off such amounts with possible counterclaims; the CUSTOMER is not entitled to any further claims against FELDBINDER, in particular no claims for damages.

4.3 The goods to be delivered by FELDBINDER are designed for disposition in the country for delivery agreed with the CUSTOMER. The CUSTOMER is obliged to consider whether the re-export of the goods is subject to the laws on foreign trade and payments and export control provisions of the United Kingdom, the country of delivery as well as, where applicable, other countries, and whether the CUSTOMER can be obliged to obtain a licence. The CUSTOMER is obliged to inform himself in each case of the decisive law on foreign trade and payments and where applicable to apply for and obtain the necessary licences and FELDBINDER takes no responsibility in this regard.

4.4 The CUSTOMER is exclusively responsible for compliance with all import provisions and permits as well as for obtaining any technical permissions, operation permits etc. in relation to the Subject Matter required in countries outside the United Kingdom. The non-grant of permissions, approvals etc. which may be required for the use outside of the United Kingdom shall not in particular constitute a defect or grounds for rescission or avoidance of the contract by the CUSTOMER. Upon request however, FELDBINDER will assist the CUSTOMER with obtaining the permissions etc. by making available documentation concerning the Subject Matter; any costs thereby arising (e.g. for translations, certifications etc.) shall be borne by the CUSTOMER.

#### 5. Delivery, CUSTOMER's obligations to cooperate

5.1 Scheduled delivery dates by FELDBINDER are always non-binding estimates only, unless delivery delays or delivery dates are expressly marked as binding in the order confirmation. Absolute fixed dates must be marked with a respective suffix.

5.2 The CUSTOMER shall collect the Subject Matter from FELDBINDER's premises at Sutton Bridge Spalding (Lincolnshire) or such other location as the parties may agree in writing (the "**Delivery Location**"). Delivery of the Subject Matter shall be completed on surrender to the CUSTOMER (or an authorized representative of the CUSTOMER) of the Subject Matter at the Delivery Location.

5.3 Delivery periods shall commence only after receipt of all documents pertaining to the order, payment of any deposits as agreed, presentation of a confirmation of financing and total clarification of all technical details or the delivery periods shall be postponed respectively if the above-mentioned acts of cooperation are not carried out as agreed. In this case the new delivery period can also be postponed for longer than the delay of the act of cooperation by the CUSTOMER. Subsequent changes to a contract will likewise automatically result in an appropriate postponement of the scheduled dates.

5.4 If the CUSTOMER does not carry out the acts of cooperation which are required for the manufacture of the Subject Matter (e.g. notification of vehicle specifications, clarification of technical details), FELDBINDER may after the expiry of a reasonable period to no avail, withdraw from the contract and/or claim damages including the lost profit.

5.5 In the event that a non-binding delivery date or delivery deadline remains unfulfilled for longer than four weeks, the CUSTOMER may request in writing delivery by FELDBINDER within a reasonable period of time. Upon expiration of this delivery deadline FELDBINDER shall be in delay, unless FELDBINDER is not responsible for the non-performance.

5.6 FELDBINDER's duty to perform is suspended in case of force majeure (in particular disruptions in the ordinary course of business or of traffic, disturbances in shipment, business interruptions due to technical requirements, war, strike, lock out, insufficient delivery of supply items, administrative legal measures or similar events) for which FELDBINDER is not responsible, as well as incorrect or late supplies being made to FELDBINDER to the extent FELDBINDER is not responsible. In this case, FELDBINDER must inform the CUSTOMER without delay of the unavailability of the service. In these cases FELDBINDER is entitled to postpone its performance, for as long as such events continue, however, up to a maximum of four months. In case of a permanent disturbance of the performance or if the disturbance lasts more than four months, FELDBINDER is entitled to withdraw from the contract either in whole or in part. In the event of withdrawal from the contract, the CUSTOMER is not obliged to pay any consideration, and any advance payments shall be paid back to the CUSTOMER without delay. FELDBINDER shall have no liability for any failure to deliver the Subject Matter to the extent that such failure is caused by a Force Majeure event described in this **clause 5.6**.

#### 6. Acceptance / Duty to Inspect and Give Notice of Defects

6.1 The CUSTOMER has the obligation, within 14 days of receipt of the notice of completion, to inspect the Subject Matter personally or by a third person instructed to do so at the FELDBINDER works with respect to defects, and to accept delivery. The acceptance cannot be refused for immaterial defects.

6.2 Obvious defects must be notified by the CUSTOMER to FELDBINDER without delay, at the latest, however, within 8 working days in the United Kingdom of acceptance. Latent defects must be notified by the CUSTOMER to FELDBINDER in writing without delay, at the latest however, within 8 working days of the discovery of the defect. To the extent there is a breach of this duty to give notice of defects, the right to assert a warranty claim is excluded.

6.3 The Subject Matter shall be deemed to be accepted or approved respectively when the CUSTOMER fails to accept or inspect, respectively, the subject matter within the 14 day deadline set out in **clause 6.1**.

6.4 In the event of the CUSTOMER not fulfilling its duty to accept delivery within the 14 day period following receipt of the notice of completion, and this non-acceptance amounts to a breach of a duty, FELDBINDER shall be entitled, upon expiry of an appropriate grace period to be established in writing, to withdraw from the contract. Granting of a grace period shall not be required if the CUSTOMER seriously and definitely, refuses to accept delivery. Further claims by FELDBINDER shall remain unaffected.

6.5 In the event that the CUSTOMER is in default of its duty to accept, FELDBINDER is entitled to claim compensation for additional expenses arising as a result, or at its option 0,1 % of the net invoice amount for each commenced week, as lump sum reimbursement of expenses. During the period in which the CUSTOMER delays acceptance, FELDBINDER shall only be liable for intentional acts and acts of gross negligence. Any possible claims for compensation by FELDBINDER for culpable breaches of (ancillary) obligations by the CUSTOMER shall not be affected.

6.6 **Clause 6.5** shall apply correspondingly to the wrongly-timed calling of deliveries, to the extent that delivery on call is agreed, as well as to failure of the CUSTOMER to carry out any required cooperation, e.g. if the CUSTOMER does not make available specifications or the truck which are necessary for the completion of the Subject Matter.

6.7 If at the request of the CUSTOMER after payment FELDBINDER stores the Subject Matter free of cost on its premises, the risk of accidental loss and accidental damage to the Subject Matter shall pass to the CUSTOMER on the originally agreed date of acceptance. During such storage period, FELDBINDER shall only be liable for intentional acts and acts of gross negligence.

## 7. Risk Transfer

- 7.1 Upon completion of delivery in accordance with **clause 5.2** or acceptance in accordance with **clauses 6.1, 6.3** (whichever is earlier), the risk of accidental loss, destruction or deterioration passes to the CUSTOMER. The Subject Matter shall only be insured by FELDBINDER if a special agreement is made and at the expense of the CUSTOMER.
- 7.2 **Clause 7.1** shall also apply, if FELDBINDER bears delivery costs of the Subject Matter as agreed upon.

## 8. Payment Terms

- 8.1 Within one week after receipt of the order confirmation from FELDBINDER the CUSTOMER shall pay 40 % of the invoiced amount. The entire remainder is due upon acceptance or within 10 days from the date of the invoice, according to which takes place first. Time of payment is of the essence. Invoices for spare parts and repairs are due upon delivery of the parts or upon acceptance of the repaired item respectively according to which takes place first. FELDBINDER is then first obliged to perform if the CUSTOMER has completely fulfilled its payment obligations including any possible additional requirements.
- 8.2 The acceptance of payment orders, checks, or promissory notes shall always be deemed on account of performance. A duty to accept these means of payment shall not exist. Collection fees and discount charges shall be borne by the CUSTOMER.
- 8.3 If the CUSTOMER fails to make any payment due to FELDBINDER under the contract by the due date for payment then the CUSTOMER has to pay interest on the overdue amount of 8 percent per annum over the Bank of England's base rate. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Any further rights to claim for damages on the part of FELDBINDER shall remain unaffected.
- 8.4 Payment by instalments shall not be accepted by FELDBINDER in principle unless the Parties have expressly made a written agreement for payment by instalments. In the event that instalment payments are agreed - regardless of the respective maturity of any promissory notes - any remaining balance owing shall become due immediately and payable in full if the CUSTOMER falls behind with payment of an instalment for more than 7 days, if the CUSTOMER suspends its payments, or if insolvency proceedings are filed against the assets of the CUSTOMER.
- 8.5 In the event that the CUSTOMER falls behind with payments - in the event of agreed instalment payments with two successive instalments or an amount which equals the total of two partial payments - FELDBINDER shall, upon notifying the CUSTOMER and acting in its sole discretion, be entitled to fix a reasonable grace period for payment. Following the unsuccessful expiry of the grace period, FELDBINDER shall be entitled to withdraw entirely from the contract and/or to assert a claim for damages against the CUSTOMER. The fixing of a grace period shall not be required if the CUSTOMER, seriously and definitely, refuses payment or is obviously unable to pay the purchase price within the grace period.

## 9. Retention of Title

- 9.1 Title to the Subject Matter shall not pass to the CUSTOMER until FELDBINDER has received payment in full (in cash or cleared funds) for:
- a) the Subject Matter; and
  - b) other goods or services that FELDBINDER has supplied to the CUSTOMER or their related entities, including all interest and other costs due and payable.
- 9.2 Until title to the Subject Matter has passed to the CUSTOMER, the CUSTOMER shall:
- a) hold the Subject Matter on a fiduciary basis as FELDBINDER's bailee;
  - b) store the Subject Matter separately from all other goods held by the CUSTOMER so that they remain readily identifiable as FELDBINDER's property;
  - c) maintain the Subject Matter in satisfactory condition; and
  - d) notify FELDBINDER immediately if it becomes subject to any insolvency event,
- but the CUSTOMER may resell or use the Subject Matter in the ordinary course of its business.
- 9.3 If the CUSTOMER is the subject of any insolvency event or if FELDBINDER reasonably believes that any insolvency event is

about to happen in relation to the CUSTOMER and notifies the CUSTOMER accordingly, the CUSTOMER fails to make payment when due in accordance with the contract or otherwise breaches these Terms and Conditions FELDBINDER may demand the immediate return of the Subject Matter. Without limitation to any other right or remedy FELDBINDER may have, the CUSTOMER shall deliver up the Subject Matter and if the CUSTOMER fails to do so promptly, FELDBINDER may enter any premises of the CUSTOMER or of any third party where the Subject Matter is being stored in order to recover them.

- 9.4 All costs incurred with respect to FELDBINDER's repossession of the Subject Matter shall be borne entirely by the CUSTOMER.
- 9.5 In the event that FELDBINDER supplies a vehicle bodywork or vehicle accessories (for example, load supports, cooling systems), their retention of title to the Subject Matter shall exist if the said item can be removed from the (railway) vehicle or its sub frame or undercarriage, respectively (hereinafter "**Vehicle(s)**") in such a way that the removal does not destroy the bodywork or the Vehicle or change their fundamental characteristics and the Subject Matter retains its identity. In such a case the CUSTOMER hereby acknowledges that the Subject Matter is not nor will not be an integral part of the Vehicle.
- 9.6 In case of third party possession, especially in case of a seizure of the Subject Matter or a use of the contractor's lien by a workshop, the CUSTOMER shall immediately inform FELDBINDER thereof in writing, and shall inform the third party without delay of FELDBINDER's retention of title. The CUSTOMER shall bear all necessary expenses incurred for terminating any such possession and for efforts to reacquire possession of the Subject Matter, to the extent that said costs cannot be recovered from any third parties.
- 9.7 Repairs that become necessary are to be carried out immediately by FELDBINDER or by a workshop approved by FELDBINDER to care for the Subject Matter, unless there is a case of emergency.
- 9.8 The CUSTOMER shall, for the duration of the retention of title, take out fully comprehensive vehicle insurance cover with an appropriate level of excess or, in case of railway vehicles, a comparable insurance, providing instructions that all rights under the insurance contract are due to FELDBINDER. In the event that the CUSTOMER fails to meet this obligation immediately, FELDBINDER may take out fully comprehensive insurance at the CUSTOMER's expense, advance all insurance premium costs, and recover the said insurance premium costs from the CUSTOMER as part of the claim under the contract. Unless otherwise agreed, all benefits arising from the fully comprehensive vehicle insurance are to be used entirely for the repair of the Subject Matter. In the event that FELDBINDER renounces a repair in case of serious damage, insurance benefit shall be used for the repayment of FELDBINDER'S claim, the costs of all additional services and for repayment of costs advanced by FELDBINDER. The CUSTOMER hereby assigns its possible additional claims against the insurance to FELDBINDER.
- 9.9 The CUSTOMER is obliged to pay and/or reimburse all costs which could possibly be incurred by FELDBINDER in connection with the Subject Matters under retention of title, for example (without limitation) taxes, liability for damages in connection with the operation of the Subject Matters etc.
- 9.10 Notwithstanding any ongoing legal provisions, FELDBINDER shall be granted a right of retention and a lien also based upon prior work, prior spare part deliveries or other prior performance enforceable against all items of the CUSTOMER that came into FELDBINDER's possession by the order insofar as it relates to the Subject Matter or a permanent business relationship exists with the CUSTOMER. In the event of an enforcement of said lien, notice in writing delivered to the CUSTOMER's last known mailing address shall be deemed sufficient for the threat with sale of a lien.
- ## 10. Warranties / Liability for Defects
- 10.1 Only FELDBINDER's product description shall apply as the agreed composition of the Subject Matter. Public statements, recommendations or advertising by FELDBINDER or third parties shall not represent any indication of the composition of the Subject Matter as per the contract. Warranty claims by the CUSTOMER cannot be made in relation to the modifications customary in trade referred to in **clause 3.4**.

- 10.2 In the event of the CUSTOMER's breach of the duty to inspect and give notice of defects according to **clause 6.2**, the assertion of any warranty claims by the CUSTOMER is excluded in this respect. FELDBINDER shall be entitled to inspect any items noticed as defective themselves, or to have said items inspected by experts.
- 10.3 Insofar as a defect exists which has been notified within the correct time limits prescribed in **clause 6.2**, FELDBINDER is entitled at its option to remedy the defect within a reasonable deadline by undertaking warranty repairs or by delivering a non-defective replacement for the Subject Matter. In the event that the remedy is ineffective, the CUSTOMER is entitled at its option to require either a reduction in the purchase price or the cancellation of the contract. The CUSTOMER has no cancellation rights in the case of immaterial defects. Furthermore, FELDBINDER shall be liable for possible claims for compensation from the CUSTOMER arising from or in connection with the defects in the Subject Matter, solely in accordance with the provisions of **clause 13**.
- 10.4 If FELDBINDER opts to remedy the defect by warranty repairs, the following shall apply:
- In principle, FELDBINDER is allowed two attempts at warranty repairs;
  - The CUSTOMER may only submit claims for warranty repairs directly to FELDBINDER or to an agreed service centre approved by FELDBINDER for such service;
  - Parts replaced in the course of the warranty repairs shall become the property of FELDBINDER;
  - In the event that a Subject Matter should become inoperational as a result of a warranty defect, the CUSTOMER shall turn to the service centre approved by FELDBINDER to care for the service that is closest to the inoperational Subject Matter. Said service centre shall determine whether the required repairs are to be performed on the spot or at the service centre's workshop;
  - FELDBINDER shall bear the costs of all those expenses that become necessary for remedial purposes. To the extent that the expenses increase disproportionately e.g. because the Subject Matter - contrary to its intended use - has been moved by the CUSTOMER to another location, FELDBINDER can refuse to carry out the remedies; in this case the CUSTOMER shall be entitled to the same rights as those which apply where the remedy is ineffective (**clause 10.3**);
  - With respect to remedies of third-party vehicle bodyworks being Subject Matter of the contract, the CUSTOMER shall at FELDBINDER's demand first turn to the third-party manufacturer of the vehicle bodywork. Likewise, with respect to warranty defects of tyres, wheels, cooling equipment, brake parts, vehicle load supports, axles, axle assemblies, or similar items, the CUSTOMER shall at FELDBINDER's demand first turn to the respective third-party manufacturer or their approved service centre - in this case FELDBINDER assigns any potential warranty claims against third-party manufacturers to the CUSTOMER. In the event that potential warranty claims assigned by FELDBINDER are barred by the statute of limitations, or the third party manufacturer fails to fulfil its obligation to remedy within a fixed grace period prescribed by the CUSTOMER, said rights may be asserted against FELDBINDER insofar as the CUSTOMER reassigns said potential warranty claims back to FELDBINDER. This provision shall also apply correspondingly to used spare parts provided by FELDBINDER which FELDBINDER has obtained from a supplier.
- 10.5 The provisions of this **clause 10** also apply to repairs and service work carried out by FELDBINDER and any repaired or replacement Subject Matter supplied by FELDBINDER.
- 10.6 Without prejudice to applicable statutory provisions, FELDBINDER is granted a right of retention and lien on the item subject to repair which also includes prior work, prior spare part deliveries and other prior services to the extent that they, the services, relate to the item subject to repair or a permanent business relationship with the CUSTOMER exists. In relation to the threatened sale of a lien, **clause 9.11** shall apply.
- 10.7 The warranty claim of the CUSTOMER shall expire to the extent that a loss has arisen or increased because the Subject Matter, despite FELDBINDER's request, has not been delivered to FELDBINDER's own production facility within one week after FELDBINDER has received the CUSTOMER's notice of defect.
- 10.8 Warranty claims by the CUSTOMER shall be excluded, to the extent that defects are causally related to any of the following occurrences, such that
- the CUSTOMER failed to provide notice of the defect and an opportunity to repair said defect without delay in accordance with **clause 6.2**;
  - the Subject Matter was used or handled improperly, or was placed under excessive performance demands, e.g. product overload;
  - the CUSTOMER failed to follow the prescribed requirements regarding the proper use, handling, care and maintenance of the Subject Matter (e.g. those contained in the operating instructions);
  - the Subject Matter was modified, parts were changed, or consumable materials were used which do not meet the original specifications, if the CUSTOMER does not prove wrong a substantiated assertion that the purported defect was caused by one or more of the above stated circumstances.
- 10.9 The wear and tear according to regulation of so called wearing parts like tyres, wheels, disc brakes, brake pads, filter elements, shut off valves, seals, delivery hoses, aeration systems etc., is excluded from the liability for defects.
- 10.10 In the event that the CUSTOMER receives defective installation instructions, FELDBINDER shall only be obliged to supply installation instructions free of defects and this only in the event that the defect in the installation instructions is an obstacle to the proper installation.
- 10.11 Subject to **clause 13.1**, the right of the CUSTOMER in respect of any claim for a breach of warranty shall only be enforceable within one year from the date of acceptance of the Subject Matter.
- 10.12 The sale of used vehicles or other used Subject Matter is made under the exclusion of any liability for defects without prejudice to FELDBINDER's liability for damages under **clause 13**. CUSTOMER claims based on fraudulent concealment of defects remain unaffected.
- 10.13 Except as set out in these Terms and Conditions all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.
- ## 11. Rental
- 11.1 In the event of rental the CUSTOMER is obliged, prior to transfer of possession, to inspect the Subject Matter or hired item, respectively, with respect to functioning.
- 11.2 The CUSTOMER is obliged to use the hired item only in compliance with all traffic regulations (especially the respective valid rules of the road or railway traffic, respectively). The hirer is obliged to use the hired item only within its usual field of application and in compliance with its technical features (e.g. permissible loading capacity).
- 11.3 The CUSTOMER is obliged to use and handle the hired item properly and at its own cost keep said item in a roadworthy condition as well as secure it amply against theft. In the event of longer use the CUSTOMER is obliged, following agreement with FELDBINDER, to carry out the necessary servicing work at its own cost. FELDBINDER shall be notified without delay of any damage incurred to the hired item.
- 11.4 FELDBINDER shall be notified in writing without delay of any accident with the hired item. In the event that persons are injured or considerable damage is incurred to the hired item or to items of the CUSTOMER or a third party, the police shall be informed immediately and shall be instructed to draw up a report. The police reference number shall be provided to FELDBINDER without delay. This obligation shall also apply in the event of theft of the hired item. Even in the event of minor damages as well as theft the CUSTOMER shall provide FELDBINDER with a detailed report and a presentation of a sketch. The report on the accident or theft must in particular contain names and addresses of all involved persons and possible witnesses.
- 11.5 Only the CUSTOMER is allowed to use the hired item. The CUSTOMER is not allowed to permit the use to a third party.
- 11.6 Upon expiration of the rental period the CUSTOMER is obliged to return the hired item to FELDBINDER to the agreed place. Unless otherwise agreed the place of return shall be the

registered office of the respective FELDBINDER company. An extension of the rental period requires the written consent of FELDBINDER prior to expiration of the said period.

- 11.7 In the event that the hired item is not returned on time the CUSTOMER shall pay FELDBINDER EUR 500.00 for every day commenced after the agreed day of return, however, up to a maximum of EUR 20.000,00. Possible claims for damages by FELDBINDER shall thereof remain unaffected.

## 12. Sale to Leasing Companies

In the event of the sale of subject matter to a leasing company these General Terms and Conditions shall apply with the following proviso:

- 12.1 The leasing company becomes FELDBINDER's sole contractual partner. Any changes to the legal relationship between the leasing company and the lessee, for example, the cancellation of a promise of financing for the lessee, shall not affect the validity of the contract between FELDBINDER and the leasing company.
- 12.2 The leasing company is already entitled before the complete payment of FELDBINDER's claims (in terms of **clause 9.1**), to let the lessee have possession of the Subject Matter which is still subject to a right of retention; the leasing company may also demand that FELDBINDER performs its contractual obligations directly to the lessee.
- 12.3 FELDBINDER already grants its consent in advance to the assignment of the warranty rights of the leasing company contained in the contract with FELDBINDER to the lessee.
- 12.4 After the surrender of the Subject Matter to the lessee the leasing company is, inter alia, also liable for the duration of the reservation of title for the performance of the contractual obligations in terms of **clause 9** by the lessee. This also applies, in case of road vehicles, for example to the obligation to make the vehicle registration documents available to FELDBINDER throughout the duration of the reservation of title.
- 12.5 If a leasing company joins in with a contract with FELDBINDER's consent after the conclusion of the contract, the lessee remains obliged under the contract alongside the leasing company.

## 13. Liability

- 13.1 Nothing in these Terms and Conditions shall limit or exclude FELDBINDER's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation;
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - defective products under the Consumer Protection Act 1987; or
  - any matter in respect of which it would be unlawful for FELDBINDER to exclude or restrict liability.
- 13.2 Subject to **clause 13.1**:
- FELDBINDER shall not be liable to the CUSTOMER, whether in contract (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract;
  - the liability of FELDBINDER for gross negligence as well as negligent breaches of essential contractual obligations shall be limited to the foreseeable damage which is typical for this type of contract;
  - with respect to the additional contents of the respective vehicle or the vehicle's accessories or equipment, FELDBINDER shall only be liable to the extent that said items were delivered especially to FELDBINDER for safekeeping;
  - in particular, FELDBINDER shall not be liable for damages to the extent this is caused by the improper handling of the Subject Matter by the CUSTOMER;
  - vehicle scales are properly calibrated before the hand-over of the Subject Matters or vehicles, respectively. The liability of FELDBINDER for damages caused by the incorrect calibration of the vehicle scales after the hand-over of the vehicle is excluded in cases of negligence on the part of FELDBINDER;
  - insofar as the liability pursuant to the preceding provisions is limited, such limitation shall also apply to the personal liability

of employees, workers, co-workers, representatives and assistants of FELDBINDER;

- FELDBINDER shall also not be liable for the negligence of its ordinary employees;
- the CUSTOMER shall be obliged to give notice without delay of all damages and losses for which FELDBINDER is to be held answerable; and
- FELDBINDER's total liability to the CUSTOMER in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise (including losses caused by a deliberate breach of contract by FELDBINDER, its employees, agents or subcontractors) shall not exceed the net price of the Subject Matter.

## 14. Manufacturer's Signs to be Affixed to the Subject Matter

FELDBINDER is entitled to affix the following company signs or stickers to the subject matter in a clearly visible position:

- A company sign "FFB" to be welded onto the subject matter, dimensions approx. 23.35 x 22.55 cm;
- A diamond-shaped sticker bearing the company logo "FFB" with dimensions of approx. 30 and 21 cm;
- A diamond shaped company sign bearing the logo "FFB" to be welded on. Dimensions approx 14.09 and 20.13 cm;
- A sticker with the text "www.feldbinder.com". Dimensions approx. 90 x 8 cm;
- Company sign „FFB FELDBINDER“ (with a banner), sticker in a diamond /asymmetrical shape; dimensions approx. 74 and 21.9 / 11.6 cm;
- As well as any similar company signs or stickers.

## 15. Miscellaneous

- 15.1 FELDBINDER shall be entitled to use data concerning the exchange of purchased items and payments with the CUSTOMER in compliance with the respective data protection provisions.
- 15.2 The contract and any dispute or claim arising out of or in connection with it or its Subject Matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the courts of England and Wales shall have jurisdiction to settle any claim, dispute or issue between the parties whether arising out of or in connection with this contract or otherwise (including non-contractual claims). In the case of a dispute which is the subject of a claim by FELDBINDER such jurisdiction shall be non-exclusive. In any other case such jurisdiction shall be exclusive.
- 15.3 A person who is not a party to the contract shall not have any rights under or in connection with it.
- 15.4 Any transfers or assignments of CUSTOMER rights and duties arising under the contract shall require the written consent of FELDBINDER. FELDBINDER may at any time transfer or assign or deal in any other manner with all or any of its rights or obligations under the contract.
- 15.5 The CUSTOMER shall be allowed to set-off claims or assert a right of retention withholding against claims asserted by FELDBINDER only if the alleged counterclaim is undisputed or declared legally binding. FELDBINDER may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the CUSTOMER against any amount payable by FELDBINDER to the CUSTOMER.
- 15.6 All agreements are to be made in writing. Any amendments or additions to these General Terms and Conditions – including this written form requirement - shall be made in writing (see **clause 1.4**) to the extent that there is no stricter form required by statute for the validity of the provisions. The same shall apply to side letters and supplementary agreements.
- 15.7 Should one or more provisions of these General Terms and Conditions be, or become legally invalid, illegal or unenforceable that provision or part provision shall, to the extent required by deemed to be deleted and the validity and enforceability of the other provisions of the contract shall not be affected. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.