

# General Terms and Conditions of FISCHER Mess- & Regeltechnik GmbH, Bad Salzflun, Germany (January 2013)

## 1 General

- 1.1 The following sale and delivery conditions apply to all our offerings, deliveries and services including information and advice. Repair orders apply only to figures 1, 2, 3, 4, 6, 7, 8 and 10. Also our sale and delivery conditions apply to all future business relationships between customers and us even if they are not referred to explicitly during contract conclusion. The actual version during conclusion of the contract is decisive; it is sent to the customer on demand. Other conditions than these do not apply even if we do not disagree explicitly.
- 1.2 Any variations to these terms of contract, our contract offerings in written form as well as other agreements with the customer are only effective if and only if these are confirmed by us in written form. Our employees - unless it is an authorized shareholder or signatory - have no authority to conclude contracts and are only authorized to receive written offers. They are in particular not authorized to make binding commitments and assurances about the contract or delivery and are not entitled to collect.

## 2 Delivery – Size of Order

- 2.1 Our offers are subject to change unless otherwise agreed. Offers by the customer are binding and may be accepted by us within two weeks from entry.
- 2.2 Only our written confirmation of an order prevails the scope of delivery and services owed under the contract. Drawings, illustrations, dimensions, weights or other performance data in brochures, newsletters, price lists, other publications or in our offerings and/or the corresponding documentation are for descriptive purposes only and are not legally binding; particularly the information does not constitute any legal warranties. They are only approximately decisive.
- 2.3 For customized versions  $\pm 5\%$  changes of the quantity ordered are tolerable, as far as this cannot be avoided for technical reasons and is reasonable for the customer.
- 2.4 We reserve the right for changes of the design, choice of materials, specifications and construction method after sending the order confirmation if these changes serve technical process and are reasonable for the customer.

## 3 Delivery Time

- 3.1 We are entitled to partial delivery and performance.
- 3.2 In any case the period of delivery and performance starts running once all details regarding the execution of the order are agreed and the customer provided all information, data, test unit and all parts to be provided according to the contract and – if agreed – made a deposit. If we detect any defects we will inform the customer without delay. If the customer is behind with payments or actions, eventually agreed periods of delivery and performance are delayed for the default period.
- 3.3 If we do not perform our services within the agreed time, the customer can withdraw from the contract or claim compensation if and only if we are responsible for the delay, the customer set an adequate period of grace of at least 30 days and this time is elapsed unsuccessfully.
- 3.4 Unpredictable and inevitable incidents (war and warlike events, shortage of raw materials or energy, sabotage, strike, lawful lockout as well as all other holdups or regulatory actions we are not responsible for) relieve us from the duty to deliver and perform for the period of their presence. This applies also to already existing delays. Periods of delivery and delivery dates are prolonged by these incidents to an adequate extent. This applies also to deliveries or services of our suppliers not in time or not in proper form we are not responsible for. If these incidents last for more than six weeks the customer may withdraw from the contract. The same applies to a rescission by us.

## 4 Prices – Terms of Payment

- 4.1 Unless a fixed price is expressly agreed, the prices specified by us are based upon our actual costs at the order confirmation date. If there is a cost increase caused by rising material prices or a boost in wages, we reserve the right to calculate the price anew at the delivery date in the event that the delivery takes place more than four months after the order confirmation date and provided that the price adjustment in consideration of our interests is reasonable for the customer. If no order confirmation is given the purchase order date is effective.
- 4.2 The prices given in the price list valid at the respective date of conclusion of the contract apply to all orders according to our catalogue, brochures and price lists unless otherwise expressly agreed in written form. We equip the customer with the valid price list on request.
- 4.3 Our prices are quoted ex works and do not include packaging. The legal value added tax is not included in the prices and is added in its respective amount at the delivery or performance date.
- 4.4 Unless otherwise agreed in written form all payments, subject to the provisions of 4.8, are payable in full and free of transaction charges to the designated account within 30 days from billing date. We allow cash discount of 2 per cent if the payment is receipt within 10 days; we do not allow cash discount for payments using credit card or „Purchasing Card“.
- 4.5 Bills of exchange and cheques are accepted only on account of performance. Acquittance by bill of exchange or cheque payment is not done until the respective amount is booked irrevocably to us at our bank. The same applies to payment done by credit card or Purchasing Cards. All transaction fees for bills of exchange and cheques and all discount charges as well as all other costs are for the customer's account.
- 4.6 The customer has the right to offset only if his counterclaim is legally decided, undisputed or accepted by us. Only in these cases the customer has the right to assert the right of retention. Retention because of counterclaims which are not based on the same legal relationship is excluded.
- 4.7 The assignment of all customer's claims against us to a third party require our explicit agreement in written form to be valid unless it is a claim for money.
- 4.8 If circumstances become known to us after conclusion of contract which call the customer's credit standing into question like e.g., the initiation of a insolvency proceeding, slow payment, adverse information or delay at previous deliveries, we are entitled to refuse the performance of the contract until adequate collateral is made to us whereat eventual delivery or performance periods are extended accordingly. Further we are entitled to take cash on delivery. In the event that we already have delivered in such cases, we are entitled to demand immediate payment of our invoice notwithstanding article 4.4. In the event that the customer does not fulfill our demand for collateral within reasonable time, we are entitled to withdraw from the contract. In these events the customer is not entitled to claim for compensation.
- 4.9 If the customer defaults all or part of his duty of payment we will charge interest of 5 per cent, respective after the issue of a demand note an interest of 4 per cent above the actual bank rate of the European Central Bank with reservation of our entitlement for further claims.

## 5 Passing of Risk – Packaging

- 5.1 The risk of accidental loss or incidental deterioration of goods is transferred to the customer at delivery ex works. This applies to partial delivery or in the event that we accept further service like shipping or shipping costs as well. Thereby we choose the shipping method and dispatch route which seem favorable.
- 5.2 The customer is bound to accept deliveries with negligible defects.
- 5.3 In the event that the customer is in default of acceptance we are entitled to claim for compensation. In such cases the risk of accidental loss or incidental deterioration is transferred to the customer at the moment the readiness for dispatch is announced.

## 6 Warranty

Our warranty is carried out due to statutory provisions in accordance with the following regulations:

- 6.1 Our warranty covers only items which are applied appropriately according to our specifications. The warranty is void in the event that a defect is caused by chemical, physical or thermal influencing variables which are unusual and which were not pointed out towards us at conclusion of the contract. The same applies in the events that repair or changes of the item carried out by a third party caused defects.
- 6.2 The warranty is excluded in the event that the value and the capability of the item show negligible defects as well as in the event that negligible quantity deviations occur.
- 6.3 Despite legal investigation and notice obligations among business people apparent defects have to be notified in written form within 8 days after receipt of goods. Latent defects have to be notified immediately after detection otherwise the warranty become void.

- 6.4 After detection of a defect the customer shall send the defective item to us.
- 6.5 In the event that the item shows a defect we will either eliminate the defect or send a replacement at our choice. The customer shall grant us an additional time of at least 30 days.
- 6.6 In the event that the supplementary performance is not successful after the end of the term, the customer may claim compensation or reimbursement of expenses, claim decrease, withdraw from the contract or – for repair orders – eliminate the defect by himself at our expense within the provisions of the law in accordance with article 7.
- 6.7 As far as the customer is entitled to the preceding mentioned rights in addition to the supplementary performance he shall be bound to announce at our demand within the period of 14 days if and how he will make use of these rights. In the event that he does not declare in due time or in the event that he insists on supplementary performance, the customer is entitled to the right of asserting further claims not until the supplementary performance is not successful after the end of at least 30 days. In the event that it turns out we are not able to keep the term already during an additional respite the preceding applies accordingly.
- 6.8 Only the customer is entitled to claim warranty, transfer to third parties is excluded.
- 6.9 Costs caused by unjustified claims must be beard by the customer.

## **7 Limitation of Liability**

- 7.1 We are fully liable for our customer's losses within the limits of statutory regulations in the event that our agencies or our chief executive are charged with intent or gross negligence. Furthermore we are liable in the event that we fail to comply with essential contractual obligations in their performance the customer may trust notably even in the event of slight negligence. In the event that we fail to comply with essential contractual obligations and in the event that auxiliary persons who are not in the status of a chief executive are charged with intent or gross negligence we are liable only in the amount of the typical loss in consideration of all decisive and recognizable circumstances. Liability for consequential losses like e.g., loss of profit, missed savings and other indirect loss and for registered data is excluded. We are not liable for slight negligence of simple contractual obligations.
- 7.2 The preceding limitations of liability cover all claims for loss independent of the legal basis. However they do not apply to damage by loss of life, bodily harm or injury to health. Also the liability according to the Product Liability Act and the acceptance of a guarantee of quality and durability remain unaffected.
- 7.3 The preceding limitations of liability apply also for the benefit of our personnel and third parties assigned by us.

## **8 Dangerous Working Materials**

- 8.1 The customer commits to observe the Ordinance on Hazardous Substances in its respective actual amendment strictly for deliveries of repair goods and returns.
- 8.2 The customer shall pack and mark particularly instruments which are filled with dangerous working materials or encountered them as well as he shall point out explicitly the contact to dangerous working materials in the written repair order in terms of directive 91/155/EEC and – as far as reasonable – provide a material safety data sheet acc. to the directive.
- 8.3 We may decline accepting and repairing of instruments in terms of this paragraph 2 with reference to the connection to dangerous working materials at any time and without restrictions as far as these instruments are not produced by us and are to be safeguarded by us by law. Claims for compensation of any kind towards us are excluded.
- 8.4 We explicitly reserve the right to claim for loss due to non-observance of the regulations for dangerous working materials.

## **9 Retention of Title**

- 9.1 We remain in ownership of delivered goods until full payment of all generated accounts receivable at the time of contract execution is made to us.
- 9.2 The customer is entitled to resell delivered goods within proper business connections. At that moment he assigns all arising accounts receivable from his buyers in the amount of the price charged by us for the goods subject to retention of title. The customer is entitled to collect the debt unless he is in default of payment. He shall be bound to announce his buyers' names and to hand all the documents necessary over on written demand and to reveal the assignment towards his buyers. This applies in the event that the customer is in default of payment and we decided to collect the debt ourselves.
- 9.3 The customer is not entitled to pledge goods subject to retention of title or to pledge them as security. He shall be bound to inform us about compulsory execution proceedings of any kind and shall give us the opportunity to announce third party proceedings under the terms of §771 ZPO (German Code of Civil Procedure). All costs in this respect shall be beard by the customer.
- 9.4 In the event that our belongings get lost due to coercive legal requirements the customer shall be bound to assign to us his entitlement for the claim for loss in value of the invoice of the goods subject to retention of title.
- 9.5 If the retained goods have been processed or combined with other goods not belonging to us, the customer admits joint ownership to the value of the invoiced amount of the goods subject to retention of title.

## **10 Other**

- 10.1 Patent rights and intellectual property rights which are represented in our performed services are not transferred to the customer. Any release or other circulation of plans, estimate of costs, price files, drawings, models and other technical documentation provided by us require our prior agreement in written form. The same applies to the reproduction or disclosure of these documents to a third party.
- 10.2 We remain in ownership of customer-specific tools and equipment which we purchased for the execution of an order even in the event that we charged the costs unless explicitly otherwise agreed in written form.
- 10.3 As far as we process data regarding business transactions the customer notes and accepts that this is done at a central place. We explicitly reserve the right to effect credit insurance for eventually concluded transactions and to provide the needed data to the insurer in this connection. The customer takes note and accepts that.
- 10.4 For all conflicts resulting from the contractual relationship including procedures of producing documentary evidence in the event that the customer acts as merchant, corporate body under public law or separate assets subject to public law the suit shall be filed to the court regional and factual responsible for the headquarters (or the delivering regional office) of our company. Further we are entitled to file a suit at the headquarters of the customer.
- 10.5 The present contract is applicable to German law to the exclusion of the "Convention on Contracts for the International Sale of Goods".