

General Terms and Conditions of FISCHER Deutschland GmbH

1. General

- 1.1. The agreement shall be concluded upon receipt of the written confirmation of FISCHER Deutschland GmbH, hereinafter called „Supplier“, that it accepts the order (order confirmation).

Any deviation from the order in the order confirmation shall become subject matter of agreement unless the Client objects in writing within 5 business days as of the date of receipt of the order confirmation. Offers (particularly such in price lists, brochures, etc.) that do not have any period of acceptance, shall be not binding.

- 1.2. These General Terms and Conditions shall be binding when they are declared as applicable in the offer or the order confirmation. Any other terms and conditions of the Client shall only be applicable if the Supplier accepted these expressly and in writing.

2. Scope of Supplies and Services

The supplies and services of the Supplier shall be listed finally in the order confirmation including any potential attachments hereto. The Supplier shall be authorised to carry out any modification that lead to improvement unless this entails a price increase.

3. Plans and Technical Documentation (diagrams, drawings, etc.)

- 3.1 The details and images as included in brochures, catalogues and other technical documents are approximate values of the industry unless the Supplier expressly describes these as binding.

- 3.2 Each contracting party hereto reserves all its rights regarding plans and technical documentation which it delivered to the other. The receiving contracting party shall accept these rights and shall not make the documentation in whole or in part available to any third party, or shall not use it beyond the purpose to which it was delivered to this party without previous written authorisation by the other contracting party.

4. Regulations in the Country of Destination and Safety Devices

- 4.1 The Client shall inform the Supplier at the latest in its order regarding the rules and standards that apply to the execution of the supply and services, to the operation as well as to health protection and accident prevention.

- 4.2 In the absence of any other agreement the supply and services correspond to the rules and standards at the registered business of the Client about which it informed the Supplier according to section 4.1. Any additional or other safety devices shall be included in the delivery if expressly agreed.

5. Prices

- 5.1 All prices are net in EURO, ex works including shipping at works, however, excluding packaging and unloading. The value-added tax may be added in the respective statutory amount.

- 5.2 The Supplier reserves its right to price adjustment in the event that between the time of offer and the contractual performance technical adjustments on the products shall be carried out by request of the Client.

6. Conditions of Payment

- 6.1 Payment shall be effected without any deduction of discount, expenses, tax, charges, fees, duties, and the like. The payment period shall be **30 days net** of the invoice date, except for repair orders, which shall be paid within 14 days net.

- 6.2 In the event of delayed payment, the Supplier shall be entitled to invoice interest on arrears in the amount of the rate which the bank charges regarding overdraft, however, minimum in the amount of 8% above the respectively applicable base rate of the European Central Bank.

- 6.3 The payment dates shall also be observed if transport, delivery, putting into service or acceptance of the supplies and services are delayed or become impossible, for reasons the Supplier is not responsible for, or if insubstantial parts are missing or if subsequent rework is considered as necessary that make the use of the delivered items not impossible.

7. Reservation of Title

The Supplier retains title to the delivery item until all payment is rendered as stipulated in the supply agreement.

In the event the Client acts in breach of the agreement, regarding delay in payment in particular, the Supplier shall be entitled to take back the delivery item after a warning was issued and the Client shall be obliged to return the items. Based on the reservation of title, the Supplier shall only be entitled to request the delivery item be returned if the Supplier rescinds the contract before.

An application for the commencement of insolvency proceedings shall entitle the Supplier to rescind the contract and to request the immediate return of the delivery item.

The Client shall be entitled to sell the items that are subject to reservation of title only by way of normal course of business and shall not be entitled to pledge or to assign them as a security. The Client shall inform the Supplier without delay regarding any access to the items by any third party.

The Client shall assign its claims from the resale of the items under reservation of title to the Supplier to full extent in advance for securing reasons.

The Client shall maintain the delivered items at own cost for the period under reservation of title and shall insure the items in favour of the Supplier against loss, breakage, fire, water and any other risks. Further, it shall carry out any and all measures so that the reservation of title of the Supplier is neither impaired nor cancelled.

8. Delivery Period

The delivery period shall commence as soon as the agreement is concluded, any and all administrative formalities are completed, the payments to be effected on basis of the order and all due securities are paid and the most important technical issues are clear. The delivery period shall be regarded as observed when upon expiry of the period the receipt of the notification of readiness is sent to the Client.

The delivery period shall be reasonably extended:

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- i. in the event the Supplier does not receive the details in due time that the Supplier needs for fulfillment of the contract or in the event the Client modifies them subsequently and thereby causes a delay of the supply or services;
- ii. in the event there are circumstances that the Supplier is not able to prevent despite Supplier takes the required care irrespective whether they occur at Supplier's place of business, at the Client or any third party. Such circumstances are e.g. epidemics, mobilisation, war, insurrection, significant interruption of operations, accidents, labour disputes, or faulty delivery of the necessary raw material, semi-finished or finished items, rejects of important manufactured parts, authoritative measures or omissions, natural phenomena;
- iii. in the event the Client or any third party are in delay regarding their works to be carried out or the fulfillment of their contractual obligations, in particular when the Client does not meet the payment conditions.

Due to delay regarding supplies and services the Client shall not have any rights or claims. This restriction shall not apply to wilful intent or gross negligence of the Supplier, however, this shall apply to wilful intent or gross negligence of assistants.

9. Packaging

The Supplier shall invoice the packaging separately and it shall not be taken back. In the event that it is defined as owned by the Supplier the Client shall return it, however, franco to the location of departure.

10. Passage of Use and Risk

10.1 Use and risk shall pass to the Client at the latest when the items leave the works.

10.2 In the event dispatch is delayed upon request of the Client or due to any other reasons that the Seller is not responsible for, the risk shall pass to the Client at the time the delivery was first planned. From this time onwards the supplies and services shall be stored and insured at the cost and the risk of the Client.

11. Inspection and Acceptance of the Supplies and Services

11.1 The Supplier shall inspect the supplies and services prior to dispatch as is usual. In the event the Client requests further inspection such shall be agreed specifically and must be paid by the Client.

11.2 The Client shall inspect the supplies and services within 5 days after receipt and shall inform the Supplier without delay regarding any and all defects. In the event the Client does not do so, the supplies and services shall be considered as accepted.

11.3 The Supplier shall be obliged to carry out repairs regarding the reported defects pursuant to section 11.2 as soon as possible, and the Client shall provide an opportunity to the Supplier to do so.

11.4 The execution of inspection tests as well as the stipulation of the applicable conditions shall be subject to separate understanding.

11.5 Due to defects of any kind regarding supplies and services the Client shall not be entitled to any rights and claims except the ones as mentioned expressly in section 11 hereof and in section 12 (liability / limitation).

12. Liability / Limitation

12.1 Regarding defects, which did not arise at the delivery item itself, the Supplier shall – irrespective the legal reason – only be liable

- a. in the event of willful intent;
- b. in the event of gross negligence by the owner / the board members or senior managers;
- c. in the event of culpable injury to life, body and health;
- d. in the event of fraudulent non-disclosure of a defect or a defect the absence of which has been guaranteed;
- e. in the event of defects in the delivery item insofar as the Product Liability Act provides for personal injury and damage to privately used property.

In the event of culpable fundamental breach of contract the Supplier shall also be liable for gross negligence by Seller's employees and for slight negligence, in the latter case liability shall be limited to the contractually relevant, foreseeable damage or loss.

Any further claims shall be excluded.

Any and all claims of the Client – regardless of the legal grounds whatsoever – shall have a statute of limitation of 12 months. Regarding damage claims according to the section (a.-e.) the statutory limitation periods shall apply.

The claims of the Client shall have a shorter statute of limitation in the event the Client or any third party carry out any improper modifications or repairs, or the Client, if a defect has arisen, does not take all appropriate measures without delay to minimise the damage and does not give the Supplier the possibility to remedy the defect.

12.2 The Supplier shall be obliged, at own choice, to repair or replace, upon request of the Client, all parts of the delivery by the Supplier, as soon as possible, that provably have become defective or unusable due to poor material, faulty construction or improper workmanship by the end of the limitation period. The Supplier shall have the ownership regarding replaced items.

12.3 Warranted characteristics shall only be those as were named as such in the specifications. The warranty shall at the latest last until the expiry of the limitation period.

In the event the warranted characteristics are not met at all or only in part, the Client shall initially have a claim to immediate repair by the Supplier. In this regard, the Client shall grant the Supplier an adequate time period and opportunity to do so.

In the event that the defect is so serious that it cannot be remedied within adequate time, and the supplies and services are not or only to a reduced extent usable regarding the announced purpose, the Client shall be entitled to refuse acceptance of the defective item or, if any partial acceptance is

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economically not reasonable, to withdraw from the contract. The Supplier shall only be obliged to refund those amounts that were paid to Supplier regarding the items that became part of the withdrawal.

12.4 Excluded from limitation and the liability of the Supplier shall be damage that arises not verifiably due to poor material, missing information details regarding use (milling strategy, grinding, etc.), faulty construction or improper workmanship, e.g. due to natural wear and tear, insufficient maintenance, non-observance of operating instructions, excessive stressing, unsuitable operating media, chemical or electrolytic influences, construction and assembly work not carried out by the Supplier, as well as due to any other reasons the Supplier is not responsible for.

12.5 Due to defects in material, construction or workmanship as well due to a lack in warranted characteristics, the Client shall not have any rights and claims except the ones as expressly described in sections **11.1 through 11.5**.

13. Exclusion of Further Liabilities of the Supplier

Any and all cases of contractual infringement and their legal consequences as well as any and all claims of the Client, irrespective of the legal ground on which they are raised, shall be finally stipulated by these provisions. In particular, any and all not expressly listed claims to damage claims, reduction, cancellation or withdrawal of the contract shall be excluded. Under no circumstances, the Client has any claim regarding compensation for defects that did not arise on the delivery item itself namely as loss of production, loss of use, loss of orders, loss of profit and any other direct and indirect defect.

14. Cancellation of Contract by Client

In the event the Client cancels the contract without any reason or the Client does not fulfill the contract, the Supplier shall be entitled to claim 25% of the order amount as damages. It shall be at the choice of the parties hereto to claim any deviating loss.

15. Jurisdiction and Applicable Right

15.1 Place of jurisdiction for the Client and the Supplier shall be the place of business of the Supplier.

15.2 Regarding any and all legal relationships between the Supplier and the Client the legislation of the Federal Republic of Germany shall exclusively be applicable.