

Terms and Conditions of Sale and Delivery (Version: November 2019)

1. Scope

1.1 Unless otherwise agreed, the following Terms and Conditions of Sale and Delivery (hereinafter referred to as “Conditions”) apply exclusively to all – including future – deliveries by the fischer companies specified in Clause 1.2 (hereinafter referred to as “fischer” or “we”) to the customers specified in Clause 1.3. The terms and conditions of the customer shall not form part of any contract even if we do not expressly exclude them.

1.2 “fischer” includes the following companies:

fischer Edelstahlrohre GmbH, Achern
fischer Rohrtechnik GmbH, Achern and Sundern
fischer Hydroforming GmbH, Menden
fischer Maschinenteknik GmbH, Achern
fischer eco solutions GmbH, Achern
fischer Coil Service Center GmbH, Achern

1.3 These Terms and Conditions of Sale and Delivery only apply to companies within the meaning of Section 14 German Civil Code (BGB), legal persons under public law and special funds under public law (hereinafter referred to as “Customer”).

1.4 The contract concluded in writing including these Terms and Conditions of Sale and Delivery reflects, in full, all agreements between the contracting parties regarding the subject matter of the contract. Oral ancillary agreements or commitments by our employees which go beyond the content of the written contract or which modify these Conditions in such a way that is disadvantageous to us, are only valid where they are confirmed in writing.

2. Offers, Product Specifications and Prices

2.1 Our offers are non-binding unless they are expressly designated as binding or contain a specific acceptance period.

2.2 The documents accompanying the offer, such as illustrations, specimens, samples, brochures, drawings and our information on the subject matter of

the delivery or service (e.g. weight, performance, colour, loading capacity, tolerances and technical data) are only approximate values unless they are essential or expressly designated as binding by us.

- 2.3 Our product specifications do not constitute any guarantee.
- 2.4 Customary deviations from the agreed quality, as well as deviations which constitute technical improvements, are permitted provided they are not detrimental to fitness for the contractually agreed purpose. Deviations from the agreed quality, that are required due to legal requirements, are permitted.
- 2.5 Our prices apply FCA plant of the supplying fischer company(Incoterms 2010®), net in Euro, excluding packaging. To this is added the customary alloy surcharge.
- 2.6 Where the Customer has to bear a share of the tooling costs, we nevertheless retain title to the tools; the Customer itself does not acquire any title to the tool.

3. Conclusion of the Contract / Order Acceptance

- 3.1 Contracts only come into effect on issue of our written order confirmation or by way of delivery. The content of the contract, particularly the scope of delivery and performance, is determined solely according to the order confirmation.
- 3.2 Amendments and additions to the contract require our written confirmation.

4. Delivery Time, Default

- 4.1 Delivery dates and delivery periods are determined according to the agreements concluded in the individual case. Where a specific calendar week is agreed as the delivery period, delivery must take place by no later than Friday of the relevant week.
- 4.2 The delivery period commences on receipt of the order confirmation but not before clarification of all details relating to execution and technical matters, submission of all necessary documentation required from the Customer, approvals and the receipt of any advance payment or payment security due.
- 4.3 A delivery period has been complied with where the goods are loaded onto

the means of transport provided by the Customer by expiry of the period. Where dispatch is delayed through no fault on our part, the delivery time is complied with on notification of readiness for delivery.

- 4.4 Requests for changes made by the Customer shall extend the delivery period until we have examined their feasibility and by the length of time required for implementing the new requirements into the production. Where ongoing production is suspended due to the request for changes, we may bring forward and finish other orders. We are not obliged to keep production capacity free during the period of the delay.
- 4.5 In the case of a delay in delivery, our liability is limited, in the case of simple negligence, to 0.5 % per full week of the delay, up to a maximum of 5 % of the net invoice amount for the part of the delivery that is affected by the delay. This shall be without prejudice to the right to claim damages in lieu of performance pursuant to Clause 11.
- 4.6 Where dispatch is delayed as a result of circumstances for which we are not responsible, we shall charge for storage on our premises at a monthly rate of at least 5 % of the net invoice amount for the stored delivery.

5. Force Majeure

- 5.1 Unforeseeable, unavoidable events for which we are not responsible (e.g. operational disruption due to force majeure, lockouts and strikes, shortages of raw materials, transport delays, energy supply problems, measures taken by authorities as well as difficulties in obtaining authorisations, especially import and export licences), shall extend the delivery time or postpone the delivery date by the duration of the period of disruption and its effects. This also applies where our own suppliers are subject to obstructions or during an existing period of delay.
- 5.2 If one of the events referred to in Clause 5.1 occurs, we will notify the Customer without delay. Where the event is not simply temporary, both parties are entitled to rescind the affected contract. The right to claim damages is excluded in the cases referred to in Clause 5.1.

6. Delivery, Transfer of Risk

- 6.1 Delivery shall be FCA plant of the supplying fisher company(Incoterms 2010®). Where dispatch is delayed through no fault on our part, the risk shall pass as soon as we have notified the Customer of our readiness for dispatch

and this shall be the case even where, in the exceptional case, we have assumed other responsibilities, such as e.g. shipping costs or shipping.

6.2 Our delivery obligation is subject to the proviso that we receive correct and timely delivery from our own suppliers, unless we are responsible for the incorrect or late delivery. The proviso entitles us to rescind the contract. In this case, claims for damages are excluded.

6.3 We are entitled to make partial deliveries provided the Customer is able to use the partial delivery in accordance with the contractual purpose for which it was intended and the Customer does not incur any additional expense or costs (unless we agree to bear the costs) and it is not unreasonable for the Customer for any other reason.

7. Packaging

The Customer is entitled to return packaging to us at any time on request. The Customer shall bear the costs of return. Packaging must be returned clean, free of extraneous material and sorted according to type.

8. Payment

8.1 Unless otherwise stipulated in our order confirmation, our invoices must be paid within 14 days net from the date of invoice, without any deductions and free of any charges, to our bank account. Compliance with the payment deadline is determined by the date on which the invoice amount arrives in our bank account.

8.2 In the event of payment default, we charge interest of 9 percentage points above the base interest rate, but in any case a minimum of 10%.

8.3 Where, for a period exceeding four weeks, the Customer defaults on payment of a claim which represents at least 20% of our total claims against the Customer, we shall be entitled to render all claims based on the same legal relationship immediately due and payable.

8.4 The Customer may only assert a right of set-off or retention against our claims where its counter claims are uncontested or have been upheld by a final court judgement. In addition, the Customer can only assert a right of retention where its counter claim is based on the same contractual relationship.

9. Reservation of Title

- 9.1 We reserve title to the goods delivered until we have received all payments arising under the entire business relationship with the Customer. Where there is a current account relationship, the reservation of title extends to the recognised balance.
- 9.2 The Customer is obliged to treat the reserved goods with care and keep them in good condition. The Customer is also under a duty to sufficiently insure the reserved goods at its own expense, against fire, water damage, burglary and theft, at replacement value. At our request, we must be provided with the insurance policy and proof of payment of the premiums for perusal. The Customer hereby assigns to us any claims arising under the insurance contract subject to the condition subsequent that title passes. We hereby accept the assignment.
- 9.3 Attachment of the reserved goods by third parties must be reported to us, in writing, without delay. The Customer shall bear all the costs required for defence against and removal of the attachment and for recovery of the reserved goods.
- 9.4 The Customer is entitled to use the reserved goods in the ordinary course of business. In so doing, any treatment or processing of the reserved goods by the Customer shall be undertaken on our behalf without involving any obligations on our part. Where the reserved goods are combined with other goods, we shall acquire co-ownership of the new product in accordance with the ratio of the net invoice value of the reserved goods to the other materials.
- 9.5 The Customer is also entitled to resell the reserved goods, or the goods which have been newly manufactured pursuant to Clause 9.4, in the ordinary course of business.
- 9.6 The Customer hereby assigns to us, in advance and in full, all receivables to which it becomes entitled as a result of the resale or subsequent use of the reserved goods or newly manufactured products.
- 9.7 We hereby authorise the Customer to recover the receivables assigned to us, in its own name, for our account.
- 9.8 We are entitled to revoke the authorisation for the subsequent sale and use of the reserved goods, as well as for recovery of receivables, where the

Customer fails to comply properly with its payment obligations. If we revoke the authorisation for the subsequent sale and use of the reserved goods, we can require the Customer to disclose to us the assigned receivables and the respective debtors, provide us with all the information necessary to effect recovery, hand over all the accompanying documentation and notify its debtors of the assignment. Redemption of the reserved goods does not constitute rescission of the contract. If we declare rescission of the contract we shall be entitled to sell the goods as we think fit.

- 9.9 Where the value of securities exceeds our claims by more than 10%, we shall, at the Customer's request, release securities to that extent at our own discretion.

10. Claims under Warranty

- 10.1 The Customer can only assert rights to claim under warranty if it has properly complied with its inspection and notification obligations under Section 377 Commercial Code (HGB) in relation to the delivered goods.
- 10.2 In the case of a legitimate notification of defects, we may opt to effect subsequent performance either by rectification of the defects or by delivery of a defect-free item. This shall be without prejudice to our right to refuse the chosen method of subsequent performance under statutory provisions. Where subsequent performance fails or if, pursuant to statutory provisions, an extension of time for performance is unnecessary, the Customer can reduce the purchase price or, in the case of a major defect, rescind the affected delivery contract. In this case, the Customer is also entitled to claim damages in lieu of performance in accordance with Clause 11.
- 10.3 We will not assume the cost of subsequent performance which arises due to the fact that, following delivery, the delivered goods are transported to a location other than the Customer's place of business. Where, in the course of subsequent performance, we exchange goods that have been delivered by us, in whole or in part, we shall acquire title to the exchanged parts/materials.
- 10.4 Insofar as the defect arises from a material third-party product, we are initially entitled to restrict our liability to the assignment of the claims and rights under warranty to which we are entitled as against the supplier of the third-party product, unless satisfaction by way of the assigned claims or rights fails or cannot be obtained for some other reason. In this case, the Customer is entitled to the rights under Clause 10.2.

- 10.5 The Customer is solely responsible for checking that the ordered goods, or goods suggested by us, are suitable for the intended purpose. Equally, it is a matter for the Customer to check whether products supplied by us may be safely combined with parts from other manufacturers. We assume no liability for combinations undertaken by the Customer without our consent.
- 10.6 Where the notification of defects proves to be unjustified, the Customer shall be obliged to refund the costs which we incur as a result of the notification of defects, based on our current price list.
- 10.7 The infringement of third-party rights only represents a defect where these rights exist in the Federal Republic of Germany.

11. General Liability

- 11.1 In case of intent and gross negligence, fraudulent concealment of defects, death, personal injury and damage to health and under the Product Liability Act, we shall be liable in accordance with the law. Where there is a guarantee, we shall be liable in accordance with any provisions of the guarantee.
- 11.2 In the case of simple negligence, we are only liable for the breach of an essential contractual condition and this shall be limited – unless otherwise specified in Clause 4.5 in the case of default damages – to compensation for foreseeable and typical loss. An essential contractual condition is one which must be fulfilled in order for the contract to be properly implemented and compliance with which the Customer generally expects and is entitled to expect, and the breach of which jeopardises the purpose of the contract. In all other cases of simple negligence, our liability is excluded.
- 11.3 The following applies with regard to the limitation period:
- (1) Claims by the Customer under warranty shall lapse after 12 months from the passing of risk, other claims after 12 months from the start of the statutory period of limitation.
 - (2) Where a guarantee is given, the guarantee provisions shall apply; in the case of the fraudulent concealment of a defect as well as claims for damages under the Product Liability Act, for death, personal injury or damage to health and due to the intentional or grossly negligent breach of obligations, the statutory limitation provisions apply. Otherwise, the statutory limitation provisions apply in the case of the delivery of goods

which are used, in accordance with their customary purpose, for a building and cause the building to be defective.

11.4 Under no circumstances do we accept contractual penalties or lump sums.

12. Special Conditions for Contracts to Produce a Work

The following Special Conditions for Contracts to Produce a Work apply to such contracts within the meaning of Section 631 et seq. German Civil Code (BGB).

Where the Parties conclude a contract to produce a work, the following Special Conditions shall take precedence over the other provisions of these Terms and Conditions of Sale and Delivery:

12.1 The acceptance procedure shall take place at the relevant supplier's premises unless otherwise agreed between the Parties. The costs of acceptance as well as the Customer's personal travel and accommodation costs shall be borne by the Customer. Where it is agreed that acceptance will take place at the supplier's premises and the Customer waives this acceptance the goods are deemed to have been accepted as soon as they leave the premises.

12.2 Where the Customer provides us with items for implementation of the contract to produce a work, the Customer shall be solely responsible for insuring such items, at its own expense, against fire, water and other damage.

12.3 We are entitled to transfer all or parts of the contractual work to subcontractors unless the Customer objects to such a course of action in writing.

13. Concluding Provisions

13.1 This Contract is subject to German law. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

13.2 The place of performance for all obligations of both Parties shall be the relevant supplier's premises.

13.3 (1) The place of jurisdiction for all disputes under the supply contract with Customers that have their registered office in the EU, Switzerland or the UK, shall be the location of the relevant supplier. We are, however, entitled to bring proceedings in the court with jurisdiction over the

Customer's place of business.

- (2) Where the Customer's registered office is outside the EU, Switzerland and the UK, the following applies: All disputes arising in connection with the delivery contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of the arbitration shall be Frankfurt, Germany. The language of the arbitration proceedings is German. In the case of claims for payment of the purchase price, we are, however, also entitled to bring proceedings in the ordinary courts pursuant to para. (1) of this Clause 13.3.

13.4 The invalidity of individual provisions of this contract shall not affect the validity of the other provisions or the validity of the contract. The invalid provision shall be replaced by a provision which comes closest to the invalid provision in its economic content. The corresponding rule applies in the case of an omission.