

**F.C.T. FISCHER CORPORATION AND TRADE GMBH  
70794 FILDERSTADT, GERMANY**

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

**1. Scope of Application**

1.1 These General Terms and Conditions of Sale and Delivery apply to all deliveries and other services of F.C.T. Fischer Corporation and Trade GmbH, 70794 Filderstadt, Germany ("Seller") and its customers ("Buyer"), unless set out otherwise in writing. They will also apply in future even if not mentioned in later contracts.

1.2 General business terms and conditions of the Buyer which depart from these conditions will not be part of the content of the contract.

**2. Conclusion of Agreement, Prices, Price Adjustments, Packaging Costs, Shipping, Transport Insurance**

2.1 The Seller's offers are non-binding and subject to change, unless they are expressly described as binding offers. They only constitute the invitation to the Buyer to submit a corresponding offer by placing an order with the Seller.

A contract only comes into force if the Seller has confirmed the Buyer's order in writing or delivered the goods ordered.

2.2 The documents attached to an offer (illustrations, drawings, weights and sizes, as well as other information on contractual products and services) and references to technical norms serve to provide a description of the product. They do not constitute promised or guaranteed properties or an agreement as to assured qualities, unless expressly agreed in writing.

It is possible to deviate from the product description if there is good cause, as long as the purpose of the contract is still fulfilled.

2.3 All prices will be ex works from the Seller plus VAT, subject to a price adjustment pursuant to 2.4.

2.4 If more than four months elapse between conclusion of the contract and the delivery date the Seller is entitled to adjust the price if cost increases are incurred for material or labour. If less than four months elapse between the conclusion of the contract and the delivery date the Seller is entitled to adjust the price if the market price of the raw materials required increases by 10 % or more between the date on which the order is placed and the date on which the product is delivered.

The price increase is limited to the proportion of the raw materials costs in relation to the costs of the entire product. The price increase will not exceed 15 % of the agreed purchase price for the entire product. This reservation with regard to the price includes, but is not limited to, an increase in the market price for the materials steel, copper, nickel, cobalt and molybdenum.

2.5 Unless otherwise agreed, the Seller will decide how to package the order and will invoice the costs incurred.

2.6 If it is agreed that the goods will be shipped, shipment will be at the cost and the risk of the Buyer. The Seller will only take out transport insurance at the express request of the Buyer and at the Buyer's cost.

2.7 Devices and auxiliary materials delivered will be assembled by the Buyer.

**3. Delivery, Passage of Risk, Shipment, Part Delivery**

3.1 All deliveries are ex works or ex Seller's warehouse, unless otherwise agreed in writing (EXW Incoterms®2010).

3.2 The Seller will choose the carrier, type of transport and means of transport, unless agreed otherwise.

3.3 Part deliveries are permissible insofar as they are reasonable from a technical standpoint; payment for part deliveries is due pro rata.

**4. Term of Delivery, Delay, Rescission**

4.1 In principle the delivery dates stated are non-binding, and are only binding if expressly agreed in writing. An agreed delivery period will not commence before the documents, licences, permits and other formalities required on the part of the Buyer have been provided, nor will it commence before any agreed advance payments have been made.

4.2 In the event of a delay in delivery for which the Seller is responsible after expiry of 2 weeks the Buyer may claim liquidated damages of 0.5 % for each additional full week of delay - however no more than 5 % - of the value of the part of the delivery that cannot be delivered as planned as a result of the delay - in as far as the Buyer provides prima facie evidence that it has sustained a loss. Any further compensation claims due to delayed delivery are excluded. This does not apply in the case of intent or gross negligence.

4.3 The Buyer may only rescind the contract as provided in the statutory provisions in as far as the Seller is responsible for the delay.

4.4 If the Buyer is in arrears with regard to a material obligation of the contractual relationship the delivery period will be extended by the same period.

**5. Acceptance, Calls for Delivery**

5.1 Even if it transpires that deliveries are defective they will be accepted by the Buyer irrespective of its rights as to defects, provided these are not material defects.

5.2 The Buyer bears the cost incurred for storage, insurance, protective measures, etc. owing to an unjustified delayed acceptance. Without special proof the Buyer will pay at least 0.5% per full week of delay and a maximum of 5% of the order of value unless the Buyer can prove that no loss or a lower loss has been incurred.

5.3 Deliveries without a fixed delivery date ("on call") are only possible if such have been expressly agreed in writing. The goods are available on call for the agreed period if necessary. Once this period has expired the Seller is entitled to deliver the residual amount to the Buyer or, if a deadline set has expired without the Buyer having called for the goods, to demand compensation.

**6. Payment**

6.1 Unless otherwise agreed in writing, all payments will be made within 30 days after the date on the invoice without any discount. All payments will be made in Euros onto the account of the Seller.

If customer-specific parts (special production) or variations of the same are manufactured an advance payment will be paid in the amount of a third of the agreed purchase price, unless otherwise agreed.

6.2 If payment is not made in time the Seller is entitled to interest in the amount of 9 percentage points above the base interest rate of the European Central Bank per annum with effect from the date on which payment was due until payment is made.

6.3 If there are objective circumstances giving rise to considerable doubts with respect to the creditworthiness of the Buyer the Seller is entitled to deliver once advance payment has been made only.

6.4 If part-payment has been agreed and if the Buyer falls into arrears with an amount of more than 10% of the purchase price still outstanding for more than 10 days the entire outstanding residual amount will be due for payment.

6.5 If, after expiry of a subsequent deadline granted to it, the Buyer does not accept goods purchased (default in acceptance) the purchase price becomes due for payment on the date on which the Seller states that it is ready to dispatch.

**7. Responsibility for the Compliance of the Goods with Contract**

7.1 The Buyer will inspect the goods without undue delay upon receipt. It loses the right to appeal on the grounds that goods do not comply with contract if it has not informed the Seller that the goods are defective in writing without undue delay after the time at which it has ascertained or should have ascertained such, stating the specific complaints, location, number and date of their occurrence and the goods about which complaint has been made and the production and supply batches. Upon consultation with the Seller, the Buyer will ensure that the findings are secured and that this information is documented and provide such to the Seller. If the defect is discovered later, notification must be made without undue delay after discovery, subject to the above conditions. The notification is deemed to be without undue delay if it is made within 8 working days of the defect having been ascertained or after it could have been ascertained if no due inspection was carried out, whereby the dispatch of the notice is definitive with regard to whether deadline was observed. If the Buyer fails to carry out a due and proper inspection and/or to give notice of the defects the liability of the Seller for the defects not notified in due time is ruled out. Buyer will also provide any reports about service work carried out in the meantime.

7.2 If the Buyer has sold on the goods the Seller will be provided not only with the notice of defects but also the end customer complaint and any reports about service work carried out in the meantime.

7.3 If the goods do not comply with contract the Seller can choose to remedy the defect by repair or replacement within a reasonable period once the Buyer has reported the defect. Upon agreement with the Seller the Buyer may carry out the repair itself.

7.4 If attempts to repair or improve the goods fail the Buyer is entitled to rescission or reduction of the purchase price in accordance with the statutory provisions.

7.5 The expense incurred for inspections and subsequent fulfilment, in particular transport, travel, work and materials within the meaning of section 439 (2) German Civil Code will be borne by the Seller should it transpire that there is indeed a defect. This does not apply to those expenses which have increased because the Buyer has transported the goods to a place other than the delivery address, unless the goods from their nature were intended

- to move location. Subject to the self-help right of the Seller as set out in the following, the Seller will assume necessary removal and installation costs of faulty goods in the context of subsequent fulfilment to the extent that the Buyer has installed them in another item dependent on their nature and their purpose for use to a maximum of double the net purchase price for the part delivered by the Seller.
- The restriction to double the net purchase price of the part concerned delivered by the Seller also applies to strict-liability recourse claims pursuant to section 445a German Civil Code. The Seller definitely reserves the right to object on the grounds of lack of proportionality (section 439 (4) sentence 1 German Civil Code).
- Provided the customer itself is still in possession of the goods the Seller may the removal have carried out by a professional company. The customer will give the Seller a reasonable deadline in which to do so. If the deadline expires the Buyer can carry out removal itself.
- Otherwise, strict-liability subsequent fulfilment or recourse claims to payment of removal and installation costs are ruled out. If the Seller is at fault the Buyer can demand subsequent fulfilment and compensation subject to the specific conditions set out in 7.6, sentence 1.
- If the complaint regarding defects is unjustified, the Seller is entitled to demand reimbursement of the expenses incurred by it from the Buyer in the context of the review of the defect.
- 7.6 The Seller is fully liable in the event of intent or gross negligence and for guarantees assumed, in the case of malice, culpable injury to life, body and health and claims from producer liability. In all other respects the Seller is also liable for losses caused by defects, including production stoppage, lost profit or other indirect loss only in cases of infringement of a material contractual duty arising from the nature of the contract the satisfaction of which makes possible the due execution of the contract and on which the Buyer as a rule may trust. In the case of negligent infringement of such material contractual duties, default and impossibility, the liability of the Seller is restricted to foreseeable typical loss.
- 7.7 If parts or material for processing or assisting with the processing of an order are delivered by the buyer no inspection will be carried out on receipt for non-obvious defects, if not expressly agreed otherwise.
- 8. Plans, Sales Documents, Confidentiality**
- 8.1 The Seller will have all rights in drawings, drafts and plans prepared by the Seller.
- 8.2 The parties agree to keep secret all economic and technical details of their mutual business relationship, provided these are not already in the public domain. This also applies to documents set out in 8.1 which may not be copied or disclosed to third parties or otherwise made accessible by the Buyer without authorisation.
- 9. Force majeure**
- 9.1 The parties are not liable for the non-fulfilment of their duties if non-fulfilment is based on a reason outside their sphere of influence such as natural catastrophes, war, fire, cyber attacks, confiscation or other official measures, general shortage of raw materials, restriction on energy consumption or strike. The same will apply if a supplier is affected by one of the above reasons.
- 9.2 Each party can terminate the contract by written notice of termination in the event that its implementation is hindered for more than six months in accordance with 9.1.
- 10. Limitation Period**
- 10.1 Claims of the Buyer owing to defects or other breaches of contract become statute-barred after twelve months from the receipt of delivery by the Buyer. This does not apply to claims owing to culpable injury to life, limb or health to intentionally and grossly negligent breaches and to the breach of warranties and malice of the Seller. Furthermore, the statutory period of limitations for claims from producer liability and on the grounds of the contractual installation of the products delivered into buildings (section 438 (1) no.2 German Civil Code) remain unaffected.
- 11. Reservation of Title**
- 11.1 The Seller reserves title in the goods until all claims from the business relationship have been paid in full.
- 11.2 The Buyer is entitled to resell the goods in the ordinary course of business.
- 11.3 The entitlement of the Buyer to sell, process or install reserved goods in the ordinary course of business ends on revocation by the Seller as the result of a material deterioration of the assets of the Buyer, however at the latest if the latter stops payment or when application has been filed for insolvency proceedings or such has commenced on its assets.
- 11.4 The Buyer hereby assigns with effect from the transfer date all claims arising from selling on the reserved goods with all ancillary rights to the Seller. If the goods have been processed, mixed, or combined with others, and if the Seller has acquired co-ownership of the item in the amount of the invoice value of the reserved goods, it is entitled to the purchase price claim pro rata to the value of its rights in the goods. If the Buyer has sold this claim in a genuine factoring transaction, the claim of the Seller becomes due immediately and the Buyer assigns the newly acquired claim against the factor to the Seller and forwards to the Seller its sale proceeds without undue delay.
- 11.5 The Buyer is entitled to collect the assigned claim as long as it fulfils its payment obligations. The authorisation to collect will be cancelled on revocation, and at the latest on default by the Buyer or if its assets deteriorate materially. The Seller is then entitled to inform the customers of the Buyer of the assignment and collect the receivables itself. The Buyer is obliged to give the Seller on request an exact list of the claims to which the Seller is entitled, providing names and addresses of its customers, the amount of the individual claims, the date of the invoice, etc. and to provide the Seller with all information required to assert the assigned claims and to permit verification of this information.
- 11.6 If the value of the invoices of the security for the Seller exceeds all its claims including ancillary claims (e.g. interest, costs) by more than 20 %, the Seller is obliged on request from the Buyer or a third party affected by this over-collateralisation to release securities at the discretion of the Seller.
- 11.7 The reserved goods and assigned claims may not be pledged or transferred by way of security. The Seller must be informed immediately of pledges giving the name of the pledgee.
- 11.8 If the Seller takes back the goods supplied owing to the reservation of title the contract may only be rescinded if the Seller has expressly declared this. The Seller can satisfy itself from the reserved goods taken back on the open market.
- 11.9 If the reservation of title is invalid under the law of the country in which the goods are delivered and located, the parties shall be deemed to have agreed on the security which corresponds most closely to the German reservation of title under the law of that country. The Buyer is obliged to fully cooperate with and to support the Seller in implementing the respective security.
- 12. Miscellaneous**
- 12.1 The rights and duties of the parties under this supply agreement are not transferable, except for the assignment of purchase price claims to the Seller's bank.
- 12.2 Amendments, additions and collateral agreements to these General Terms and Conditions of Sale and Delivery or to agreements concluded will be in writing. This also applies to a waiver of the written form requirement.
- 12.3 Any agreement concluded on the basis of these General Terms and Conditions of Sale and Delivery will remain in effect even if individual conditions are invalid. This is replaced by the valid or implementable provision which reflects as closely as possible the purpose of the invalid or unenforceable condition.
- 12.4 The Buyer can only assert rights of retention or set-off on claims which are undisputed by the Seller or have been finally upheld by a court.
- 13. Place of Performance, Jurisdiction, Choice of Law**
- 13.1 The place of performance is the registered office of the Seller.
- 13.2 All disputes arising from contracts on the basis of these General Terms and Conditions of Sale and Delivery will be decided by Stuttgart Regional Court.
- 13.3 German law applies excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 14. Data Processing, Date of Coming into Force**
- 14.1 The Seller is entitled to receive and process data in connection with business procedures.
- 14.2. These General Terms and Conditions of Sale and Delivery will apply to agreements concluded with effect from September 2018.