

# Terms and Conditions of Purchase 12/2023

## fischerwerke GmbH & Co. KG

### 1. General

- 1.1 All deliveries, services and offers from our suppliers shall be rendered exclusively on the basis of these General Terms and Conditions of Purchase. These shall form an integral part of all contracts we conclude with our suppliers for the deliveries or services they offer. These shall also apply to all future deliveries, services or offers vis-a-vis us, even if they are not separately agreed again.
- 1.2 The terms and conditions of our suppliers or third parties shall not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter containing (or referring to) terms and conditions of the supplier or a third party, respectively, this shall not constitute an agreement to the validity of said terms and conditions.

### 2. Supply contract – Delivery schedules

- 2.1 Offers shall be free of charge for us. If the offer differs from our enquiry, this must be expressly stated in the offer.
- 2.2 Orders, offer confirmations and delivery call-offs, as well as their amendments and supplements, shall require text form unless otherwise expressly agreed.
- 2.3 Insofar as our orders do not expressly contain a binding period, we shall be bound by them for a fortnight after the order date. Any delayed acceptance shall be deemed a new offer and shall require acceptance by us. The receipt of a declaration of acceptance by us shall be decisive for timely acceptance.
- 2.4 By accepting the order, the supplier acknowledges that he has ascertained the type of execution and the scope of the performance by inspecting the available documents. In the event of any obvious errors, spelling mistakes and miscalculations contained in the documents, drawings and plans submitted by us, we shall not be held liable. The supplier shall be obliged to inform us of such errors so that our order can be corrected and renewed. This shall also apply in the case of missing documents or drawings. In the event of any lack of response to proposals, demands or evidence from the supplier, this shall in no case be deemed to be tacit consent, unless expressly agreed otherwise in writing.
- 2.5 If a framework agreement exists between us and the supplier for future deliveries, an order placed by us in this respect shall be binding unless the supplier objects within 5 working days and unless otherwise expressly agreed.
- 2.6 We shall be entitled to change the time and place of delivery, as well as the type of packaging, at any time by giving written notice of at least 7 calendar days before the agreed delivery date. The same shall apply to changes in product specifications insofar as these can be implemented within the framework of the supplier's normal production process without significant additional effort, whereby in these cases, the notification period pursuant to the preceding sentence shall be at least 14 calendar days.
- 2.7 We shall reimburse the supplier for the respective proven and reasonable additional costs incurred as a result of the change. If such changes result in delays in delivery, which cannot be avoided in the supplier's normal production and business operations with reasonable efforts, the originally agreed delivery date shall be postponed accordingly. The supplier shall notify us in writing of any additional costs or delays in delivery to be expected from him upon careful assessment in good time before the delivery date, but at least within 7 calendar days of receipt of our notification.
- 2.8 We shall be entitled to withdraw from the contract at any time by written declaration, stating the reason, if
  - a. we are no longer able to use the ordered products in our business operations, or are only able to use them at considerable expense due to circumstances occurring subsequent to the conclusion of the contract for which the supplier is responsible (such as the failure to comply with legal requirements), or
  - b. the financial circumstances of the supplier deteriorate subsequent to conclusion of the contract to such an extent that delivery in accordance with the contract cannot be expected.

### 3. Prices – Terms of payment

- 3.1 The price stated in the order (net price) shall be binding.
- 3.2 In the absence of any written agreement to the contrary, the price includes delivery and transport to the shipping address stated in the order, including packaging.
- 3.3 Unless otherwise agreed in writing, we shall pay the purchase price within 30 days calculated from delivery and receipt of invoice with a 3% discount. The receipt of our transfer order by our bank shall be sufficient for the timeliness of any payments owed by us.
- 3.4 All order confirmations, delivery documents and invoices must state our order number, the article designation (incl. number, delivery quantity and unit of quantity), gross, net and, if applicable, calculated weight, delivery address and, if applicable, the remaining quantity in the event of a partial delivery. If one or more of these details should be missing, and this causes a delay in processing by us in the normal course of business, the payment deadlines specified in Clause 3.3 shall be extended by the period of the delay. Further claims remain unaffected.
- 3.5 In the event of default in payment, we shall owe default interest at the rate of (five) percentage points above the base interest rate pursuant to Section 247 German Civil Code (BGB).
- 3.6 The supplier shall not be entitled to make partial deliveries without our prior written consent.
- 3.7 Should ancillary costs – such as freight costs – be incurred, these must be shown on the respective invoice with the ordered delivery.
- 3.8 For orders of goods which we acquire ownership of, we shall act using the VAT number issued to us by the country of the respective fischerwerke logistics location. Should we not have such a country-specific VAT registration number, we will act with the German VAT registration number issued to us by the country of residence (Germany).  
The respective VAT ID number shall only apply to the respective order in question, and shall be stated by the supplier in its invoice. When purchasing services, we shall always act under our German domicile VAT number.

### 4. Delivery dates and deadlines, delay

- 4.1 The delivery time (delivery date or period) specified by us in the order (or which is otherwise decisive according to these General Terms and Conditions of Purchase) shall be binding. Early deliveries are only permissible with our prior approval.
- 4.2 The supplier shall be obliged to inform us in writing without delay – without the dates being adjusted as a result – if circumstances occur or become apparent to him which indicate that the agreed delivery time cannot be met.
- 4.3 If the day on which the delivery must be made at the latest can be determined on the basis of the contract, the supplier shall be in default upon expiry of this day, without this requiring a reminder on our part.
- 4.4 In the event of a delay in delivery, we shall be entitled to the assertion of statutory claims without restriction, whereby we may only exercise a right of withdrawal or assert claims for damages in lieu of performance after the fruitless expiry of a reasonable grace period.
- 4.5 In the event of delays in delivery, we shall be entitled, subsequent to a prior written warning to the supplier, to demand a contractual penalty of 0.5 %, up to a maximum of 5 %, of the respective order value for each commenced week of delay in delivery. The contractual penalty shall be set off against the default damage to be compensated by the supplier.
- 4.6 The supplier shall not be entitled to make partial deliveries without our prior written consent.

## 5. Securing property ownership

- 5.1 We reserve the ownership or copyright to orders placed by us and commissions, as well as drawings, illustrations, calculations, descriptions and other documents made available to the supplier. The supplier may neither make them accessible to third parties nor use or reproduce them himself or through third parties without our express consent. He shall return these documents to us in full at our request if they are no longer required by him in the ordinary course of business, or if negotiations do not lead to contract conclusion. In this case, any copies made by the supplier shall be destroyed; the only exceptions to this are storage within the scope of statutory storage obligations and the storage of data for backup purposes within the scope of normal data backup.
- 5.2 Tools and models which we make available to the supplier or which are manufactured for contractual purposes and charged to us separately by the supplier, shall remain our property or pass into our ownership. The supplier shall designate them as our property, store them carefully, protect them to a reasonable extent against damage of any kind and use them only for the purposes of the contract. In the absence of an agreement to the contrary, the parties shall each bear half of the costs of their maintenance and repair. However, insofar as these costs are attributable to defects in the items manufactured by the supplier or to improper use on the part of the supplier, its employees or other vicarious agents, they shall be borne solely by the supplier. The supplier shall notify us immediately of any damage to these tools and models that is deemed not merely insignificant. Upon request, he shall be obliged to return them to us in the proper condition if they are no longer required by him for the performance of the contracts concluded with us.
- 5.3 Retentions of title by the supplier shall only apply insofar as they relate to our payment obligation for the respective products to which the supplier retains title. In particular, extended or prolonged reservations of title shall not be permitted.

## 6. Delivery, transfer of risk, packaging

- 6.1 In the absence of any written agreement to the contrary, the price includes delivery and transport to the shipping address stated in the order, including packaging.
- 6.2 Even if shipment has been agreed, the risk shall only pass to us upon acceptance. Insofar as acceptance is not owed when the goods are handed over to us at the agreed destination.
- 6.3 Unless otherwise agreed, the goods to be delivered shall be packaged in a customary and appropriate manner or – at our request – shall be provided with our original packaging or other special packaging in accordance with our instructions. The supplier shall be liable for damage resulting from inadequate packaging.
- 6.4 Insofar as – according to the agreement reached – the price does not include the packaging, and the remuneration for the packaging (not only provided on loan) is not expressly determined, this is to be charged at the proven cost price. At our request, the supplier must take back the packaging at his own expense.
- 6.5 The supplier shall mark or label the goods and the packaging in the manner specified by us. The goods are to be delivered stacked on Euro pallets according to our stacking plans.
- 6.6 Goods bearing a for us protected brand or corresponding equipment or packed in our original packaging may only be delivered by the supplier to us or to a third party designated by us.

## 7. Scope of performance obligations

- 7.1 The supplier warrants that the delivered goods comply with the respective purchase sample, as well as the legal and agreed quality and packaging conditions – in the absence of which at least the customary quality conditions – and are furthermore free of defects or faults within the meaning of the German Product Liability Act (Produkthaftungsgesetz). Furthermore, the supplier guarantees that the delivered goods correspond to the latest technological standards respectively, comply with the latest DIN and other relevant standards and public law regulations and safety regulations, and that any existing (or enclosed) markings pertaining to properties, designations, descriptions or instructions for use for the goods are correct in terms of content, legally flawless, complete and comprehensible.
- 7.2 We reserve the right to conclude a quality assurance agreement (QAA) with the supplier. If a QAA exists between the parties, it shall apply – insofar as it does not contradict the framework agreement provisions and these GTCP.

## 8. Warranty

- 8.1 In the event of defects, we shall be entitled to the statutory claims without restriction. Insofar as the warranty period is governed by § 438 I Nr. 3 BGB, 30 months in derogation thereof shall apply. Otherwise the legal warranty periods shall remain unaffected.
- 8.2 We shall check immediately upon receipt of the goods whether they correspond to the ordered quantity and type, and whether there is any externally recognisable instances of transport damage, or other externally recognisable defects. We are not obliged to carry out any further inspections, subject to the express restriction of Section 377 German Commercial Code (HGB). Insofar as acceptance has been agreed, there shall be no obligation to inspect.
- 8.3 We shall not waive warranty claims by acceptance or by approval of samples or specimens submitted.
- 8.4 Upon receipt of our written notice of defects by the supplier, the limitation period for warranty claims shall be suspended until the supplier rejects our claims, or declares said defect eliminated, or otherwise refuses to continue negotiations regarding our claims. In the event of a replacement delivery and rectification of defects, the warranty period for replaced and rectified parts shall recommence, unless we had to assume from the supplier's conduct that the supplier did not consider itself obliged to take the measure, but only undertook the replacement delivery or rectification of defects as a gesture of goodwill or for similar reasons.

## 9. Product liability

- 9.1 The supplier shall be responsible for all claims asserted by third parties for personal injury or property damage attributable to a defective product supplied by him, and shall be obliged to indemnify us against any resulting liability. Should we be obliged to carry out a recall action vis-a-vis third parties due to a defect in a product supplied by the supplier, the supplier shall bear all costs associated with the recall action.
- 9.2 The supplier shall maintain product liability insurance at its own expense with an appropriate sum insured which – unless otherwise agreed in individual cases – need not cover the recall risk or punitive or similar damages. The supplier shall send us a confirmation of insurance at any time upon request.

## 10. Property rights

- 10.1 The supplier hereby warrants in accordance with this Clause 10.1 that no third party property rights are infringed, domestic or abroad, by products supplied by it. In this context we indicate that products are distributed worldwide. The supplier shall be obliged to indemnify us against all claims asserted against us by third parties on account of such an infringement of industrial property rights, and to reimburse us for all necessary expenses in connection with such claims. This shall not apply insofar as the supplier proves that it is neither responsible for the infringement of the property right nor should have been aware of it at the time of delivery if it had exercised due commercial care.
- 10.2 Our further legal claims due to defects of title of the products delivered to us shall remain unaffected.

## 11. Spare parts

- 11.1 The supplier is obliged to store compatible spare parts for the products delivered to us for a period of at least 15 years after delivery.
- 11.2 Should the supplier intend to discontinue the production of spare parts for the products delivered to us at or after the end of the period referred to in Clause 11.1, it shall notify us thereof without undue delay after the decision on the discontinuation. This decision must be at least 6 months prior to the cessation of production.

## 12. Confidentiality

- 12.1 The supplier shall be obliged to keep the terms and conditions of the order, as well as all information and documents made available to him by us for this purpose (with the exception of publicly accessible information), secret for a period of 3 years after the date of delivery and to use them only for the execution of the order. He shall return the aforementioned documents to us immediately upon request for the processing of the order or the handling of enquiries relating thereto.
- 12.2 Without our prior written consent, the supplier may not refer to the business relationship in advertising material, brochures, etc. and may not exhibit delivery items manufactured for us.
- 12.3 The supplier shall oblige its sub-suppliers in accordance with this Clause 12.

### **13. Compliance with laws**

- 13.1 In connection with the contractual relationship, the supplier shall be obliged to comply with the statutory provisions applicable to it in each case. This concerns, in particular, anti-corruption and money laundering laws, as well as antitrust, labour and environmental protection regulations, especially the provisions of the Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz) or hazardous goods regulations.
- 13.2 Subject to a further agreement, applies: The supplier shall ensure that the products supplied by him comply with all relevant requirements for placing on the market in the European Union and the European Economic Area. Upon request, he shall provide us with evidence of conformity by submitting suitable documents.
- 13.3 The supplier shall use reasonable endeavours to ensure compliance by its subcontractors with the obligations incumbent on the supplier under this Clause 13.
- 13.4 At our request, the supplier shall allow us to inspect its documents, provide us with information and undertake to cooperate fully to the extent necessary, in order to enable us to comply with the statutory obligations incumbent upon us.

### **14. Applicable law, place of jurisdiction and place of performance**

- 14.1 The place of performance for both parties and the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office. A deviating place of performance may be agreed for the delivery.
- 14.2 The contracts concluded between us and the supplier shall be governed by the law of the Federal Republic of Germany to the exclusion of the Convention on Contracts for the International Sale of Goods (UN Sales Convention).
- 14.3 These Terms and Conditions of Purchase shall apply from 13 December 2023.