

# Terms and Conditions of Purchase, 03/2016, fischer Werkzeug- und Formenbau GmbH

## 1. General information

1.1 Legal relations between the supplier and fischer Werkzeug- und Formenbau GmbH (the "customer") are determined exclusively according to these Terms and Conditions of Purchase. We do not acknowledge terms and conditions of the supplier that conflict herewith unless we have expressly consented in writing to the application thereof. Our Terms and Conditions of Purchase apply even if we accept the supplier's delivery without reservations while knowing of terms and conditions of the supplier that conflict with or deviate from our Terms and Conditions of Purchase.

1.2 Our Terms and Conditions of Purchase also apply to future transactions with the supplier.

## 2. Supply agreement; release orders

2.1 Offers are free of charge to the customer. If the offer deviates from the customer's inquiry, the offer must expressly state that this is the case.

2.2 Supply agreements (order and acceptance) and release orders and any amendments and/or addenda thereto must be in written form. Orders, release orders, and any amendments and/or addenda thereto may also be transmitted via remote data transmission or by means of machine-readable unsigned data storage media.

2.3 If the supplier does not accept the order within two weeks after receipt thereof, the customer is permitted to revoke it.

2.4 By accepting the order, the supplier acknowledges that it has obtained information on the nature of the execution and scope of the performance by examining the available documents. Documents, drawings, and plans presented by us are not binding if they contain obvious errors, including typographic and arithmetic errors. The supplier is obligated to notify us of any such errors so that our order can be corrected and a new one issued. This also applies in the event of any missing documents or drawings.

If the customer does not respond to suggestions, requests, or proof from the supplier, this is not under any circumstances deemed to constitute consent unless expressly agreed otherwise in writing.

2.5 If the customer enters into a framework agreement for future deliveries with the supplier, an order placed by the customer is binding unless the supplier objects thereto within five working days.

2.6 We reserve the rights of ownership and copyrights to illustrations, drawings, calculations, and other documents; these must not be made accessible to third parties without our express written consent. They must be used exclusively for production based on our order. After the order is carried out, they must be returned to us unsolicited. They must be kept confidential toward third parties.

## 3. Prices; payment terms

3.1 The price stated in the order is binding. Unless otherwise agreed in writing, the price includes "free" delivery to the destination stipulated by the customer, including packaging. Returns of packaging must be agreed separately.

3.2 We can only process invoices and delivery slips if they state information on the order number, quantity and unit quantity, gross weight, net weight, and where applicable calculated weight, the designation of the item with our item number, and the remaining amount in case of partial deliveries. The supplier is responsible for any and all consequences arising from failure to comply with this obligation.

3.3 Unless otherwise agreed in writing, we will pay the purchase price within 30 days, counted from the date of delivery and receipt of the invoice, subject to a 3% prompt payment discount or net within 60 days from receipt of the invoice.

3.4 The goods shall become the customer's property without any encumbrances upon payment at the latest.

3.5 We have rights of setoff and retention within the scope provided by law. Claims by the supplier on us must not be assigned to third parties except with our consent.

## 4. Delivery dates and time limits; default and *force majeure*

4.1 Agreed dates and time limits are binding. The factor determining whether the delivery date or delivery time limit has been observed is the time of receipt of the goods by the customer.

4.2 The supplier is obligated to inform us in writing without delay if circumstances based on which the agreed delivery time cannot be observed should arise or become apparent to the supplier.

4.3 In the event of default of delivery, we have the statutory claims. In particular, we are entitled to demand payment of damages after a reasonable cure period elapses fruitlessly.

4.4 *Force majeure* shall release the Parties from their obligations of performance for the duration of the disruption and within the scope of the effects thereof. This applies even if these events occur at a point in time when the Party in question is in default. The Parties are obligated, within reason, to provide the necessary information without delay and adjust their obligations to the changed circumstances in good faith.

## 5. Delivery; passage of risk; packaging

5.1 The delivery shall take place at the supplier's expense, free of charge, to the destination stipulated by the customer.

5.2 The risk shall pass to the customer after the goods reach the destination, upon acceptance by the customer, or in the case of set-up, installation or assembly of the goods supplied by the supplier, upon commissioning at the customer's plant.

5.3 Unless otherwise agreed, the goods to be supplied must be packed properly and in accordance with standard commercial practices or, at the customer's request, must be equipped on the customer's instructions with the customer's original packaging or other special packaging. The supplier is liable for any damage occurring as a result of defective packaging.

5.4 The supplier is obligated to mark or label the goods and the packaging in the manner stipulated by the customer or the agreed manner, where applicable. The goods must be delivered stacked on European pallets in accordance with the customer's stacking plans.

5.5 The supplier is obligated to deliver any goods that bear a trademark protected for the customer or have corresponding features or are packed in the customer's original packaging exclusively to the customer or a third party designated by the customer.

## 6. Formal acceptance; notification of defects

6.1 Formal acceptance shall be in accordance with the agreements set out in the delivery release order.

6.2 The customer must notify the supplier in writing without delay of any defects in the delivery as soon as they are identified under the circumstances of a proper business process. The supplier waives in this regard the right to object that complaints regarding defects have been received late.

## 7. Scope of performance obligations

The supplier represents and warrants that the goods supplied are in accordance with the relevant purchase samples and the statutory and agreed quality and packaging terms, or, in the absence thereof, at least with the quality conditions customary within the trade, and beyond that are free of defects or errors within the meaning of the German Product Liability Act (ProdHaftG). The supplier moreover represents and warrants that the goods supplied reflect the current state of the art and are in accordance with the then most-recent DIN and other relevant standards and provisions of public law and safety regulations and that any markings concerning properties, designations, descriptions, or operating instructions for the goods that may be present or enclosed are correct in terms of content, legally unobjectionable, complete and understandable.

To the extent that the supplier breaches the duties mentioned above, the supplier is liable for all kinds of fault in accordance with the statutory provisions. The supplier is advised that it has the right to prove that it is not responsible for a breach of duty.

The customer reserves the right to conclude a quality assurance agreement with the supplier.

## **8. Warranty**

8.1 Unless expressly agreed otherwise in writing, the warranty shall be in accordance with the statutory provisions. The customer is entitled, at its discretion, to demand first that a cure be effected at no cost or delivered goods that are free of defects be supplied. The customer is also permitted to demand that delivered goods that are free of defects be supplied with regard to deliveries that have not yet taken place, but which can already be expected not to be in accordance with the agreement. In all other respects, the customer is entitled to the statutory claims.

8.2 The limitation period for claims regarding defects is five years from delivery of the goods.

## **9. Product liability**

9.1 The supplier is obligated to indemnify and hold harmless the customer from and against claims of third parties arising from product liability if and insofar as the supplier is responsible under the principles of product liability law for the product error and the damage and/or losses that have been incurred. Nothing herein shall affect any further legal claims.

9.2 Within the scope of this duty, the supplier is moreover obligated to reimburse the customer for any expenses arising from or in conjunction with a recall carried out by the customer. To the greatest extent possible and whenever reasonable, the customer shall inform the supplier of the content and extent of any recall measures to be carried out and offer the supplier the opportunity to issue a statement of its position.

9.3 The supplier undertakes to maintain product liability insurance with reasonable sums of coverage for personal injury and property damage.

## **10. Indemnification against third-party rights**

The supplier represents and warrants that in conjunction with its delivery, no industrial property rights (patents, utility models, etc.) or other third-party rights are infringed. In this context, the customer points out that the customer's products are marketed worldwide. If a third party asserts claims on the customer due to infringement of its rights, the supplier is obligated to indemnify and hold harmless the customer from and against these claims. The obligation of indemnification also relates to all expenditures necessarily incurred by the customer in conjunction with the assertion of claims by a third party.

## **11. Retention of title; supply of materials; tools**

11.1 Where we supply parts to the supplier, we reserve title thereto. Processing or transformation by the supplier are carried out on our behalf. If our goods subject to retention of title are processed together with other objects that do not belong to us, we will acquire co-ownership of the new object in relation to the value of our goods to the other objects processed at the time of processing.

11.2 If the goods supplied by are inseparably mixed with other objects that do not belong to us, we will acquire co-ownership of the new object in relation to the value of the goods subject to retention of title to the other objects mixed therewith at the time when they are mixed. If this mixing is done in such a way that the supplier's goods are to be seen as the primary materials, the Parties hereby agree that the supplier will assign a percentage of co-ownership of the goods to us. The supplier shall hold our sole or co-owned property on our behalf.

11.3 We reserve title to tools. The supplier is obligated to use the tools exclusively to produce the goods ordered by us. The supplier is obligated to insure the tools that belong to us at replacement value at its own expense against fire and water damage and theft. The supplier is obligated to perform any necessary maintenance and inspection work in due time at its own expense. It must notify us immediately of any disruptions. If the supplier culpably fails to do so, claims for damages shall be unaffected.

## **12. Manufacturing equipment and confidential information of the customer**

12.1 Samples, models, drawings, print artwork, technical instructions, and manufacturing equipment such as tools (hereinafter "samples and manufacturing equipment") that the customer provides to the supplier or for which the customer pays in full must not be used for deliveries to third parties except with the customer's prior written consent.

12.2 In all other respects, the production, service and maintenance, use and storage of the manufacturing equipment are subject to the customer's instructions.

## **13. Confidentiality**

13.1 The supplier is obligated to treat our orders and all associated commercial and technical details as business and trade secrets.

13.2 The supplier must keep samples and manufacturing equipment, along with other documents and information received from the customer, strictly confidential. These must not be disclosed to third parties except with the customer's express consent. The obligation of confidentiality applies even after the contract in question has been fully carried out and settled.

13.3 Documents concerning the design, construction, and manufacturing of products of the customer that the customer has provided to the supplier during purchasing negotiations that have not led to the placement of an order must be returned to the customer without delay after the purchasing negotiations come to an end.

13.4 The supplier must impose obligations on its own suppliers in accordance with the foregoing provisions of this Sec. 13.

13.5 Neither Party is permitted to advertise the business relationship between them except with the other Party's prior written consent.

## **14. Applicable law; place of jurisdiction**

14.1 All relationships between the supplier and customer are subject exclusively to German law. The application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is ruled out.

14.2 The place of performance is the location in which the customer has its registered office. A differing agreement may be reached for delivery.

14.3 Where the supplier is a merchant, the place of jurisdiction is Stuttgart.

14.4 These Terms and Conditions of Purchase apply from 1 March 2016 onward.