

General Delivery Terms of FISCHER AG Precision Spindles (2004)

1. General

- 1.1 The contract shall be deemed to have been concluded upon receipt of written acknowledgement from FISCHER AG Precision Spindles (hereinafter called the "Supplier" stating acceptance of the order.

Any deviations from the order that are mentioned in the order confirmation shall become part of the contract, unless the customer contests them in writing within 5 working days of receipt of the order confirmation. Offers (especially those in price lists, brochures etc.) which do not stipulate an acceptance period shall not be binding.

- 1.2 These General Delivery Terms shall be binding if declared applicable in the tender or in the order acknowledgement. Any conditions stipulated by the customer which are in contradiction to these General Delivery Terms shall only be valid if expressly accepted by the Supplier in writing.

2. Scope of supplies and services

The supplies and services of the Supplier are exhaustively specified in the order confirmation and any appendices thereto. The Supplier shall be empowered to make changes resulting in improvements, provided that they do not incur any increase in price.

3. Technical documents (diagrams, drawings etc.)

- 3.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Information in technical documents shall only be binding if this is stipulated in writing.

- 3.2 Each party to the contract retains all rights to plans and technical documents provided to the other party. The party receiving such documents recognises these rights and shall – without previous written consent of the other party – not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were provided.

4. Regulations in the country of destination and safety measures

- 4.1 The customer shall inform the Supplier of any existing regulations and standards relating to the supply of goods and services, operations, and measures for the prevention of sickness and accidents no later than when placing the order.
- 4.2 Unless otherwise agreed, goods and services supplied shall comply with the regulations and standards applicable at the domicile of the customer as indicated to the Supplier in clause 4.1 above. Additional or other safety devices shall be included, insofar as this is specifically agreed.

5. Prices

- 5.1 Unless otherwise agreed, all prices shall be deemed to be net, in the agreed local currency, including any Swiss VAT in percent, ex works, excluding packing, without any deduction whatsoever.
- 5.2 The Supplier reserves the right to adjust the prices if technical changes have to be made to the products at the customer's request between submission of the tender and the contractually agreed performance.

6. Terms of payment

- 6.1 Payments shall be made at the Supplier's domicile, without any deduction for cash discount, expenses, taxes levies, fees, duties, and the like. Payment shall be **30 days** net from invoice date.
- 6.2 If the customer fails to adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date of payment at a rate of 4 % over the current discount rate of the National Bank of Switzerland. The right to claim further damages is reserved.

- 6.3 The payment dates are to be respected even if transport, delivery, commissioning or acceptance of the goods or services should be rendered impossible or be delayed for reasons beyond the Supplier's control, or if minor parts are missing or such reworking proves to be necessary as does not render the use of the goods supplied impossible.

7. Reservation of title

The Supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract. Upon entering into the contract the customer authorises the Supplier to enter the reservation of title in the public register and to fulfil all corresponding formalities, at customer's cost.

During the period of the reservation of title, the customer shall, at his own cost, maintain the delivered products and insure them for the benefit of the Supplier against theft, breakage, fire, water and other risks. Furthermore, he shall take all measures to ensure that the Supplier's title is in no way prejudiced or forfeited.

8. Delivery time

The delivery time begins as soon as the contract is concluded, all official formalities have been completed, payments due upon ordering have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the Supplier has sent a notice to the customer informing him that the supplies are ready for dispatch.

The delivery time is reasonably extended:

- i. if the information required by the Supplier for performance of the contract is not received in time, or if the customer subsequently changes it, thereby causing a delay in the delivery of the supplies or services;
- ii. if hindrances occur which the Supplier cannot prevent, despite exercising due care, regardless of whether they affect the Supplier or the customer or a third party. Examples of such hindrances are: epidemics, mobilisation, war, rioting, serious breakdowns, accidents labour conflicts, late or deficient delivery of the necessary raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by public authorities, natural catastrophes;
- iii. if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.

A delay in the supply of goods or services does not entitle the customer to any rights and claims, unless there has been unlawful intent or gross negligence on the part of the Supplier. However, such rights and claims shall not exist in the case of unlawful intent or gross negligence of persons employed or appointed by the Supplier to perform any of his obligations.

9. Packaging

The Supplier will invoice the packaging materials, which are not returnable, separately. If, however, it is designated property of the Supplier, the customer must return it to the place of departure post-paid.

10. Passing of benefit and risk

- 10.1 The benefit and the risk shall pass to the customer on the date that the goods leave the works.
- 10.2 If dispatch is delayed at the request of the customer or due to reasons beyond the Supplier's control, the risk shall pass to the customer at the time originally foreseen for the goods to leave the works. From this moment on, the supplies shall be stored and insured for the account and risk of the customer.

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11. Inspection and taking-over of supplies and services

- 11.1 As far as it is normal practice, the Supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 11.2 The customer shall inspect the supplies and services within 5 days of receipt and immediately inform the Supplier of any defects. If the customer fails to do so, the supplies and services shall be deemed accepted.
- 11.3 Having been notified of the deficiencies according to **Point 11.2**, the Supplier shall remedy them as soon as possible, and the customer shall give the Supplier the opportunity to do so.
- 11.4 The conducting of an acceptance test, as well as stipulating the conditions for such a test, must be covered by a special agreement.
- 11.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in **Points 11** and **12** (guarantee, liability for defects).

12. Guarantee, liability for defects

- 12.1 The guarantee period is **12 months**, beginning when the supplies leave the works or upon acceptance or commissioning by the customer at the premises of the end user and the completion of such acceptance or commissioning.

If dispatch is delayed due to reasons beyond the Supplier's control, the guarantee period shall end not later than 18 months after the Supplier's notification that the supplies are ready for dispatch.

For replaced or repaired parts the guarantee period starts anew and lasts **6 months** after replacement or completion of the repair.

The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in the case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the Supplier the opportunity to remedy the defect.

- 12.2 Upon the written request of the customer, the Supplier undertakes to either repair or replace as quickly as possible all parts of the goods supplied which, before the expiry of the guarantee period, are proved to be defective or useless due to bad material, faulty design or poor workmanship. Replaced parts shall become the Supplier's property.
- 12.3 Express warranties are only those which have been expressly specified as such in the order acknowledgement or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest.

If the express warranties are not fulfilled or only partially fulfilled, the customer may first of all request the Supplier to carry out the improvements immediately. The customer shall give the Supplier the necessary time and opportunity to do so. If, however, the defect is such that it cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer

shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically unreasonable, to terminate the contract. In such a case the Supplier can only be held liable for reimbursing the sums which have been paid for the parts affected by the termination.

- 12.4 Excluded from Supplier's guarantee and liability for defects are all deficiencies which cannot be proved to have their origin in bad material, a lack of detailed information on the use of the device (milling strategy, abrasion techniques etc.) faulty design or poor workmanship, e.g. those resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, excessive loading, use of any unsuitable material, influence of chemical or electrolytic

action, building or erection work not undertaken by the Supplier, or resulting from other reasons beyond the Supplier's control.

- 12.5 With respect to any defective material, design or workmanship, as well as any failure to fulfil express warranties, the customer shall not be entitled to any rights and claims other than those expressly stipulated in Clauses **11.1 - 11.5**.

13. Exclusion of further liability on the Supplier's part

All cases of breach of contract and the relevant consequences, as well as all rights and claims on the part of the customer, irrespective of the grounds on which they are based, are exhaustively covered by these General Delivery Terms. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract are excluded. In no case whatsoever shall the customer be entitled to claim compensation for damage that has not occurred to the goods themselves, e.g. loss of production, loss of use, loss of orders, loss of profit and other direct, indirect or consequential damage.

14. Jurisdiction and applicable law

14.1 The place of jurisdiction for both the customer and the Supplier shall be at the registered office of the Supplier.

14.2 The contract shall be governed by Swiss substantive law.

Hence the Lugano Convention of 16.9.1988 and the United Nations Convention of Vienna of 11.4.1980 on Contracts for the International Sale of Goods are expressly excluded.