

# General Terms and Conditions of Fischer GmbH & Co. KG Lagertechnik + Regalsysteme

## 1. General conditions / Scope of application

- 1.1. We perform services for our business partners ("Customers") solely under these General Terms and Conditions ("GTC"). We order goods and/or the delivery of goods based on our Terms and Conditions of Purchasing.
- 1.2. We do not recognise any deviating, conflicting or supplementary contractual terms and conditions of the Customer unless we have expressly agreed to their validity in writing. We hereby expressly contradict Customer orders that refer to contractual terms and conditions. Our GTC shall also apply if we make deliveries to the Customer without reservation, in awareness of deviating, conflicting or supplementary contractual terms and conditions of the Customer.
- 1.3. Our GTC shall also apply to future agreements with the same Customer, without us having to refer to this in each individual case.
- 1.4. Individually reached, separate agreements with the Customer (including subsidiary agreements, supplements and changes) shall have precedence over these GTC in every case. A written agreement or our written confirmation, as the case may be, shall form the basis of content for such agreements, subject to proof to the contrary.
- 1.5. If any assembly conditions are attached to the order documents, then these shall form a component of the agreement.
- 1.6. Our GTC shall only apply to traders within the meaning of Section 14 of the German Civil Code (BGB), legal persons or special funds governed by public law.

## 2. Offers / Offer documentation / Basis for calculation

- 2.1. Our offers are subject to change without notice. In order to be effective, the agreement shall require our written confirmation of the Customer's orders.
- 2.2. We are able to accept Customer orders within four weeks.
- 2.3. We reserve rights of ownership and copyrights to the the illustrations, drawings, calculation and any other documentation subject to copyright drawn up by us. This also applies if the documentation is handed over to the Customer – regardless of the reason. They are to be returned upon request and may not be made available to third parties without our written consent. Duplications and imitations are not permitted.
- 2.4. Minor deviation from details that are contained in the documentation belonging to the offer are expressly reserved, insofar as they do not permanently impair the function of the agreed service.
- 2.5. Insofar as not described otherwise, our racks are calculated on the basis of the following rules and regulations:
  - Eurocode parts 0, 1, 3, 5, 7 and 8
  - DIN EN 15512 Steel static storage systems
  - DGUV Shelf 108-007 Storage facilities and devices (previously BGR 234)

## 3. Price

- 3.1. Our prices apply "ex works", excluding packaging. The packaging is charged separately.
- 3.2. We reserve the right to alter our prices appropriately if any increases or decreases in costs, over which we have no influence, in particular due to material costs, an increase in commodity prices, supplies, wage and salaries, freight or public levies, occur after concluding the agreement. We will, if requested, provide the customer with evidence of these alterations

in costs.

- 3.3. The statutory VAT is not included in our prices. The statutorily determined amount as at the respective date of invoicing will be indicated separately on the invoice.
- 3.4. All duties, fees, taxes and other public charges shall be borne by the buyer, even if incurred outside of Germany.
- 3.5. Currency fluctuations are entirely at the expense of the customer, the agreed prices in euros remain unaffected by currency fluctuations in relation to the currency of our customers.

#### **4. Terms and condition of payment / Set-off**

- 4.1. Payments for goods and ancillary services are to be made within 10 days of receipt of the invoice.
- 4.2. Should we, after concluding the agreement, become aware of any circumstances which, according to our best judgement, give us reason to doubt the Customer's creditworthiness, for example the institution of insolvency proceedings, any signs of impending cessation of payment (non-adherence to payment terms, etc.), our claims shall immediately be due independently of the term of any bills of exchange accepted or credited or any payment terms granted, as the case may be. In this case, we shall also be entitled to only make deliveries still outstanding in return for advance payment or a security deposit.
- 4.3. All payments are to be made in euros. Insofar as the prices in our offer are reproduced as different currencies, the official euro exchange rate of the foreign currency exchange centre in Frankfurt am Main (12 noon CET) is to be taken a basis, for the day on which the written order confirmation was issued by us, when making payment.
- 4.4. Payment by bills of exchange or cheque may only be made with our consent. Should payment by means of a bill of exchange or cheque be agreed, the bill of exchange or cheque will only be accepted by us as conditional payments; any bill charges and expenses, as well as the risk of timely presentation and disputing of payment shall be borne by the customer.
- 4.5. In the event of delayed payments, notwithstanding our other rights, we shall be authorised to withhold any deliveries already ordered or any work agreed upon until such time as all claims have been settled in full.
- 4.6. The Customer shall only be entitled to set off our claims following our written agreement or in the case of claims that have been determined as being legally valid or undisputed. In addition, it shall only be authorised to exercise rights of retention, insofar as its counter-claim is based on the same contractual relationship.
- 4.7. When agreeing partial deliveries, the Customer is obliged, upon request, to make partial payments in the amount corresponding to the value of the partial delivery in relation to the complete delivery.

#### **5. Delivery time / Delay / Liability**

- 5.1. Should it be necessary to enlist the Customer's co-operation in order to carry out our service, for example in obtaining permits from the authorities or for the release of drawing, etc., the delivery deadlines specified by us shall only commence once the Customer has properly fulfilled all commitments and responsibilities.
- 5.2. Should there be delayed acceptance on the part of the Customer or should it violate its obligations to co-operate, we shall be entitled to demand compensation for any damage incurred by us, including any additional expenses. To the extent that special services are required, the Customer shall be charged according to the work time sheet. We reserve the right to assert any further claims. The Customer shall be obliged to temporarily store any goods already delivered until such time as the complete service has been provided by us, as its own expense and risk, for the period of delay in acceptance and the violation of any existing obligations to co-operate.
- 5.3. Should delivery deadlines be given in the order documentation as approximate deadlines, we shall be entitled to exceed the dates specified by a maximum of two weeks. Should use be

made of this right, we will indicate this as early as possible. All subsequent contractual deadlines shall be extended accordingly.

- 5.4. Our delivery times do not consider delays in cross-border shipments and deliveries. If delays occur at the border crossing (for example due to customs declarations and customs clearances, traffic jams or queues due to customs declarations and clearances, border closures or the like), these delays shall be borne by the customer and the delivery times extended accordingly.
- 5.5. Hindrances, particularly event of force majeure, entitle us to postpone delivery by the duration of the hindrance. Trade disputes, mobilisation, war, embargo, prohibitions on imports and exports, shortages of raw materials and energy, fire, blocking of traffic, bad weather conditions (such as during assembly) and other circumstances beyond our responsibility shall be considered as force majeure. In this respect, it is irrelevant whether this occurs at our premises, those of a prior vendor or a sub-contractor.
- 5.6. Should we, when making a delivery, provide evidence that, in spite of carefully selecting our suppliers and in spite of concluding the necessary contracts on reasonable conditions, we did not receive the delivery from our suppliers in a timely manner, the delivery deadline shall be extended by the period of delay that was caused by the goods not having been supplied by our suppliers in a timely manner.
- 5.7. Should delivery become impossible due to events described in Clauses 5.2 and 5.5, or should the temporary hindrance result in the provision of services taking longer than four weeks, we shall be entitled to withdraw from the contract. After a period of four weeks has expired, the Customer shall be entitled to request a statement from us regarding whether we wish to withdraw or to deliver within a reasonable period of time. If we do not respond within a reasonable period of time, then the Customer shall be entitled to exercise its statutory rights.
- 5.8. The liability for delay is regulated according to Clause 10.
- 5.9. In an owed by us delivery abroad, we will obtain the necessary for export licenses, permits or approvals. We are entitled to withdraw from a contract in whole or in part without compensation if the required export licenses, authorizations, clearances or consents are not issued by the authorities or not within a reasonable period.
- 5.10. Without prior agreement, we are not required on the section 5.9 also to procure certificates or documents in order to obtain the necessary licenses, permits and other formalities for the import or arrange for customs clearance.
- 5.11. Without separate agreement, we are not obligated to comply with specifications on weight and measurement technology, packaging, labeling and markings that are required outside Germany.
- 5.12. Without separate agreement we are not obliged to insure goods.

## **6. Shipping / Packaging**

- 6.1. When we carry out shipping, to the extent that no special agreement is stipulated in the order confirmation, we shall be free to select the means of transportation. Any additional expenses for a mode of shipment that is desired by the Customer or for the expedited shipment shall be borne by the Customer, even if we assume the freight charges.
- 6.2. In the event of rescission of the contract, to the extent that the Customer is responsible for the termination of the contractual relationship, the Customer shall be required to return the goods supplied by us to our place of business in Stutensee.
- 6.3. If the Customer wishes to return the transport and outer packaging that we used, then the Customer shall be obliged to return it to our place of business in Stutensee during normal business hours. We shall only accept returned transport and outer packaging if it is free from extraneous matter (substances not originating from the supplied goods) and sorted according to different types of packaging material. If the Customer fails to comply with this obligation, it shall be required to bear our addition resulting expenses.

## **7. Delivery / Collection and transfer of risk**

- 7.1. Upon delivery of the goods, the unloading of the vehicle shall be carried out by the Customer.
- 7.2. Should the Customer collect the goods itself, only lorries or containers that can be loaded from the side with forklifts are permitted. If several collection vehicles arrive simultaneously, then these will be attended to one after the other.
- 7.3. Should the goods be delivered by us and assembled and/or installed by the Customer, the risk shall be transferred to the Customer with the provision of goods at the location that is stated in the order confirmation. The same shall apply to partial deliveries.
- 7.4. Should the delivery or shipment of goods be delayed due to reasons for which the Customer is responsible, the risk of destruction or deterioration, particularly the risk of impairment of the surface quality due to long-term storage, shall pass to the Customer with notification that they are ready for delivery or shipment.

## **8. Notice of defects**

- 8.1. Customer rights regarding defects assume that the Customer complies with its obligations of examination and notification in accordance with Section 377 of the German Commercial Code (HGB).
- 8.2. Upon shipment of the goods, the Customer must also report to and have confirmed by the responsible freight forwarder or freight carrier each damage or objection.

## **9. Claims in regard to defects**

- 9.1. Any details regarding load capacity shall only be valid in the event of assembly by us or in accordance with our instructions. If the assembly is carried out by the Customer and not in compliance with the assembly instructions, then we cannot assume any warranty for the stipulated loads, unless the deviation do not affect the loads. If no original OHRA components are used for repairs / system retrofitting, the product liability shall become fully void for the shelving system used. This also applies to the details regarding load capacity.
- 9.2. Should any goods delivered or work produced by us be defective, the Customer's claims shall initially be limited to subsequent performance. At our discretion, the subsequent performance shall either be the elimination of the defect or a new delivery. Should the subsequent improvement fail, the Customer may, at its own discretion, reduce the remuneration for the work or, if the statutory prerequisites are present, it may rescind the contract, if a construction work is not the subject of the defect liability.

- 9.3. Should the Customer assert claims for damage based on defects,

- we shall be liable in accordance with the statutory provisions, if the claims for compensation for damage are based on intent or gross negligence by us or our vicarious agents;
- we shall be liable in accordance with the statutory provisions, if we have violated a fundamental contractual obligation due to negligence; in such a case, if we have not committed an intentional contractual violation, then our liability shall be limited to typically foreseeable damage occurring.

The liability due to culpability regarding injury to life, limb and health, as well as compulsory product liability, shall remain unaffected.

The limitations of liability of this Clause 9.2 also apply in the case of the violation of obligations through or on behalf of persons for whom we are responsible according to statutory provisions. They shall not apply if we have fraudulently concealed a defect or if we have guaranteed the quality of the goods.

- 9.4. The period of limitations for asserting defect claims shall be as follows:

- insofar as the service owed by us consists in the manufacture or provision of construction work or in the provision of an item which, according to its intended purpose, is used for

construction work and which has caused it to be defective, five years;

- insofar as the Customer's defect claims involve intent or gross negligence, or the injury to life, limb and health, as well as claims according to the product liability law as well as Section 438, para. 1 (1), para. 3, Sections 444 and 445b of the BGB, the relevant statutory period of limitation; and
- in all other cases, 12 months.

The above periods of limitation also apply to contractual and non-contractual damage claims of the buyer that involve a defect, unless the application of the regular statutory period of limitation (Sections 195 and 199 of the BGB) would result in a shorter period of limitation in the individual case.

9.5. Minor defects shall not constitute entitlement to withhold payment.

9.6. The subsequent performance comprises neither the dismantling of the defective item nor a new installation, if we were not originally obligated to perform installation.

9.7. The expenses that are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs, as well as any dismantling and installation costs, shall be borne or reimbursed by us in accordance with statutory regulations, if there is an actual defect. Otherwise, we shall be entitled to reimbursement from The Customer for costs resulting from the unjustified demand to remedy a defect (particularly inspection and transport costs), unless the Customer was unaware of there being no defects present.

## **10. Limitation of liability**

Should a claim for compensation for damage be asserted against us that does not involve a warranty,

- we shall be liable in accordance with the statutory provisions, insofar as the claims for compensation for damage are based on intent or gross negligence by us or our vicarious agents;
- we shall be liable in accordance with the statutory provisions, insofar as we have negligently violated a fundamental contractual obligation (obligation, the fulfilment of which enables the proper execution of the contract possible and the observance of which the contract partners regularly rely and may rely on); in this case, our liability shall be limited to typically foreseeable damage occurring.

Any further liability – without taking into consideration the nature of the claim asserted – shall be excluded. The liability due to culpability regarding injury to life, limb and health, as well as compulsory product liability, shall remain unaffected.

The limitations of liability of this Clause 10 also apply in the case of the violation of obligations through or on behalf of persons for whom we are responsible according to statutory provisions. They shall not apply if we have fraudulently concealed a defect or if we have guaranteed the quality of the goods.

## **11. Reservation of ownership**

11.1. The goods shall remain our property until such time as full payment of all claims due to us has been made by the Customer. Putting individual payment requested into current invoices or references to account balances and the recognition of them shall not abrogate the reservation of ownership. In the event of conduct by the Customer in violation of the contract, particularly delay in payment, we shall be entitled to take back the delivered goods after setting a reasonable deadline. Taking back the goods shall not constitute a withdrawal from the contract, unless we have expressly declared this in writing. The seizure of the item by us shall always constitute withdrawal from the contract. After taking back the goods, we shall be authorised to dispose of them; the proceeds of sale shall be set off against the Customer's liabilities – less the reasonable expense of disposal.

11.2. The Customer shall continue to be entitled to sell the goods in the proper course of business; this shall exclude pledging or transfer of ownership by way of security by the

Customer. The Customer hereby assigns to us all claims equivalent to the final invoiced amount (including value-added tax) against its customers or third parties from the sale, regardless of whether the goods were sold with or without further processing. The Customer shall also remain authorised to collect this receivable amount following the assignment. Our authority to collect this receivable amount shall remain unaffected by this. However, we shall undertake not to collect the receivable amount as long as the Customer complies with its payment obligations from the collected proceeds, not in default of payment, and in particular that no application has been made to open insolvency or composition proceedings and cessation of payments has not taken effect. Should this be the case, however, we may require the Customer to disclose the receivables assigned and their debtors, provide all details necessary for their collection, hand over the associated documentation and notify the debtors (third parties) of the assignment.

- 11.3. In the case of seizures or other interventions by third parties, the Customer is required to notify us without delay, in order that we can file the action in accordance with Section 771 of the German Code on Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial expenses according to Section 771 of the ZPO, the Customer shall be liable for our resulting expenses.
- 11.4. The processing or alteration of the goods by the Customer shall always be carried out for us. Should the goods be processed together with other items not belonging to us, we shall acquire co-ownership of the new item in the proportion of the value of the goods (final invoice amount including VAT) to the other items processed at the time of processing. The item created through such processing shall be governed by the same principles as the item delivered under reservation of ownership. Should we only be entitled to joint ownership of the goods, we shall acquire to joint share in the new item in the corresponding proportion.
- 11.5. Should goods subject to reservation of ownership account for a significant component of the Customer's property, the Customer hereby assigns to us the receivable amounts resulting from the sale of the property or property rights, limited to the amount of the value of the goods subject to reservation of ownership, with all ancillary rights and with ranking prior to the others. Should the goods for a significant component of the property of a third party, the Customer hereby assigns to us the receivable amounts from third parties resulting from the combination of goods and property in the amount of the value of goods (final invoice amount including VAT) including ancillary rights to secure our claims with ranking prior to the others.
- 11.6. Insofar as the realisable total value of the securities granted to us exceeds 100% of our remaining outstanding claims against the Customer, not only for a short period of time, we shall be obliged to release the securities to which we are entitled that exceed this amount at the Customer's request. It is incumbent upon us to select the securities to be released.

## **12. Storage of data**

By concluding the contract, the Customer consents to our storage of its personal data by means of electronic data processing for the purpose of executing orders and accounting.

## **13. Final provisions**

- 13.1. Should one of the above provisions become invalid or not become a contractual component, the remaining provisions shall not be affected by this. In such a case, the parties hereby undertake to commence negotiations with the aim of replacing the invalid provision with a clause that comes nearest to the economic purpose of the parties with the previous provision.
- 13.2. These GTC and the entire contractual relationship between the Customer and us shall be exclusively subject to the law of the Federal Republic of Germany, under exclusion of the UN Convention on the International Sale of Goods of April 1980.
- 13.3. If not otherwise regulated in the order confirmation, the place of performance for our services, for all payments and for all bills of exchange received shall be our place of business in Stutensee.
- 13.4. The venue for all legal disputes arising from this contractual relationship as well as from its formation and validity (including actions concerning bills of exchange) is Stutensee, if the Customer is a trader, a legal person or special fund under public law. The same applies

if the Customer is an entrepreneur (Section 14 of the BGB). However, we shall be entitled to sue the Customer at our discretion at its place of residence or place of business.

13.5. Contract language is German. Statements and communication are to be made in German. However, we have the discretion to write in English. In this case, our customers are also authorized to respond in English.

**14. Special conditions relating to the United Kingdom of Great Britain and Northern Ireland and withdrawal from the European Union (so-called Brexit)**

14.1. If the customer is domiciled in the United Kingdom of Great Britain and Northern Ireland, the following applies, in deviation from section 13.4:

(1) All disputes arising out of or in connection with this contract or its validity shall be governed by the Rules of Arbitration of the German Institute of Arbitration e.V. (DIS - Schiedsgerichtsordnung der Deutschen Institution für Schiedsgerichtsbarkeit e.V.) thereby excluding ordinary legal remedies.

(2) The arbitration tribunal consists of a sole arbitrator.

(3) The place of arbitration is Stutensee.

(4) The language of the proceedings is German.

(5) The law applicable in the matter is the law of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods of April 1980.

14.2. We point out that for our products the regulations and rules according to section 2.5 apply. Any deviating requirements from the United Kingdom of Great Britain and Northern Ireland will not be binding on us.

14.3. The parties agree that all costs, risks and other disadvantages associated with the contract resulting from the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union shall be borne by the customer. Claims of the parties due to a disruption or ceasing to exist of the basis of the transaction according to § 313 BGB remain unaffected.

(Valid as of 01/2019)