

General terms and conditions of commerce of Fischer Electronicsysteme GmbH & Co. KG

1. General

The following conditions shall apply to all our present and future offers, deliveries and services. Alterations of any description as well as oral agreements are only valid if we have confirmed them in writing. We are not liable to recognise any other terms and conditions of commerce and these shall be deemed as void even if we have not expressly stated same. They shall only be valid if and in so far as we have given individual agreement to them in writing. Orders shall only be deemed as accepted after we have supplied written confirmation. Content and extent and scope shall be solely in accordance with the written issued confirmation of order.

The value and attributes of hard or software specified in any confirmation of order and offer shall always represent approximate maximum values or attributes achievable under the most favourable circumstances. We shall view the problems and tasks revealed to us by the contracting company as a maximum requirement.

2. Offers

Our offers are made on a non-binding basis. All depictions, weights and measures, colours, performance rate details and information on specific features included in offers are approximate and not binding. We reserve the right to make alterations within the scope of technical or scientific progress as well as with regard to any changes in the model type. Furthermore, we reserve all rights to ownership and copyright with regard to estimates, drawings and any other documents supplied in offers. Documents of this kind may not be passed on to third parties and in the event of non-fulfilment of an order shall not be made available to third parties.

3. Prices

Deliveries and services shall be in accordance with the prices and conditions as set down in the written confirmation of order. These prices shall be binding. The current valued added tax (VAT) as per the day of issuing of the invoice shall be charged in addition, in so far as no other contrary arrangement has been made. Payment shall be made within 10 days of the date of issue of the invoice allowing for a 2 % discount or within 30 days net. There is no provision for discount on invoices for any kind of services rendered. These invoices are payable upon receipt without deduction. Fischer Electronicsysteme is entitled to calculate the legally acceptable interest on arrears in the event of default of payment. Should the installation of the systems be delayed by more than one month of the agreed delivery date for reasons for which Fischer Electronicsysteme are not responsible the (remaining) purchasing price shall be due one month after declaration of readiness to deliver has been given.

4. Delivery

Delivery dates and deadlines shall be binding if they have been individually and expressly been deemed by us in writing as so being. Otherwise, all delivery dates and deadlines are subject to alteration. In the event of an agreed delivery date exceeding more than 4 weeks, the orderer is entitled to set the company a reasonable period of grace. Should delivery not take place within this period of grace for reasons incurred by us, the orderer shall be entitled to withdraw from the agreement. Claims for damage in so far as they are not legally enforced shall not be permitted. In so far as the orderer does not fulfil his contractually defined obligations within the time set or deadlines cannot be met for unforeseeable reasons beyond our control, the agreed deadline shall be extended correspondingly. We are only under obligation to deliver systems if the orderer has made prior arrangements and provided the necessary installation conditions, whether supplied by us or by the manufacturer, at the place of installation

and with regard to this, has entered into a binding agreement in compliance either with the manufacturer or us. In the event of refusal, delay, protracted delivery or any other acceptance of delivery contrary to the clauses of the contract the orderer is liable to make compensation to the amount of 5% of the net value of the order plus payment of the legal tax on turnover irrespective of any other legal or contractual claims. All rights to the enforcement of any damage claims above and beyond remain reserved. The right of the orderer to provide proof of a considerably lesser or alternatively non-occurrence of damage shall remain unaffected. Part deliveries are permissible also if they form part of overall deliveries. However they shall each be paid for separately. Before payment has been received for a part delivery we shall not be under obligation to continue with further delivery.

5. Dispatch

Dispatch shall be billed to the orderer; all risk is herewith transferred from the manufacturer or us to the orderer once goods are dispatched. Packing shall be calculated according to cost price. Should the orderer so wish, we can take out an insurance policy for dispatch for any damages, which might occur during transport for which the orderer shall make payment.

6. Installation and operation

In so far as has been agreed, the manufacturer or we ourselves shall take responsibility for the installation of the products and inform the orderer in writing of the readiness to operate.

7. Subsequent performance, guarantee

We guarantee for material defects and deficiency in title of the delivery excluding any further claims subject to the liability regulations as stated below in section 8 as follows:

7.1 Material defects

- a) All component parts proving to be defective and resulting before transfer of risk shall be either repaired or re-delivered free of charge according to our discretion. Any such defects shall be reported to us immediately and in writing. Replaced component parts shall return to our ownership.
- b) In order to carry out all repairs and deliveries of component parts, which we deem necessary, the purchaser shall having once provided us with the necessary information grant us the required time and opportunity so to do. Should this not be the case we shall be relieved of any liability for the ensuing consequences. Only in urgent cases where operational safety is in jeopardy and a prevention of an unproportionally high risk of damage is involved and about which we shall be immediately informed, does the orderer have the right to remedy the defect either himself or through a third party and to demand reimbursement of the required expenses incurred.
- c) Direct costs ensuing from any rectification of defects or subsequent performances rendered shall be borne by us (provided that the claim proves valid) for expenses resulting from the replacement component part and to include dispatch "free border" as well as for reasonable costs for assembly and disassembly. Within the Federal Republic of Germany and depending on location of the individual case, we shall provide the required support through our own personnel should this prove to be more cost-effective. Otherwise the purchaser shall be responsible for the costs. Replaced component parts shall revert to our ownership.

d) Within the parameters of the legal rulings, the purchaser has the right to withdraw from the contract should we with respect to the legally recognised exceptional cases default on the set and reasonable period of grace for the carrying out of any rectification of faults or subsequent performances in the event of a material defect and be unable to provide a result. Should the defect prove to be negligible, the purchaser merely has the right to make application for a reduction in price as laid down in the contract. The right to any other form of reduction in price as specified in the contract is not permitted.

e) No guarantee shall be accepted for the following. In particular:

Unapproved or unsuitable use, errors in assembly or operation caused by the purchaser or any third party, natural wear and tear, wrong or negligent treatment, incorrect maintenance, exposure to chemical, electro-chemical or electrical influences in so far as these are not prescribed by us.

f) Should the purchaser or a third party carry out incorrect alterations no liability shall be assumed for any resulting consequences. The same shall also apply to any alterations implemented on the delivered item where we have not given prior approval.

g) In addition, the following shall apply should software for EDP systems be included in our scope of supply and services:

aa) We shall guarantee that the software supplied does not contain reproducible errors. However the condition for guarantee is that usage is in accordance with the contractually agreed.

bb) The purchaser shall immediately inform us of any errors in the programming.

cc) Errors of which we have been informed shall be eradicated by us. Should an eradication of the error prove impossible we shall develop an alternative solution.

dd) Should we be unsuccessful in adhering to the ruling obligation as specified in cc) the purchaser has the option of either reducing within reasonable limits the agreed payment (also with regard to equipment which has been considerably affected due to the programming error) or to demand dissolution of the contract.

ee) We accept no guarantee for the supplied software corresponding to the specialist requirements of the orderer.

7.2 Deficiency in title

a) Should usage of the delivered item lead to an infringement of industrial protective rights or copyrights we shall at our own cost and do pledge to gain the purchaser the right to continued usage or to make modifications to the delivered item in a way that is acceptable to the purchaser so that an allegation of infringement of protective rights can no longer be upheld. Should this not be possible under reasonably acceptable economic terms or prove impossible within a reasonable space of time, the purchaser shall be entitled to withdraw from the contract. Under these given circumstances we shall also have the right to withdraw from the contract. Furthermore we shall exempt the orderer from any ascertained undisputed or legally binding claims made by the protective rights owners in question.

b) Our obligations as laid down in a) shall be understood subject to the liability rulings below and in the case of protective rights and copyright infringement. They shall only apply if:

- the purchaser immediately informs us of an infringement of protective rights and copyrights which has been brought to bear.

- the purchaser provides us with his support in assisting us in counter-acting the claims brought to bear and enables us to carry out modifying measures in accordance with section 8.

- the purchaser reserves us all rights to implement counter measures including out-of-court settlements.

- if the deficiency in title is not based on an instruction by the purchaser

- the legal infringement was not caused by the purchaser altering the delivered item independently or using it in a manner contrary to the contractually agreed purpose.

8. Liability

a) If through a fault of our own the delivered item cannot be used by the orderer in the contractually agreed manner as a result of either negligence or defective execution of the order subsequent to suggestions and recommendations or through infringement of other contractually agreed secondary obligations whether before or after conclusion of the contract, in particular with regard to operation and maintenance of the delivered item, the rulings of section 7 and then section b) shall correspondingly take effect with the exclusion of any further claims on the part of the purchaser.

b) We shall be liable for damages, which do not result on the delivered item itself, for what ever legal reason only in the case of

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- in the case of gross negligence on the part of the owner, the authorities in question or managerial personnel.

- in the case of culpable injury to life, body and health

- in the event of culpable infringement of essential contractual obligations we shall also be liable for gross negligence on the part of non-managerial personnel or minor negligence; in the latter case limited to the anticipatable damages. No further claims may be made.

9. Statute of limitation

All claims made by the purchaser for whatever legal reason, shall be subject to a statute of limitation amounting to a period of 12 months. The legal deadlines shall apply with regard to intentional or malicious practice as well as to any claims lodged in accordance with the law concerning product liability.

10. Rights of ownership

We reserve the rights to ownership of the delivered products until completion of fulfilment and all further payment requests have been met. The orderer does not receive rights to ownership through installation of products delivered by us into other machine systems. Every reworking of products delivered by us shall be to our advantage. In the case of installation in other systems carried out by the orderer we shall immediately become co-owners of the newly created products commensurate with the value of our products that have been installed and which shall be deemed as goods subject to reservation of title. The purchaser may only dispose of products deemed as goods subject to reservation of

title in accordance with correct business standards conveying the reservation to ownership rights. Any form of pledging or sales by way of security with regard to products deemed as goods subject to reservation of title is prohibited. In the event of accessing by third parties the orderer shall refer to our reservation of ownership and inform us immediately. At this point and as a security, the orderer shall already assign us all demands due in connection with resales or rental of our products complete with secondary rights totalling our demands in question. Under revoke the orderer is entitled and under obligation to make recovery of the assigned demands. We shall be entitled to take possession of the goods subject to reservation of title should the orderer default on payments. This shall not include withdrawal from the contract. We shall release the securities at the wish of the orderer in so far as their value exceeds the demands to be ensured by more than 20%.

11. Rights of usage regarding software

The orderer shall be granted with non-exclusive and non-transferable rights of usage to the programmes irrespective of their origin and their relevant supplementary updates for internal use only. All other rights to programmes and documentation including their copying and subsequent updates shall remain the software supplier's or ours. The orderer shall ensure that the said programmes and documentation is not accessible to third parties. Copies may only be made for archive purposes or as a reference for usage to remedy errors. A surrendering/transfer of source programmes requires an especial written agreement. In so far as the original documents bear an advisory clause referring to copyright law this clause shall be attached by the orderer to any copies made. In as far as nothing other has been agreed the rights to usage shall apply once confirmation of order has been supplied and delivery of the programmes, documentation and subsequent updates has been made.

12. Miscellaneous

The orderer may only transfer the rights and obligations resulting from this contract with our written approval. These conditions in their entirety shall remain valid even in the event of an invalidation of individual clauses. Place of fulfilment and place of jurisdiction for all contractually concluded claims connected with this same contract shall be Villingen-Schwenningen.