

## **Purchase Terms**

All our present and future legal relations shall be subject exclusively to the following Purchase Terms. We shall not be subject to conflicting terms and conditions of business, sale or delivery issued by the supplier. Such conflicting terms and conditions are hereby contradicted. The supplier recognizes the general validity of our Purchase Terms on acceptance, at the latest on performance, of the contract order even if the supplier refers to its own terms and conditions. Acceptance of the deliveries and services of the supplier by us or payment for such deliveries and services shall not be construed as implying our acceptance of the terms and conditions of the supplier. The above terms shall also apply in the event that deviating or supplementary clauses, or clauses which modify our terms, are contained in quotations or letters of confirmation. Such conditions are hereby expressly contradicted.

### **1. Quotations/orders**

Sample deliveries and quotations shall be provided at no cost and shall not be binding on us. Orders shall only be valid if made in writing or if they are confirmed in writing by us. Agreements reached verbally or on the telephone shall be subject to written confirmation. All contract terms shall be in written, legally-binding form. This requirement for written form may also be fulfilled by fax, EDI or email. Purchase orders placed by Festo shall be considered as having been accepted if the supplier does not object to the purchase order by means of a differing sales order confirmation within a period of four working days subsequent to receipt of the written purchase order.

### **2. Delivery/default/rescission**

The supplier guarantees that binding delivery dates will be adhered to.

The supplier shall be regarded as having defaulted on its deliveries or other services should it exceed the agreed date by more than 2 weeks without a reminder needing to be issued in advance. This stipulated period shall also be the statutory period of grace with the corresponding legal effects without an additional declaration needing to be made by us.

In the event of force majeure, necessary reductions in business operations and closures, we shall be entitled to extend the delivery date or to rescind the contract. Default in acceptance shall not occur as a result. The contractor expressly waives claims for damages except in the event of gross negligence or intent on the part of our legal representatives and senior managers. In the event of force majeure eight weeks before the agreed delivery date we shall be entitled to modify the order either by increasing or decreasing quantities or by procuring other parts of a similar type and of similar value subject to otherwise unchanged terms and conditions. Notwithstanding the above we shall in other respects also be entitled to extend the originally planned delivery or acceptance date by 4 weeks without the statutory effects of default in acceptance occurring as a result.

Should the supplier be unable to fulfill its undertaking to adhere to binding delivery dates as a result of force majeure, industrial disputes or other operational reasons for which the supplier is not responsible, the supplier shall inform us without delay as soon as the supplier becomes aware of the impediment to such performance. In this event we shall be entitled either to extend the deadline for acceptance or, after a reasonable period of time has passed, to withdraw entirely or partially from the contract should our interest in the delivery be substantially impaired; in particular the supplier shall not, in the event of force majeure or similar, be entitled to withdraw from the contract or increase prices at its own discretion.

Ordered products shall conform with the rules of origin of EU preferential agreements; relevant certificates of origin shall be provided to Festo with the delivery by the supplier unsolicited, unless expressly waived by Festo. Delivery shall be free of charge (DDU or DDP in accordance with INCOTERMS 2000).

### **3. Dispatch/prices/assumption of risk**

Quantities, dimensions and weights determined by us during receiving inspections shall be authoritative for deliveries. Over- or under-delivery are admissible within the over- and under-delivery tolerances specified in the order. Defects in deliveries shall be notified to the supplier in writing without delay as soon as such defects are noticed/detected during the course of ordinary business operations and also if only discovered in the process of further use. To this extent the supplier shall waive the defense of failure to issue a notification of defects in good time. Payments made shall not be construed as acknowledgement of correct delivery. Warranty agreements shall not be affected by the foregoing.

Finally agreed prices are maximum prices and apply to deliveries made within the Federal Republic of Germany inclusive of all incidental costs free to the point of delivery (DDU/DDP Incoterms 2000).

The risk shall only pass to us once the goods have been received at their point of destination.

We pay invoices twice monthly as follows:

- at the 15th and at the end of the month
- 14 days following date of invoice with 3 % sales discount, 30 days with 2 % sales discount or 60 days net.

Deviating modes of payment apply only if this is agreed upon in writing. The payment takes place under reservation of the audit. For the discount payment period the invoice date is determining. If the receipt of the goods deviates more than 5 days, is this basis of the maturity.

### **4. Warranty/liability**

Unless otherwise stipulated under this point, the statutory provisions apply regarding redhibitory defects and defects of title.

The supplier guarantees the use of the best material that is suitable for the purpose and correct and appropriate workmanship in keeping with the current status of science and technology. The supplier expressly guarantees that the goods sold conform with specimens, samples and descriptions provided by the supplier. The information given by the supplier in connection with sales discussions and in particular in catalogues, advertising documentation, public statements, data sheets and/or other product descriptions shall be regarded as the contractually agreed characteristics of products. In this context, the supplier also guarantees that the goods delivered possess the characteristics warranted or required by the contract and irrespective of this shall be accessible for the use preconditioned or possess the characteristics usual or expected for goods of the same type and quality.

In the event of a defective delivery, we shall be entitled to demand rectification of defects and/or replacement supplies at no charge. Any expenditures that may arise from these, such as costs for transport, travelling, labour, material or costs for any goods inwards inspection exceeding usual scope of inspection shall be borne by the supplier. Should the supplier fail to comply with our written request to rectify defects within a reasonable period specified by us, we shall be entitled, at the cost of the supplier, to perform the required action ourselves or to arrange for such action to be taken by

a third party. We shall be entitled to arrange for minor defects to be rectified immediately at the cost of the supplier. Should we exercise our right to rescind the contract, the goods shall be returned to the place of dispatch at the cost and risk of the supplier. We shall also be entitled to claim damages for nonperformance as well as damages other than those to the delivery item itself to the extent that this is permissible by law.

The period of limitation for claims for damages is 24 months commencing in the case of deliveries of goods with their transfer, in the case of contracts of work and services with acceptance, in each case at the time of the passage of risk.

The supplier shall in all circumstances be liable to us for faults of whatever nature, in particular for negligence of any type on the part of the supplier's employees, staff or other parties obliged to perform services for the supplier.

In the event of any defects becoming apparent within 6 months of passage of risk, the assumption shall be assumed that the defect already existed at the time of the passage of risk (delivery or acceptance), unless this assumption is irreconcilable with the type of matter or defect.

The supplier shall indemnify us against claims, regardless of their legal basis, to our contractual parties or other third parties which arise as a result of any negligent or intentional infringement of contractual or subsidiary obligations or of the supplier's non-contractual duties to exercise due care. This shall apply in particular to product liability claims resulting from defects in the product delivered by the supplier regardless of who is regarded as the manufacturer under liability law. In this context it shall be incumbent on the supplier to demonstrate that the goods delivered to us were not defective.

## **5. Prohibited substances**

The supplier guarantees that the products supplied to us do not contain any substances included in the standard EU 2002/95/EC of 27.01.2003 (RoHS) and EU 2003/11/EC of 06.02.2003.

## **6. Transfer of title**

It is agreed with the supplier that title to the goods ordered shall pass to us immediately upon notification of their readiness for delivery, whereby the supplier shall store the goods at no charge until they are accepted by us. Goods which are ready for delivery shall be stored separately and set apart from the supplier's remaining inventories.

The supplier affirms that the goods delivered are not subject to the rights of third parties. We do not recognize an extended or more extensive reservation of title due to the supplier.

## **7. Intellectual property rights**

Drawings, models, samples and tools provided by us or made according to our specifications are our property and may not be used for third parties or made available to third parties in any other way. The supplier guarantees that samples, brands, models, drawings, descriptions and documentation provided by the same are not subject to the rights of third parties and in particular that intellectual property rights are not infringed. The goods delivered must conform to statutory regulations and official requirements. The supplier shall in all instances indemnify us against claims for damages asserted by third parties arising from infringements of such rights and regulations.

## **8. Applicable law**

The contractual relationship between us and the supplier shall be subject to the law of the Federal Republic of Germany excluding all bilateral and/or multilateral agreements relating to the purchase of movable property and in particular excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1989 (CISG).

## **9. Place of performance/legal venue**

The place of performance for the delivery is the respective delivery destination. If the supplier is a registered trader, a legal person under public law or a public special fund or if the supplier's residence or principal place of business is outside the Federal Republic of Germany, the legal venue shall be at our principal place of business in 73760 Ostfildern. We are however entitled to bring an action at the principal place of business of the supplier.

## **10. Software**

Unless otherwise agreed in individual contracts, the supplier shall grant us as a minimum a nonexclusive, non-transferable and time unlimited license to use software and hardware products and the Page 4 Purchase Terms 01/2005 associated documentation. We are entitled to create copies for data backup purposes. We are also entitled to pass on the same to our customers in connection with the performance of contracts including a reference to possible copyright notice issued by the originator. The supplier guarantees that the software is free of errors and that the data structure of the same is such that correct copies can be made.

## **11. Final provisions**

Should any constituent part or parts of these terms be null and void, this shall not affect the remaining terms or the validity of the contract as a whole. Should a provision contained in these terms or the contract be null and void with regard to mandatory foreign law, the supplier shall, on request, agree to contractual additions with us and make declarations to third parties or official authorities which will ensure the validity of the relevant provisions and, if this is not possible, which ensure that the business intent and content remains valid even under foreign law. Pursuant to § 33 of the Federal Data Protection Act (BDSG) we hereby give notice that we store personal data relating to the supplier.