

# Terms and conditions of sale and delivery of Fischer Group, as of: 01/02/2017

Applies to the following companies:

- Fischer Surface Technologies GmbH
- Fischer Oberflächentechnologie GmbH
- Galvanoplast Fischer Bohemia s.r.o.

## § 1 – General provisions

(1) All our offers, deliveries and services, including future ones, shall occur exclusively according to the following terms and conditions. With the receipt of our confirmation and/or acceptance of the ordered good, the purchaser recognises our conditions of sale and delivery.

(2) Differing terms and conditions of business or purchase on the part of the purchaser are hereby expressly excluded. They are only binding for us in so far as we have expressly recognised them in writing. Neither a failure to object nor execution of deliveries and services represent recognition of the purchaser's terms and conditions of business or purchase.

(3) Ancillary agreements and changes to these terms and conditions must be made in writing to be effective.

## § 2 – Offer and conclusion of contracts

(1) Our offers are non-binding. Orders from the purchaser only become binding once we confirm them in writing. The same applies to additions, amendments and ancillary agreements.

(2) We are bound by our offer price for a maximum period of 3 months, providing the offer does not state otherwise.

(3) Offers including annexes may not be made accessible to third parties without our permission.

(4) Offers based on drawings by the purchaser or third parties shall occur without checking or guarantee as to the functionality of parts and their finishing options. We only guarantee that we will keep to measurements given in drawings if this has been expressly agreed in writing between the purchaser and us.

(5) In offers for raw parts where the purchaser has provided injection moulds, the purchaser guarantees the functionality of these injection moulds and the correctness of the information provided as to their application and properties (e.g. burst limits). Should the purchaser violate these guarantees, we have the right to extraordinary termination of the supply contract. In the event of a culpable violation we are also entitled to assert claims for compensation against the purchaser. We will be sure to notify the purchaser as soon as possible in such cases.

## § 3 – Prices

(1) The prices given in our order confirmation are exclusive of VAT. Additional deliveries and services will be charged separately. Prices apply for delivery from the plant, excluding packaging, freight, postage and insurance.

(2) Where no other agreements have been made, prices for delivered raw parts are to be understood for customary processing from the plant on the premise of carriage-paid and free delivery of the objects to be processed.

(3) We retain the right to adjust our prices accordingly if costs increase or decrease after the contract is concluded, in particular due to changes in the prices of raw materials or to tariff agreements. Proof of these costs will be provided to the purchaser on request. We will inform the purchaser of cost changes which could result in a price increase as soon as we become aware of such costs.

## § 4 - Terms of payment

(1) If credit is allowed and no other agreement has been made in the order confirmation, our invoices are payable without deduction within 14 days of the invoice date.

(2) Where the agreed payment period is exceeded, legal default interest will be charged without any special warning and under retention of the right to assert further claims.

(3) The withholding of payment due to counterclaims and offsetting with counterclaims is not permitted, unless the counterclaims are uncontested or have been made legally binding. § 7 paragraph 3 is not affected by this.

(4) Delay in payment or risk to our claims through reduced creditworthiness on the part of the purchaser entitle us to make all our claims payable immediately or demand securities, regardless of the term of any bills. In such cases we are further entitled only carry out any outstanding deliveries against pre-payment or provision of securities.

## § 5 – Delivery periods/partial deliveries/delay/commitment

(1) Delivery periods and deadlines are only binding if they have been expressly agreed in writing.

(2) Compliance with delivery time requires that all commercial and technical questions between the contracting parties have been clarified and that the purchaser has fulfilled all its obligations, such as supply of the required quantities of fault-free raw parts or payment of a deposit. If this is not the case, the delivery time shall be extended accordingly. Should the purchaser fall behind on its obligation of supply or cooperation we are entitled, after the expiration of a suitable grace period, to withdraw from the contract and demand compensation from the purchaser for the damage we have incurred.

(3) The delivery period is complied with if the object of delivery has left our plant or been declared ready for delivery by the end of that period. Where the order must be accepted, the acceptance deadline or notification of readiness to accept is decisive, unless there is a good reason to refuse acceptance.

In cases of force majeure, measures in the context of industrial action (in particular strike or lockout), supply failure and difficulties in material procurement which are no fault of ours, as well as other unforeseeable circumstances which are not our fault, we are entitled to increase the delivery period by the duration of the hindrance. Should the above circumstances make the delivery impossible or unreasonable, we may withdraw from the contract. The purchaser is entitled to withdraw from the contract if it is not reasonable for it to accept the delivery due to the delay. We will inform the purchaser of the beginning and end of such circumstances as soon as possible.

(4) We are entitled to carry out partial deliveries and partial services as long as this is acceptable for the purchaser.

(5) We are entitled to fall below or exceed the delivery amount where this is determined by production batches, as long as no other agreement has been made in writing. The purchaser will be charged for the quantity actually delivered.

(6) Insofar as it has been agreed with the purchaser that a firmly agreed quantity is to be delivered within a determined period ("closure period") and the purchaser has the right to determine the delivery date, deliveries must be requested at least four weeks before the desired delivery date. After expiry of the closure period we may deliver the quantity which has not yet been retrieved and invoice the purchaser for it.

(7) If we are in default of delivery, the purchaser may withdraw from the contract after a suitable grace period determined by it in writing. Further claims due to delay follow §12 exclusively.

(8) Should acceptance of the objects of delivery be postponed through the fault of the purchaser, we are entitled to demand a flat compensation payment for delay.

This shall amount to 0.5% of the value of that part of the total delivery which the purchaser has not accepted in a timely manner for every full week of the delay, up to a maximum of 5%. We reserve the right to assert claims for further expenses incurred in retaining and maintaining the objects of delivery. The purchaser retains the right to prove that we have not incurred damages, or not in this amount. We are only obliged to retain and maintain the objects of delivery for 3 months since the beginning of the purchaser's delay in accepting them, and only in so far as we have the capacity to store them in the particular case in question. After 3 months since the beginning of the purchaser's delay in acceptance we are entitled to freely sell or scrap the objects of delivery.

## § 6 – Packaging/dispatch/transfer of risk

(1) Risk is transferred with the dispatch of the objects of delivery from our plant (EXW) to the purchaser, regardless of who pays the freight costs in the individual case. This also applies if and in so far as it is shipped using our own transport vehicles. If collection by the purchaser has been agreed, risk is transferred upon notification of readiness for dispatch.

(2) For the interpretation of the delivery terms used, the Incoterms apply in the version valid on the day of the order confirmation.

(3) Palettes, containers and other reusable packaging remain our property and must be returned by the purchaser without undue delay and without charge to our delivery point. Single-use packaging will be charged at cost and not taken back.

(4) The dispatch of objects of delivery for the manufacture of which the purchaser has supplied raw parts shall occur in the packaging in which the raw parts were delivered to us from the purchaser. Damage due to unsuitable packaging shall be to the detriment of the purchaser. Should other packaging be chosen in consultation with the purchaser, we are entitled to charge for this.

## § 7 – Warranty/claims for defects

The purchaser's legal warranty rights according to §437 para. 1 BGB shall be applied according to the following provisions:

(1) In order to retain its warranty rights the purchaser must examine the objects of delivery without undue delay and notify us of externally visible defects within a limitation period of 12 days after receiving the good, and of hidden defects in writing without undue delay after their discovery.

(2) We will repair or recall defective objects of delivery according to our own choice and replace them with functional objects of delivery or refund them with a credit note.

(3) In the event of a complaint payments may only be withheld by the purchaser in the amount of the delivery value affected by a defect. The purchaser may only withhold payments if a complaint is being made which is undoubtedly well-founded. Should a wrongful complaint be made, we are entitled to claim reimbursement for expenses incurred from the purchaser.

(4) The purchaser must give us enough time and opportunity to carry out such work as we deem necessary for remedy, especially to sort out the defective objects of delivery. Otherwise we shall be released from liability for the resulting consequences. The purchaser only has the right to remedy the defect itself or to employ third parties to rectify it and demand reimbursement for necessary costs in urgent cases of risk to operational safety or to prevent disproportionately large damages or if we are behind on remedy. In such a case we must be notified immediately.

(5) We especially accept no liability in the following cases: Supply of unsuitable or defective raw parts or injection moulds by the purchaser. In such cases the purchaser is obliged to accept the objects of delivery produced by us using the raw parts or injection moulds supplied by the purchaser at the agreed price. The same applies where we have passed the injection moulds on to third parties for the manufacture of raw parts.

(6) We accept no liability for defective goods and shortfalls of up to 3% of the total quantity delivered in orders of small or mass-produced parts, unless this liability has been agreed in writing.

(7) Claims for defects expire 12 months after delivery of the objects of delivery, unless a longer limitation period is mandatory by law. This excludes claims for defects as well as compensation claims.

## § 8 – Special limitations of liability for subcontracted injection moulding and electroplating

(1) The following additional limitations of liability apply to subcontracted injection moulding:

Warranty claims are excluded in so far as the defect in the objects of delivery has been caused by wear and tear on the tools supplied by the purchaser.

(2) The following additional limitations of liability apply to subcontracted electroplating:

a) The purchaser is responsible for ensuring that the raw parts to be supplied by it at no charge are suitable for the electroplating process. Warranty claims for defects in the parts electroplated by us caused by defects in the raw parts to be supplied by the purchaser (raw part defects). Such defective parts will be separated by us and invoiced as raw part defects. The purchaser shall inform us as to whether the defective goods due to raw part defects should be supplied to it or scrapped by us.

b) By way of compensation for the unavoidable defects caused during production in the electroplated goods, the purchaser shall provide additional raw parts of around 10% - 20% added to the annual quantity without charge. The proportion of additional raw parts to be provided by the purchaser without charge shall be determined separately for each item between the purchaser and us. In the absence of an appropriate determination, the proportion of additional raw parts to be provided without charge by the purchaser shall amount to 15%, added to the annual

quantity. The purchaser's guarantee claims are excluded in the amount of this additional proportion of blanks, even if these are not caused by blank defects.

c) We do not check the concrete application of the parts electroplated by us. We are liable neither for the functionality of the parts electroplated by us nor for tolerance and/or accuracy of fit in combination with other parts.

## § 9 – Retention of title

(1) We retain title to all the goods/objects of delivery delivered by us until all outstanding accounts receivables from the business relationship with the purchaser have been settled (retained goods). If operating a running account the retention of title acts as a guarantee for payment of the balance.

(2) The handling and processing of retained goods by the purchaser shall be done for us as a manufacturer in the sense of §950 BGB without obligating us. The handled and processed good should be considered a retained good in the sense of §9 para. 1.

(3) Should the retained good be combined with other items by the purchaser to form a unified object belong to the purchaser, this constitutes an agreement that the purchaser grants us joint ownership of the new item and is storing this for us free of charge. Our share of ownership shall be determined according to the ratio of the value of the retained good to the value of the new item.

(4) The purchaser shall be entitled to sell the retained good within the ordinary course of business. It transfers to us now all accounts receivables arising from the resale of the retained good to its customers. We accept this transfer. Should the retained good be sold on along with other goods which do not belong to us, the purchaser shall transfer to us the share of the resale payment which corresponds to the invoice amount of the retained good. Should a retained good which only belongs partially to us be resold, the part of the payment from the resale transferred to us shall be determined according to our share of ownership.

(5) The purchaser is only authorised to collect the transferred payment in the usual course of business and this authorisation may be revoked. We will only revoke it if the purchaser does not fulfil its payment obligations to us or other circumstances arise which threaten our accounts receivables due to deterioration in the purchaser's creditworthiness. In such cases the purchaser is obliged at our request to inform its customers without undue delay of the transfer to us - if we do not do this ourselves - and to give us the information and documents necessary to collect the payment.

(6) In the event that the purchaser acts contrary to the contract, fails to pay on time or takes unauthorised ownership of the retained good, the purchaser's financial situation significantly worsens or bill and check protests arise, insolvency proceedings are opened by the purchaser itself or third parties concerning the purchaser's assets or the opening of such proceedings are rejected due to a lack of assets, we are entitled to prohibit the handling and processing as well as the sale of the retained good. In such cases we are also entitled to take possession of the retained good and enter the purchaser's business for this purpose, demand useful information and take necessary insight into its books.

(7) Should the retained good be seized or should our rights otherwise be violated by third parties, the purchaser must inform use without undue delay.

(8) We commit to release the securities in our possession in so far as their value exceeds that of the payments to be secured by more than 10%.

(9) We acquire joint ownership of the parts supplied by the purchaser for subcontracted electroplating and processed by us. Our share of ownership is determined according to the ratio of the value of the blanks to the value of the processed parts. §9 otherwise applies accordingly.

## § 10 – Drawings/tools/racks

(1) Our drawings, samples, models and tools remain our property and may not be made accessible to third parties.

(2) Tools manufactured by us on behalf of the purchaser also remain our sole property if the manufacturing costs are partially or completely borne by the purchaser. Costs arising through wear shall be borne by the purchaser, likewise the costs of insurance for the tools, which is to be concluded by the purchaser.

(3) The purchaser must bear the costs of racks manufactured by us or by third parties on our behalf for the production of the objects of delivery, in so far as a different agreement has not been made in writing. Because the racks are manufactured using sensitive know-how, they remain our property before, during and after completion of the purchaser's order. The purchaser has no right to surrender or transfer of the racks even if it has partially or completely borne the manufacturing costs for the racks.

(4) We commit only to use moulding, tools and racks for the purchaser's orders. Should the purchaser get into default of payment, we may use moulding, tools and racks as we like.

(5) Our retention period for moulding, tools and racks shall end two years after the purchaser's last order.

## § 11 – Property rights

In so far as we produce goods according to samples, drawings, models etc. provided by the purchaser, the latter shall be liable for ensuring that the objects of delivery manufactured by us do not violate the property rights of any third parties. If a claim is brought against us in such a case by a third party invoking property rights, we are entitled to cease manufacture and delivery without further investigation of the property rights situation and to demand compensation from the purchaser for the damages incurred.

## § 12 – Limitation of liability

(1) Should the purchaser be unable to use the objects of delivery in the manner foreseen in the contract as a result of negligent execution on our part of suggestions and advice received before or after conclusion of the contract or of breach of other contractual accessory obligations, the provisions of §§7 as well as 12 para. 2 and para. 3 shall apply under exclusion of further requirements on the part of the purchaser.

(2) We are only liable for damages which did not occur to the object of delivery itself, regardless of legal reason, in the event of

a) deliberate breach of obligation

b) grossly negligent breach of obligation on the part of our legal representatives or executive employees

c) culpable injury to life, body and health

d) fraudulent non-disclosure of defects or guarantee for the quality of an object of delivery

e) culpable breach of significant contractual obligations - limited to contractually typical, reasonably foreseeable damages in the event of gross negligence by non-executive employees and slight negligence

f) Defects in the object of delivery, in so far as we are liable according to the Product Liability Act for personal injury or damage to property for privately used items.

(3) Our liability is excluded where no other stipulation has been made in §5 para. 7, §7 or in §12 para. 1 and 2.

## § 13 – Place of jurisdiction/applicable law/partial invalidity

(1) The place of jurisdiction is Montabaur. We may, however, bring a suit at the purchaser's registered office.

(2) The law of the Federal Republic of Germany shall apply to all legal relationships between the purchaser and us, with the exception of conflict of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11/04/1980 is expressly excluded.

(3) Should a provision in these terms and conditions be or become invalid, the validity of the remaining provisions shall not be affected. The parties are then obliged to replace the invalid provision with a valid provision which approaches as closely as possible the original intent. The same applies to any loopholes in these terms and conditions.