

# **Fischer Elektromotoren GmbH Terms and Conditions of Sale and Delivery**

Effective November 2007

## **1. Area of application**

1.1 These general sales and delivery conditions apply only to entrepreneurs in the sense of §14 of the German civil code.

1.2 We provide all deliveries and services exclusively subject to the application of these terms and conditions of sale and delivery. Any contradictory or deviating terms of the customer shall only be recognised subsequent to written agreement.

## **2. Offer and order**

2.1 Our offers are non-binding and non-committal.

2.2 Our written order confirmation is authoritative to the order. This order confirmation may also take place via transmittal of an invoice. If the customer has objections against the contents of the order confirmation the order confirmation must be immediately contested.

Otherwise the contract shall come into force in accordance with the conditions of the order confirmation.

2.3 Verbal or telephonic agreements shall only become an integral part of the contract after written confirmation.

2.4 Drawings, illustrations, measurements, weights and other service data outside of the offer and the order confirmation are non-binding.

## **3. Handling, processing and assembly of parts sent in**

3.1 Parts sent in for handling, processing and assembly must be sent free our plant and, if necessary, in good packing with the inclusion of a waybill and a delivery note.

3.2 The material or the technical condition of parts sent in must be declared. Pre-processed parts or parts provided for assembly must be delivered in the exact size and within the required tolerances.

3.3 In the event of failure to fulfil these pre-conditions, we are entitled to invoice the costs of additional work as well as compensation for prematurely worn out or damaged tools or to withdraw from the contract.

3.4 Waste material from the parts sent in for handling or processing shall become our property.

## **4. Prices and terms and conditions of payment**

4.1 The prices stated in the order confirmation shall be authoritative. These shall apply ex-works and do not include packing, freight, postage, insurance and VAT.

4.2 Transport insurance shall only be taken out at the request and expense of the customer.

4.3 Unless otherwise agreed payment shall be made as follows:

a) Within 14 days from the invoice date with 2% discount or 30 days net.

b) For initial business dealings and for repairs in advance or upon availability for dispatch. Assembly costs shall be payable upon receipt of the invoice. Partial deliveries shall be invoice immediately.

4.4 Should it be agreed that a contract is cancelled the expenditure and material consumption accrued up to this point is payable.

## **5. Retention of title**

5.1 We shall retain the title of all the goods delivered by us until the complete payment of all claims.

5.2 The taking back of the delivered article does not constitute withdrawal from the contract unless we have explicitly declared this.

5.3 The customer may neither sell or pledge the delivered item nor transfer it by way of security. In the event of seizure as well as confiscation by third parties he must notify the supplier immediately.

5.4 The customer is entitled to dispose to the delivered item within the scope of the normal course of business subject to the reserve of revocation admissible for important reason. In the event of onward sale the customer hereby assigns henceforth to us all claims from the onward sale, in particular payment claims as well as other claims related to the sale in the amount of the final invoice amount (including VAT). This shall apply irrespective of whether the delivered item has been resold without or after processing. Until revocation for important reason, the customer is entitled to collect the claims assigned on a trust basis. In the event of an important reason we are entitled to notify the assignment of the claim to the third party debtors even on behalf of the customer. Upon notification of the assignment to the third party debtor the power of the customer to collect shall expire. In the event of revocation of the power to collect we can demand that the customer notifies us of the assigned claims and their debtors, provides all information required for the collection, hands over the corresponding documents and notifies the debtors of the assignment.

5.5 If the delivered item is processed with other items not belonging to us we shall acquire the joint-ownership of the new item thing in the ratio of the value of the delivered item to the value of the other finished articles at the time of processing. The same is valid for the item resulting from processing as for the item supplied under reservation.

5.6 We undertake to release the collateral to which we are entitled at our discretion if the realisable value of such exceeds the claims to be secured by more than 20%.

5.7 The application for the initiation of insolvency proceedings shall entitle us to withdraw from the contract and to demand the immediate return of the delivered article.

## **6. Delivery**

6.1 Delivery shall also take place at the risk of the customer.

6.2 Deliver times and dates indicated by us are non-binding unless agreed as binding.

6.3 The delivery period can be seen from the agreements between the Contracting Parties. Their observance by us presupposes that all commercial and technical questions between the Contracting Parties have been clarified and that the customer has fulfilled all obligations for which they are responsible, such as for example, procurement of the necessary official certificates or permission or the affecting of a down-payment. Should this not be the case, then the delivery time shall be extended appropriately. This shall not apply if we are responsible for the delay.

6.4 We shall not be responsible for delays in delivery and performance as a result of force majeure and events which are not foreseeable and which are not caused by us which make the delivery or performance substantially more difficult or impossible even in cases of dates and deadlines agreed as binding even if we are in default for the delay.

6.5 The customer may only withdraw from the Contract or claim compensation for damages instead of the performance if an appropriate period of grace with the threat of refusal has been previously set out.

6.6 Should dispatch be delayed for reasons for which the customer is responsible, then following notification of availability for dispatch the customer shall be charged for the costs resulting from storage, in the event of storage in our plant at least 0.5% of the invoice amount applicable to the parts taken into storage each month. We are also entitled to store the delivered article outside of our plant.

6.7 Should the customer grant us an appropriate period for performance under consideration of the statutory exceptions and should the deadline not be adhered to, the customer shall be entitled to withdrawal within the scope of the statutory regulations.

## **7. Transfer of risk**

Risk shall be transferred at the latest upon dispatch of the delivered parts ex factory at the latest, even if freight-free delivery and assembly has been agreed upon. Should the dispatch be delayed as a result of circumstances for which we are not responsible then the risk shall pass to the customer as from the date of availability for dispatch. Discrepancies which arise from the dispatch are to be immediately indicated to the supplier in writing after the receipt of the goods. Partial deliveries are admissible in so far as these can be reasonably expected of the customer.

## **8. Material defects**

8.1 The customer is obligated to immediately examine each delivery upon receipt and to immediately indicate any defects in writing.

8.2 In the event of the presence of a defect for which we are responsible we are entitled to subsequent fulfilment by choosing at our discretion between removing the defect or delivering a defect free item. If subsequent fulfilment is refused by us, if such has failed or cannot be reasonably expected of the customer, the customer can choose between withdrawal from the contract or demanding a reduction in the selling price.

8.3 Customer claims for defects shall fall under the statute of limitations after 12 months starting from delivery. In as far as periods of limitation can be shortened by these rulings this shall not apply in so far as the law in accordance with § 438 paragraph 1 no. 2 BGB (Civil code (building works and items for building works), as per § 438 paragraph 3 BGB (Civil code (malice) and § 479 BGB (Civil code (Right of recourse) prescribes longer periods.

8.4 No guarantee shall be assumed in the following cases:

unsuitable or inappropriate use, incorrect assembly and/or start-up by the customer or third parties, natural wear, incorrect or negligent handling, improper maintenance, unsuitable operational methods, influences which are not the responsibility of the supplier.

## **9. Compensation for damages**

9.1 We shall be liable for intentional behaviour and gross negligence. We shall only be liable for slight negligence if this concerns the violation of fundamental contractual obligations which result from the nature of the Contract itself or the violation of which endangers the achievement of the contracts purpose. Even so the compensation for damages is restricted to contract-typical, foreseeable damage. Furthermore, in the event of slight negligence compensation claims by the customer are excluded irrespective of the legal ground.

9.2 The aforementioned limit of liability shall not apply for claims from the product liability law, in the event of injury to life, body or health.

9.3 The limit of liability shall also not apply with compensation claims due to material defects if we have maliciously concealed a defect or have assumed the warranty for the quality of the item.

Additionally a period of limitation for claims for damages due to material defects is valid for 12 months.

## **10. Liability for processing defects of parts sent in**

With handling of parts sent in we shall not be liable for defects which result from the behaviour of the material. Should parts sent in become unusable during the processing due to material defects or other defects, our processing costs sustained must be reimbursed. If work pieces become unusable due to circumstances for which we are responsible, then we shall undertake the processing of identical replacement pieces.

## **11. Call-off orders**

Provided nothing to the contrary is agreed upon, a 12 month period starting from the date of the order confirmation is binding for both parties with a call-off order. If the ordered quantity of items is not taken by the expiration of the 12 months, we shall grant a period of grace of four weeks. If no other agreement is reached, the customer shall be obliged to take and pay for the parts not called off following the expiration of the period of grace. Following the period of grace we are also entitled to invoice the quantity actually taken as per our quantity discount scale

## **12. Property and copyright**

All offer documentation, drawings, cost quotations, samples and such like shall remain our property and shall be returned upon request. No right of withholding exists irrespective of the legal ground. The documents may not be made accessible to third parties.

## **13. Place of performance, area of jurisdiction, applicable law**

13.1 The place of performance for delivery and payment for both parties is exclusively the legal domicile of our company.

13.2 The place of jurisdiction for both parties for all legal disputes arising from the contractual relation as well as from its coming about and its effectiveness shall be the court responsible for the legal domicile of our company. We may also choose to initiate legal proceedings at the legal domicile of the customer.

13.3 The contractual relationship shall be governed by German law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.