

General terms and conditions of FISCHER FUEL CELL COMPRESSOR AG (2021)

1. Scope

- 1.1 The following general delivery terms, valid at the time of ordering, apply to any business relationship between FISCHER Fuel Cell Compressor AG (referred to as supplier or FFCC) and the customer. Alternative provisions by the customer are valid only if they have been explicitly accepted in writing by the supplier.
- 1.2 FISCHER Fuel Cell Compressor AG is the contractual partner. This does not apply to products which the customer orders directly from another company of FISCHER Spindle Group, in which case the purchase contract is concluded in regard to the respective company and their applicable delivery terms.
- 1.3 FFCC does not conduct business with private individuals.

2. Conclusion of Contract

- 2.1 A purchase is regarded as an offer to enter into a binding purchase contract.
- 2.2 The contract shall be deemed to have been concluded upon receipt of written acknowledgement from the supplier stating acceptance of the order.
- 2.3 All agreements and legally relevant declarations must be made in writing to be valid. Verbal agreements require written confirmation from FFCC.
- 2.4 Any deviations from the order that are mentioned in the order confirmation shall become part of the contract, unless the customer contests them in writing within 5 working days of receipt of the order confirmation.
- 2.5 The goods and services of the supplier are exhaustively specified in the order confirmation and any appendices thereto. The supplier shall be entitled to make any changes which lead to improvements provided such changes do not result in a price increase.
- 2.6 The supplier is entitled to withdraw from the purchase contract if he is unable to deliver the items ordered for reasons beyond the supplier's control, specifically because his subcontractor does not meet their contractual obligation. In this case the customer is to be informed immediately that the product ordered is unavailable. Legal claims from the customer shall remain unaffected.

3. Prices

- 3.1 All prices shall be deemed to be net, in the agreed currency, without any deductions whatsoever plus value-added tax where applicable.
- 3.2 Packaging costs are stated separately, unless they are part of the product price.
- 3.3 The supplier reserves the right to adjust the prices if technical changes have to be made to the products at the customer's request between submission of the tender and the contractually agreed performance.

4. Terms of payment

- 4.1 For new customers and customers ordering irregularly the invoice amount is due in advance.
- 4.2 Repeat customers have the option to pay via invoice as previously. The supplier reserves the right to cancel this option in particular justified cases.
- 4.3 Payments shall be made at the supplier's domicile, without any deduction for cash discount, expenses, taxes levies, fees, duties, and the like. Payment shall be 30 days net from invoice date.
- 4.4 If the customer fails to adhere to the agreed terms of payment, he shall be liable, without reminder, for interest with effect from the agreed date of payment at a rate of 4 % over the current discount rate of the National Bank of Switzerland. The right to claim further damages is reserved.
- 4.5 The payment dates are to be respected even if transport, delivery, commissioning or acceptance of the goods or services should be rendered impossible or be delayed for reasons beyond the supplier's control, or if minor parts are missing or such reworking proves to be necessary as does not render the use of the goods supplied impossible.

5. Delivery time

- 5.1 The delivery time begins as soon as the contract is concluded, all official formalities have been completed, payments due upon ordering have been made, any agreed securities given and the main technical points settled. The delivery time shall be deemed to be observed if by that time the supplier has sent a notice to the customer informing him that the supplies are ready for dispatch.
- 5.2 The delivery time is reasonably extended:
 - a) if the information required by the supplier for performance of the contract is not received in time, or if the customer subsequently changes it, thereby causing a delay in the delivery of the supplies or services;
 - b) if hindrances occur which the supplier cannot prevent, despite exercising due care, regardless of whether they affect the supplier or the customer or a third party. Examples of such hindrances are: epidemics, mobilization, war, rioting, serious breakdowns, accidents labor conflicts, late or deficient delivery of the necessary raw materials, semi-finished or finished products, the need to scrap important work pieces, official actions or omissions by public authorities, natural catastrophes;
 - c) if the customer or a third party is behind schedule with work he has to execute, or with the performance of his contractual obligations, in particular if the customer fails to observe the terms of payment.

A delay in the supply of goods or services does not entitle the customer to any rights and claims unless there has been unlawful intent or gross negligence on the part of the supplier. However, such rights and claims shall not exist in the case of unlawful intent or gross

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- negligence of persons employed or appointed by the supplier to perform any of his obligations.
- 6. Reservation of title**
- 6.1 The supplier shall remain the owner of all supplies until having received the full payments in accordance with the contract. Upon entering into the contract, the customer authorizes the supplier to enter the reservation of title in the public register and to fulfill all corresponding formalities, at customer's cost.
- 6.2 During the period of the reservation of title, the customer shall, at his own cost, maintain the delivered products and insure them for the benefit of the supplier against theft, breakage, fire, water and other risks. Furthermore, he shall take all measures to ensure that the supplier's title is in no way prejudiced or forfeited.
- 7. Technical documents (diagrams, drawings etc.)**
- 7.1 Unless otherwise agreed upon, brochures and catalogues are not binding. Information in technical documents shall only be binding if this is stipulated in writing.
- 7.2 Each party to the contract retains all rights to plans and technical documents provided to the other party. The party receiving such documents recognizes these rights and shall - without previous written consent of the other party - not make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were provided.
- 8. Regulations in the country of destination and safety measures**
- 8.1 The customer shall inform the supplier of any existing regulations and standards relating to the supply of goods and services, operations, and measures for the prevention of sickness and accidents no later than when placing the order.
- 8.2 Unless otherwise agreed, goods and services supplied shall comply with the regulations and standards applicable at the domicile of the customer as indicated to the supplier in clause 8.1 above. Additional or other safety devices shall be included, insofar as this is specifically agreed.
- 9. Passing of benefit and risk**
- 9.1 The benefit and the risk shall pass to the customer on the date that the goods leave the works.
- 9.2 If dispatch is delayed at the request of the customer or due to reasons beyond the supplier's control, the risk shall pass to the customer at the time originally foreseen for the goods to leave the works. From this moment on, the supplies shall be stored and insured for the account and risk of the customer.
- 10. Inspection and taking-over of supplies and services**
- 10.1 As far as it is normal practice, the supplier shall inspect the supplies and services before dispatch. If the customer requests further testing, this has to be specially agreed upon and paid for by the customer.
- 10.2 The customer shall inspect the supplies and services within 5 days of receipt and immediately inform the supplier of any defects. If the customer fails to do so, the supplies and services shall be deemed accepted.
- 10.3 Having been notified of the deficiencies according to Point 10.2, the supplier shall remedy them as soon as possible, and the customer shall give the supplier the opportunity to do so.
- 10.4 The conducting of an acceptance test, as well as stipulating the conditions for such a test, must be covered by a special agreement.
- 10.5 Deficiencies of any kind in supplies or services shall not entitle the customer to any rights and claims other than those expressly stipulated in Points 10 and 11 (guarantee, liability for defects).
- 11. Guarantee, liability for defects**
- 11.1 Unless no other agreement has been concluded, the guarantee period for new products is 12 months, beginning when the shipment is dispatched.
- If dispatch is delayed due to reasons beyond the supplier's control, the guarantee period shall end not later than 18 months after the supplier's notification that the supplies are ready for dispatch.
- For repaired products the guarantee period starts anew and lasts 6 months after replacement or completion of the repair. It will be applied to the replaced or repaired parts as well as the labor performed.
- The guarantee expires prematurely if the customer or a third party undertakes inappropriate modifications or repairs or if the customer, in the case of a defect, does not immediately take all appropriate steps to mitigate the damage and give the supplier the opportunity to remedy the defect.
- 11.2 Upon the written request of the customer, the supplier undertakes to either repair or replace as quickly as possible all parts of the goods supplied which, before the expiry of the guarantee period, are proved to be defective or useless due to bad material, faulty design or poor workmanship. Replaced parts shall become the supplier's property.
- 11.3 Assured characteristics are only those which have been expressly specified as such in the order acknowledgement or in the specifications. An express warranty is valid until the expiry of the guarantee period at the latest.
- 11.4 If the assured characteristics are not fulfilled or only partially fulfilled, the customer may first of all request the supplier to carry out the improvements immediately. The customer shall give the supplier the necessary time and opportunity to do so.
- 11.5 If a supplementary shipment is necessary to replace a previous order of defective merchandise, the customer is obliged to return the previously delivered products within 30 days to the supplier's premises.
- The supplier shall bear the transport costs for the replacement delivery, whereas the customer shall bear

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- the transport costs for any return shipment including all fees and charges.
- The return shipment of defective merchandise will be effected according to the statutory regulations. The supplier reserves the right to claim damages within the scope of statutory provisions.
- 11.6 If, however, the defect is such that it cannot be remedied within a reasonable time and provided the supplies and services cannot be used for their specified purpose, or if such use is considerably impaired, then the customer shall be entitled to refuse acceptance of the defective part or, if partial acceptance is economically unreasonable, to terminate the contract. In such a case the supplier can only be held liable for reimbursing the sums which have been paid for the parts affected by the termination.
- 11.7 The guarantee and liability of the supplier is limited to damages that are demonstrably attributable to
- substandard material
 - faulty design
 - or poor workmanship
- The supplier shall be exempt from liability and warranty in respect to damage resulting from
- wear and tear
 - deficient or inadequate maintenance
 - disregard of operating regulations including compressor system maps
 - excessive operational demand
 - lack of detailed information regarding the use of the device
 - use of any unsuitable or faulty overall system
 - rebuilding, repairs or assembly work not undertaken by the supplier
- Or resulting from other reasons beyond the supplier's control.
- 12. Exclusion of further liability on the supplier's part**
- All cases of breach of contract and the relevant consequences, as well as all rights and claims on the part of the customer, irrespective of the grounds on which they are based, are exhaustively covered by these General Delivery Terms. In particular, any claims not expressly mentioned for damages, reduction of price, termination of or withdrawal from the contract is excluded. In no case whatsoever shall the customer be entitled to claim compensation for damage that has not occurred to the goods themselves, e.g. loss of production, loss of use, loss of orders, loss of profit and other direct, indirect or consequential damage.
- 13. Investments / tools**
- If serial production tools are used that are not compensated by the customer in one payment, but instead are paid in the form of a surcharge on the price of deliveries, the supplier has the right to demand the remaining amount from the customer at any time.
- 14. Ownership of tools**
- If the customer pays for the tools and other devices, these only become the property of the customer after full payment. Number 13 applies analogously.
- The maintenance obligation on the part of the supplier ends at the latest when the service life is reached (achievement of load change) or when the maintenance exceeds 50% of the manufacturing costs of the tool.
- 15. Software**
- If the deliveries and services of the supplier also include software, the customer is granted the non-exclusive right to use the software together with the delivery item, unless otherwise agreed. The customer is not entitled to make copies (unless for archiving purposes, for troubleshooting or to replace faulty data carriers) or to edit the software. In particular, the customer may not disassemble, decompile, decrypt or reverse engineer the software without the prior written consent of the supplier. In the event of a breach, the supplier can revoke the right of use. In the case of third-party software, the terms of use of the licensor apply, who can also assert claims against the supplier in the event of infringement.
- 16. Privacy**
- The supplier is entitled to process personal data of employees of the customer in the context of the execution of the contract. The customer is responsible for ensuring that his employees have given the appropriate consent. In particular, the customer agrees that the supplier may also disclose such data to third parties in Switzerland and abroad to process and maintain business relationships between the parties.
- 17. Jurisdiction and applicable law**
- The place of jurisdiction for both the customer and the supplier shall be at the registered office of the supplier. The contract shall be governed by Swiss substantive law. The Vienna UN Convention on Contracts for the International Sale of Goods expressly excluded.