

## **1. General Terms and Conditions of Delivery and Payment**

### **1.1 Offer, Order**

- 1.1.1 Any deliveries made and performances rendered by Fischer Panda GmbH are subject to these terms and conditions and terms of payment and the agreement entered into by Fischer Panda GmbH and the customer. Fischer Panda GmbH T&Cs apply exclusively; T&Cs of the customer which are inconsistent with these T&Cs or which deviate from them are hereby expressly excluded by Fischer Panda GmbH, except where Fischer Panda GmbH has expressly agreed to them in writing. These Fischer Panda GmbH T&Cs also apply if Fischer Panda GmbH unconditionally renders performance despite having had knowledge of conflicting or deviating T&Cs issued by the customer.
- 1.1.2 Orders placed by the customer represent binding offers, which Fischer Panda GmbH may accept within one week by way of order confirmation or by way of performing the order. All offers made by Fischer Panda GmbH are non-binding, except where they have been expressly specified as binding.
- 1.1.3 Offer-related documentation such as images, drawings, indications of weight and dimensions are approximates, except where these have been expressly specified as binding.
- 1.1.4 Fischer Panda GmbH reserves all proprietary and intellectual property rights in any cost estimates, drawings and other documentation; these must not be disclosed to third parties. Fischer Panda GmbH undertakes not to disclose to third parties any schemes and plans which have been designated as confidential by the customer without the customer's prior consent. Where construction-related documentation has been prepared on behalf of or at the request of the customer, it will be invoiced separately. This shall apply even where no order is subsequently placed.
- 1.1.5 Samples, models, drawings or data carriers provided by the customer will only be returned upon the request and at the expense of the customer. In cases in which no subsequent order is placed, and no such request for return is made in due course, Fischer Panda GmbH is entitled to destroy such samples, models and drawings within one month of making the offer, without being liable for any claims for damages.
- 1.1.6 Our T&Cs apply equally to consumers and businesses "Unternehmer", as defined by the German Commercial Code", except in relation to clauses in which a distinction is made between these entities.

### **1.2 Pricing and Payment**

- 1.2.1 The purchase price set out in an offer is binding. Prices quoted to consumers include the statutory rate of VAT.
- 1.2.2 With regard to customers that are businesses, prices – if not agreed otherwise – are ex works including loading at the works, but excluding shipping costs, costs of packaging and VAT at the statutory rate.
- 1.2.3 Where no specific agreement has been made, invoices shall be paid in advance and without any deductions. Payment in good time shall be adjudicated on the basis of the date of receipt onto one of the bank accounts designated on the invoice. Submission of a cheque will not constitute payment on time, and will only be considered as a component part of performance. Bills of exchange will not be accepted.
- 1.2.4 In the case of individual deliveries that have been constructed in accordance with customer specifications, advance payments shall be agreed individually.

- 1.2.5 If the customer is in arrears with a payment, Fischer Panda GmbH is entitled to declare that all amounts owed to it are due for payment at once, without taking account of due dates otherwise agreed, and to refuse any further performances and/or deliveries as long as these payments have not been made in full. Moreover, Fischer Panda GmbH may claim the statutory rate of interest on all late payments. If Fischer Panda GmbH provides evidence of damages as a result of delayed payment over and above the rate of interest, Fischer Panda GmbH is entitled to claim the respective damages, unless the customer proves that Fischer Panda GmbH did not suffer any or only suffered less damage as a result of late payment.
- 1.2.6 A right to a set-off may only be invoked by the customer if the respective counter-claims have been bindingly ascertained at a court of law, are undisputed or admitted by Fischer Panda GmbH. If the customer is a business, it may only assert rights of retention, if the respective counter-claim stems from the same contract, is undisputed or has been bindingly ascertained at a court of law.

### **1.3 Delivery Times**

- 1.3.1 The term of delivery commences on confirmation of an order, not however before the customer has delivered all documentation, approvals and releases and clarified all technical issues, and not prior to receipt of any advance payments due.
- 1.3.2 The delivery deadline is deemed to have been complied with if the delivery item has left the works by the deadline or if notification has been given that it is ready for shipping. Where an acceptance procedure is required, the date of acceptance shall – except in cases in which refusal of acceptance is justified – be decisive, or the date of notification that the acceptance procedure can be carried out. Compliance with the delivery deadline is conditional upon correct and timely supply of Fischer Panda GmbH itself. Fischer Panda GmbH has the right to rescind the contract if Fischer Panda GmbH does not receive the delivery item on time, despite having entered into a corresponding purchase agreement in good time. Fischer Panda GmbH will notify the customer of any impending delays or non-deliveries and will reimburse any consideration received in the case of rescission.
- 1.3.3 The delivery deadline shall be reasonably extended in the event of industrial action, in particular strikes and lockouts, and in the case of occurrence of unexpected hindrances which fall outside the sphere of influence of Fischer Panda GmbH, insofar as such hindrances affect the manufacture and/or delivery of delivery items. The same applies where such circumstances occur in relation to the suppliers of Fischer Panda GmbH. The circumstances described above shall also be deemed not to be within the sphere of influence of Fischer Panda GmbH if they occur during a delay that had already begun.
- Fischer Panda GmbH will notify the customer of commencement and ending of such hindrances as quickly as possible.
- 1.3.4 If Fischer Panda GmbH is in default, the customer must grant Fischer Panda GmbH a reasonable grace period for specific performance. If delivery is not made by expiry of the grace period, the customer is entitled to rescind the contract and claim damages in accordance with Section 8 below.
- 1.3.5 Where shipping is delayed at the request of the customer, the customer shall be invoiced, commencing one month subsequent to notification of readiness for shipping, for the costs of storage in the works of Fischer Panda GmbH, which amount shall be no less than 1% of the invoice value of each given month. Following the grant and expiry of a reasonable grace period, Fischer Panda GmbH is entitled to dispose of the delivery item.

- 1.3.6 Compliance with the delivery deadline requires the timely and orderly performance by the customer of all his/its duties. Fischer Panda GmbH reserves the right to claim lack of performance of contract.

## **1.4 Passing of Risk and Acceptance**

- 1.4.1 Where the customer is a business, the risk passes to the customer at the moment in time in which the delivery item leaves the works of Fischer Panda GmbH; the same applies where part-deliveries are being made or where Fischer Panda GmbH has undertaken further performances such as delivery and on-site installation of the delivery item. At the request of the customer, Fischer Panda GmbH will insure delivery at the customer's expense against theft, damage, transport damage, fire damage and water damage as well as against any other insurable events. The request must be phrased expressly and must be made in writing.
- 1.4.2 If the customer is a business, and if delivery is delayed or not made due to circumstances which cannot be attributed to Fischer Panda GmbH, the risk passes to the customer on the date that notification of readiness for shipping is given. Fischer Panda GmbH is entitled to insure the delivery item against theft, damage, transport damage, fire damage and water damage as well as against any other insurable events at the expense of the customer, provided that the customer did not demonstrably object to taking out such insurance policies.
- 1.4.3 Any items delivered must be received by the customer, even if they show defects, however, without prejudice to the rights of the customer specified in Section 1.6.

## **1.5 Retention of Title**

- 1.5.1 If the customer is a consumer, Fischer Panda GmbH retains title in the delivery items until all receivables owed to Fischer Panda GmbH have been paid in full by the customer.
- 1.5.2 If the customer is a business, Fischer Panda GmbH retains title in the delivery items until all receivables owed to Fischer Panda GmbH by the customer which stem from their business relationship are settled, including all future liabilities arising from contracts entered into at the same time or later, even if the actual delivery items in question have already been paid. The same applies where individual or all receivables owed to Fischer Panda GmbH have been enumerated in one combined receivable account that includes payments made and whose balance has been approved by the customer.

The customer is entitled to sell the delivery item in the course of his regular business operation. It hereby assigns by way of security any claims against his customers arising from such selling-on of goods which are subject to retention of title to Fischer Panda GmbH. In the case of processing, transformation or combination with other goods which are subject to retention of title, Fischer Panda GmbH directly and unconditionally acquires legal title in the goods so created. The goods in question are then subject to retention of title. The customer is entitled to collect its claims even after title has been assigned. This shall not affect the right of Fischer Panda GmbH to collect its claims; however, Fischer Panda GmbH undertakes not to collect its claims as long as the customer honours its payment obligations in due course, is not in arrears and in particular as long as no application for the initiation of insolvency proceedings has been filed or no cessation of payments is given. Fischer Panda GmbH may require that the customer discloses the assigned claims and the identity of the respective debtors, and all details necessary for collection, hands over all related documentation and notifies the creditor of such assignment. If the delivery item is being sold on together with other goods which are not the property of Fischer Panda GmbH, the claims of the customer against his end consumers are deemed to have been assigned in the amount of the initial contract price. The retention of title and other collateral to be provided for the benefit of Fischer Panda GmbH persist as long as

Fischer Panda GmbH has been fully released from any liabilities which it incurred in the interest of the customer. If the value of the collateral exceeds the value of Fischer Panda GmbH's claims by more than 20%, Fischer Panda GmbH is, upon the request of the customer and at the discretion of Fischer Panda GmbH, obliged to release collateral belonging to Fischer Panda GmbH in the value of the respective amount.

- 1.5.3 The customer must not pledge the delivery item nor assign it by way of security. The customer must notify Fischer Panda GmbH of any third party compulsory execution measures relating to goods which are subject to retention of title without delay, and in doing so must provide the documentation required for any related legal intervention; the same applies in the case of other types of detriments. Irrespective of this, the customer must specify existing rights in the goods to such third parties. The customer must bear the costs of such intervention by Fischer Panda GmbH to the extent in which the third party is unable to reimburse these.

## **1.6 Liability for Defects of the Delivery/Warranty**

- 1.6.1 If the customer is a consumer, Fischer Panda GmbH's liability for defects is in keeping with the respective statutory provisions.
- 1.6.2 If the customer is a business, the warranty claims of the customer require that the customer has complied with its obligation to inspect the goods and to give notice of defects (Section 377 German Commercial Code) without delay. Any identified defects must be documented as intelligibly as possible and must be described using all documentation required for this purpose. In the case of an orderly notice of defect, Fischer Panda GmbH will perform specific performance as follows:
- 1.6.2.1 In the context of such specific performance, Fischer Panda GmbH is, at its sole discretion, entitled to rectify the defect or to provide a replacement. Parts which have been replaced become the property of Fischer Panda GmbH. Fischer Panda GmbH shall be granted at least two opportunities to perform specific performance.
- 1.6.2.2 The customer shall grant the time and opportunity required for the implementation of all repairs and replacement deliveries which in the opinion of Fischer Panda GmbH are necessary, following consultation with Fischer Panda GmbH; otherwise Fischer Panda GmbH shall be released from its liability. In case of urgency arising from imminent danger to industrial safety or for the purposes of preventing unreasonably high damages, or should Fischer Panda GmbH be in default of specific performance, the customer may be granted the right to rectify the defect himself or to let third parties perform such cure and to invoice Fischer Panda GmbH with the costs so incurred, provided, however, that Fischer Panda GmbH has given its prior written consent.
- 1.6.2.3 If the customer decides to assert a warranty claim, it must immediately return the delivery item to Fischer Panda GmbH's premises. Fischer Panda GmbH shall bear the costs of return and of the most economical shipment of the rectified delivery or of the replacement part. If the complaint is justified, Fischer Panda GmbH shall bear the costs of the replacement part ex works. Where delivery items (electric generators and other aggregates and components) have been installed and dismantling and return to Fischer Panda GmbH entail an unreasonable effort, it may be agreed that a Fischer Panda GmbH technician or an authorised subcontractor shall repair the defect on-site. Other than the costs for the replacement, including the costs for least expensive shipping, the customer shall bear all other related costs, including any travel costs or costs of assembly.

Any costs of installation and/or dismantling shall not be borne by Fischer Panda GmbH.

- 1.6.3 Should Fischer Panda GmbH fail to render specific performance within the reasonable grace period granted by the customer or should specific performance definitively fail after several attempts, or should Fischer Panda GmbH refuse such specific performance, the customer shall be entitled to reduce the agreed remuneration and claim reimbursement of any related expenses incurred or to rescind the contract. If the defect in question is insignificant, the customer may merely ask for a reduction of the purchase price.
- 1.6.4 Fischer Panda GmbH is not liable for defects which are caused by inappropriate or inexpedient use or by faulty installation or commissioning by the customer or by third parties who have not been instructed or authorised by Fischer Panda GmbH, or which represent regular wear and tear, or which stem from faulty or negligent treatment, lack of proper maintenance, inappropriate working materials, defective construction works, inappropriate foundation soil, or a chemical, electrochemical or electrical interference which does not fall within Fischer Panda GmbH's sphere of influence. Where the specific performance rendered by the customer or by a third party proves to be inappropriate, Fischer Panda GmbH does not assume any liability for the consequences so caused. The same applies where the delivery item has been modified without the prior consent of Fischer Panda GmbH.
- 1.6.5 If the customer is a consumer, the warranty period for delivery of a new item is two years, and one year in the case of a second hand item. The limitation period commences upon the passing of risk. This shall not apply to claims for damages arising from defects. Section 1.8 applies to such claims for damages.
- 1.6.6 If the customer is a business, the warranty period is one year. The limitation period for any recourse claims pursuant to Sections 478, 479 of the German Civil Code shall remain unaffected. This shall not apply in the case of claims for damages arising from defects. Section 1.8 applies to such claims for damages.

## **1.7 Commissioning**

- 1.7.1 Any expenses for mechanics and allowance rates incurred on account of the commissioning, in particular for overtime work, work on Sundays and public holidays shall be borne by the customer in accordance with the laws of the Federal Republic of Germany. Journey times and travel times also count as working hours.
- 1.7.2 The costs for the return journey as well as for the transportation of tools and other working materials and the luggage shall be borne by the customer.

## **1.8 Liability for Defects**

- 1.8.1 Fischer Panda GmbH's liability for breaches of contractual duties as well as for tortuous acts is limited to intentional acts and to gross negligence. This shall not apply to any impairments of life or health or to bodily harm caused to the customer, or to claims arising from an infringement of material contractual terms, i.e. terms which reflect the nature of the contract at hand and whose infringement put the objective of the contract at peril, and to product liability claims and to claims for damages for default (Section 286 German Civil Code). In relation to the above, Fischer Panda GmbH shall assume liability for all manner of culpable behaviour. In addition, the above exclusion of liability shall equally apply to bodily harm caused by mere carelessness on the part of individuals employed by Fischer Panda GmbH to perform its contractual obligations [Vicarious agents as defined in Section 278 German Civil Code]. In the case of claims for damages not arising from injury to life, body or health of the customer, and for which liability is not excluded on the grounds of carelessness, such claims shall expire within a year commencing from the date of the claim arising, or in the case of a

claim for damages arising from a defect, within a year of delivery. Where Fischer Panda GmbH's liability for damages is excluded or limited, the same applies in relation to the personal liability of employees, staffers, representatives and individuals employed by Fischer Panda GmbH to perform its contractual obligations [Vicarious agents as defined in Section 278 German Civil Code].

## **1.9 Cancellation of the Contract**

- 1.9.1 Should the customer unjustly rescind the contract, Fischer Panda GmbH is entitled, without prejudice to the assertion of greater damages, to claim 10% of the gross contract value for the processing of the order and for any loss of profit incurred. The customer is entitled to furnish evidence to prove that lesser or no damages have been incurred by Fischer Panda GmbH.

## **1.10 Applicable Law and Place of Jurisdiction**

- 1.10.1 If not provided for otherwise in the contract, the place of performance shall be the place of business of Fischer Panda GmbH. The statutory provisions regarding jurisdiction shall remain unaffected, except where the special provisions contained in Section 1.10.3 below provide otherwise.
- 1.10.2 These T&Cs are governed by the laws of the Federal Republic of Germany under exclusion of the Vienna Convention on the International Sale of Goods [CISG]. In the event of dispute about meaning, the German- language version shall prevail.
- 1.10.3 The exclusive place of jurisdiction for disputes arising from contracts with businesses, bodies corporate or special funds under public law is the appropriate court of law that has jurisdiction at the place of business of Fischer Panda GmbH. Fischer Panda GmbH, however, has the right to bring legal action against the customer at the customer's general place of jurisdiction.

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