

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

### **1.1 Scope**

Any orders placed by the Fischer Panda GmbH [private company limited by shares pursuant to German law] are subject to these terms and conditions of purchase and payment and must be in accordance with the respective agreement entered into by the Fischer Panda GmbH and the seller.

These T&Cs apply exclusively; T&Cs of the seller 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 expressly approved of them in writing. These T&Cs also apply if the Fischer Panda GmbH unconditionally accepts the performance of the seller despite having had knowledge of the conflicting or deviating T&Cs of the seller. These T&Cs only apply to businessmen [“Unternehmer” technical term defined in the German Commercial Code “Handelsgesetzbuch”], bodies corporate or special funds under public law.

### **1.2 Orders, Confirmations**

Orders and agreements entered into in connection with the former are only legally binding if they have been made in writing. Orders placed by the Fischer Panda GmbH must be confirmed by the seller within 5 business days following the receipt of the order, setting out the order data. If said confirmation is not sent or not sent in due course, Fischer Panda GmbH has the right to revoke the order within 14 business days following the date of the placing of the order by giving written notice of such revocation; or [alternatively] to rescind the contract.

Where order confirmations of the seller deviate from the orders placed by Fischer Panda GmbH, the seller is obliged to point this out to Fischer Panda GmbH. In this case, the respective agreement shall only come into force upon the issue of a written approval by Fischer Panda GmbH.

### **1.3 Shipping**

Provisions relating to shipping, in particular such which are mentioned in the order, must be complied with. In absence of an agreement to the contrary, the delivery, including packaging, is free-of-charge. Shipping notes must, subject to a highlighting of the order data, be sent to Fischer Panda GmbH, to the delivery address and to further recipients' addresses set out in the order document, if any, and must be attached to the shipment.

### **1.4 Pricing, Invoicing and Passing of Risk**

The agreed prices are fixed prices and independent from the date of delivery. The prices include free-of-charge delivery and packaging. The invoice shall be sent to Fischer Panda GmbH's postal address and shall set out the VAT applicable at the moment in time of the delivery separately. Any down payments or advances must be set out individually.

Where no deviating terms of payment have been agreed in the order document, payments shall be made within 30 days following receipt of the invoice and delivery or acceptance. All payments are made with the provision that in the case of reclamations subsequent corrections are permissible.

The risk of shipment (loss, damage, delays, etc.) shall be borne by the seller. He shall, without being prompted, take out an insurance policy against transport-related risks and damage.

## **1.5 Deadlines**

The delivery times specified in the order are binding.

The seller is obliged to notify Fischer Panda GmbH in writing without delay if circumstances occur or become discernible which show that agreed delivery times cannot be honoured.

Where the seller is in default of delivery, he shall pay damages in the amount of 0.1% for each day in which the delay persists, but limited to 5% of the contract value. This goes without prejudice to any statutory claims arising from such default of delivery.

## **1.6 Assignment/Set-Off**

The seller may not assign claims he may have against Fischer Panda GmbH to third parties or authorise third parties to collect such claims.

Fischer Panda GmbH may assert any statutory rights of retention and rights to set-off it may have without any limitations.

## **1.7 Retention of Title**

Fischer Panda GmbH acquires legal title to the shipment upon delivery. Fischer Panda GmbH accepts a simple retention of title for the benefit of the seller; a retention of title involving arrears of the whole [company] group or any duty to transfer the retention of title to clients of Fischer Panda GmbH however requires the express prior written consent of Fischer Panda GmbH in order to be valid.

## **1.8 Attachments**

Material provided by Fischer Panda GmbH such as documentation, samples, drawings, models, data and recordings on data carriers must be kept safe on behalf of Fischer Panda GmbH free of charge and subject to the level of care applied by a prudent businessman, must be kept separate from other materials by the seller and must be labelled as property of Fischer Panda GmbH until the moment in time in which Fischer Panda GmbH demands their return. Such material must not be reproduced and must not be made available to third parties. The seller is prohibited from any type of use which falls out outside of the contractually agreed scope of use, including any private use.

The above provision also applies to cases which occur after the contract has been implemented in full. The seller is liable to pay damages for any damage and loss caused by an infringement of the above provision.

Any such material provided by Fischer Panda GmbH shall remain the property of Fischer Panda GmbH. Any processing or conversion by the seller is deemed to have been carried out on behalf of the Fischer Panda GmbH. Where materials which are the property of Fischer Panda GmbH are processed together with items which are not the property of Fischer Panda GmbH, the Fischer Panda GmbH acquires co-ownership of the newly created item in the proportion in which the value (purchase price plus VAT) of the items which are Fischer Panda GmbH's property at the moment in time of the processing relate to the other items processed which are not property of Fischer Panda GmbH. The above applies mutatis mutandis in the case of an inseparable intermixture or combination. Where such intermixture occurs in a manner in which the item owned by the seller must be seen as the main item, it is deemed to have been agreed that the seller will transfer pro rata co-ownership to the Fischer Panda GmbH. Sole or co-ownership shall be kept safe by the seller on behalf of Fischer Panda GmbH.

## **1.9 Intellectual Property Rights**

The seller is liable for any infringements of domestic and overseas patents and other intellectual property rights of third parties arising from the procurement and use of items delivered by the seller. The seller shall indemnify and hold Fischer Panda GmbH harmless against any third party claims and undertakes to support Fischer Panda GmbH in the context of possible related law suits. The duty of the seller to indemnify relates to all expenditure which the Fischer Panda GmbH has to necessarily bear because of, or in connection with its liability towards third parties.

## **1.10 Warranties and Liability**

Fischer Panda GmbH retains its statutory warranty-related rights in full. In particular, the Fischer Panda GmbH is entitled to choose in its sole discretion between specific performance [cure] or the delivery of a new item. The Fischer Panda GmbH expressly reserves the right to claim damages, including damages in lieu of performance, in full, in accordance with the applicable statutory provisions and irrespective of the type of culpable behaviour at hand. In the case of an imminent danger or urgency, Fischer Panda GmbH is entitled to cure any defects at the expense of the seller or to procure such cure or to procure a replacement.

The limitation period for warranty claims is 36 months commencing with the passing of the risk.

The seller is obliged to comply with existing statutory health and safety provisions, (VDE [Verband der Elektrotechnik - German Association for Electrical, Electronic and Information Technologies] regulations, accident prevention regulations imposed by mutual indemnity associations, the Maschinenschutzgesetz [German Industrial Safety Act], etc.).

Deliveries which are subject to the 9. Verordnung zum Geräte- und Produktionssicherheitsgesetz (Maschinenverordnung) [9th by-law to the Industrial Safety Act] or electrical devices which are subject to the Niederspannungsrichtlinie [German Low Voltage Directive] must be fitted with a CE-marking and must be delivered together with an instruction manual. The declaration of conformity and the instruction manual must, upon request, be handed over to the Fischer Panda GmbH. Deliveries which are not ready-to-operate must be delivered together with the manufacturing formula. In the case of non-compliance, the seller is liable for all damage and loss arising from such and shall indemnify the Fischer Panda GmbH against all claims for compensation raised in this context.

Further, the seller is liable to Fischer Panda GmbH for any damage and loss which he or his Erfüllungsgehilfen [individuals which the seller uses to perform his contractual duties, Section 278 Para 2 BGB- Bürgerliches Gesetzbuch - German Civil Code] cause, in full, in accordance with the applicable statutory provisions and irrespective of the type of culpable behaviour at hand.

The risk for any transport damage shall be borne by the seller.

The Fischer Panda GmbH is obliged to inspect the goods for defects in quality or deficiencies in quantity within a reasonable period of time. Notices of defects are served in due course if they are served on the seller within 2 weeks following the receipt of the goods or in the case of hidden defects, within 2 weeks following the detection of the defect.

## **1.11 Place of Performance, Place of Jurisdiction and applicable Law**

If not provided for otherwise in the contract, the place of performance shall be the delivery address/place of use designated by the Fischer Panda GmbH or, as the case may be, the agreed place of performance.

These T&Cs are governed by the laws of the Federal Republic of Germany to the exclusion of the Vienna Convention on the International Sale of Goods [CISG].

The exclusive place of jurisdiction is the competent court of law which has jurisdiction at the place of business of the Fischer Panda GmbH. The Fischer Panda GmbH, however, has the right to bring legal action against the seller at the general place of jurisdiction applicable to the latter.

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