

General Condition of Supply of Georg Fischer Piping Systems (Switzerland) Ltd., Schaffhausen

1 General

- 1.1 These General Conditions shall apply to all Products supplied by Georg Fischer Piping Systems (Switzerland) Ltd. («Georg Fischer») to the Purchaser. They shall also apply to all future business even when no express reference is made to them.
- 1.2 Any deviating or supplementary conditions especially Purchaser's general conditions of purchase and verbal agreements shall only be applicable if accepted in writing by Georg Fischer.
- 1.3 The written form shall be deemed to be fulfilled by all forms of transmission, evidenced in the form of text, such as telefax, e-mail, etc.

2 Tenders

Tenders shall only be binding if they contain a specifically stated period for acceptance.

3 Scope of Delivery

- 3.1 Georg Fischer's product range is subject to change.
- 3.2 The confirmation of order shall govern the scope and execution of the contract.

4 Data and Documents

- 4.1 Technical documents such as drawings, descriptions, illustrations and data on dimensions, performance and weight as well as the reference to standards are for information purposes only. They are not warranted characteristics and are subject to change.
- 4.2 All technical documents shall remain the exclusive property of Georg Fischer and may only be used for the agreed purposes or as Georg Fischer may consent.

5 Confidentiality, Protection of Personal Data

- 5.1 Each party shall keep in strict confidence all commercial or technical information relating to the business of the other party, of which it has gained knowledge in the course of its dealing with the other party. Such information shall neither be disclosed to third parties nor used for other purposes than those for which the information has been supplied.
- 5.2 In the context of the contractual relation with the Purchaser personal data may be processed. The Purchaser agrees to the disclosure of said data to third parties such as foreign subcontractors and suppliers etc.

6 Local Laws and Regulations, Export Controls

- 6.1 The Purchaser shall bring to the attention of Georg Fischer all local laws and regulations at the place of destination which bear connection with the execution of the contract and the adherence to relevant safety regulations and approval procedures.
- 6.2 In case of re-exports, Purchaser shall be responsible for compliance with pertinent export control regulations.

7 Price

- 7.1 Unless agreed otherwise, the prices shall be deemed quoted net ex works (according to Incoterms 2010 of the ICC, or latest version) including standard packing. All supplementary costs such as the cost of carriage, insurance, export-, transit- and import- licences etc. shall be borne by the Purchaser. The Purchaser shall also bear the costs of all taxes, fees, duties etc. connected with the contract.
- 7.2 If the costs of packing, carriage, insurance, fees and other supplementary costs are included in the tender price or contract price or are referred to specifically in the tender or confirmation of order, Georg Fischer reserve the right to revise their prices accordingly should any change occur in the relevant tariffs.

8 Terms of Payment

- 8.1 The Purchaser shall make payment in the manner agreed by the parties without any deductions such as discounts, costs, taxes or dues.
- 8.2 The Purchaser may only withhold or off-set payments due against counter claims which are either expressly acknowledged by Georg Fischer or finally awarded to the Purchaser. In particular, payment shall still be made when unessential items are still outstanding provided that the Products already delivered are not rendered unusable as a result.

9 Retention of Title

- 9.1 The Products shall remain the property of Georg Fischer until the Purchaser shall have settled all claims, present and future, which Georg Fischer may have against him.
- 9.2 Should the Purchaser resell Products to which title is reserved, in the ordinary course of business, he shall hereby be deemed to have tacitly assigned to Georg Fischer the proceeds deriving from their sale together with all collateral rights, securities and reservations of title until all claims held by Georg Fischer shall have been settled. Until revoked by Georg Fischer, this assignment shall not preclude Purchaser's right to collect the assigned receivables.
- 9.3 To the extent the value of the Products to which title is reserved together with collateral securities exceeds Georg Fischer's claims against the Purchaser by more than 20%, Georg Fischer shall re-assign the above proceeds to Purchaser at his request.

10 Delivery

- 10.1 The term of delivery shall commence as soon as the contract has been entered into, all official formalities such as import and payment permits have been obtained and all essential technical issues have been settled. The term of delivery shall be deemed duly observed when, upon its expiry, the Products are ready for despatch.
- 10.2 Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended:
 - a) if Georg Fischer are not supplied in time with the information necessary for the execution of the contract or if subsequent changes causing delays are made by the Purchaser.
 - b) if Georg Fischer are prevented from performing the contract by force majeure. Force majeure shall equally be deemed to be any unforeseeable event beyond Georg Fischer's control which renders Georg Fischer's performance commercially unpractical or impossible, such as delayed or defective supplies from sub contractors labour disputes, governmental orders or regulations, shortages in materials or energy, serious disturbances in Georg Fischer's works, such as the total or partial destruction of plant and equipment or the breakdown of essential facilities, serious disruptions in transport facilities, e.g. impassable roads. Should the effect of force majeure exceed a period of six (6) months, either party may cancel the contract forthwith. Georg Fischer shall not be liable for any damage or loss of any kind whatsoever resulting therefrom, any suspension or cancellation being without prejudice to Georg Fischer's right to recover all sums due in respect of consignments delivered and costs incurred to date.
 - c) if the Purchaser is in delay with the fulfilment of his obligations under the contract, in particular, if he does not adhere to the agreed conditions of payment or if he has failed to timely provide the agreed securities.
- 10.3 If for reasons attributable to Georg Fischer the agreed term of delivery or a reasonable extension thereof is exceeded, Georg Fischer shall not be deemed in default until the Purchaser has granted to Georg Fischer in writing a reasonable extension thereof of not less than one (1) month which equally is not met. The Purchaser shall then be entitled to the remedies provided at law, it being however understood that, subject to limitations of Art. 16, damage claims shall be limited to max. 10% of the price of the delayed delivery.
- 10.4 Part shipments shall be allowed and Georg Fischer shall be entitled to invoice for such partial deliveries.
- 10.5 If the Purchaser fails to take delivery within a reasonable time of Products notified as ready for despatch, Georg Fischer shall be entitled to store the Products at the Purchaser's expense and risk and to invoice them as delivered. If Purchaser fails to effect payment, Georg Fischer shall be entitled to dispose of the Products.
- 10.6 Should Purchaser cancel an order without justification and should Georg Fischer not insist on the performance of the contract, Georg Fischer shall be entitled to a penalty amounting to 10% of the contract price, Georg Fischer's right to prove and claim higher damages remaining reserved.

Purchaser shall be entitled to prove, that Georg Fischer has suffered no or a considerably lower damage than the penalty forfeited.

11 Packing

- 11.1 If the Products are provided with additional packing over and above the standard packing, such packing shall be charged additionally.

12 Passing of Risk

- 12.1 The risk in the Products shall pass to the Purchaser as soon as they have left Georg Fischer's works (EX WORKS, Incoterms 2010 ICC, or latest version), even if delivery is made carriage-paid, under similar clauses or including installation or when carriage is organized and managed by Georg Fischer.
- 12.2 If delivery is delayed for reasons beyond Georg Fischer's control, the risk shall pass to the Purchaser when he is notified that the Products are ready for despatch.

13 Carriage and Insurance

- 13.1 Unless agreed otherwise, the Purchaser shall bear the cost of carriage.
- 13.2 The Purchaser shall be responsible for transport insurance against damage of whatever kind. Even when such insurance is arranged by Georg Fischer it shall be deemed taken out by the order of and for the account of the Purchaser and at his risk.
- 13.3 Special requests regarding carriage and insurance shall be communicated to Georg Fischer in due time. Otherwise carriage shall be arranged by Georg Fischer at their discretion, but without responsibility, by the quickest and cheapest method possible. In case of carriage-paid delivery transport arrangements shall be made by Georg Fischer. If the Purchaser specifies particular requirements, any extra costs involved shall be borne by him.
- 13.4 In the event of damage or loss of the Products during carriage the Purchaser shall mark the delivery documents accordingly and immediately have the damage ascertained by the carrier. Not readily ascertainable damages sustained during carriage shall be notified to the carrier within six (6) days after receipt of the Products.

14 Inspection, Notification of Defects and Damages

- 14.1 The Products will be subject to normal inspection by Georg Fischer during manufacture. Additional tests required by the Purchaser shall be agreed upon in writing and shall be charged to the Purchaser.
- 14.2 It shall be a condition of Georg Fischer's obligation under the warranties stated hereinafter that Georg Fischer be notified in writing by the Purchaser of any purported defect immediately upon discovery. Notice concerning weight, numbers or apparent defects is to be given latest within 30 days from receipt of the Products, notice of other defects immediately latest within seven (7) working days after discovery, in any event within the agreed warranty period.
- 14.3 Purchaser shall not dispose of allegedly defective Products until all warranty and/or damage claims are finally settled. At its request, defective Products are to be placed at Georg Fischer's disposal.
- 14.4 At its request, Georg Fischer shall be given the opportunity to inspect the defect and/or damage, prior to commencement of remedial work, either itself or by third party experts.

15 Warranty

- 15.1 At the written request of the Purchaser, Georg Fischer undertakes to repair or replace at its discretion, as quickly as possible and free of charge, all Products supplied which demonstrably suffer from faulty design, materials or workmanship, from faulty operating or installation instructions or which become defective or unusable due to faulty advice. In order to protect employees from toxic or radioactive substances which may have been transported through defective parts returned to Georg Fischer's sales organisation, said parts must be accompanied by a Material Safety Disclosure Form. The form may be obtained from Georg Fischer's local sales company or via www.piping.georgfischer.com. Replaced parts shall become property of Georg Fischer, unless Georg Fischer waives such claim.
- 15.2 For Products which are manufactured to specifications, drawings or patterns supplied by the Purchaser, Georg Fischer's warranty shall be restricted to proper materials and workmanship.
- 15.3 The Purchaser shall be entitled to rescind the contract or to demand a reduction of the contract price if
 - the repair or replacement of the defective Product is impossible
 - the defective Product is not repaired or replaced within a reasonable period
 - Georg Fischer refuses the repair or replacement or if for reasons attributable to Georg Fischer the repair or replacement is delayed.
- 15.4 For Products or essential components manufactured by a third party and supplied by Georg Fischer under this contract, Georg Fischer's warranty is limited to the warranty provided by said third party.
- 15.5 This warranty shall not apply to damage resulting from normal wear and tear, improper storage and maintenance, failure to observe the operating instructions, overstressing or overloading, unsuitable operating media, unsuitable construction work or unsuitable building ground, improper repairs or alterations by the Purchaser or third parties, the use of other than original spare parts and other reasons beyond Georg Fischer's control.
- 15.6 No action or claim may be brought by the Purchaser on account of any alleged breach of warranty or any other obligation of Georg Fischer after the expiration of twelve (12) months from receipt of the Products by the end user or at the latest within eighteen (18) months of the Products being despatched by Georg Fischer.
- 15.7 In case of Products for use in domestic installations or in utilities
 - Georg Fischer will assume the costs of dismantling the defective Product and restoring the damaged object up to CHF 1'000'000 per occurrence.
 - warranty or damage claims - contrary to Section 15.6 - are time-barred five (5) years from the date of installation or seven (7) years from the production date, whichever is earlier.

16 Limitation of Liability

The rights and remedies of the customer shall be exclusively governed by these General Conditions of Supply and shall be in lieu of any remedies at law. All further claims for damages, reduction of the purchase price, termination of or rescission of the contract are excluded. In no case whatsoever shall the customer be entitled to claim damages other than compensation for costs of remedying defects in the supplies. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, loss of profit, third party recovery claims and other direct or indirect or consequential damages. This limitation of liability equally applies to the extent Georg Fischer is liable for acts or omissions of its employees or third parties engaged for the performance of its obligations. It does not apply in case of unlawful intent or gross negligence on the part of Georg Fischer's management and in case of Georg Fischer's statutory liability, in particular under applicable product liability laws.

17 Severability

Should any term or clause of these General Conditions in whole or in part be found to be unenforceable or void, all other provisions shall remain in full force and effect and the unenforceable or void provision shall be replaced by a valid provision, which comes closest to the original intention of the unenforceable or invalid provision.

18 Place of Performance and Jurisdiction

- 18.1 Place of performance for the Products shall be the Georg Fischer works from which the Products are despatched.
- 18.2 The contract shall be governed by Swiss law without regard to conflict of law provisions that would require the application of another law.
- 18.3 Any civil action based upon any alleged breach of this contract shall be filed and prosecuted exclusively in the courts of Schaffhausen, Switzerland. Georg Fischer however reserves the right to file actions in any court having jurisdiction over controversies arising out of or in connection with the present contract.