

Heinz Fiege GmbH General Terms and Conditions of Sale (Export Orders)

06/2017

1 General provisions

- 1.1 All current and future contracts between Heinz Fiege GmbH, Odenwaldring 9, 63934 Röllbach, Germany (hereinafter: "Seller") with any foreign entrepreneurs, legal entities under public law and with special funds under public law (hereinafter: Customer") regarding deliveries and respective services ("Delivery Items") are exclusively governed by the following terms of delivery.
- 1.2 Deviating general terms and conditions of customers are not binding on Seller. We herewith expressly object to any deviating terms and conditions.
- 1.3 The contract and any amendments, subsidiary agreements, declarations regarding its termination or other declarations and notifications must be in written form, unless otherwise agreed in these conditions.

2 Offer and contract conclusion

- 2.1 All of the Seller's offers are non-binding and subject to change, unless they contain a specific acceptance deadline.
- 2.2 The Seller can accept Customer's orders within 14 days of receipt. If the order confirmation contains immaterial changes or supplementations, acceptance will be deemed to have been given if the Customer does not object within four weeks.
- 2.3 All agreements between the Seller and the Customer shall be made in writing in order to be effective.
- 2.4 Details provided by the Seller about the subject of the delivery or service (e.g., weights, sizes, use values, load-bearing capacity, tolerances, and technical data), as well as depictions of same (e.g., drawings and images), do not constitute guaranteed characteristics but rather descriptions or identifications of the delivery or service.

3 Intellectual property

- 3.1 Plans and other documentation and resources of a material or immaterial nature – including in electronic form – remain the intellectual property of the Seller. They may be used only to the extent permitted by the Seller and may not be altered, reproduced, or made accessible to third parties. At the request of the Seller, the Customer must return such objects to it in full. The Customer cannot assert any right of retention against such claim to return such objects.
- 3.2 If subjects of delivery or parts thereof are protected by industrial property rights or copyrights, the Seller grants the Customer a non-exclusive, non-assignable right to use them in conformity with the contract. In all other respects, rights of exploitation

remain with the Seller or manufacturer. Reproduction and processing require the prior written approval of the Seller.

- 3.3 Logos, trademarks, and other labels on the subjects of delivery may not be removed or altered.

4 Software rights of use

- 4.1 All the software products and software documentation contained in the Seller's Delivery Items are protected by copyright in Seller's favour or in favour of the software author from whom the Seller has acquired a license. All copyrights and rights of exploitation are the Seller's property or the property of the software authors. The Customer will observe the copyrights and the exploitation rights and in particular will not delete or alter the copyright notices.
- 4.2 With the payment of the total agreed purchase price (if no separate purchase price is agreed for the software with delivery of the products), Seller grants Customer the non-exclusive and non-transferable right with no time limit to use the software products and their documentation in accordance with the contract within your company. The right of use applies to the actual scope of supply in which the software is implemented, or to the contractually agreed scope of software use. Customer is not entitled to pass the software on to third parties. The exception is the passing on of integrated software when selling complete machines provided an indication is given as to Seller's copyrights and rights of exploitation or those of the software authors.
- 4.3 Any duplication of software and documentation requires Seller's prior written consent. The making of a backup copy is excluded from this provision, on condition that Customer provides this with the corresponding copyright notices of the original. In the event of sale or other permanent surrender of complete delivery Items including the passing on of integrated software to third parties, Customer will either hand over the backup copy to the third party or destroy it.

Any editing or altering of the software also requires Seller's prior written consent, unless it has been explicitly released for editing or altering. If software is processed or changed by Customer, any warranty claim against the Seller becomes invalid.
- 4.4 If there is a violation of these provisions Seller reserves the right to serve notice in respect of the rights of use and to claim damages.
- 4.5 Any further provisions issued by Seller's software authors will be submitted to Customer if applicable.

5 Prices and payment

- 5.1 Prices are valid for delivery "ex works" (EXW Odenwaldring 9, 63934 Röllbach, Germany; pursuant to the latest version of Incoterms), excluding however packaging and insurance. Prices do not

include value-added tax, customs duties for export deliveries, or fees or other public charges.

- 5.2 Pricing is generally in euros. At the Customer's request, offers in foreign currency may also be submitted. In such case, the current exchange rate of such currency to the euro is taken as a basis. Offers in foreign currencies are generally valid only for a period of two weeks. After the two-week period, the Seller reserves the right to modify offers based on changes in the exchange rate to the euro.
- 5.3 A price modification is moreover possible if material costs and/or production costs have increased since the date of the offer by 10% and the Seller furnishes prima facie evidence (*glaubhaft machen*) corresponding price increase. In such case, the Seller is entitled to modify the price accordingly.
- 5.4 Changes to the subject of delivery that are to be made by the Seller at the request of the Customer after contract conclusion are binding on the Seller only in the case of written agreement. The Customer bears all added costs resulting from this.
- 5.5 Payments are to be made as follows: 30 days net from date of invoice.
- 5.6 The Seller is entitled to demand from the Customer at any time that the price be secured by a letter of credit issued by a major bank.
- 5.7 At the Seller's discretion, payments may be offset against other claims that are still open. All payments are considered made only after the Seller can dispose of them without reservation.
- 5.8 The Customer has the right to retain payments or to set off counterclaims only insofar as its counterclaims are uncontested or have been reduced to a legally enforceable judgment.
- 5.9 If the Customer fails to promptly meet its due and owing payment obligations despite warning, the Seller is entitled to
- accelerate all outstanding payments;
 - withhold services under contracts that have not yet been fulfilled;
 - rescind the contract after setting a reasonable grace period and assert damages.
- 5.10 If the Customer fails to make payment by the due date, interest will be charged on outstanding amounts at the rate of 8% over the applicable base interest rate, starting on the due date.
- 5.11 The Seller is entitled to carry out outstanding deliveries or to render outstanding services only against pre-payment or the posting of security if after conclusion of the contract it becomes aware of circumstances that are capable of substantially reducing the Customer's creditworthiness and that jeopardize the payment by the Customer of the Seller's open claims under the respective contractual relationship (including under other individual

orders for which the same framework agreement applies).

6 Delivery and delivery time

- 6.1 Deliveries are made "ex works" (EXW Odenwaldring 9, 63934 Röllbach, Germany, Germany; pursuant to the latest version of Incoterms).
- 6.2 Times and deadlines envisaged by the Seller for deliveries and services are in every case approximate only, unless a fixed time or a fixed deadline has been promised or agreed to.
- 6.3 Compliance with the delivery time presupposes that the order has been completely clarified, all permits have been issued, and all documentation, payments, and securities to be provided by the Customer have been received by the Seller in timely fashion. The delivery time will be reasonably extended where the aforementioned prerequisites have not all been met in a timely fashion.
- 6.4 The delivery time will be reasonably extended for delivery delays that were caused by force majeure or other unforeseeable events at the time of contract conclusion (e.g., business interruptions of any nature, difficulties with materials, raw-materials, or energy procurement, transport delays, strikes, lawful lock-outs, difficulties with procuring the required official permits, or where upstream suppliers fail to deliver or fail to do so correctly or in a timely fashion) for which the Seller is not responsible. If such events make the delivery or the service by the Seller substantially more difficult or impossible, and the impediment is more than merely temporary, the Seller may rescind the contract.
- If the Customer cannot reasonably be expected to accept the delivery or service due to the delay, it may rescind the contract by immediately sending the Seller a written declaration.
- 6.5 Partial deliveries are permissible.
- 6.6 If deadlines and times cannot be complied with for a reason the Seller is liable for, the Customer is entitled – after expiry of a reasonable grace period of two weeks and proof that it has incurred damage – to assert as liquidated damages for delay of delivery in an amount of 0.25% of the net value of the delayed delivery for each completed week of default, up to a maximum of 5% of the net value of the delayed delivery. The foregoing liquidated damages shall be the sole remedy of the Customer for delay of delivery. The parties acknowledge and agree that the liquidated damages described herein are to compensate the Customer for costs associated with the delayed delivery and do not constitute a penalty.

7 Passage of risk

Passage of risk is determined by the agreed delivery clause pursuant to Article 5.1. With partial deliveries and the provision of other services, risk

nevertheless passes in accordance with the delivery clause.

The subject of delivery will be insured by the Seller against damage due to theft, breakage, transport, fire, and water only at the express request of the Customer and at its expense.

8 Warranty

Material defects

- 8.1 If a defect exists, the Seller is initially obligated and entitled at its discretion either to undertake repair or to provide a replacement delivery. In the case of rectification of defects, the Seller bears the necessary expenses, provided same are not increased because the subject of delivery is located at a place different than the place of performance. Rectification of defects is considered to have failed, at the earliest, with the second fruitless attempt, unless further attempts are reasonable based on the subject of delivery and the Customer can reasonably be expected to accept them.
- 8.2 The Customer is entitled at its discretion either to reduce the purchase price or to rescind the contract and, pursuant to the arrangements in Article 9, demand compensation of damages in lieu of performance, if the Seller earnestly and definitively refuses to rectify the defect, if the rectification fails, if the Customer cannot reasonably be expected to accept the rectification, or if a reasonable deadline for rectification was fruitlessly set. The foregoing does not apply where the Seller is entitled to refuse to rectify the defect based on statutory provisions.
- 8.3 Claims for defects are precluded where the defect was not promptly notified to the Seller. Moreover, the warranty does not apply in the case of only insignificant deviations from the agreed characteristics, in the case of only insignificant impairment of usability (in particular, if the power feed-in is not impaired), in the case of natural wear and tear, or in the case of damage that occurs after the passage of risk as a result of defective or negligent handling, excessive load, unsuitable operating equipment, defective construction work, unsuitable subsoil, or specific or external influences that were not envisioned under the contract, as well as in the case of non-reproducible software errors. Likewise, if improper changes or repair work is performed by the party or by third parties, no claims for defects exist for these and the resulting consequences.

Legal defects

- 8.4 If use of the subjects of delivery during the period set forth in Article 8 leads to an infringement of industrial property rights or copyrights at the place of delivery, the Seller will at its discretion either procure for the Customer the right of continued use or modify the subjects of delivery in such a way that the industrial property rights and copyrights are no longer infringed.

If this is not possible under economically reasonable conditions, the Seller will take back the subjects of delivery and reimburse the purchase price, less an amount that takes into account the use and condition of the subjects of delivery upon return.

In addition, the Seller will indemnify the Customer to the extent set forth in Article 9 against claims by the holders of the relevant industrial property rights or copyrights that are uncontested or have been reduced to a legally enforceable judgment.

- 8.5 Subject to article 9, the aforementioned obligations are conclusive for the case of an infringement of industrial property rights and copyrights. They apply only if
- the Customer promptly notifies the Seller about the asserted infringement of industrial property rights or copyrights;
 - the Customer supports the Seller to a reasonable extent in contesting the asserted claims and, where appropriate, enables it to carry out the modification measures under this terms and conditions.
 - all defensive measures, including out-of-court arrangements, remain reserved to the Seller;
 - the subjects of delivery have not been manufactured or modified at the Customer's instruction;
 - the right was not infringed as a result of the Customer having unilaterally altered the subject of delivery or used it in contravention of the contract.

9 Prescription

Warranty claims for a material or legal defect are prescribed one year after delivery.

10 Liability

- 10.1 Seller shall be liable for deliveries and work of its employees and subcontractors exclusively in case of unlawful intent and gross negligence.
- 10.2 Liability for slight and medium negligence and liability for ancillary workers pursuant to Article 101 OR (Law of Obligations) are excluded entirely.
- 10.3 Except for such cases covered by Section 10.1, Seller is not liable for any consequential damages caused by its performance to the customer or other indirect damages not arising to the object of the service itself, in particular for lost profit, losses of working hours, expenses incurred and damages to fabricated goods, increased consumption of material, data corruption or data loss, delays in delivery and their consequences. Seller shall also not be liable for directly caused losses on a non-fault basis in the event of rescission.
- 10.4 Unless provided otherwise in Article 10.1–10.3, the Seller's liability is precluded in all other respects.

- 10.5 The limitations of liability in Article 10 also apply to extra-contractual claims.
- 10.6 The Seller is not liable for damages based solely on fault on the part of individuals deployed by the Customer, even if such individuals are supervised by the Seller's technical personnel and are given instructions when performing work. The same applies to technical information or an advisory activity, unless this is part of the contractually agreed scope of performance.
- 10.7 If provisions relating to limitation of liability are or become invalid for any reason, they must be interpreted such that the limitation of liability is reduced to the maximum extent permitted and is considered to be fully legally valid to this extent.

11 Retention of title

- 11.1 The Seller retains title to the subjects of delivery ("Secured Goods") until payment in full of all current and future claims of the Seller under the business relationship with the Customer, including outstanding current-account balances.
- 11.2 The Customer shall treat the Secured Goods with care. The Customer shall insure them at its own expense against damage due to fire, water, and theft.
- 11.3 The Customer is entitled to sell the Secured Goods in the ordinary course of business. The Customer may not pledge the Secured Goods or assign them as security. It is obligated to secure the Seller's rights when selling the Secured Goods on credit terms. The Customer hereby assigns to the Seller to the full extent for the purpose of security its payment claims against its customers from a resale of the Secured Goods, as well as those claims of the Customer with respect to the Secured Goods that arise under any other legal basis against its customers or third parties (in particular, tort claims and insurance claims), including all outstanding current-account balances. The Seller hereby accepts such assignment.

The Customer may collect for the Seller the claims assigned to the Seller for the Customer's own account and in its own name, provided such authorization has not been revoked. The Seller's right to collect such claims itself is not affected by the foregoing. However, the Seller will not assert the claims itself and refrain from revoking the collection authorization as long as the Customer is properly meeting its payment obligations.

However, if the Customer acts in contravention of the contract – in particular, if it is in default in making a payment – the Seller may demand that the Customer disclose to the Seller the assigned claims and the respective debtors, notify the respective debtors about the assignment, and furnish the Seller with all documentation and information that it needs in order to assert the claims.

- 11.4 The Customer must support the Seller in steps to secure and, if necessary, enforce the Seller's retention of title. If third parties assert rights to the subject of delivery or make a disposition concerning it, the Customer must promptly notify the Seller.
- 11.5 If the Customer is in default in payment or otherwise in serious breach of contract, the Seller is entitled to take back the subject of delivery. If the Seller takes back the subject of delivery or places a lien on it, same does not constitute rescission of contract.
- 11.6 If the retention of title in the aforementioned form is ineffective under the law of the destination country, the Customer shall assist to establish a security right corresponding to the provisions of its country.

12 Final provisions

- 12.1 Zurich, Switzerland, is the place of jurisdiction for any disputes arising under the business relationship between the Seller and the Customer. However, the Seller is entitled to bring suit against the Customer at any court with statutory jurisdiction. Mandatory statutory provisions concerning exclusive jurisdiction remain unaffected by this arrangement.
- 12.2 The relationships between the Seller and the Customer are subject exclusively to the law of Switzerland, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods and to the exclusion of conflict-of-laws rules of private international law.
- 12.3 The Customer may assign its rights under this Agreement to third parties only with prior written consent of the Seller.

Heinz Fiege GmbH