

## **General Terms of Sale of FiWaRec Valves & Regulators GmbH & Co. KG**

### Clause 1 Applicability of the terms

(1) The deliveries, services and offers provided by FiWaRec Valves & Regulators GmbH & Co. KG shall be made exclusively on the basis of these terms of business. These terms of business shall thus also apply to all future business transactions, even if they are not explicitly agreed again. These terms of business shall be deemed to have been accepted at the latest with the receipt of the products or services. We herewith object to any contrary confirmation issued by the purchaser with a reference to its own terms of business or purchase.

(2) All agreements which are made between the vendor and the purchaser for the purpose of implementing a contractual relationship must be set out in writing in this contract.

### Clause 2 Offers and agreement of contract

(1) The offers made by the vendor shall be subject to change and non-binding. Declarations of acceptance and all orders shall require confirmation by the vendor in writing or by teleprinter in order to be legally valid.

(2) Drawings, illustrations, dimensions, weights or other performance data shall only be binding if this is explicitly agreed in writing.

(3) The vendor's sales personnel are not authorised to make supplementary agreements by word of mouth or to give verbal assurances which go beyond the content of the written contract.

### Clause 3 Prices

(1) Insofar as no other arrangement is stipulated, the vendor shall keep to the prices contained in the offer for 30 days from the date of the offer. Otherwise, the prices stipulated in the vendor's order confirmation shall apply, plus statutory turnover tax at the current rate. Additional deliveries and services shall be charged separately.

(2) The prices for our goods and services are stated in Euros unless any other currency is explicitly stipulated, and in the absence of any other agreement they are understood to be ex works including normal packaging.

### Clause 4 Period for delivery and performance

(1) Delivery dates or periods shall always be deemed to be non-committal details, any binding agreements of delivery dates or periods must be explicitly agreed and must be in writing.

(2) The vendor shall not be responsible for any delays in delivery and performance which result from force majeure or are caused by events which make the delivery or performance considerably more difficult or impossible for the vendor for more than a temporary period – including but not limited to strikes, lockouts, requirements of public authorities etc. even if they occur at the vendor's suppliers or the suppliers' sub-contractors – even if the delivery periods and deadlines are agreed as binding. Such circumstances shall entitle the vendor to postpone the delivery or service by the duration of the hindrance plus a reasonable start-up time, or to revoke the contract in full or in part for the part that has not yet been fulfilled.

(3) If the hindrance lasts longer than three months, the purchaser shall be entitled, after setting a reasonable extension period, to revoke the contract for the part that has not yet been fulfilled. If the delivery period is extended, or if the vendor is released from its obligation, the purchaser shall not be entitled to derive any claims for compensation from this circumstance. The vendor shall only be

entitled to appeal to the above circumstances if it notifies the purchaser of such circumstances without delay.

(4) Insofar as the vendor is responsible for a failure to adhere to firmly promised periods and deadlines or is in default, the vendor shall be entitled to compensation for delay amounting to 1/2% of the invoice value of the deliveries and services affected by the delay for each full week of the delay, but no more than a maximum total of 5% of such invoice value. Any further claims are excluded unless the delay is caused at least by gross negligence on the part of the vendor.

(5) The vendor shall be entitled to make partial deliveries and render partial services at any time unless the partial delivery or partial service is of no interest for the purchaser.

(6) Adherence to the vendor's delivery and service obligations assumes that the obligations of the purchaser have been fulfilled properly and in good time.

(7) If the purchaser is in default in acceptance, the vendor shall be entitled to demand compensation for the loss or damage which it suffers as a result; when the arrears of acceptance arise, the risk of accidental deterioration and accidental destruction shall pass to the purchaser.

#### Clause 5 Transfer of risk

The risk shall transfer to the purchaser as soon as the consignment has been handed over to the person carrying out the transport, or has left the vendor's warehouse for despatch. If the shipment is delayed at the request of the purchaser, the risk shall transfer to the purchaser with the notification of readiness for shipment.

#### Clause 6 Rights of the purchaser due to defects

(1) The products shall be delivered free from manufacturing and material defects; the time limit for the enforcement of claims for defects shall be one year from the delivery of the products.

(2) If operating and maintenance instructions of the vendor are not followed, changes are made to the products, parts are replaced or consumable materials are used which do not comply with the original specifications, any claims for defects in the products shall lapse unless the purchaser refutes a reasonably substantiated claim that the defect was caused by one of these circumstances.

(3) If the purchaser is a business entrepreneur, a legal entity under public law or a special fund under public law, the purchaser shall be obliged to check the delivery or service immediately after receiving it.

In this case, the purchaser shall be obliged to notify the vendor of any defects in writing without delay, but at the latest within one week after the receipt of the delivered object. Any defects which cannot be discovered within this period even by a careful examination shall be notified to the vendor by the purchaser in writing without delay after they have been discovered. Otherwise the purchaser shall forfeit the right to make any appeal to the defectiveness of the delivery or service.

(4) In the event of a notification by the purchaser that the products have a defect, the vendor may demand at its own discretion and expense:

- a) that the defective part or appliance be sent to the vendor for repair and subsequent return;
- b) that the purchaser hold the defective part or appliance ready and that the vendor will send a service technician to the purchaser to carry out the repair.

If the purchaser demands that remediation work should be carried out at a place determined by the purchaser, the vendor shall be entitled to comply with this demand; in this case, replaced parts shall not be charged for, but the working time and travelling expenses shall be charged at the vendor's standard rates.

(5) If the remediation fails after a reasonable period, the purchaser shall be entitled, at its own discretion, to demand a reduction of the remuneration demand or to revoke the contract.

(6) Any liability for normal wear and tear is excluded.

(7) Any claims against the vendor for defects shall only be the prerogative of the direct purchaser and are not assignable.

#### Clause 7 Spare parts

For a period of five years from the delivery of a product, the vendor shall supply spare parts for that product at the respective valid spare part prices.

#### Clause 8 Reservation of ownership

(1) Until all payment claims to which the vendor is entitled from the purchaser for any legal reason now or in the future have been met (including all current account balance amounts), the vendor shall be granted the following security, which the vendor shall release at its own discretion on demand by the purchaser as soon as the value of the security is permanently more than 20% above the value of the amounts payable.

(2) The goods shall remain the property of the vendor until the claims mentioned in Clause 8 (1) have been fulfilled. Any processing or reforming shall always be carried out for the vendor as the manufacturer, but without entailing any obligation for the vendor. If the (co-)ownership of the vendor lapses by mingling of the product, it is now agreed in advance that the purchaser's (co-)ownership of the combined object shall be assigned to the vendor proportionally (in proportion to the invoice value). The purchaser shall keep the vendor's (co-)owned property free of charge. Any goods in which the vendor has any (co-)ownership shall be referred to hereinafter as the reserved goods.

(3) The purchaser shall be entitled to process and/or sell the reserved goods in the course of proper business transactions as long as the purchaser is not in arrears. Any pledging or transfer of ownership by way of security is prohibited. The purchaser assigns to the purchaser in advance in full, by way of security, all accounts receivable with respect to the reserved goods (including all balances receivable in any current account) which arise from resale or any other legal grounds (insurance, prohibited action). The vendor grants the purchaser a revocable authorisation to collect on its own account and in its own name the accounts receivable which are assigned to the vendor. This authorisation of collection may only be revoked if the purchaser fails to meet its payment obligations properly.

(4) In the event of any action of third parties against the reserved goods, especially levy of execution, the purchaser shall point out the vendor's ownership and notify the vendor without delay so that the vendor can enforce its property rights. Insofar as the third party is unable to reimburse the vendor for the court or out-of-court costs incurred by us in this connection, the purchaser shall be liable for these costs.

(5) In the event of any breach of the contract by the purchaser – especially delayed payment – the vendor shall be entitled to revoke the contract and demand the return of the reserved goods.

#### Clause 9 Payment

(1) Insofar as there is no agreement to the contrary, the vendor's invoices shall be payable without deduction 30 days after the invoice date.

The vendor shall be entitled, irrespective of any contrary terms and conditions of the purchaser, to assign any payments first of all to any older debts of the purchaser; the vendor shall inform the purchaser of the assignment of the payment. If costs and interest have already occurred, the vendor shall be entitled to assign the payment first of all to the costs, then to the interest and last of all to the main debt.

(2) A payment shall only be deemed to have been made when the vendor has disposal over the amount. In the event of payments by cheque, the payment shall only be deemed to have been made when the cheque has been settled.

(3) If the purchaser falls into arrears, the vendor shall be entitled to demand interest of 8% above the base interest rate from that time onwards as lump sum compensation unless the purchaser is a private

consumer (Section 13 of the German Civil Code/BGB). If the purchaser is a private consumer, the interest rate shall be 5 percentage points above the base rate. The interest rate used shall be lower if the purchaser proves a lesser loss; the vendor shall be entitled to prove that the loss is greater.

(4) If the vendor learns of circumstances which cast doubt on the purchaser's creditworthiness, especially if a cheque issued by the purchaser cannot be honoured or the purchaser ceases to make payments, or if the vendor learns of any other comparable circumstances, the vendor shall be entitled to declare that the whole of the outstanding debt is immediately payable even if the vendor has previously accepted cheques. In this case, the vendor shall also be entitled to demand advance payments or security.

(5) The purchaser shall only be entitled to set off, reserve or reduce payments if the counter-claims have been awarded by an unappealable ruling or are undisputed, even if complaints for defects or counter-claims are being claimed. However, the Purchaser shall also have a right of retention for counter-claims arising from the same contractual relationship.

#### Clause 10 Changes in structural design

The vendor reserves the right to make changes in the structural design at any time; however, it shall not be obliged to make such changes in products that have already been delivered.

#### Clause 11 Patents

(1) The vendor shall indemnify the purchaser and its customers against any claims arising from violations of copyright, trademarks or patents unless the design for the delivered product originated from the purchaser. The vendor's obligation to provide indemnification is limited to the amount of any predictable damage or loss.

An additional requirement for indemnity is that the conduct of any legal disputes is left to the vendor and that the alleged violation of rights is exclusively due to the design and characteristics of the objects supplied by the vendor, without any connection or use together with other products.

(2) The vendor shall optionally be entitled to release itself from the obligations undertaken in subsection 1 by one of the following means:

- a) either by obtaining the necessary licences for the patents that are allegedly violated

or

- b) by providing the Purchaser with a changed object of supply, or parts thereof, which will eliminate the allegation of a violation of a right by the supplied object if they are used instead of the supplied object or part of an object that causes the violation.

#### Clause 12 Confidentiality

Unless any other arrangement has been explicitly agreed in writing, the information provided to the vendor in connect with orders shall not be deemed to be confidential.

#### Clause 13 Liability

(1) Any claims against the vendor for compensation are excluded irrespective of the nature of the violation of obligations, including but not limited to prohibited actions, except in cases of deliberate action or gross negligence.

(2) In the event of a violation of major contractual obligations, the vendor shall be liable for any case of negligence, but only up to the amount of the foreseeable loss or damage. Any claims for loss of profit, saved expenses, on the basis of compensation claims of third parties and any other direct and consequential loss or damage cannot be demanded unless an assured characteristic guaranteed by

the vendor is explicitly declared to be for the purpose of indemnifying the purchaser against such loss or damage.

(3) The limitations of liability and exclusions of liability in sub-sections 1 and 2 shall not apply to claims which have arisen due to fraudulent action by the vendor, to any liability for guaranteed characteristics, to claims under the German Product Liability Act or to loss or damage resulting from death, bodily injury and harm to health.

(4) Insofar as the liability of the vendor is excluded or limited, this shall also apply to the vendor's staff members, employees, representatives and vicarious agents.

#### § 14 Applicable law, place of jurisdiction, partial invalidity

(1) These terms of business and all legal relationships between the vendor and the purchaser shall be governed by the law of the Federal Republic of Germany. The provisions of UN commercial law shall not apply.

(2) If the purchaser is a business entrepreneur, a legal entity under public law or a special fund under public law, the place of jurisdiction for both parties for all disputes arising directly or indirectly from the contractual relationship shall be Trier. However, the vendor shall be entitled to the alternative of conducting any legal disputes at the general place of jurisdiction of the purchaser.

(3) If one or more provisions of these terms of business or any provision in other agreements should be or become invalid, this shall not affect the validity of all other provisions or agreements.

(4) Versions of these General Terms of Sale may exist simultaneously in different languages. However, the German version shall always be the sole definitive version of the content and interpretation of the rights and duties of the vendor and purchaser under these General Terms of Sale.

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