

General sales and delivery conditions
Finsterwalder Umwelttechnik GmbH & Co. KG
As of 09 August 2010

1. Scope

These general sales and delivery conditions shall be valid for any contracts and contractual objects between Finsterwalder Umwelttechnik GmbH & Co. KG (FITEC) and their contractual partner. Contrary conditions of the contractual partner shall only be valid if explicitly accepted by FITEC in writing.

2. Conclusion of a contract and written form

2.1 The written order confirmation of FITEC is decisive for the contents and accomplishment of a contract. The same applies to amendments, changes and side agreements to any already concluded contracts. Drawings, illustrations, measures and other performance data shall only be binding for FITEC, if the contract explicitly refers to them. The operating, mounting and maintenance instructions for the contractual object are always an integral part of the contract.

2.2 Any verbal agreements including the waiver of this requirement of written form are subject to a written agreement in order to be effective

3. Scope and performance of the contractual object

3.1 FITEC regards the facts, especially any figures and submitted documents, stated by the contractual partner as correct and complete when performing the orders placed. FITEC shall not be obliged to check these documents and facts for correctness, completeness and regularity. Unless this obligation is explicitly stipulated in the contract, FITEC does not accept any liability for any errors or obscurities arising from the documents submitted by the contractual partner.

3.2 FITEC reserves the right to marginally differ from the submitted documents and facts, if the serviceability of the contractual object is not impaired in this way.

4. Documents and items of the contractual partner, storage

If the contractual partner submits any documents to FITEC for the purpose of the contractual performance, FITEC shall store them for a period of six months from the time of delivery for collection by the contractual partner. During this period, FITEC shall only be responsible for that care which they also exercise in their own affairs. After the expiration of six months and after setting a reasonable final deadline, FITEC shall be entitled to destroy the documents or make other use of them.

5. Shipping, risk of loss, place of performance

5.1 The shipping is always for account of and at the risk of the contractual partner. The risk shall be transferred to the contractual partner as soon as the consignment is passed on to the person performing the transport or as it leaves the FITEC warehouse for the purpose of shipment. This applies regardless of whether the shipment is to the place of performance and which contractual party bears the shipping costs.

5.2 If the timely delivery of the contractual object is impossible for reasons not caused by FITEC or if the contractual partner refuses the acceptance without any reason or wishes a subsequent delivery, FITEC may invoice the contractual object and store it at the risk of the contractual partner for a storage charge of 2.5% of the net invoice amount.

5.3 Provided that the contractual partner wishes so, FITEC will procure a transport insurance for the consignment. The costs incurred shall be borne by the contractual partner.

5.4 In the case of a delivery including assembly and/or installation, the risk shall be transferred to the contractual partner upon acceptance or the day of the refusal of acceptance without any reason. Putting into use shall be considered as acceptance.

5.5 The place of performance for each contractual object as well as for the taking back of any transport packaging is the FITEC warehouse.

6. Prices

6.1 Unless otherwise agreed the prices stated by FITEC are calculated ex manufacturer's works and do not include packaging, loading and unloading, transport, assembly and value added taxes. Packaging is charged at cost price.

6.2 FITEC shall be bound to the stipulated prices for a period of four months from the conclusion of a contract. Afterwards FITEC reserves the right to pass any price changes during the delivery time on to the contractual partner. Price changes shall especially include changes in taxes, charges, raw materials and employees' wages.

6.3 Engineer services are charged separately. They are calculated according to the actual expenditure plus travel, food and accommodation expenses, overtime, Sunday and holiday bonuses.

6.4 If FITEC is prepared to conduct an exchange on request of the customer, FITEC shall be entitled to charge the costs incurred, however at least the amount of the loss in value resulting from aging and usage plus 10% of the stipulated price of the originally agreed contractual object for the purpose of compensation of the expenditure incurred for FITEC by the exchange.

7. Payments and offsetting

7.1 The first half of the price stipulated for the contractual performance shall be due upon order confirmation, the second half shall be due upon notice of completion by FITEC or upon shipment. The deduction of early payment discounts shall be subject to a separate written agreement.

7.2 Unless otherwise agreed, deliveries of machines shall be due for payment without deduction within 7 days from delivery, spare parts within 30 days and services within 14 days from date of invoice.

7.3 If the customer is in default, the amounts receivable by FITEC shall bear interests of 8.0% over the base rate.

7.4 The contractual partner may only set off any claims by FITEC against any uncontested or legally established claims. The assignment of claims against FITEC shall be excluded.

8. Retention of title

8.1 The contractual object shall remain the property of FITEC until the complete payment of the price and of all claims arising from the business relation ("goods subject to retention of title"). The same applies until the settlement of the corresponding current account balance claims (current account) which are due to FITEC for whatever reason against the contractual partner now or in the future.

8.2 Provided that the contractual partner processes the goods subject to retention of title with other items not belonging to FITEC, FITEC shall receive the coproperty of the new item in proportion of the goods subject to retention of title to the other processed items. The new item resulting from the processing is regarded as good subject to retention of title in terms of these conditions.

8.3 When combining and mixing movables, the goods subject to retention of title shall be regarded as main item in terms of Art. 947 Sec. 2 of the German Civil Code.

8.4 The contractual partner shall irrevocably and preventively assign any titles or claims resulting from the resale of the goods subject to retention of title to FITEC. FITEC shall in turn be obliged to release the securities due to them according to the above-mentioned conditions to their choice upon request of the contractual partner, provided that the realisable value of the securities exceeds the claim to be secured by more than 20%.

8.5 FITEC shall be entitled to collect any claims resulting from the resale. Upon request of FITEC, the contractual partner shall be obliged to inform their customers immediately about the assignment to FITEC and submit any information and documents required for the collection to FITEC.

8.6 The contractual partner shall be obliged to handle the contractual object carefully until the complete transfer of property. In particular the contractual partner shall be obliged to insure them sufficiently at his own account against damages by fire, water and theft to the replacement value and prove this to FITEC upon request. Provided that maintenance and inspection works are necessary, the contractual partner must conduct them at their own account in due time.

8.7 In the case of the opening of insolvency proceedings concerning the assets of the contractual partner, of attachments or other interventions of third parties in the property rights of FITEC, FITEC must immediately be informed in writing. In this case FITEC shall be entitled to retain any material already processed by them and any possible stocks of material of the contractual partner not yet processed as a security for any outstanding debts until the debts are completely settled.

9. Delivery period, fulfillment

9.1 The stipulated delivery period starts with the acceptance of the order by FITEC and the agreement of all order details. In the case of a contractual object without installation or assembly, it shall be considered as met when the contractual object leaves the FITEC warehouse or the message of the announcement of the release for shipment is made within this delivery period.

9.2 If the delivery date is delayed through no fault of FITEC or in cases of force majeure like war, fire, explosion, strike or lockout at FITEC or their suppliers, FITEC shall be entitled to reasonably extend the delivery period or to withdraw from the contract fully or in parts; this shall also apply if FITEC is in default with their contractual object at this point of time or if the contractual partner does not fulfill their duties to cooperate in due time.

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In these cases, compensation claims by the contractual partner shall be excluded in the case of slight negligence of FITEC.

9.3 If an agreed delivery date is exceeded by more than three weeks, the contractual partner shall only be entitled to withdraw from the contract when a grace period set by the contractual partner has elapsed unsuccessfully. Sections 9.1 and 9.2 shall remain unaffected.

9.4 If the shipment is delayed upon request of the customer, FITEC can invoice either the actually incurred costs of storage and maintenance or a lump sum of 1/2% of the amount invoiced per month; the latter shall not be possible if the customer can prove that only slight damages or expenses were incurred for FITEC. The orderer's obligations to pay shall remain unaffected.

10. Acceptance

At the option of FITEC, the stipulated acceptance of the contractual object can either take place at FITEC or the contractual partner. The contractual partner must be informed of the exercise of this right of choice in writing in due time, at the latest together with the note of dispatch or of completion. Each contractual party shall bear their own costs associated with the acceptance. If the contractual partner refuses the acceptance although the contractual object is objectively in working order, the contractual object is regarded as accepted after a grace period set by FITEC has elapsed.

11. Warranty, liability

11.1 Claims for defects by the contractual partner require that the contractual partner complied properly with their obligations to inspect and give notice of defects according to Art. 377, 378 of the German Code of Commercial Law and gave written notice of any alleged defects. In the case of spurious notices of defects, the contractual partner shall be obliged to compensate the costs of inspection and any other associated costs (e.g. travel and freight costs) to FITEC.

11.2 If there is a defect in the contractual object, FITEC shall be entitled at their own choice to the supplementary performance by up to two subsequent improvements or to the subsequent delivery of an item free of defects. If the supplementary performance fails, the contractual partner shall be entitled to demand a withdrawal or price reduction at their own choice.

11.3 FITEC shall be liable according to the legal stipulations provided that the contractual partner claims damages which are based on intent or gross negligence of their representatives or agents. Insofar as FITEC is not accused of any deliberate breaches of contract, the liability for damages is limited to the predictable, typically occurring damages.

11.4 FITEC shall be liable according to the legal stipulations provided that FITEC culpably violates a primary contractual obligation; even in this case the liability for damages shall be limited to the predictable, typically occurring damages.

11.5 The liability due to culpable damages to life, body or health shall remain unaffected; this shall also apply to the mandatory liability according to the Product Liability Law.

11.6 Any unauthorised subsequent improvements by the customer or by third parties shall result in the loss of all claims for defects towards FITEC. The costs of any subsequent improvement by the customer or by third parties without the prior explicit approval of FITEC shall not be borne by FITEC. This applies to any urgent - particularly unpostponable - cases of threats to the operational safety or to the prevention of disproportionately large damages. In these cases FITEC must be informed immediately and shall only be obliged to compensate the required costs.

11.7 FITEC shall not assume liability for any material delivered by the customer or purchased due to any specifications stated by the customer as well as for any designs specified by the customer.

11.8 When selling any used machines, devices or parts, FITEC shall not assume liability for any possible material defects. FITEC does not warrant any properties and indicates that used machines and parts often do not have the same properties - also referring to their performance - as new machines and parts.

11.9 Unless otherwise stipulated above, any liability shall be excluded.

12. Other liabilities

12.1 Any liability for damages other than stipulated in Section 11 shall be excluded - regardless of the legal nature of the asserted claim. This shall particularly apply to any damage claims through any fault when the contract was concluded, through any further violation of duty or through any tort claims for compensation of any material damages according to Art. 823 of the German Civil Code.

12.2 Provided that the liability for damages by FITEC is excluded or limited, this shall also apply to the personal liability of the employees, workers, representatives and agents of FITEC.

12.3 Any further claims by the customer, especially any claims for damages referring to any damages not occurred to the delivered item itself, shall be excluded.

13. Copyright / property rights

If FITEC delivers anything according to any drawings, models or samples or using parts provided by the customer, the orderer shall guarantee that no copyright or property right of any third party is violated in this way. The customer shall keep FITEC indemnified against any possible claims by third parties for the violation of copyrights / property rights and shall compensate the damages incurred for FITEC as well as their costs and expenses. If the orderer is prohibited to manufacture or deliver by any third parties with reference to a copyright / property right, FITEC shall be entitled to cease the works. In this case FITEC shall be entitled to withdraw from the contract and to claim compensation for their damages, costs and expenses.

14. Software usage

Provided that any software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software and its documentation. It shall be ceded for usage on the delivered item intended for it. Using the software on more than one system shall be prohibited.

The customer shall only be entitled to copy, edit, translate or transfer the software from object code to source code within the limits of the statutory regulations (Art. 69 a et seq. of the German Copyright Law). The customer undertakes not to remove any producer information - particularly any copyright notes - nor to change it without the prior explicit approval of FITEC.

Any other rights to the software and its documentation including any copies shall remain with FITEC or the software producer. The granting of any sub-licenses shall not be permitted.

15. Applicable law, place of performance, venue

The place of performance and jurisdiction shall be Traunstein, if permitted by law. German law shall be regarded as agreed for any legal relationships between FITEC and the contractual partner, the application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

16. Validity in case of partial nullity

14.1 If any individual stipulations of these General Sales and Delivery Conditions are or become null and void, the validity of the remaining stipulations shall be unaffected.

14.2 These General Sales and Delivery Conditions shall nullify and replace any previous sales and delivery conditions.