

General Terms and Conditions of Contracts and Delivery of Fritsch Elektronik GmbH (as at 08/2020)

§ 1 Validity

(1) All deliveries, services and offers of Fritsch Elektronik GmbH (hereinafter referred to as "Fritsch") shall be made exclusively on the basis of these General Terms and Conditions of Delivery.

These are an integral part of all contracts which Fritsch concludes with its contractual partners (hereinafter also referred to as "Customers") for the deliveries or services offered by Fritsch. They shall also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed upon again.

(2) Terms and conditions of the Customer or third parties shall not apply, even if Fritsch does not separately object to their validity on a case-by-case basis. Even if Fritsch refers to a letter containing or referring to the terms and conditions of the Customer or a third party, this does not constitute an agreement to the validity of those terms and conditions.

§ 2 Conclusion of contracts/Master supply agreements

(1) All offers made by Fritsch are subject to change without notice and are non-binding, unless they are expressly marked as binding or contain a specific acceptance period.

(2) The legal relationship between Fritsch and the Customer shall be governed solely by the purchase contract concluded in writing, including these General Terms and Conditions of Delivery. This shall fully reflect all agreements between the contracting parties on the subject matter of the contract. Oral promises made by Fritsch prior to the conclusion of this contract are not legally binding and oral agreements between the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.

(3) Supplements and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing in order to be effective. With the exception of managing directors or expressly authorised employees of Fritsch, **the seller's employees** shall not be entitled to make verbal agreements deviating from the written agreement.

(4) Statements from Fritsch concerning the item to be delivered or the service (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics of quality but descriptions or identifications of the delivery or service. Deviations customary in the trade and deviations which occur due to legal regulations or which represent technical improvements, as well as the replacement of components by parts of equal value, are permissible insofar as they do not impair the usability for the contractually intended purpose.

(5) Fritsch shall retain ownership or copyright of all offers and cost estimates submitted by Fritsch as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. The Customer may not make these items accessible to third parties, disclose them, use them himself or through third parties or reproduce them without the express consent of Fritsch, either as such or in terms of content.

(6) In the case of master supply agreements, the following shall also apply:

a) Unless a different term is agreed, master supply agreements shall apply for one calendar year from the date of their agreement.

b) In the case of individual call-off orders which are made within the framework of master supply agreements, an order confirmation shall only be issued by Fritsch if the Customer expressly requests one and/or if delivery dates/quantities or prices deviate from the call-off order.

c) If fixed or minimum quantities are agreed in the master supply agreement which are to be accepted by the Customer and if the Customer does not accept these quantities during the agreed term, the Customer shall pay the agreed purchase price for the fixed or minimum quantities not accepted after expiry of the term of the master supply agreement.

(7) In the case of supply agreements based on plans (without fixed or minimum quantities), the following shall also apply:

a) The provisions of paragraph 6 a) and b) above shall apply accordingly.

b) Material releases refer to the planned delivery quantity of one year. Quantities of material not consumed by the end of the term of the supply agreement shall be accepted by the Customer at the price of Fritsch's acquisition costs plus a surcharge of 10%.

§ 3 Prices and payment

(1) The prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services will be charged separately. The prices are in EUR ex works plus packaging, the statutory value added tax, in the case of export deliveries customs duty as well as fees and other public charges.

(2) Insofar as the agreed prices are based on Fritsch's list prices and the delivery is to take place more than four months after conclusion of the contract, Fritsch's list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

(3) Invoice amounts shall be paid within thirty days without any deduction, unless otherwise agreed in writing. The date of receipt by Fritsch shall be decisive for the date of payment. Payment by cheque is excluded unless it is agreed separately on a case-by-case basis.

§ 4 Delivery and delivery time

(1) Deliveries shall be made ex works.

(2) Deadlines and dates for deliveries and services promised by Fritsch are always only approximate, unless a fixed deadline or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarder, carrier or other third party commissioned with the transport.

(3) Fritsch can – without prejudice to its rights arising from default on the part of the Customer – demand from the Customer an extension of delivery and performance deadlines or a postponement of delivery and performance dates by the period of time during which the Customer does not fulfil its contractual obligations towards Fritsch.

(4) Fritsch shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events which were not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lock-outs, shortage of labour, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or lack of delivery by suppliers or the incorrect or untimely delivery by the latter, in particular "allocation") for which Fritsch is not responsible.

Insofar as such events make it considerably more difficult or impossible for Fritsch to deliver or perform and the hindrance is not only of temporary duration, Fritsch shall be entitled to withdraw from the contract. In the event of obstacles of temporary duration, the delivery or service deadlines shall be extended or the delivery or service deadlines shall be postponed by the period of the obstacle plus an appropriate start-up period. Insofar as the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate written declaration to Fritsch.

(5) Fritsch shall be entitled to make partial deliveries if

- the partial delivery is usable for the Customer within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is ensured and
- the Customer does not incur any significant additional expenditure or additional costs as a result (unless Fritsch agrees to bear these costs).

(6) If Fritsch is in default with a delivery or service or if a delivery or service becomes impossible for it, for whatever reason, then the liability of Fritsch is limited to compensation for damages in accordance with § 8 of these General Terms and Conditions of Delivery.

§ 5 Extended reservation of title

(1) The reservation of title agreed below shall serve to secure all current and future claims of Fritsch against the Customer arising from the supply relationship existing between the contracting parties.

(2) The goods delivered by Fritsch to the Customer shall remain the property of Fritsch until full payment of all secured claims.

The goods and the goods covered by the reservation of title which take their place in accordance with the following provisions shall hereinafter be referred to as "goods subject to reservation of title".

(3) The Customer shall store the goods subject to reservation of title free of charge for Fritsch.

(4) The Customer shall be entitled to process and sell the goods subject to reservation of title in the ordinary course of business until the time of the enforcement of the reservation of title (para. 9).

Pledges and transfers of ownership by way of security are not permitted.

(5) If the goods subject to reservation of title are processed by the Customer, it is agreed that the processing shall be carried out in the name of and for the account of Fritsch as manufacturer and that Fritsch shall acquire direct ownership or – if the processing is carried out from the materials of several owners or the value of the processed item is higher than the value of the reserved goods – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the goods subject to reservation of title to the value of the newly created item. In the event that no such acquisition of ownership should occur at Fritsch, the Customer shall already now transfer his future ownership or – in the above-mentioned ratio – co-ownership of the newly created item to Fritsch as security. If the goods subject to reservation of title are combined with other items to form a uniform item or are inseparably mixed and if one of the other items is to be regarded as the main item, Fritsch shall, insofar as the main item belongs to it, transfer to the Customer proportionate co-ownership of the uniform item in the ratio specified in sentence 1.

(6) In the event of resale of the goods subject to reservation of title, the Customer hereby assigns to Fritsch by way of security the resulting claim against the purchaser – in the event of co-ownership by Fritsch of the goods subject to reservation of title, in proportion to the co-ownership share. The same applies to other claims that take the place of the goods subject to reservation of title or otherwise arise with regard to the goods subject to reservation of title, such as insurance claims or claims resulting from tort in the event of loss or destruction. Fritsch revocably authorises the Customer to collect the claims assigned to Fritsch in his own name. Fritsch may only revoke this collection authority in the event of enforcement of the reservation of title.

(7) If third parties gain access to the goods subject to reservation of title, in particular through seizure, the Customer shall immediately inform them of Fritsch's ownership and inform Fritsch of this in order to enable it to enforce its ownership rights. If the third party is not in a position to reimburse Fritsch for the court or out-of-court costs incurred in this connection, Fritsch's Customer shall be liable for these.

(8) Fritsch shall release the goods subject to reservation of title and the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 50%. The selection of the items to be released according to this provision is up to Fritsch.

(9) If Fritsch withdraws from the contract in the event of a breach of contract by the Customer (enforcement event) – in particular default of payment – Fritsch shall be entitled to demand the return of the goods subject to reservation of title.

§ 6 Place of performance, Dispatch, Packaging, Transfer of risk

(1) The place of performance for all obligations arising from the contractual relationship is D-77855 Achern, unless otherwise specified.

(2) The method of dispatch and the packaging shall be subject to the dutiful discretion of Fritsch.

(3) The risk shall pass to the Customer at the latest when the delivery item is handed over (with the decisive moment being the start of the loading process) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made. If the dispatch or the handover is delayed due to a circumstance the cause of which lies with the Customer, the risk shall pass to the Customer from the day on which the delivery item is ready for dispatch and Fritsch has notified the Customer of this.

(4) The shipment will only be insured by Fritsch against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Customer and at the Customer's expense.

§ 7 Warranty, Material defects

(1) The warranty period shall be one year from delivery or, if acceptance is required, from acceptance. This period shall not apply to claims for damages by the Customer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by Fritsch or its vicarious agents, which shall in each case be time-barred in accordance with the statutory provisions.

Furthermore, the above limitation period shall not apply in the following cases

a) in the case of the five-year period of § 438 (1) (2) German Civil Code (BGB) (in the case of a purchase contract for a building or for items which are used for buildings in accordance with their customary use and which have caused its liability for defects) and

b) in the case of the five-year period of § 634a (1) (2) German Civil Code (BGB) (in the case of a contract for work on a building or concerning a work whose success consists in the provision of planning or supervisory services for a building).

(2) The delivered items shall be carefully inspected immediately after delivery to the Customer or to the third party designated by the Customer. They shall be deemed to have been approved by the Customer with regard to obvious defects or other defects which would have been recognisable during an immediate, careful inspection if Fritsch does not receive a written notice of defects within (seven) working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Customer if the notice of defect is not received by Fritsch within (seven) working days of the point in time at which the defect became apparent; however, if the defect was already apparent at an earlier point in time during normal use, this earlier point in time shall be decisive for the commencement of the period for giving notice of defect.

(3) In the event of material defects of the delivered items, Fritsch shall first be obliged and entitled to rectify the defect or to make a replacement delivery at its discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the rectification or replacement delivery, the Customer may withdraw from the contract or reasonably reduce the purchase price.

(4) The Customer shall not be entitled to compensation for installation and removal costs pursuant to § 439 (3) German Civil Code (BGB).

(5) If Fritsch is responsible for the fault, the Customer may claim damages under the conditions set out in § 8.

(6) The warranty shall not apply if the Customer modifies the delivery item or has it modified by a third

party without the consent of Fritsch and the rectification of the defect becomes impossible or unreasonably difficult as a result. In any case, the Customer shall bear the additional costs of remedying the defect arising from the modification.

(7) Any delivery of used items agreed with the Customer on a case-by-case basis shall be made to the exclusion of any warranty for material defects.

§ 8 Liability for damages in case of fault

(1) Fritsch's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations during contractual negotiations and tort, shall be limited in accordance with the provisions of this § 8, insofar as fault is relevant in each case.

(2) Fritsch shall not be liable in the event of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents, unless this involves a breach of material contractual obligations. Material contractual obligations are the obligation to deliver and install the delivery item in good time, to ensure that it is free from defects of title and material defects which impair its functionality or usability to a more than insignificant extent, as well as obligations to provide advice, protection and care which are intended to enable the Customer to use the delivery item in accordance with the contract or to protect the life and limb of the Customer's personnel or to protect the Customer's property from significant damage.

(3) Insofar as Fritsch is liable on the merits for damages in accordance with § 8 (2), this liability shall be limited to damages which Fritsch foresaw as a possible consequence of a breach of contract at the time of the conclusion of the contract or which it should have foreseen by exercising due care. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation if such damage is typically to be expected when the delivery item is used as intended.

(4) In the event of liability for simple negligence, Fritsch's liability to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to an amount of EUR 250,000.00 per case of damage, even if it involves a breach of material contractual obligations.

(5) The above exclusions and limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of Fritsch.

(6) Insofar as Fritsch provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by it, this shall be done free of charge and to the exclusion of any liability.

(7) The limitations of this § 8 shall not apply to Fritsch's liability for intentional conduct, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act.

§ 9 Property rights

(1) Fritsch warrants in accordance with this § 9 that the delivery item is free of industrial property rights or copyrights of third parties. Each contracting party shall notify the other contracting party in writing without delay if claims are asserted against it due to the infringement of such rights.

(2) In the event that the delivery item infringes an industrial property right or copyright of a third party, Fritsch shall, at its discretion and at its expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a licence agreement with the third party. If Fritsch does not succeed in doing so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the Customer shall be subject to the limitations of § 8 of these General Terms and Conditions of Delivery.

§ 10 Set-off/ Rights of retention/ Prohibition of assignment

(1) The Customer shall only be entitled to set-off and to assert a right of retention against Fritsch insofar as his counterclaim invoked for this purpose

a) is either undisputed or has been established as final and absolute,

b) in the case of a procedural assertion, is ready for a decision at the time of the last oral hearing, or

c) is in a reciprocal relationship to the main claim of Fritsch.

(2) The Customer may only assign rights and claims against Fritsch to third parties with the prior written consent of Fritsch.

§ 11 Place of jurisdiction/Applicable law

(1) If the Customer is a merchant, a legal entity under public law or a special fund under public law or if he has no general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction for any disputes arising from the business relationship between Fritsch and the Customer shall be, at Fritsch's discretion, either Stuttgart or the Customer's place of business. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.

(2) The relations between Fritsch and the Customer shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

§ 12 Partial ineffectiveness

Insofar as the contract or these General Terms and Conditions of Delivery contain gaps or omissions, those legally effective provisions shall be deemed agreed to fill such gaps or omissions which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the gap or omission.