

# GENERAL CONDITIONS OF BUSINESS

FERGO Armaturen GmbH – Blindeisenweg 31 – 41468 Neuss

All our quotations, sales and deliveries are exclusively subject to the last edition of our following "General Conditions of Sale".

## **I. Quotations and contracts**

The prices quoted are subject to change without notice and are valid for the quoted amount only. Contracts are effective only after written order confirmation. The same applies to any amendment, modification or later agreement. In addition to these general conditions of sale, Incoterms valid at time of shipment of contract are applicable. In the event the Buyer supplies drawings or samples he is liable to the Seller that the use of same does not infringe the rights of third parties. The Seller is not liable for drawings and samples supplied by the Buyer. Samples of the Seller are to be considered as a guide only.

## **II. Prices**

Seller's prices do not include value added tax (VAT). This tax, if any, is charged separately at the rate valid at the time of performance of services. The Buyer absorbs customs duties as well as any taxes or expenses outside Germany. Prices quoted in currencies other than that of Germany are based on the officially fixed average rate of exchange of the German Mark to the respective foreign currency at the Francfort Exchange Bourse at the date of the Seller's last offer. If this rate of exchange varies between the date of this offer and receipt of the payment by the Seller, the price changes accordingly. If an offer was not made by the Seller, the rate of exchange in effect at the date of order confirmation by Seller is applicable. The prices agreed upon are based on the current prices of raw materials, operating costs, the German wage tariffs and freight costs, foreign exchange rates and duties, and are to be understood ex factory excluding loading and packing, if not stipulated otherwise. If these costs change, the Seller reserves the right to reestablish prices within the limits of the cost increase incurred maintaining the principles of reasonable equity. Additional costs resulting from later changes to the order for which the Seller is not responsible, are for the Buyer's account.

## **III. Extent of delivery**

The delivery time commences from the date of clarification of all technical and other details, the receipt of necessary import licences, if required, and/or the presentation of the contractual Letter of Credit. If the Buyer does not comply with his contract obligations, the Seller is not bound to the delivery time. When deliveries of an open quantity are spread over a fixed time period, each release requires an individual agreement as to quantity and date of delivery. The delivery time is considered as fulfilled if the goods have left the works prior to the expiry date or if they are ready for shipment and such dispatch is prevented by circumstances beyond the Seller's control. The Seller is entitled to postpone the delivery or to cancel it completely or partially in the event of circumstances beyond his control, e.g. strike, lock-out, hindrance of shipping at Seller's own works or at subcontractors work, breakage, lack of raw materials, sundry materials or fuels, or any incidents occasioned by Force Majeure. In case of insufficient supply by his subcontractor the Seller is released from his contract obligations as long as he has concluded a corresponding congruent contract and his subcontractor failed to fulfill ist contract due to delayed or omitted delivery. If by personal fault the Seller fails to deliver at the specified date, the Buyer may agree on an adequate extension of the term, and on expiration of such term, he shall be entitled to renounce that part of contract not yet fulfilled. If a partial performance of the contract is not in the interest of the Buyer, he may cancel the entire contract. Further rights such as claims of damages are regulated by No.

IX. provided that the vendor is also responsible for damages caused through gross negligence such as delays as far as these are typical and foreseeable.

#### **IV. Acceptance**

Any goods inspected by the Buyer prior to dispatch shall be understood as being delivered in accordance with the conditions stipulated. If goods reported ready for dispatch remain in stock at the Buyer's disposal due to reasons of the Buyer's responsibility, the invoice can be issued at once and payment can be requested. In that case, the goods shall be stored at the Buyer's cost and risk. Such measures will not change Seller's claim to the Buyer to take delivery of the goods.

#### **V. Shipment**

Shipment is always at the risk of the Buyer even if delivered "Freight prepaid". Transport and other insurance are effected only at the request of the Buyer and shall be for his account. If dispatch cannot be made under the agreed conditions, the Seller shall be free to choose the best possible means of transport. The cost of packing and protective coverings are for the account of the Buyer. The Seller is not obliged to accept returned packing materials or coverings.

#### **VI. Invoicing and payment**

In the event of the agreed date of payment being exceeded, the Seller shall be entitled to invoice from the day of maturity, interest on any arrears amounting to a minimum of 3% above the valid bank rate for loans of the Deutsche Bundesbank. The Seller is entitled to claim from the Buyer the current value added tax for all amounts invoiced. The Seller is not obliged to accept drafts. Should the Seller accept them, however, all expenses are for account of the Buyer. Payment is considered as fulfilled only when the draft has been paid or - when a cheque is used - has been cleared by the Buyer's bank. Counter-claims by the Buyer are valid only when declared lawful by a court or if fully acknowledged by the Seller. Only such counter-claims entitle the Buyer to set off claims and withhold payments due. In case justifiable doubts arise regarding the solvency of the Buyer, the Seller reserves the right to request sufficient securities before further shipments are effected.

#### **VII. Reservation of ownership**

The Seller reserves ownership on all goods delivered until the Buyer has honoured all claims resulting from the present contract or previous contracts between the parties. The Buyer is not entitled to pawn the goods delivered or to transfer the ownership as a security. The Seller has to be notified immediately of any seizures by other creditors. As long as the Buyer is not in default with his payment, he shall be entitled to process and resell the goods in the regular course of business. The reservation of ownership also includes new commodities resulting from processing of the goods delivered. When the goods are joined or mixed with goods not belonging to the Seller he acquires coownership. The Buyer immediately cedes to the Seller any claims resulting from resale of the goods delivered, irrespective if the goods under reservation were resold to one or to several customers either without or after processing. The ceded claims shall serve the Seller as a security in the amount of the value of the goods sold under reservation of ownership. In the event of the Buyer selling goods under reservation of ownership with goods not belonging to the Seller, regardless of processing or not, the cession of the claim for the purchase price is valid for only the amount equal to the value of the goods under reservation of ownership. On demand, the Buyer has to disclose to the Seller the names of third debtors as well as the amounts of such claims. In case of payment default of the Buyer, the Seller is entitled to inform the third debtors of the cession and to enforce the ceded claims. If his claims are in jeopardy, the Seller is entitled to immediately take back the goods under reservation of ownership. At the Buyer's request, the Seller is obliged to release parts of the securities at his option if the value of the securities given to the Seller

exceeds his claims by more than 20%. Costs resulting from possible interventions are for the Buyer's account.

### **VIII. Guarantee**

The Buyer is obliged to examine the delivered goods for their completeness and correctness immediately after receipt and to claim any deficiencies in writing without delay after detection. Criteria of the goods, which the buyer or any third party in his name checked before dispatch and did not criticize, cannot be complained of at a later date. After resale, processing or installation of the goods, deficiencies, which could have been detected upon receipt of the goods, cannot be claimed anymore. Claims resulting from possible deficiencies of materials apply only to the individual defective pieces. In this respect, the deliveries shall be considered as partial deliveries. The period of guarantee shall be six months for machinery, devices, etc. and shall be reduced to three months where daily operation will extend to several shifts. The respective periods of guarantee commence with the date of delivery. There is no guarantee on all parts which are exposed to continuous wear. Deficiencies which are proven attributable to the Seller will be settled at the earliest convenience at the option of the Seller, either by supplying new material ex works free-of-charge or, after return for customer's account, by no-charge elimination of the defects in accordance with the terms of the contract, in keeping with the principle of equity. The amount of claims shall be limited to the value of the proportional amount of the contract. No guarantee will be assumed if the Buyer fails to meet his obligations under the contract, particularly regarding the notification of deficiencies or payment obligations. If by virtue of a guarantee, a repair is made, the guarantee time for the defective part will be extended by the period necessary for such repair. Repairs shall also be subject to the above conditions. In case of disputes regarding the guarantee for certain properties of the goods, the decision of a neutral surveyor to be nominated by the Seller shall be binding. If possible, necessary samples should be taken jointly by both parties. Expenses for such tests shall be for the account of the unsuccessful party.

### **IX. Extent of liability**

Any other claim of the Buyer exceeding the guarantee agreed upon according to the present conditions of sale, particularly for indemnification of damages of any kind, regardless whether as guarantee or for any other legal reason - including non-contractual liability - shall be excluded. This limitation on liability is not valid in case of intent and gross negligence of the vendor or of his managing staff and employees in the performance of his obligation as well as in the case of non-compliance with guaranteed properties, in so far as the Buyer was to be protected by the guarantee especially against damages of this kind. The herewith existing liability is limited to the compensation of typical foreseeable damages. Any claim of the Buyer against the Seller shall become prescriptive latest six months after receipt of the materials by the Buyer, unless shorter terms of limitation are provided by law or contract.

### **X. Place of performance and arbitration**

Place of performance for delivery is the place where the respective supplying works is located and for payment the place where the Seller is located. Neuss respectively the place where the Seller's subcontractor is located is the exclusive place of jurisdiction. The Seller is entitled however to bring action against the Buyer also at the Buyer's place of jurisdiction. For orders from foreign countries the application of the CISG (Convention on Contracts for the International Sale of Goods) formulated by the United Nations is expressly excluded. The German text of the present conditions shall prevail. Supplementary to these conditions the laws of the Federal Republic of Germany are applicable; the stipulations of the Bürgerliches Gesetzbuch -BGB- (German Civil Code), the Handelsgesetzbuch -HGB- (Commercial Code), and the Zivilprozeßordnung -ZPO- (Rules of the Civil Court) supersede other German legal rules. Terms deviating from these conditions of sale, especially conditions of the Buyer, shall become effective only if expressly confirmed in writing by the Seller. The bare acceptance of the order by

the Seller can in no way be taken for his acceptance of the Buyer's (purchasing) conditions. The Seller's conditions of sale are considered as accepted by the Buyer at the latest when the Buyer takes possession of the goods or at the time the Buyer makes use of the Seller's performance.

**XI. Others**

If parts of these conditions become invalid, all other conditions remain valid and the entire validity of the conditions will not be affected.