

## **GENERAL TERMS AND CONDITIONS FLUORTUBING B.V.**

### **Article 1: General, area of application**

1. Our terms and conditions apply exclusively, including for all future business with our customers. We do not recognise conditions that conflict with or deviate from our terms and conditions, unless we have expressly agreed in writing to their validity. Our conditions also apply if we carry out the delivery without reservation whilst being aware of conditions that conflict with or deviate from our terms and conditions.
2. Our terms and conditions only apply in respect of contractors (referred to hereinafter as 'customers'). Contractors within the meaning of the general terms and conditions are natural persons or legal entities or partnerships that have legal capacity, with whom a business relationship is entered into and who are acting in the pursuit of a commercial or self-employed professional occupation.

### **Article 2: Formation of a contract**

1. Our offers are made subject to confirmation. Technical changes as well as changes in form, colour and/or weight may occur, within the limits of what is reasonable. The documents relating to the offer such as catalogues, brochures, illustrations, drawings, information on weight and dimensions, price lists, announcements, Internet pages and other publications are only approximately authoritative in so far as they are not explicitly described as being binding.
2. When he (or she) orders goods, the customer is making a binding declaration that he wishes to acquire the goods ordered. The customer will receive written acceptance. Information provided by our employees by phone does not constitute a guarantee of quality or other undertaking.
3. The formation of a contract takes place with the proviso of the correct and timely delivery to us by our supplier. This only applies in the case that the failure to deliver is not our responsibility, especially in the event of the conclusion of a corresponding covering transaction with our supplier. The customer will be informed promptly about the unavailability of the performance. The consideration will be repaid promptly.
4. In the event of a repeat order of goods, we will inform our customer should we be unable to supply the goods on the basis of the price originally agreed.

### **Article 3: Prices, payment conditions**

1. Unless otherwise agreed, our prices apply for deliveries ex works and are exclusive of VAT. They do not include freight charges, customs duties, postage, insurance or other shipping charges.
2. If we accept changes to an order or accept repeat orders, the customer will bear the resulting additional costs. The customer must inform us in writing of the changes four weeks before the agreed delivery date. Changes to the order are to be confirmed by us in writing beforehand.
3. Unless otherwise agreed, all payments are to be made to our account without any charge or deduction.
4. Once he has received the goods, the customer undertakes to pay no later than 30 days after the invoicing date. Once this deadline has passed, the customer will be in default. During the period of default, the customer must pay interest on the debt in the amount of 8% above the base rate. We reserve the right to establish and claim a higher loss caused by the default.
5. The customer is only entitled to setoff if his counterclaims have become res judicata (non-appealable) or have been acknowledged by ourselves. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.

6. Bills of exchange and cheques will only be accepted for payment collection if this has been specifically agreed. Payments from bills of exchange and cheques will only be deemed to have been performed when their equivalent value has been definitively credited to our account.

#### **Article 4: Delivery period**

1. The delivery term commences at the earliest with the dispatching of the order confirmation but not on the date of the submission of the documents, permits and releases to be provided by the customer, and not before an agreed partial payment has been received. A precondition of the commencement of the delivery period is that all technical queries have been cleared up. A further precondition of our compliance with our delivery obligation is the timely and proper fulfilment of the customer's obligation. We reserve the right to plead that the contract has not been performed.
2. The delivery term has been complied with if by the time of its expiry the delivery item has left the works or the customer has been informed that the item is ready for dispatch. This also applies to partial deliveries, which are permissible.
3. The delivery term will be appropriately extended for measures taken in respect of industrial disputes, in particular strikes and lockouts, as well as upon the occurrence of unforeseen impediments that we have no control over, in so far as such impediments have a demonstrably material effect on the completion or delivery of the delivery item. This also applies if these circumstances occur at the subcontractor. The circumstances described above are not our responsibility either should they occur during a delay that has already occurred. We will inform the customer as soon as possible when any significant impediment commences and ends.
4. If the delivery periods are exceeded, our customer is not entitled to any compensation; a right of rescission is excluded.
5. If the dispatch is delayed at the customer's request, starting one month after notification of the readiness to dispatch he will be charged the storage costs; if the item is stored at our works, he will be charged at least 1% of the invoice amount per month. We reserve the right to make further claims in this regard, including to claim compensation. Should the customer have failed to accept our goods within one month after delivery, the customer is obliged to reimburse all resulting losses without any notice of default being required. In this case too we are entitled to store the goods or sell them to third parties.

#### **Article 5: Passing of risk, packaging**

1. The risk of accidental perishing or accidental deterioration of the goods passes to the customer upon handover, or in the case of sale by delivery to a place other than the place of performance upon the handover of the items to the forwarding agent, carrier or other person or establishment mandated to perform the delivery.
2. Should the dispatch be delayed for reasons that are the customer's responsibility, the risk of the accidental perishing and of the accidental deterioration of the goods passes to the customer on the day that the goods are reserved for him.
3. Transportation packaging and all other packaging that complies with the German packaging ordinance will not be taken back, with the exception of pallets.
4. If we are responsible for the transportation, the customer undertakes vis-à-vis ourselves to unload the delivery promptly upon arrival and to provide all aids needed for the unloading to proceed smoothly. All costs associated with the unloading will be for the customer's account.

## **Article 6: Warranties**

1. In the event of defective goods, first of all we warrant that at our discretion we will rectify defects or make a substitute delivery. Minor deviations, such as additional weight or short weight occurring for technical reasons, do not constitute a material defect and do not entitle the customer to submit a complaint about defective goods.
2. The customer must give us the necessary time and opportunity to perform all rectifications of defects and substitute deliveries that we deem necessary in our fair judgment; otherwise we will be exempted from our liability for defects.
3. Should the supplementary performance fail, in principle, the customer may decide whether to demand a reduced consideration (price reduction) or to annul the contract (rescission). However, the customer does not have right of rescission in the case of a minor contractual infringement, especially in the event of merely minor defects.
4. The customer is obliged to check the goods for defects promptly upon receipt. He must notify us in writing of obvious defects no later than one week after receiving the goods, as otherwise his warranty claim will be excluded. The deadline will be complied with if the notification of a claim is dispatched punctually. The customer bears the full burden of proof for all prerequisites for the claim, especially regarding the defect itself, the time at which the defect is established and the punctual submission of the complaint about defects.
5. Should the customer, after the failure of a supplementary performance, opt to rescind the contract due to a defect of title or material defect, he will not be entitled to any compensation for the defect as well. Should the customer, after the failure of a supplementary performance, opt for compensation, the goods will remain with the customer when this can be reasonably expected of him. The compensation amount is limited to the difference between the purchase price and the value of the defective items. This does not apply if we have fraudulently caused the contractual infringement.
6. The warranty period is one year from the delivery of the goods. This does not apply if the customer has failed to notify us punctually of the defect in line with Item 4. In principle, when it comes to the condition of the goods, it is only the agreed product description that applies; note too that public statements, recommendations or advertising do not constitute a contractual statement of the goods' condition.
7. Our obligation to perform our warranty is cancelled if the customer fails to comply with the operating instructions and maintenance instructions, has tampered with the product technically (apart from through normal usage) or has replaced components. This also applies in respect of any claims against our employees, workers, staff, vicarious agents and/or representatives.

## **Article 7: Securing reservation of ownership**

1. We reserve ownership of the goods until all payments under the contract have been received. Should the customer breach the contract, especially by defaulting on the payment, we are entitled to take back the sold item. If we take back the sold item this does not mean the contract has been rescinded, unless we explicitly state this in writing. If we seize the sold item, in all cases we are rescinding the contract. Once we have taken back the sold item we are authorised to realize it; the proceeds from the realization - minus reasonable realization costs - are to be offset against the customer's liabilities.
2. The customer is obliged to handle the sold item with care; in particular, he is obliged to adequately insure it at his own expense against fire, water and theft loss and/or damage, at its replacement value. If maintenance and inspection work are needed, the customer must perform this work in time at his own expense.

3. In the event of seizure or other action by third parties, the customer must inform us promptly in writing, so that we can institute legal proceedings in accordance with Article 771 ZPO (German Code of Civil Procedure). Should the third party be unable to reimburse us for the judicial and extrajudicial costs of legal proceedings in accordance with Article 771 ZPO, the customer is liable for the shortfall we incur.
4. The customer is entitled to resell the sold item in the ordinary course of business; however, he already assigns to us all claims in the amount of the total invoice amount (including VAT) of our claims that accrue to him from the resale vis-à-vis his buyer or third party, and this irrespective of whether the sold item was resold with or without processing. The customer remains authorised to collect this claim even after it has been assigned. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake to refrain from collecting the claim for as long as the customer fulfils his payment obligations from the proceeds collected and refrains from defaulting on his payment, and provided in particular that no insolvency proceedings have been instituted and that there is no suspension of payments. However, if this has occurred, we can require the customer to inform us about the assigned claims and about their debtor, to provide us with all the information needed for collection, to hand over the relevant documents and to inform the debtors (the third parties) about the above assigning.
5. The processing or alteration of the sold item by the customer will in all cases be undertaken for us. If the sold item is processed using items that do not belong to us, we will acquire co-ownership of the new item pro rata to the value of the sold item (total invoice amount, including VAT) to the other processed items at the time of processing. In other respects, the same applies for the item created through processing as for the sold item delivered with reservations.
6. If the sold item is inextricably mixed with other items that do not belong to us, we will acquire co-ownership of the new item pro rata to the value of the sold item (total invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the customer's item is deemed to be the principal item, it is deemed agreed that the customer transfers co-ownership to us on a pro rata basis. The customer preserves the sole ownership or co-ownership arising in this way for us.
7. In order to secure our claims against him, the customer also assigns to us those claims that arise through the linking of the sold item with a piece of land vis-à-vis a third party.
8. We undertake that at the customer's request we will release the collateral we are entitled to in so far as the realisable value of our collateral exceeds the claims to be secured by more than 10%; it falls on us to choose which items of collateral to release.

#### **Article 8: Compensation for rescission and other compensation**

1. If it is established after the contract has been entered into that the payments of the purchase price are jeopardized by an inability to pay, payment default or by a material deterioration of the customer's financial condition, we are entitled to demand collateral appropriate for the advance performance.
2. Should the customer fail to fulfil this demand within a reasonable period, we can withdraw from the contract. We reserve the right to make further claims, in particular to enforce rights of retention.
3. The customer is obliged to inform us promptly as soon as the inability to pay arises or if insolvency proceedings are instituted against him.

### **Article 9: Limitations on liability**

1. In the event of an ordinarily negligent breach of duty, depending on the nature of the goods our liability is limited to the average loss that was foreseeable, typical for the contract, and direct. This also applies in the case of an ordinarily negligent breach of duty on the part of our lawful representatives or vicarious agents. We are not liable for infringements of minor contractual obligations where the infringement is the result of ordinary negligence.
2. Any claims by the customer that go beyond this are excluded, irrespective of the legal grounds. Should we negligently breach a material contractual obligation, our duty to compensate for material damage or personal injury is limited to the compensation or other substituted performance under our product liability insurance cover. The above-mentioned exclusion of liability does not apply if the loss/damage was due to intent or gross negligence.
3. Compensation claims by the customer in connection with a defect shall become statute-barred one year after the goods were delivered. This does not apply if we are guilty of fraudulent intent.

### **Article 10: Proprietary rights, trademark rights, third party property rights**

1. All documents, and in particular drawings, designs, sketches, specifications, calculations, descriptions, models, advertising materials, sales aids and other documents that we hand over remain our property. We reserve the copyrights existing on them. These documents must not be made accessible to third parties without our consent.
2. All documents we hand over, including those described above individually, only entitle our customers to advertise using the trademark in so far as we do not object to a utilization for advertising purposes.
3. If the customer is to supply us with items that are based on drawings, models or samples, he guarantees vis-à-vis ourselves that the manufacture and supplying of the items will not infringe third parties' property rights.
4. If a third party, invoking an existing property right, prohibits us from manufacturing and supplying items that are based on our customer's drawings, models or samples, we are entitled, to the exclusion of all compensation claims on the part of our customer, to halt the manufacturing and supplying and to demand compensation for the costs incurred.
5. Our customer undertakes to promptly indemnify us against all compensation claims made by third parties.

### **Article 11: Concluding provisions**

1. The law of the Federal Republic of Germany applies. The provisions of the UN Sales Convention do not apply.
2. If the customer is a merchant, legal entity under public law or a separate fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract is our principal place of business. However, we reserve the right to institute legal proceedings against our customer at the court that is competent for his place of residence or domicile.
3. Only with our explicit written consent may the customer transfer to third parties the rights arising from the contractual relationship entered into with ourselves. However, we will not refuse our consent unreasonably.
4. Should individual provisions of the contract with the customer including these general conditions of sale be or become invalid in whole or part, this will not affect the validity of the remaining provisions. The arrangement that is invalid in whole or part will be replaced by an arrangement that comes closest to the economic result of the invalid arrangement.