



General Terms and Conditions of Delivery and Payment

1 - Quotation, order placement

- 1.1 Deliveries and services from Fischer Panda will be provided solely on the basis of the conditions below. Divergent purchasing conditions of the customer shall not become part of the contract, not even through acceptance of the order.
- 1.2 All quotations from Fischer Panda are subject to alteration, unless they are explicitly designated as binding.

A contract shall not come into being until a written confirmation has been issued, and shall confirm the latter's content, or when the customer has utilised work from Fischer Panda. This shall also apply *mutatis mutandis* for ancillary agreements or changes to the contract.
- 1.3 The documents related to the quotation, such as illustrations, drawings, weights and dimensional particulars, shall be only approximately determinant, unless they have been explicitly designated as binding.
- 1.4 Fischer Panda reserves ownership and copyright to cost estimates, drawings and other documents; they must not be made accessible to third parties. Fischer Panda shall be obligated not to render plans designated by the purchaser as confidential to third parties without the latter's consent.

If design documents are prepared on behalf of the customer or at his instigation, these shall be invoiced separately. This shall also apply if the order concerned does not materialise.
- 1.5 Samples, models, drawings or data carriers handed over by the customer shall be sent back to the customer only on request and at the customer's expense. If an order does not materialise, and if a request is not received in good time, Fischer Panda shall be entitled to destroy any samples, models or drawings handed over one month after issuing a quotation, without thereby providing any grounds for compensation to be claimed.

2 – Price and payment

- 2.1 The prices shall, unless something to the contrary has been agreed, be understood ex works including loading in the plant, but exclusive of freight, packing and value added tax at the statutory rate applicable.
- 2.2 If no special agreement has been concluded, invoices shall become due for payment immediately, and without any deduction. The determinant factor for the punctuality of payment shall be receipt of the payment concerned in one of the accounts specified on the invoice. Cheques will be accepted only by way of payment. Payment by bill of exchange will not be accepted.
- 2.3 For all individual consignments, and in particular in the case of delivery items that have to be built in accordance with a customer's specifications, a down payment amounting to 40% of the order value must always be made. The down payment must have been received within 8 days after the order has been confirmed. Any delivery time agreed shall be extended by the delay in receiving the down payment demanded.
- 2.4 If the customer falls into arrears with a payment owed, then Fischer Panda shall be entitled to demand immediate payment of the entire remuneration, irrespective of the due date of payment involved, and to discontinue further work and withhold deliveries until payment has been made in full. Fischer Panda shall additionally be entitled to demand interest on arrears at the statutory rate. If Fischer Panda evidences a higher amount of loss or damage caused by delay, this can be asserted, unless the customer proves that Fischer Panda suffered no or lesser loss or damage as a result of the delay.
- 2.5 The customer shall be entitled to withhold payments or offset them against counter-claims only if these counter-claims have been adjudged as non-appealable, are undisputed, or have been recognised by Fischer Panda.

3 – Delivery time

- 3.1 The delivery time shall begin with dispatch of the order confirmation, but not before provision of the documents, approvals and releases to be supplied by the customer and before receipt of any down payment due.
- 3.2 The delivery deadline shall be deemed as met if the delivery item has left the plant or readiness for dispatch has been announced before it expires. If an acceptance test has to be performed, the acceptance test date shall be determinant (unless acceptance is declined for good cause), alternatively notification of readiness for acceptance-testing. Compliance with the delivery deadline shall be subject to correct and timely deliveries to Fischer Panda itself. Fischer Panda shall notify the customer as soon as possible of any impending delays.
- 3.3 The delivery time shall be extended appropriately in the event of measures in connection with labour disputes, particularly strikes and lock-outs, and in the event of unforeseen obstacles occurring which cannot be influenced by Fischer Panda, insofar as such obstacles demonstrably influence the completion or delivery of the delivery item concerned. This shall also apply if these circumstances occur at subsuppliers. The above-mentioned circumstances shall not be blamed on Fischer Panda even if they occur during an already existent delay.

In important cases, Fischer Panda shall notify the customer as quickly as possible of the beginning and end of such obstacles.
- 3.4 If Fischer Panda is in default, then the customer must set Fischer Panda a reasonable period within which to make performance. If delivery has not been made before this deadline has expired, then the customer may withdraw from the contract and assert claims for damages in conformity with Section 8 below.
- 3.5 If dispatch is postponed at the customer's request, he shall, beginning one month after notification of readiness for dispatch, be invoiced the costs incurred by storage in Fischer Panda's plant, but not less than 1.5% of the invoice amount for each month.



Fischer Panda shall, however, be entitled after setting a reasonable deadline which is then not met, to make other arrangements for the delivery item concerned.

- 3.6 Compliance with the delivery deadline shall be conditional on the customer's meeting his contractual obligations.

4 – Passage of risk and taking receipt

- 4.1 Risk shall pass to the customer when the delivery item has left the plant, even if part-deliveries are being made or Fischer Panda has undertaken to perform other services, e.g. delivering and erecting the delivery item on site. At the customer's request, and at his expense, the consignment can be insured by Fischer Panda against theft, breakage, damage in transit, plus fire- and water-related damage, and against other insurable risks. This must, however, have been explicitly demanded in writing.
- 4.2 If dispatch is delayed or fails to materialise as a result of circumstances outside the control of Fischer Panda, risk shall pass to the customer from the day when readiness for dispatch is announced. Fischer Panda shall be entitled to insure the delivery item, at the customer's expense, against theft, breakage, fire- and water-related and other damage, unless the customer himself has demonstrably taken out the insurance cover concerned.
- 4.3 Items delivered must, even if they exhibit defects, be taken receipt of by the customer, irrespective of the rights detailed under Section 6.

5 – Retention of ownership

- 5.1 Fischer Panda shall retain rights of ownership of the delivery items until all Fischer Panda's claims against the customer arising from the business relationship, including future claims also arising from contracts concluded simultaneously or subsequently, have been settled. This shall also apply if some or all of Fischer Panda's claims have been included in a current account and the balance has been drawn and recognised.
- 5.2 The customer shall be entitled to sell on the delivery item during the normal course of business. However, he assigns to Fischer Panda all claims, with all ancillary rights, accruing to him from the resale against the purchaser or against third parties, irrespective of whether the goods subject to retention are resold without or in accordance with an agreement. The customer shall be entitled to collect these claims even after assignment. Fischer Panda's prerogative of collecting the claims itself shall not be affected hereby; however, Fischer Panda undertakes not to collect the claims for as long as the customer duly meets his payment obligations. Fischer Panda can demand that the customer disclose to her all the receivables assigned to her and their debtors, provide all the particulars required for collection, hand over the associated documents, and inform the debtors concerned of the assignment(s). If the delivery item is resold together with other goods that do not belong to Fischer Panda, the customer's claim against the purchaser shall be deemed as having been assigned to the amount of the delivery price agreed between Fischer Panda and the customer. If the delivery item is linked to form a harmonised whole with one or more movable objects, and if the other object or one of the other

objects is to be regarded as the principal object, then it shall be deemed as agreed that the customer transfer to Fischer Panda co-ownership on a *pro rata* basis insofar as the principal object belongs to him. Retention of ownership and other securities to which Fischer Panda is entitled shall continue to apply until complete release of Fischer Panda from any Fischer Panda obligations that Fischer Panda enters into in the customer's interest. Fischer Panda undertakes to release the securities to which it is entitled insofar as their value exceeds the claims to be secured by more than 20%.

- 5.3 The customer may neither pledge the delivery item involved nor transfer ownership by way of security. In the event of attachments and confiscation or other dispositions by third parties, the customer must notify Fischer Panda thereof immediately in writing.

6 – Liability for defects in the consignment

- 6.1 The customer's warranty rights shall be conditional upon his having met his duties of examination and complaint without delay. Any defects occurring must be documented in maximally comprehensible form, and described with reference to all requisite documents attached. Claims arising from defects in the delivery item shall fall under the statute of limitations in one year for businesspersons, for consumers in two years from passage of risk for the delivery item concerned, unless a case of intention to deceive or assumed warranty is involved.
- 6.2 If the customer complains of defects in accordance with Section 6.1 above, Fischer Panda shall provide post-performance as follows:
- 6.2.1 Within the context of post-performance, Fischer Panda shall be entitled, at its own discretion, to remedy the defect by reworking or to deliver a new replacement.
- If the customer concerned is a consumer, he/she shall initially have a choice as to whether post-performance is to be provided by reworking or a replacement delivery. Fischer Panda shall, however, be entitled to decline the type of post-performance chosen if it is possible only for disproportionate costs and the other type of post-performance remains without substantial disadvantages for the customer.
- Replaced parts shall become the property of Fischer Panda. Fischer Panda shall be entitled to at least two post-performance attempts.
- 6.2.2 For carrying out all the reworking and replacement deliveries deemed necessary by Fischer Panda, the customer must, following consultations with Fischer Panda, provide the requisite time and opportunity; otherwise Fischer Panda shall be exempted from liability for defects. In urgent cases involving a hazard to plant safety and in order to guard against disproportionately great damage or, if Fischer Panda is in default with remedying the defect, the customer shall be entitled to remedy the defect himself or have it remedied by third parties, and to demand that Fischer Panda compensate him for the costs required, but only after obtaining Fischer Panda's prior agreement in writing.
- 6.2.3 In a case involving warranty, the customers must send the delivery item back to Fischer Panda's plant immediately. Fischer Panda shall bear the



costs for such return, plus the costs for dispatching the reworked delivery item or the replacement part.

Of the direct costs incurred due to reworking or replacement delivery Fischer Panda shall (if the complaint proves to be justified) bear the costs of the replacement part ex works, plus reasonable costs for removal and installation.

If delivery items (power generators and other units and components) are permanently installed and dismantling or return to Fischer Panda is impracticable, or possible only with a disproportionately high outlay, it can be agreed that for remedying a defect a technician from Fischer Panda or from an authorised contracted company shall carry out the repair work on site. With the exception of the costs for the replacement part and installation costs, the customer shall bear all other costs, including travel costs.

- 6.2.4 Costs for removing the defective part and installing a replacement part can be borne only to the amount that they would have been incurred for a normally accessible piece of equipment. An additional outlay, entailed by more difficult accessibility, cannot be reimbursed, or must, if the repair job is carried out directly by Fischer Panda or a third party commissioned by Fischer Panda, be invoiced additionally.
- 6.2.5 If Fischer Panda is not successful with post-performance within an appropriate period set by the customer, if post-performance definitively fails even after several attempts, or if Fischer Panda declines post-performance, the customer shall be entitled to demand a reduction in the agreed remuneration and compensation for expenses, or to withdraw from the contract. If only an insignificant defect is involved, the customer shall have merely a right to a reduction in the remuneration.
- 6.2.6 Fischer Panda accepts no warranty for defects attributable to unsuitable or improper use or faulty erection or commissioning by the customer or by third parties not instructed or authorised by Fischer Panda, natural wear and tear, faulty or negligent handling, inadequate maintenance, unsuitable expendables, defective construction work, unsuitable foundation, chemical, electro-chemical or electrical influences, provided these are not the responsibility of Fischer Panda. If the customer or a third party reworks the item(s) inadequately, there shall be no liability on the part of Fischer Panda for the resultant consequences. The same shall apply for changes to the delivery item made without Fischer Panda's consent.
- 6.2.7 Consequential damage - Further demands or other claims, such as a damage to any other items other than that of the object of purchase, are excluded, insofar as no mandatory legal liability has been imposed. Further claims of the customer shall be governed by Section 8 of these conditions.

7 - Commissioning

- 7.1 The expenditures incurred during commissioning for fitter and allowance rates shall be borne by the customer, in particular also for overtime, Sunday and Bank Holiday working, in accordance with the law of the Federal Republic of Germany. Travel time

shall be construed as working hours.

- 7.2 The costs for travel to and from site, and for the transport of tools and other equipment, and of travel luggage, shall be borne by the customer.

8 – Liability

Fischer Panda rules out any liability for slightly negligent violations of duty, provided these do not relate to essential duties under the contract, loss or damage arising from injuries to life, limb or health, or to guarantees, or claims under the German Product Liability Act are involved. The same shall apply for Fischer Panda's vicarious agents.

9 – Annuling a contract

If the customer withdraws from a contract without good reason, Fischer Panda shall be entitled, irrespective of asserting an actually greater loss or damage, to claim 20 % of the gross order value for the costs incurred in processing the contract and the lost profits. The customer shall retain the right to submit evidence that Fischer Panda has not incurred loss or damage to this amount.

10 – Applicable law and place of jurisdiction

For all business and legal relations between Fischer Panda and the customer applies exclusively non-unified German law, in particular the BGB/HGB. The regulations of the Vienna UN Convention of 11.4.1980 on Contracts for the International Sale of Goods (UN-Uniform Law on the International Sale of Goods/CISG) do not apply. The place of performance and jurisdiction is Paderborn.

If the customer is a businessperson, a legal entity of public law or a public-sector special fund, the sole place of jurisdiction for all disputes arising from this contract shall be the registered domicile of Fischer Panda. The same shall apply if the customer does not have a general place of jurisdiction, or his domicile or usual place of abode is not known on the date on which suit is filed.

Fischer Panda shall, however, also be entitled to file suit at the customer's domicile.

Besides these General Terms and Conditions, the "Guarantee conditions for mobile and stationary Fischer Panda Generators" shall apply in their most recent version in each case.

Should individual provisions of these General Terms and Conditions of Delivery and Payment be or become in whole or in part null, void or illegal or should the contract contain an omission, this shall not affect the validity of the other provisions contained in these General Terms and Fischer pandaConditions of Delivery and Payment. Instead of the provision which is null, void or illegal a valid provision is deemed as agreed upon, which comes closest to what the parties intended; The same shall apply in the event that there is an omission in these 'provisions' coverage.

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