

General Terms and Conditions of Delivery and Payment of Fischer Chemicals AG

1. General

FISCHER CHEMICALS AG (hereafter referred to as "FISCHER") owns a license from Swissmedic to supply, import and export medical drugs on a wholesale basis. In the relationship with FISCHER customers the following terms and conditions apply to all contracts, deliveries and other services, including consultation services, and these terms and conditions have precedence over any terms and conditions of purchase of the purchaser even if no objection is raised. The right is reserved to conclude deviating agreements in writing in the individual case.

2. Offer and Conclusion of Contract

- 2.1 Insofar as FISCHER does not declare otherwise, it always acts as an agent on behalf of and for the account of the manufacturer or supplier.
- 2.2 Offers are always subject to change. Orders are deemed to have been accepted if they are either confirmed by FISCHER in writing or carried out immediately following receipt of order. In this case the consignment note or the invoice counts as confirmation of order. For make-and-hold orders the total, specified quantity must be taken within the agreed period. Insofar as FISCHER supplies on the basis of manufacturer price lists the prices always refer to the current manufacturer price list – unless expressly agreed otherwise. Agreements on special prices relate only to the respective order and do not constitute a precedence for subsequent contracts.
- 2.3 Insofar as the sales personnel of FISCHER conclude additional verbal agreements, or issue assurances which extend over and beyond the written contract, these shall always require confirmation in writing. The documents forming part of the offer, such as diagrams, drawings, calculations, weight and measurement details, are only deemed to be approximate unless agreed otherwise. Obvious errors, typing, printing and calculation errors will be ignored.
- 2.4 Advice is provided to the best of the company's knowledge and belief. However, liability from this can only be assumed insofar as this is an integral part of the contractual agreement.
- 2.5 If, after the contract has been concluded, FISCHER learns of facts, in particular information on previous payment arrears, which, based on proper commercial assessment, give cause to conclude that there has been a material deterioration in the solvency, FISCHER shall be entitled to demand payment in advance or corresponding collateral and, if this is refused, shall be entitled to withdraw from the contract and any part deliveries already made shall become due for payment immediately.

3. Delivery Periods and Delay

- 3.1 The International Commercial Terms (INCO Terms 2010) plus their amendments are applied for the purpose of specifying the delivery terms.
- 3.2 FISCHER endeavours to execute its goods deliveries on time; however, the stated delivery periods or deadlines are not binding on it. Any delay in the delivery periods or deadlines does not give the purchaser the right to refuse the consignment or to claim damages. However, a delayed consignment can be rejected providing the deadline for the service was agreed expressly as binding in the sense of a fixed transaction.
- 3.3 FISCHER shall not be liable for the resultant losses incurred, or for those which lead to a delay in or failure of the delivery on grounds for which the supplier is responsible. However, FISCHER gives an undertaking to transfer any claims for compensation against the supplier to the purchaser.

4. Despatch, Transfer of Risk, Packaging

- 4.1 The choice of route and method of despatch is left to FISCHER. The same applies to the packaging which is carried out according to transportation and safety as well as environmental policy aspects. If the purchaser issues special despatch instructions the resultant additional costs will be charged to it.
- 4.2 If despatch is delayed at the request or the fault of the purchaser, the goods will be stored at the purchaser's costs. In this event notification of readiness for despatch will be treated as the goods having been despatched. The goods invoice is immediately due for payment on placement of the goods in storage.
- 4.3 Moreover, the risk passes to the purchaser on handover of the goods to a forwarding company or freight carrier, no later however than when the goods leave the despatch warehouse, even if the delivery is made using a FISCHER vehicle. FISCHER shall therefore not be liable for losses incurred due to damage to the goods, loss of the goods or otherwise after the goods leave the despatch warehouse, irrespective as to whether the transport company or its personnel were at fault.
- 4.4 The purchaser is responsible for disposal of the packaging.

5. Prices and Payment

- 5.1 The billing is carried out at the confirmed prices. The right is reserved to amend prices for subsequent orders.
- 5.2 Payments must be made in the invoiced currency, within 30 days of the invoice date without any deduction, or in accordance with the agreed terms and conditions, respectively.
- 5.3 In the event of a material change in the costs after the conclusion of the contract, e.g. resulting from a change in supplier prices, FISCHER shall be entitled to apply an appropriate adjustment to the agreed prices for those consignments which are to be executed more than four months after conclusion of the contract. If the price in such a case increases by more than 10% the purchaser is entitled to withdraw from the contract.
- 5.4 If the customs tariff for the goods in the contract changes in between of the offer and delivery time, the customs tariff at the delivery-time is valid. According to Incoterms 2010 DDP (Delivered Duty paid), additional customs tariff can be charged, in case the tariff increases more than 5%.
- 5.5 If the purchaser is in arrears with a payment FISCHER reserves the right, at its discretion and without setting a subsequent period of grace, to refuse delivery of the remaining quantities sold or to demand payment in advance for these quantities.
- 5.6 If the purchaser exceeds the agreed payment period, it will be liable to pay arrears interest at the rate of 5% above the headline interest rate/pa (minimum bid price for the main refinancing instrument) of the National State Bank of the country where the customer is located. The right is reserved to file further claims for damages. Loss, destruction of or damage to the goods during transportation or at the purchaser's premises do not release it from its obligation to adhere to the payment dates.
- 5.7 Offsetting against claims by FISCHER is permitted only through counterclaims of the purchaser which are undisputed or have acquired legal force. The purchaser cannot claim any right of retention arising from previous or other transactions in the current business relationship.

6. Patents

- 6.1 If FISCHER supplies the purchaser with samples then these are deemed to be trial samples and are to be used exclusively for laboratory and development purposes.

The purchaser bears full responsibility for adherence to the patent rights that apply in its country. (e.g. EU Directive 2004/27 Article 10; Swiss Patent Law)

7. Retention of Title

- 7.1 Until receipt of full payment for all pretensions concerning these business connection including contingency refinancing or reversal bill of exchange, FISCHER retains ownership of the supplied goods.
- 7.2 By processing the goods the buyer acquires no ownership of the wholly or partly processed goods, the processing costs shall be made gratuitously and exclusively for FISCHER. However, should the title of retention expire to any circumstances, FISCHER and the buyer are now agreed that the ownership of the goods including the processing pass on FISCHER, who will accept the conveyance. The buyer keeps gratuitous depositary.
- 7.3 FISCHER is entitled to register the retention of title in the Retention of Title Register at the registered offices of the purchaser. This proviso also extends to goods that have been further processed.

8. Defects and Warranty

- 8.1 The purchaser must inspect the goods immediately on receipt and notify the freight carrier in writing, with a copy to FISCHER, of any defects, shortfalls or incorrect deliveries, no later than within eight days, in any event however before the goods are utilised or processed. Complaints regarding a consignment do not revoke acceptance or the payment obligation. Claims for hidden deficiencies have to be placed to FISCHER at the latest six month after delivery. For afterwards incoming claims for hidden deficiencies FISCHER decline every warranties.
- 8.2 Where complaints are justified FISCHER will amend the non-confirming goods, make replacement delivery or issue a credit note, at its choice.
- 8.3 The purchaser must allow the time and opportunity to rectify the defect as can be reasonably expected, in particular it must make the item forming the subject of the complaint or samples available, otherwise the warranty is invalidated. FISCHER is permitted to first obtain a report from the supplier if there is any doubt about the justification for the complaint.
- 8.4 If FISCHER allows the reasonable period of grace granted to expire
- without rectifying a verified defect
 - or prove that the claim is not justified
 - or supplying a replacement
 - or if the repair or replacement delivery is impossible
 - or rejected by FISCHER
- the purchaser is entitled, at its choice, to demand the revocation of the contract (rescission) or a reduction in the purchase price (reduction).
- 8.5 No guarantee is given for losses which are incurred for the following reasons:
- inappropriate or improper use
 - failure to follow operating instructions, recommendations or regulations for use from the manufacturer
 - faulty installation, commissioning, maintenance, modification or repair which has not been carried out by FISCHER
 - unsuitable service materials
 - incorrect storage or transportation or other improper handling by the purchaser or third parties
 - normal wear and tear

- 8.6 If the goods do not display a major assured property on the date of transfer of risk, the purchaser shall be entitled to withdraw from the contract. It can only claim damages for consequential losses due to defect insofar as the purpose of the assurance was to specifically protect it against the consequential losses due to defect which have occurred. Liability for any consequential losses caused by the application of the substances is excluded.

9. Force Majeure / troubles with the contract / import restriction and others

- 9.1 Shortfall from advanced supplier, energy or lack of raw materials, traffic-problems, as long as such major events not have been predictable, or storm, strike, disturbance, war, instruction by the government and common cases of force majeure dispense the affected part from the obligation of delivery or the receipt of the goods for the time period of the disturbance. If the delay for the delivery or the receipt of the goods is ongoing for more than one month, the purchaser and FISCHER have to find an agreement for the further proceeding. If they may not find a compromise, one part may call the judgement as agreed in this general term earliest after a further month.
- 9.2 If there is nothing else agreed in written form the purchaser has to procure the import license and/or the approval for to bring the material in circulation at his cost and his risk.

10. Liability

- 10.1 FISCHER's liability is governed exclusively by the agreements concluded in the sections above. Claims for damages by the purchaser arising from fault on conclusion of contract, breach of additional contractual obligations or unlawful action are excluded unless these are based on gross negligence on the part of FISCHER or one of its vicarious agents.
- 10.2 The above clauses do not affect claims arising from the Product Liability Act.

11. Final Provisions

- 11.1 Amendments to these terms and conditions as well as the agreement of diverging provisions in the individual case must be in writing; the latter apply only to the individual transaction.
- 11.2 The remaining parts of these terms and conditions remain legally binding in the event of doubt, including if one or more provisions is legally unenforceable. Should provisions be or become unenforceable in whole or in part, then these are to be replaced by a provision that most closely reflects the intended commercial purpose or unenforceable provision.
- 11.3 The contractual conditions are governed exclusively by Swiss substantive law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 11.4 The place of performance and the exclusive place of jurisdiction is Zurich 8. However, FISCHER is entitled to take legal action against the purchaser at the purchaser's place of jurisdiction.