

## General Conditions of **fitech ag**

### **1 General**

- 1.1 These General Conditions are exclusively applicable to all sales, supplies and services as far as no other conditions have been specifically agreed in writing. Conditions of the customer deviating from these conditions become applicable only with the express and written acceptance by **fitech ag**.
- 1.2 All agreements and legally relevant declarations by the contract parties must be executed in writing to become valid.

### **2 Offers and conclusion of contract**

- 2.1 Offers not containing a fixed period of validity are issued without commitment. Implicit acceptance is excluded.
- 2.2 The contract is considered concluded upon the written confirmation of its acceptance by **fitech ag**.

### **3 Scope of supply**

- 3.1 Scope and execution of the supply and the services are defined by the confirmation of order. Materials or services not contained therein are charged in addition to the contract amount.
- 3.2 **fitech ag** is free to implement changes in respect to the confirmation of order provided they effect improvements and do not lead to a price increase.
- 3.3 Orders received by telephone are executed without engagement and at the risk of the customer. Apparent errors, faults in writing and calculation are not binding for **fitech ag**.

### **4 Drawings and technical documents**

- 4.1 Prospectuses, catalogues, drawings and price lists are, except otherwise agreed, not binding. Specifications within technical information are binding only if they have been expressly agreed.
- 4.2 **fitech ag** retains all rights on drawings and technical information which it hands over to the customer or a third party. The customer acknowledges these rights and will not pass on any such information, fully or partially, to third parties without the previous agreement by **fitech ag**.

### **5 Regulations of the country of destination**

- 5.1 The customer will inform **fitech ag** at the latest with the offer request of the legal, regulatory and other rules, regulations and norms that may have a bearing on the execution of the supply and services, the operation as well as of the prevention of sickness and accidents.
- 5.2 In the absence of other agreements the supplies and services are rendered in accordance with the rules, regulations and norms applicable at the registered office of the customer, of which he has informed **fitech ag** in accordance with Para. 5.1.

### **6 Prices**

- 6.1 Unless otherwise agreed, the prices of **fitech ag** are understood to be net, ex works (EXW – Buchenhölzlistrasse 3, 8580 Amriswil/Switzerland, acc. INCOTERMS 2010), in Swiss Francs, without packing, transport, insurance, legal dues (for ex. VAT and Heavy Vehicle Charges - LSV), customs duties, installation and commissioning.

- 6.2 An increase of the cost (wages, salaries, or prices of materials), on which the calculation is based, between the offer and the contractual execution entitles **fitech ag** to adjust the prices mentioned in the order confirmation accordingly until the finalisation of the order.

## 7 Payment conditions

- 7.1 For orders placed by customers in Switzerland the payment is due 30 days net after the date of the invoice. In case of supplies and services for other countries and provided no other conditions have been agreed in writing, a pre-payment is applicable or the payment is secured by a Letter of Credit. All dues or commissions are at the charge of the customer.
- 7.2 The customer pays Swiss Francs, net, without any deduction for discount, allowance, taxes and duties of any kind at the legal domicile of **fitech ag**.
- 7.3 Upon a delay of payment **fitech ag** will reserve the right to an immediate stop of planned deliveries and is entitled to charge an interest on arrears of 6 % above the 3-months CHF LIBOR rate p.a.
- 7.4 The customer may not retain any payments for any claims not accepted by **fitech ag** or for counter claims not legally ascertained. Payments are to be executed even if marginal parts are missing but the use of the delivery is not made impossible or if additional work is required on the delivery.
- 7.5 The minimum invoice amount is CHF 100.00.

## 8 Reservation of ownership

- 8.1 **fitech ag** reserves the ownership of the delivery until the final payment. The customer is obligated to take all necessary measures for the protection of the ownership of **fitech ag**.
- 8.2 **fitech ag**, with the participation of the customer, is authorised to secure its ownership in the country of the customer in a form accepted in that country. The customer is obligated to participate in any measures required for the protection of the ownership; with the signature of the contract he especially empowers **fitech ag** to effect a registration of the reservation of the ownership in public registers, books or similar and to fulfil any related formalities at his cost. The customer herewith expressly declares his agreement to a registration of the reservation of ownership.

## 9 Period of delivery

- 9.1 The period of delivery starts with the acceptance of the order by **fitech ag**, however not prior to the full clarification of all technical aspects and the receipt of the agreed down payment resp. security.
- 9.2 The period of delivery is reasonably extended:
- if the information, required for the execution of the order has not been received by **fitech ag** in a timely manner or it is subsequently changed by the customer;
  - if payment periods are not observed, Letters of Credit are opened too late or required import licences are not received in time by **fitech ag**;
  - if obstacles are encountered of which **fitech ag** is not the cause and that it has not, with all due diligence, been able to avoid, irrespective of whether they occur at **fitech ag**, the customer or third parties. Such obstacles may be due to events of Force Majeure, for ex. epidemics, mobilisation, war, commotion, grave business disruption, accidents, strikes, delayed or faulty sub-supplies of required raw material as well as semi and finished products, acts or failures of authorities and natural causes.

## 10 Delivery, transport and insurance, risk and cost transfer

- 10.1 The products are carefully packed by **fitech ag**. The packing is charged to the customer at cost.
- 10.2 Particular wishes in respect to transport and insurance must be placed with **fitech ag** in a timely manner. The transport is executed at the cost and risk of the customer. Complaints concerning transport are to be lodged by the customer with the last carrier immediately upon receipt of the delivery or the freight documents.
- 10.3 An insurance for any damages is the customer's obligation. Even though **fitech ag** may conclude the insurance, it is for the cost and risk of the customer.
- 10.4 Risk and cost transfer to the customer is at the latest with the departure of the delivery ex works. The same applies to partial deliveries.
- 10.5 Should the dispatch, on request of the customer or due to any other reason for which **fitech ag** cannot be held responsible, be delayed, the risk and cost transfer to the customer will be on the date of the planned delivery ex works. From this point of time the deliveries are stored at the cost and risk of the customer. In the event where a delivery is being stored, **fitech ag** is, after granting a reasonable time of extension and its fruitless expiry, entitled to withdraw from the contract and claim damages instead of performance.

## 11 Inspection of the order

- 11.1 The customer will check the delivery within a reasonable period (maximum 10 days) from the date of receipt and will advise **fitech ag** of any defects immediately in writing. The deliveries and services are considered accepted if he fails to do so.
- 11.2 Where an inspection is agreed in writing, it is to be carried out with the completion of the works in accordance with the contract. With all inspections after completion/installation successfully concluded the works are considered accepted by the customer. The inspection test is executed in writing. The warranty period starts with this point of time.
- 11.3 Should customer prevent or be prevented from carrying out of an inspection test and / or the delivery or services are used prior to the inspection test, the works are considered accepted.

## 12 Warranty and responsibility

- 12.1 **fitech ag** warrants that the products delivered are free of faults in respect to manufacturing and materials.
- 12.2 Warranted characteristics are only the ones that have been expressly designated as such in the confirmation of order respectively the operating manual. The warranty is valid until the expiry of the warranty period.
- 12.3 Should products be found to be defective, **fitech ag**, at its own choice, will repair the faults or replace the products during the warranty period of 12 months respectively the advice of readiness of delivery.
- 12.4 Should a fault within the sense of Para. 12.3 not be corrected within a reasonable period by a replacement delivery or a repair, the customer may, after three failed attempts of rectification, refuse to accept the faulty part and demand a reduction of the purchasing price or if a partial acceptance is economically not reasonable, to retreat from the contract. **fitech ag** can only be obligated to repay the amounts paid for the parts that are subject to the retreat.
- 12.5 The warranty will become null and void if the customer or any third party implements changes, carries out repairs, fits spare parts that are not approved by **fitech ag** or if the customer, on the appearance of the fault, has not immediately instituted any reasonable measures to reduce the damage and has not provided **fitech ag** the possibility to rectify the fault.

- 12.6 Excluded from the warranty and responsibility of **fitech ag** are faults which are not proven to be due to faulty material, faulty construction, inadequate execution or other reasons and therefore not within the responsibility of **fitech ag**.
- 12.7 The customer cannot claim other rights and claims due to faulty material, construction or execution or lacking attributes except the ones expressly mentioned in Para. 12.3 and 12.4. No compensation for damages such as business interruption etc. can be claimed.
- 12.8 In the case of plants or equipment within a lease agreement or a test unit the customer is responsible for damages on the plant and equipment, unless such damages have been caused through faults in construction, manufacturing or material.
- 12.9 All cases of contract violations and subsequent legal consequences, as well as claims by the customer, irrespective of the legal ground, are conclusively ruled within these conditions. In particular all claims not specifically mentioned, such as compensation for damages, mitigation, contract resignation or cancellation, are excluded. The responsibility for consequential damages is excluded, unless otherwise ruled by statutory law.

### **13 Cancellation, offsetting, assignment of claim**

- 13.1 **fitech ag** may cancel the contract partially or fully if customer's economic situation has materially deteriorated.
- 13.2 **fitech ag** is authorised to offset any receivables against claims that are due, not due or due at a later date against the customer.
- 13.3 Claims of the customer can be assigned to third parties only upon the express agreement by **fitech ag**.

### **14 Applicable law**

- 14.1 This contract is subject to Swiss material law, excluding the Vienna Convention (CISG) of 11<sup>th</sup> April, 1980.
- 14.2 Invalidity or nullity of individual parts of these conditions does not constitute an invalidity or nullity of the entire contract respectively the valid parts. In such case the parties to the contract engage themselves to replace the invalid conditions with an effective condition in the sense and intention of the invalid condition.

### **15 Place of jurisdiction**

- 15.1 Place of jurisdiction is the registered place of business of **fitech ag**, presently Amriswil/ Switzerland.