



## Terms and Conditions of Sale, Delivery and Payment of Jofo Pneumatik GmbH

### 1. Acknowledgment of the Terms and Conditions of Sale

Orders will not be deemed accepted until confirmed in writing by us. All transactions with purchasers will be governed exclusively by these T&Cs. The purchasers' T&Cs shall not apply. Any varying agreements must be confirmed by us in writing in order to take effect. Transmission by fax shall be deemed compliant with the requirement for the written form; other forms of transmission via telecommunications, in particular e-mail, will not be sufficient.

### 2. Preis- und Zahlungsbedingungen

All offers are subject to confirmation and non-binding unless otherwise agreed in writing. The prices valid on the day on which the contract is entered into shall apply. All prices shall be in EUR net of any statutory VAT, customs levies, charges and other expenses arising in connection with the performance of the contract of sale unless otherwise specified. Prices apply ex works. Transportation packaging will be charged at cost but not taken back. In the event of a general price increase for the type of the ordered goods between order and performance of the delivery, the price – including any agreed fixed price – will increase accordingly if our performance is not to be rendered within four months of conclusion of the contract. Where a take-back of goods has been agreed, a credit note will only be issued subject to the deduction of a handling fee of 10% of the invoiced price unless the purchaser is able to demonstrate that our expenditure is lower.

Any discounts and deductions that have not been expressly agreed will not be acknowledged. The purchaser shall only be entitled to assert any counterclaims if these arise from the same contractual relationship. Counterclaims may only be set off if they have been recognized by final judgement or acknowledged. This also applies to claims from earlier deliveries, even if bills of exchange have been provided. We are entitled to make partial deliveries to a reasonable extent. These must be paid for in accordance with the payment terms irrespective of any subsequent deliveries. A payment shall only be deemed to have been made once we are able to dispose over the sum. From the commencement of payment default, interest at a level of eight percentage points above the respective base rate of the European Central Bank plus any additional dunning costs shall be applied.

If following conclusion of the contract it becomes apparent that our claim to the purchase price is at risk as a result of a credibility gap on the part of the purchaser (e.g. due to an application for insolvency proceedings to be initiated), we are entitled to refuse the performance of the contract in accordance with the statutory provisions relating to refusal of performance and to withdraw from the contract, where applicable subject to a grace period (section 321 German Civil Code (Bürgerliches Gesetzbuch, BGB)). In the case of contracts for the manufacture of custom-made items (single-unit production), we may declare withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline remain unaffected.

### **3. Transfer of risk, delay in acceptance and storage**

Deliveries are made ex works Schloß Holte-Stukenbrock (place of performance). The risk, including for delivery free to destination, passes to the purchaser on handover of the goods to a carrier or freight forwarder. If the shipping or handover is delayed due to a circumstance caused by the purchaser, the risk will pass to the purchaser on the day on which the item to be delivered is ready for shipping and we have notified the purchaser accordingly. In the event of a delay in acceptance we are entitled to store the goods at a commercial storage facility at the purchaser's risk and on its account. If it has been expressly agreed that finished goods will be stored by us for a fixed-term, we can accept no liability for any damage that arises despite the observance of a reasonable level of care. We are further not subject to any obligation to insure stored goods. Storage will be limited to three months in all cases.

### **4. Delivery times**

Delivery times will only be binding if they are expressly agreed as being binding. If shipping has been agreed, the delivery periods and deadlines relate to the point of handover to the carrier, freight forwarder or other third party charged with the transport

### **5. Liability and defects**

The purchaser must immediately inspect the shipment for absence of defects and, in case of obvious defects, submit a written complaint within a week. The time of delivery and the day on which the complaint is received are material for calculating the period. Defects that cannot be identified during this period even via a careful inspection must be communicated as soon as the defects are identified. If the purchaser fails to conduct a proper inspection and/or notification of defect, our liability for the non-notified defect will be excluded, even if the purchaser is able to invoke an excuse for its omission. At our request the delivered item subject to the objection shall be returned to us freight paid. In the event of a justified complaint about a defect we shall reimburse the purchaser for the costs of the most cost-effective dispatch method; this shall not apply if the costs increase because the delivered item is located at a location other than the place of the intended use. In the case of defects where a timely notification is made, we are entitled to specify whether re-work or re-delivery will take place. If the subsequent performance is unsuccessful, the purchaser is entitled to assert its further statutory rights.

The warranty shall lapse if the purchaser alters the delivered item, or has it altered by a third party, without our consent and this renders removal of the defect impossible or unreasonably difficult. In any event the purchaser shall be liable for the additional costs arising as a consequence of the removal of the defect.

Any compensation claims for damage and expenditure by the purchaser, irrespective of the legal grounds, shall be excluded. Compensation claims for consequential losses shall also be excluded. This shall not apply where mandatory liability exists due to e.g. German Product Liability Act (Produkthaftungsgesetz), wilful misconduct, gross negligence, injury to life, limb or health or the infringement of material contractual obligations. However, claims for damages due to the infringement of material contractual obligations shall be limited to foreseeable damage typical for the type of contract, except in cases of liability for wilful misconduct or gross negligence or injury to life, limb or health. Indirect damage and consequential loss that are the consequence of defects to the delivered item shall only attract compensation if such damage may be typically expected where the delivered item is used as intended. The above

provisions shall not occasion a change in the burden of proof to the detriment of the purchaser. The limitation period for any claims due to material defects and compensation claims directed at us is one year from delivery. In the event of claims for damages under the German Product Liability Act (Produkthaftungsgesetz), the statutory terms of limitation shall apply.

## **6. Retention of title**

We shall retain title to the goods supplied by us until the full performance of all current claims arising under the commercial relationship against the purchaser (goods subject to the retention of title). Processing and transformation is performed for us as the manufacturer at all times, albeit without any obligation on our part. If our (co-)ownership lapses due to combination of the goods, it is hereby agreed that the purchaser's (co-)ownership of the unitary item passes to us pro rata (invoice value). The purchaser shall then store our (jointly owned) property free of charge.

The purchaser is entitled to process and sell the goods subject to the retention of title in the ordinary course of its business provided it is not in default of payment. Pledging, assignment by way of security or any other disposal over goods subject to the retention of title is not permissible. The purchaser hereby assigns to us in full the claims arising from the selling-on or other legal basis (insurance, tort) relating to the goods subject to the retention of title (including all balance claims from the current account) by way of security. The purchaser is authorised to collect the claims assigned to us in its own name on our account, which authorisation may be revoked. If the value of the claims assigned to us in advance by way of security exceeds our claims by a value of more than 110%, we shall release the claims assigned by way of security at our discretion on request to the requisite extent. The purchaser must store the goods subject to the retention of title properly and ensure they are properly insured. If the purchaser falls into default with the fulfilment of its payment obligations towards us, ceases to make its payments or insolvency proceedings are instituted over its assets, or the institution of insolvency proceedings is rejected due to the lack of assets, the entire residual debt shall fall due, even where bills of exchange with a later due date are current. In this case the customer shall submit to us on request a catalogue of all goods it still holds that are our property and a list of all claims assigned to us with the name and address of the debtor and the amount of the claim.

Where third parties access the goods subject to the retention of title, the purchaser must make reference to our ownership and notify us without undue delay. If the purchaser acts in breach of the contract – in particular in the case of payment default – we are entitled to withdraw from the contract and/or to demand delivery up of the goods on the bases of our retention of title, subject to a grace period being set that lapses without action being taken. The demand for delivery-up shall not at the same time constitute a withdrawal. Following a withdrawal, we are entitled, subject to prior notification, to enter the purchaser's premises, collect the delivered goods and to sell them ourselves by private treaty to the best of our abilities and by way of set-off against the open claim for the purchase price less any costs that are incurred.

## **7. Delay in delivery**

If we miss a delivery date the customer shall set a reasonable grace period of at least 21 days for delivery. If we render the due performance within the grace period, no further claims shall apply.

Should the performance of our contractual duties as a supplier be delayed or impaired in part or in full as a result of events of force majeure or other unavoidable events affecting us or our suppliers as well as all circumstances that for which we are not at fault and that render impossible or delay the performance of accepted orders, the delivery period shall be extended by a reasonable period or we shall be entitled to withdraw from the contract.

If such disruptions result in performance being delayed by four months, the purchaser may withdraw from the contract. In this case no compensation claims of any kind may be made against us; this shall not apply for damages caused by delay.

## **8. Call orders**

In the case of call orders the purchaser undertakes to accept the full quantity within six months unless otherwise agreed. Once production has commenced, no withdrawal from acceptance shall be possible. A reasonable period of usually around four weeks must lie between the call and the required shipping date.

## **9. Closing provisions**

The place of performance for delivery and payment is Schloß Holte-Stukenbrock. The place of jurisdiction for any disputes, including in matters relating to cheques and bills of exchange, is Bielefeld. All legal relationships between us and the purchaser shall be governed exclusively by German law. If the UN Convention on Contracts for the International Sale of Goods (CISG) applies, this shall only apply subject to the proviso that compensation and expenses claims against us due to defectiveness of the purchased item or other disruptions to performance shall only obtain in the event of the fault by our statutory representative or vicarious agents and only within the limitations of section 5.

Last revised: September 2013

### **JOFO Pneumatik GmbH**

Eulenweg 14 - 20 // D-33758 Schloß Holte-Stukenbrock  
fon +49 (0) 5207 8958-0 // fax +49 (0) 5207 8958-88

[www.jofo.de](http://www.jofo.de)