

Festo Sdn Berhad Terms and Conditions of Sales

1. Definitions

In these Terms and Conditions:

- (a) "Festo" shall mean Festo Sdn Berhad;
- (b) "EULA" refers to the End-User Licence Agreement, including any supplemental terms between the customer and Festo and governs the customer's use of Festo software applications;
- (c) "Apps" means software applications offered by Festo Sdn Berhad. All sales of products and/or software described on the reverse hereof are subject to the following terms and conditions which supersede any earlier set of conditions appearing in the sales catalogue or elsewhere and any variation of these terms and conditions in any document of the buyer or otherwise is inapplicable unless accepted in writing by Festo.

2. Prices and Quotation

Prices are subject to change without notice, but any such price changes shall not affect orders accepted by Festo and that are scheduled for delivery/shipment within 30 days from the date such order is accepted; in relation to orders accepted by Festo that are scheduled for delivery/shipment after 30 days from the date the order is accepted and entered, the price applicable to such orders shall be the published price in effect at the time of such scheduled delivery/shipment, but the customer, by written notice to Festo within 5 business days' written notice of a price increase, may elect to cancel the order for said products without charge in lieu of paying a higher price. Price quotations are firm for 30 days only.

3. Orders

- 3.1 All orders for products or software are subject to Festo's written or electronic acceptance, including, for the avoidance of doubt, any orders submitted through Festo's online store. Customers who submit orders for products or software through Festo's online store may receive an automatically generated order confirmation for informational purposes. Such an order shall become binding on Festo on the earlier of (i) the customer's receipt of a written or electronic order acceptance; or (ii) when the products are dispatched or when the software is made available to the customer (as the case may be).
- 3.2 Notwithstanding acceptance or acknowledgement thereof, all orders and quotations are subject to approval by Festo of the customer's creditworthiness; at Festo's option, terms of payment may be varied from those set forth herein.
- 3.3 Orders placed through Festo's online store will only be accepted for deliveries in Malaysia. Orders that are to be delivered to a different country must be directed to the local sales company in that country.
- 3.4 If a written or electronic order acceptance contains typographical or other errors or inaccuracies, the order shall not be binding on Festo.

4. Deliveries

Delivery/shipment quotations are based upon best information available at the time of quotation. Festo shall not be held liable for delays in shipping due to causes beyond our control or the control of our suppliers or subcontractors, which make it impossible or commercially unreasonable to perform including so called "Acts of God" or "Force Majeure" events.

5. Returned Goods

No returns for credit will be allowed without Festo's prior written permission. Only unused active items, non-obsolete in current demand will be considered by Festo for return for credit. Credit will be based upon prices of products in effect at time of return or time of invoicing. However, Festo reserves the right to impose a minimum value on returned goods which is subject to handling, re-inspection and any additional expense incurred in restoring goods to saleable condition, as determined by our inspection and including all shipping charges incurred in the return. [Click to view the current Goods Return Policy.](#)

6. Goods on Approval

Where goods are delivered as samples, for advertising or for any other purpose whatsoever in which the goods remain the property of Festo, no markings or endorsement made on the goods by Festo shall be erased, eradicated, obscured or altered in any manner whatsoever.

7. Order Cancellations

Cancelled orders are subject to a cancellation charge of 50% of the invoice value; however, cancellation for orders for (i) special products namely, products customised according to customer specifications and (ii) software are not permitted, and in such instances, the full invoice value will be charged.

8. Designs and Published Data

8.1 All designs and specifications are subject to change without notice. Such changes are not to be considered retroactive, and Festo assumes no responsibility for revision of models already in the field.

8.2 All data is sufficiently accurate for general use, but seller assumes no responsibility for errors or omissions. Certified prints are available on request, at a reasonable charge.

9. Warranty and Limitation of Liability

9.1 Festo warrants its products to be free from defects in materials and workmanship, for a period of one year on a shift basis from date of delivery/shipment to the original purchaser. Festo makes no warranty for (i) any specific application or use of its products; or (ii) for software. Festo's liability under this warranty being limited to an allowance of credit for, or replacement of, any defective product or parts; Festo shall not be liable for any consequential injuries or for claims for labour, loss of profit, repairs, transportation or other expenses incidental to replacement of the material. And in the event of any defect in materials, workmanship or otherwise in any delivery/shipment, it should not be a ground for cancellation of the remainder of the order and contract.

9.2 The warranty shall not apply to and shall be void against any products which have been subject to misuse, misapplication, modifications or tampering or any products which have been damaged by the negligence or wilful default of the user.

9.3 This warranty is expressly in lieu of all other warranties expressed or implied by statute, common law or otherwise, and of all other obligations or liabilities on its part and no agent representative or employee of Festo has any authority to extend the scope of this warranty or make any other representation, promise or guarantee in connection with the manufacture, sales or application of its products to the extent permitted under Malaysian law. Nothing in this clause excludes liability for death or personal injury caused by Festo's negligence, or liability which cannot be excluded under applicable law. The parties acknowledge that this limitation is reasonable, negotiated, and reflects the allocation of risk between the parties

- 9.4 Notice of products received in a damaged condition shall be given to Festo within ten (10) days after delivery shipping thereof, but the same shall not be returned to Festo until after notification to the carrier and inspection and examination by a representative of Festo examination by a representative of Festo.
- 9.5 Any claim against Festo by a purchaser of its products arising out of the condition or quality of said products shall be made in writing to Festo within ten (10) days of the delivery/shipment of said goods and merchandise and a failure to present such claim within the said ten (10) days shall constitute a waiver of such claim.
- 9.6 For products manufactured according to the buyer's specifications, the buyer will be further responsible that the said specifications and/or products do not infringe any intellectual property rights of any other party. Festo shall be fully indemnified (including but not limited to all its costs and expenses, including costs of its solicitors on an indemnity basis) by the buyer against any such infringement.
- 9.7 Festo shall also be entitled to determine and alter this agreement of sale in the event that the buyer becomes insolvent or bankrupt or commences proceedings for insolvency or bankruptcy.
- 9.8 Festo's only office for the transaction of business is in Malaysia and only duly authorised officials of Festo in Malaysia shall have the power to alter or amend the terms of any agreement binding upon Festo. No such amendment or alteration shall be binding upon Festo unless in writing and signed by such person.
- 9.9 Festo's products are not developed for nor are they intended to be used in connection with any safety-related functions for nuclear or atomic energy stations and/or plants or any other application associated with nuclear or atomic energy and Festo hereby disclaims any and all liability to the maximum extent permitted under applicable laws for any damages, losses, costs, charges, liabilities or expenses incurred as a result of such use.

10. Title and Risk

- 10.1 The risk shall pass in accordance with the applicable Incoterms 2020.
- 10.2 Title to the goods shall remain with Festo until Festo has received full payment for the relevant delivery. Until title passes, the Customer shall not sell, pledge, assign, or otherwise part with possession of the goods except as permitted below.
- 10.3 Notwithstanding the foregoing, the Customer may resell the goods in the ordinary course of its business as principal (and not as agent for Festo). Upon such resale, the Customer shall hold the proceeds of sale on trust for Festo to the extent of the unpaid purchase price. Nothing in this clause is intended to, nor shall it be construed to, create a charge over the goods or any proceeds within the meaning of the Companies Act 2016.

11. Terms of Payment

- 11.1 Payment of the price shall be made within 30 days net from the date of invoice unless Festo has agreed in writing to a variation of the terms notwithstanding that delivery of the goods or materials may be prevented or delayed by the customer payment shall be made by the due date of all sums payable under the order as if there had been no such prevention or delay.
- 11.2 Festo reserves the right to assess an interest charge on any invoice remaining unpaid for more than 30 days from the invoice date. If Festo has agreed in writing to grant the customer more than a 30 days payment period, interest will be charged as stated above on the first day the extended payment terms are exceeded.
- 11.3 If the customer defaults making payment on the due date of any sum due to Festo on any account, Festo

may suspend deliveries (in which event the customer will be liable for any damage loss or expense which Festo may thereby suffer) and if such default continues for seven days after written notice of the Festo's intention to invoke the provisions of this Condition Festo may determine the contract..

11.4 If the customer commits an act of bankruptcy or being a company goes into liquidation (otherwise than a voluntary liquidation for the purposes of reconstruction) or has a Receiver appointed Festo may suspend deliveries and/or determine the contract.

11.5 In the event of determination of the contract for any reason the customer will be liable to pay forthwith for all work done and materials supplied and may also be liable in damages as for wrongful repudiation.

12. Use of software

12.1 Unless agreed otherwise, the customer shall, in return for a fee, obtain for any type of software, a non-exclusive, non-transferable, and time-unlimited right to use in respect of a specified hardware product.

12.2 All copyright, trademarks and other intellectual property rights subsisting in any software licensed and/or purchased from Festo and all documentation and manuals relating to software licensed and/or purchased from Festo shall remain the property of Festo.

12.3 The customer shall not (i) copy, reproduce, translate, adapt, vary or modify the software or to communicate the same to any third party without Festo's written consent.

12.4 In addition, the customer shall not remove, add to, change or otherwise tamper with any copyright notice, legend or logo appearing in or to the software or the medium in which it resides.

12.5 Nothing herein shall operate to transfer any intellectual property rights except the limited licence granted.

13. Use of Apps

13.1 Apps made available to customers through the Festo App World are licensed, not sold, to customers, subject to the terms of the EULA.

13.2 In the event Apps are made available to a customer via Festo App World or through any other channel, the Apps are deemed to be delivered and accepted by the customer on the earlier of (a) the date the App is made available for download to the customer; or (b) the date the customer installs such App.

13.3 The customer agrees to be bound by the terms of the EULA from such date. The full terms of the EULA can be found at (https://www.festo.com/my/en/e/legal-information/end-user-licence-agreement-id_45479/).

14. Copyright, Patents, etc.

14.1 Festo retains copyrights, patents and right of legal protection of registered designs in its drawings, diagrams, documents and equipment, drawings, documents, etc., appended to quotations, or forwarded to customers are for their personal use only. They may be neither make copies (including extracts) nor make accessible to third parties without Festo's express consent. No transfer of any Intellectual Property.

14.2 The documentation attached to the request for quotation or purchase order, such as drawings, specifications, materials, samples, tools, models and the like, which are passed onto Festo, remains the property of the customer. These are binding for the preparation and composition of the quotation by Festo. The customer must point out any subsequent change to the first request for quotation and the quotation

by Festo in writing when placing purchase orders. If Festo attaches similar documentation of the type previously mentioned to its quotations, this is and remains the property of Festo. The customer undertakes not to use this documentation for purposes beyond the scope of the contract, reproduce it or otherwise make it accessible to third parties.

15. Compliance

15.1 The customer warrants that he or she has read, and has implemented internal processes to ensure compliance by its employees, representatives and/or agents with, the Festo code of conduct for business partners at the below link:

(https://www.festo.com/media/cms/media/editorial/downloads/EN_Code_of_Conduct_Business_Partners.pdf).

In addition, the customer represents warrants and undertake that (i) its operations will at all times be conducted in compliance with applicable laws; (ii) none of its employees, representatives or agents committee or attempted commit or abet any corrupt acts which is an offense under any laws applicable to corrupt acts whether in Malaysia or elsewhere; and (iii) its operations have been conducted at all times in compliance with all money laundering-related laws in Malaysia and any other jurisdiction where it conducts business or owns asset.

16. Confidentiality

16.1 Any pricing information provided by Festo is confidential and proprietary information. The customer agrees not to disclose or share Festo's pricing information with any third party. The customer will use such pricing information solely for the purpose of conducting business with Festo and may not use it for any other purpose. This non-disclosure clause shall continue in perpetuity, unless otherwise agreed upon in writing by Festo. Any breach of the non-disclosure term will result in legal action or termination of the business relationship.

17. Hazardous Materials

17.1 Any Festo products which, after delivery to the customer, come into contact with materials or substances which may be classified as hazardous to health or regulated as a hazardous material must be properly decontaminated by the customer as may be necessary to comply with all applicable environmental laws prior to its return to Festo.

17.2 Such Festo products may only be returned to Festo after prior consultation with Festo and only after the customer's submission of a completed contamination declaration form.

18. Export Control Clause

18.1 It shall be a condition to Festo's delivery of any products (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) as well as Festo's performance of work and services including technical support of all kinds by Festo to a customer (collectively called "Festo Performance") that such Festo Performance is not prohibited under any applicable laws, including any national or international export or re-export control regulations (in particular embargos or other sanctions). The customer undertakes to provide Festo with all information and documentation that Festo may require to export and/or ship products. In the event any delay in shipment is due to delays with export examinations or other approval procedures, the time for shipping will be extended accordingly. If the necessary approvals are not granted or if the delivery and service is not capable of being approved, Festo shall be excused from any failure on its part to deliver the products.

- 18.2 In the event a contract with a customer causes Festo to be in breach of any applicable laws or in the event the termination of a contract for any Festo Performance is necessary in order for Festo to comply with applicable laws, such contract shall ipso facto cease and determine and the customer shall not have any claim against Festo for costs, damages, compensation or otherwise.
- 18.3 In particular, (i) the customer is prohibited from selling, exporting or re-exporting, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods, products, deliverables or documents produced by Festo in connection with the Festo Performance that falls under the scope of the Council Regulation (EU) No 833/2014 or Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), or in the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment; and (ii) the customer is prohibited from selling, exporting or re-exporting, directly or indirectly, to Belarus or for use in Belarus any goods, products, deliverables or documents produced by Festo in connection with the Festo Performance that falls under the scope of Council Regulation (EU) No 765/2006, or Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), or in the Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment. In such an event, without prejudice to any other remedies available to Festo, Festo's contract with the customer *shall ipso facto* cease and determine and the customer shall not have any claim against Festo for costs, damages, compensation or otherwise. In the event the customer is unable to comply with this section 15.3, the customer shall immediately notify Festo in writing and make available to Festo information concerning its compliance with the obligations under this section 15.3, including information on any relevant activities by third parties.

19. General and Governing Law

- 19.1 Festo will not be responsible for any failure to fulfil any term of this contract if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which is not within its control including strikes, lockouts, fire, explosion, any curtailment, failure or cessation of public utilities or services or of supply of the products from any of the Festo's existing suppliers of any national, local port, transportation or other authority or anybody or person purporting to be or act for such authority. The customer after notifying Festo shall be free to purchase from other suppliers any deficiency caused by the operation of this Condition.
- 19.2 These terms and conditions are governed by Malaysian Law and the customer and all proceedings in connection herewith shall be brought in, and the customer and Festo hereby agrees to submit to the exclusive jurisdiction of the appropriate courts in Malaysia.