

## **Festo DMCC General Terms and Conditions of Sale**

### **1 General remarks**

All Festo deliveries and services – including the provision of software – are subject solely to the following conditions of sale. Any conditions stipulated by the customer that deviate from these are hereby expressly opposed. Such conditions are only binding on Festo if Festo has acknowledged them in writing. By placing the order and accepting the goods supplied by us, the customer confirms its agreement with our conditions.

### **2 Quotation and delivery**

Our quotations are always non-binding if they do not have a time limit; our written order confirmations form the contractual basis and are decisive for the scope of the delivery. This also applies if the customer has requested an actual quotation to be submitted. Orders placed by the customer are binding for the latter and are deemed to be accepted upon presentation of the order confirmation by Festo. For catalogue components, this is deemed to be on time if presented together with the invoice and delivery. In case of quotations with a time limit and a certain acceptance period, the quotation is decisive if no order confirmation is submitted on time. We reserve the right to make design changes and other changes to technical data and performance characteristics if they are in the interests of technical progress. Festo will also announce such changes, as well as product discontinuations, in the pneumatics catalogue on the Festo website ([www.festo.com](http://www.festo.com)) with a reasonable notice period. 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. Obvious mistakes, print, calculation, typing and costing errors are not binding for Festo and do not entitle the customer to compensation. If we provide documents (e.g. manuals) for certain products, these are available to the customer as a free download on our website [www.festo.com](http://www.festo.com). We can provide the customer with printed versions of such documents for a charge as a separate order.

### **2a Conclusion of contracts in Festo online shops**

The goods and services offered in our online shops do not represent an offer to conclude a contract; they are merely an invitation to submit an order. Upon submitting an order, the customer issues us an offer to conclude a purchase contract. The language of the contract is English. The customer may view the content of his or her order any time, by visiting the order history in his or her account in the Festo online shop. The full text of the contract is stored by Festo, but cannot be accessed by the customer. The customer receives an order confirmation after his or her order has been received. This is for informational purposes only; it does not constitute acceptance of the order. The order does not become binding until a written or electronic order confirmation is issued or the goods are dispatched. In cases where software is being purchased via the App World, a contract comes about when the app is provided for the customer's use. If an order confirmation has been issued but contains obvious spelling errors, calculation errors or other errors, it is not binding for Festo.

### **3 Prices and payment**

The prices apply from the Festo delivery plant or the Festo plant warehouse. The prices do not include the statutory rate of value added tax. The customer shall bear the costs of delivery and packaging.

If the basis of the calculation changes, we reserve the right to make price adjustments.

Festo's invoices shall be 100% net payable as per the agreed payment terms in the quotation and/or contract. If the period of payment has been exceeded, we reserve the right to claim the damages caused by delayed performance to the level of the bank loan used by us. Assembly, repair and product-information costs are payable immediately net. The withholding of payments or offsetting of potential counterclaims is only permissible in the case of recognised or legally established counterclaims on the part of the customer.

We will only process customer-specific production/orders after the receipt of an advance payment as per the agreed payments terms in the quotation and/or contract, payable upon receipt of the order confirmation. The payment is deemed to have been received once we can freely dispose of the whole down payment amount. The remaining balance shall be payable as per the agreed payment terms in the quotation and/or contract. In case of a default of payment, deliveries are only made against advance payment.

Please bear in mind that the payment conditions may also change depending on a change to your credit limit according to section 3.1 of these delivery, payment and software utilization conditions.

#### **3.1 Credit limits**

Once a business relationship has successfully started – yet after six months at the earliest – on request, we are prepared to grant a supplier credit amounting to 1.5 times the monthly net turnover, based on the average over the last quarter, unless otherwise agreed. The granting of a supplier credit can be revoked/cancelled at any time on our part.

New customers are supplied on account up to max. €500 once we have received a copy of the current extract from the commercial register. If the purchase order exceeds this value, we shall deliver against advance payment.

Once the line of credit has been used up and no due receivables are open, further deliveries are made either by paying invoices not yet due or by making a down payment of 30% of the order value, due on receipt of the order confirmation, with the remainder falling due within 30 days.

### **4 Delivery time**

The delivery period starts with the date of the order confirmation. This only applies, however, if all technical and commercial details have been clarified at this point in time. The customer undertakes to arrange all the provisions necessary for the order to be executed on time. The delivery date is deemed to have been adhered to if the object of delivery has left the Festo plant by the said date or if the customer has been advised of its readiness for despatch. The delivery times documented by means of a classification system of standard delivery times (standard delivery time classes) and quoted in all our sales and communications media (such as product catalogues, quotations, etc.) are merely empirical values drawn from everyday practice. The standard delivery times quoted for the individual classes are not guaranteed or warranted delivery times.

Non-adherence to these delivery times in individual cases shall not automatically put us in default and shall not entitle the customer to raise complaints or claims for damages of any kind. Partial and early deliveries by Festo are permissible. The delivery date is extended proportionately in the event of obstacles attributable to force majeure. This includes actions as part of industrial disputes, in particular strikes and lockouts. It also applies in the event of unforeseen obstacles and circumstances arising with subcontractors. Adherence to the delivery period is conditional on the customer fulfilling its contractual duties. Festo is also not responsible for the aforementioned circumstances if they arise during an already existing delay. If despatch is delayed at the request of the customer, we shall, after a reasonable period of time, be entitled to dispose otherwise of the delivery item, to supply the customer with a

correspondingly extended time limit and to charge the customer for storage costs incurred.

## **5 Transfer of risk**

All deliveries shall be effected at the risk of the customer. The risk is also transferred to the customer upon despatch in the event of partial and early deliveries. This also applies if the consignment is transported by Festo, even if Festo uses its own vehicles, and effects the installation. If despatch is delayed by circumstances for which the customer is responsible, then the risk is transferred to the customer from the day the delivery is ready for despatch. At the request of the customer, Festo shall arrange at the customer's expense insurance of the consignment against theft, breakage, transport, fire and water damage and any other insurable risks.

## **6 Retention of ownership**

The goods supplied shall remain our property until all existing and future claims arising from the business relationship with the customer are paid in full, irrespective of the legal grounds. The enforcement of our rights to retain ownership should not be regarded as a withdrawal from contract. On the contrary, it ensures our rights from the contract of sale in addition to our entitlement to the return of our property, in particular to the reimbursement of damages and lost profits. The customer is entitled to resell the supplied goods revocably as part of a proper business activity. The customer assigns to us at this stage all claims with subsidiary rights to the value of the goods subject to retention of ownership due to it from the resale. The assigned claims are used to secure all claims under paragraph 1. Upon our request, the customer is obliged to notify us of any assignment to a third party for the purpose of payment and to provide us with the information and documentation necessary to assert our rights. The customer is allowed to process, transform and combine the goods subject to retention of ownership with other items. The processing or transformation is effected for Festo. We shall immediately become the owner of any goods made as a result of processing or transformation, namely corresponding to the value of the delivery. The processed or transformed items shall be deemed to be goods subject to retention of ownership. In the event of any processing, transformation or combination with other items not belonging to us, we have the right to joint ownership of the new item to the value of the share which represents the proportion of the value of the new item resulting from the processed, transformed or combined goods subject to retention of ownership. The share of claims assigned to us has priority over any other claims. If our goods subject to retention of ownership are combined with real estate or movable property by the customer, the customer shall by way of security also assign to us the claim due to it as remuneration for the combination, including all subsidiary rights without the need for any further particular explanation. The above paragraph correspondingly applies to the level of the assigned claim. We undertake to release the securities due to us insofar as their value exceeds the claims to be secured by more than 20%, and insofar as these have not yet been settled. The customer does not have the right to any other dispositions regarding the goods subject to retention of ownership other than those mentioned above. In the event of pledges, attachments or other dispositions by third parties, the customer undertakes to draw attention to the fact that it is Festo property. The customer must inform us immediately of any impairment of the rights to items owned by us. In the event of the customer not conforming to the contract, in particular in the case of a delay in payment, the total balance due shall become payable immediately. In such cases, we have the right to recover possession of the goods following a demand for payment and to collect these from the customer's premises. The customer then has no right to possession.

## **7 Use of software**

Unless otherwise agreed for a specific product, the customer shall, in return for a fee, obtain for any type of Festo software including associated documentation a non-exclusive, non-transferable and time-unlimited right of use to a certain hardware product respectively one which may be determined in individual cases. This software may be used on a particular or individually determined hardware product.

Festo shall remain the owner of the copyright and all other industrial patent rights. The right to make copies is only provided for the purpose of data backup. Copyright marks must not be removed.

Festo shall supply installation and commissioning instructions containing relevant safety instructions for its software in printed form. All other documentation shall be supplied only in digital form with online help. When new software releases are supplied, the corresponding online documentation shall also be sent. The transfer of software to third parties requires our consent in any case. If the software is provided for the purpose of resale, the third party must agree to these conditions.

Modifications are not permissible. In the event of a violation of these conditions, for each violation the purchaser shall pay a contractual penalty amounting to ten times the order value. This contractual penalty shall be set off against any claims for compensation. The software and associated documentation must be returned immediately on request. The conditions described above do not apply to exclusive customer-specific software developed on the basis of specifications provided by the customer. This software is developed and customized by Festo as part of a contractually produced control system making use of modular software modules (standard software modules) put together by Festo that are suitable for a wide range of applications and adapted to the contractual performance requirements. The above conditions shall also not apply to customized training software. Upon full payment of the purchase price of the customized application program, Festo shall transfer the exclusive, spatially unlimited and perpetual rights of utilization to the customer, without the customer having any lawful entitlement to the individual basic standard software modules forming the basis of the customized version.

Festo remains entitled, irrespective of these conditions, to use the basis of this development to create and offer similar software solutions customized for applications required by other customers. Festo shall retain basic utilization rights to the customized solution for internal purposes.

## **8 Warranty claims**

Subject to the regulations in section 10 of these conditions and excluding any further claims, Festo shall be liable for defects of quality and title and warrants as follows:

### **Defects of quality:**

All parts found to be defective as a result of circumstances prior to the transfer of risk shall, at the discretion of Festo, either be repaired or replaced by delivery of a faultless part. Wearing parts are excluded from this.

We shall warrant that Festo software has been duplicated properly. Festo software is designed to run on hardware products specified by Festo. Warranty claims shall be satisfied by means of a replacement. Unless otherwise agreed in writing, we shall not warrant that the software and its data structure are free of defects. For customized software, Festo shall warrant compliance with the functions and features stipulated in the specifications, the order confirmation, documentation or the jointly defined work/procedure descriptions. Festo shall not warrant that such programs are free of defects when they are used in all applications intended by the customer, in particular not such applications of which Festo was not aware or did not test at the time of development/acceptance. Evident defects shall be notified to us immediately in writing, however, at the latest within eight days after receipt of goods. Hidden defects which are not evident must be notified to Festo in writing as soon as they become known or, in case of ignorance due to gross negligence, at the latest within eight days of this time. If the complaint is justified, we shall bear the immediate costs – insofar as the complaint proves to be founded – the costs of the replacement part, the costs of despatch as well as reasonable costs related to removal and installation, insofar as this does not result in unreasonable demands made on Festo.

The customer shall allow us time and opportunity to effect the repair or replacement delivery, otherwise Festo shall not be held liable for the ensuing consequences. The customer, with Festo's prior consent, shall have the right to rectify defects itself or have them rectified by a third party only in urgent cases where there is a danger to operational safety and to prevent extensive damage, and to claim

reimbursement of necessary costs from us. This shall also apply in the cases where we cause undue delay by remedying the defect. Should the customer or a third party carry out unqualified repairs, Festo shall not be held liable for the resulting consequences.

The customer shall be entitled to withdraw from the contract within the scope of the statutory provisions if Festo, taking into account exceptional cases provided in the law, i.e. if Festo refuses to rectify the delivery, the rectification has failed or rectification is unreasonable for the customer, and it allows to let pass a reasonable period for repair or replacement delivery as a result of quality defects without remedying the situation. If the defect is insignificant, the customer shall merely have the right to a reduction of the purchase price, provided also that Festo allows to let pass a reasonable period for repair or replacement delivery due to quality defects without remedying the situation. Otherwise, the right to a reduction of the purchase price shall be excluded. Other claims shall be determined according to section 10 of these conditions.

In addition, we shall not be held liable for any damage arising from the following grounds: unsuitable or improper use or storage, faulty installation by the customer or a third party, unauthorized repair attempts and modifications, natural wear, faulty or negligent handling, chemical effects and electrical effects etc. over which we have no influence, as well as in case of improper use and non-observance of the instructions and information in our documentation (e.g. operating instructions and catalogue sheets), regardless of how they are published, particularly in relation to the operating conditions of our products (e.g. oiling instructions, quality of the compressed air or other operating media and ambient conditions). In addition, the warranty shall be voided if the customer or third parties modify the control system/software without prior consent from Festo and without any other justification (Festo's undue delay in remedying defects), even if the error occurs in an unchanged component.

#### **Defects of title:**

If the use of the delivery item infringes domestic industrial property rights or copyrights, Festo shall, at its cost, obtain the right to principally enable the customer to continue to use the delivery item or to modify the delivery item in a manner acceptable to the customer so that the copyright infringement no longer exists. Should this not be achievable in an economically reasonable manner or within a reasonable period of time, the customer shall be entitled to withdraw from the contract. Given the stipulated conditions, Festo shall also have the right to withdraw from the contract. Over and above this, Festo shall indemnify the customer in relation to any non-disputed claims or legally established claims raised by the relevant copyright owners. Subject to the regulations in section 10 of these conditions, the above-stated obligations of Festo shall be final in relation to cases of infringement of property rights or copyrights. These obligations shall be applicable only if the customer informs Festo immediately of any property or copyright infringement claims raised, the customer reasonably supports Festo in the defence of such claims or enables Festo to carry out modifications, Festo has at its disposal all defence actions including out-of-court settlements, the defect of title is not based on an instruction issued by the customer and the infringement is not caused by non-authorized modifications of the delivery item by the customer or non-authorized use of the delivery item by the customer.

#### **9 Impracticality/default**

The customer may withdraw from the contract should overall performance become impossible for us before the transfer of risk. The customer shall also be entitled to withdraw from the contract should, in the case of an order for similar goods, execution of part of the delivery become impossible and the customer has a legitimate interest in refusal of a partial delivery. Should this not be the case, the customer may reduce the consideration accordingly. In the event of a performance default by us as defined in section 4, line 1, and the customer grants us a reasonable extension, the customer shall be entitled to withdraw from the agreement, within the scope of the statutory provisions, should the extension not be complied with. Should there be an acceptance default through the fault of the customer, the customer shall remain

obliged to pay consideration. Should the customer incur damage caused by a delay for which we are responsible, then the customer shall be entitled to claim compensation for default. This compensation shall amount, for each full week of the delay, to 0.5% and no more than 5% of the value of the part of the total delivery that cannot be used in good time or according to the contract due to the delay. Other claims arising from late delivery shall be determined according to section 10 of these conditions.

#### **10 Liability**

Should the delivery item not be fit to be used by the customer as stipulated in the contract due to the fault of Festo following omitted or defective execution of proposals and discussions prior to and after the conclusion of the contract or as a result of violation of other contractual obligations, in particular the instructions for operation and maintenance of the delivery item, then the provisions in sections 8 and 10 of these conditions shall apply accordingly excluding any other claims. Festo shall not be liable for defects other than to the delivery item, for whatever legal reasons, only in case of intent, gross negligence of bodies or executives, culpable violation of life, body, health, defects whose presence was disclosed by Festo maliciously or their absence guaranteed by Festo, as well as in case of delivery item defects to the extent as liability is provided under the product liability law for personal injury and property damage in relation to privately used items. In case of culpable violation of essential contractual obligations, Festo shall be liable also in case of gross negligence of non-executive personnel and cases of ordinary negligence; in the latter case liability shall be limited to reasonably foreseeable damage that is typical for the contract. Any further claims are excluded.

#### **11 Statute of limitation**

All claims by customers, for whatever legal reason, shall become time-barred after twelve months from the time of delivery, in the case of damage not originating with the contractual object, from the time of the event causing the damage and the knowledge, or grossly negligent lack of knowledge, of the customer. Statutory time limitations and damage caused by intent or gross negligence are excluded from this.

#### **12 Confidentiality**

The customer is obliged to treat all information, knowledge and other industrial secrets in connection with the execution of the respective order in strict confidence and not to pass on or make available any information, documents, documentation, drawings, sketches or other papers to third parties without the express permission of Festo. Festo shall also treat all customer documentation in confidence.

#### **13 Place of jurisdiction**

All disputes arising out of or in connection with this Agreement shall be finally settled by DIFC-LCIA Arbitration Centre in accordance with the provisions set forth under the DIFC-LCIA Arbitration Centre Rules ("Rules"), by a sole arbitrator appointed in compliance with the Rules. The venue of arbitration shall be Dubai and the language of arbitration shall be English.

#### **14 Applicable law**

This Agreement shall be governed by and shall be construed in accordance with the laws of the United Arab Emirates.

#### **15 Compliance**

The customer assures that it has taken notice of the content of the Festo value management (code of conduct) and has instructed its managers and employees to comply with it. To ensure this good conduct, the customer undertakes to take all necessary measures to prevent unlawful practices, especially to the detriment of Festo. In this respect the customer shall take those organizational precautions at its

company to be able to monitor compliance with the code of conduct by its employees, particularly those that are necessary to prevent corruption and other criminal offences.