

Terms and conditions of sale, Festo AG & Co. KG, Ruiter Str. 82, 73734 Esslingen

1. General

All deliveries and services from Festo AG & Co, including the sale of software, are subject to the following terms and conditions of sale. Any conditions in any order given by any customer which are inconsistent with these conditions are expressly revoked. Such conditions shall not be legally binding for Festo unless they have been agreed to in writing by Festo.

The use of Festo software and customised software is subject to separate software user conditions.

The placing of an order and acceptance of goods delivered by Festo shall constitute the customer's agreement to our conditions.

2. Quotation and delivery

All quotations unless limited in time are subject to confirmation; our written order confirmations shall form the basis of the contract and the definitive factor for the scope of the delivery. This also applies if the customer has requested a specific tender. Orders given by the customer are binding for the customer and shall be deemed to have been accepted upon presentation of the order confirmation by Festo. This shall be deemed to have been presented in due time in the case of catalogue components if presented together with the issued invoice and the delivery. In the case of quotations with a time limit and a time stated for acceptance, the quotation shall be binding, if an order confirmation is not submitted in time.

We reserve the right to vary the design and make changes to technical data and performance characteristics insofar as these are for the purpose of technical progress. Festo will announce any such changes, and any product discontinuations, with an appropriate period of notice in its pneumatics catalogue on the Festo website (www.festo.com).

Any documentation submitted with the request for tender or an order, such as drawings, specifications, material, samples, tools, models or similar and made available to Festo, shall remain the property of the customer. These are binding for the preparation and issue of the Festo quotation. Any subsequent variations relating to the initial request for tender and the Festo quotation must be specified in writing when ordering.

Any documentation added by Festo to a quotation in a manner similar to that mentioned above shall remain the property of Festo. The customer undertakes not to use this documentation for the purpose of any other contracts or to reproduce or make it available to third parties.

Any apparent mistakes, printing, computational, spelling or calculation errors shall not be binding for Festo and do not give the customer the right to claim for damages.

Insofar as we have documentation (e.g. manuals) for particular products, this will be available to customers as a free-of-charge download from the Festo website (www.festo.com). Printed versions of this documentation can be provided for customers to separate order and for an additional charge.

3. Prices and payment

Prices apply ex Festo distribution warehouse or Festo factory store. Value added tax is not included.

The despatch and packaging costs shall be met by the customer. Insofar as we are obligated through the packing decree to take back the packaging used for transport, the customer shall bear the costs for the return transport of the packaging used and any reasonable costs for their utilisation or as far as this is possible and considered appropriate by us, any reasonable costs arising additionally for the re-use of the said packaging. The ordering party accepts the obligation, and confirms this by awarding its order to us, to recycle any non-returned packaging of the stated type in accordance with the procedures described in the Packaging Act (Verpackungsordnung), to provide us at any time with requested information about the type and quantity of packaging recycled in this way and to confirm its compliance with this obligation in writing if requested at any time. We are entitled to check compliance with this obligation on the premises of the ordering party at any time by prior appointment.

We reserve the right to implement price changes if the basis for our calculations has been altered.

The invoice amount is payable within 10 days from the date of the invoice and is subject to a 2% discount or is payable within 30 days net cash. The discount of 2% shall not be granted if any other debts are outstanding.

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 credit claimed.

Assembly and repair costs and product information costs are payable net.

In the case of orders with a net goods value of less than € 25, we will add a small-order supplement to the invoice to bring its value up to this amount.

The withholding of payments or offsetting of potential counterclaims is not permissible other than in the case of recognised or legally determined counterclaims.

We will only process customer-specific production/orders after the receipt of a deposit amounting to 30% of the value of the contract, payable upon receipt of the order confirmation. The payment is defined as received once we have access to the entirety of the deposit. The remaining balance shall be payable within 30 days after invoicing. In case of a default of payments, delivery will only occur if paid for in advance.

3.1 Credit Limits

After the establishment of a successful business relationship, and after 6 months at the earliest, we are prepared, unless otherwise agreed, to grant supplier's credit of up to 1.5 times the net monthly turnover based on an average taken over the last quarter. We reserve the right to revoke or cancel the supplier's credit at any time.

New customers will be supplied with goods to a maximum of €500 on account, once we have received a copy of the current trade register excerpt. Should the order exceed this limit, we will only deliver against prepayment. If the credit limit has been exhausted and if no further payments are outstanding, further deliveries can be made upon payment of invoices not yet outstanding or upon receipt of a deposit amounting to 30% of the value of the contract, payable upon receipt of the order confirmation, the remaining balance shall be payable within 30 days after invoicing.

4. Delivery period

The date specified in the order confirmation is binding only if all the technical and commercial details have been clarified by that time. The customer undertakes to provide the materials essential 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 works by the said date or if the customer has been advised of its readiness for shipment.

Partial and early deliveries by Festo are permissible.

The delivery delay increases proportionately in the event of difficulties attributable to vis major. This includes actions as part of industrial disputes, in particular strikes and lockouts. It also applies in the event of unforeseen difficulties or circumstances arising with subcontractors.

Moreover, Festo will not be responsible in the above described circumstances, if these occur 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 or to supply the customer to a correspondingly extended time limit and to charge the customer storage costs.

5. Passage of risk

All deliveries shall be effected at the risk of the customer. Partial and early deliveries shall also be at the risk of the customer upon despatch or upon communication of readiness for shipment. This also applies if the consignment is transported by Festo and even if Festo uses its own vehicles and effects the installation.

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 the property of Festo until all debts owed by the customer are settled in full including any balances existing from the business relationship with the customer irrespective of statutory source.

The enforcement of our right 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 authorised to resell the supplied goods revocably as part of a proper business activity. The customer assigns at this stage all claims with subsidiary rights to the value of the conditional commodity due to him from the resale. The customer retains the authority to collect the assigned claims as long as he meets his payment obligations towards Festo. Upon our request, the customer is under obligation to notify

Festo 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 conditional commodity 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 a conditional commodity.

In the event of any processing, transformation or combination with other items not belonging to Festo, 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 conditional commodity. The share of claim assigned to us has priority over any other claims.

If our conditional commodity is combined with real estate or movable property by the customer, the customer shall by way of security also assign to Festo his claim due to him as remuneration for the said 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 conditional commodity other than those mentioned above, in particular the customer does not have the right to pledge or transfer the property by way of security. 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 and to inform us of the situation immediately.

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. In such an event, the customer shall not have any right to ownership.

7. Use of software

In return for remuneration, the customer shall receive non-exclusive, non-transferrable and perpetual utilisation rights for Festo software of all kinds and any associated documentation. This software may be used on one hardware product or in some cases a specially agreed hardware product. Festo shall remain the owner of copyrights and all other industrial property rights. No part of this software must be duplicated other than for the purpose of data backup. Copyright notices must not be removed.

Festo will supply installation and commissioning instructions containing relevant safety instructions for its software in printed form. All other documentation will be supplied only in digital form with on-line help. When new software releases are supplied, these will also be sent in digital form.

The transfer of software to third parties requires the permission of Festo. 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, the purchaser shall pay a contractual penalty amounting to ten times the order value. This contractual penalty shall not be set off against any potential 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 customised by Festo as part of a contractually produced complete control system making use of modular software modules (standard software modules) from Festo suitable for a wide range of applications and adapted to the contractual performance requirements. Clause 2 of these conditions does not apply to customised training software. Upon full payment of the purchase price of the customised application program Festo shall transfer the exclusive, spatially unlimited and perpetual rights of utilisation to the customer, without the customer having any lawful entitlement to the individual basic standard software modules forming the basis of the customised version. Festo has the right, irrespective of these conditions, to create and offer similar software solutions customised for applications required by other customers. Festo shall retain basic utilisation rights for internal purposes.

8. Warranty claims

Subject to the provisions in item 10 of the terms and conditions herein and excluding any further claims, Festo shall be liable for defects of quality and legality of 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. Excluded from this warranty shall be parts subject to wear.

We shall guarantee 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. In case of customised software, Festo shall warrant compliance with the functions and features stipulated in the specifications, the order acknowledgement, documentation or the work/procedure descriptions worked out together between Festo and the customer. Festo shall not warrant that such programs are free of defects in relation to the use of said programs 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.

The defects shall be notified immediately in writing, however, at the latest within 8 days after receipt of goods.

If the defect complaint is justified, we shall bear of the immediate costs – insofar as the complaint proves to be founded – the cost of the replacement part, shipping thereof as well as reasonable costs related to uninstallation and reinstallation, insofar as such procedure 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 in such urgent cases where there is a danger to operational safety and to prevent extensive damage, and to claim reimbursement of necessary costs from Festo. This shall also apply in the cases where we are causing undue delay in remedying the defect. Should the customer or a third party carry out unqualified repairs, Festo shall not be held liable for any consequences thereof.

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, allows to let pass a reasonable period for repair or replacement delivery as a result of quality defects without remedying the situation. The aforesaid exceptional cases are for instance if Festo refuses to rectify the delivery, the rectification has failed or rectification is unreasonable for the customer. If the defect is insignificant, the customer shall merely have the right of 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 of reduction of the purchase price shall be excluded.

Other claims shall be determined as stipulated in item 10 of the terms and conditions herein.

In addition, we shall not be held liable for any damage on foot of the following grounds: unsuitable or improper use or storage, faulty installation by the customer or a third party, unauthorised repair attempts and modifications, natural wear, erroneous or negligent handling, chemical effects and electrical effects etc. outside our power, as well as in case of non-intended use and non-compliance with our information and details out of our documentation (e.g. user manuals, catalogue sheets), irrespective of the method of such information, in particular in relation to the conditions of use of our products (e.g. lubrication instructions, quality of pressurised air/of other operational requirements, environmental conditions). In addition, the warranty shall be voided if the customer or third parties modify the control/software without Festo's prior consent 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 also shall have the right to withdraw from the contract.

In addition, Festo shall indemnify the customer in relation to any non-disputed claim or legally asserted claim raised by the relevant copyright owners.

Subject to the provisions of item 10 of the terms and conditions herein, the above stated obligations of Festo shall be final in relation to cases of infringement of property rights or copyrights. The aforesaid obligations shall be applicable only if the customer advises any property or copyright infringement claims raised immediately to Festo, 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-authorised modifications of the delivery item by the customer or non-authorised use of the delivery item by the customer.

9. Impossibility of performance, default

The customer may withdraw from the agreement should performance by us become impossible before the risk is passed. The customer shall also be entitled to withdraw from the agreement 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 delay of performance by us as defined by item 4, where the customer guarantees 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 a delay of acceptance through the fault of the customer, the customer shall remain obliged to render a return service.

Should the customer incur damage caused by a delay for which we are responsible, the customer shall be entitled to claim compensation for default.

This compensation shall amount to, for each full week of the delay and to the exclusion of further claims, 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 as agreed upon due to the delay.

Further claims as a result of late delivery shall be determined exclusively as stipulated in item 10 of the terms and conditions herein.

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, the provisions in items 8 and 10, sections 2 and 3 of the terms and conditions herein shall apply accordingly excluding any other claims.

Festo shall 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 contract-typical, reasonably foreseeable damage.

Any further claims shall be excluded.

11. Statute of limitation

Any and all claims, no matter what legal reason, come under statute of limitation after 12 months commencing from time of delivery or acceptance, and concerning damages, not accrued at the product itself, commencing from the time of the relevant injuring action and the knowledge of it or the non-knowledge by gross-negligence of the customer. This does not apply in cases of statutory stipulations as well as in case of damages caused to intend or wilful act.

12. Confidentiality

The customer undertakes to treat all information, know-how 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

The court of our business headquarters in 73734 Esslingen shall be the competent court of jurisdiction for all disputes arising from the contractual relationship, if the customer is an accredited merchant, a legal entity of public law or a public special fund, or has its residence or business headquarters outside the Federal Republic of Germany. Festo is also authorised to institute proceedings at the customer's business headquarters.

14. Applicable law

The law of the Federal Republic of Germany shall apply to the contractual relationship between Festo and the customer to the exclusion of all bi and/or multilateral agreements concerning the purchase of movables, in particular to the exclusion of the UN agreement relating to contracts regarding the international purchase of goods of 11.04.1980 (CISG).