

Terms of Purchase for Investment Goods of Festo Production EOOD

The following Terms of Purchase for Investment Goods shall apply exclusively to all our existing and future legal relationships. Contradictory terms and conditions of business, sale or supply of the supplier shall not be binding for us and are herewith expressly rejected.

The supplier recognises the sole validity of our Terms of Purchase, even if he refers to his own terms and conditions in same. The acceptance of the supplies and services of the supplier by us or our payment for same does not imply agreement with the terms and conditions of the supplier. These terms shall also apply, even where deviating or supplementary clauses or clauses that modify our terms are included in bids or letters of confirmation. Such clauses are herewith expressly rejected.

1. Bids/Orders

1.1 The supplier's samples and bids shall not be binding for us and shall be free of charge. Orders shall only be effective, if they have been made in writing or have been confirmed in writing by us. Oral agreements and agreements made by telephone require written confirmation. Only that which has been recorded in written form in a legally binding fashion shall be considered part of the Contract.

1.2 Every order must be confirmed by the supplier within 7 calendar days, indicating the binding delivery date.

2. Delivery date/Default/Withdrawal

2.1 The supplier shall be responsible for compliance with the binding delivery date as stipulated in the relevant order. Date changes owing to lack of or amended Festo documents shall be communicated in writing.

2.2 The supplier shall be considered to be in default with his deliveries or other services, if he exceeds the agreed deadline. A reminder from Festo is not required.

2.3 If the delivery deadline is exceeded for reasons for which the supplier can be held responsible, the supplier shall be obliged to pay a contractual penalty amounting to 0.1% of the contract value per day of delayed delivery, but, at maximum 10 % of the contract value. In addition to the contractual penalty, Festo can also demand compensation for damages arising from the delivery delay. Festo shall be entitled to deduct the penalty from due payments to the supplier.

2.4 In cases of force majeure and operational restrictions and adjustments that become necessary, we make an effort to find an amicable execution of these cases. If this won't be possible we reserve the right to postpone the delivery date or to withdraw from the Contract. In this cases the supplier shall have no right of compensation. Claims due to cases of force majeure shall be excluded, unless it were caused intentionally or through gross negligence by Festo.

2.5 Notwithstanding this, we shall also be entitled to postpone the originally planned date of delivery/acceptance by four weeks, without incurring the consequences of an acceptance default or owing any compensation.

2.6 We shall be entitled, pursuant to prior notification, to enter the production premises of the supplier during normal business hours to assure ourselves that work on the machines/systems to be delivered is progressing.

3. Dispatch/Prices/Risk

3.1 The supplier shall supply an entire system/machine, including all parts which are required for the proper operation of said system/machine such that the contractually agreed data is achieved and the contractually agreed properties are complied with, even if the required individual components are not listed. The Supplier shall manufacture and inspect the system/machine, including all parts to be delivered allowing for the relevant environmental, technical-safety and legal regulations applicable to the corresponding contractual products, the relevant DIN-, EN-, ISO-, VDE-standards and regulations, engineer standards and on a basis of the relevant state of the art of technology.

3.2 We shall notify the supplier immediately in writing of any nonconformity in the delivery as soon as they are detected, in keeping with the conditions of a proper business process. In this respect, the supplier shall waive the right to object to delayed notices of defect. Payments made do not constitute recognition of a proper delivery. Indeed, the other agreements with respect to warranty are not affected by this.

3.3 Agreed final prices are maximum prices and are inclusive of all additional costs, specifically packaging, insurance and assembly insurance, free to place of unloading point in the Festo factory /DDP according to currently valid INCOTERMS. The supplier shall thus undertake to lower the purchase price in the event of a fall in prices, unless special order-related agreements intervene.

3.4 The risk shall be transferred to us after the machine/system arrives at the place of destination.

3.5 Festo shall make payments as follows:

3.5.1. For an invoice value of less than EUR 50,000.00: 14 days subsequent to receipt of invoice with 3% discount or 60 days net.

3.5.2. For an invoice value greater than EUR 50,000.00, the following applies:

3.5.2.1. Without prepayment:

- 90% after commissioning at Festo;
- 10% after the end of the 4-week test phase and final acceptance with no defects at Festo;

All payments shall become payable 60 days net after receipt of the invoice and the relevant documents for acceptance of the phase.

3.5.2.2. With agreed prepayment:

- 30% after receipt of the order confirmation and bank guarantee at Festo.
- 60% after commissioning on Festo premises.
- 10% after the end of the 4-week test phase and final acceptance with no defects on Festo premises.

All payments shall become payable 60 days net after receipt of the invoice and the relevant documents for acceptance of the phase.

Unless otherwise agreed, payments for services provided as part of machine procurement, such as costs for assembly, conveying, training and packaging, shall be made within 60 days net without discounts.

3.6 Prepayments shall become payable only on opening of a time-limited to a period for at least 3 months following the agreed delivery date, absolute bank guarantee for the amount of the relevant part-payment, to be presented by the supplier accordingly to our requirements to such absolute guarantee. The last part-payment requires presentation of a so-called performance guarantee for the duration of the relevant, contractually agreed warranty period.

In the event of a delay in delivery, the period of validity of the bank guarantee shall be extended/adjusted accordingly by the supplier, without the supplier being prompted to do so.

3.7 Where part-payments have been agreed, the supplier shall be obliged to issue a separate invoice for each part-payment.

4. Spare parts and hourly rates

4.1 The supplier is obliged to guarantee the supply of a comprehensive range of spare parts for the supplied system/machine for a period of 10 years for purchased parts and 15 years for in-house manufactured parts of Supplier from final acceptance within 24 hours from relevant order and to install, at our request, the supplied spare parts. Unless otherwise regulated, the list prices and the standard hourly rates at the time of final acceptance shall be agreed as fixed prices. Price adjustments need to be agreed in writing but only to the maximum adjustments usual in the market in the relevant year and after impartial argumentation by the supplier.

4.2 The supplier shall provide a list of spare parts that includes procurement sources, exact material designations and lead times.

4.3 If any spare parts cannot be supplied within 24 hours, the type of stockpiling to be provided for these parts shall be defined together with the Festo project manager on a project-specific basis, no later than the point at which the system is delivered.

5. Warranty/Liability/Technical Availability

5.1 Unless otherwise regulated in this section, the statutory terms and conditions relating to liability and warranty as defined in the Bulgarian legislation and product liability law shall apply. This shall also apply for any claims of our contract partners and other third parties, in case of secondary purchase or transfer of the system/machine. Such claims shall be the sole responsibility of the supplier and supplier shall indemnify us for all damages and lost profits, irrespective of their legal basis as far as he is responsible for.

5.2 In case that the delivered system/machine has defects, faults or nonconformities Festo shall be entitled to return the goods and claim the price paid together with the expenses for the purchase, keep the goods and claim a reduction of the price or have the defects repaired at the supplier's expense. If the supplier does not meet with our written request to rectify the nonconformity within an appropriate period defined by us, we can, at the supplier's expense, take the necessary measures ourselves or have them performed by a third party. Furthermore we can immediately rectify minor defects ourselves or have them rectified at the supplier's expense after consulting the supplier. If we exercise our legal right to withdraw from the Contract, the goods shall be returned to the place of dispatch at the expense and risk of the supplier.

5.3. The claims of Festo according to Art. 195 of the Obligations and Contracts Act shall be discharged with the elapse of three years period.

The supplier shall provide 3 years trade guarantee of the supplied system/machine.

The warranty period shall start only after our whole acceptance procedure for the supplied system/machine was finished.

5.4 The same scope of warranty shall apply to spare parts.

This shall not cover parts subject to wear and consumables which shall be defined jointly with the Festo Maintenance Department. Supplier guarantees best quality of the parts subject to wear so replacement of these parts subject to wear is and will be reduced to a minimum. A minimum durability of 3 months of each part subject to wear or consumable shall be guaranteed by supplier.

5.5 The supplier guarantees a technical availability as stipulated in the relevant Performance Specification. Any necessary repair work (defect of design, materials or workmanship) shall be borne by the supplier. In case of violation of the limit of the technical availability within the warranty period, the warranty period shall be extended by a 6 months period (evaluation of the availability rate quarterly).

5.6 To the best of its knowledge and belief, the supplier declares that it is not aware of the products it supplies or their components containing tantalum, wolframite, tin or gold (3TG) that has been obtained from the conflict region of the Democratic Republic of the Congo or its adjoining countries. The supplier is aware of its responsibility throughout the supply chain to identify the use, the sources and the origin of 3TG within the supply chain to the extent that it is possible to do so.

6. Festo components

If the contractual products include or the production of same involves elements/components, the supplier shall undertake, when manufacturing the contractual product, to use only Festo elements/components. The use of other brand names requires the consent of Festo ex ante.

7. Transfer of ownership

7.1 The supplier shall ensure that no third parties have rights to the supplied goods. We do not recognize an extended or transferred reservation of ownership on the part of the supplier.

7.2 Payments shall not constitute acceptance or transfer of ownership.

7.3 The statutory regulations for the moment of transfer of ownership shall apply, as soon as otherwise agreed by the parties in the present Terms of purchase, in the contract or its appendixes.

8. Advance acceptance on supplier's premises/Assembly, commissioning and final acceptance by Festo

8.1. A report, signed by the supplier and by Festo, shall be drawn up in relation to advance acceptance, which does not represent final acceptance, even in case that no nonconformities have been recorded, but is meant as preliminary performance control. Festo shall not be permitted to refuse acceptance on the basis of insubstantial nonconformities. Nonconformities shall be recorded in the advance acceptance report and shall be remedied immediately by the supplier previous to delivery to Festo. After such remedy, a new advance acceptance is required. If, during the course of this, nonconformities are detected again which prevent advance acceptance, Festo shall be entitled to cancel the contract without giving a prior notice.

8.2 Advance acceptance shall, at all events, be performed formally and in writing. In particular, advance acceptance shall be deemed as having been performed if Festo has not reported any nonconformity in written form during or after completion of advance acceptance.

If it has not been possible to perform advance acceptance successfully, even on the second attempt, due to reasons that are not attributable to Festo, then Festo may invoice the supplier for the costs arising from each next acceptance. This shall not affect any other claims.

The same shall apply to quantities of supplied materials that are in excess of the agreed quantities (for unmachined parts and test parts), provided that the supplier has provided these excess quantities due to unsuccessful acceptances.

8.3 Assembly/commissioning of the scheduled scope of delivery shall be performed by trained supplier's personnel at the Festo plant and shall be included in the price.

In the event of nonconformities of the system being established during commissioning, these nonconformities shall be remedied immediately by the supplier.

Commissioning shall be completed at the latest 2 (two) weeks subsequent to delivery to Festo.

8.4 Installation/commissioning of the subject matter of the Contract shall be followed by a test phase. This test phase shall last 4 (four) weeks and shall serve to verify operability of the contractual work and services of the supplier in practical use for the intended purpose defined in the Contract and shall provide confirmation that the subject matter of the Contract has been manufactured pursuant to the Performance Specifications of the specification sheet. Festo shall declare final acceptance and shall recognize the work and services of the supplier as contractual if no nonconformities have been established during the test phase or if any nonconformities established have been remedied by the end of the test phase.

Nonconformities established during the test phase shall be jointly recorded and shall be remedied immediately by the supplier. If, during the course of this, nonconformities are detected again which prevent final acceptance, the Contract is deemed not to have been fulfilled. If insubstantial nonconformities are determined, acceptance can take place subject to immediate remedy. In this case, however, we are entitled to withhold the last instalment up to 10% of the order value until the final rectification of all outstanding nonconformities.

If a second acceptance is necessary because of non-remedy of the insubstantial nonconformities, supplier shall be obliged to pay a contractual penalty amounting € 100.00 for each open issue out of the CA040 safety-related acceptance report.

8.5 Final acceptance shall, at all events, be performed formally and in writing. In particular, final acceptance shall be deemed as having been performed if Festo has not reported in written form any nonconformity during or after completion of the test phase. Regardless of the final acceptance supplier shall still meet all requirements of product safety and product liability out of the applicable statutory provisions, the applicable guidelines and applicable standards concerning the system / machine and shall remain solely responsible to do so.

8.6 If Festo is not responsible for delay, final acceptance shall be done successfully at the latest 6 (six) weeks subsequent to delivery to Festo. If the deadline for final acceptance is exceeded for reasons for which Festo cannot be held responsible, the supplier shall be obliged to pay a contractual penalty amounting to 0.1% of the contract value per day of delayed acceptance, but, at maximum 10 % of the contract value. In addition to the contractual penalty, Festo can also demand compensation for damages and lost profit arising from the delivery delay. The contractual penalty shall be credited against any claims for damages arising from default.

9. Industrial property rights

9.1 Drawings, models, samples and tools, which were provided by us or were manufactured according to our instructions, are our property and may not be used by third parties or otherwise made accessible to third parties.

9.2 The supplier shall be liable for ensuring that the samples, brands, models, drawings, descriptions and documentation provided to him and the supplied machine/system is free of third-party rights and, specifically, for ensuring that the industrial property rights of third parties are not infringed. The supplied goods must comply with legal and official requirements. In any event, the supplier shall indemnify us against any third party compensation claims arising from the infringement of these rights and requirements as far as he is responsible for.

10. Termination

10.1 Festo shall be entitled to terminate the Contract at any time and without stating reasons through to acceptance of the contractual work and services. In this case, Festo shall pay the supplier for the work he has rendered to date in accordance with the share of the firm flat-rate price. The supplier shall have no other claims to remuneration.

10.2 In addition, Festo shall be entitled to terminate this Contract for cause if the supplier discontinues his deliveries or payments, interrupts his work with no justifiable reason and does not resume this work or does not comply with contractual deadlines or dates after receipt of a dunning notice from Festo and after granting of a period of grace by Festo. In this case, the supplier shall not be entitled to remuneration for the non-rendered and also non-usable part of the work and services rendered to date.

11. Confidentiality

11.1 The parties to the Contract shall be mutually obliged to handle in strict confidence all information and documents of the relevant, other party to the Contract, expressly identified as confidential, and all other information/documents recognizable as trade secrets and/or company secrets and not to use such information/documents, disclose such information/documents to third parties or make such information/documents available in any other way to third parties for their use.

11.2 Transfer of information and documents shall not constitute any transfer of rights of ownership and rights of use to this information or these documents. Drawings, models, templates and samples etc. shall not be disclosed or made available to unauthorized third parties in any other way.

11.3 Such items may be duplicated only within the framework of operational requirements and only as permitted subject to copyright law.

11.4 Subcontractors shall be obliged to follow the same procedures of this number 11 accordingly.

11.5 The supplier is not entitled to use references in the form of the name/the company name, the contractual association with us, or the contents of activities performed as part of orders without first obtaining written consent from the Festo Purchasing department. In general, the supplier must refrain from using the “Festo” brand name or trademark.

12. Servicing

12.1 The supplier shall ensure immediate start of fault-clearance by qualified and specialized professionals within a period of 24 hours subsequent to receipt of our request. If the request is received after 12 a.m. on a Friday, start of fault-clearance must commence until 12 a.m. on the following Monday. The same shall apply to public holidays at the place of performance start of fault-clearance must commence until 12 a.m. on the following working day. If the supplier fails repeated culpable to comply with this obligation, the supplier shall be obliged to pay a contractual penalty amounting € 500.00 for each infringement. We shall be entitled to assert a claim for higher damages. This shall not restrict the Supplier's right to furnish proof of lower damage or loss incurred. The amount of the contractual penalty shall be offset against any claims to damages.

12.2 Additionally, the supplier shall undertake to set up a hotline at his own expense, in order to be able to offer telephone support during the above indicated times for malfunction clearance from the first advance acceptance. The supplier shall ensure perpetual that it can be contacted at all times between these hours. The supplier shall inform us of the telephone number immediately as at first advance acceptance.

13. Applicable law

13.1 The contractual relationship between the supplier and Festo shall be governed by Bulgarian law to the exclusion of all bilateral and/or multilateral agreements concerning the purchase of moveable property, in particular to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.89 (CISG). Bulgarian law shall also be deemed to have been agreed if the deliveries are made directly by the supplier abroad.

14. Place of performance/jurisdiction

14.1 The place of performance for the delivery is the relevant place of destination.

14.2 For all disputes arising out of the contractual relationship the court of our business headquarters in Sofia shall have jurisdiction. However, we shall also be entitled to take legal action at the place where the business headquarters of the supplier are located.

15. Software

15.1 Unless otherwise agreed in individual contracts, the supplier shall grant us, at the very least, a non-exclusive and non-transferable right of use that is not limited in time to the software and hardware products and the corresponding documentation.

15.2 We shall be entitled to make copies for the purposes of data protection. Moreover, in cases of providing the machine/system to a third party we are also entitled to forward same to our customer within the context of contractual processing provided we include a reference to any copyright notes of the owner.

16. Insurance

16.1 The Supplier engages to take out a suitable insurance policy for product liability and to provide Festo with a copy of the pertinent insurance certificate. The supplier shall keep cover and scope of the suitable insurance policy at least unmodified during the contract term.

16.2 A suitable coverage exists if the cover and scope of product liability insurance of the Supplier covers the contract-typical, reasonably foreseeable damage and claims considering the quantity and the mode and type of application of the product(s) of the Supplier.

The Supplier shall monitor the insurance coverage of his product liability insurance periodically. He shall increase the insurance coverage at his own expense if reason(s) can be identified by the supplier, which is/are able to influence the risk of damage or claims negatively or increase in the risk of damage or claims.

17. Compliance

17.1 Supplier hereby represents, confirms and certifies that it and all of its directors, officers, employees and subcontractors has concluded with the Code of Conduct for Business Partners of Festo.

17.2 Securing compliance with the Code of Conduct for Business Partners of Festo, Supplier commits to take any necessary step to avoid any illegal actions, especially to avoid illegal actions which are able to incriminate Festo.

Therefore within its company and/or group Supplier shall take any necessary actions and launch any system needed to monitor compliance with the Code of Conduct for Business Partners of Festo of its directors, officers, employees and Subcontractors especially such actions which are essential to avoid corruption or any other criminal acts.

18. General/Accuracy/Additional Costs/Assignment

18.1 Additional expenditure and postponement resulting from jointly agreed modifications to and deviations from the bid may be claimed from Festo by the supplier only if such modifications and deviations have been expressly agreed and recorded in a joint, written report or if a written order has been issued for them.

18.2 Installation work shall be performed by the supplier in compliance with the relevant accident prevention regulations and the known instructions for Festo plant security.

18.3 The supplier undertakes to notify Festo within the framework of his duty to take care if he detects vulnerabilities in the concept which could lead to the need for subsequent orders being placed or a reduction in the value of work and services.

18.4 Likewise, Purchasing Department of Festo shall be notified in advance if it has wishes and requirements which would lead to additional expense for Festo.

18.5 The assignment of rights, debts or the transfer of obligations by the supplier arising from this Contract requires our prior written consent, otherwise shall be invalid.