

Terms and Conditions of Sale of fischer Canada

The following standard terms and conditions of sale (the “**Terms**”) form an integral part of each sales contract entered into between fischer Canada Stainless Steel Tubing Inc. or fischer Tubetech Inc. or Koenigfischer Metal Inc. (such corporation hereinafter called “**fischer**” or “**the Seller**”) and each purchaser (“**the Buyer**”) and shall apply to and govern any present or future sale of goods and services (the “**Goods**”) by the Seller to the Buyer whether the Buyer orders Goods through the medium of (a) written contracts or other writings between the Buyer and the Seller or a quotation from the Seller which the Buyer has expressly accepted relating to the Goods or releases thereunder; or (b) written purchase orders of the Buyer expressly accepted by the Seller or in respect of which the Seller has commenced performance (in each case, a “**Sales Contract**”). These Terms and the terms of the Sales Contract become a binding contract between the Buyer and fischer.

1 General; Entire Agreement; Representations

1.1 These Terms, together with the terms of the Sales Contract, contain the entire and exclusive agreement (the “**Agreement**”) between the Seller and the Buyer regarding the sale of the Goods described in the Sales Contract, unless otherwise indicated in the Sales Contract.

1.2 In the event of any conflict or inconsistency between these Terms and/or the terms and conditions contained in the Purchase Order or in any other form issued by the Buyer, whether or not any such form has been acknowledged or accepted by fischer, these Terms shall prevail and such conflicting, additional or modified terms are expressly rejected by fischer and are expressly excluded from these Terms and the Sales Contract, unless such terms are expressly agreed to by fischer and incorporated in the Sales Contract. No waiver, alteration or modification of these Terms shall be binding upon fischer unless made in writing and signed by a duly authorized representative of fischer.

1.3 The Buyer and the Seller agree that no representations have been made or relied upon concerning the subject matter of these Terms, except as specifically stated in these Terms and the Sales Contract.

2 Offers; Interpretation

2.1 Unless specified otherwise, fischer’s offers are not binding and a Sales Contract between fischer and the Buyer is only concluded after written confirmation by fischer. Oral agreements, undertakings, representations and warranties and guarantees, if any, by the Seller’s representatives are only binding after fischer’s written confirmation.

2.2 The interpretation of commercial terms contained in these Terms is governed by the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce (Incoterms 2020).

2.3 Any changes to the Purchase Order or Sales Contract (as applicable) shall only be binding upon the Seller once they are accepted by the Seller in writing and shall be at the Seller’s sole discretion. Changes to the Purchase Order or Sales Contract may be subject to additional charges or a change in the price of the Goods and/or a delay in delivery of the Goods.

3 Prices; Payment

3.1 Unless otherwise expressly stated in the Sales Contract, prices are quoted in Canadian Dollars and do not include insurance, storage, handling, demurrage, freight, duties, taxes (including, without limitation, to federal, state or provincial sales tax), all of which are extra and are the sole responsibility of the Buyer and shall be paid by the Buyer. Prices are subject to increase in accordance with Paragraph 4 and Paragraph 9.

3.2 Payment for the full amount of each invoice issued pursuant to a Sales Contract (“**invoice**”) shall be made to the Seller on or before the due date stated in the invoice, addressed as indicated on the invoice, in the currency established in the invoice in question, subject to Paragraph 3.1. All claims by the Buyer shall be made by written notice to the Seller in accordance with the provisions of Paragraph 12, and no offset or deduction from any invoice is permitted. If no date is set out in the invoice, all payments shall be due thirty (30) days after the issuance of such invoice.

3.3 Should payment not be made to the Seller when due, fischer reserves the right, until the price has been fully paid in cash, to charge the Buyer with interest on such overdue payments at the lesser of 18% per annum (1.5% per month) or the maximum amount allowed by law on any such payment from the date such payment becomes due. The charging of such interest shall not be construed as obligating the Seller to grant any extension of time in the terms of payment.

4 Taxes; Duties

Unless otherwise expressly stated in the Sales Contract, the Buyer shall be solely responsible for and shall pay all sales taxes, duties, fees, levies, assessments, exactions, impositions and other charges, of any local, state or federal government now or hereafter imposed or assessed or in any way arising out of these Terms and the Sales Contract.

5 Delivery; Shipment

5.1 Shipment and delivery periods/dates are approximate and are based on prevailing market conditions at the time of the Seller's issuance of the Sales Contract.

5.2 The Seller's obligation to deliver is subject to due and timely delivery by the Seller's suppliers to them unless the Seller is responsible for such an incorrect or late delivery. In addition to the Seller's other remedies in case of a default of the Buyer, the agreed delivery period may, at the Seller's option, be extended by the period, during which the Buyer is in default with its obligations under the Agreement.

5.3 Unless otherwise expressly stated in the Sales Contract the Seller shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale and payment shall become due therefor in accordance with the terms of payment set forth in the Sales Contract.

5.4 Unless otherwise specified in the Sales Contract all shipments under these Terms and the Sales Contract shall be made on an Ex-Works Incoterms (2020) basis the moment the Goods are placed at the Buyer's disposal at fischer's facility and all risk of loss and damages transfers to the Buyer at such time.

6 Risk of Loss

Risk of loss and damage shall be transferred pursuant to the Incoterms 2020 governing Ex-Works delivery. If delivery is postponed at the Buyer's request or for reasons for which the Buyer is responsible, the risk of accidental loss and/or impairment of the Goods shall pass to the Buyer on the day on which delivery would have been executed pursuant to the original provisions of the Sales Contract and the Seller has notified the Buyer that the Goods in question are ready for delivery.

7 Licenses and Approvals

The Seller will be solely responsible, at its own cost and expense, for obtaining all necessary licenses and authorizations to sell the Goods at the load point, including without limitation, to all licenses and authorizations from all governmental or quasi-governmental agencies.

8 Disclaimer of Warranty and Limitation of Liability

8.1 Unless otherwise expressly stated in the Sales Contract, and notwithstanding any oral or written exchange between the Buyer and the Seller prior or subsequent to the date of the Sales Contract, all warranties, conditions, representations and collateral agreements, express or implied, statutory or otherwise, including, without limitation, any implied warranty or condition of merchantability, quality or fitness for purpose are hereby expressly disclaimed by the Seller and excluded, and if any model or sample was shown to the Buyer, such model or sample was used merely to illustrate the general type and quality of goods and not to represent that the goods would necessarily conform to the model or sample. The Seller shall not be liable whether in contract, tort or otherwise, for any loss, injury, expense or damage of any kind whatsoever, regardless of whether those damages were foreseeable (including, without limitation, special, consequential, incidental or indirect damages including loss of use, earnings or profits), in any manner resulting, whether or not from negligence by the Seller, its employees, agents or servants. In any event the liability of the Seller arising out of or relating to the goods sold pursuant to the Agreement shall be limited to the actual amounts paid by the Buyer to the Seller for the goods giving rise to such damages. This Paragraph 8.1 shall survive the termination or cancellation of the Agreement.

8.2 If any Goods shall fail to conform to the specifications set out by the Seller contained in Sales Contract, and the Seller agrees that such Goods fail to conform to the specifications set out by the Seller, the Seller will repair or replace the Goods or, at the Seller's option, reimburse the Buyer for the purchase price therefor. Any claim that the Goods fail to conform to specifications or are defective shall be deemed waived by the Buyer unless made in writing within thirty (30) days from receiving the Goods to which such claim relates. No Goods shall be returned to the Seller, without the Seller's written consent.

9 Change in Cost

Any increase in insurance premiums, duties, taxes, increased valuation, transportation cost, ocean freight, terminal or other shipping charges incurred by the Seller in respect of the Goods and established or occurring after the date of the Sales Contract shall entitle the Seller to elect, in its sole discretion, to increase the price indicated in the Sales Contract accordingly, or to terminate the Sales Contract.

10 Reservation of Title; Security Interest

10.1 The Seller hereby retains and reserves title to, ownership of, property in, and, without limitation, a first fixed charge on and security interest (including, without limitation, a purchase-money security interest) in the Goods, and all attachments and accessories now or hereafter affixed thereto or used in connection therewith, and all proceeds therefrom, until all amounts due to the Seller are paid in full.

10.2 The Buyer shall obtain and deliver to the Seller from time to time, on request by the Seller, agreements in form and substance reasonably acceptable to the Seller, for further effectuating the security interest and agreements herein contained, including, without limitation, subordination agreements executed by any landlord, owner, mortgagee or other encumbrances of the Buyer or of the premises where the Goods will be situated. The Buyer shall indemnify and save harmless the Seller from any liability arising out of the Seller's removing the Goods from any premises in which the Goods are located.

10.3 The Buyer agrees not to charge, encumber or dispose of any interest in the Goods and to keep them free and clear of all charges, liens, security interests and encumbrances of any nature whatsoever until such time as all amounts to be paid to the Seller under the Sales Contract have been fully paid and satisfied.

The intent of the parties is that the Agreement constitutes an agreement in respect of reservations of ownership and the sale and transfer thereof in respect of universalities of movable property of the same kind contemplated by Article 2961.1 of the Civil Code of Quebec.

11 Breach; Termination

11.1 If the Buyer breaches any provision of these Terms or the Sales Contract or any other contractual obligation in favour of the Seller, (a) the Seller may choose to defer any or all further shipments or other performance under the Sales Contract and performance of any other contractual obligation in favour of the Buyer until the Buyer cures its breach, or (b) the Seller may immediately terminate the Sales Contract if the Buyer fails to cure such breach within ten (10) days after receipt of written notice from the Seller describing such breach.

11.2 In the event of a termination, upon the Seller's demand, all outstanding payment obligations or other indebtedness of the Buyer to the Seller under the Sales Contract and any other agreement between the Seller and the Buyer shall be immediately due and payable.

11.3 Acceptance by the Seller of less than the full amount due shall not be a waiver of any of the Seller's rights under the Agreement or applicable law.

11.4 Notwithstanding any provision in the Sales Contract, the Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to the Buyer unless the Buyer is fully in compliance with its payment and other obligations under the Sales Contract and any other contractual obligation in favour of the Seller. In addition, in the event that the Buyer fails to make any payment when due, the Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of the Buyer to the Seller against any outstanding payment obligations or other indebtedness that the Seller or any of its affiliates may owe the Buyer.

12 Claims

12.1 All claims for damages to, or defects in, the Goods which the Buyer claims occurred before delivery of the Goods to the Buyer, or any claims for shortage of Goods, are barred unless reported in writing by the Buyer to the Seller, with full particulars, promptly after the damage, defect or shortage was or reasonably should have been discovered, but in no event later than thirty (30) days after the date of delivery. The Buyer shall make the Goods available to the Seller and its insurer for inspection and investigation forthwith.

12.2 If a timely and bona fide claim is made with respect to a material defect in or material damage to the Goods, and if the Seller accepts the validity of such claim, the Seller shall give the Buyer allowance therefor, not exceeding the purchase price. The Seller shall not be otherwise liable for such defective or damaged Goods or its use or for consequential or special damages in tort or contract or for any cause. The Buyer's Obligation to accept and make payment on time for the balance of the material delivered or to be delivered under the contract shall not be affected by any claim for damaged or defective material in other shipments.

13 Force Majeure

fischer shall not be responsible or liable for any loss or damage incurred by the Buyer resulting from causes beyond the reasonable control of fischer including, without limitation, acts of God, war, invasion, insurrection, the Seller's failure to obtain necessary governmental licenses or authorizations, riot, the order of any civil or military authority, fire, flood, weather, acts of the elements, delays in transportation, unavailability of equipment or materials, breakdown, sabotage, lock-outs, strikes or labor disputes, delays at the terminal, or the failure of the Seller's suppliers to meet their delivery promises. The acceptance of delivery of the Goods by the Buyer shall constitute a waiver of all claims for loss or damage due to any delay whatsoever.

14 Assignment; Survival

14.1 The Buyer shall not assign all or any portion of the Contract without the Seller's prior written consent.

14.2 The Seller may assign all or any part of its rights and/or obligations hereunder to its financing partners or affiliates without the Buyer's consent.

14.3 The Agreement shall bind and inure to the benefit of the successors and permitted assigns of the respective parties.

14.4 In order that the parties may fully exercise their rights and perform their obligations arising under the Agreement, any provisions of the Agreement that are required by their nature to ensure such exercise or performance (including, without limitation, any obligation accrued as of the termination date) shall survive the termination of the Agreement.

14.5 Sections 8, 10, 11, 12 and 13 of the Agreement shall survive the expiration or termination of the Agreement.

15 Severability

If any one or more of the provisions contained herein or in the Sales Contract shall for any reason be invalid, illegal, or unenforceable, such circumstance shall not affect any other provision contained herein or in the Sales Contract and the Agreement shall continue in full force and effect and be construed as if such provision, to the extent that it is invalid, illegal, or unenforceable, had never been contained herein or therein.

16 Construction

The headings of the paragraphs in these Terms are provided for convenience only and may not be considered in the interpretation of the Agreement. The parties agree that the provisions of the Agreement may not be construed in favour of or against either party by reason of the extent to which a party or its professional advisors participated in the preparation of the Agreement.

17 Entire Agreement

The Agreement comprises the complete and final agreement between fischer and the Buyer, except as specifically set forth in Paragraph 1, and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between fischer and the Buyer, either written or oral. Any other representations or warranties made by any person, including, without limitation, employees or other agents of fischer, that are inconsistent with the Agreement must be disregarded by the Buyer and are not binding upon fischer.

18 Waiver

The waiver by fischer of any breach by the Buyer of any provision of the Agreement may not be construed to be either a waiver of the provision itself as to subsequent application or any other provision of the Agreement.

19 Notices

All notifications, communications and notices required or permitted under these Terms and the Sales Contract shall be made in writing and delivered to each party, by hand, email or registered letter with notice of receipt, to the addresses listed in the Sales Contract.

20 Governing Law

These Terms and the Sales Contract shall be governed, interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of the Canada applicable therein, without regard to the applicable conflicts of law provisions.