

General Terms and Conditions – fismatec GmbH
(Amtsgericht Stuttgart, HRB 7311309)
stated December 10, 2010

1. Area of Validity:

1.1 Unless agreed otherwise, the following General Terms and Conditions of sales, deliveries and payments of **fismatec GmbH**, Auensteinerstr. 32, 74360 Ilsfeld, referred to as **fismatec** in the following, apply under exclusion of the General Terms and Conditions of our suppliers and customers, to all deliveries, services and supplies relating to fismatec. In addition to our General Terms and Conditions of Trading, the INCOTERMS of the International Chamber of Commerce, Paris, in the relevant valid version apply with a lower priority to international transactions.

1.2 The General Terms and Conditions as well as any contracts made subject to these conditions are subject to German law as applicable to residents.

1.3 Should any of the conditions below be ineffective towards contractual partners who are not business people, legal entities of public law or fund assets, their validity towards business customers will remain unaffected in line with § 310 para. 1 BGB (German Civil Code).

1.4 The place of jurisdiction for any disputes arising from the contractual relationship, providing the contractual partner is a business person, a legal entity of public law or fund assets, is agreed to be Heilbronn. This also applies to complaints referring to transactions relating to documents, bills of exchange or cheques.

2. Realisation of the contract:

2.1. Technical data and/or illustrations of the article in question in offers, brochures or other information material do not portray any guaranteed features.

The acceptance of orders by **fismatec** will be made when a written confirmation is supplied or the ordered goods are dispatched.

2.3 We reserve the right to make changes, in particular improvements of the goods ordered, if these are necessary due to official requirements, for technical reasons and/or for reasons relating to consumer protection, or are advisable for the rationalisation of manufacturing processes, providing the customer can be reasonably expected to accept the changes.

3. Prices:

3.1 Unless indicated otherwise in our order confirmation, our prices are ex-works. The prices listed in our price list are excluding sales tax ex-works, unless indicated otherwise.

3.2 In the case of contracts with an agreed delivery period exceeding four months, **fismatec** reserves the right to increase prices in line with any cost increase as a result of labour agreements or price increases of materials. Should the price increase exceed 5%, the customer has the right to withdraw from the contract.

3.3 The agreed prices do not include delivery costs. The delivery costs are to be paid separately by the customer, unless agreed otherwise.

4. Terms and Conditions of Payment:

4.1 Invoices by **fismatec** for goods are always to be paid immediately on receipt of the goods, either in cash or by payment into a business bank account of **fismatec**. The goods will only be dispatched to the customer's address if payment is made on delivery or has been made in advance. Payment always has to be made in the currency indicated in the invoice. Payments are considered to have been made on the day they are received by **fismatec**. In each case the payments will be applied against the oldest outstanding invoice. Prepayments and payments on account will not incur interest. Cheques will only be accepted by way of payment and subject to the standard

reservations applicable to commercial transactions. Bills of exchange are only accepted following prior agreement, and then only by way of payment subject to the standard agreements applicable to commercial transactions. Discount charges will apply to bills of exchange transactions.

4.2 The customer will be in default of payment at the very latest 30 days following the due date of the payment in accordance with point 4.1. Default can occur earlier should **fismatec** choose to issue an overdue notice. If the customer is in default, he is obliged to pay interest charges of 8% above the base rate from the point in time at which he began to be in default. Should **fismatec** be able to prove higher damages caused by default, it is entitled to make a claim for these.

4.3 Should the customer be in default of payment towards **fismatec**, **fismatec** is not obliged to fulfil further orders by the customer during this period.

4.4 The customer can only exercise the right of retention or choose to offset **fismatec**'s payment claims against those claims that are undisputed or have been legally verified.

4.5 If the customer's economic situation deteriorates through his own actions, or if he suspends payments, becomes insolvent or applies for composition proceedings or bankruptcy proceedings, or in case of dishonour of cheques, or, where applicable, bills of exchange of the customer, all open or deferred claims by **fismatec** become due for payment immediately. In these cases **fismatec** is entitled to request prepayment or securities, or, should the customer when requested refuse to fulfil the contract or refuse to provide securities, to withdraw from the contract or make a claim for damages arising from non-fulfilment.

4.6 If the ordered goods are provided by us and not accepted by the customer, we are entitled to stipulate a final deadline of two weeks for the acceptance of the goods. Following unsuccessful expiration of this deadline we are entitled to claim damages of 20% of the value of the goods from the customer. The customer is entitled to prove a lower level of damages. **Fismatec**'s rights to make a claim for further damages or the enforcement of ongoing contractual obligations remain unaffected.

5. Deliveries:

5.1 Delivery deadlines and delivery dates are only binding if they have been expressly agreed as such with **fismatec**. An expressly agreed delivery period will be considered fulfilled if the item in question has been dispatched within the time period or, should dispatch be delayed for reasons out of **fismatec**'s control, if the readiness for dispatch by **fismatec** is communicated during the agreed time period.

5.2 An agreed delivery period is extended reasonably if it is not complied with due to force majeure, mobilization, war, unrest, strike, lockout, seizure, embargo, lack of natural resources or the occurrence of other unexpected obstacles which cannot be reasonably resolved, providing the obstructing factor occurred following the completion of the contract. The same applies if **fismatec**'s suppliers are affected by such events. If the agreed delivery is expected to be delayed by more than six months as a result of absence of deliveries from **fismatec**'s suppliers not caused in any way by **fismatec**, or due to force majeure, **fismatec** is entitled to withdraw from the contract.

5.3 If dispatch or delivery is delayed by the customer, **fismatec** is entitled to invoice the customer for any additional costs incurred as a result of this delay.

5.4 **fismatec** is entitled to make partial deliveries to a reasonable extent.

6. Costs – Delivery and Other/Transfer of Risk/Packaging Regulations:

6.1 The ordered goods will be dispatched by **fismatec** in packaging that is suitable for the product and the delivery process. The customer will bear any additional costs of any packaging or transportation requested over and above.

6.2 The customer will bear the risk for all deliveries, including returns, but excluding returns for material defects. This also applies if free delivery or fob/fca or cif delivery has been agreed. At the very latest the risk will be transferred to the customer when the goods are dispatched in the sense of § 447 BGB.

6.3 Packaging Regulations: In line with the stipulations of the Packaging Regulations we are obliged to take back packaging of our products that does not bear the symbol of a widespread disposal system (such as the "Grüner Punkt" of the Duales System Deutschland AG) and to ensure its reuse or disposal.

Please contact us for further clarification on the return of such products (**fismatec** GmbH, Auensteiner Str. 32, 74360 Ilsfeld, Tel.: +49 70 62 / 67 47 11 Fax: +49 70 62 / 67 60 67). We will then provide you with the details of a communal collection point or a disposal company near you that will accept the packaging free of charge. Should this not be possible you can also send the packaging to us (**fismatec** GmbH, Auensteiner Str. 32, 74360 Ilsfeld). The packaging will then be reused by us or disposed in line with the stipulations of the Packaging Regulations.

7. Software License:

The supply of software only includes the license to use the particular software itself. Software will only be supplied for the exclusive use by the customer. In each case it must only be used on a single computer system. Changes to the software are only permitted with express agreement by **fismatec**. Liability by **fismatec** for damages arising from the use of a program is excluded, unless gross negligence by **fismatec** can be proven.

8. Retention of Title:

8.1 The goods delivered by **fismatec** remain the property of **fismatec** until all of the customer's contractual obligations have been fulfilled (goods subject to retention of title). If an explicit or implicit current account relationship exists, the goods remain the property of **fismatec** until the claim for payment of account balance has been settled. The account balance will be considered as accepted by the customer if the customer does not object to the balance message within a time period of 3 days following receipt.

8.2 The customer is obliged to store the goods subject to retention of title appropriately and to insure them sufficiently at his own cost. The customer is only entitled to sell on the goods subject to retention of title as part of an orderly business transaction either against cash payment or under agreement of retention of title. The customer is prohibited to chattel mortgage or pawn or exercise any other disposal over the goods subject to retention of title which obstructs or prevents the collateral purpose. If the goods subject to retention of title are seized by a third party at the customer's premises, the customer must notify the seizing third party of the retention of title and immediately inform **fismatec** in writing, including the seizure documentation and a declaration confirming that the seized goods are the delivered goods. Any costs arising from the protection of the goods subject to retention of title against access by a third party will be borne by the customer.

8.3 The customer will always handle or process the goods subject to retention of title for **fismatec** without any obligations arising for **fismatec** as a result. If the goods subject to retention of title are processed, combined or mixed with other goods not belonging to **fismatec**, **fismatec** will gain the resulting proportional share of ownership in the new item. This share will be based on the proportion of the invoice value of the goods subject to retention of title and the value of the other processed goods at the time of processing, combining or mixing. If the customer obtains the sole right to the new item, he will grant **fismatec** joint ownership in relation to the invoice value of the goods subject to retention of title. The customer will store the new item for **fismatec** free of charge.

8.4 If the goods subject to retention of title are sold or leased, the customer will as a precaution henceforth relinquish any claims or demands that he is legally entitled to arising from the resale or the lease to **fismatec**, until all claims arising from the contractual relationship with the customer have been satisfied. This includes any bills of exchange or cheques received up to the invoice amount of the goods subject to retention of title. If the processed goods to which **fismatec** has obtained joint ownership are sold, the transfer shall be limited to the proportion of the claim equal to the proportion of joint ownership.

8.5 On receipt of an invoice from **fismatec** the customer, as trustee, is entitled to collect any claims assigned to **fismatec** arising from the disposal of the goods and to realise ancillary rights. The collection authorisation and the permission to realise ancillary rights can be revoked if the customer's financial situation deteriorates considerably. If the customer's financial situation is subject to extra-judicial or judicial composition procedures or bankruptcy proceedings or if these proceedings are rejected for lack of assets, the above granted rights expire without the requirement for a declaration of revocation.

8.6 Should the customer be in default of payment or should payment cease for another of the reasons listed under point 4.5, or should the customer's financial situation deteriorate, the customer must supply **fismatec** on request with a list of all goods still kept by him that are subject to a retention of title and/or with a list of all claims assigned to **fismatec**, including the names and addresses of debtors and the respective amount of the claim. In this case

fismatec can request that the customer notifies his debtors of the assignment of the claim to **fismatec**. **Fismatec** is permitted to notify third party debtors of the assignment themselves. Additionally, **fismatec** is entitled to withdraw from the contract and reclaim the goods subject to retention of title for the purpose of utilisation and settling of the balance, at the customer's cost. The customer is obliged to provide **fismatec** with ownership of the goods and to grant **fismatec** or **fismatec**'s agent entry to the business premises and store rooms during normal business hours for the transfer of the goods subject to retention of title.

If required by the customer, **fismatec** is obliged to release securities should their value exceed **fismatec**'s claims arising from the contractual relationship by more than 20%. **Fismatec** is entitled to choose which securities are affected by the release.

9. Claims/Warranty:

9.1 The goods delivered by **fismatec** have to be state-of-the-art and must conform to the quality agreements made.

9.2 Claims for incomplete or incorrect deliveries and/or notifications of obvious defects or those obvious during orderly examination are to be made in writing to **fismatec** immediately, at the very latest within 48 hours following delivery. This time period has been complied with if the notification is dispatched in time. Notification of any hidden defects has to occur immediately following their discovery, at the very latest prior to the expiration of the statute of limitation agreed below.

9.3 The statute of limitation for machines, devices, parts and accessories is one year from the date of delivery. Excluded are consumables and used parts! Improper application or the installation of the delivered machines, devices, parts or accessories by the customer in vehicles, or improper repair by the customer, invalidates the statute of limitations. Neither does a statute of limitation exist for damage to machine parts or device parts if these are used in performance-enhanced vehicles.

When adapting an engine control unit sent to **fismatec**, **fismatec** will bear no responsibility for the functionality if the unit is installed by the customer (defects resulting from deinstallation/installation in the electronic engine control system – engine control unit).

Should **fismatec** only provide performance optimisation ("tuning") on the customer's vehicle, the statute of limitation as well as the liability for any damages shall be limited to defects to the parts installed by **fismatec**. A statute of limitation or liability for damage or wear and tear of the motor or transmission of the vehicle resulting from increased performance and/or performance optimisation is excluded. The customer retains the right to enter into a separate guarantee with **fismatec** to cover such damage, subject to a charge.

9.4 If during the statute of limitation the customer notifies **fismatec** of a defect that is the responsibility of **fismatec**, **fismatec** has the choice to either replace the defective item or to repair it. If a repair would involve disproportionate effort, **fismatec** is entitled to refuse it. In this case the customer has the right to a reduction or withdrawal from the contract.

If defects are corrected, **fismatec** is obliged to bear all costs necessary for the correction of the defects, in particular those relating to transport, work and materials, unless these are increased due to the defective item having been moved from the delivery address to a different location.

9.5 The customer must comply with his contractual obligations, in particular the agreed payment conditions. The customer can only retain payment due to a defect if he has submitted an orderly complaint. In that case the retained payment must be of a level proportionate to the extent of the defect and must not exceed three times the expected costs associated with the removal of said defect.

9.6 The customer must give **fismatec** sufficient time and opportunity to fulfil the warranty obligations. Should the customer refuse to do so, **fismatec** will be released from all warranty obligations and liability for defects.

9.7 If **fismatec** allows a stipulated deadline to lapse without removing the defect, or if repair is refused by **fismatec** or if repair or replacement is impossible, the customer has the right to reduce the price or withdraw from the contract. An impossibility of repair or replacement only exists if the defect cannot be removed after two repairs or two attempts at replacing the item or if a defect-free exchange has failed.

9.8 Guarantees that have been exclusively and freely given by **fismatec** and do not form part of the legal warranty are personal and non-transferable to other persons. This applies to all special items, used goods and those deviating from the standard of original goods. If the goods are sold on, any assured claims become invalid with immediate effect.

9.9 All tuning measures and alterations will be undertaken at the explicit request of the customer. All warranty claims resulting from these will be handled as described in 9.8.

10. Liability:

fismatec is liable for damages resulting in damage to life and limb that are caused by gross negligence by **fismatec** or by a representative or agent. **fismatec** is only liable for other damages if these are intentional or caused by gross negligence by **fismatec** or by a representative or agent. If the negligence is only careless our liability is excluded, unless one of the contractual cardinal duties has been infringed. If a contractual cardinal duty has been carelessly infringed, liability is limited to the typical and expected damages arising from the contract.

11. Copyright/Trademarks:

11.1 The copyright to the goods and trademarks supplied by **fismatec** remains with **fismatec**, unless expressly agreed otherwise. Copying of the goods supplied is not permitted without prior agreement by **fismatec**.

11.2 Trademarks may only be used if a separate written permission by the trademark holder is provided in connection with the products processed or manufactured by the customer.

11.3 If the completion of the order in line with the customer's specification results in the infringement of the trademark rights of a third party, the customer is liable for all claims made by the wronged party as a result.

12. Cancellation Policy:

12.1 Revocation right: You can cancel the contract within four weeks in writing (e.g. letter, fax, e-mail) without stating a reason or, if the goods have been supplied to you before this period has passed - by returning the items. The period begins when the written form of this declaration has been received, but not before the recipient has received the goods; in the case of repeat deliveries of similar items it does not begin until the first partial delivery has been received and not before we have fulfilled our duty to inform in line with § 312c para. 2 BGB in connection with § 1 para. 1, 2 and 4 BGB-InfoV as well as our duties in line with § 312e para. 1 sentence 1 BGB in connection with § 3 BGB-InfoV. The cancellation period has been complied with if either the cancellation notification or the goods in question are sent off within the time period. The cancellation is to be addressed to:

fismatec GmbH
Auensteiner Straße 32,
74360 Ilsfeld
Fax +49 (0) 70 62 / 67 60 67
anfrage@fismatec.com

12.2 Cancellation Effects: If an effective cancellation occurs, both parties are to return any services received and, if applicable, hand over any benefits incurred (e.g. interest). If you are unable to return the received service to us either whole or in part or only in a deteriorated condition, you will have to provide compensation where necessary. In the case of items having been transferred, the above does not apply if the deterioration of the item is solely due to its inspections – e.g. of the kind that might occur during a retail transaction. You do not have to provide compensation if the deterioration results from using the item as intended. Goods that can be returned by post are to be sent at our risk.

You have to bear the costs for the return if the delivered goods correspond with the order and if the price of the returned goods does not exceed the sum of 40 Euro or, if the item value exceeds 40 Euro and you have not provided the service in return or the contractually agreed part payment at the time of cancellation. In all other instances the return will be free of charge. Items that are unsuitable for posting will be collected from you. Obligations for the reimbursement of payments must be fulfilled within 30 days. The period begins for you when you send your cancellation notification or dispatch the item. It begins for us when either is received.

13. Place of Execution:

The place of execution for all services to be performed by **fismatec** is Heilbronn.

14. Final clauses:

Should individual clauses of these Terms and Conditions of Trading or parts thereof be invalid or ineffective, the effectiveness of the other terms and conditions and the effectiveness of the contract between **fismatec** and the customer remains unaffected.

Ilfeld, December 10, 2010