

Terms and Conditions of Sale of fischer USA or Canada

The following standard terms and conditions of sale (the “**Terms**”) (a) form an integral part of each sales contract entered into between, as applicable, fischer USA Stainless Steel Tubing, Inc., 1120 AEDC Access Road, Manchester, TN 37355 USA or fischer Canada Stainless Steel Tubing Inc., 190 Frobisher Dr., Waterloo, ON N2V 2A2, Canada (such applicable corporation hereinafter called “**fischer**” or the “**Seller**”), and the purchaser (the “**Buyer**”) that issued an Order for goods (the “**Goods**”), and (b) shall apply to, govern and prevail over any other terms and conditions for any present or future sale of Goods by the Seller to the Buyer. As used in these Terms, “**Order**” shall mean any purchase order, or other writing issued or delivered by the Buyer to the Seller for the Goods; “**Proposal**” shall mean the quotation, proposal, or other writing for any Goods provided by the Seller to the Buyer and which has been expressly accepted by the Buyer including, without limitation, by issuance by the Buyer of an Order; “**Acknowledgment**” or “**Acknowledged**” shall mean a confirmation that the Seller has received an Order and is in no way a confirmation that the Order is accepted by the Seller; “**Acceptance**” or “**Accepted**” shall mean the Seller’s agreement to furnish the Goods on the terms and conditions set forth herein. These Terms and the Proposal shall become a binding contract between the Buyer and fischer.

1 General; Entire Agreement; Representations

1.1 These Terms, together with the terms of the Proposal, contain the entire and exclusive agreement (collectively, the “**Agreement**”) between the Seller and the Buyer regarding the sale of the Goods, unless otherwise indicated in the Acceptance or other signed writing between the Seller and the Buyer.

1.2 In the event of any conflict or inconsistency between these Terms and/or the terms and conditions contained in the Order or in any other form or writing issued by the Buyer, whether or not any such form or writing has been Acknowledged or Accepted by fischer, these Terms shall prevail and such conflicting, additional or modified terms, whether or not material, are expressly rejected by fischer and are expressly excluded from these Terms and the Proposal, unless such terms are expressly agreed to by fischer and incorporated in the Agreement or an addendum to the Agreement signed by the Seller and the Buyer. 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/or the Proposal.

2 Offers; Interpretation

2.1 Unless specified otherwise, fischer’s Proposal in response to the Buyer’s Order is not binding, and an Agreement between fischer and the Buyer is only concluded, after written Acceptance by fischer confirming the Proposal. No oral agreement, undertaking, representation, warranty and/or guarantee, if any, by the Seller’s representative(s) is binding unless reduced to writing and incorporated into the Proposal and confirmed by fischer’s Acceptance. Any Acknowledgement issued by the Seller shall constitute only an acknowledgement of receipt of the Order and shall not constitute an Acceptance.

2.2 The interpretation of certain commercial terms identified 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 Order or the Agreement (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 Order or the Agreement occurring after the Proposal, or any delays caused by the Buyer or by events that are beyond the Seller’s control, including a delay in delivery of the Goods, may be subject to additional charges or a change in the price of the Goods.

3 Prices; Payment

3.1 Unless otherwise expressly stated in the Proposal or the Agreement, 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. If not included in the invoice for the Goods, the foregoing charges and taxes may be invoiced at a later date. Prices are subject to increase in accordance with Paragraph 2.3, 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 such invoice, 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 The Buyer agrees to reimburse the Seller for all reasonable travel and out-of-pocket expenses incurred by the Seller in connection the performance of any services for Buyer.

3.4 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 Agreement, 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, provincial or federal government now or hereafter imposed or assessed or in any way arising out of these Terms and the Agreement, as the same may be amended.

5 Delivery; Shipment

5.1 Shipment and delivery periods/dates are approximate and are based on prevailing market and supply chain conditions at the time of the Seller’s issuance of the Proposal. Seller will use reasonable efforts to deliver the Goods in accordance with the agreed upon schedule but does not warrant or guarantee any particular delivery date(s).

5.2 The Seller’s obligation to deliver is subject to due and timely delivery by the Seller’s suppliers, unless the Seller is directly responsible for such an incorrect or late delivery. In addition to 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 Agreement, 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 Agreement.

5.4 Unless otherwise specified in the Agreement, delivery terms for all Goods purchased under these Terms and the Agreement shall be made on an Ex-Works Incoterms (2020) basis the moment the Goods are made available to the Buyer at fischer’s facility in Manchester, TN, USA or Waterloo, Ontario, Canada, as applicable, and at which point title, all risk of loss and damage passes to the Buyer. All claims made for damage incurred during loading or shipment shall be made directly to the carrier.

6 Risk of Loss

Title, risk of loss and damage shall pass to the Buyer 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, title, risk of 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 Agreement and the Seller has notified the Buyer that the Goods in question are ready for delivery.

7 Licenses and Approvals

The Buyer will be solely responsible, at its own cost and expense, for obtaining all necessary licenses and authorizations to resell the Goods or to export the Goods to any other jurisdiction.

8 Disclaimer of Warranty and Limitation of Liability

8.1 UNLESS OTHERWISE EXPRESSLY STATED IN THE PROPOSAL AND/OR THE AGREEMENT, AND NOTWITHSTANDING ANY ORAL OR WRITTEN EXCHANGE BETWEEN THE SELLER AND THE BUYER PRIOR OR SUBSEQUENT TO THE DATE OF THE PROPOSAL OR THE AGREEMENT, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY; WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS

OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION EXPRESSLY DESCRIBED IN THE PROPOSAL OR THE AGREEMENT.

8.2 If any model or sample was shown by the Seller 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 or product would necessarily conform to the model or sample.

8.3 If any Goods shall fail to conform to the specifications expressly stated in the Proposal and/or the Agreement issued by the Seller, 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 the stated specifications or are defective shall be deemed waived by the Buyer, unless made in writing within thirty (30) days from receiving delivery of the Goods to which such claim relates. No Goods shall be returned to the Seller, without the Seller's prior written consent.

8.4 IN NO EVENT SHALL THE SELLER BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE, TO THE BUYER OR ANY THIRD PARTY 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 PROPOSAL AND/OR THE AGREEMENT SHALL BE LIMITED TO THE ACTUAL AMOUNTS PAID BY THE BUYER TO THE SELLER FOR THE GOODS GIVING RISE TO SUCH DAMAGES.

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 Proposal or the Agreement shall entitle the Seller to elect, in its sole discretion, to increase the price indicated in the Proposal or the Agreement accordingly, or to terminate the Proposal or Agreement.

10 Reservation of Title; Security Interest

10.1 As collateral security for the payment of the purchase price of the Goods, Seller reserves and the Buyer hereby grants to the Seller a lien on and security interest in and to, the right, title, and interest, of the Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all attachments and accessories thereto and replacements or modifications 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. The security interest granted under this provision constitutes a purchase money security interest under the Tennessee Uniform Commercial Code or the Personal Property Security Act (Ontario), as applicable.

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 lien and security interest and agreements herein contained, including, without limitation, subordination agreements executed by any landlord, owner, mortgagee or other encumbrancers 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 Proposal and/or the Agreement have been fully paid and satisfied.

11 Breach; Termination

11.1 If the Buyer breaches any provision of these Terms, the Proposal and/or the Agreement or any other contractual obligation in favour of the Seller, (a) the Seller may choose to defer any or all further deliveries or shipments, as applicable, or other performance under the Agreement 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 Agreement 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 or constitute a novation of any of the Seller's rights under the Agreement or applicable law.

11.4 Notwithstanding any provision in the Agreement, 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 Agreement 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, as provided in Paragraph 8.4. The Buyer's obligation to accept and make payment on time for the balance of the Goods delivered or to be delivered under the Agreement shall not be affected by any claim for damaged or defective material in other deliveries or shipments.

13 Force Majeure

In the event, and in addition to all other limitations stated in these Terms, fischer shall not be responsible or liable to the Buyer, nor deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the Seller's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God, (b) war, invasion, hostilities (whether war is declared or not), insurrection, terrorist threats or acts, riot or other civil unrest, or the order of any civil or military authority, (c) fire, flood, weather, acts of the elements, explosion, or other catastrophe(s) such as epidemics or pandemics, (f) shortage of adequate power, delays or shortages in transportation facilities, unavailability of equipment or materials, or breakdowns, (e) sabotage, lock-outs, strikes, labor disputes or stoppages, or other industrial disturbances or slowdowns, (g) delays at the terminal, or the failure of the Seller's suppliers to meet their delivery promises, or (h) other similar events beyond the reasonable control of the Seller. The Seller shall give notice of the Force Majeure Event to Buyer stating the period of time the occurrence is expected to continue. Seller will use commercially reasonable efforts to end the failure or delay and attempt to minimize the effects of such Force Majeure Event. 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 Agreement 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 Paragraphs 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 Agreement shall for any reason be invalid, illegal, or unenforceable in any jurisdiction, such circumstance shall not affect any other term or provision contained herein or in the Agreement, 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, which consists of these Terms, the Proposal, and any signed amendment thereto, 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 shall 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 Agreement 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 Agreement.

20 Governing Law and Forum

These Terms and/or the Agreement, the construction of the same, all rights and obligations between the Seller and the Buyer, and any and all claims arising out of or relating to the subject matter of these Terms and the Agreement (including all tort claims), shall be governed by the laws of the following jurisdictions, and any litigation or other legal proceeding of any kind based upon or in any way related to these Terms and/or the Agreement, their subject matter, or the rights or obligations of the Seller and the Buyer (collectively, the "**Proceeding(s)**") will be brought as hereinafter provided:

20.1 If the Goods are manufactured and fulfilled from the fischer facility located in Manchester, Tennessee, then the laws of the State of Tennessee, USA, without regard to its conflict of laws principles, will govern and control. In such event, any Proceeding shall be brought and thereafter maintained exclusively in an appropriate court of competent jurisdiction located in Coffee County, Tennessee (if the Proceeding is brought in state court) or in the Eastern District of Tennessee (Knoxville Division) (if the Proceeding is brought in federal court).

20.2 If the Goods are manufactured and fulfilled from the fischer facility located in Waterloo, Ontario, Canada, then the laws of the Province of Ontario without regard to its conflict of laws principles, will govern and control. In such event, any Proceeding shall be brought and thereafter maintained exclusively in an appropriate court of competent jurisdiction located in Toronto, Ontario.

20.3 Any Proceeding must be brought within two (2) years after the date on which the claim accrued. Any action brought in such courts shall not be transferred or removed to any other court. The Seller and the Buyer consent to the exercise of jurisdiction over them by the above-named applicable courts as their freely negotiated choice of forum for all Proceedings subject to selection clause. The rights and obligations of the parties to this Agreement shall not be governed by the provisions of the 1980 UN Convention on Contracts for the International Sale of Goods.