

General Terms and Conditions of Sale- GF Piping Systems Canada Ltd- English



1. General

1.1. These general terms and conditions of sale (hereinafter referred to as "General Terms and Conditions") shall apply to all products (hereinafter referred to as "Products") supplied by Georg Fischer Piping Systems Ltd. GF Piping Systems Canada Ltd. (hereinafter referred to as "GF") to the purchaser of Products ("Purchaser").

They shall also apply to all future business between GF and Purchaser even when no express reference is made to these General Terms and Conditions, unless otherwise expressly provided in writing.

1.2. Any legal transactions (one-, two-, as well as multi-sided legal transactions, e.g. conclusion, disputing, contesting etc.) on the part of GF or Purchaser must be in writing in order to be valid.

Provisions deviating or supplementing these General Terms and Conditions, including, but not limited to, any of Purchaser's general terms and conditions of purchase and verbal agreements, shall only be applicable if accepted in writing by GF or if they favor GF, as determined by GF in its sole discretion.

Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given if sent by any form of transmission, evidenced in the form of text, such as e-mail, etc., with the exception of transmission by fax.

1.3. Offers made by GF shall only be binding if they contain a specifically stated period for acceptance by Purchaser and have been accepted by Purchaser within such stated period of time.

2. Scope of supplies

2.1. GF's product range is subject to change without prior notice.

2.2. The order confirmation and these General Terms and Conditions (the "Contract") shall govern the scope and execution of any order for Products made by the Purchaser.

2.3. GF shall be entitled to hire subcontractors to perform its obligations under the Contract.

3. Local Laws and Regulations, Export Controls

3.1. The Purchaser shall bring to the attention of GF all local laws and regulations applicable in the jurisdiction where the Products will be used or resold by the Purchaser (the "Place of destination") which bear connection with the execution of the Contract by GF and any requirements to adhere to specific safety regulations and comply with approval procedures.

3.2. Unless otherwise agreed by the parties, following notification by the Purchaser in accordance with Clause 3.1, the Products shall comply with the regulations and standards applicable in the jurisdiction of GF's registered office.

3.3. In case of re-exports, the Purchaser shall be responsible for compliance with pertinent export control regulations.

4 Price

4.1. Unless agreed otherwise, the prices shall be deemed to be in [CAD], exclusive of all federal and provincial sales tax, EXW (Incoterms 2020 of the ICC, or latest version) at the production site of GF, but inclusive of the standard packing costs.

4.2. If, contrary to EXW (Incoterms 2020 of the ICC, or latest version) at the production site of GF, GF incurs costs of any kind, in particular all supplementary costs, such as the cost of carriage, freight, insurance, export, transit and import licenses etc. as well as all types of taxes, fees, duties, etc. connected with the Contract, Purchaser agrees to reimburse GF for such costs. GF reserves the right to adjust the prices accordingly in the event of a change in costs.

4.3. If the Products are provided with additional packaging over and above the standard packaging, such excess packaging costs shall be charged additionally to Purchaser.

5. Terms of Payment

5.1. The Purchaser shall make payments within thirty (30) days of receipt of invoice by cheque or wire of immediately available funds, without any set-off or deductions, such as discounts, costs, taxes or dues.

5.2. The Purchaser shall only have a right of set-off against amounts owing by GF resulting from counterclaims that are either undisputed by GF, as confirmed by GF in writing, or ruled valid and enforceable by a court of competent jurisdiction.

The Purchaser shall have no right to withhold payments due if unessential parts of the delivery are still pending, provided that the delivered parts are not unusable without the unessential parts in respect of which delivery is still pending.

5.3. If the advance payment or the contractually agreed security has not been made or granted by Purchaser on time, GF shall be entitled to enforce or to rescind the Contract and shall in both cases be entitled to claim damages resulting therefrom.

5.4. If the Purchaser, for any reason, is late with respect to any payment, or if GF is seriously concerned that GF will not receive payments in total or in due time because of circumstances having taken place since entering into the Contract, GF, without being limited in its rights and recourses provided for by law, shall be entitled to refuse the further performance of the Contract and to retain the Products ready for dispatch until new terms of payment have been agreed to and/or until GF will have received, in GF's opinion, satisfactory security from the Purchaser to guarantee its payment of orders made hereunder. If such an agreement cannot be reached within a reasonable time, or if GF does not receive, in its opinion, adequate security, GF shall be entitled to rescind the Contract and to claim damages.

5.5. If the Purchaser does not adhere to the agreed terms of payment, the Purchaser shall be liable without reminder, for default interest on any overdue amounts at a rate equal to five (5) percent per annum with effect from the agreed date on which the payment was due, with interest on overdue interest at the same annual rate. The right to claim further damages is reserved.

6. Reservation of Title

6.1. As far as acknowledged by the jurisdiction in the respective country of destination of the goods, the further provisions of this Clause 6 shall apply.

In any case, they shall be considered separable from each other in terms of content and linguistics and shall apply to themselves.

Simple reservation

GF retains title to all goods delivered by GF until full payment of the respective claims of GF.

6.2. Processing or transformation of the goods supplied by GF by the Purchaser is always carried out for GF. If the goods supplied are processed or inseparably combined or mixed with objects not belonging to GF, co-ownership of the new object shall be acquired in proportion to the value of the goods supplied by GF to the other processed objects at the time of processing or in proportion to the value of the goods supplied by GF to the other combined or mixed objects at the time of combination or mixing. If the goods are combined or mixed by the Purchaser with other objects to form a single object and if the other object is to be regarded as the main object, the Purchaser is obliged to transfer co-ownership to GF on a pro rata basis insofar as the main object belongs to the Purchaser. The Purchaser shall detain the sole ownership or co-ownership on behalf of GF.

6.3. During the period of reservation of title, the Purchaser shall at his own cost maintain the supplies and insure them for the benefit of GF against theft, breakdown, fire, water and other risks. The Purchaser shall further take all measures to ensure that GF's title is in no way compromised or rescinded.

6.4. Extended reservation of title

Should the Purchaser resell Products to which title is reserved, in the ordinary course of business, the Purchaser shall hereby be deemed to have tacitly assigned to GF the proceeds deriving from their sale together with all collateral rights, securities and reservations of title until all claims held by GF have been settled.

The Purchaser is authorized to collect the assigned receivables, as long as the Purchaser fulfills his payment obligation towards GF in accordance with the contract.

6.5. Overall reservation of title

6.5.a. The requirements to be met from Clause 6.2 extends to all current and future demands of GF towards the Purchaser.

6.5.b. The assignment is only valid insofar as the value of the Products subject to retention of title together with the granted securities exceeds GF's claims against the Purchaser by more than 20%.

6.6. For purposes of the relevant Personal Property Security Act statutes in force in the relevant jurisdictions, the Purchaser also hereby grants to GF a security interest in all goods or products delivered or supplied to the Purchaser by GF or its agent, and all additions, accretions, thereto and replacements thereof and any goods, inventory or equipment that result from a combination with any such goods or products, and all proceeds of any of the above, as security for all obligations owed or owing currently or hereafter, by the Purchaser to GF. Such security interest shall include a "purchase money security" interest in any and all such goods that have been delivered or supplied by GF or its agent to the Purchaser.

7. Terms of Delivery

7.1. Unless otherwise agreed (see Clause 4), the Products shall be delivered EXW (Incoterms 2020 of the ICC, or latest version) production site of GF.

7.2. Purchaser acknowledges and agrees that GF's obligation to deliver the Products to the Purchaser commences only once the contract has been entered into, all official formalities, such as import and payment permits have been obtained and all essential technical issues have been settled. Purchaser further

acknowledges and agrees that the Products will be deemed delivered to the Purchaser and the delivery date(s) will be deemed to have been met once GF places the Products at the disposal of the Purchaser at the agreed point, if any, at the location indicated in Clause 7.1 or Clause 4.

7.3. Part shipments to a reasonable extent shall be allowed and GF shall be entitled to invoice for such partial deliveries.

7.4. Delivery is subject to the following conditions, i.e. the delivery time shall be reasonably extended, and the delivery date postponed, respectively,

7.4.a. If the information of the Purchaser required by GF for the performance of the Contract is not received in time, or if the Purchaser subsequently changes it, thereby causing a delay in the delivery of the Products;

7.4.b. If GF is prevented from performing the Contract by force majeure. In particular, force majeure shall be deemed to be any unforeseeable event beyond GF's control which renders GF's performance commercially unreasonable or impossible, such as receiving delayed or defective supplies from subcontractors, acts of God, war, embargoes, pandemics, labor disputes, governmental orders or regulations, shortages in materials or energy, serious disturbances in GF's works, such as the total or partial destruction of plant and equipment or the breakdown of essential facilities, serious disruptions in transport facilities, e.g. impassable roads.

Should the effect of force majeure exceed a period of six (6) months, either party may terminate the Contract effective forthwith.

In no event, shall GF be liable for any damage or loss of any kind whatsoever arising out of or caused by such an event of force majeure.

7.4.c. If the Purchaser is late with respect to the fulfillment of its obligations under the Contract, in particular, if the Purchaser does not adhere to the agreed conditions of payment or if it has failed to timely provide the agreed security.

7.5. If for reasons attributable to GF the agreed term of delivery or a reasonable extension thereof is exceeded, GF shall not be deemed in default until the Purchaser has granted to GF in writing a reasonable extension thereof of not less than two (2) weeks which is equally not met.

The Purchaser shall then be entitled to the recourses provided at law, it being however understood that, subject to limitations of Clause 10, damage claims shall not exceed ten (10) percent of the purchase price of the Products subject to the delayed delivery.

7.6. If the Purchaser fails to take delivery within a reasonable time of Products notified as ready for dispatch, GF shall be entitled to store the Products at the Purchaser's expense and risk, to invoice them as delivered. If the Purchaser fails to effect payment pursuant to the terms of payment, GF shall be entitled to dispose of the Products.

7.7. If, contrary to the agreed terms of delivery, GF takes on tasks (e.g. transport, loading or unloading of the deliverables, insurance, etc.) which is not its responsibility pursuant to EXW (Incoterms 2020 of the ICC, or latest version), these tasks shall be deemed to have been performed on behalf of, for the account of and be payable by the Purchaser.

In this sense, the person executing the order acts as a vicarious agent for the responsible contracting party.

7.8. Should the Purchaser cancel an order without justification and should GF not insist on the performance of the Contract, GF shall be entitled to a penalty amounting to ten (10) percent of the Contract price.

The right to claim damages remains unaffected.

8. Inspection, Notification of Defect and Damages

8.1. The Products will be subject to normal inspection by GF during manufacture. Additional tests required by the Purchaser shall be agreed upon in writing by GF and shall be charged to the Purchaser.

8.2. It shall be a condition of GF's obligation under the warranties stated herein after that GF is notified in writing by the Purchaser of any purported defect immediately upon discovery. Notice concerning weight, numbers or apparent defects is to be given within thirty (30) days from receipt of the Products, notice of other defects immediately latest within seven (7) working days after discovery, in any event within the warranty period.

8.3. The Purchaser shall not dispose of allegedly defective Products until all warranty and/or damage claims are finally settled. At GF's request, defective Products are to be placed at its disposal.

8.4. At its request, GF shall be given the opportunity to inspect the defect and/or damage, prior to commencement of remedial work, either by itself or by a third party.

9. Warranty, liability for defects

9.1. Warranty

9.1.a. The warranty is, unless otherwise explicitly agreed, not transferable and warranty claims must be made in the country in which the Product in question was purchased by Purchaser. GF reserves the right, in its sole discretion, to

change the warranty provided herein at any time, which change shall become effective immediately upon receipt by Purchaser of the revised warranty.

9.1.b. The warranty or damage claims become time-barred twelve (12) months from receipt of the Products by the end user but at the latest within eighteen (18) months of the Products being dispatched by GF.

9.1.c. For spare or repaired parts, the warranty period is limited to the initial warranty period of the replaced or repaired part.

9.1.d. For Products manufactured to specifications, drawings or patterns supplied by the Purchaser, GF's warranty shall be restricted to proper materials and workmanship.

9.1.e. This warranty shall not apply to damage resulting from normal wear and tear, improper storage and maintenance, failure to observe the operating instructions, overstraining or overloading, unsuitable operating media, unsuitable construction work or unsuitable building ground, improper repairs or modifications / alterations by the Purchaser or third parties, the use of other than original GF-supplied spare parts and other reasons beyond GF's control.

9.1.f. Claims for deficiency of title becomes time-barred twelve (12) months from receipt of the Products by end user.

9.2. Liability for defects

9.2.a. At the written request of the Purchaser, GF undertakes to repair or replace at its discretion, as quickly as possible and free of charge, all Products supplied which demonstrably suffer from faulty design, materials or workmanship, from faulty operating or installation instructions provided by GF or which became defective or unusable due to faulty advice provided by GF.

Replaced parts shall be returned to GF by Purchaser or end-user at GF's expense and become property of GF, unless GF waives this right.

In order to protect employees from toxic or radioactive substances which may have been transported in the Products concerned, defective parts returned to GF or its sales organizations, must be accompanied by a Material Safety disclosure Form. The form may be obtained by the Purchaser or end-user from GF's local sales company.

In the event that:

- the repair or replacement of the defective Product is impossible,
- the defective Product is not repaired or replaced within a reasonable period, or
- if GF refuses the repair or replacement of the defective Product for no justifiable reason or if for reasons attributable to GF the repair or replacement is delayed;

GF may, in its discretion, provide Purchaser or end-user with a credit in respect of future purchases of Products for the price of the defective Product, failing which Purchaser shall be entitled to rescind the Contract or to demand a reduction of the Contract price.

9.3. In case of Products for use in domestic installations or in utilities

- GF will assume, in deviation to Clause 10.3, the dismantling and installation costs for the restoration of the original condition of the defective Product up to a maximum amount of CAD 1'000'000 per occurrence.
- warranty and damage claims - contrary to Clause 9.1.b — shall become time-barred five (5) years from the date of installation or seven (7) years from the production date, whichever is earlier.

10. Limitation of Liability

10.1. The rights and recourses of the Purchaser shall be exclusively governed by these General Terms and Conditions. Except where prohibited by law or as otherwise provided herein, GF makes no warranty to Purchaser or Purchaser's customers that the Products delivered to Purchaser hereunder are merchantable or fit for any particular purpose, and to the fullest extent permitted by applicable law, GF hereby expressly disclaims all warranties, either express or implied, by operation of law, course of performance, course of dealing, usage of trade or otherwise, with respect to the Products, including without limitation, any implied warranties of merchantability, fitness for a particular purpose, quality and non-infringement, legal warranties of title and quality and any other warranties that may arise by implication of law. Purchaser acknowledges and agrees that the warranty at Section 9 hereof will in all cases constitute its sole recourse and remedy in the event of any defect in Products purchased hereunder; all further claims such as damages, reduction of the purchase price, termination or rescission of the Contract are excluded.

10.2. Notwithstanding anything to the contrary contained herein, to the fullest extent permitted by applicable law, and except to the extent arising out of strict product liability or GF's gross negligence or willful or intentional misconduct: (1) in no event will GF be liable for any loss, damage or claim for any indirect, special, incidental, exemplary, punitive or consequential damages, or any damages for loss of profits, loss of revenue, delay or damages, whether contractual or extra-contractual (including, without limitation, in tort, including negligence, strict liability or in equity) or otherwise; and

(2) In no event will claims of the Purchaser, contractual or extra-contractual (including, without limitation, in tort, including negligence, strict liability or in equity), in relation to or in connection with the Contract, the breach thereof or from the design, manufacture, sale, delivery, resale, inspection, testing, repair, replacement or use of Products exceed the total amount of the purchase price paid by Purchaser for the Product which gives rise to such claim.

11. Data and Documents

11.1. Technical documents, such as drawings, descriptions, illustrations and data on dimensions, performance and weight as well as the reference to standards are for information purposes only. They are not warranted characteristics and are subject to change.

11.2. All technical documents shall remain the exclusive property of GF and may only be used for the purposes agreed between the parties or as GF may consent.

11.3. No sale of Products hereunder shall convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by GF, whether relating to the Product or any design, manufacturing process or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by GF.

12. Confidentiality, Protection of Personal Data

12.1. Each party shall keep in strict confidence all commercial or technical information relating to the business of the other party, of which it has gained knowledge in the course of its dealing with the other party. Such information shall neither be disclosed to third parties nor used for other purposes than the agreed, except to the extent that disclosure is required by applicable law.

12.2. Personal data will only be processed by GF in accordance with the relevant laws and exclusively based on a separate contract submitted by GF.

13. Severability

Should any term or clause of these General Terms and Conditions in whole or in part be found to be unenforceable or void, all other provisions shall remain in full force and effect. The unenforceable or void provision shall be replaced by a valid provision, which comes closest to the original intention of the unenforceable or invalid provision.

14. Applicable Law and Jurisdiction

14.1. The contract shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein to the exclusion of any conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG) provisions.

14.2. Exclusive place of jurisdiction for any dispute, controversy or claim arising out of or in relation to this Contract, including the validity, invalidity, breach or termination thereof, shall be the appropriate courts having jurisdiction in the Province of Ontario].

However, GF reserves the right to file actions in any court having jurisdiction.

14.3. This Contract shall be binding upon the parties and their permitted successors and assigns.