

Standard Conditions of Sale of Frese Limited

The customer's attention is drawn in particular to the provisions of clause 9.

1. **INTERPRETATION**
- 1.1 **Definitions.** In these Conditions, the following definitions apply:
Business Day: a day (other than a Saturday, Sunday, or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6
Confidential Information: any information of a confidential nature concerning the business, affairs, customers, clients, or suppliers of the other party or of any member of its group, including information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers.
Contract: the contract between the Frese and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or firm who purchases the Goods from the Frese.
Force Majeure Event: has the meaning given in clause 10.
Goods: the goods (or any part of them) set out in the Order.
Order: the Customer's order for the Goods, as set out in the Customer's purchase order (but excluding any standard purchase terms and conditions).
Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Frese.
Frese: Frese Limited (registered in England and Wales with company number 05194482) whose registered office is at 605 Merlin Park, Ringtail Road, Burscough, Lancashire, L40 8JY.
Warranty Terms: means the warranty terms and conditions in relation to the Goods as updated from time to time (current version set out in Appendix 1).
Frese Code of Conduct: The Frese Code of Conduct in force can be found at www.frese.eu and clarifies the standards Frese adheres to and also expect from our suppliers and other collaborators. We expect our suppliers and other collaborators to adhere to our code of conduct or to their own similar code of conduct. The standards in the code of conduct are not intended to conflict with or modify the General Conditions of Sale and Delivery or any other contract with Frese.
- 1.2 **Construction.** In these Conditions, the following rules apply:
- A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
 - A reference to a **party** includes its personal representatives, successors or permitted assigns.
 - A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
 - Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
 - A reference to **writing** or **written** includes faxes and e-mails.
2. **BASIS OF CONTRACT**
- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when Frese issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous **agreements, promises, assurances, warranties, representations and understandings** between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Frese which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by Frese and any descriptions or illustrations contained in Frese's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 Frese reserves the right to modify the Goods, without prior notice to the Customer, provided that such modifications do not affect the Specification.
- 2.7 A quotation for the Goods given by Frese shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.8 In the event of any conflict or inconsistency between the terms set out in these Conditions and the terms set out in any Order, the terms set out in these Conditions shall prevail.
3. **Goods**
- 3.1 The Goods are described in Frese's catalogue as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Frese against all liabilities, costs, expenses, damages and losses (including legal and other professional costs and expenses) suffered or incurred by Frese in connection with any claim made against Frese for actual or alleged infringement of a third party's intellectual property rights arising

- out of or in connection with Frese's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 Frese reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
4. **DELIVERY**
- 4.1 Frese shall ensure that:
- each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant reference numbers, the type, and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - if Frese requires the Customer to return any packaging materials to Frese, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Frese shall reasonably request. Returns of packaging materials shall be at Frese's expense.
- 4.2 Goods are delivered Ex Works unless Frese has agreed to deliver to another location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Frese notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Frese shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Frese with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If Frese fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Frese shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Frese with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within three Business Days of Frese notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Frese's failure to comply with its obligations under the Contract:
- delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Frese notified the Customer that the Goods were ready; and
 - Frese shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which Frese notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Frese may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 The Customer shall not be entitled to reject the Goods if Frese delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 4.9 Frese may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
5. **QUALITY**
- 5.1 The Warranty Terms in force at time of purchase of the Goods shall apply and the remedies in the applying Warranty Terms shall constitute the only remedies available for Customer in case of defects and warranty claims in relation to the Goods. Frese disclaims any other warranties (implied or otherwise) with regard to the Goods.
- 5.2 Except as provided in this clause 5, Frese shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.4 These Conditions shall apply to any repaired or replacement Goods supplied by Frese.
6. **TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until Frese has received payment in full (in cash or cleared funds) for:
- the Goods; and
 - any other goods or services that Frese has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- hold the Goods on a fiduciary basis as Frese's bailee;
 - store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Frese's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify Frese immediately if it becomes subject to any of the events listed in clause 8.2, and
 - give Frese such information relating to the Goods as Frese may require from time to time,

Standard Conditions of Sale of Frese Limited

- but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or Frese reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Frese may have, Frese may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. PRICE AND PAYMENT**
- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Frese's published price list in force as at the date of delivery.
- 7.2 Frese may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond Frese's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - any delay caused by any instructions of the Customer or failure of the Customer to give Frese adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of the costs and charges of bespoke packaging, insurance, and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 The price of the Goods is exclusive of amounts in respect of value added tax (VAT) and applicable duties and levies. The Customer shall, on receipt of a valid VAT invoice from Frese, pay to Frese such additional amounts in respect of VAT as are chargeable on the supply of the Goods together with the amount of any applicable duties and levies.
- 7.5 Frese may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.6 Unless otherwise agreed in writing by Frese, the Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Frese. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to Frese under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Frese in order to justify withholding payment of any such amount in whole or in part. Frese may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Frese to the Customer.
- 8. CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Frese reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Frese, Frese may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Frese without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer (to the extent such provision is permitted by law or otherwise to enable the defaulting party to seek legal relief);
 - (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer (to the extent such provision is permitted by law or otherwise to enable the defaulting party to seek legal relief);
 - (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets (to the extent such provision is permitted by law or otherwise to enable the defaulting party to seek legal relief);
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Frese's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude Frese's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - fraud or fraudulent misrepresentation; or
 - any matter in respect of which it would be unlawful for Frese to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- Frese shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
 - loss of profits;
 - loss of sales or business;
 - loss of agreements or contracts;
 - loss of anticipated savings;
 - loss of use or corruption of software, data or information;
 - loss of or damage to goodwill; and
 - indirect or consequential loss.
 - Frese's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price actually paid for the Goods.
- 10. FORCEE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), epidemic, pandemic, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Frese or subcontractors.
- 11. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**
- 11.1 Each party undertakes that it shall not at any time during this Contract and for a period of two (2) years after termination or expiry disclose to any person any Confidential Information, except as permitted by Clause 11.2.
- 11.2 Each party may disclose the other party's Confidential Information:
- to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors, or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party or to be implied from this Contract. In particular, each party shall retain its intellectual property rights and nothing in this Contract shall be construed as assigning any intellectual property rights from one party to the other party. No licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright, or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 12. GENERAL**
- 12.1 Assignment and subcontracting.**
- Frese may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract.
 - The Customer may not assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Frese.
- 12.2 Notices**

Standard Conditions of Sale of Frese Limited

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action, negligence, breach of statutory duty, or otherwise, shall in no circumstances exceed the price actually paid for the Goods.
- 12.3 **Severance**
- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part- provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Frese.
- 12.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



Standard Conditions of Sale of Frese Limited APPENDIX 1

Warranty Terms

1. Frese Branded Goods and products:

For **OPTIMA Compact pressure independent control valves, SIGMA Compact and ALPHA dynamic flow limiting valves, PV Compact differential pressure control valves, and MODULA bypass units, the following terms apply:**

Frese warrants that the products will be free from defects in material and workmanship under normal use for a period of 36 months commencing from the date of purchase. Hereinafter referred to as the "Warranty Period".

In the event that the customer in writing can prove a later date of installation than the date of purchase, the 36 months Warranty Period will commence from such later date of installation.

The Warranty Period will always end at the latest 5 years from the date of purchase regardless of commencement date. Date of installation shall mean the date where the product has been installed in a pipe system or fitted together with another product first time regardless of when operation of the system starts.

For Frese branded actuators, the following terms apply:

Frese warrants that the products will be free from defects in material and workmanship under normal use for a period of 36 months commencing from the date of purchase.

For all other Frese Branded products, the following terms apply:

Frese warrants that the products will be free from defects in material and workmanship under normal use for a period of 24 months commencing from the date of purchase.

2. Non-Frese Branded Products

For non-Frese branded products sold by Frese, Frese refers to the warranty terms applying from the producers of such products and devices. Please contact Frese for further information on warranty terms applying to such products and devices.

3. Warranty Claims

In the event of defects covered by this limited warranty, Frese shall in writing be informed of such alleged defects, together with the customers documentation for normal use and operation of the defective product in accordance with the technical documentation and specifications for the product and information regarding the problem encountered within 30 days from the customer or user discovering the alleged defect. Proof of purchase date or proof of installation date if a later commencement date for the Warranty Period is claimed, shall be submitted together with the warranty claim. The defective product shall upon request from Frese be sent to Frese or to any other address designated by Frese with freight paid by the sender. Any warranty claim received by Frese without proper documentation or received after end of the Warranty Period will be rejected.

If Frese accepts that alleged defect is covered under this warranty and the claim has been filed within the Warranty Period, Frese will at its sole discretion replace, repair free of charge, or credit such defective product. If the product is replaced or repaired by Frese, Frese will at its own cost send the new or repaired product to the buyer or user and Frese will reimburse freight costs incurred in sending defective products to Frese. Repaired or replaced products will be warranted hereunder for the remaining portion of the Warranty Period for the original product plus 2 months.

If the returned product is not defective as covered under this limited warranty, Frese may return the product at buyer or users cost and risk, and may charge a fee for the time and materials used in examining the returned product.

4. Limitations on and Exceptions from Warranty

This limited warranty does not extend to any product that has been damaged or rendered defective as a result of (a) modification, repair, alteration or improper installation, (b) unreasonable or improper use or storage, use beyond or outside rated conditions or specifications, operation outside Frese's instructions, or being otherwise subjected to improper maintenance, negligence or accidents including acts of nature (c) because of any use of the product after user has, or should have, knowledge of any defect in the Product.

A buyer is immediately upon delivery obliged to examine the products for defects. If a product is found to be defect, the buyer shall immediately notify Frese in writing. If the Buyer fails to do so, the buyer or any other user of such product shall not at a later date be entitled to complain about defects that were or would have been ascertained by such an examination. Replacement, repair free of charge or credit of the defective product upon Frese's sole discretion shall constitute the sole and only remedy for the customer under this warranty.

Frese's warranty liability shall not exceed the original purchase price of the defective product. In no event shall Frese be liable for any special, indirect, consequential, punitive, or exemplary damages or losses arising out of any defects, breach of warranty or faulty products irrespective of the cause or reason for such liability, including but not limited to loss of profit, loss of production, loss of income, loss of goodwill, loss of data.

The limited warranty provided by Frese is exclusive and in lieu of all other warranties, express or implied including warranties of merchantability and fitness for a particular purpose, whether pertaining to the Product and whether arising by law, custom, conduct, usage, or trade. The aforementioned shall not apply to the extent warranty cannot be excluded under applicable law.