

TERMS AND CONDITIONS OF SALE

1. Scope

1.1. Except otherwise agreed in writing, these Terms and Conditions shall exclusively apply to all deliveries of products by FIXATTI AMERICA, INC. as confirmation of the terms of sale (Confirmation) and shall prevail over any additional material term or condition of a buyer's order (Order) who/which is deemed to accept these terms and conditions by placing an Order.

1.2. These terms of this document and those of Confirmation may not be modified except by a change order agreed in writing by FIXATTI AMERICA, INC.

2. Price

2.1. FIXATTI AMERICA, INC.'s price list is valid for the time period published but FIXATTI AMERICA, INC. reserves the right to change prices according to market conditions for Orders which have not been accepted. Prices of FIXATTI AMERICA, INC. are binding for confirmed Orders and quotes until their published end date.

2.2. All prices mentioned in the price list and offers are exclusive of sales taxes, VAT and all other like charges and assessments of governmental authorities in transactions subject of an Order.

2.3. Except otherwise specified in writing in the quotation, Confirmation or the Order, all prices mentioned in the price list or quotations are prices per full pallet of the same product. For Orders and deliveries of less than full pallet size, extra charges will be added to the product unit price. The applicable extra charges are available on www.fixatti.com and can be requested by e-mail directed to sales@fixatti.com.

3. Delivery and risk transfer

3.1. All delivery dates in the Confirmation are a "best efforts" date proposed for delivery and shall not be deemed to be a contractual obligation of FIXATTI AMERICA, INC. unless otherwise agreed in writing. Excusable delay for late delivery caused by an event of *Force Majeure* as defined herein is a basis for extension of any agreed delivery date.

3.2. Except otherwise agreed in a Confirmation, the delivery shall take place EX WORKS passing risk and title at the premises of FIXATTI AMERICA, INC. c/o Kontane Logistics, 4400 Arco Lane, North Charleston, SC 29418, United States. The buyer must arrange transport and bears risk of loss and costs of loading and transport from an EX WORKS tender to final destination. Any inspection before packing and loading must be pre-arranged since products are deemed accepted by the buyer from delivery EX WORKS.

3.3. Upon written request of the buyer, FIXATTI AMERICA, INC. can arrange shipments of the products at the cost and risk of the buyer. In that event, FIXATTI AMERICA, INC. is free to choose the transport firm it deems appropriate for this purpose.

3.4. The buyer, or its designated agent, shall receive the tender of goods on the delivery date specified in the Confirmation. (Delivery Date) Failure to take products on the Delivery Date may result, at FIXATTI AMERICA, INC.'S sole option, in imposition of a storage and handling fee accruing daily after the Delivery Date, at a rate of $1/360 \times \text{\#days delayed} \times 1\%$ of the total invoice amount unless a delay has been agreed in writing by FIXATTI AMERICA, INC.. In the event the products are not collected by the buyer after expiry of 30 days from the Delivery Date, FIXATTI AMERICA, INC. shall have the right to resolve the agreement unilaterally as well as to claim a lump sum indemnification of 15 % of the total invoice amount of the non-collected products, subject to an increase if the actual damages suffered are higher.

4. Force Majeure

4.1. FIXATTI AMERICA, INC. may delay performance of a duty under the doctrine of *Force Majeure* in case it is unable to carry out any of its obligations under these Terms and Conditions due to any event or circumstance which is beyond its reasonable control, such as but not limited to fire, flood, strikes, labour disputes or other industrial disturbances, (declared or undeclared) war, embargoes, blockades, legal restrictions, riots, insurrections, governmental regulations, telecommunication problems, default of its suppliers or the unavailability of means of transportation (*Force Majeure Event (s)*).

4.2. In case of a *Force Majeure Event*, FIXATTI AMERICA, INC. may suspend its performance obligations for as long as the *Force Majeure Event* continues or up to 90 days or may suspend the Order as agreed by the buyer or cancel an Order and refund any deposit less expenses incurred for any Order subject of a Confirmation.

5. Complaints Accepted under Warranty

5.1. Any complaint about products regarding a claim for breach of FIXATTI AMERICA, INC.'S product warranty, such as conformity to warranty, missing pieces, visual damage or deficiencies, must be notified by e-mail to sales@fixatti.com. In a claim for damages, the claim must also be confirmed by registered mail to FIXATTI AMERICA, INC.,(6650 Rivers Avenue, Charleston, SC 29406, United States) no later than 15 calendar days as from delivery of the products.

5.2. Latent or hidden deficiencies in the products delivered by FIXATTI AMERICA, INC. must be described as to the nature of deficiency and notified by e-mail to sales@fixatti.com and confirmed by registered mail to FIXATTI AMERICA, INC.(6650 Rivers Avenue, Charleston, SC 29406, United States) no later than 15 calendar days from discovery of this deficiency and at the latest within 6 months as from delivery of the products.

5.3. All warranty claims must be made within the published warranty term for filing claims as specified by a Confirmation or FIXATTI AMERICA, INC. written warranty in order to be valid.

5.4 No warranty coverage shall be afforded where products have been altered, modified or misused against manufacturer's recommendations or for purposes for which the products are not intended.

6. Limitations of Liability and Remedies

6.1. FIXATTI AMERICA, INC. has no liability or other obligation to buyer or a third party except to address warranty claims timely and properly made by the buyer which are accepted by FIXATTI AMERICA, INC. as subject of warranty coverage. FIXATTI AMERICA, INC.'s warranty obligation and buyer's remedy for a warranty claim is limited to repair or replacement of a product defective in workmanship or parts as determined in the sole discretion of FIXATTI AMERICA, INC. FIXATTI AMERICA, INC. will pay transportation costs to return a product to a buyer which has been repaired under warranty. FIXATTI AMERICA, INC. shall be responsible only for sale of the products and service of the warranty issued by the manufacturer of the products. FIXATTI AMERICA, INC. makes no additional warranty in addition to that of the manufacturer and shall assign its rights in the manufacturer's warranty to the buyer or customer upon receipt of payment of the products in accordance with the terms of the Order accepted by FIXATTI AMERICA, INC..

6.2. Warranty coverage shall extend only to product malfunction or defect arising from defective labor, parts or composition of the product. FIXATTI AMERICA, INC. shall be liable only for actual and direct damages arising from a breach of warranty, or any other legal theory of liability, with such claims being limited to the value of products sold per Order but in no event not to exceed a loss per occurrence of \$100,000.00 per Order and an aggregate value of \$500,000.00 U.S.D. In no event shall FIXATTI AMERICA, INC. be liable directly or indirectly, for incidental, consequential or punitive damages for any reason, including but not limited to personal or business loss or harm, lost

profits, economic or financial injury to third persons, or bodily injury, to any person including but not limited to, damages resulting from contamination of the products or non-compliance with the national laws of another country other than the United States of America.

6.3. FIXATTI AMERICA, INC. shall not be obliged to provide any certification as to the conformity of its products to standards other than other than the laws of the United States of America and the laws and directives of the European Union for uses other than the manufacturer's recommended use of the products. In case a certification of compliance or conformity is provided, the certificate concerned is valid for one year only as from date of delivery of the goods and shall attest conformity of the products as manufactured to be compliant with such legislation and rules mentioned therein as effective on the date of delivery of the goods for such one year term. The buyer shall inform FIXATTI AMERICA, INC. in writing of any change to the legislation and rules concerned during the period of validity of the certificate. In the absence of such notification by the buyer, the buyer can claim no rights as to the non-conformity of the products to the modified legislation and rules. Upon receipt of such written notification, FIXATTI AMERICA, INC. shall assess whether its products are still conform to applicable legislation and rules and may modify or withdraw its certification or modify its product to conform to the new legislation and rules. In no event, shall buyer have the right to claim damages or indemnity for non-conformity of the goods which FIXATTI AMERICA, INC. elects not to conform to the modified legislation and rules. No claim may be based on a requirement for FIXATTI AMERICA, INC. to replace or remanufacture goods based upon a retroactive application of such legislation unless a recall is mandated by law.

6.4. In no event FIXATTI AMERICA, INC. is bound by any liability or obligation the buyer assumed to its customer or client. Buyer shall have no right to modify the warranty of FIXATTI AMERICA, INC. on products which buyer may resell in the market.

7. Intellectual Property

7.1. FIXATTI AMERICA, INC. owns all intellectual property rights to and in respect of the products sold to buyer. Buyer shall claim no interest in these intellectual property rights, drawings, marks, patents of FIXATTI AMERICA, INC. and shall make no effort to register or assert a claim thereto in any country or under any law or convention.

8. Reservation of ownership

8.1. FIXATTI AMERICA, INC. reserves title and the ownership rights on all delivered products until it has received full payment by the buyer of the total invoice amount. In cases where reservation of title is not recognized in a sales transaction, FIXATTI AMERICA, INC. shall have a security interest attached to and perfected in the goods as a chattel mortgage on movable goods. Until payment in full, the buyer does not have the right to sell the products, nor to encumber them with any third-party right. If buyer violates this provision, FIXATTI AMERICA, INC. shall have security interest in the products and any proceeds or products arising from sale thereof.

8.2. Notwithstanding FIXATTI AMERICA, INC.'s reservation of ownership, the buyer bears all risks the products are exposed to as from delivery set forth herein.

8.3. In addition to all other remedies, in case of non-payment by the buyer, FIXATTI AMERICA, INC. reserves the right of stoppage in transit, replevin or recovery of the products by peaceful repossession without any need for judicial writ or decision.

9. Payment and Remedies for FIXATTI AMERICA, INC.

9.1. Except agreed otherwise in writing, all payments are to be made by bank wire transfer on FIXATTI AMERICA, INC.'s bank account as stated on the Confirmation or invoice or alternatively payments are due in Charleston, cash and without any rebates or allowances for such cash payment.

9.2. The buyer shall pay the invoiced amount as well as all related taxes and costs. All payments, by whatever means, shall be made so that FIXATTI AMERICA, INC. will not have to bear any cost related to the receipt and crediting of the payment on buyer's account.

9.3. In case of non-payment within the agreed term, and notwithstanding any other right to indemnification, FIXATTI AMERICA, INC. shall have the right, *ipso jure* and without formal notice, to charge a daily interest rate based on 360 days per year annualized at a rate of 10% assessed from the expiry date of the agreed payment term and until receipt of full payment of the invoiced amount and interests due.

9.4. In case of non-payment within the agreed term, and notwithstanding any other right to indemnification, the invoiced amount shall be increased *ipso jure* and without formal notice by a lump sum indemnification of 15 % of the invoiced amount, with a minimum of 200 USD, and without prejudice to higher proven actual and compensatory damages for all loss of profits on the sale and debt recovery costs incurred as a consequence of non-compliance of the buyer as to the agreed payment subject of the Terms and Conditions and Confirmation.

9.5. In case of non-payment within the agreed term of an invoice, the buyers obligations may be declared in default and, in addition to all other remedies available to FIXATTI AMERICA, INC. in a court of law, the balance of the current invoice and all other invoices, whether expired or not, shall (i) fall due *ipso jure* and immediately be declared due and owing; (ii) cause the buyer to lose all rights on reductions or other advantages that were conferred by FIXATTI AMERICA, INC.; (iii) authorize FIXATTI AMERICA, INC. to use all other remedies in the recovery of its property and damages as allowable by law. If FIXATTI AMERICA, INC. must initiate collection proceedings, buyer shall be responsible for payment for all costs of collection and attorney's fees in addition to the lost interest and indemnity charges noted above.

10. Gross Misconduct, Violations of Law or other Misfeasance of the Buyer

10.1. In case of material default of the Terms and Conditions or Confirmation, significant violations of law related to the purchase of the products, or other gross misconduct or misfeasance of the buyer, including default of payment and cancellation of a pending Order, FIXATTI AMERICA, INC. has the right, without formal notice, to cancel all further deliveries to the buyer and/or to declare all pending agreements resolved *ipso jure*, without impairing the rights and remedies of FIXATTI AMERICA, INC. to seek and enforce performance of buyer's obligations under this agreement and to claim damages and indemnification from the buyer.

10.2. In addition to payment of attorney fees and interest on overdue accounts, in case one or more pending defaults of the buyer arising under section 10.1 are resolved, the buyer shall pay as liquidated damages to FIXATTI AMERICA, INC. (i) an indemnification of 15 % of the invoiced price, in case the object of the agreement consisted of standard products only or (ii) the total amount of the invoiced price, in case the object of the agreement consisted of customised or tailor made products.

10.3. FIXATTI AMERICA, INC. reserves the right to resolve the sales agreement without judicial interference or formal notice, if the buyer has become insolvent or declared bankrupt, has been dissolved or entered into liquidation, or has filed a voluntary petition for proceedings in temporary relief of creditors, without indemnification for the buyer notwithstanding FIXATTI AMERICA, INC.'s right for indemnification.

11. Jurisdiction and applicable law

11.1. All agreements between FIXATTI AMERICA, INC. and the buyer as well as all disputes in relation thereto shall exclusively be governed by U.S. law without resort to conflicts of law rules.

11.2. The courts of South Carolina, County of Charleston have exclusive jurisdiction to rule on all disputes arising between FIXATTI AMERICA, INC. and buyer hereby agrees to submit to the personal and subject matter jurisdiction of such courts for judicial resolution of disputes.