

General Business Terms of Fixatti AG

§ 1 General

- (1) Mutual rights and obligations shall be governed by our General Business Terms below. These shall apply for this and all future contractual relationships even if they contradict a purchase order of the customer and/or his general terms and conditions of sale and supply unless we have expressly recognised the terms and conditions of the other party in writing.
- (2) Deviations from these General Business Terms shall only be effective if agreed in writing in the individual contract with the customer. This shall apply in particular for any agreement lifting the requirement for written form.
- (3) Should a provision of these General Business Terms be or become ineffective, this shall not alter the rest of the General Business Terms. The parties hereto hereby undertake to replace the ineffective clause by an effective clause corresponding to the ineffective clause or coming as close as possible to it in economic result.

§ 2 Payment

- (1) Our invoices shall be due for payment as follows: from 10 to 60 days after the invoice date, net. The customer will be considered in default of payment without further notice from the 61st day.
- (2) If we accept bills of exchange, payment shall be governed by § 2 No. 1 of the payment terms according to the term of the bill. If bills whose term extends beyond the sixtieth day after the invoice date are accepted, a supplement of 1 % of the bill total will be asserted. If bills are taken as payment, the charges arising thereby shall be reimbursed. Bills with a term of more than 90 days will not generally be accepted. If bills are not honoured in timely fashion, all collection charges will also be asserted.
- (3) Payments will always be used to settle the oldest due claim plus the default interest arising thereon.
- (4) Payment will be deemed made when it has been received on the account of the supplier.
- (5) Default interest of 8 % p.a. in addition to the respective base interest rate will be charged on payments after the due date.
- (6) We shall not be bound to make any further delivery arising from any current contract before all due invoice sums have been paid in full, including interest. This does not affect our right to assert damage caused by delayed performance.
- (7) If the customer delays in payment or in the event of pending insolvency or other substantive deterioration in the financial circumstances of the customer we may, after setting a period of grace of 10 working days, demand cash payment before delivery for any outstanding deliveries from any current contract, frustrating the time allowed for payment, or withdraw from the contract or assert damages.
- (8) The customer may only set due invoice sums off against his own claims or withhold due invoice sums if the supplier consents in writing or the claims have been conclusively determined by a court of law.

§ 3 Content of the contract

- (1) Our offers are not binding. The order will not be considered accepted until we have confirmed it in writing or have performed it by delivery goods and invoicing. Verbal ancillary agreements shall only be binding on us if we confirm them in writing. All prices we quote are exclusive of sales tax at the statutory rate.
- (2) Information, advice on technical issues relating to use etc. are always given on a non-binding basis to the exclusion of any liability of any kind. Specimens given to the purchaser shall not be binding in respect of their characteristics unless we warrant these characteristics in writing.
- (3) All sales will only be agreed for specific delivery dates, quantities and qualities. Both parties shall be bound thereby. Third party property rights shall be respected in the use of the supplied goods.

§ 4 Delivery

- (1) Goods will be delivered ex distribution warehouse or manufacturing works (ex works). Freight charges shall be borne by the customer. We will choose the method and means of shipment. In doing so we will strive for the most economical method of shipment and will try to take the wishes of the customer into account. Any additional costs necessitated thereby – even if delivery is agreed carriage-free – shall be borne by the customer. In the case of shipment by rail the freight charges from the distribution warehouse or manufacturing works to the destination station will be charged. Packaging will only be charged if the customer requests special packaging. Unless otherwise agreed in writing, we will ship the goods uninsured.
- (2) Cases of force majeure – these will be considered circumstances and events which cannot be prevented with the due care of business management –, labour disputes, official measures and excusable interruptions to business which have lasted or are expected to last longer than one week will result in the contractual obligations of the parties being suspended for the duration of the interruption and to the extent of its effect, but for no longer than five weeks plus the period allowed for subsequent delivery. The extension shall commence if we notify the customer immediately of the cause of the obstruction as soon as we perceive that the delivery periods cannot be met. If the obstruction has lasted for longer than five weeks and we do not inform the customer immediately on request that delivery or acceptance will be timely, the customer may cancel the contract. Further claims, in particular claims to damages, shall be excluded in the above cases.
- (3) On expiry of the delivery period a period of 10 working days for subsequent delivery shall commence without notice. On expiry of the period for subsequent delivery the contract shall be considered cancelled, to the exclusion of claims for damages. Cancellation shall not occur if the customer informs us during the period for subsequent delivery that he insists on performance of the contract. However, we shall be released from our obligation to supply if the customer does not state, on our request within the period for subsequent delivery, whether he insists on performance of the contract.
- (4) Fixed-price transactions must be expressly designated as such in our written confirmation of order.
- (5) The customer may claim compensation in lieu of performance if he has set us a 4-week period of grace with the threat that he will refuse performance when that period expires. The period shall commence on the day on which the notification of the customer goes out by registered post. In the case of Paragraph 3 above this provision shall apply in place of the cancellation only if we receive the notification from the customer of the period of grace, with the threat of refusal, within the period for subsequent performance.
- (6) The customer shall have no claims on account of late delivery before the period for subsequent delivery has expired.

§ 5 Reservation of title

- (1) The delivered goods shall remain our property until payment has been received in full. However, the customer may process or sell the goods within the ordinary course of business. These goods may not be pledged or assigned as security in favour of third parties without our written consent. The customer must notify us immediately of any attachment of these goods by third parties.
- (2) The following applies for the case of processing and subsequent sale:
 - a) The delivered goods shall remain our property until our claims have been paid in full.
 - b) The authority of the customer to process and to sell reserved goods in the ordinary course of business shall end if he suspends payment or bankruptcy proceedings are instituted against him, if he has petitioned for respite in administration or has approached his creditors with regards to an out-of-court administration agreement. In this case the customer shall be bound to surrender the unprocessed reserved goods on our first request. We will in this case credit the customer with the proceeds which he would achieve from the best possible realisation. Our demand for surrender of the unprocessed reserved goods shall not constitute cancellation of the contract of sale.
 - c) The reserved goods or the assigned claims may not be pledged or assigned as security.
 - d) The customer shall not acquire title to the new article through the processing of the reserved goods. The customer shall carry out processing for us without us accruing any liabilities thereby. If the reserved goods are processed, we shall acquire joint title to the new article to the value of the individual parts at the time of combination (Par 950 BGB).
 - e) The customer hereby assigns to us the claim arising from the resale of the reserved goods to the extent that the goods are processed. The assignment shall be limited in amount to the invoice value of the reserved goods which were processed to form the new article.
 - f) We will not collect the assigned claims provided that the customer fulfils his payment obligations. However, the customer shall be bound to tell us the name of the account debtor on request and to notify him of the assignments. The customer shall also be entitled to collect the claims himself provided that he fulfils his payment obligations.
 - g) The reservation of title shall exist even if individual claims of ours flow into a current account and the balance is drawn and recognised, unless the balance is settled.
 - h) We undertake to release the securities accruing to us at our option to the extent that the value exceeds the claims to be secured by 10 % after taking account of the value added by the customer.
 - i) We shall be notified of attachments immediately, with details of the pledgee.
 - j) The customer or the insolvency administrator shall, as soon as he has suspended payment, be bound to send to us immediately after disclosure of the suspension of payment a schedule of the reserved goods still in existence, even if they have been processed, and a schedule of the claims to account debtors together with credit memoranda.
- (3) Should we enter into contingent liabilities in the interests of the customer – payment by cheque or bill – the extended and prolonged reservation of title shall continue to exist until we have been completely released from these liabilities.

§ 6 Passage of risk

The risk of accidental loss or deterioration shall pass to the customer upon handover of the goods to the haulier or freight forwarder. The risk shall pass even if the customer is in default of acceptance.

§ 7 Warranty & Notification of defects

- (1) The buyer has the duty to inspect the goods for deficiencies immediately after their delivery. Any deficiency claims in relation to the goods must be notified in writing to us within 14 days after receipt of the goods by the buyer, otherwise the goods are deemed as accepted. Hidden defects have to be asserted immediately after their discovery, otherwise the goods are deemed as accepted. Without any notice of defect the goods are deemed as accepted two months after delivery at the latest. The notice of defect shall be in writing under specification of order – data, invoice- and delivery-numbers. Claims for hidden defects are excluded for processed goods.
- (2) In the event of any rightful notification, we reserve the right to remove the defects or to deliver faultless goods within 14 days after receiving the scare goods. Rejected goods shall be returned to us only with our prior approval. In this case we will bear the freight charges. If the supplementary performance fails, the buyer has - at his option - the right either to demand for a reduction of the purchase price or to terminate the contract. Any further claims of the buyer, in particular damage compensations are- if not caused by our willful misconduct - excluded.
- (3) The buyer has the duty to inspect the delivered goods in order to determine whether they are of the agreed condition and suitable for the intended use. We assume no liability for the suitability of our goods for a use intended by the buyer. Statements and advice provided by our employees with the regard of the suitability of our products for an intended use by the buyer do not constitute any warranty claims. A suitability of our goods can only be taken as a basis for the assertion of warranty claims if we have confirmed the suitability of our goods for a certain used intended by the buyer in writing.
- (4) We especially do not assume any liability for an incorrect use of our goods (confusion of goods), resulting from and out of an incorrect storage of our goods, an incorrect handling (dust creation, in particular with fine powders) and resultant risks.

§ 9 Compensation

- (1) Where allowed by law, our obligation to pay compensation, on whatever legal grounds, shall be limited to the invoice value of our goods directly involved in the damaging event.
- (2) If liability arises thereby, however, the compensation shall not exceed the resulting loss and the lost profit which we should have foreseen at the time of formation of the contract having due consideration for the circumstances which we knew of or should have known of.

§ 10 Other provisions

- (1) The place of performance and jurisdiction for all claims arising from the contractual relationship shall be CH-8304 Wallisellen, Switzerland. We shall at our option also be entitled to pursue the customer at his general place of jurisdiction.
- (2) Business relations and all legal relations between us and the customer shall be governed by the laws of Switzerland without provisions on selection of the proper law. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) in particular is excluded.