

## **FISTA HANDELS & RECYCLING AG TERMS AND CONDITIONS OF PURCHASE**

### **1. Content of the contract and confidentiality**

Amendments and supplements to the supply contract shall only be valid if these have been confirmed in writing by Fista Handels & Recycling AG. Details contained in offers from the supplier shall only become part of the contract if these are expressly mentioned in the order. Orders and all associated commercial and technical details must be treated in confidence by the supplier. Reference to the business relationship is only permitted with the express consent of Fista Handels & Recycling AG.

### **2. Prices**

The prices upon which the orders are based are fixed prices. Unless expressly agreed otherwise the legal charges are included in the price. The remaining terms and conditions of delivery are governed by the current Incoterms Rules unless agreed otherwise. Changes to prices and provisions shall only be binding insofar as these have been expressly agreed by Fista Handels & Recycling AG.

### **3. Invoicing and payment terms**

A corresponding invoice, to be sent separately from the delivery, must be submitted for each consignment with reference to the order. The delivery is only deemed to have been fulfilled if the documents required in the order plus the technical documentation have also been supplied. Payments of Fista Handels & Recycling AG are made subject to proper performance of the contract and subject to prices and calculations being correct. In the event of incorrect delivery Fista Handels & Recycling AG shall be entitled to withhold an appropriate part of the payment until proper performance of the delivery. Payments made for and use of the goods supplied do not constitute acceptance of the deliveries.

### **4. Delivery dates and delivery periods**

Delivery dates and delivery periods refer to the arrival of the goods at the destination and are binding. Fista Handels & Recycling AG must be notified immediately of any delays in delivery which are recognizable by the supplier. Costs for freight/express goods etc. as the result of delay in dispatch by the supplier will be charged to the supplier.

### **5. Acceptance and inspection of the goods**

Payments of Fista Handels & Recycling AG are made on the basis of an inspection report on receipt of the goods at the destination. Since the more detailed inspection of the goods with regard to quantity and quality can normally only be done at a later date, such payments do not constitute acknowledgement of quantity and quality. Fista Handels & Recycling AG therefore also reserves in full the corresponding rights to submit claims following inspection of and payment for the goods. The same also applies accordingly if payment is only made for part of the delivery. The costs for the necessary sampling, testing, etc. as a result of defective delivery or delivery which does not conform to the order will be charged to the supplier.

## 6. Quality

The supplier guarantees that delivery will be fully in accordance with the terms of the contract and faultless, that good quality raw materials have been used, that the items are in good condition appropriate for the intended purpose of use and in the agreed quality. Fista Handels & Recycling AG can put goods which are the subject of complaint to the suppliers disposal and demand replacement for goods in perfect condition. Out of consideration for the fact that for the majority of consignment deliveries it is impossible for the goods to be checked immediately to verify whether they meet the agreed quality, by accepting the order the supplier also acknowledges a notification of defects outside the time limit for claim; this also applies in respect of hidden defects (see Art 201, 367, 370 OR). Reductions in the periods of notice provided in law for asserting material warranty claims are excluded. In any event Fista Handels & Recycling AG retains the rights to conversion or reductions (Art 205, 368 OR [Swiss Code of Obligations]) as well as compensation. Fista Handels & Recycling AG is entitled to withhold payment in full or in part until, where replacement is demanded, the supplier has met its obligation to supply replacement goods in perfect condition or until the situation with regard to conversion, reduction and compensation has been cleared up to binding effect.

## 7. Packaging, transport and insurance

Losses of and damage to goods attributable to faulty packing or incorrect method of transport shall be charged to the supplier, whereby the supplier shall only be held liable for defects as a result of transportation if the supplier is responsible for the transportation (in accordance with Incoterms). Hazardous materials must be packaged and labelled in accordance with the applicable laws, the corresponding safety data sheets must be enclosed with the delivery. Dangerous goods must also be packaged and labelled in accordance with the valid laws, the dangerous goods classification or, if necessary, the notice "not dangerous goods" must be stated on the consignment note. Transfer of risk takes place in accordance with the current Incoterms.

## 8. Dispatch requirements

Dispatch notices must be sent to Fista Handels & Recycling AG on the date of dispatch, quoting the order number and order date. A delivery note, quoting the order number, description of goods, net and gross weights or precise unit quantities, must be enclosed with each delivery. In the absence of these details acceptance can be refused. Part and residual deliveries must be designated as such. The order numbers must also be stated at least in waybills and accompanying documents.

The resultant costs arising from failure to adhere to these instructions shall be charged to the supplier.

## 9. Warranty of title

The supplier guarantees that the goods supplied by it do not breach any industrial or commercial property rights or other statutory provisions and that no claims against Fista Handels & Recycling AG can be filed by third parties arising from the use of the goods and their sale. In the event of claims from third parties being filed the supplier will indemnify Fista Handels & Recycling AG in full from any claims for damages and assist or represent Fista Handels & Recycling AG at its, the supplier's, costs in negotiations and legal disputes. All costs for legal redress shall be charged to the supplier.

10. Subcontracting

The subcontracting of orders to third parties without the written consent of Fista Handels & Recycling AG is prohibited. Any breach of this provision shall entitle Fista Handels & Recycling AG to withdraw from the contract or to waive the services of the supplier in whole or in part without payment. In addition, Fista Handels & Recycling AG can file claims for compensation.

11. Assignment of claims and offsetting

The assignment of claims against Fista Handels & Recycling AG as well as offsetting by the supplier is excluded without the express consent of Fista Handels & Recycling AG.

12. Choice of Law

**Swiss law applies to the business relationships.**

13. Jurisdiction

**Place of jurisdiction** for all disputes arising from this contract and/or these terms and conditions of purchase is at **the respective registered office of Fista Handels & Recycling AG, currently Zollikon/Switzerland.**