

TERMS AND CONDITIONS OF SALE AND DELIVERY OF FISTA HANDELS & RECYCLING AG

1. Conclusion of Contract

All offers, sales and deliveries are carried out only in accordance with the terms and conditions below. Special terms and conditions or amendments to the terms and conditions below must be confirmed in writing by Fista Handels & Recycling AG to be valid. The purchaser's general terms and conditions of purchase shall only be binding if these are expressly confirmed in writing by Fista Handels & Recycling AG in place of these terms and conditions of contract. The goods to be supplied are defined exclusively in the contract. Orders only become binding on submission of an express confirmation of sale from Fista Handels & Recycling AG.

2. Delivery

- 2.1 If the purchaser issues an order without stating, prior to conclusion, how delivery is to be divided up, then it must be accepted in approximately equal monthly quantities spread over the delivery period. If, on conclusion of contract, the purchaser has reserved the right to spread the quantities and their delivery period then it must issue a corresponding declaration within four weeks following written request from the seller or within a period to be agreed with the seller. The seller is only obligated to delivery if it has agreed to the division of the consignment in writing.
- 2.2 If the purchaser does not promptly notify its request for division of delivery then Fista Handels & Recycling AG is entitled to spread the deliveries itself in accordance with the basic principles specified in item 2.1 or to withdraw from the contract. The rules under items 1 and 2 apply accordingly in the absence of other specified requirements to be notified by the purchaser.
- 2.3 In the absence of any agreement to the contrary deliveries are made ex works or ex warehouse of Fista Handels & Recycling AG in accordance with the current provisions of INCOTERMS. The date of delivery is deemed to be the time on which the goods are dispatched from the factory or warehouse or are made available and ready for dispatch to the purchaser.
- 2.4 All risks pass to the purchaser on delivery. The same applies to the transport risk even if Fista Handels & Recycling AG has concluded an insurance policy for this risk.
- 2.5 A delivery is only deemed to be overdue if a written reminder has been received from the purchaser. In the event of a delay in delivery the purchaser will set an appropriate period of grace; this must be at least six weeks. If the period of grace is exceeded the purchaser shall be entitled to withdraw from the contract to the extent that the consignments have not yet been delivered. Claims for compensation as a result of late delivery are excluded. Late delivery does not apply whilst the purchaser is in arrears with a due payment.
- 2.6 Circumstances beyond the control of Fista Handels & Recycling AG, such as in particular but not exclusively force majeure, energy and/or raw material shortages, plant shutdowns, strikes, transport difficulties or other obstacles which render it impossible in whole or in part for Fista Handels & Recycling AG or its suppliers to manufacture or dispatch the goods, shall exempt Fista Handels & Recycling AG from its obligation to prompt delivery for the duration and consequence of the interruption and shall entitle Fista Handels & Recycling AG, at its option, to extend the period of delivery accordingly or to withdraw from that part of the contract which has not yet been fulfilled. If the agreed delivery period is exceeded by more than two months both parties shall be entitled to withdraw from the contract insofar as this has not yet been fulfilled.

- 2.7 In these cases the purchaser has no entitlement to subsequent delivery or compensation.
- 2.8 All agreed quantities and weights are understood as including a tolerance of +/- 10%. In the absence of an express request for the goods to be weighed the weight specified by Fista Handels & Recycling AG shall apply as the basis for the purpose of calculating prices.
3. Prices and Payment Terms
- 3.1 ¹Unless expressly agreed otherwise prices are understood as being in Euro, excluding packaging, ex works or warehouse of Fista Handels & Recycling AG, Netherlands in accordance with the current provisions of INCOTERMS.
- ²Any costs or fees incurred in connection with the order, such as license fees, taxes, freight and insurance costs etc. that were not known at the time of conclusion of contract will be charged to the purchaser.
- 3.2 If the purchaser is more than 30 days overdue with payment of a due debt then all claims arising from the business relationships with the purchaser shall become immediately due for payment.
- 3.3 In the event of overdue payment, subject to further rights, interest at the rate of 1% per month shall be payable on the outstanding amount.
- 3.4 In the case of part or instalment contracts Fista Handels & Recycling AG shall also be entitled, at its option, to subsequently demand payments in advance for the remaining outstanding consignments or adequate sureties if the purchaser is in arrears with payment for previous deliveries.
- 3.5 Fista Handels & Recycling AG is also entitled to exercise these rights in accordance with items 3.2 – 3.4 if well-founded doubt arises about the purchaser's solvency.
- 3.6 Payments received will first be appropriated to any default interest owed and then to the oldest debt.
- 3.7 The purchaser has no entitlement to offsetting against Fista Handels & Recycling AG. There is no right of retention on the part of the purchaser in respect of due purchase price payments.
4. Reservation of ownership
- 4.1 Fista Handels & Recycling AG remains the owner of the goods supplied by it until the purchaser has settled all claims arising from the business relationship. The purchaser will perform all the acts required in order to protect the rights of Fista Handels & Recycling AG in accordance with this provision.
- 4.2 The ownership also extends to the full value of the new products created through the processing of the goods subject to the reservation of ownership. If the ownership rights of third parties are preserved when processing third party goods Fista Handels & Recycling AG shall acquire co-ownership in the ratio of the invoice values for the goods supplied by Fista Handels & Recycling AG and this third party. The purchaser does not acquire any claims against Fista Handels & Recycling AG arising from the processing and storage of the goods subject to the reservation of ownership. The purchaser may

dispose of the processed goods subject to the reservation of ownership through the normal business process providing it has met its obligations to Fista Handels & Recycling AG in the proper manner. In the event of default in payment the purchaser must return the goods subject to the reservation of ownership to Fista Handels & Recycling AG at its first request and for its free disposal.

4.3 The purchaser is obligated to insure the goods which are subject to the reservation of ownership and still housed on its premises against the risk of fire and theft and at the request of Fista Handels & Recycling AG provide evidence that this insurance has been effected.

5. Warranty

5.1 Fista Handels & Recycling AG guarantees the purchaser that the goods supplied hereunder will be supplied in accordance with the product description. The warranty period is 30 days from the date of delivery on the condition that the goods have been stored in accordance with standard industrial practice and conditions. The purchaser must inspect the goods on receipt.

5.2 The goods are deemed to be in conformity with the contract even if they contain deviations in appearance and properties due to the characteristics of raw materials or manufacturing, providing these do not significantly impair the use of the goods.

5.3 Insofar as a complaint in respect of a defect can be filed this must be submitted to Fista Handels & Recycling AG in writing no later than within 30 days following receipt of the goods, enclosing documents, samples, pack labels, details on crates or bales etc. If the complaint is not submitted within this period or if the goods supplied are handled or processed in any way whatsoever, the right of complaint is excluded. Complaints in respect of hidden defects must be notified as soon as the defect is discovered. The purchaser bears the burden of proof that this relates to a hidden defect. The right of complaint expires in any event 3 months following receipt of the goods. If the goods are handled, processed or otherwise sold in any form whatsoever after the purchaser has discovered or should have discovered a hidden defect, all and any claims for defect shall expire. This does not apply if the purchaser has notified the defect within the exclusion period of three months and if it provides evidence that the handling or further processing had been necessary to prevent what would otherwise have been a more significant loss/damage.

5.4 If the purchaser has justifiably and in due time submitted claims for defect then he cannot demand replacement for the goods affected by the complaint, but only conversion. The right to compensation is excluded. The exclusion of the right to compensation also applies for any collateral damage as well as for damage arising from delay in or impossibility of the replacement supply. If Fista Handels & Recycling AG requests that the goods be returned and if the purchaser proves that it is no longer in a position to return the goods which form the subject of the complaint in their original condition as a result of handling or processing of the goods for which it was not at fault, the purchaser can demand a reduction in the purchase price for those defective goods which have been handled or processed.

6. Liability

Notwithstanding provisions to the contrary and where permitted in law, Fista Handels & Recycling AG shall only be liable for loss/damage caused in connection with the contract where it is proven to have acted with gross negligence or unlawful intent, with the total liability being limited to the contract purchase price. Any liability for indirect or consequential loss is excluded.

7. Salvatory Claus / Partial Invalidity

Should individual provisions of the purchase contract and these terms and conditions of sale and delivery be contrary to mandatory, statutory provisions under the applicable law, this will not affect the remaining provisions of the purchase contract or these terms and conditions. The clause that most closely reflects the purpose of the provisions concerned shall apply.

8. Choice of Law

Swiss law applies to the business relationships.

9. Jurisdiction

Place of jurisdiction for all disputes arising from this contract and/or these terms and conditions of sale is at **the respective registered office of Fista Handels & Recycling AG, currently Zollikon/Switzerland**. Fista Handels & Recycling AG is also entitled to take legal action against the purchaser in respect of these disputes at any ordinary court having jurisdiction for the purchaser.