

1 Scope of Application

These General Terms and Conditions of Sale and Supply ("GTC") apply to all transactions between FlexFactory Ltd ("Supplier") and its customers, unless otherwise agreed in writing.

These GTC are binding if they are declared applicable in the offer or in the order confirmation. They also apply to future business with the customer. Deviating terms and conditions of the customer shall only apply if the Supplier expressly accepts them in writing.

2 Conclusion of Contract

Offers made by the Supplier are subject to change and non-binding. Orders placed by the customer shall be considered as an offer. A contract is only concluded with the Supplier's order confirmation (acceptance). The provisions of the order confirmation take precedence over these GTC.

If the Supplier's order confirmation deviates from the customer's order, it shall be deemed a counter-offer. The counter-offer shall be deemed accepted and a contract shall be concluded if the customer does not object to it within three working days of receipt. Under no circumstances shall the Supplier's silence to an offer by the customer be deemed a declaration of acceptance.

3 Regulations in the Country of Destination

If the country of destination of the delivery is not Switzerland, the customer shall draw the Supplier's attention to the relevant statutory, official and other regulations and standards applicable in the country of destination with the order at the latest. If the customer does not comply with this obligation, it shall bear the costs for any adjustments necessary due to the applicable regulations and standards.

4 Brochures, Plans and Technical Documentation

Unless otherwise agreed, information on the Supplier's website and the Supplier's brochures are not binding. Information in plans and technical documents are only binding if expressly warranted.

Each party reserves all rights to plans and technical documents which it has handed over to the other party. The receiving party acknowledges these rights and, without the prior written consent of the other party, will not make the documents available to third parties in whole or in part or use them for purposes other than those for which they were handed over.

The Customer shall be responsible for the completeness and correctness of sample parts, technical documents, calculations or other information provided to the Supplier for the execution of the order.

The customer may only use the software, know-how and documentation contained in the delivery for the purposes for which they were made available to it. It may neither disclose them nor otherwise make them available to third parties, copy them or reproduce them. Any extension or modification of the software by the customer requires the prior written consent of the Supplier.

5 Part Tests

At the request of the customer, the Supplier can test the feasibility of a project and the expected performance in trials and record the results in a test report. The tests are carried out with great care in the Supplier's test laboratory according to the customer's specifications. However, the Supplier's results and statements on feasibility and performance can only be achieved in the customer's real project if the customer creates the same framework conditions as were present during the Supplier's test. In particular, changed lighting conditions or an unstable overall structure of the cell can lead to strong deviations from the test. The supplier does not warrant that the results recorded in the test report can actually be implemented in the customer's real project.

6 Delivery

6.1 Scope of Delivery

The order confirmation is decisive for the scope and execution of the delivery and service. Material or services not included therein will be charged additionally. The Supplier shall be entitled to make partial deliveries and render partial services.

Changes to the order confirmation may be made by the Supplier if these bring about an improvement for the customer.

6.2 Delivery Periods

Delivery periods or dates ("Delivery Periods") shall only be binding if they have been confirmed on the order confirmation and can only be changed with the explicit consent of the Supplier. They shall not commence until all official formalities have been completed, advance payments made, any securities provided and the relevant technical matters have been settled. The Delivery Period shall be deemed to have been complied with if the notification of readiness for dispatch has been sent to the customer by the end of the delivery period.

The Supplier undertakes to do everything in its power to comply with binding Delivery Periods. Non-compliance with Delivery Periods by the Supplier shall only entitle the customer to withdraw from the contract if the delivery has not taken place even after expiry of a reasonable grace period set by the customer. Claims for damages by the customer are excluded to the maximum extent permitted by law.

The Supplier shall be released from its obligation to comply with Delivery Periods without the customer having the right to withdraw from the contract and/or assert claims for damages,

- a) if the customer is in default with the fulfillment of its contractual obligations and/or duties or has subsequently requested changes;
- b) in all cases of force majeure, in particular the occurrence of unforeseen events in production or sales as a result of delayed supply, boycotts, lockouts or strikes, whether in the Supplier's own operations or the operations of sub-suppliers or transport companies, as well as natural catastrophes or warlike events or mobilisations.

6.3 Delivery Terms, Transfer of Benefits and Risks

Unless otherwise agreed, delivery will be EXW Dietikon (Switzerland) INCOTERMS 2010.

In any case, benefit and risk shall pass to the customer at the latest upon dispatch of the delivery ex works.

6.4 Inspection of Deliveries and Services and Notice of Defects

The customer shall immediately inspect deliveries and services and notify the Supplier of any defects by means of a notice of defects in writing within seven working days of delivery. If it fails to do so, the deliveries and services shall be deemed approved.

Hidden defects, which cannot be discovered immediately upon careful inspection, must be notified to the Supplier in writing immediately after their discovery. Otherwise, the delivery or service shall be deemed approved also with regard to these defects.

7 Default of Acceptance by the Customer

If the customer does not collect the delivery or parts thereof within seven working days of dispatch of the notification of readiness for dispatch, it shall be in default of acceptance.

In the event of default of acceptance on the part of the customer

- a) benefit and risk are transferred to the customer;
- b) the customer shall bear the storage and insurance costs of the parts not collected;
- c) the Supplier shall be released from the obligation to comply with the Delivery Periods and shall be entitled to sell the not collected parts elsewhere.
- d) the Supplier is entitled at any time to withdraw from the contract after setting a grace period of five working days.

8 Services

Unless otherwise agreed in writing, the Supplier's scope of performance shall not include services such as parts testing, assembly, installation and commissioning of the delivery at the customer's premises, project support, cycle optimisation or training of customer's employees on site. Agreed services shall be governed by this Clause 8. Services shall be rendered at the Supplier's applicable rates for labour and travel time, travel costs and expenses.

For on-site services at the customer's premises, the customer shall make available free of charge qualified operating personnel, auxiliary personnel as well as all necessary materials, sample parts, auxiliary equipment, tools and energy. The customer is also responsible for ensuring orderly working conditions and for compliance with the applicable safety and employee protection regulations.

9 Payment

9.1 Prices

Unless otherwise agreed, the Supplier's prices are net ex works, in Swiss francs, excluding packaging, transport, insurance and value-added tax.

9.2 Payment Terms

Unless otherwise agreed, the payment period is 30 days net from the invoice date. The Supplier may check the creditworthiness of customers and demand advance payments. Payments are to be made by the customer without deduction (e.g. cash discount, expenses, taxes, fees, etc.) in Swiss francs to the bank account specified by the Supplier on the invoice.

The customer may not set off the Supplier's claims with counterclaims.

9.3 Payment Default

After expiry of the agreed payment period, the customer shall be in default and shall owe the Supplier default interest of 5% (five per cent) p.a.

If the customer is in default of payment or if the Supplier has reason to be seriously concerned that payments by the customer will not be received in full or on time due to circumstances occurring after the conclusion of the contract, the Supplier shall be

- a) released from compliance with the Delivery Periods and entitled to sell parts not yet delivered elsewhere;
- b) entitled to retain deliveries and services not yet performed;
- c) entitled to withdraw from the contract and demand the return of the delivered items after the setting of a grace period.

The Supplier in any case reserves all other statutory rights, including any claims for damages.

10 Retention of Title

The Supplier retains title to the delivery until it has been paid for in full.

The customer is obliged at its own expense to take the necessary measures to protect the Supplier's property. In particular, the customer shall maintain the Supplier's property and insure it adequately and in a manner commensurate with the risk against loss by theft, fire, water, etc., and provide evidence of such insurance to the Supplier upon request. The customer assigns its claims against the insurer to the Supplier.

With conclusion of the contract, the customer authorizes the Supplier to have the retention of title entered in the relevant register at the customer's expense and to complete all the relevant formalities.

Until the purchase price has been paid in full, the delivered goods may not be pledged, transferred by way of security or otherwise encumbered with rights of third parties, but may only be sold in the ordinary course of business.

11 Warranty

11.1 Warranty Period

The warranty period is 24 months. It begins with the dispatch of the delivery ex works. If dispatch is delayed for reasons for which the Supplier is not responsible, the warranty period ends 24 months after dispatch of the notification of readiness for dispatch.

For replaced or repaired parts, the warranty period begins anew and lasts six months from replacement or completion of the repair, but at the most until the expiry of a period which is twice the warranty period according to the previous paragraph. The replacement or repair of individual parts shall not lead to an extension of the warranty period for the entire delivery.

The warranty expires prematurely if the customer or third parties carry out modifications or repairs without the Supplier's written consent or if the customer, if a defect has occurred, does not immediately take all suitable measures to minimise the damage and gives the Supplier the opportunity to remedy the defect.

11.2 Contents of the Warranty

Warranted characteristics are only those which have been expressly designated as such in the order confirmation or in the specifications. The warranty is valid until the end of the warranty period at the latest.

At the written request of the customer, the Supplier undertakes to, at its own discretion, either repair or replace as quickly as possible all parts of the delivery which do not exhibit the warranted characteristics or which demonstrably become defective or unusable within the warranty period as a result of poor material, faulty design or defective workmanship.

Repair work shall generally be carried out in the Supplier's workshops after the customer has duly packed the defective parts and sent them to the Supplier, whereby the shipping costs shall be borne by the Supplier within Europe. If a repair has to be carried out at the customer's premises, the travel and accommodation costs shall be borne by the customer.

Parts to be replaced may, at the Supplier's discretion, be replaced by the Supplier itself or delivered to the customer, who shall then replace them with the Supplier's consent. Replaced parts shall become the property of the Supplier unless it expressly waives this right. Defective parts replaced by the customer itself shall be returned to the Supplier upon request. Within Europe the shipping costs shall be borne by the Supplier.

11.3 Warranty Limitations

The following are excluded from the Supplier's warranty

- a) all defects which demonstrably have not arisen as a result of poor material, faulty design or defective workmanship, e.g. defects that

have arisen as a result of natural wear and tear, poor maintenance, disregard of operating instructions, excessive strain, unsuitable operating materials, chemical or electrolytic influences, construction or assembly work not carried out by the Supplier and other reasons for which the Supplier is not responsible.

- b) all defects in wear parts and any tools supplied.

The customer shall have no rights and claims due to the absence of warranted properties and due to defects in material, design or workmanship other than those expressly mentioned in this Clause 11.

12 Limitation of Liability

All claims of the customer, no matter from what legal basis they arise, are conclusively governed by these GTC. In particular, all claims of the customer for damages, price reduction, cancellation or withdrawal from the contract not expressly mentioned in these GTC are excluded.

In the event that claims of the customer should exist from or in connection with the contractual relationship or its improper fulfilment, the total amount of these claims shall be limited to the price paid by the customer.

Irrespective of their legal basis, any claims by the customer for compensation for damage not incurred to the delivery item itself, such as, in particular, production losses, loss of use, loss of orders, recall costs, loss of profit and other direct, indirect or consequential damage, are excluded. Liability for the compensation of third party claims asserted against the customer due to infringement of intellectual property rights is also excluded.

This exclusion of liability shall not apply to unlawful intent or gross negligence on the part of the Supplier, but shall apply to unlawful intent or gross negligence on the part of the Supplier's auxiliary persons. This exclusion of liability does not apply insofar as it is contrary to mandatory law.

If third parties are injured or otherwise damaged as a result of actions or omissions on the part of the customer and if claims are made against the Supplier in this respect, the Supplier shall be entitled to a right of recourse against the Customer.

13 Final Provisions

13.1 Severability

Invalidity of individual parts of these GTC or other agreements between the parties does not affect the validity of the remaining provisions.

13.2 Changes

Changes to these GTC or to the provisions of the order confirmation require the Supplier's written consent.

13.3 Applicable Law and Jurisdiction

These GTC and the entire legal relationship between the customer and the Supplier are governed by Swiss substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

The place of performance and jurisdiction shall be the Supplier's seat. However, the Supplier is entitled to sue the customer before any other competent court.