

## **FREWITT General Conditions of Sale and Delivery**

### **1. General**

- 1.1 These FREWITT General Conditions of Sale and Delivery are valid for all goods and services supplied by Frewitt Engineering Works Ltd. (hereinafter called "FREWITT") unless otherwise agreed in writing. General conditions, or any other terms and conditions issued by the customer that are in contradiction with the General Conditions of Frewitt are valid only if accepted in writing by FREWITT.
- 1.2 All agreements and legally binding statements of the parties are valid only if made in writing. A lack of reply on behalf of FREWITT does not imply any agreement or acceptance to any proposal of customer order or change to an order.
- 1.3 The present FREWITT General Conditions of Sale and Delivery are in English or French. Either English or French shall be the prevailing language of the Conditions in the event FREWITT Conditions are translated into any other language.

### **2. Offers and Conclusion of a Contract**

Unless otherwise expressly stated in writing, all quotations and estimates by FREWITT are to be treated as a proposal to the Customer to place an order to purchase the Goods. Unless specified in writing by FREWITT, all quotations and estimates are for products of FREWITT and not an offer of "WORKS FOR HIRE". The Customer's order is an offer to purchase the Goods. A legally binding contract will only be formed upon FREWITT posting its confirmation of acceptance of the order (the "Contract"). FREWITT reserves the right to decline any Customer's order without reason. A confirmed order may be cancelled or modified by the Customer only with FREWITT's written consent. The giving of the FREWITT's written consent shall not in any way prejudice FREWITT's right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

### **3. Validity of the offer**

- 3.1 The validity of the FREWITT offer is 30 calendar days, starting from the date of issue. Beyond that date, FREWITT reserves its right to adjust the offer to new conditions, or to not renew the offer. FREWITT reserves the right to rescind the validity of the offer during the validity period.
- 3.2 Any reserves made by FREWITT in an offer or URS response will be considered as irrevocably accepted unless the Customer makes exceptions in writing to FREWITT before the issue of the Customer's purchase order.
- 3.3 User Requirement Specifications (URS) issued by the Customer after the issue of a budget or formal FREWITT offer, invalidate the FREWITT offer.
- 3.4 The present FREWITT General Conditions of Sale and Delivery are an intrinsic part of the FREWITT offer.

### **4. Scope of delivery**

- 4.1 Scope and delivery of goods and services are defined by the confirmation of the order by FREWITT. Goods or services not specified therein will be invoiced separately.
- 4.2 Pictures, drawings, and descriptions in brochures and catalogues, as well as data of dimensions and weights are approximative and not legally binding. They are binding only if expressly confirmed by FREWITT in writing.
- 4.3 It is the Customer's responsibility to satisfy itself that the drawings, calculations, and specifications are correct. No responsibility for errors or omissions will be accepted by FREWITT once the Customer has approved submitted details and drawings. In any event, FREWITT's responsibility is solely confined to its own manufactured components and does not extend to Third-party products and components as well as the overall structural or architectural considerations.

## **5. Prices**

- 5.1 Unless otherwise expressly stated in the FREWITT offer, FREWITT prices quoted are FCA FREWITT Factory (FCA Incoterms 2020) excluding VAT, cargo inspection, packaging, customs duties, taxes, fees, insurance, installation, commissioning, and other services.
- 5.2 Any change order on behalf of the Customer is excluded and must be quoted by FREWITT as an additional value. In the event the requested quote for the change order is not purchased by the Customer, FREWITT will invoice the customer for the elaboration of the change order offer at FREWITT Standard Rates.
- 5.3 Unless otherwise expressly stated in the FREWITT offer, the price does not include the loading, unloading or installation of the equipment, commissioning, validation support, or staff training.
- 5.4 If, between the conclusion of the contract and the acceptance of the goods, the costs underlying the calculation increase, FREWITT has the right to adjust accordingly the prices stated in the confirmation of the order.
- 5.5 In the event the Customer requires an Advance Bank Guarantee (ABG), the costs of the ABG shall be charged to the account of the customer.

## **6. Terms of Payment**

- 6.1 Unless otherwise expressly stated in the FREWITT offer, the payments terms are:
  - 60% of the full amount of the customer's purchase order payable net 10 days from FREWITT order confirmation
  - 30% payable at the latest 1 week before confirmed delivery date: payment due 30 days net from invoice date
  - 10% payable at final invoice; payment due 30 days net from invoice dateLate payment, at any stage, will stop the project and extend the delivery date.
- 6.2 In the case of exports, FREWITT reserves its right to request an irrevocable letter of credit issued by a first-class Swiss bank. The letter of credit charges are at the expense of the customer.
- 6.3 Customer payments are to be made to FREWITT without deduction for discounts, charges, taxes and fees of any kind.
- 6.4 Upon expiry of the payment term set forth in the invoice, the customer shall owe default interest at the rate of 6% yearly, plus processing charges without formal notice. Compensation for further damages shall remain reserved. In the event of default of payment, FREWITT shall be entitled with immediate effect to stop further deliveries and to suspend any remedy of defects.
- 6.5 No payments may be withheld not in the event of delayed delivery or complaints. The offsetting of any possible counterclaims of the customer against claims of FREWITT shall be excluded.
- 6.6 In the event of default of payment, FREWITT reserves the right to rescind the contract, while demanding the return of the goods in accordance with Article. 214 paragraph 3 of the Swiss Code of Obligations.
- 6.7 All charges to FREWITT resulting from the delay of payment of the Customer, including the stocking of equipment, off-site transport, temporary packing, extension of bank guarantees, modifications of letters or credits, etc. will be reinvoiced to the Customer.
- 6.8 In the event of late or non-payment, FREWITT reserves the right to suspend all business and after sales support until further notice by FREWITT management.
- 6.9 Any invoices raised by FREWITT due to conditions covered in Clause 8.6, and 8.7 shall be payable 30 days net from invoice date.

## **7. Retention of Title**

- 7.1 FREWITT retains title to all goods delivered until such time as they are fully paid for. The customer is required to take all necessary measures to protect the ownership of FREWITT.
- 7.2 FREWITT has the right to enter the retention of title in any appropriate public register, and the customer shall be obliged to cooperate with this entry.

## 8. 8. Term of Delivery

- 8.1 The estimated delivery time FCA Frewitt Factory is stipulated in FREWITT work weeks in the FREWITT offer according to the following conditions:
- All equipment clearly specified at time of order.
  - Request of Customer's approval for the layout is 10 FREWITT works days after customer's purchase order and clarification of all technical details.
  - Customer's approval of the layout, tool selection, and technical points to be completed within 5 FREWITT working days upon receipt. Any customer's delay exceeding this 5 working day period will extend the delivery date.
  - Exact final delivery time depends on the equipment and will be confirmed after customer's approval of the layout.
- 8.2 The time of delivery will be extended if the terms of payment are not respected, or if letters of credit are opened too late.
- 8.3 The time of delivery will be extended in the event that the customer makes an inquiry for a change order that alters the design or function of the FREWITT equipment, therefore obliging FREWITT to temporarily suspend the project during the feasibility study of the change order inquiry, the subsequent phases of design conception, issue of technical-commercial offer, issue of the Customer's change order, FREWITT's confirmation of the Customer's change order, and the Customer's final design approval, after which a firm delivery date will be advised to the Customer by FREWITT. The modified delivery time will also modify and move back proportionally any date in which penalties would be imposable.
- 8.4 Any URS issued by the Customer after issue of the Customer's purchase order will be considered and inquiry for a change order and will have the same consequences as the inquiry for a change order.
- 8.5 FREWITT will endeavor to fulfill the Customer's delivery requirements for the Goods promptly, but no liability is accepted for failure to deliver within quoted times. Time of delivery shall not be of the essence unless expressly stipulated in writing in the Customer's order form and FREWITT's acceptance of the order. Any Force Majeure event impacting FREWITT as described in the ICC FORCE MAJEURE CLAUSE of March 2020 (Long-Form) removes any liability from FREWITT in the event of late delivery and the duration of any Force Majeure Event will move back proportionally any latest delivery date, as well as any date in which penalties would be imposable.
- 8.6 If through no fault of FREWITT, the Customer fails, or declines for reasons of convenience to take delivery on the agreed delivery date, or if no specific delivery date has been agreed to when the Goods have been duly advised by FREWITT as ready for dispatch, FREWITT shall be entitled to store and insure the Goods and to charge the Customer, at minimum, the following, listed costs of so doing and invoice the customer's account as follows:
- i) On-site storage at Frewitt costs CHF 450.00 for the first week (includes handling), and CHF 300.00 for every supplemental week. Starting with 5 storage days, the storage time will be rounded to a week. FREWITT reserves the right to store Goods off-site at its discretion.
  - ii) Off-sites storage costs CHF 950.00 for the first week (includes round-trip transportation and handling), and CHF 450.00 for every supplemental week. Starting with 5 storage days, the storage time will be rounded to a week.
  - iii) FREWITT management reserves the right to invoice any additional costs due to Customer failure to take delivery of the equipment. In addition, FREWITT reserves the right to charge interest at the rate of 6% yearly, plus processing charges.
- 8.7 The conditions of Clause 8.6 apply equally in the event of Force Majeure.

## 9. Packing

The packing is non-returnable, and its appropriate disposal is the customer's responsibility and expense.

## **10. Inspection and Acceptance of Delivery**

- 10.1 FREWITT inspects the goods and services in accordance with standard practice before dispatch or after performing the services. Any additional tests have to be agreed upon in advance and will be invoiced separately.
- 10.2 The customer must inspect all deliveries and services supplied, including partial deliveries and partial services, within 10 calendar days of delivery or performance, respectively, and must inform FREWITT in writing of any defects without delay, failing which, the deliveries and services are deemed to have been accepted.
- 10.3 FREWITT must correct the defects notified in accordance with article 10.2 as quickly as possible, and the customer must give FREWITT adequate opportunity to do so. After the correction, an acceptance test will be made at the request of the customer or of FREWITT.
- 10.4 Deliveries of material and services are also deemed to have been accepted if the customer uses or is able to use them.
- 10.5 The remedies stated in articles 11 for defective deliveries and services are exclusive and the customer waives all other remedies.

## **11. Warranty for Defects**

- 11.1 FREWITT warrants that the products delivered hereunder shall be free from defects in material or workmanship that could affect their proper use. The warranty starts when the products are delivered FCA FREWITT factory.
- 11.2 Express representations are only those expressly mentioned as such in the confirmation of the order by FREWITT. This warranty expires no later than the lapse of the term of warranty.
- 11.3 Any warranty or liability of FREWITT is excluded for damages that cannot be proved to result from defects in material or workmanship affecting the proper use of the products. In particular, any warranty or liability of FREWITT is excluded for damages resulting from wear and tear, deficient maintenance, noncompliance with operating instructions, overexertion,
- 11.4 Exclusion of Certain damages, FREWITT shall to the ultimate limits of applicable law in no case whatsoever be liable for:
  - iv) loss of revenues or profits
  - v) loss of opportunity, production, or contracts
  - vi) loss of use, standby costs
  - vii) loss of damage to feed, raw materials, utilities or product, plant downtime or delays
  - viii) loss of goodwill; liquidated damages or penalties imposed on the Customer by its clients or third parties, Customer's contractual liability towards any third party, claims to financial or economic losses or damages, and in each case irrespective whether the losses or damages in question are deemed to be direct, consequential, indirect or otherwise, or for any consequential, indirect, special, incidental, punitive or exemplary, losses or damager howsoever caused or arising.
- 11.5 The term of warranty is for 24 uninterrupted months from the date of delivery or from the date of notification that the goods are ready for dispatch if the delivery is FCA FREWITT Factory-. The warranty covers parts and on-site intervention but excludes travel costs. For products not manufactured by FREWITT, the terms of warranty of the respective manufacturer apply.
- 11.6 If, within the term of warranty, the customer discovers defects within the meaning of articles 11.1 and 11.2 in products supplied by FREWITT and wishes to make a warranty claim, then he must notify FREWITT at the latest within seven Customer workdays of this discovery. The discovery must be documented adequately by the Customer.
- 11.7 FREWITT shall, at its discretion, either repair or replace such products or parts thereof. The replacement or the repair of defective products constitutes neither an extension, nor give rise to a recommencement of the term of warranty. Time spent and expenditures incurred by FREWITT as a result of notifications of defects that turn out to be unfounded, shall be charged to the customer at FREWITT standard, managed billing rates.



- 11.8 The term of warranty expires with immediate effect, and all certificates (ATEX, CE and others) become null and void if:
- i) the customer or third parties do not handle the products in accordance with the instructions given by FREWITT.
  - ii) the products have been operated incorrectly as per FREWITT instructions or exerted beyond their specifications.
  - iii) the customer or third parties make improper modifications or repairs.
  - iv) the customer has used tooling's, components, or parts not of Frewitt origin.
  - v) if the customer fails to issue a written complaint about a defect in good time (see article 11.5).
  - vi) If the customer, in the event a defect occurs, does not immediately take all suitable measures to mitigate the damage and to give FREWITT the opportunity to remedy the defect.

## 12. TERMINATION

- 12.1 Either party may immediately terminate the Contract by written notice, in the event the other party:
- i) commits a material breach of the terms of the Contract (and if remediable the breach has not been remedied within 90 days of receiving notice requiring it to be remedied);
  - ii) persistently breaches any one or more terms of the Contract.
  - iii) fails to make any payment when due.
  - iv) is declared or becomes insolvent, or bankrupt, or has a moratorium declared in respect of any of its indebtedness, enters into administration, or liquidation, or threatens to do any of these.
  - v) ceases or threatens to cease to carry on business.
- 12.2 If FREWITT exercises its right to terminate the Contract under Clause 12.1:
- i) FREWITT may withhold delivery of any undelivered Goods and stop any Goods in transit.
  - ii) FREWITT may terminate the Customer's right to re-sell and retain possession of any of the Goods owned by FREWITT
  - iii) FREWITT may enter the Customer's premises or any other premises where the Goods are or may be stored and may repossess and sell or dispose of any Goods owned by FREWITT to discharge any sums owed by the Customer to FREWITT under the Contract or any other agreement with the Customer.
  - iv) all monies owed by the Customer to FREWITT shall immediately become due and payable.
- 12.3 If Customer exercises its right to terminate the Contract under Clause 12.1:
- i) The Customer must terminate the Contract by giving timely notice thereof. The Customer has the liability of paying FREWITT for the works and materials engaged up to the date of the Termination. FREWITT shall be entitled to pro-rata compensation as if the Contract has been executed, including a pro-rata profit, that FREWITT expected under the Contract. The following cancellation fees apply once the purchase order has been placed:
    - a. 15% of the purchase order value after 2 (two) weeks
    - b. 30% of the purchase order value after 5 (five) weeks
    - c. 60% of the purchase order value after 8 (eight) weeks
    - d. 100% of the purchase order value after 9 (nine) weeks and on
    - e. If the costs of Frewitt surpass the above values at the time of the cancellation, Frewitt reserves the right to invoice the totality of the expenses incurred up to the date of the cancellation.
- 12.4 Termination of Contract for convenience is excluded, therefore:
- i) FREWITT shall be entitled to compensation as if the Contract has been executed and is entitled to the full profit, that FREWITT expected under the Contract.
  - ii) FREWITT is obligated to deliver the paid, partially assembled materials to the Customer. Thereafter the Parties will have no further obligations towards each other.

## 13. Exclusion of Further Liability

- 13.1 All cases of breach of contract and the legal consequences thereof are conclusively regulated by these General Conditions.
- 13.2 With the exception of those expressly stipulated in these General Conditions, the customer expressly waives all claims, regardless of their legal basis, in particular any claims for damages, reduction of purchase price, and cancellation of or rescission of the contract.
- 13.3 Subject to any mandatory strict product liability provisions, any liability for incidental or consequential damages is expressly excluded. FREWITT is not liable, on any legal ground whatsoever, for damages caused by defects including damages spreading out or consequential damages such as business disruption, loss of production, capital costs, lost profit, third-party claims (including claims of the customer's clients) or any interests of the customer to be held harmless against such claims, respectively.

#### **14. CE Conformity**

- 14.1 Frewitt stand-alone equipment (as technically described in the FREWITT offer) are provided with a CE Marking, this is fully conforming with CE norms at the time of the delivery.
- 14.2 Frewitt equipment supplied as partially complete (for instance without safety grids, electrical panel, or machine control system as technically described in the FREWITT offer) will be delivered with a CE Certificate of Incorporation in accordance with CE Directive 2006/42/EC on machine safety. In such case, the final integrator is responsible for the final and complete CE certification of the integrated equipment.

#### **15. Equipment Performances**

Unless otherwise expressly stated in the FREWITT offer, FREWITT does not take any responsibility for the process performances of the goods sold. No warranty is given that products or services are suitable or sufficient for any specific purpose, unless such purpose is defined in the Contract, and trials with the specific products of the Customer have been performed in advance of any purchase order issue, and the guarantee of Equipment Performance has been expressly accepted by FREWITT in writing.

#### **16. Intellectual Property Rights**

Any know-how, technical or commercial information process information, or document supplied at any time by FREWITT in connection with these General Conditions of Sale and Delivery, a Contract or any earlier associated product trials, shall be treated as confidential by the Customer, its employees or agents and shall not be reproduced or disclosed to any third party or used for any other purpose other than the purpose of the Contract without FREWITT's written consent, unless and until the same is public knowledge or comes into the Customer's possession bona fides from a third party. FREWITT's technical, process, trial results, or commercial information, specifications, data, and other documents shall remain the property of FREWITT and any intellectual property rights including but not limited to patents, or copyrights in the same remains vested in the FREWITT. The Customer shall not acquire any intellectual property rights in such materials or works.

#### **17. Severability**

If any provision of these General Conditions of Sale and Delivery is held invalid in whole or in part, or if it cannot be implemented, the parties will replace it with a new one which comes as close as possible to the intention of the invalid provision. All other provisions hereof are not affected thereby.

#### **18. No Waiver**

No waiver by either party of any breach of the Contract by the other party shall be considered as a waiver of any subsequent breach of the same of any other provision.

#### **19. FORCE MAJEURE**

FREWITT shall not be liable for any failure to fulfill its obligations under the Contract if such failure is due to events described in the ICC FORCE MAJEURE CLAUSE of March 2020 (Long-Form)

#### **20. Applicable Law and Jurisdiction**

All contracts concluded in accordance with these General Conditions of Sale and Delivery are governed by the laws of Switzerland with the place of jurisdiction, the Courts of Canton Fribourg (Switzerland). The applicable language of the Courts of Canton Fribourg for all proceedings will be the French Language. In addition, FREWITT reserves the right to take legal action before the courts at the domicile of the customer or before any other competent court.

## **21. ASSIGNMENT AND ONWARD SALES**

- 21.1 The Customer shall not assign, sub-contract, delegate, transfer or dispose of the Contract and/or any of its rights or obligations under it without prior written consent of FREWITT.
- 21.2 The Customer irrevocably warrants, represents, undertakes and guarantees that it will not sell the Goods onto a third-party domiciled in a foreign jurisdiction, where, if FREWITT were to make such a sale it would be unlawful to do so pursuant to the laws of Switzerland or under any International trade embargo restricting the sale of the Goods from Switzerland to a foreign jurisdiction from time to time.
- 21.3 In the event that the Customer discovers that it has resold the Goods in breach of Clause 21.2 it shall notify FREWITT as soon as such breach is discovered, of the detail of such resale including (but not limited to) the identity of the third-party purchaser, the date of the resale, the quantity of Goods resold and any further details requested by FREWITT.
- 21.4 In the event that the Customer breaches Clauses 21.2 and 21.3:
  - i) FREWITT shall be entitled to withhold the supply of any undelivered Goods, under the Contract to which the breach relates or any other contract made between FREWITT and the Customer and
  - ii) without prejudice to any remedy which FREWITT is entitled to under these conditions the parties agree that damages for breach of Clauses 21.2 and 21.3 shall be an inadequate remedy.

## **22. CUSTOMER INDEMNITY**

- 22.1 The Customer shall indemnify and hold harmless FREWITT and its employees against any claim made against or any loss, cost (including any legal costs incurred), damage, injury or expense suffered by FREWITT or its employees or agents:
  - i) howsoever arising on the Customer's site or any site to which delivery is made or on which services are provided at the request of the Customer.
  - ii) caused or contributed to by the negligence of the Customer, its employees or other persons for whom the Customer is responsible.
  - iii) arising out of any breach by the Customer or any liability of the Customer under the Contract or these conditions, save in any case, to the extent directly caused by the negligence of FREWITT, its employees or agents; or
  - iv) arising out of any breach of the Customer's obligations under Clause 21.
- 22.2 If at the request of (or by contract with) the Customer, FREWITT agrees to provide Goods or services to any person who is not a party to the Contract, the Customer shall procure that such person agrees to be bound by these conditions as though a party to the Contract and the Customer shall indemnify FREWITT against any consequences of the Customer failing so to do, including any claim made by such person.