

General terms and conditions of business and delivery terms of Fabrimex Systems AG

1. Validity

The Fabrimex Systems AG conditions are binding when explicitly or tacitly recognised by the parties. Any alterations and relating agreements only come into effect when confirmed in writing by the supplier.

2. Means of Communication

The parties shall communicate with each other verbally, in writing, or by means of electronic data exchange.

In writing refers to letters, protocols, drawings, blueprints, faxes, E-mails and other forms of conveyance that can be verified by way of text or picture. Undersigned means that a signature by one's own hand or an appropriate electronic signature is necessary.

3. Range

For range and execution of the delivery the confirmation of order takes precedence, or where it is not evident - the offer made by the supplier. Services not explicitly listed, e.g., documentation, programming, customizing, installation, commissioning, training and support are not part of the delivery. Alterations to the confirmation of order are permissible in as far as the product has the same functions or the services fulfill the same purposes. The supplier has no obligations to make alterations to products and services that have already been produced or delivered.

4. Reservation of title

The supplier shall reserve the title of the products until any and all payments pursuant to the sale and purchase agreement have been received. The client shall forthwith notify the supplier in writing of any attachment by third parties, in particular of enforcement measures as well as other impairments of its property. The client shall compensate the supplier for any and all damages and costs incurred as a result of a violation of this obligation and as a result of necessary intervention measures against third-party attachments.

If the client acts in breach of contract, in particular if the client does not meet its payment obligation despite a reminder from the supplier, then the supplier can rescind the agreement after setting a reasonable time limit and demand the return of the goods that are still its property. If the goods are taken back or seized by the supplier then this shall constitute rescission of the agreement. As the occasion arises, the client shall bear the shipping costs. The supplier shall be authorised to dispose of the goods after they have been returned.

5. Fulfilment and Place of Delivery

If no particular place for execution of delivery is specified by the parties or is unclear as to the nature of business, the supplier's domicile shall be construed as the place of execution of delivery. If the supplier delivers any goods to a place at clients' request, the client bears all risk and liability of the transport, including packaging and customs duties. If supplier renders services at a client's domicile, the client bears all travel expenses.

6. The Customer's Duty to Inform

At the destination of delivery the customer must give the supplier timely notice of any technical requirements as well as legal, governmental and other regulations, so long as they are of significance. Care and attention as well as conform to manufacturer and supplier guidelines.

7. Documentation

If the product documentation is not part of agreed upon services, the client may request it at an additional cost. The supplier shall at an added cost provide supplementary editions or documentation, which is not available in a desired language. Alterations in description and illustrations of the documentation are permitted in as far as they meet the desired ends.

8. Software und Know-how

The customer may utilise software, work results, know-how, data carriers and documentation left at his disposal, as far as it is within the framework of the existing licence conditions. In the absence of such conditions and when the purpose of utilisation is not evident, the customer and the end user have only the right of use with the respective corresponding products, but not to make independent sales, distribution, reproduction, extension, or alterations.

Ownership and the right to further use remain with the supplier or his licensor, also when the customer subsequently changes the computer programme, work results or know-how blueprints.

The customer shall take essential precautions to protect against the undesired access or misuse of computer programmes, work results and documentation by an unauthorised party. The customer may make necessary backup files. He shall correspondingly mark and classify as well as keep them under lock and key.

9. Warranty and Liability for SSD's

The warranty for any defective SSDs shall exclusively be limited to the repair or replacement of the defective product in question.

Fabrimex Systems can, at its sole discretion, determine the appropriate warranty. Fabrimex Systems must be given a reasonable period of time after a defect in a product has been discovered to repair or replace the defective product.

The replacement product that Fabrimex Systems provides under the limited warranty is made from new and functional second-hand parts.

The warranty of Fabrimex Systems is applicable to repaired or replaced products until the end of the applicable warranty period for the original product or ninety days from the date of delivery of a repaired or replaced product, whichever is longer.

The total liability of Fabrimex Systems for a defective product shall be limited to the amount of the purchase price. This limitation applies even in the event that Fabrimex Systems is unable or refuses to repair or replace a defective product. Any and all firmware updates must be carried out by the Client with due care, e.g. with a prior back-up, etc. Liability for indirect or consequential damages is excluded to the extent permitted by law.

This includes the loss of recorded data, the interruption of the use of the product, the cost of recovering lost data, lost profits, and the cost of installing or removing any products. The installation of replacement products and inspections, tests or re-planning necessitated by a defect or by the repair or replacement of products occasioned by a defect in any product.

This paragraph does not limit liability for bodily harm inflicted on persons, in accordance with the provisions of the Product Liability Act.

10. Application

The customer is responsible for the installation and the application of the product as well as the combination with other products. He is to take due care and attention as well as conform to manufacturer and supplier guidelines.

For the security of all relevant information, the customer is obliged to pass on such information to the user in a suitable form.

11. Delivery dates

Our delivery dates are non-binding and are estimated. Due to the current worldwide shortage of primary raw materials, we reserve the right to adjust the specified (non-binding) delivery dates in the event of short-term and currently unforeseeable shortages or delivery delays or delivery failures of primary raw materials.

Only delivery dates pledged in writing are binding. Such delivery dates are deemed appropriately prolonged,

- a. if the supplier's details that are necessary for delivery do not arrive on time, or when the customer subsequently alters them.
- b. if the customer is behind schedule in the execution of his contractual obligations, particularly when he does not meet the conditions of payment.
- c. if impediments occur that are beyond the responsibility of the Supplier, e.g. shortages, natural events, mobilisation, war, riots, epidemics, accidents and sickness, significant operational disruptions, labour disputes, late or defective deliveries and official measures.

In the event of significant delays, the Client shall grant the Supplier a reasonable period of grace in writing for subsequent performance. If the additional period is not complied with and if a further delay is unreasonable to the Client, then the Client may, provided that it notifies the Supplier in writing within three working days of the expiry of the period of grace, demand the rescission of the agreement.

The supplier can affect partial delivery.

In cases of delay the customer shall grant the supplier an appropriate time extension to carry out works outstanding. Where the time extension is surpassed and further delays are unacceptable for the customer, he may declare nullification of the contract, providing he communicates it within three working days following expiry of the deadline.

Where the delay in the deadline is the fault of the supplier and there is proof thereof, despite works outstanding being carried out, or nullification of the contract, the customer can claim compensation for real damage. Compensation is limited to one percent per week, at the most ten percent of the

calculated value of the delayed delivery. Further claims to delays in delivery are excluded.

Claims for damages as a result of delays that can be attributed to delivery failures or delays in the delivery of primary raw materials are excluded, even if the delivery date was guaranteed.

12. Acceptance

Unless a quality control procedure has been agreed to, the customer shall quality control the products and services himself. On receipt of the incoming products, the customer shall immediately control them and pay attention to identity, quantity, damage through transport, and accompanying documentation. The customer shall check for further defects in the product and services as soon as possible. The customer must give written notice of all defects immediately after their discovery. Products and services are validly accepted if no notice of defects is made within sixty days following delivery, or if the products and services are commercially utilised for more than twenty days.

Any hidden defects that could not possibly be found at incoming inspection, need to be announced immediately after discovery in written form.

13. Defects Hardware

The supplier shall endeavour to take the required due care and attention. In addition all his products and services must fulfil all the expressly warranted characteristics. Thereupon he is liable for the qualitative well being of the application within the perimeters communicated by the customer in writing before conclusion of the contract.

The supplier cannot be held accountable for results the client intends to realise with the products or services.

Excluded from liability for defects are faults and malfunctions that are not the responsibility of the supplier, like natural wear and tear, acts of god, inappropriate handling, encroachment by the customer or a third party, undue demands, unsuitable means of production, disruptions caused by other machines and equipment, instable electrical supply, particular climatic conditions, or unusual environmental influences.

The customer shall make no claims for negligible defects. Negligible defects are namely those that do not affect the application of products and services. In cases of substantial defects the customer shall grant the supplier an appropriate time extension for their elimination (correction or spare parts delivery). The supplier shall eliminate the defects as he sees fit, at his own premises or that of the customer, who must facilitate access for the purpose.

The costs for disassembly and assembly, transport, packaging, travelling and accommodation are to be borne by the customer. Spare parts will be the property of the supplier. The warranty period and statutory period of limitations are twelve months. These will not be discontinued in the event of a defect being recognised or eliminated. Should the elimination of the defect fail, the customer is entitled to a price reduction. He can only declare nullification of the contract if the acceptance of the product or services is unacceptable.

Where the blame for the defect lies with the supplier and there is proof thereof, despite the elimination of defects, price reduction, or nullification of the contract, the customer is entitled to compensation for real damage, in any case twenty percent of the value of the defective delivery. Entirely excluded is compensation with regard to incoming profit and further damage to assets.

14. Disclaimer of Warranties Software

Fabrimex-Systems AG expressly disclaims all warranties, express and implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

Fabrimex Systems AG does not warrant that the licensed software will meet licensee's requirements, that the licensed software is compatible with any particular hardware or software platform, or that the operation of the licensed software will be uninterrupted or error-free, or that defects in the licensed software will be corrected. The entire risk as to the results and performance of the licensed software is assumed by licensee.

Furthermore, Fabrimex Systems AG does not warrant or make any representation regarding the use or the results of the use of the licensed software or related documentation in terms of their correctness, accuracy, quality, reliability, appropriateness for a particular task or application, currentness, or otherwise. No oral or written information or advice given by Fabrimex Systems AG or Fabrimex Systems' authorized representatives shall create a warrant.

Limitation of Liability

In no event shall Fabrimex Systems AG be liable to licensee or any third party for any incidental or consequential damages (including, without limitation, indirect, special, punitive, or exemplary damages for loss of business information) arising out of or connected in any way with the use of or inability to use the licensed software, or for any claim by any other party, even if Fabrimex Systems AG has been advised to the possibility of such damages.

Fabrimex Systems's total liability to licensee for all damages, losses, and causes of action (whether in contract, tort (including negligence), or otherwise) shall not exceed the purchase price. Fabrimex Systems shall not be liable for damages or costs of any nature arising from the expiration or termination of this agreement in accordance with its terms.

15. Third Party Software and Hardware

All third-party software or hardware included Fabrimex Systems products included on an "AS IS" basis. Fabrimex Systems AG makes no warranties, express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose and non-infringement, regarding any third-party software and hardware, or its use and operation alone or in combination with licensee products.

16. Further Liabilities

The supplier assumes liability within the framework of his Liability Insurance personal and material damage, where the customer can prove the supplier is to blame. Further claims namely for the behaviour of vicarious agents are excluded.

17. Prices and Conditions of Payment

Unless otherwise stated the prices are in Swiss Francs without value added tax, taxes, duties, transport, packaging, insurance, permits, authentication, installation, execution, training, and application support. They are payable net within thirty days of date of invoice.

Should the customer cause interruptions in the contractual development the supplier is entitled to adjust the price accordingly.

Where the customer has counter claims he may only settle the account with the undersigned consent of the supplier. Should the customer not meet the payment deadline he shall pay interest of eight percent a year from the due date of payment.

In case of delay of payment, the supplier may:

- a. declare that all open positions are due for immediate payment, including those from different entities in the customer's legal structure.
- b. set an appropriate time extension. If the customer does not settle the whole amount in this time, the supplier may declare nullification of the contract and demand the return of the products and services.
- c. require securities, including prepayments, before fulfilling any further services (including repair of defects) to any entity of the customer.

The prices quoted in the order confirmation are only approximate prices due to the current delivery bottlenecks at our suppliers. In the event of a short-term increase in the material and/or product purchasing costs in respect of the object of performance, we shall be entitled to unilaterally and, if necessary, repeatedly increase the approximate price quoted, and such after having given corresponding notice.

An increase in the aforementioned sense is excluded insofar as the cost increase in any or all of the aforementioned factors is offset by a cost reduction in other of the aforementioned factors in relation to the total cost burden for the delivery or service. If the aforementioned cost factors are reduced without the cost reduction being offset by an increase in any of the other aforementioned cost factors, then the cost reduction shall be passed on to you in the form of a price reduction.

18. Discretion

Neither of the parties shall disclose any information relating to the business practices of the other to a third party, be it generally accessible or generally known. Both must take all precautions to prevent the access of this information to a third party. On the other hand, either party may further apply know-how in their original business activities that promote business development.

19. Export

The customer is responsible for conforming to all pertinent national and foreign export regulations.

20. Binding Law and Locality of Court

These legal relations are bound by Swiss Law. The locality of court is in the domicile of the supplier. The supplier may also seek legal redress at a court in the domicile of the customer.

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