

GENERAL TERMS AND CONDITIONS OF FRACATEX

Article 1: applicability of general terms and conditions

- 1.1 These general terms and conditions apply to all offers and contracts (of sale) between Fracatex and the other party, hereinafter referred to as the "buyer", and all contracts based on or arising from them.
- 1.2 Departures from the general terms and conditions shall only apply if they have been specifically agreed in writing.
- 1.3 The applicability of any general terms and conditions used by the buyer are hereby expressly rejected, unless Fracatex has specifically accepted their applicability in writing.

Article 2: agency

- 2.1 Fracatex also acts as an agent for third parties. When acting as an agent for a third party (the principal), Fracatex is not a party to the contracts that arise from its activities as an agent. The contracts concluded in such cases between the principal and buyer are only binding for those two parties and not Fracatex.
- 2.2 Notices from or activities of Fracatex in its role as agent shall not be binding for Fracatex but shall be attributable to the principal.
- 2.3 The buyer shall indemnify Fracatex against all possible liability concerning transactions arising from Fracatex's activities as an agent.
- 2.4 Insofar as any liability is possible notwithstanding article 2.3, it shall in any case be limited to the amount of the payment that Fracatex received as a net payment for acting as an agent within the scope of the specific transactions concerned.

Article 3: offers

- 3.1 Any offers, price quotations and delivery dates are provided by Fracatex without engagement. They are purely indicative. Fracatex may revoke offers at any time. Revocation is also possible after the buyer's acceptance, provided notice is given immediately.
- 3.2 If an offer's period of validity is not specifically stated in writing, it shall be valid for fourteen days. Fracatex shall be entitled to revoke this period before it expires. The period commences at the time that Fracatex sends the offer.
- 3.3 The buyer's acceptance of an offer from Fracatex with amendments made by the buyer shall be regarded as a rejection of the offer and as a counterproposal from the buyer which does not bind Fracatex.
- 3.4 Fracatex shall only be required to process offers that have been specifically accepted in writing.

Article 4: orders

Fracatex shall only accept and be bound by orders if it has confirmed them in writing. The risk of inaccuracies and/or mistakes in orders not confirmed in writing shall be borne entirely by the buyer.

Article 5: prices

- 5.1 Unless the contract specifically determines otherwise, the prices stated therein are exclusive of VAT, import levies and all other government levies, and inclusive of packaging, on the basis of delivery ex factory. Transport is at the expense and risk of the buyer.
- 5.2 If one or more of the cost factors, after the contract conclusion and before delivery, changes with the result that Fracatex's net cost price increases by more than 10%, Fracatex shall be entitled to increase the agreed price accordingly.
- 5.3 Cost factors shall be deemed to include, taxes imposed by authorities, import duties, levies or other charges and the costs of raw materials or (semi-finished) products.

Article 6: delivery times

- 6.1 Unless otherwise agreed in writing, the stated delivery times and dates always apply as target periods and never as a strict deadline. Fracatex shall always endeavour to comply with a stated delivery time but in the event of failing to meet the deadline, the buyer must provide written notice that it will allow Fracatex at least ten more working days to make the delivery, before claiming that the delivery time has been exceeded.
- 6.2 Fracatex may deliver the goods and services that are due in consignments.

Article 7: delivery, risk and acceptance

- 7.1 Unless stipulated otherwise in writing, the buyer shall pay for the delivery of orders.
- 7.2 Without detriment to the other provisions of these general terms and conditions, Fracatex shall be deemed to have delivered the goods and the buyer to have accepted them:
 - a. in the case of delivery ex factory: as soon as the goods have left Fracatex's warehouse (or the warehouse of the party storing the goods for Fracatex).
 - b. in the case of delivery carriage paid: as soon as the goods have been conveyed to the location and – if agreed by or on behalf of Fracatex – have been unloaded at the place agreed by the parties. Delivery shall always take place on the vehicle and the buyer shall be obliged to take receipt of the goods there. Unloading outside working hours shall only take place subject to agreement by Fracatex/the carrier.
- 7.3 The buyer bears the risk of transport. The risk of damage, loss of goods and any consequential damage shall be borne by the buyer as soon as the goods have left Fracatex's warehouse.
- 7.4 If a circumstance attributable to the buyer results in the delivery not taking place at the time originally agreed by the parties, the risks referred to in 7.3 shall be transferred to the buyer at the time that the delivery should have originally taken place. Fracatex may recover any damage connected with this – including consequential damage – from the buyer.

Article 8: complaints

- 8.1 The buyer must inspect the goods for defects upon delivery. Defects that could have been detected upon delivery shall be deemed to have been accepted by the buyer, unless they are immediately recorded on the consignment note, delivery note or similar document that has to be returned. These defects cannot therefore form the basis of any legal proceedings. If defects are detected other than as referred to in the preceding sentence, Fracatex must be notified of them in writing promptly, within no later than fourteen days. This applies on penalty of forfeiture of rights. Complaints after this period shall not be accepted.
- 8.2 The buyer shall be responsible for the consequences of uncertainties in details and orders that the buyer issues to Fracatex.
- 8.3 If an objection concerning goods delivered by Fracatex is acknowledged, Fracatex shall be entitled to replace or repair the goods concerned or to (partially) credit the invoice. Fracatex shall not be obliged to do any more than this.
- 8.4 Goods that have been delivered and accepted shall not be taken back.

Article 9: quantity

- 9.1 The consignment note, delivery note, CMR or similar document that is issued upon the delivery of goods shall be deemed to state the correct quantity of goods delivered, unless the buyer's objections are stated on the document concerned at the time of delivery.
- 9.2 If the buyer notifies Fracatex in the manner indicated above that a quantity other than that stated on the document concerned has been delivered, the buyer shall not be entitled to defer payment for the delivered goods.

Article 10: set-off excluded

- 10.1 The buyer is not entitled to apply any form of set-off in respect of any claims. In the event of nevertheless failing to pay amounts due and invoking set-off, the buyer shall owe a penalty of 10% of the unpaid amount. This applies without detriment to Fracatex's right to claim the statutory or contractual interest on the unpaid amount as well, and the right to claim any related (consequential) losses from the buyer.

Article 11: payment and retention of title

- 11.1 Payment must be made within fourteen days of the invoice date.
- 11.2 Without detriment to the other provisions in these conditions of sale, if the delivery of the goods does not take place in accordance with the originally agreed delivery schedule owing

to a request or actions of the buyer, full payment must be made within fourteen days of the originally agreed delivery time.

- 11.3 In the event of failing to pay on time, the buyer shall be in default by operation of law. All invoices from Fracatex shall consequently become immediately due and payable. The buyer shall owe default interest on the outstanding amount of 1.5% per month, in the event of being in default, without any further notice of default being required, whereby part of a month shall count as a whole month.
- 11.4 In the event of being in default, the buyer shall bear all associated losses and legal and extrajudicial costs. The extrajudicial collection costs shall at least equal the collection rates recommended by the Netherlands Bar Association for the amount owed, whereby the minimum payment shall be €200. The legal costs in connection with this are the actual costs of Fracatex's legal assistance.
- 11.5 Fracatex retains the title to the delivered goods until full payment of all its receivables based on the sale and delivery of the goods, including interest and costs has been made. The title to the goods shall only be transferred after full payment of all the receivables. This applies on the understanding that the delivery shall be subject to a right of pledge. The right of pledge serves as security for the payment of receivables that the buyer may owe Fracatex at any time, on whatever grounds.
- 11.6 Within the framework of the buyer's normal business, the buyer may sell to third parties goods still owned by/pledged to Fracatex which have been delivered to the buyer. The buyer shall lose this right if he is in default to Fracatex or if Fracatex issues a written notice of the right's withdrawal.
- 11.7 In the event of the buyer failing to pay debts to Fracatex within the payment term, Fracatex shall be entitled to take back its goods without any notice of default or judicial intervention being required and, to this end, the buyer shall be obliged to grant Fracatex access to all areas and sites which are accessible to or used by the buyer. This shall apply without detriment to Fracatex's right to claim compensation from the buyer.
- 11.8 Fracatex shall always be entitled to request payment in advance or sufficient security from the buyer for the fulfilment of the buyer's obligations. This also applies in respect of possible collection charges and interest and even if the amount concerned is not yet due and payable. If the buyer fails to respond post-haste to any such request, Fracatex shall be entitled to suspend or discontinue the delivery of goods and services. The buyer shall then be in default, without any further notice of default being required.
- 11.9 The buyer is not permitted to establish a possessory pledge or undisclosed pledge on behalf of any third party in respect of goods Fracatex has delivered for which payment has not yet been made.
- 11.10 In the event of statutory provisions requiring the buyer's VAT number or other information to be provided to Fracatex, the buyer shall be responsible for the consequences of any failure to provide the (correct) information.
- 11.11 If Fracatex exercises its right to suspend or wholly or partially terminate the contract, the buyer shall be liable for the costs that Fracatex incurs in connection with storage and/or removal.

Article 12: liability

- 12.1 Except in the case of an intentional act or gross negligence on the part of Fracatex or its employees, Fracatex shall not be liable for losses suffered by the buyer as a result of any incorrect assembly, structure or measurements and/or unsatisfactory quality or any other defect of the delivered goods.
- 12.2 All contractual and/or statutory liability of Fracatex, including for consequential damage or trading losses, shall in any case be limited to the invoice amount of the order concerned. This applies per incident.
- 12.3 The buyer shall fully indemnify Fracatex against any claims of third parties and any costs arising from such claims for Fracatex in connection with goods Fracatex has delivered to the buyer. The buyer shall also indemnify Fracatex against any third-party claims arising from EU Directive 97/478 (concerning product liability), possible successors to that Directive and related implementing legislation.
- 12.4 If the buyer is a joint venture composed of two or more persons, each person shall be jointly and severally liable for the full payment of orders or any related obligations to pay compensation. This also includes liability for interest and costs and fulfilment of the other provisions of these general terms and conditions.

Article 13: force majeure

Any circumstance that Fracatex need not reasonably have taken into account upon concluding the contract and which results in it no longer being reasonable to expect Fracatex to continue with the normal execution of the contract shall be deemed to constitute a case of force majeure. This includes failures of Fracatex's suppliers to make deliveries or to make them on time or properly, failures of carriers and other agents involved in the contract's execution, traffic problems, war, threats of war, import/export prohibitions – or other measures taken by government bodies that (temporarily) prevent the contract's execution – freezing conditions, extreme weather conditions, strikes, sit-ins, loss or damage by transport, fire, water damage, theft, interruptions in the delivery of raw and ancillary materials or energy, and defective machinery. Fracatex shall not be deemed to have failed if it is unable to make (timely) deliveries owing to a case of force majeure. In such cases, the buyer must allow Fracatex a reasonable period of one month before terminating the contract of sale. This applies without being entitled to enforce any claim to compensation.

Article 14: termination/notice

Insofar as not stated otherwise in these conditions, if a contract is entirely or partially terminated, the buyer shall be obliged to make full payment for goods and services already produced or obtained from third parties for the buyer pursuant to the contract concerned. If the buyer cancels a contract before Fracatex has incurred any production costs, etc., in connection with the contract, the buyer shall in any case owe Fracatex compensation for administrative costs. The compensation concerned shall be fixed at 15% of the order's invoice amount, excluding VAT.

Article 15: debt immediately due and payable in the event of a contingency

Receivables due in respect of goods, services and so forth delivered by Fracatex shall become immediately due and payable from the moment that:

- a) The buyer requests a moratorium
 - b) A winding-up petition is filed against the buyer
 - c) An application is submitted for the application of Debt Rescheduling (Natural Persons) Act in respect of the buyer
 - d) An application is filed for the buyer to be placed under guardianship
 - e) The buyer loses power of disposition over the buyer's assets (or a portion thereof) owing to attachment measures or for any other reason
 - f) The buyer goes into liquidation or is dissolved
 - g) The buyer dies
 - h) The buyer entirely or partially fails to fulfil any payment obligation to Fracatex on time
- In the aforementioned cases, Fracatex shall always be entitled to call for the termination of all existing contracts between the parties.

Article 16: choice of law and forum

All disputes shall be subject to Dutch law. As far as possible, the application of the Vienna Sales Convention is excluded. The Court of Breda shall have sole jurisdiction to hear any disputes that are subject to these general terms and conditions. This shall apply unless Fracatex opts for a different court.