
Fabrimex AG – General Terms and Conditions of Delivery

The Fabrimex business conditions of delivery strive for a well ordered running of business . The following general terms and conditions set out the fundamentals for the

delivery of parts, appliances, systems and services.

Thereby, the delivery can consist of a product or a service, hardware or software, or an integration of different products and services rendered. Depending on the type of business, the Fabrimex general terms and conditions shall be replaced by special terms and conditions, or supplemented by sample contracts and special clauses.

1. Validity

The Fabrimex 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 ones own hand or an appropriate electronic signature is necessary.

3. Range, Fulfilment and Place of Delivery

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.

Alterations to the confirmation of order are permissible in as far as the product has the same functions or the services fulfil the same purposes. The supplier has no obligations to make alterations to products and services that have already been produced or delivered.

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.

4. 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.

5. Documentation

The customer is entitled to a customary instruction manual from the supplier. 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.

6. 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.

7. 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.

8. Delivery dates

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 hindrances occur outside the responsibility of the supplier like natural disasters, mobilisation, war, insurgency, epidemics, accident and illness, substantial business breakdown, work disputes, delayed or faulty deliveries, as well as governmental measures.

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.

9. 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.

Products and services are validly accepted if no notice of defects is made within ninety days following delivery, or if the products and services are commercially utilised for more than twenty days.

The customer must give written notice of all defects immediately after their discovery.

10. Defects

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.

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.

11. 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.

12. 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, schooling, 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 set an appropriate time extension. If the customer does not settle the whole amount in this time he may declare nullification of the contract and demand the return of the products and services.

13. 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.

The parties are obliged to extend these confidentiality obligations to all their staff, employees and assigned personnel.

14. Export

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

15. 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.

Fabrimex AG
Industristrase 4B
CH-8604 Volketswil, Switzerland
Tel.: +41 44 908 13 13, Telefax: +41 44 908 13 00
E-Mail: info@fabrimex.ch