

General terms and conditions of business of FRUTIGER Company AG

1. General points

The following conditions apply to all services and work deliverables, arising from purchase or work contracts, which are rendered by the FRUTIGER Company AG (hereinafter referred to as FRUTIGER). Any special agreements that have been defined in the contract (invoice) shall take precedence over these "General terms and conditions of business".

2. Bid

a) Technical principles

The technical principles of the bid are binding for FRUTIGER. We expressly reserve the right to make changes. All documents remain the property of FRUTIGER. They must not be copied or reproduced, nor made accessible to any third parties or used for in-house production of the relevant items. This particularly refers to storage and use on optical and electronic data media.

The relevant documents must be returned to FRUTIGER on request.

b) Subject to prior sale

Pending the legally valid conclusion of the contract, FRUTIGER is deemed free in the sense that it may sell on the items offered for sale to any other third parties.

c) Project planning expenses

If the customer has commissioned FRUTIGER to develop a project, but does not pursue the collaboration further after the bid is issued, FRUTIGER shall be entitled to request reimbursement of the project planning expenses from the customer. Costs of basic clarifications involved as part of preparing the bid are excluded.

d) Structural measures

All structural measures relating to the installation of the items to be delivered are the concern of the customer and do not constitute part of the bid. This includes, but is not limited to, the following in particular:

Determining the position of the machine, clarification of the ground conditions, drawing up the construction plans and official permits, preparing foundations including electrical installations, provision of water, provision of unhindered access, provision of a suitable load-bearing work area for any interim storage and preliminary assembly required, provision of the required crane capacity, supplying of operating materials (e.g. fuel, compressed air etc.) as well as implementation of additional construction works.

e) Use

The operating and maintenance requirements of FRUTIGER and/or its subcontractors and all instructions concerning proper use and permissible loads must be strictly observed.

3. Conclusion of contract

Conclusion of contracts via independent agents are binding for the parties concerned only when they have been signed by both parties. FRUTIGER is deemed bound by contracts concluded by an independent agent if it does not withdraw from the contract in writing within 20 business days from concluding it.

Within the scope of processing and using personal and company-related data that are required to conclude or settle a contract FRUTIGER may exchange or transfer data with authorities or companies that provide credit information or that are engaged in debt collection work, to the extent required to ascertain creditworthiness or to exercise its claims. We undertake to ensure compliance with the provisions of the Swiss Data Protection Act when handling your personal data.

4. Prices

a) Prices are quoted ex stock FRUTIGER (CH, CZ, USA), loaded for transport.

b) Order handling in the service contract shall be separately regulated (currency, payment terms, price increase, transport, packaging, insurance, customs, taxes and duties).

5. Delivery

a) Delivery period

The delivery period commences on conclusion of contract, but at the earliest on receipt of all required details and documents from the customer as well as of any advance payments to be made. The period is determined in accordance with the circumstances prevailing at the time of concluding the contract and has binding effect. If unforeseen events outside the control of the supplier occur – such as cases of Force Majeure, difficulties in material procurement, business disruptions etc. – the period shall be extended correspondingly. Moreover, it will be suspended under circumstances where the customer fails to promptly settle its payment obligations. If the customer suffers damages due to a delay for which FRUTIGER is responsible, it is entitled – excluding any further claims for damages and subject to a grace period of two weeks – to demand compensation for delay. The sum of damages shall amount to ½% for each full week of delay but shall not exceed a maximum amount equivalent to 5% of the value for the respective portion of the overall delivery that was rendered unusable or not punctually available due to the delay; or, in the event of works services, of the relevant price for such works service. If the supplier remains in default even after the aforementioned ceiling contract delay penalty has reached 5%, the customer is entitled to withdraw from the contract, provided a reasonable extension has been allowed. Any bonus/penalty rules applicable to changes in delivery deadlines can be individually regulated in the sales/service contract.

b) Transport

The costs of transport shall be covered by the customer. Shipping is performed at the customer's risk, even if freight-free delivery has been agreed. The risk shall pass to the customer, as soon as the consignment is made available to the carrier, forwarder or customer, loaded for transport and ex stock FRUTIGER. If the customer detects any damage or defects on arrival of the consignment, it is obliged to inform the carrier or forwarder of FRUTIGER and the insurer immediately and, as may be required to ensure proof, have a relevant protocol signed by one of the parties involved. The number of pieces for each consignment shall be checked in accordance with the delivery slips. Provided no written notification of defects is received by FRUTIGER within eight working days, the consignment is deemed approved. Subsequent complaints will be accepted only if the defect concerned was not detectable on delivery despite proper examination and the customer issues a written complaint within a week of detecting the defect, but no later than the expiry of the guarantee period.

c) Storage

If, upon completion of production and notification of readiness to ship, the ordered goods cannot be delivered on time through no fault of FRUTIGER, the relevant goods will be stored with FRUTIGER or a third party on the account of and at the risk of the customer.

d) Assembly and dismantling

FRUTIGER shall undertake the assembly and/or dismantling of the delivered items only if this has been expressly agreed. In the other cases the customer shall be provided with fitters on request – subject to payment of travel, working and waiting time and travel and accommodation costs at the respectively applicable rates. If the fitters are unable to commence or to continue work due to circumstances for which neither they nor FRUTIGER are responsible, all the extra costs incurred as a result shall be covered by the customer, even if a fixed sum has been agreed for the assembly and dismantling work. The customer must also provide the required auxiliary staff and assembly facilities (e.g. crane) promptly and in accordance with the agreement. If the customer is required to provide fitters or auxiliary staff to FRUTIGER, their salaries, social security contributions, insurance premiums and other expenses shall be covered by the customer. The times specified by FRUTIGER in connection with the assembly and dismantling work that they have been tasked with are binding. Unforeseen circumstances (e.g. hindrances, Force Majeure, poor weather, non-contractually compliant construction-site preparation, etc.) may result in a deadline being extended. Failure to comply with specified assembly and dismantling times for the above reasons shall not entitle the customer either to withdraw from the order or to claim any damages.

6th Payment terms (unless other arrangements are specified, the following payment terms shall apply):

a) For sales contracts, spare parts supply, repairs

Within 30 days of invoicing with no deductions.

b) For service contracts

30% on conclusion of contract

40% on notification of readiness for shipment

25% 30 days after the operational readiness or after a maximum of 60 days from shipment if the operational readiness could not be previously ensured by FRUTIGER for reasons beyond its control.

5% 10 days after handover to the customer.

All payments shall be made free of charges and must still be made even under circumstances where reworking has to be applied to the supplied items or parts replaced, or if the goods cannot be delivered on time for reasons for which the customer is responsible. In the event of incorrect deliveries or serious mistakes for which FRUTIGER is responsible and which prevent commissioning, the final 5% of the sum owing shall be payable only on receipt of a delivery confirmed as contractually compliant or on rectification of the defects.

7. Default by the customer

Any sums owed in accordance with the agreement shall be deemed immediately due without prior notice, and penalty interest shall be applied with effect from the due date onwards. This rate is normally 1% over the normal base interest rate of the banks. If agreed payment instalments remain unpaid 30 days after becoming due at the latest, the entire remaining sum owed is deemed due without further notice. In the event of incorrect deliveries or serious mistakes for which FRUTIGER is responsible and which prevent commissioning, the customer shall have the right to request an extension of the payment deadlines. FRUTIGER expressly reserves the right to withdraw from the contract in the event of payment default and return any items that have been delivered. For hire purchase transactions and leasing contracts FRUTIGER is entitled to demand the remaining portion of the purchase price owed in a single one-off payment if the buyer falls into arrears with the final instalment payment.

a) If FRUTIGER declares the withdrawal from the contract, the customer is obliged to render the following services – as well as immediately to return any objects already delivered:

- To make payment of rent equating to 5% of the agreed purchase price for each month or part thereof from the time of delivery up until return of the supplied items;
- To pay compensation for extraordinary wear and tear and for any damage caused to the supplied items;
- To cover the dismantling, transport and insurance costs incurred by the return of the supplied items and any additional related expenses incurred. The customer shall undertake to meet these service obligations even if it is not culpable for any of the relevant circumstances.

b) If the damage sustained by FRUTIGER exceeds the scope of services listed under a), the customer must reimburse any surplus, unless it can prove that it remains blameless for the same.

c) In all other cases involving non-compliance with the contract by the customer, such as non-acceptance of ordered items, the above provisions shall be applicable correspondingly.

8. Retention of title

The supplied items shall remain the property of FRUTIGER until the agreed upon prices together with all additional costs and interest charges are paid in full. Up to this time they may be neither repledged, sold nor leased unless previous notice is given by the supplier; the liability for the same, however, shall remain with the contractual partner. FRUTIGER is authorised to register the retention of title at the registered address of the customer in the title registry. The customer is also obliged to inform FRUTIGER immediately of any change to its place of residence or registered business address.

9. Insurance

With effect from the transfer of risk of all items not paid for or not paid for in full, the customer is obliged to take out all relevant insurance policies, such as theft, fire, explosion, elemental damages, transport, machine and/or comprehensive machinery and assembly insurance. Any claims involving insurance benefits arising from these policies shall be assigned to FRUTIGER. If the customer is unable to furnish proof of having concluded the required insurance policies, FRUTIGER is entitled to conclude such policies itself, at the customer's own expense. The customer must inform FRUTIGER immediately of any claim event.

The establishment of equivalent collateral can be agreed between the customer and FRUTIGER.

10. Guarantees and liability

a) Scope

FRUTIGER shall provide a guarantee for proper construction, commensurate quality of the materials used and fault-free operation under the conditions set out in the sales contract for 24 months or 2,000 operating hours (scrapedozers) or 3,000 operating hours (dust control products) or 100,000 washing cycles (wheel washing systems), whichever applies in the first instance. If the ownership of the supplied items changes before expiry of the normal guarantee period, the guarantee is deemed to end as of the time of transfer of ownership.

However, FRUTIGER disclaims all guarantees under any of the following circumstances:

- For used items or parts thereof,
- For material which it did not originally supply
- For assembly and dismantling operations outside its relevant scope as well as for items that were modified or repaired without its prior consent,
- In the event that the customer makes any modifications without the prior written consent of FRUTIGER, particularly installing any additional components to the item,
- For damage of any kind attributable to normal wear and tear, incorrect or rough handling, excessive use, insufficient foundations, unsuitable operation and maintenance, freezing, the use of unsuitable materials and lubricants, accidents or Force Majeure and similar,
- for trade goods or materials from subcontractors, such as electrical equipment, engines, gears, chain drives etc., (in this case, FRUTIGER accepts liability only within the scope of the guarantee conditions specified by the relevant manufacturing firm),
- for any claims beyond the stated scope of the guarantee obligation. In particular, all further warranty claims (such as price reduction or cancellation of sale) and any additional liability on the part of FRUTIGER for direct or indirect damage sustained by the customer (e.g. due to inability to use the contractual object and any arraignment of the customer due to third-party damage linked with the supply and operation of the contractual object) are expressly excluded. The right is reserved to claim further damages that have been verifiably caused by FRUTIGER in person though gross negligence or with illegal intent.

b) Regress

If any third party exercises a claim against FRUTIGER due to a case of damage and joint and several liability applies, FRUTIGER shall be able to take recourse for all payments owing against the customer, provided it is not verifiably and personally culpable of gross negligence.

c) Warranty services

Pursuant to this guarantee, defective parts shall be replaced free of charge. The costs incurred for delivery and installation are not deemed to be components of this guarantee. Any operating checks additionally requested by the customer by fitters from FRUTIGER shall not be included within the scope of guarantee services but shall be invoiced for separately.

11. Applicable law

The concluded contracts shall be governed by Swiss law.

12. Place of performance and jurisdiction

For all obligations under this contract, the place of performance is deemed to be Winterthur in Switzerland.

The German version of these General Terms and Conditions has precedence over any foreign language version and is binding in case of doubt.