



## General Terms & Conditions of the FluidSolids AG

Version: 8<sup>th</sup> of December 2016

### 1. Scope of Application

The buyer accepts our Terms & Conditions (T&Cs), which in their current valid version shall form the basis for any present and future contracts concluded between the buyer and FluidSolids AG. Any offers, deliveries and performances are exclusively undertaken on the basis of these T&Cs. They shall also apply for all future business relations, even if they are not expressly agreed each time.

### 2. Conclusion of a Contract

Offers made by FluidSolids AG are non-binding. Prices quoted and technical specifications are non-binding. An order shall only be deemed as accepted, when we have confirmed it in writing. (Verbal agreements are non-binding.)

All information provided by FluidSolids AG in their documents must be checked by the buyer. The buyer is obliged to notify us of any potential errors or discrepancies contained in our order confirmation which differ from their ordered requirements.

### 3. Price

The price quoted in our offer is valid for 30 days and refers to the delivery date specified. If not expressly stated otherwise, all prices quoted are net prices in CHF, exclusive of VAT and are ex-works prices.

Other costs, for example for transport, delivery, insurance, taxes, custom duties, export/import permits and certificates (ISO, DIN) or any other permits and certificates shall be borne by the buyer and shall be charged additionally.

A packaging fee is applied, which must also be borne by the buyer. All contract conclusions are based on the freight, insurance and custom duty tariffs or tax rates applicable at the time. Any changes to these tariffs or fees shall be borne by the buyer.

The sales prices also exclude any costs for: the production of plans, travel expenses, external material tests, training courses for the processing or for support during a pilot series/production, and for assembly or installation. FluidSolids AG will, however, furnish or organise such additional services upon the buyer's request and in return for separate payment.

### 4. Payment Terms

Payment must be made in full within 30 days from the date of invoice, provided that nothing to the contrary has been agreed.

The payment deadlines must also be observed, if transport, delivery or acceptance of the delivery is delayed for any reason.

Should the buyer be in payment arrears, all discounts and reductions promised to the buyer shall become void for any outstanding payments. FluidSolids AG shall furthermore also be entitled to withhold its performances and deliveries until the outstanding amount has been paid in full or demand payments in advance or assurances prior to delivery and performance.

### 5. Delivery / Delivery Period

The delivery dates stated in our offer, or respectively our order confirmation, are to be understood as guidelines only and are non-binding. The buyer shall not be entitled to damages or contract cancellation because of delayed delivery. Partial deliveries or performances by us are permissible. Under deliveries and excess deliveries of up to 10% of the contractually agreed quantity are also permissible. The delivery obligation of FluidSolids AG exists subject to receiving timely self-deliveries from their sub-stream suppliers.

If an order cannot be fulfilled for reasons beyond our control, we shall be entitled to increase the agreed prices by any price rises which may have occurred in the interim period.

If FluidSolids AG and the buyer have agreed delivery on demand in writing, the buyer must request delivery of all remaining goods within 3 months following expiration of the agreed term.

After expiry of the 3 months period and following notification, FluidSolids AG shall be entitled to deliver the stored goods to the buyer and charge for them.

### 6. Uses / Quality

The products sold and/or delivered by FluidSolids AG are not intended for:

- a.) the production of medical products in risk category III in accordance with EU Guideline 93/42/EWG
- b.) implants regardless under which risk category they fall
- c.) medical products which have a life-saving effect
- d.) the manufacture of weapons or other items which serve the purpose of harming or killing people
- e.) building aircrafts or for use in aircrafts unless the supply is intended for the production of products which are intended for the interior fittings of aircrafts.

Minor or other alterations to the performance or delivery obligation of FluidSolids AG deemed acceptable for the buyer shall be deemed as agreed beforehand. This applies in particular to deviations that are an inherent part of the actual product (e.g. in masses, colours, wood and veneer patterns, wood grain and texture, etc.). The quality of the products made by FluidSolids AG is interdependent on the raw materials that are available for their production.

The expert technical and any other advice that FluidSolids AG provides to the best of their knowledge is non-binding and does not exempt the buyer from checking each individual delivery prior to processing the product on its suitability for the intended deployment and intended application purpose.

The buyer is solely responsible for the deployment, use and further processing of the products delivered by FluidSolids AG and for adhering to applicable safety regulations. FluidSolids AG rules out all liability insofar as legally permissible.

### 7. Retention of Title / Assignment of Receivables

We shall retain ownership of the goods delivered until all claims we have vis-à-vis the buyer have been fulfilled, even if specially designated demands have been met. For all open accounts, the retained ownership to the goods delivered shall serve as security for the balance carried forward vis-à-vis the buyer.

In the event that the buyer breaches the term of these T&Cs or the applicable order, we shall be entitled to reclaim the deliveries. Reclaiming the deliveries does not constitute a withdrawal from contract, unless we expressly declare this in writing.

Reclaiming the deliveries by us shall always constitute a withdrawal from the contract. After reclaiming the goods we shall be entitled to make use of them; the profit achieved from their use is to be offset against the buyer's liabilities (minus any reasonable usage costs).

In the event of third party seizures or other third party interventions the buyer must notify us immediately in writing. Intervention costs shall be borne by the buyer.

The buyer shall be entitled to resell the purchased goods within the scope of normal business transactions; however, s/he shall herewith already assign to us all claims to the amount of the final invoice total (including statutory VAT), which shall arise as a result from his/her resale vis-à-vis his/her buyers or third parties and this irrespective of whether the purchased object was sold with or without further processing. The buyer shall retain entitlement to collect the claims even after assignment. Our entitlement to collect the claims ourselves shall remain unaffected by this. We shall, however, undertake not to collect the claims ourselves, as long as the buyer performs his/her payment obligations from the



collected proceeds, does not get into arrears with payment and in particular, no application for opening insolvency proceedings has been filed and payments have not been suspended.

Should this however be the case, we shall be entitled to demand that the buyer discloses to us the assigned claims and their debtors, furnishes all information required for collection, hands over the relevant documents and informs the debtors (third parties) about the assignment. Other assignments of the buyer are not permitted.

Processing or modifications of the delivery by the buyer are always performed on our behalf. In the event of the processing of the delivery with other goods not belonging to us, we shall acquire co-ownership of the new object in proportion to the value of the other mixed object at the time of processing. For the remainder, the same provisions that apply to goods delivered under title retention shall also apply to the object resulting from processing.

At the request of the buyer, we shall take reasonable steps to release any security interest we have in any secured buyer property insofar as the value of our remaining security interest exceeds the value of the buyer claims to be secured by more than 20%; the choice of which security interest to release, shall be at our sole discretion.

### **8. Indemnity / Force Majeure**

The buyer shall fully indemnify and hold FluidSolids AG harmless from all claims and demands of third parties, including any damage claims, at the first request.

Neither FluidSolids AG nor the buyer shall be liable for damages of any kind in the event of obstacles occurring which they are unable to avoid despite exercising due care, irrespective whether these arise at FluidSolids AG, at the buyer or at a third party.

Should the disruption last longer than three months, FluidSolids AG shall be entitled to contract dissolution. In the event of partial or full discontinuation of supply sources due to force majeure in the sense of the above provisions, FluidSolids AG shall not be obligated to secure supplies from other upstream suppliers.

### **9. Copyright / Intellectual Property Rights**

FluidSolids AG retains the full rights to all intellectual property rights related to the products including all plans, notes about process flows or similar, sketches, other technical documentations, specifications, samples, models, concepts, designs, catalogues, brochures, illustrations, films, photographs, technical drafting plans, instruction manuals, handbooks, quotes, tools, IT data and data carriers etc. (collectively, FluidSolids Intellectual Property). Notwithstanding any earlier agreement entered into by the parties, buyer acknowledges and agrees that nothing in these T&Cs or any order shall confer in buyer any right of ownership in any FluidSolids Intellectual Property unless otherwise specifically set forth in an order.

### **10. Warranty**

All information given about suitability, processing and utilisation of the products sold, and all technical advice and other information, is given to the best of our knowledge, but does not, however, release the buyer from making their own checks and carrying out their own tests. Guaranteed characteristics shall be only those characteristics which were explicitly stated as such and were thus confirmed as such in our order confirmation.

The warranty period is 6 months from the date of delivery. The buyer must check the goods as soon as is feasible in the ordinary course of business, but at the latest prior to processing the goods, for any defects with regards to condition and intended purpose, otherwise the goods are deemed accepted.

Complaints shall in any case only be considered, if they are made in writing and with enclosed documentations, within eight days after receipt of the goods – hidden defects must be reported

immediately upon their discovery, at the latest, however, six months after receipt of the goods.

After notification of defects we shall be entitled to check the goods at our end. Until that time, the buyer must ensure access and correct storage.

Our warranty obligation is limited, at our discretion, to replacement delivery, repair or reduction. Defective goods must only be returned to us after obtaining our express consent.

Any further warranty and liability, especially for indirect and consequential damages like loss of profit, cost savings not realised, or claims by third parties, in particular when caused by our agencies, employees or vicarious agents, shall be, in as far as is legally permissible, excluded.

### **11. Liability / Damages**

FluidSolids AG shall only be liable for damages, which result from its own grossly negligent behaviour or deliberate acts. Any further liabilities shall be excluded in as far as legally permissible.

The same shall also apply with regard to the personal liability of its employees, representatives and auxiliary persons.

FluidSolids AG shall not be liable for damages resulting from imprecise or wrong information about the use, the requirements with regards to the electrical, mechanical, thermal, chemical, physical, or biological nature or about any other nature, or resulting from incorrect type designation or from inappropriate storage, treatment or usage of the goods or resulting from alterations or repairs made to the goods or resulting from any other culpable conduct by the buyer, his/her auxiliary persons or third parties that he/she consulted.

FluidSolids AG shall not be liable for the technical or commercial success of a product developed as part of a development order.

### **12. Applicable Law / Jurisdiction**

These T&Cs and all legal transactions concluded between FluidSolids AG and the buyer shall be governed by Swiss (substantive) Law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980 (CISG; the Vienna Convention) and the referral provisions of the German Federal Act on Private International Law (IPRG, SR 291).

All disputes, differences or claims arising from or in connection with these T&Cs or from an agreement associated therewith, including its validity, invalidity, breach or dissolution, shall exclusively be settled by an Arbitral Tribunal under the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce.

The arbitration rules valid at the time of receipt of notice of arbitration apply. The seat of arbitration is Zurich, (CH). The language used in the arbitration is German.

FluidSolids AG shall also be entitled to sue the buyer at his/her place of residence or registered office.

### **13. Place of Fulfilment**

Place of fulfilment for all obligations is our registered office in Zurich (CH), unless the parties agree otherwise in writing.

Zurich, 8<sup>th</sup> of December 2016