

# General Terms and Conditions of Purchase

(dated as of April 2018)

## 1. Scope

- 1.1. These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") shall apply exclusively to all orders and purchases by F List Canada Corp., 5485 boul. des Rossignols, Laval (Québec), H7L 5S7, Canada (hereinafter collectively referred to as "F. List"). These GTCP shall also apply to all such future orders and transactions between the parties without the need of express reference to these GTCP.
- 1.2. Terms and conditions which differ, contradict or supplement these GTCP, in particular general terms and conditions of the supplier shall in any event be deemed waived and shall not apply even if F. List is aware of their existence when making the order without explicitly rejecting the supplier's general terms and conditions.
- 1.3. Any modifications or additions to these GTCP need to be in written form in order to be legally effective. A transmission by facsimile or email shall be sufficient to meet the requirement of written form. Any deviation from this written form requirement must also be in writing.
- 1.4. The supplier shall be solely responsible for and will further defend and indemnify F. List, upon demand, from and against all claims, actions, liabilities, losses and expenses (including investigation expenses and attorney fees incurred in litigation or because of the threat of litigation) , arising or alleged to arise from acts or omissions of the supplier or from defects or alleged defects, whether latent or patent, in the goods or workmanship on the goods or defective design of the goods purchased by F. List from the supplier.

## 2. Conclusion of the Contract

- 2.1. In order to be legally effective, each individual order issued by F. List needs to be in written form. Electronic transmission shall be sufficient to meet the requirement of written form. In the event the written order deviates from the original request or the non-binding notification of an order, the written order shall supersede the previous request or notification, as the case may be, and be deemed accepted unless the supplier notifies F. List about his rejection in writing within one week.
- 2.2. The supplier shall be bound by his offers issued to F. List for a period of 4 weeks from the date of receipt by F. List.
- 2.3. Unless otherwise agreed in writing on a case-by-case basis, the order shall include any necessary supplementary, supportive and additional deliveries and services which are covered by the agreed price. For the avoidance of doubt, this shall include installation and assembling services, running trial operations including the provision of all necessary commodities such as operating materials, lubricants and test materials. Additionally, the order shall include the provision of required training measures and the handover of user manuals and technical documentation in English and in German, if available.

- 2.4. The supplier is obligated to review all requests, documents, information and orders issued by F. List for ambiguities and incompleteness and to check whether the object ordered is suitable for the intended purpose of use. The supplier shall immediately inform F. List of any recognizable faults or concerns in writing. Additionally, the supplier shall at no charge provide F. List with tips or suggestions for correction or improvement within a reasonable period of time.
- 2.5. The acceptance by F. List of an offer made by the supplier needs to occur in written form to be legally effective, however, an electronic submission shall be sufficient.
- 2.6. The acceptance of an order by the supplier may not only occur expressly or implied but in case of an existing business relationship between F. List and the supplier, the order from F. List may also be accepted tacitly if the supplier remains silent for more than one week.
- 2.7. The supplier is requested to provide F. List with written confirmation of each order. Such written confirmation, however, is not a prerequisite for the conclusion of the contract and shall not affect its validity. The acceptance of an order by the supplier is to be determined pursuant to Section 2.5 and 2.6.
- 2.8. After the receipt of an order confirmation, F. List is not obligated to point out again that these GTCP shall apply exclusively and that terms and conditions contradicting these GTCP shall be deemed as waived.
- 2.9. In the event the order confirmation according to Section 2.7 differs from the order, the supplier shall clearly indicate this fact in the order confirmation and point out such deviations. Any deviations and subsequent modifications by the supplier must be confirmed in writing by F. List to become legally effective. Otherwise the original order shall be deemed to have been accepted by supplier's order confirmation irrespective of any deviations.
- 2.10. Offers from the supplier to F. List can be submitted in any possible form.
- 2.11. Any contracts entered into between the supplier and F. List shall be conditional upon the approval by F. List's management. As a consequence, F. List shall be free to reject any initiated transaction within a reasonable period of time. These rejected transactions shall be deemed to have never been concluded in the first place, without any compensation payable by F. List.
3. Intellectual Property Rights
  - 3.1. All rights of F. List in any works and documents protected by copyright or otherwise, such as drawings, plans, designs of any kind, know-how, patents or other intellectual property of F. List, regardless of whether such intellectual property rights are registered (the "Confidential Materials") are explicitly reserved. Such Confidential Materials are and shall remain the confidential property of F. List. The supplier will keep private such Confidential Materials and shall not be transmitted, made available or transferred to any third party without the prior approval of F. List, which needs to be obtained in writing and on a case by case basis. The supplier shall not use any of the Confidential Materials for the supplier's own

purposes or for any purpose than this order without the prior written approval of F. List. In case of doubt, such approval by F. List shall be deemed to have not been granted.

- 3.2. In the event the supplier or a third party fulfilling F. List's order on behalf of the supplier creates tools, models, designs, devices, computer programs etc., any rights, interests and title thereto, including exclusive and perpetual rights to use and exploit, shall be transferred exclusively to F. List upon payment of the purchase price. Notwithstanding the foregoing, title to movable objects shall be transferred to F. List upon acceptance of the relevant order pursuant to Section already before the actual physical transfer has occurred. Any of the aforementioned rights may be transferred by F. LIST in whole or in part to third parties without obtaining the supplier's approval. For the avoidance of doubt, this shall include the right to modify, duplicate, distribute or otherwise exploit such tools, models, designs, devices, computer programs etc. without any limitations. The use of such tools, models, designs, devices, etc. by the supplier for the fulfillment of third party orders is prohibited.
- 3.3. The supplier warrants and guarantees that all goods delivered to F. List under any order do not infringe on any valid patent, copyright, trademark or industrial design, foreign or domestic, owned or controlled by any other party. The supplier agrees to indemnify and hold F. List harmless against any and all liabilities, losses and expenses, including, but not limited to, legal fees, for any claim or action arising out any alleged or actual infringement of intellectual property rights resulting from the use or sale of the good purchased from the supplier. The supplier guarantees that the goods furnished to F. List can be used continuously during the course of any such proceeding.
4. Delivery/ Delay/ Shipment/ Acceptance
  - 4.1. The delivery date specified in F. List's order shall be binding and means the date of receipt. Advance deliveries or partial deliveries need to be accepted by F. List in advance and in writing. In the case of a shipment exceeding the ordered quantity, F. List shall be entitled to choose to accept the goods against payment or to return them at the expense and risk of the supplier.
  - 4.2. The supplier guarantees to fulfil all preconditions necessary for the completion of the order, including but not limited the availability of sufficiently qualified personnel, technical facilities, intellectual property rights, know-how etc.
  - 4.3. Furthermore, the supplier guarantees to hold all regulatory and other authorizations, rights, permits or licenses, regardless of whether they are subject to public or private law, which are necessary for the execution of the order.
  - 4.4. F. List is entitled to decline the acceptance and reject a deficient delivery or service, regardless of the severity of the defect. As a consequence, the supplier's delivery shall be in delay. To the extent the supplier is obligated to provide material tests, test protocols, documents regarding quality or other documents, the delivery shall only be complete following receipt of these documents.

- 4.5. In the event the supplier's delivery is in delay, F. List shall – without prejudice to any further claims including but not limited to the right to claim damages, performance etc. – be entitled to withdraw from the contract or relevant order (as applicable) following the lapse of a reasonable grace period. As a consequence, any costs arising thereof, including potential consequential costs, shall be borne by the supplier. In addition, F. List shall be entitled to engage a third party to fulfill the obligations of the supplier and the additional costs arising thereof shall be borne by the supplier. The acceptance of the delivery or service at the place of delivery is decisive for meeting the agreed delivery time.
- 4.6. Deliveries shall be made according to the delivery terms and at the delivery destination indicated in F. List's order. Commercial terms (Incoterms) used by either Party shall have the meaning pursuant to the Incoterms 2010. If on an exceptional basis different delivery terms are agreed in writing, the shipment instructions issued by F. List must be followed strictly.
- 4.7. Shipment requires packaging that is suitable to protect the goods from damages resulting from forces which are usual for this kind of transport. F. List shall not bear any packaging costs, which shall be borne by supplier.
- 4.8. Each delivery shall have a delivery note enclosed which includes the order number and the item number from F. List. In the event a consignment consists of more than one package, each package shall be furnished with the order data of F. List and a packing note. F. List is entitled to refuse the acceptance of the delivery if the appropriate delivery documentation is lacking.
- 4.9. In the event of deliveries the total value of which exceeds EUR 35,000 (EURO thirty-five thousand, or equivalent), before any applicable sales tax, a formal acceptance procedure with a written protocol may be applied.
- 4.10. Unless explicitly agreed otherwise, supplier shall be responsible for fees, duties, taxes, and other levies as well as export/import clearance.
5. Warranty for material defects and defects in title
  - 5.1. The supplier warrants that the ordered goods and services are fit for their specific purpose, are free from any defects and free from rights and claims of third parties, in particular including claims in respect to intellectual property rights. Moreover, the supplier warrants that the ordered goods and services fully comply with the characteristics contractually agreed on and meet the requirements of F. List. It is understood that the foregoing does not release the supplier from its obligation to deliver goods that are fit for their intended purpose.
  - 5.2. The warranty period shall be 36 months, except where agreed otherwise in writing on a case by case basis. This period starts with the acceptance of the goods by F. List, in case of defects in title and other hidden defects or errors according to Section 5.1. with the discovery of such defect. In case a defect or error arises within 12 months after the handover of the ordered goods and services, it shall be assumed that this defect or error existed and was known by

the supplier already at the time of handover. Any obligations of F. List to notify defects in accordance with Section 1739 of the Civil Code of Quebec are explicitly waived by the supplier.

- 5.3. In case the supplier is not complying with his warranty obligations within an appropriate timeframe after the notification of the defect, the supplier shall be in default by the mere lapse of time in fulfilling its obligations and F. List will be entitled to remedy the defect or error on its own or by engaging a third party at the expense of the supplier.
- 5.4. F. List is entitled to withhold 5% of the gross contract value as a financial retention to safeguard its warranty claims for the duration of the warranty period. The supplier is entitled to replace this financial retention by providing an abstract bank guarantee. It is permitted to provide one single bank guarantee for more than one project.
- 5.5. Any warranty expressly contained under these GTCP or under the order will not limit the application of any legal warranty or of any implied warranty or condition. All statutory claims and rights of F. List remain unaffected and are expressly reserved.
6. **Cancellation by F. List**

F. List is entitled to cancel all or part of the order at any time. As a consequence, F. List compensates the supplier for all expenses already incurred with regard to the cancelled order. In the event the goods were already produced based on an order containing individual requirements and specifications of F. List, the supplier shall be entitled to claim compensation for any prime costs documented in detail, provided that such goods cannot be used or disposed of otherwise.
7. **Withdrawal from the contract**

F. List is entitled to withdraw from the contract for good cause as follows:

  - a) Upon receipt of an insolvency filing from the supplier by court. The withdrawal must be declared before the insolvency proceedings starts.
  - b) In case of a rejection of supplier's insolvency filing by court.
  - c) In case the supplier discontinues payments before insolvency proceedings have been initiated.
  - d) In case liquidation proceedings are initiated against supplier (whether voluntary or compulsory).
  - e) In case of a breach of these GTCP by the supplier.
8. **Reporting obligation - Contractual penalty**

The supplier is obligated to inform F. List immediately in writing of any intended insolvency filing or liquidation. In case of a violation of this obligation, the supplier shall pay a contractual penalty in the amount of USD 15,000 (fifteen-thousand US-Dollar) to F. List, whereas such penalty shall not be subject to mitigation by court.
9. **Prices/ Invoicing / Payment**

- 9.1. The prices stated in the order are fixed prices (including all related costs, fees, taxes and duties) and therefore, remain firm until the completion of all deliveries and services pursuant to the order. Should any further costs (e.g. fees, taxes, higher material costs, transport, packaging, etc.) arise in fulfillment of an order, these shall be borne solely by the supplier. Whenever providing a cost estimate the supplier guarantees its correctness.
- 9.2. Irrespective of the beginning of the statute of limitation period regardless of the acceptance of partial deliveries, invoices shall become due only after the ordered goods or services have been accepted fully and free from defects and a proper invoice has been issued. Likewise the discount period starts after the complete delivery of the ordered goods or services and after a proper invoice has been issued.
- 9.3. Notwithstanding any deviating written agreements in individual cases, invoices issued to F. List shall become due for payment within 60 days after complete delivery and issuance of a proper invoice. Supplier grants a discount of 3 % for payment within 30 days. Payments shall always be deemed to have occurred on the date when F List's bank account is charged. Payments by cheque shall be deemed to have occurred one working day following the cheque's submission.
- 9.4. In case of payment by installments (down payments) F. List is entitled to withhold 10 % of the invoice as a financial retention. The payment of installments or down payments shall never be interpreted as a pre-acceptance.

## 10. Retention of title

Title to goods delivered by the supplier shall pass to F. List in line with Article 3.2 of these GTCP at the latest upon delivery. Any retention of title or reservation of ownership claimed by the supplier shall be invalid.

## 11. Liability/ Solidary liability/ Retention/ Right to withhold service

- 11.1. Any liability of F. List and of third parties acting on behalf of F. List for pecuniary losses shall be excluded, except in the event of gross negligence.
- 11.2. In the event that several suppliers are executing the order, each of these suppliers shall be jointly and severally liable with the others to F. List as co-debtors.
- 11.3. Any of the supplier's rights of retention or rights to withhold services shall be waived to the extent legally permitted. Disagreements shall not entitle the supplier to withhold scheduled services and to retain deliveries.

## 12. No right to set-off

The supplier shall not be entitled to set off any of his claims against F. List, based on which grounds whatsoever, against any of F. List's claims.

## 13. Invalidity

If any provisions of these GTCP are held to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. In such case the invalid provision shall be deemed to be replaced by such provision that corresponds closest to the meaning and economic purpose of the invalid or unenforceable provision and the intention of the parties.

14. Notices

14.1. Any notice shall be made in the form stated in these GTCP, otherwise in the form required by law, and shall be directed to the last address announced in writing. The transmission by facsimile shall satisfy the written form unless these GTCP provide otherwise.

14.2. Supplier shall notify F. List in writing without undue delay if supplier changes its business address, otherwise a notice submitted to the business address last announced by the supplier shall be deemed to be received and legally effective. Unless expressly stated otherwise, the date of dispatch shall be the relevant date to determine whether a notification has been served in due time.

15. Place of performance/ Jurisdiction/ Applicable law/ Limitation period

15.1. The place of performance for all obligations resulting from the business relationship hereunder shall be 485 boul. des Rossignols, Laval (Québec), H7L 5S7, Canada.

15.2. The courts of the Province of Quebec, judicial district of Montreal, shall have exclusive jurisdiction for all disputes arising from purchase transactions hereunder. However, F. List is also entitled to file a suit against the supplier at the supplier's general place of jurisdiction.

15.3. The laws of the Province of Quebec and the laws of Canada applicable therein shall apply exclusively to these General Terms and Conditions and to any agreement between F. List and the customer. The application of the UN Convention on the International Sale of Goods (CISG) and of any conflict of laws provisions is expressly excluded.

15.4. All claims of the supplier need to be asserted by filing suit within one year after the due date, otherwise such claim shall be statute barred. The relevant date to determine whether a claim has been filed in due time shall be the date of receipt of the claim by court.

16. Additional conditions for working with materials, tools, samples and/or other items which are provided by F. List

16.1. All materials, substances, tools, samples and/or other items provided by F. List to the supplier or to a third party based on supplier's request, shall remain the sole property of F. List. Therefore, any disposal which might limit the property rights of F. List is prohibited. The supplier is obligated to make F. List's sole ownership evident to third parties by any possible means at any time. The supplier is obligated to treat such materials, substances, tools, samples and/or other items with due care and to store them diligently.

16.2. Notwithstanding any other rights and obligations, upon F. List's request the supplier is obligated, to hand over the materials, substances, tools, samples and/or other items provided including any workpieces produced by the supplier. This shall apply including

without limitation if an insolvency proceeding against the supplier has been initiated or dismissed due to lack of assets or F. List's withdraws from the contract for whatever reason.

- 16.3. The supplier hereby declares and warrants that all assessments or compensation payable to the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST) have been paid and, the supplier shall at all times pay or cause to be paid any assessments or compensation required to be paid pursuant to the *Act respecting occupational health and safety* and any applicable workers' compensation act.
- 16.4. The supplier shall comply with all applicable federal, provincial, municipal and local laws and regulations and more particularly environmental laws and regulations
- 16.5. The supplier shall inform F. List immediately in writing of any events concerning F. List's property, including but not limited to seizure, confiscation, third party claims etc. Additionally, the supplier needs to take all actions, regardless of whether judicial or extrajudicial measures, which are necessary to prevent infringements of F List's property at supplier's sole cost and risk.
- 16.6. Upon request by F. List, a sample of the goods to be delivered shall be provided to F. List for inspection purposes, in particular for inspection before acceptance. The supplier warrants that the goods delivered will conform to such sample(s).