

## GENERAL TERMS AND CONDITIONS (Version May 2019)

### 1. Scope

- 1.1. All deliveries and services of F. LIST CANADA CORP., 5485 Boulevard. des Rossignols, Laval (Québec), H7L 5S7, Canada (hereinafter referred to as: **F/LIST**) are made exclusively on the basis of these terms and conditions (hereinafter referred to as the "**General Terms and Conditions**"). These terms and conditions shall also apply to all future transactions concerning deliveries and services of F/LIST to the customer, without explicitly referring to these terms and conditions.
- 1.2. These terms and conditions apply in their valid version, as may be amended from time to time by F/LIST. F/LIST informs the customer of any amendments of these terms and conditions in due time in advance.
- 1.3. Different, contradicting, additional or supplementary terms and conditions (conditions of purchase) of the customer shall not apply, even if F/LIST is aware of their existence and even if they have not been explicitly contradicted by F/LIST or if F/LIST accepts or performs services with knowledge and without reservation. Such performance of F/LIST shall not be deemed (tacit) agreement to the customer's conditions.  
Particular individual agreements between the parties deviating from or supplementing these terms and conditions shall take precedence over these General Terms and Conditions, provided, however, such arrangements are explicitly made by F/LIST in writing.
- 1.4. Modifications and additions to these General Terms and Conditions shall be in written form in each particular case in order to be legally binding. The transmission by fax shall meet the requirement of written form. Any deviation from this written form requirement must also be in written form.
- 1.5. Customer hereby agrees that F/LIST may engage any third party, including, without limitation, other companies of the List Group of companies to perform its obligations arising hereunder or under any contract with the customer, without notification or consent of the customer required.

### 2. Conclusion of an agreement

- 2.1. Offers from F/LIST are subject to change and non-binding. Samples and specimens may be provided for guidance only and be without any commitment.
- 2.2. An order by a customer constitutes a binding offer to conclude a contract. Any confirmation to the customer of receipt of the customer's order by F/LIST shall only constitute a binding acceptance of the order if expressly stated by F/LIST.
- 2.3. The conclusion of an agreement shall in any case require a written acceptance of the customer's order by F/LIST. An electronic transmission shall meet the requirement of written form. In the event of a deviation between the written acceptance and the customer's order, the agreement shall in any case be deemed as concluded with the content of the written acceptance, unless the customer contradicts in writing within one week after receipt.
- 2.4. F/LIST shall have the right to accept the offer made by the customer within one week.
- 2.5. In the event of a conclusion of an agreement with a customer, F/LIST's delivery and service is under the reservation of F/LIST's correct and proper self-supply. F/LIST reserves the right not to deliver (in whole or in part, as the case may be) and insofar withdraw from the contract. In case deliveries or services are unavailable or only available in part, the customer shall be notified immediately in writing. Any counter performance already provided by the customer to F/LIST shall be refunded immediately in full or partwise immediately in case of withdrawal from the contract by F/LIST. No further compensation shall be payable to customer in case of such non-delivery and withdrawal (in whole or in part, as the case may be).
- 2.6. Technical and other modifications are subject to change within reasonable limits.

### 3. Performance and Transfer of Risk

- 3.1. Place of performance of deliveries, services and payments shall be the place of business of F/LIST, Laval, Canada. Deliveries shall be made, unless otherwise agreed in writing, "ex works" (EXW Incoterms 2010). This shall also apply in the event that the handover is performed at a different place pursuant to the agreement between the parties. The risk of accidental destruction and accidental damage of the goods shall pass to the customer at time of handover of the goods to the freight carrier, but by no means later than at the time the good leaves F/LIST's warehouse. Upon request of the customer, shipments will be insured in his name and on his account.
- 3.2. In the event of a delay in delivery or service caused by the customer, the risk of accidental loss and accidental damage shall pass to the customer at the time the delivery or service was due. In the event of the customer's default of acceptance of more than one month, F/LIST is allowed to charge the customer with storage costs of 0.5% of the respective price per each full month of delay. All further claims by F/LIST shall remain unaffected.
- 3.3. The agreed time of deliveries and services is subject to force majeure. If an event of the nature of force majeure shall delay the delivery of the Goods, F/LIST may extend the delivery and service period by a period of time equal to the delay so caused.
- 3.4. Compliance by F/LIST with the periods for deliveries and/or services requires that all obligations of the customer are fulfilled properly and in due time, in particular that all documents, approvals and releases to be furnished by the authorities or customer are received by F/LIST in time, that all plans are clarified and approved in time, that the items and services to be provided by the customer are available, and that such other obligations are satisfied which are required for the deliveries and/or services by F/LIST to be carried out properly and in due time. If such requirements are not satisfied in time, the periods shall be extended accordingly, plus a reasonable restart period.
- 3.5. In the event of a delay in delivery or service by F/LIST, and after granting a grace period of 21 days for F/LIST to remedy to such delay, the customer is entitled to claim a lump-sum compensation of 0.5% of the part of delivery or service which has not been rendered duly or properly per full week, provided that the customer proves that it suffered damages from such delay. This lump-sum compensation is capped at 5% of the price for such part of delivery or service. Other claims of the customer for compensation shall be determined exclusively in accordance with section 9 of these General Terms and Conditions.
- 3.6. Early delivery and partial delivery shall be permissible insofar as reasonable for the customer.

### 4. Reservation of Ownership

- 4.1. The goods shall remain F/LIST's property until full payment of the purchase price, receivables and all associated claims (costs and fees etc.) arising from the business relationship. In the event a current account relationship exists, F/LIST shall retain ownership of the goods and services until receipt of all payments of recognized balances.

- 4.2. Each processing or transformation of the delivered goods that are subject to a reservation of ownership ("Reserved Goods") by the customer is done for F/LIST. In case this is done with third party goods, that do not belong to F/LIST or the Reserved Goods are inseparably connected with such third party goods, F/LIST shall acquire co-ownership of such new goods in the relation of the value of the Reserved Goods to the third party goods; the same conditions that apply to Reserved Goods shall also apply for the new goods. If the connection is done in a way that results in the customers goods being the key thing (*Hauptsache*), the customer shall transfer co-ownership to F/LIST in due proportion.
  - 4.3. The customer is not entitled to resell or otherwise dispose of the Reserved Goods (collectively "Disposition") except (i) where F/LIST explicitly allows him to do so in writing and (ii) only against the written deed of assignment of the purchase price and any other claim arising out of or being connected with the Disposition to F/LIST, and (iii) against proof that the debtor has been duly notified in writing of such assignment. Claims of the customer against third parties arising out of the resale of reserved goods by the customer, the customer shall assign to F/LIST including all ancillary rights until all claims are paid as set forth in section 4.1. The customer shall record the assignment of the claim in his books.
  - 4.4. The customer shall be entitled and obligated to collect the claims that are assigned to F/LIST. The right of F/LIST to collect the claims by itself shall be unaffected. F/LIST will not collect the claims, as long as the customer fulfills his payment obligations from the collected claims, does not generally stop payments, is not in default of payment and no application has been filed for the initiation of insolvency proceedings regarding the assets of the customer. If one of these conditions is fulfilled, the customer is obliged to inform F/LIST immediately in writing; upon request by F/LIST he is obliged to inform the debtors about the assignment and deliver to F/LIST all necessary information and documents to enforce its rights.
  - 4.5. In all other respects selling, pledging or protective conveyance by the customer is prohibited.
  - 4.6. The customer shall cooperate with F/LIST and proceed to all registrations necessary for F/LIST to enforce its rights under these General Terms and Conditions.
  - 4.7. The customer shall treat Reserved Goods with due care. In the event that maintenance and inspection works are required, the customer shall perform these works at his own expense. Customer shall adequately insure all Reserved Goods under retention of title against fire and theft. Any claims for damages against the insurers shall hereby be assigned to F/LIST in the amount of the value of Reserved Goods.
  - 4.8. If (i) the customer does not fulfil his payment obligations from the collected claims, generally stops payment, or is in default of payment and a grace period of 2 weeks granted by F/LIST has elapsed to no avail; or (ii) an application for the initiation of insolvency proceedings regarding the assets of the customer has been filed, then, at the option of F/LIST, such default shall cause the customer to forfeit the benefit of the term for its payment obligations and the customer shall thereupon be required to immediately pay all amounts due to F/LIST and to immediately perform all of its obligations under these General Terms and Conditions.
  - 4.9. If the customer is in default under section 4.8, F/LIST shall be entitled to take back the Reserved Goods without any retention rights of the customer and to enter the business premises of the customer during normal business hours for this purpose. After redemption and prior warning F/LIST shall be entitled to the appropriate realization of the Reserved Goods. The proceeds from the sale are credited to the liabilities of the customer, minus the appropriate expenses for realization. A withdrawal from the contract is not necessary; also the demand for redemption, return, warning or realization does not constitute a withdrawal from the contract.
  - 4.10. Insofar as the law of a country in which the goods are located does not permit a retention of title in accordance with the above regulations, but grants F/LIST other comparable security rights on the goods, F/LIST may apply these security rights. The customer is obligated to take all necessary measures at his own expense to make and maintain the retention of title or another security right effective.
- ### 5. Prices, Payment
- 5.1. In the absence of an individual written agreement upon the price, the prices as set forth in the respective price list by F/LIST shall be deemed to be agreed upon. If any costs change before the day of delivery / performance of service, F/LIST reserves the right to adjust the prices, in cases when the deliveries and/or services are to be carried out as agreed more than 3 months after conclusion of contract.
  - 5.2. Unless otherwise agreed upon, the prices shall be net prices "ex works" (EXW Incoterms 2010). To be added are any and all taxes, including VAT, customs duties, port fees, or charges as well as consular or legalization fees possibly levied according to any applicable laws. Any other costs arising for packing of goods as well as special packaging requested by the customer will be charged separately.
  - 5.3. In the absence of an individual written agreement, payments to F/LIST shall be made in Canadian Dollars within 30 days (received by F/LIST) from the date of invoice. No discount shall be applicable.
  - 5.4. Payments received by F/LIST shall be credited against the oldest debt, first against the interest, then against the capital.
  - 5.5. In the event of a payment delay, interest at the rate of 9 % per annum above the 6-month EURIBOR, taking as a basis a year with 360 days, shall be charged to the customer by F/LIST. In this case, the customer shall pay all extrajudicial costs for adequate prosecution. Without prejudice to further claims, in the event of payment delay despite that the debt is due, F/LIST is entitled to withdraw from the agreement with the customer after an appropriate grace period, set by F/LIST, expired without results.
  - 5.6. The customer is only entitled to set off against F/LIST's claims and the customer shall only be entitled to exercise its right of retention with counterclaims that were explicitly confirmed by F/LIST in writing as uncontested or were legally confirmed by court/tribunal with non-appealable effect. The customer shall only be entitled to exercise its right of retention in case the counterclaims arise from the same contractual relationship.
- ### 6. Intellectual Property Rights
- 6.1. Copyrights and other industrial property rights of all kind in connection with deliveries and services shall not be transferred to the customer. Works, documents, drawings, plans and samples and know-how, etc. of whatever nature and form constitute intellectual property of F/LIST, irrespective of whether such intellectual property is registered. The transfer to and usage by third parties is not permitted. The purchase price/work wages includes a non-exclusive right to use the goods/services, which shall comply with the scope of the agreement and shall be limited in time to the lifespan of the goods/services. There shall be no further granting of rights, especially no right for issuance of sub-licenses and no editing rights exceeding the purpose of this contract.

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## 7. Warranty

- 7.1. The following provisions apply on any warranty rights of the customer. The warranty rights apply on any defects being present in the event of transfer of risk. Thus, F/LIST particularly does not accept any responsibility for defects arising out of (i) an assembly not performed by F/LIST, (ii) excessive utilization of the good beyond the capacity indicated by F/LIST, (iii) incorrect or negligent handling and usage of the good, (iv) other actions performed by the customer or third parties not authorized by F/LIST, (v) materials provided by the customer or (vi) normal wear and tear.
- 7.2. F/LIST® Stone Products are subject to the special limited warranty provisions of *Limited Warranty – F/LIST® Stone Products* in its latest version, which can be downloaded at [www.f-list.at/en/about-flist/downloads](http://www.f-list.at/en/about-flist/downloads) and which form an integral part of these General Terms and Conditions.
- 7.3. F/LIST® Wood Flooring Products are subject to the special limited warranty provisions of *Limited Warranty – F/LIST® Wood Flooring* in its latest version, which can be downloaded at [www.f-list.at/en/about-flist/downloads](http://www.f-list.at/en/about-flist/downloads) and which form an integral part of these General Terms and Conditions.
- 7.4. Refurbishment works are subject to the special limited warranty provisions of *Limited Warranty – F/LIST® Refurbishment Services* in its latest version, which can be downloaded at [www.f-list.at/en/about-flist/downloads](http://www.f-list.at/en/about-flist/downloads) and which form an integral part of these General Terms and Conditions.
- 7.5. LIMARTEC® WOOD VENEER is subject to the special limited warranty provisions of *Limited Warranty – LIMARTEC® WOOD VENEER* in its latest version, which can be downloaded at [www.f-list.at/en/about-flist/downloads](http://www.f-list.at/en/about-flist/downloads) and which form an integral part of these General Terms and Conditions.
- 7.6. F/LIST® Carbon Flooring Products are subject to the special limited warranty provisions of *Limited Warranty – F/LIST® Carbon Flooring* in its latest version, which can be downloaded at [www.f-list.at/en/about-flist/downloads](http://www.f-list.at/en/about-flist/downloads) and which form an integral part of these General Terms and Conditions.
- 7.7. F/LIST® Leather Flooring Products are subject to the special limited warranty provisions of *Limited Warranty – F/LIST® Leather Flooring* in its latest version, which can be downloaded at [www.f-list.at/en/about-flist/downloads](http://www.f-list.at/en/about-flist/downloads) and which form an integral part of these General Terms and Conditions.
- 7.8. The customer shall notify F/LIST in writing about obvious defects of the goods within 14 days after receipt of the goods, in the event of hidden defects within 7 days after detection of the hidden defects, otherwise all of the customer's warranty rights and other rights in relation thereto shall be excluded. The relevant indicator for the timeliness of the notification is the date of dispatch of the notice.
- 7.9. Unless otherwise agreed upon in the Attachments listed in paragraphs 7.2 to 7.7 or otherwise agreed upon in writing, the warranty period shall be 6 months starting with the date of transfer of risk as provided hereunder.
- 7.10. F/LIST is entitled to choose between rectification and replacement of the defective good. In the event that the supplementary performance fails, the customer shall be entitled to reduce the price accordingly or, provided that the defect is significant, withdraw from the contract. In the event the customer or a third party who is not authorized by F/LIST performs a rectification without prior written consent of F/LIST, the customer is deemed to have waived all warranty and other rights.
- 7.11. The customer shall prove to F/LIST (i) the existence of a defect in the delivery or service, (ii) that the defect in the delivery or service already existed at the time of the transfer of risk and (iii) that the notification of defect was performed in due time.
- 7.12. Any other claims based on material defects are hereby explicitly excluded. In particular, but not limited hereto, any technical advice, verbal or written, provided by F/LIST shall not be binding and shall not release the customer from examining deliveries with regard to their suitability for the processes and purposes for which he intends to use them.

## 8. Withdrawal from the contract

- 8.1. F/LIST may withdraw from the agreement or relevant order (as the case may be) with the customer for the following reasons:
  - a) In the event the customer or a third party files an application for the initiation of insolvency proceedings or similar proceedings against the customer.
  - b) In the event of dismissal of a customer's application for the initiation of insolvency proceedings or similar proceedings.
  - c) In the event the customer fails to render timely payment or otherwise suspends payments and no insolvency proceedings have yet been initiated.
  - d) In the event that liquidation proceedings are initiated against customer (whether voluntary or compulsory).
 Each of which shall constitute a serious reason for withdrawal.
- 8.2. The customer shall immediately notify F/LIST in writing about any insolvency filing (planned by the customer or issued by a third party).
- 8.3. In the event of F/LIST's material failure to perform a delivery or performance due, the customer, subject to Section 8.4, shall be entitled to withdraw from the agreement after the lapse of an appropriate grace period set in writing which shall not be shorter than 21 days.
- 8.4. The right to withdraw from the contract according to point 8.3 shall not apply to the customer with respect to services and deliveries which have been customized by F/LIST for the customer.

## 9. Liability

- 9.1. Liability of F/LIST and third parties acting on behalf of F/LIST shall in any case be excluded, except in the event of gross negligence from F/LIST.
- 9.2. Liability of F/LIST and third parties acting on behalf of F/LIST shall in any case be limited to damages on the good or on the service itself. F/LIST shall not be liable for any other financial losses, any damages arising from third-party claims against the customer and any indirect, special, incidental or consequential damages.
- 9.3. F/LIST shall by no means be liable in the event of force majeure.
- 9.4. The limitation of liability period shall be 6 months starting with the moment the claim arose and the customer obtained knowledge of the circumstances constituting the claim. The claim shall lapse within three years of the event causing the loss regardless of actual knowledge of the customer. The limitation period regarding claims for damages caused by defects shall be governed by point 7.9.
- 9.5. The before mentioned limitations of liability apply on all claims of damages irrespective of the legal reason, except for claims of damages of the customer (i) because of wilful intent, (ii) according to the laws on product liability or (iii) because of maliciously concealed defects.
- 9.6. The before mentioned limitations of liability apply to any claims of damages of the customer against the bodies, executive employees and employees of F/LIST or third parties authorized by F/LIST.

## 10. Severability clause

If any provisions of these terms and conditions are held to be invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. The invalid clause will be replaced with a valid one, which comes closest to the economic purpose of what the parties have intended.

## 11. Notification

- 11.1. Notifications shall be made in the form stated in these General Terms and Conditions, and shall be directed to the last address that was announced in writing. The transmission by fax shall satisfy the written form.
- 11.2. The customer shall notify F/LIST in writing without undue delay of the customer's changes of business address, otherwise a notice directed to the business address last announced by the customer shall be deemed to be as received by the customer for legal purposes. The date of dispatch shall be the relevant date, unless otherwise expressly stated, for a notification to be received in time.

## 12. Jurisdiction and applicable law

- 12.1. Place of jurisdiction for all disputes arising from and in relation to an agreement between the customer and F/LIST shall be the courts of the Province of Quebec, judicial district of Montreal. Notwithstanding the foregoing, F/LIST reserves the right to file a suit against the customer at his general place of jurisdiction.
- 12.2. 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.