

GENERAL TERMS AND CONDITIONS (Version May 2020)

1. Scope of the General Terms and Conditions

- 1.1. These General Terms and Conditions, as amended from time to time, shall apply to all offers, contractual relationships, deliveries and services, provided by F. LIST GMBH, A-2842 Thomasberg, List-Strasse 1 (hereinafter referred to as "F/LIST") to the customer. These General Terms and Conditions shall also apply to all future deliveries and services provided by F/LIST to the customer without the need of express reference thereto.
- 1.2. Different, contradicting or additional general terms and conditions of the customer shall not apply to the deliveries and services provided by F/LIST, even if F/LIST is aware of their existence. Particular individual agreements in writing between the parties shall take precedence over these General Terms and Conditions.
- 1.3. Modifications and additions to these General Terms and Conditions shall be made in written form 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.

2. Conclusion of an agreement

- 2.1. Offers from F/LIST are non-binding and subject to technical and other modifications within reasonable limits.
- 2.2. Any order by a customer constitutes a binding offer to conclude a contract with F/LIST. 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 an entrepreneur, F/LIST's delivery and service is under the reservation of F/LIST's correct and proper self-supply. In case deliveries or services are unavailable or only available in part, the customer shall be notified immediately. Any counter performance already provided by the customer to F/LIST shall be refunded immediately.

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 in A-2842 Thomasberg. 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 goods leave 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 culpably caused by customer, the risk of accidental loss and accidental damage shall pass to customer at the time the delivery or service was due. In the event of customer's default of acceptance of more than one month, F/LIST is allowed to charge customer with storage costs of 0.5% of the respective delivery price per full month.
- 3.3. The agreed time of deliveries and services is subject to force majeure. In the event of force majeure a prolonged delivery and service period shall come into effect.
- 3.4. In the event of delay of delivery or service culpably caused by F/LIST and after granting F/LIST a grace period of 21 days, the customer is entitled to claim a lump-sum compensation of 0.5% of the part of delivery or service, which has not been delivered duly or properly per full week, provided that the customer has a provable damage. The lump-sum compensation is capped with 5% of the respective delivery price. Other claims for compensation shall be determined exclusively in accordance with section 9 of these General Terms and Conditions.

4. Retention of Title

- 4.1. The Goods shall remain F/LIST's property until full payment of the purchase price and all associated costs and fees. In the event of a full or partial default in payment, F/LIST is entitled to collect the goods without customer's consent.
- 4.2. The customer is only entitled to sell the goods which are still subject to retention of title in the event of the prior written consent of F/LIST. Claims of the customer against third parties arising out of the resale of goods subject to F/LIST's retention of title shall be assigned to F/LIST in such amount which corresponds to the purchase price of the goods. In this event the customer shall record the assignment of the claim in his books.
- 4.3. The customer shall treat goods that are subject to retention of title with due care. In the event that maintenance and inspection works are required, the customer shall perform these works at his own expense.
- 4.4. F/LIST is entitled to withdraw from the agreement and demand the restitution of goods that are subject to retention of title, if the customer breaches significant contractual obligations; especially payment obligations as set forth in Section 8.

5. Prices, Payment of Purchase Price/Work Wages

- 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. Unless otherwise agreed upon, the prices shall be net prices ex works (EXW Incoterms 2010).
- 5.2. In the absence of an individual written agreement payments to F/LIST shall be made in US-Dollars or Euro (according to the designation on the invoice) within 30 days (received by F/LIST) from the date of invoice. No discount shall be applicable.
- 5.3. Payments received by F/LIST shall be credited against the oldest debt, first against the interest, then against the capital.
- 5.4. In the event of a payment delay, interests at the rate of 9 % p.a. above the base interest rate, taking as a basis a year with 360 days, shall be charged to customer. In this case, customer shall pay all extrajudicial costs for adequate prosecution. Without prejudice to further claims, F/LIST is entitled to withdraw from the agreement with the customer after having set an appropriate grace period and to demand restitution of the goods subject to retention of title.

- 5.5. Customer is only entitled to set off against F/LIST's claims with counterclaims that were explicitly confirmed by F/LIST in writing as uncontested or were legally confirmed. F/LIST has the right to withhold goods in case of delay of payment.

- 5.6. The customer shall only be entitled to withhold payments if the customer is exercising reasonable rectification claims. In such event the withholding amount shall not exceed the amount reasonably necessary to rectify the deficiency.

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 or processing rights contrary to the agreement.

7. Warranty

- 7.1. F/LIST warrants that the deliveries and services are free from defects at the time 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 customer or third parties, (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 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 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 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 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 and which form an integral part of these General Terms and Conditions.
- 7.7. F/LIST® Syntec Flooring Products are subject to the special limited warranty provisions of *Limited Warranty – F/LIST® Syntec Flooring* in its latest version, which can be downloaded at 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 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 customer's warranty rights and all other rights arising out of whatever legal ground regarding the delivery or service shall be excluded. The relevant indicator for the timeliness of the notification is the date of dispatch.
- 7.9. Unless otherwise agreed upon in the Attachments listed in sections 7.2. to 7.7. or otherwise agreed upon in writing, the warranty period shall be 24 months starting with the transfer of risk.
- 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. Customer shall not perform a rectification himself. 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 rights and all other rights arising out of whatever legal ground regarding the delivery and service.
- 7.11. 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.

8. Withdrawal from the contract

- 8.1. F/LIST may withdraw from the agreement with the customer for the following reasons:
 - a) In the event customer files an application for the initiation of insolvency proceedings or similar proceedings.
 - 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 suspends payments and no insolvency proceedings have yet been initiated.
- 8.2. Customer shall immediately notify F/LIST in writing about any insolvency filing (planned by customer or issued by a third party).
- 8.3. In the event of F/LIST's culpable delay in delivery or performance of service and after the lapse of an appropriate grace period set in writing which at least must be 21 days, customer shall be entitled to withdraw from the agreement. The right to withdraw from the agreement shall not apply in the event of delay due to force majeure and slight negligence as well as with respect to services and deliveries especially customized for customer. The rules of delay of delivery shall only apply if F/LIST has delivered an *aliud* which is not subject to approval.

9. Liability

- 9.1. Liability of F/LIST and third parties acting on behalf of F/LIST shall in any case be excluded in the event of slight negligence.
- 9.2. Liability is limited to damages on the good or on the service. F/LIST shall not be liable for any other financial losses, any damages arising from third-party claims against the customer and any consequential damages.
- 9.3. F/LIST shall by no means be liable in the event of force majeure.

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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, otherwise in the statutory form, and shall be directed to the last address that was announced in writing. The transmission by fax shall satisfy the written form.
- 11.2. Customer shall notify F/LIST in writing without undue delay of 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 competent court of Wiener Neustadt, Austria. However, F/LIST remains entitled to file a suit against customer at customer's general place of jurisdiction.
- 12.2. Austrian law shall apply exclusively excluding the UN Convention on the International Sale of Goods and the conflict of law provisions.