

FORITEX S.r.l.
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FORITEX *standard terms and conditions*

Art.1 – Purchase order

The procedure of sale begins with the sending, from buyer to seller, of a purchase order. It must contain, besides the clear manifestation of the will to bind himself in case of acceptance of the seller, the description of the technical distinctive features of the desired product, the price indication, the proposed terms and ways of payment, the required delivery time, and the referring to the INCOTERMS sea carriage clauses whose application is demanded.

Art. 2 – Order confirmation

After the reception of the purchase order, the seller can send an order confirmation to the buyer, containing the present standard terms and conditions, which, in order to bring the agreement to perfection, the buyer will properly subscribe and return to the seller.

The contract is definitively fixed only in the moment and in the place of the receiving, by the seller, of the order confirmation rightly subscribed by the buyer.

Art. 3 – Seller's right to modify the conditions

The seller can freely modify the conditions required from the buyer in the purchase order, and make them result in the order confirmation.

The subscription, by the buyer, of the order confirmation which contains different conditions from the ones of the purchase order, entails the approbation of those new conditions, without any obstacle to the regular conclusion of the agreement, in accordance with the art. 2 of the present standard terms and conditions.

Art. 4 – Confidential information

If, during the negotiations, one party reveals confidential information, the receiving party undertakes to the disclosing party that it shall (I) keep such confidential information in confidence and (II) not use the information to gain an incorrect advantage for itself.

The violation of the present obligation is a serious and essential contractual breach, which legitimates the disclosing party to sue the violator for damages and to annul the contract.

Art. 5 – Variations of the prices

The prices of the products are based on: (I) cost of the productive process and of the raw materials; (II) respect of quality assurance programs; (III) applicable laws, rules and regulations. After the stipulation of the contract, if there is, for reasons not imputable to the seller, any change to the parameters (I), (II) and (III), which affects the costs of manufacturing the products, the price will be proportionally increased to reflect such additional costs and reasonable adjustments will be made to the delivery schedule to ensure that seller will have sufficient time to fulfil its delivery duty. The exercise of the right provided by the present article, is subordinated to the presentation, from seller to buyer, of adequate documentation which proves the changes to the parameters (I), (II) or (III), under the penalty of the ineffectiveness of the variations.

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Art. 6 – Payment

All accounts are payable in Euro (€), U.S. Dollars (\$) or GB Pound (£), free and net of bank exchange, bank charges, collection or other charges, in accordance to the conditions chosen by the parties.

If the letter of credit is chosen (L/C), seller's invoice will be used as evidence to claim such letter of credit.

Art. 7 – Interest in case of delay

In case of delay in the payment of the price, the buyer must pay out to the seller late interest according to the rate of the principal instrument of refinancing of the Central European Bank, applied to the latest operation, observed by the journal "Il Sole 24 Ore" the first day of the Interested month, under the item "open market operations-minimal rate", with an increase of seven (7) percentage points.

Art. 8 – Explicit resolving clause

If the buyer doesn't pay the price, even partially, the contract will be automatically resolved/annulled, leaving the gravity and the imputability of the non-performance out of consideration, because they've been preventively considered by the parties, in accordance with art. 1456 of the Italian civil code.

The resolving/annulment of the contract is not possible, if the unpaid price doesn't exceed the 5% of the total.

Art. 9 – Restitution of unpaid things

The seller, if integral payment isn't made, can regain the possession of the sold things, and exercise a retention right.

To that purpose, the seller must send to the buyer a written request, asking the restitution of the unpaid things. If the restitution isn't made within the term fixed by the seller, which in any case can't be shorter than seven (7) days, the buyer undertakes to pay a penalty which amounts to 10% of the total price, for every week of delay.

Even in the event of exercise of the right of retention by the seller, the buyer is suffering the burden of paying the remaining or total price of the goods, in addition to the penalty.

Art. 10 – Delivery

The term fixed for the delivery can't be considered essential, unless different agreement of the parties.

Goods can be delivered even before the fixed date, but the seller must notify the buyer and send a shipping notice.

If there is an established fractioned delivery, the non-performance of one or more deliveries can't legitimate the resolving/annulment of the contract by the buyer, that, anyway, can pretend the substitution of the goods undelivered with other identical, or, at his own choice, the refund of the exceeding price.

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Art. 11 – Buyer’s lack of cooperation in delivery

If the buyer delays the receiving of the goods, or doesn’t provide the seller with adequate information, the seller isn’t responsible for the delay and, in addition to any other right provided by the applicable law, he can: (I) adopt all the opportune measures to preserve the goods, charging the account to the buyer, or (II) sell the goods at the best price possible, debiting to buyer the storage and selling costs, which can be retained from the already received price.

Art. 12 – Warranty

The seller guarantees that the sold product is free of vices able to make it unfit for the established use or to significantly reduce its value.

The warranty only includes the vices attaining to the process of production, manufacture and creation of the goods; and only if the vices existed before the making of the contract.

Art. 13 – Exclusion of the warranty

The warranty is invalid if, when the contract was stipulated, the buyer was aware of the vices, or, after looking over the product, he could have perceived them with the slightest amount of diligence.

The warranty also is not valid regards to: (I) breakdowns that are due to buyer’s negligence; (II) vices derived from the use of buyer’s projects or models; (III) vices that are due to wear and tear, voluntary damaging, anomalous use or reparation made without seller’s consent.

When the warranty is not valid, it is also excluded any form of responsibility for damages or other events caused by the vices.

Art. 14 – Contents of warranty

In the cases provided by art. 12, and in the limits of art. 13, the buyer can ask, by written advice, the reduction of the price, or the elimination of the vices, at seller’s own expense.

Nevertheless, if the reparation isn’t possible, or simply too expensive for the seller, he can freely replace the product with an equivalent one.

The reparation must be considered too expensive, when its costs exceed the market price of the product, so that seller has more convenience in replacing the product itself.

Terms and conditions of the reparation or replacement must be concordantly chosen by the parties, considering the needs of both of them.

Anyhow, the buyer can’t resolve e/o annul the contract.

Art. 15 – Duration of the warranty and conditions of its exercise

The warranty is invalidated by prescription within one year from the delivery.

The buyer also loses the exercise of the warranty if doesn’t declare, in writing, the vices of the product within thirty (30) days from their discovery, if the vices are hidden, or from the delivery, if the vices are evident.

Nevertheless, if the vices are easily recognizable, the declaration must be done within seven (7) days from the delivery.

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Art. 16 – Seller’s responsibility

When in warranty, the seller’s responsibility for damages caused by the product, can never exceed its price.

Art. 17 – Vis major

The parties are freed from any responsibility provided by these standard terms and conditions, or by law, if they prove that non-performance was due to vis major.

While the cause of vis major is in act, the other party can’t resolve e/o annul the contract.

The suspension of that right ceases when ceases the cause of vis major.

Without prejudice for the general consideration expounded before, are causes of vis major:

- explosions, inundations, incidents;
- war or menaces of war, acts of sabotage, insurrections, civil disorders, requisitions;
- laws, restrictions, rules, local rules, prohibitions or any kind of measure adopted by government, Parliament or local authorities;
- importation or exportation rules or embargos;
- difficulty in finding raw materials, components and fuel for the productive apparatus;
- breakdowns of the productive apparatus or interruptions of current.

Art. 18 – Structure of the contract

The present standard terms and conditions, with the purchase order, the order confirmation and other eventual enclosures mentioned in writing, are the comprehensive contract which bounds seller and buyer, and replaces every agreement between the parties in this subject.

Every change of this contract is null and void, if not made in writing.

Art. 19 – Efficacy of the contract

If one or more clauses of the contract stipulated between seller and buyer are null e/o void e/o ineffective, the other clauses will remain totally valid.

Art. 20 – Communications between the parties

When the contract establish that acts and communications must be made in writing, oral acts and communications are ineffective.

This requisite is satisfied when the acts or communications are made by a written document properly signed.

Art. 21 – Applicable law

All the contracts based on the present standard terms and conditions must be considered self sufficient and complete.

For all the eventual gaps of the contract, the Italian law will find residual application.

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Art. 22 – Ritual arbitration clause

All the controversies about the contracts based on the present standard terms and conditions, including those who concern validity, efficacy and interpretation, will be solved by arbitration in accordance with the “Rules of the National and International Arbitration Chamber of Milano”. The court will be composed by a college of three arbiters. Each party will designate an arbiter; the third arbiter, the president of the college, will be designed accordingly by the two parties, or, if they can’t make an agreement, will be designed in accordance with the “Rules of the National and International Arbitration Chamber of Milano”.