

1 General – Offer – Conclusion of contract

- 1.1 Our deliveries, services and offers are expressly based on the following terms and conditions of business which shall expressly likewise apply also to all future business relations, even if this provision has not been specifically agreed again. At the latest at the time of acceptance of the goods or services, these conditions shall be deemed to have been accepted. Counter-confirmations by the purchaser, making reference to his own terms of business, are expressly declined in advance. Departures from these conditions are valid only if they have been confirmed in writing by forteq.
- 1.2 Offers made by forteq are without obligation, save where specifically agreed otherwise; specimens and samples are non-binding general indications.
- 1.3 Contracts and agreements only take binding effect on written confirmation of the order by forteq or on delivery.
- 1.4 Verbal or written advice by forteq on application is given without obligation, unless the corresponding services are separately billed to the customer under the specific heading of development services. However, this does not release the customer - in respect e.g. of the protected property rights of third parties - from the need to make his own tests of the products to determine their suitability for the intended processes and purposes.
- 1.5 All agreements and declarations by the contracting parties with legal effect are valid only if they are made in writing.
- 1.6 The customer may not transfer his contractual rights to third parties without the written consent of forteq.

2 Scope of supply – Plans – Technical documents – Indications

- 2.1 The deliveries and services of forteq are defined exhaustively in the order confirmation, together with any attachments thereto, in the order for which the order confirmation makes reference thereto and in these general terms and conditions of business. Changes to the scope of supply must be confirmed in writing by forteq.
- 2.2 Part-deliveries are permitted. A surplus or shortfall on quantity of up to 10% is within the discretion of forteq and due allowance thereof will be taken in the invoices.
- 2.3 Illustrations, indications of weight and dimensions in lists, technical conditions of delivery, works standards, offers and order confirmations by forteq are only approximate; deviations on dimensions, weight, number of pieces and quality are permitted within the limits of normal commercial tolerances or the relevant standards. No guarantee of compliance is given unless this is expressly designated as a binding part of the contract pursuant to section 2.1. Normal commercial differences in wastage and colour do not constitute grounds for complaints about the delivery.
- 2.4 Both contracting parties reserve all rights in documents (e.g. designs, calculations, plans, documentation, drawings, technical documents, software etc.), which they have made available to the other contracting party. The receiving contracting party acknowledges the rights in the documents and know-how received; he undertakes to treat such documents and know-how in the same way as his own business secrets, not to release them to third parties, make copies or use them other than for the purpose for which said documents and know-how were made available. Rights in patents which may be granted and in registered designs are reserved. The receiving party undertakes to release to the originating party, on first request, the documents in full and without making copies, save where copies have to be kept for legal reasons.

3 Regulations in the country of destination

- 3.1 The customer shall call the attention of forteq to all regulations relating to the performance of the delivery, assembly, operation and prevention of illness or accident.
- 3.2 Where such provisions at the place of destination are more far-reaching than the Swiss provisions or depart there from, the customer shall bear the resulting costs.

4 Prices – Conditions of payment and delivery – Quality testing

- 4.1 Save where otherwise expressly agreed, all prices are quoted net ex works or warehouse in freely available Swiss francs exclusive of packaging, freight and insurance and value added tax at the rate applicable on the date of delivery and without any deductions or costs pertaining to documentary credits, bank guarantees, encashing costs, collection of documents etc. which shall be payable by the customer. Any ancillary costs, such as packaging, insurance, transport costs, customs duty etc. shall be refunded to forteq by the customer against supporting documents if forteq has been obliged to make the corresponding payments.
- 4.2 Save where expressly agreed otherwise, prices are not binding and are based on the current cost factors. If changes in those cost factors occur up to the date of delivery, e.g. through increases in the price of raw materials or currency fluctuations of > 5%, in the case of successive delivery contracts, for smaller annual quantities or if the order falls short of the minimum order quantity per batch, in the event of a shorter project duration and any subsequent change in the specifications etc., forteq expressly reserves the right to adjust the prices accordingly.
- 4.3 Save where otherwise agreed, payment must be made in cash without any deduction free forteq's address for payment, as follows:
 - in the case of tools
 - 50% instalment immediately after receipt of the order confirmation
 - 30% no later than 10 days after receipt of the test report on the first samples
 - the remainder to be paid within 30 days of partial clearance, but at the latest 60 days after delivery
 - in the case of successive delivery contracts within 30 days of indication of readiness for dispatch.
 - for development services: against advance payment or monthly billing.
- 4.4 The place of performance for payments is Nidau (Switzerland).
- 4.5 The payment dates must still be respected if dispatch, transport, delivery, commissioning or acceptance of the delivered object or the provision and acceptance of other contractual services by forteq are delayed or rendered impossible for reasons which are not attributable to forteq or if insignificant parts of the deliveries and services are missing.
- 4.6 In the case of part-deliveries, instalment payments will be required when readiness for dispatch is notified.
- 4.7 If the customer is in arrears with payments, he shall be required to pay interest on the arrears at the normal bank interest rates, subject however to a minimum of 5% above the discount rate of the Swiss National Bank. forteq shall be released from the obligation to discharge its commitments until the late payments have been received. Arrears shall automatically be deemed to exist after the expiry of 30 days from the date of the invoice without the need for a special warning.
- 4.8 Arrears of payment on one single occasion or the existence of circumstances which call into question the creditworthiness of the purchaser, shall cause all outstanding invoices to fall due for payment and steps may be taken to enforce payment. The retention of payments or offsetting of any counterclaims contested by forteq, in particular warranty claims of the customer are excluded, as is the enforcement of rights of retention in, or in connection with, the delivery. forteq is likewise authorised to make further deliveries only against advance payment or provision of security. If advance payments are not made or security is not put up, even after an appropriate further period has been set, forteq may insist on performance of the agreement or withdraw therefrom and in both cases seek compensation.
- 4.9 No interest is allowed on down payments made and these do not constitute the payment of a penalty which authorises the customer to withdraw from the delivery contract.
- 4.10 In the absence of other instructions by the customer, forteq shall supply the packaging and clear the consignment for dispatch in good faith but without any liability. In the event of any special instructions, forteq shall take out a transport insurance to cover the normal risks at the expense of the customer.
- 4.11 forteq shall check compliance with the agreed specification by the normal procedure and using the equipment available to forteq save where otherwise expressly agreed, e.g. by the use of equipment specific to the project or customer.

5 Reservation of ownership

forte reserves ownership of the delivered object until it is in receipt of all the payments under the agreement. forte is authorised on behalf, and in the name, of the customer to make an entry in the registered of reserved ownership and to provide the necessary signatures. The customer hereby authorises forteq, acting in his name and on his behalf, to perform all the formalities in his name and for his account at the place where the property is located in order to justify the reservation of ownership.

6 Transfer of risks – Insurance – Acceptance

- 6.1 The risk is transferred as soon as the delivered object or parts thereof are ready for dispatch and that readiness has been notified to the customer.
- 6.2 If the customer does not accept the deliveries and services immediately after notification of readiness for dispatch, the goods may, at the discretion of forteq, be insured and stored or delivered for the account and at the risk of the customer. On notification of readiness for dispatch, the goods shall however be deemed to have been delivered and may be billed.
- 6.3 Delivered objects must be accepted by the customer without prejudice to any claims under warranty. Complaints on grounds of incomplete, defective or incorrect delivery must be notified without delay to forteq in writing within ten days of receipt of the goods, failing which the delivery shall be deemed to have been accepted. Development services must be verified during performance and after delivery of the work in so far as this is feasible in the normal course of business and any defects shall be notified without delay to forteq in writing, failing which the performed work shall be deemed to have been approved.
- 6.4 In the case of successive delivery contracts, the customer undertakes to accept the goods at regular intervals, unless expressly agreed otherwise.
- 7 **Delivery lead-time – contractual obligations to be satisfied by the customer**
- 7.1 The contractually agreed delivery lead time begins on the dispatch of the order confirmation but not before complete provision of the documents (e.g. drawings etc.), technical specifications, approvals, clearances (e.g. of samples/prototypes) to be supplied by the customer and not before the agreed down payment has been received.
- 7.2 The delivery lead time shall be deemed to have been respected if notification of readiness for dispatch has been given before its expiry or if the delivered objects have left the works or, in the case of tools, if manufacture has been notified to the customer.
- 7.3 If, during manufacture of the deliveries and services, the customer fails to supply items (sample components, materials etc.), process devices, documents etc. to be provided by him in the appropriate quality or quantity, forteq may invoice the resulting extra costs to the customer; in the event of failure to provide these items on time, the delivery lead time shall be agreed again between the customer and forteq.
- 7.4 If forteq is unable to perform its contractual obligations on time for reasons of force majeure or for other reasons for which forteq is not itself responsible (e.g. natural disasters, acts of war, measures imposed by the authorities, transport failures, failure of suppliers to effect delivery), the corresponding contractual obligation shall be deferred until such obstacle is removed without the customer being entitled to claim compensation. These circumstances are also not imputable to forteq if they occurred during a delay which was already in progress.
- 7.5 In the event of late delivery, the customer shall have no entitlement to claim compensation or termination of the agreement. If forteq is responsible for the delay, the customer shall only be entitled to require, in respect of the late parts of the delivery to the exclusion of any further claims or secondary damages, for each whole week's delay 0,25%, subject to a maximum of 5%, of the value of that part of the overall delivery which was not made in the contractual manner because of the delay. The first four weeks delay do not constitute grounds for any compensation for delay. forteq is prepared to keep a buffer stock at the request and at the expense of the customer when successive delivery contracts are concluded.
- 7.6 Where deliveries are delayed for reasons that are not attributable to forteq, the latter shall be entitled to store the delivered objects at the cost of the customer and/or may invoice to the customer any additional costs incurred by reason of the delay (e.g. in relation to rescheduling, overtime work etc.), together with any further damages.
- 7.7 Compliance by forteq with the delivery lead-time presupposes full performance by the customer of all the contractual obligations.

8 Warranty – Liability for defects

- 8.1 forteq undertakes to repair or supply again free of charge, at its own discretion, those parts of its delivery which prove to be unusable or whose usability is significantly impaired, within 12 months of the transfer of risks (see Sec. 6.1.) by reason of a circumstance which predated the transfer of risks - in particular because of defective design, poor materials or defective execution. Replaced or repaired parts become the property of forteq. The warranty period begins to run again for parts that are replaced or repaired and lasts for six months from replacement, completion of the repairs or acceptance but no later than until the end of the warranty period applicable to the deliveries and services. By derogation from the above provision, the warranty on tools is additionally limited to the number of rejects stated by forteq in the order confirmation.
- 8.2 Suitability for a special purpose or the assurance of a specified performance exists only where that has been given contractually in express and direct terms. Any such assurance presupposes that the deliveries and services are used in the specified manner and that all the functional parameters agreed in the contract are in fact respected. On the successful clearance of samples/prototypes, evidence of suitability for the intended purpose or the assurance of a particular suitability of the goods and services shall be deemed to have been definitively given or provided. If the assured properties are not satisfied or are only satisfied in part on final acceptance of the deliveries and services, the customer's sole entitlement shall be to repair by forteq within a reasonable period. For this purpose the customer must allow forteq the necessary time and opportunity. If this repair is not made or is only made in part, the customer shall only be entitled to a suitable price reduction.
- 8.3 forteq's own liability for third party products shall be confined to the assignment of its own warranty claims on the supplier concerned.
- 8.4 forteq shall only be liable for customer claims in respect of insufficient advice and so forth, or infringement of any secondary obligations, in the event of unlawful intent or gross negligence. Defects in specially invoiced development services, in so far as forteq is responsible for them, shall be remedied free of charge by forteq to the exclusion of any further claims by the customer.
- 8.5 The customer guarantees in full that the manufacture of objects which are made in compliance with his own indications does not infringe the protected rights of third parties and undertakes to release forteq from all claims arising out of infringement and for compensation and to pay in full all costs incurred by forteq in connection with the defence against such claims.
- 8.6 Save where expressly agreed otherwise, no warranty is given of the colourfast nature of articles made from polymer materials.
- 8.7 Liability for consequential damages resulting from defects and damages to assets of all kinds, e.g. for loss of production, loss of use, loss of orders, loss of profit, failure to perform or (positive) breach of contract or claims for compensation made by way of redress and for other direct and indirect damages are hereby declined. This exclusion of liability does not apply to deliberate intent or gross negligence on the part of forteq, but does apply to deliberate intent or gross negligence on the part of servants. For the rest, this exclusion of liability cannot be invoked in cases where binding statutory provisions require otherwise.
- 8.8 The customer shall have no rights and claims for defects in materials, design or performance or for the absence of assured properties and defective advice, save where expressly stated in Section 8 and in every case limited at most to the value of the defective parts of the deliveries, subject to binding statutory provisions.

9 Moulds and tools

- 9.1 If forteq makes or procures models, moulds, tools and other shaping devices at the request of the customer, forteq shall separately invoice part of the costs to the customer. As the invoiced proportionate costs represent only a part of the effective costs of design, construction, running-in and know-how, these models and moulds, together with the tools and accessories, shall remain the property of forteq - subject to acceptance of the remaining costs by the customer.
- 9.2 forteq is required to keep the tools for a period of not less than 5 years; said period begins to run on the date of delivery of the last articles made with them.

10 Applicable law, place of jurisdiction

- 10.1 The legal relationship shall be governed by substantive Swiss law, supplemented by Incoterms 2010.
- 10.2 The place of jurisdiction is the place where the supplier has his registered office; forteq is also entitled to take legal proceedings at the place where the customer has his registered office.