

# FRABA

## TERMS AND CONDITIONS

### 1. Definitions

For the purpose of these terms and conditions (the “Terms and Conditions”), the following expressions bear the defined meanings, namely:-

- 1.1. “FRABA” means FRABA Pte. Ltd. (company registration number 200905232C), a company duly incorporated under Singaporean law with its office at #08-60 CT Hub 2, 114 Lavender Street, Singapore 338729;
- 1.2. “Other Party” means:-
  - a) in case of a bilateral contract the party with whom FRABA is willing to enter into contract;
  - b) in case of a multilateral contract every single party individually with whom FRABA is willing to enter into contract;
- 1.3. whereas 1.1. and 1.2. are hereinafter jointly referred to as the “Parties”;
- 1.4. “Binding Order” bears the meaning set out in Article 7;
- 1.5. “Ordering Party” bears the meaning set out in Article 7;
- 1.6. “Goods” bears the meaning set out in Article 7;
- 1.7. “Recipient” bears the meaning set out in Article 7;
- 1.8. “Delivery Date” bears the meaning set out in Article 8.

### 2. Scope

The Terms and Conditions apply equally to the current contract and all future contracts. The Terms and Conditions apply exclusively; contrary or deviating terms and conditions of any Other Party are binding for FRABA only if they have been confirmed in writing. Statutory provisions will apply for issues not covered by these Terms and Conditions and where no specific agreement has been made. Any deviant provision in an individual contract takes precedence over the provisions in these Terms and Conditions.

### 3. Written Form

Verbal statements are valid only if confirmed in writing. Confirmations transferred via telecommunication become valid if they have not been disputed by the recipient within two (2) weeks of receipt. Unless a specific agreement has been made, fault-free transmission of the confirmation is at the risk of the sender.

### 4. Product Changes

Changes in design and improvements in products are constantly being made by FRABA. Such changes and improvements are being made whenever FRABA believes the product will thereby be improved. No obligation to incorporate any changes will be assumed.

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## **5. Offers and Cost Estimates. Non-Disclosure of Offer Documents. Return of Material**

- (1) All prices and other representations given in the FRABA's price books or other printed material as well as written or verbal quotations are not binding and subject to change without further notice.
- (2) Information given in catalogues, specifications or other details on the product shall not constitute guarantees for condition or durability.
- (3) Offers, unless stated differently, are valid for a period of four (4) weeks or until stocks last.
- (4) None of FRABA's offer documents may be made available to third parties without FRABA's authorisation.

## **6. Prices**

The prices are understood to be ex works according to Incoterms and excluding packaging and insurance, and are subject to Singaporean Goods and Services Tax (GST), if applicable. Prices from the RMB price list are inclusive of shipping costs to Shanghai.

## **7. Orders**

- (1) Any request to deliver products (these being referred to as "**Goods**") to a recipient specified in the request ("**Recipient**") issued by any Other Party ("**Ordering Party**") will only become binding when being in an amount of S\$300.00 or more and when confirmed by FRABA ("**Binding Order**").
- (2) Binding Orders will be entered into FRABA's system for processing. In the event that information contained in the order is incorrect or incomplete, i. e. pricing, terms, ship to or bill to address, etc., FRABA will contact the Ordering Party and request the necessary information or corrections. The Binding Order will be processed only after a corrected request to deliver Goods has been received.

## **8. Delivery Dates and Deadlines. Delay. Performance Impossibility**

- (1) Delivery dates and deadlines are not binding unless a contrary agreement has been made expressly in writing. FRABA reserves the right to make partial deliveries to a reasonable extent.
- (2) The delivery period starts when all technical and commercial questions have been resolved and terminates with the dispatch or the notification of the dispatch, whichever occurs earlier ("**Delivery Date**").
- (3) FRABA shall be entitled to withhold delivery of any Goods where any amounts payable to it by any Other Party are overdue on any account whatsoever. The Other Party is not entitled to right and/or remedy of any kind by reason of such withholding.
- (3) Demands for compensation by any Other Party on the basis of delay, or other subsequent performance impossibility, are excluded unless FRABA or its representatives or agents can be proved to have acted with intent or gross negligence. This does not apply in cases where the Delivery Date has been expressly stipulated as part of the contractual obligation.
- (4) Demands for compensation on the basis of delay are limited to the damages foreseeable by FRABA at the time of contract execution. Compensation for damages resulting from operational interruptions and lost profits is excluded.

(5) Prior to exercising any right to withdraw on the basis of delay, the Other Party must grant FRABA an appropriate redress period of fourteen (14) days minimum.

## **9. Force Majeure and Insolvency without Liability**

Force majeure as well as subsequent insolvency without liability on FRABA's side, or the part of one of its suppliers, particularly in relation but not limited to transport and operational disruption, lack of materials or energy, strike or lock-out, will entitle FRABA to postpone delivery by the duration of the disruption and the scope of the associated consequences. Should the events continue for a period in excess of six (6) weeks, or should performance of FRABA's obligation become impossible as a result of such disruption, FRABA reserves the right to withdraw from the contract.

## **10. Shipment and Passing of Risk**

(1) Shipment will be at the cost and risk of the Other Party ex-factory, at FRABA's discretion, unless the Binding Order expressly stipulates a particular method of shipment.

(2) The risk in Goods passes to the Other Party upon handover to the first carrier during the delivery to the Recipient.

## **11. Warranty**

(1) Insofar as nothing contrary is specified in specific individual agreements or these Terms and Conditions, statutory warranty provisions will apply.

(2) FRABA is only under liability in respect of the Goods within Thirty Six (36) months from Delivery Date.

(3) The Other Party must inspect the Goods immediately on receipt in the context of sound business practice. Deficiency reports regarding incomplete or incorrect deliveries or obvious defects must be submitted immediately in writing, at the latest five (5) working days after receipt. Other defects must be reported immediately in writing, at the latest five (5) working days after discovery.

(4) In the case of a justified and timely deficiency report, FRABA will redress the defect at FRABA's discretion through replacement delivery or repair at one of FRABA's factories. This discretion is not waived even after repeated unsatisfactory repairs. FRABA must be given an appropriate period of time to affect any such repairs. In the event that such replacement delivery or repair should fail within an appropriate period of time, the Other Party may demand a reduction in price or cancellation of the contract.

(5) In the case of defects which could have been determined by the Other Party with little inconvenience before inclusion or use, all warranty claims for defective materials shall be void as soon as the Goods or one of the Goods is included or used. This does not apply if FRABA, one of its leading employees, consultants or contractors is guilty of culpable intent, gross negligence or injury to life, body or health.

(6) Within the framework of warranty processing, the costs for the transport of fault-free Goods to the Other Party as well as the cost incurred directly for redressing defects on the delivered Goods will be reimbursed. Further liability for warranty processing as well as damages that are not incurred on the delivered item itself are excluded, unless such damage is caused by the lack of expressly warranted features and such warranty encompasses precisely the risk of the damage incurred.

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(7) Any defect liability is excluded in full extent (or to the extent as otherwise indicated) in either of the following cases:-

- a) where a report as set out under this Article 11 paragraph (3) was not duly made;
- b) where any Other Party or a third party makes changes unauthorised by FRABA or executes improper repairs to Goods delivered by FRABA;
- c) where the defect liability pertains a predetermined life of Goods (so far as it does not pertain the premature failure of Goods), especially under extreme or unknown operating conditions;
- d) where Goods were manufactured according to customer drawings or specifications, to the extent that the respective defect liability goes beyond compliance with the drawings or specifications;
- e) where Goods are subject to normal wear and tear or to damage caused after the passing of risk by faulty or negligent or inappropriate use outside the specifications or contractual utilisation; and
- f) where the value or the usability of Goods is reduced minimally or not at all.

## **12. Return Policy**

Goods delivered in fulfilment of a Binding Order may not be returned and are subject to 100 percent payment by the Other Party. Once the delivered Goods are assembled, the Binding Order may also not be cancelled.

## **13. Payment**

(1) Invoices are payable within thirty (30) days of invoice date without deduction. The payment deadline is only met if the payment is completed by the end of the respective period. In case of payment to a bank account the payment is completed only when credited to FRABA's bank account.

(2) Checks and bills of exchange will be accepted only as conditional payment; the party obliged to pay shall have to bear all associated costs. FRABA accepts no guarantee for accuracy of form, or timely presentation, or protest submission. Should the payment deadline be exceeded, FRABA reserves the right to charge late interest at a rate of one (1) percent above the relevant prime lending rate of the Development Bank of Singapore (DBS Bank), without affecting FRABA's right to claim further damages.

(3) FRABA's full claim becomes payable immediately if the Other Party is responsible for failure to comply with the payment terms, requests deferred payment, or halts payments. Furthermore, FRABA reserves the right to demand payment in advance for open deliveries, including but not limited to first-time Binding Orders, as well as the right to withdraw from the contract following a reminder and an adequate redress deadline, or to demand compensation on the grounds of non-performance; also to prohibit the Other Party from reselling the Goods, and to collect FRABA's Goods at the expense of the Other Party. Withholding of payments or offsetting with counter-claims of any Other Party is excluded, unless acknowledged in writing by FRABA or legally determined.

## **14. Retention of Ownership**

(1) All Goods and items pertaining to any Binding Order ("**Retained Goods**") shall remain FRABA's property until each and every claim by FRABA has against the Ordering Party and/or the Recipient on

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account of the business relationship has been fulfilled, even if the purchase price for specifically described claims has been paid.

(2) In the case of combination, mixing or processing of Retained Goods with other goods that do not belong to FRABA, FRABA acquires co-ownership in the new item as a security for its above-mentioned claim, which is hereby already transferred by the Other Party at this time. The amount of its co-ownership will be determined by the proportion of the value of the Retained Goods in relation to the other goods at the time of combination, mixing or processing. The Other Party will safeguard FRABA's co-ownership in the respective goods without charge.

(3) The Other Party is permitted to resell Retained Goods, within the context of normal business practices. Such sales shall be conducted, on condition that the Other Party agrees retention of ownership with its customer in accordance with the above paragraphs. The Other Party is not entitled to dispose of the Retained Goods in any other manner, particularly in reference to bailment and assignment as security.

(4) For any resale, the Other Party hereby assigns to FRABA at this point, and through to the satisfaction of all of FRABA's claims, its claims arising from such resale as well as other claims against its customer including all supplementary rights. FRABA hereby accepts such assignment.

(5) The Other Party is entitled to collect all claims from the sale despite the assignment pursuant to Article 15 paragraph (4). FRABA will not collect such claims itself as long as the Other Party meets its payment obligations to FRABA in an orderly manner. At FRABA's request, the Other Party is obliged to show its customers the assignment and submit such to FRABA so that it can enforce its rights. Should the value of the existing security exceed the secured claims by more than 20 percent in total, the Other Party can demand the corresponding release of security value.

(6) Bailment or seizure of Retained Goods by a third party must be reported to FRABA immediately. Any resulting intervention costs will be charged to the Ordering Party. If FRABA determines that existing provisions call for the securing of its retained ownership by way of a return of the Retained Goods, then it is entitled to sell or auction the goods freely. The return of the Retained Goods will be processed in the amount of the value received. FRABA reserves the right to submit further claims for compensation, lost profits and reimbursement of costs.

## **15. Liability Exclusion beyond these Terms and Conditions**

FRABA's liability applies exclusively to the agreements outlined in the above paragraphs. Any compensation or other claims regardless of legal basis that are not expressly recognised, including any violation of supplementary contractual obligations, pre-contractual obligations and unauthorised actions are excluded; this does not apply in the event of absolute proof of intent, gross negligence, the absence of warranted features, or on the basis of mandatory statutory provisions.

## **16. Severability**

If any provision of these Terms and Conditions or part thereof is rendered or declared invalid, illegal or unenforceable by any legislation or any judicial or other competent authority to which it is subject it shall be rendered void, illegal or unenforceable to that extent only and no further.

## **17. Place of Performance, Jurisdiction, Exclusive Validity of the Law of Singapore**

(1) All relationships between the Parties are governed by Singapore law. The United Nations Convention on Contracts for the International Sale of Goods will not be applied.

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(2) Any dispute arising out of or in connection with the Terms and Conditions, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre (“**SIAC**”) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The tribunal shall consist of a single arbitrator to be appointed by the Chairman of the SIAC. The language of the arbitration shall be English. The award of the arbitrator shall be final and binding upon the parties. Notwithstanding the foregoing, FRABA shall have the right to sue in any court of competent jurisdiction to collect from an Other Party funds due and owing to FRABA for Products sold and delivered to the Other Party, and in the event of any suit for collection brought by FRABA, the Other Party shall not be entitled to raise as a defence thereto any set-off or counterclaim alleged by the Other Party. Rather, any set-off or counterclaim shall be subject to the arbitration provision of this Clause 17.2. This Clause 10.7 shall not be construed to prevent FRABA from seeking injunctive relief against the Other Party from any judicial or administrative authority of competent jurisdiction to enjoin the Other Party from breaching any provision in the Terms and Conditions pending the resolution of a dispute by arbitration. Each party shall bear its own cost in the event of any arbitration or litigation to enforce the Terms and Conditions.