



## **Fette Compacting Middle East FZE General Terms and Conditions of Sale and Delivery**

### **1. Preamble**

1.1 The following General Terms of Sale and Delivery ("**General Terms and Conditions**") apply to all purchase and delivery agreements Fette Compacting Middle East FZE "**Fette Compacting**") concludes with its customers (hereinafter "**customer**"), including any ancillary arrangements. Deviating, opposing or supplementary terms and conditions of the customer shall only be part of the contract if Fette Compacting has expressly consented to their application in writing.

1.2 Individual agreements concluded with the customer shall always take precedence over these General Terms and Conditions.

### **2. Conclusion of Contract**

2.1 All offers by Fette Compacting, including the selling prices stated in its price lists, are subject to change and are non-binding, unless expressly designated as binding. All offers are subject to confirmation, i.e. a contract shall only be concluded when Fette Compacting issues an order confirmation, confirming the exact scope of supply as well as the delivery period for an individual order in writing or if the subject matter of the agreement has been executed by Fette Compacting. The written form requirement for the order confirmation shall also be met if the order confirmation is transmitted in text form by way of remote data transmission (e.g. e-mail) or fax.

2.2 The scope of supply to be agreed shall, in addition to the general specifications of the subject matter of the contract and the expected delivery period, also include a "Project Schedule". The Project Schedule shall include all individual project steps, each of which shall be specified with the expected date of achievement ("Milestones"). These Milestones are generally non-binding as long as the project schedule does not explicitly stipulate the binding nature of a specific Milestone. In addition to the Milestones, the Project Schedule shall also contain a binding date of the design freeze, after the occurrence of which the customer can no longer unilaterally make changes to the specification of the subject matter of the contract ("Design Freeze"). From this point in time, the customer's requests for changes shall be governed by section 3.1.

2.3 Documents such as images, drawings, as well as measurements and output data are for illustration purposes only. They are not binding for contractual purposes and for purposes of construction and technical performance.

### **3. Changes to the Scope of Supply**

3.1 The customer is entitled to request changes to the confirmed scope of supply until Acceptance, as defined in Section 6. Request for changes shall be submitted to Fette Compacting in writing and shall contain an exact description of the change. Both parties shall mutually agree on a change request. Changes could be, inter alia, the following:

- Changes to the agreed and ordered scope after Design Freeze,
- Changes if components during the Design Freeze phase, which are not mentioned in the project schedule under "Design Freeze" and
- Changes to the agreed and ordered project scope.

3.2 Both parties agree that changes to the scope of supply may lead to delays and additional costs. Said costs would have to be reimbursed by the customer separately and the delay could have an impact on the project schedule.



#### **4. Delivery and Delay in Delivery**

4.1 Delivery periods and delivery dates not explicitly denoted as mandatory in the order confirmation shall always be deemed approximate. They refer to the time of dispatch and are complied with upon notification of readiness for dispatch. Delivery periods do not begin before Fette Compacting received an advance payment if such a payment was agreed by the parties.

4.2 Unless otherwise agreed between the parties, the Incoterm (ICC 2020) FCA (Schwarzenbek) shall apply.

4.3 To meet the delivery period, all technical and commercial details must have been clarified and the customer must have complied with all of his duties. If this is not the case, the delivery period shall be extended by a reasonable period. This shall not apply if Fette Compacting is responsible for the delay.

4.4 Furthermore, the parties agree that all information and documentation listed in the project plan must be submitted to the other party within the time period mentioned therein. All consequences resulting from the delay delivery of information and documentation shall be borne by the party responsible for the delay.

4.5 Should Fette Compacting be in delay with the Factory Acceptance Test, with the delivery or with the Site Acceptance Test or should Fette Compacting's delivery become impossible, Fette Compacting shall be liable for damages only according to Section 10. Damages caused by delay, if Fette Compacting has to compensate for them, shall be limited to 0.5% of the value of the products not delivered or only partly delivered, for each complete week Fette Compacting is in delay. However, the damages shall not exceed a maximum of 5% of the value of the same delivery. Section 11 remains unaffected.

4.6 Fette Compacting is entitled to partial deliveries and partial services as is customary in the trade, unless the partial delivery or service is unreasonable for the customer.

#### **5. Factory Acceptance Test**

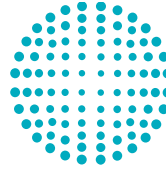
5.1 Upon agreement, Fette Compacting will conduct a Factory Acceptance Test ("FAT") prior to shipment. Fette Compacting shall be responsible for the FAT, with the participation of the customer's personnel. If the customer decides not to participate in the FAT, then Fette Compacting shall, at its own discretion, either complete the FAT on its own and issue the testing report, or reschedule the FAT. If the Customer fails to participate in the FAT, even though he has been duly summoned to do so, he shall not be entitled to any claims for damages resulting from a delay in the FAT or any resulting delay in delivery.

5.2 If the FAT shows, that the good is not in accordance with the contract, Fette Compacting shall remedy such defects within a reasonable period. A new test can then be carried out, unless the defect was insignificant.

#### **6. Installation at the Customer's Site and Acceptance of Goods**

6.1 Unless otherwise agreed between the parties, the contractual obligation of Fette Compacting does not include installation of the goods at the customer's site.

6.2 Once the goods have been installed at customer's site, a Site Acceptance Test ("SAT") shall be carried out, unless otherwise agreed between the parties. If the SAT was successful, the parties shall sign a SAT or commissioning protocol. The SAT or commissioning protocol shall confirm that the equipment delivered by Fette Compacting is in working order. The signed protocol constitutes the start of the warranty period under Section 7.1. Minor defects, which do not affect the efficiency, shall not prevent the acceptance and the start of the warranty period.



6.3 If the SAT shows, that the good is not in accordance with the contract, Fette Compacting shall remedy such defects pursuant to Section 7.3 within a reasonable period. A new test can then be carried out, unless the defect was insignificant.

6.4 The customer shall provide free of charge any power, lubricants, water, fuel, raw material and other material required for the SAT.

6.5 The customer is not entitled to use the goods or any part thereof before SAT.

## **7. Defects, Warranty and Warranty Period**

7.1 The warranty period shall be 12 months after signing of the SAT or Commissioning protocol, but no longer than 15 months from delivery to customer.

7.2 The customer must carefully inspect the delivered goods, even if samples or specimens have been previously sent, immediately upon arrival at their destination.

7.3 If a defect is discovered, Fette Compacting must be informed of this in writing without undue delay within 10 days after the signing of the SAT or Commissioning protocol at the latest. For defects reported in good time, the customer shall be entitled at Fette Compacting's discretion to repair or delivery of a defect-free item ("subsequent performance"). The customer must give Fette Compacting the time necessary to carry out the subsequent performance. In the case of a replacement delivery, the customer shall return the defective goods to Fette Compacting. Replaced parts become property of Fette Compacting. Subsequent performance does not include reinstallation, if Fette Compacting was not originally contracted for installation.

7.5 If Fette Compacting is responsible for the defect, Fette Compacting shall bear the costs of examination and subsequent performance, especially the costs of transportation, labour and material (not: costs of disassembly and reassembly). If Fette Compacting is not responsible for a defect, Fette Compacting can claim compensation from the customer for the costs arising from the unjustified request for the remedy of defects.

7.6 For defects caused by inappropriate or improper use, faulty installation or commissioning by the customer or third parties, normal wear and tear, faulty or negligent handling, warranty claims are excluded. Wear parts are in particular, inter alia but not limited to, the following:

- compression rollers,
- filling cams,
- dosing head,
- ejector,
- lifting cam,
- upper and lower punch, die turrets, segment turrets.

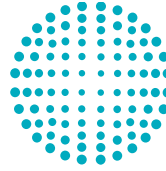
Furthermore, Fette Compacting shall not provide a warranty for defects if

- the good was installed or put into operation in a manner which does not correspond to Fette Compacting's instructions;
- Fette Compacting's operating and maintenance instructions were not followed or
- the good was handled improperly in another manner.

7.7 Fette Compacting does not assume guarantees, unless they are expressly agreed.

## **8. Price and Payment Terms, Set-Off, Assignment**

8.1 Unless otherwise agreed in writing, the prices shall be understood Ex-Works, exclusive packaging, taxes and freight. The prices shall be subject to VAT.



8.3 The payment terms are set out in the order confirmation. To the extent the parties do not agree otherwise in writing, all invoices for deliveries (or other services) are payable net within 30 days from date of invoice. Invoices can be transmitted in written form, in text form by way of remote data transmission (e.g. e-mail), or by fax. The timeliness of the payment is determined by the receipt of the funds by Fette Compacting. Upon fruitless expiry of this period, the customer is in default of payment.

8.4 Once the customer is in default of payment, Fette Compacting has the right, without reminder, to charge interest. The right to claim further damages is not excluded by this clause. If the customer does not make payments, which are due, Fette Compacting can set a reasonable period for payment together with a threat of termination of the contract for the event that the period should fruitlessly expire. If the customer does not make payments by expiry of this period, Fette Compacting can terminate the contract by written notice to the customer and the contract shall then terminate immediately and automatically without the need to obtain a court order.

8.5 Once the customer is in default of payment, even if it is just one installment, or if Fette Compacting becomes aware of circumstances that may cast justified doubt on the credit worthiness of the customer, Fette Compacting's entire claims become due. This also applies if those circumstances already existed at the time of the order of the goods, but were not known to Fette Compacting. Furthermore, in such cases, Fette Compacting is entitled to demand payment in advance for all outstanding deliveries; the customer is obliged to pay in advance.

8.6 Offsetting with counterclaims of the customer or the retention of payments due to such claims, is only permitted if the counterclaims are uncontested, ripe for decision or legally established.

8.7 Fette Compacting is entitled to setting off such claims against the customer that Fette Compacting's interlocking enterprises, particularly the parent company, affiliated companies and subsidiary companies are entitled to including such claims of the interlocking enterprises of the customer against Fette Compacting, as far as this is legally admissible.

8.8 The customer is not entitled to assign claims arising in this contract to third persons without the prior written consent of Fette Compacting.

## **9. Retention of title**

9.1 The following retention of title serves to secure all of Fette Compacting's existing current and future claims against the customer from the ongoing business relationship existing between the parties, including all current account balance claims (hereinafter "**secured claims**").

9.2 All goods delivered by Fette Compacting remain its property until full payment of all secured claims. Goods and the goods taking their place covered by the retention of title according to the following provisions are hereinafter referred to as "**reserved goods**."

9.3 All goods are subject to retention of title and may neither be pledged to third parties nor handed over as security until the secured claims have been paid in full. The customer shall inform Fette Compacting without delay in writing if an application is filed for commencement of insolvency proceedings or in the event of attachment, seizure or other act of access to the reserved goods by third parties.

9.4 The customer shall store the reserved goods for Fette Compacting free of costs. The customer is obliged to treat the reserved goods carefully. In particular, the customer is obliged to sufficiently insure the reserved goods at its own expense against fire, water and theft at replacement value. If maintenance and inspection work is necessary for the proper maintenance of the reserved goods, the customer must perform this at its own expense.

9.5 The customer is entitled to sell the delivered reserved goods in the ordinary course of business if it is ensured that its claims from the resale pass to Fette Compacting. In the case of resale of the reserved goods, the customer hereby assigns any resulting claim against the buyer of the resale to Fette



Compacting as security, as well as those claims that take the place of the reserved goods or otherwise arise with respect to the reserved goods, such as insurance claims or tort claims from loss or destruction, including all current account balance claims. Fette Compacting accepts this assignment. The customer is revocably entitled to collect the claims resulting from the resale.

9.6 If the law of the country in which the good is located does not permit a right of retention of title but permits the vendor to reserve other rights in the good, Fette Compacting may exercise all rights of this sort. The customer shall cooperate with the measures, which Fette Compacting wants to take in order to protect its right of title - or another right in the goods in place of the right of title.

9.7 In case Fette Compacting terminates the contract under Section 8.4 or terminates, rescinds, withdraws from the contract in accordance with applicable statutory rules, the right of the customer to possession of the reserved goods lapses and Fette Compacting can demand the surrender of the reserved goods; In such case, Fette Compacting is entitled after consultation with the customer to enter the business premises of the customer and to take possession of the reserved goods at the expense of the customer and, without prejudice to the payment and other obligations of the customer, to recover them as best possible by way of private sale or by way of auction; the recovery proceeds will be credited to the customer's liabilities after deduction of the costs incurred; Fette Compacting will pay out any remaining surplus to it.

## **10. Liability; Intended Use of Goods; Technical Advice**

10.1 Each party shall be liable for losses and damages incurred as a result of grossly negligent breach of the contract and/or as a result of willful misconduct of such party without limitation. In any other cases, the liability of the parties shall be limited to the purchase price.

10.2 Except in case of grossly negligent and/or willfully misconduct breach of this agreement, the parties shall not be liable to each other for any indirect or punitive damages or loss of profits, whether based on contract or tort, or arising under applicable law or otherwise.

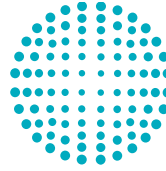
10.3 Notwithstanding anything to the contrary elsewhere, Fette Compacting shall in no event and irrespective of the legal basis (contract, tort (including negligence), statutory liability, misrepresentation, indemnity or any other area of law) be liable for loss of profit or revenue, loss of use or loss of production, loss of data, cost of capital, cost of substitute goods, property damage external to the contractual products and any damage, expenditure or loss arising of such damage, any incidental or consequential damages or any of the foregoing suffered by any third party.

10.4 For the avoidance of doubt, the limitation of liability set forth in this agreement shall not apply

- to the injury to life or health by a Party; or
- to such cases where strict liability under law applies (e.g. Product Liability).

10.5 With the exception of claims arising from tortious acts, claims for damages of the customer for which liability is limited under this provision shall lapse one year from the start of the statutory limitation period.

10.6 The delivered goods are intended exclusively for legal purposes. Liability for any other usage is excluded. Fette Compacting tries to give technical advice concerning the utilization of its goods to the best of its knowledge. This advice is free of charge and does merely constitute its experienced data that is not to be considered as warranted; the advice does not create claims against Fette Compacting, namely not concerning protected privileges of third parties. In particular, the customer is not discharged from examining the qualification/adequateness by himself.



## **11. Force Majeure**

11.1 Neither party shall be liable to the other for any damages nor shall either party be entitled to exercise any remedy otherwise available to it, if one party's performance of any of its obligations is prevented by events such as, but not limited to the following: natural disasters, strikes, lock-outs, sabotage, export or import restrictions, industrial dispute, war, civil war or warlike operations, epidemics or pandemics, threats of terrorism or strikes of terrorists, civil commotions, usurpation of civil or military government, restrictions in the use of power and delays in deliveries by subcontractors or sub-suppliers caused by any such circumstances referred in this clause or any other circumstances which are beyond the reasonable control of the party affected (hereinafter referred to as "**Force Majeure**"), provided that the occurrence of such circumstance has been unforeseeable. An event of Force Majeure, however, shall not excuse the failure of payment of moneys due by either party to the other.

11.2. The party claiming to be affected by an event of Force Majeure shall notify the other party in writing without delay on the occurrence of such circumstance.

## **12. Performance delay**

12.1 Where natural disasters, strikes, lock-outs, sabotage, export or import restrictions, industrial dispute, war, civil war or warlike operations, epidemics or pandemics, threats of terrorism or strikes of terrorists, civil commotions, usurpation of civil or military government, restrictions in the use of power and delays in deliveries by subcontractors or sub-suppliers caused by any such circumstances referred in this clause or any other circumstances which are beyond the reasonable control of the party affected prevents Fette Compacting from fulfilling its obligations in time, then the delivery period shall be extended for the duration of the hindrance and a reasonable start-up time.

12.2 If the performance of the contract or a portion thereof is hindered or delayed for a period of more than six (6) months, the parties will attempt to develop a mutually satisfactory solution.

## **13. Software**

13.1 To the extent that software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the software supplied and its documentation. It shall be provided for use on the delivered good only. Use of the software on more than one system is not permitted. The customer shall have no claim to the related object or source code.

13.2 The customer undertakes not to remove information relating to the manufacturer – in particular copyright notices – without Fette Compacting's prior written consent. All other rights with regard to software and documentation including the copies shall remain with Fette Compacting or the software supplier as appropriate. Granting sublicences is not permitted.

13.3 The customer must itself take measures to protect against computer viruses and other destructive data. The customer has a duty to test the software provided for computer viruses before running it and opening files.

13.4 Fette Compacting shall not be obliged to provide the customer with updated versions of the computer software.

## **14. Final Provisions**

14.1 The place of performance for all delivery and payment obligations is Jebel Ali Free Zone, Dubai, UAE.

14.2 The laws of the UAE as applied in the Emirate of Dubai excluding the UN Convention on Contracts for the International Sale of Goods (CISG), applies to these General Terms and Conditions and to the contractual relationship between Fette Compacting and the customer.



14.3 All disputes arising out of or in connection with the individual Project Contract or these Terms and Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The seat of the arbitration is Dubai. The language of the arbitration shall be English.

1344 It will be without prejudice to the rest of the clauses, if individual clauses of these General Terms and Conditions or of the contract are or become invalid. In place of the invalid clause, a clause that corresponds to its purpose and meaning is deemed to be agreed. The same applies to possible loopholes in the contract.