

## **GENERAL CONDITIONS OF DELIVERY**

### **1. General**

These general terms and conditions apply to all offers by and contracts with Fast & Fluid Management B.V. with respect to the supply of all products and components and parts therefor ("Products"), and/or the provision of services ("Services") by Fast & Fluid Management B.V. Where reference is made to FAST & FLUID in these general terms and conditions, this refers to the relevant entity that has declared these terms and general conditions to be applicable.

### **2. Applicability**

These general terms and conditions may only be deviated from in writing with reference to the relevant provision in these terms and conditions to which the deviation relates. A deviation desired by the other party is only binding for FAST & FLUID if FAST & FLUID has approved this in writing. Notwithstanding the above, FAST & FLUID is entitled to grant its approval by email.

### **3. Offers and/or Formation of contract**

If the other party has placed an order, the contract comes into effect after the acceptance of FAST & FLUID has reached the other party or FAST & FLUID has made known that it has commenced with the implementation of the contract, unless FAST & FLUID immediately informs the other party that it reneges on the contract. Quotations by FAST & FLUID are irrevocable and expire 60 days after they are made, unless otherwise agreed.

Samples or models shown or provided are only considered as indicative, without the Products supplied having to conform thereto.

### **4. Supplementation of contract**

At the other party's request FAST & FLUID will carry out any changes to the order suggested by the other party, provided these can reasonably be implemented by FAST & FLUID and these are requested from FAST & FLUID within a reasonable period. The above is without prejudice to the right of FAST & FLUID to make an extra charge for this.

### **5. Prices**

All prices are Free Carrier Sassenheim ("FCA" Sassenheim, Incoterms 2010) and exclude VAT.

### **6. Delivery/term of delivery**

- 6.1 The term of delivery agreed with FAST & FLUID is considered as an indication and not a deadline.
- 6.2 Delivery takes place Free Carrier Sassenheim ("FCA" Sassenheim, Incoterms 2010). FAST & FLUID is not responsible or liable for import, export and transit of the Products delivered to their place of destination.
- 6.3 FAST & FLUID is entitled to carry out its performance in stages.
- 6.4 FAST & FLUID reserves the right to cancel the order and rescind the contract without being liable for any form of compensation for damages or costs, if it may reasonably assume that by implementing the contract, the related object or its associated confidential know-how could directly or indirectly become available to its competitors or companies affiliated with its competitors.

## 7. Payment

- 7.1 Payment must be made as follows, unless otherwise agreed: 100% of the total amount of the order within 30 days after invoice date.  
FAST & FLUID will send the other party an invoice for the total amount of the order. Should the other party not have previously received an invoice, this does not discharge it of its obligation to pay on time.
- 7.2 Invoices from FAST & FLUID must be paid in the manner indicated by FAST & FLUID. Payment must be made effectively in the currency agreed upon and without any set-off, discount, or suspension.
- 7.3 If any payment is overdue, all the other party's outstanding payments, notwithstanding whether FAST & FLUID has already submitted an invoice in this respect, will become immediately due and payable.
- 7.4 If any payment is overdue, the other party is liable for interest on the outstanding amount at a rate equal to the statutory interest rate (as applicable to trade agreements) plus 3% with effect from the day following the day that has been agreed as the deadline for payment up to and including the day on which the debtor has paid the outstanding amount in full.
- 7.5 If the other party fails to comply with one or more of its obligations, all reasonable extrajudicial costs incurred to obtain payment are for its account, in any case including the costs of debt collection agencies, bailiffs and lawyers. FAST & FLUID is authorized to fix these costs at 15 percent of the amount due. The provisions of this paragraph are without prejudice to the other rights accruing to FAST & FLUID by virtue of the law or these terms and conditions.
- 7.6 The other party is obliged to reimburse all costs reasonably incurred by FAST & FLUID that are related to legal proceedings where the other party is found to be entirely or predominantly at fault. These costs will in any case include the costs of external experts, bailiffs and lawyers, etc., even insofar as the amount exceeds that awarded by the courts.
- 7.7 Payments made by or on behalf of the other party are applied to the settlement of outstanding interest and subsequently principal amounts in order of the length of time they have been outstanding, regardless of any instruction to the contrary by the other party.
- 7.8 The other party may only object to the invoice within 14 days of the invoice date.

## 8. Retention of title

- 8.1 FAST & FLUID will retain title to the Products which have been supplied by it or are to be supplied by it, until the following have been fully satisfied:
- A) the performance owed by the other party in connection with Products supplied or to be supplied under a contract as well as in connection with activities performed or to be performed under such a contract;
  - B) claims arising from a breach by the other party in the performance of such a contract or contracts.
- 8.2 If the other party is in breach of any of the obligations referred to in paragraph 1, FAST & FLUID is entitled to collect or have collected the Products owned by it from where they are located, at the other party's expense. The other party herewith, in advance, irrevocably authorises FAST & FLUID to enter or have entered for this purpose the premises used by or on behalf of the other party.

## 9. Security

- 9.1 If there are reasonable grounds to fear that the other party will not fulfil its obligations punctually, the other party is obliged, at FAST & FLUID's first request, to provide, in the form

desired by FAST & FLUID, immediate and adequate security for the fulfilment of all its obligations, and to provide additional security if necessary.

For so long as the other party has not complied herewith, FAST & FLUID is entitled to suspend the fulfilment of its obligations.

- 9.2 If the other party has not complied with the request as referred to in paragraph 1 within three working days after having received a demand letter to that effect, all its obligations will become immediately due and payable.

## **10. Intellectual property and know-how**

- 10.1 The term 'Software' will hereinafter be understood to mean all computer software and/or operating systems made available by FAST & FLUID that drive the Processing Unit in order to facilitate the correct functions, as well as the related documentation (manual), all of this including any supplied improved and/or new versions. Processing Unit (PU) is understood to mean the specific FAST & FLUID Products (i.e., dosing and/or shaking and mixing machines) for which and with which the Software is provided.
- 10.2 All intellectual property rights on the Software are vested in FAST & FLUID. Subject to the provisions in Article 10.12, the other party solely obtains a personal, non-exclusive and non-transferable right of use on the object code of the Software (i) for use within its own organization, and (ii) on the PU for which and with which the Software is supplied. The use of the Software on a PU other than the applicable PU is not permitted unless FAST & FLUID has granted prior written authorization for this. The other party accepts this license. The source code of the Software (including the technical documentation) will not be made available to the other party. The other party acknowledges that the source code of the Software is protected by copyright, is confidential and contains trade secrets of FAST & FLUID. The other party will observe strict secrecy with respect to the Software that is provided to it.
- 10.3 FAST & FLUID is permitted to take technical measures to protect the Software for the purpose of introducing limitations in the duration and/or the extent of right of use of the Software. The other party is not permitted to remove or evade such a technical measure. Authorization keys and passwords that are provided by FAST & FLUID in the context of the use of the Software are personal and may not be communicated to third parties.
- 10.4 The license includes the loading, displaying and implementation of the Software, all in conformity with the associated documentation. The use operations may only be performed by persons who are authorized for this purpose by said authorization keys and are thus legitimate users. The right of use is limited to use (i) for the PU for which and with which the Software is provided, (ii) within the configuration specified in the documentation, and (iii) for the maximum agreed number of authorized legitimate users. The other party acknowledges that prior written permission is required from FAST & FLUID for use beyond these limitations and that additional license fees may be payable.
- 10.5 The other party is only entitled to make a maximum of two copies of the Software, which may only be used in the case of involuntary loss or damage of the Software. The other party will notify FAST & FLUID in writing about the installation of the reserve copy. The copies will be provided with the same marks, specifications with respect to the copyright and other registration numbers as the original version of the Software.
- 10.6 The other party will not modify, translate (including porting), decompile, change, de-assemble, reverse engineer or imitate the Software or otherwise convert its source code, unless (i) FAST & FLUID has expressly granted written and prior authorization for this, or (ii)

mandatory provisions expressly and explicitly permit this, provided that the other party complies with such mandatory provisions. At the reasonable request of the other party, FAST & FLUID will provide the other party with the information that it requires to achieve interoperability of the Software with other, independently produced, software. FAST & FLUID may, however, attach conditions to this.

- 10.7 Without the prior written permission of FAST & FLUID, the other party is not permitted to circulate, rent, loan, sell, alienate or otherwise transfer, grant limited rights to, sublicense or lease the Software, in whole or in part. Furthermore, without prior written permission from FAST & FLUID, the other party will not make the Software available to third parties or otherwise disclose it to third parties – in any way or for any purpose whatsoever - nor provide a third party with access to the Software, remote or otherwise, nor accommodate the Software with third parties for hosting or outsourcing purposes, also if the third party in question only uses the Software exclusively on behalf of the other party. FAST & FLUID may attach conditions to any permission granted.
- 10.8 The right of use that the other party is granted commences when the Software is made available to the other party, whether or not via the Internet. Without prejudice to the provisions of Article 13, FAST & FLUID is entitled, without any other notification or proof of default being required, to immediately terminate the license with respect to Software if the other party does not comply or properly or punctually comply with any obligation as referred to in this Article 10. In the above-mentioned case, as well as in the case of a termination of the contract as referred to in Article 13, all rights of use to the Software are nullified and the other party will make a written declaration to FAST & FLUID within eight days that the originals and all copies of the Software are no longer in use and have been returned to FAST & FLUID or have in any case been destroyed.
- 10.9 The other party must ensure that its employees and/or legitimate users that have knowledge of or access to (part of) the Software made available by FAST & FLUID undertake in writing to comply with the obligation of secrecy imposed on them. The other party itself is also obliged to comply with such an obligation of secrecy.
- 10.10 The obligations with respect to secrecy will continue until after the termination of the contract to which these general terms and conditions apply or any other contract with FAST & FLUID.
- 10.11 In the event of violation of the provisions of this article by the other party, its employees or legitimate users, the other party is liable to pay a penalty of € 50,000 for each violation and each day that the violation continues, regardless of any other rights of FAST & FLUID by virtue of the law or under these general terms and conditions, including but not confined to the right to performance, rescission, full damages, etc.
- 10.12 The other party is entitled to give the legitimate user of the PU the right to use the Software in connection with the PU, in accordance with the provisions of this Article 10. In such a case, the other party is obliged to impose the obligations, which are imposed on it in this Article 10, on the legitimate user, as if the latter was bound to these general terms and conditions. In the event of violation by the other party of the provisions of this Article 10.12, the other party is liable to pay an immediately payable, non-refundable penalty of € 100,000 for each violation and each day that the violation continues, regardless of any other rights of FAST & FLUID by virtue of the law or under these general terms and conditions, including but not confined to the right to performance, rescission, full damages, etc.

## 11. Complaints

- 11.1 The other party is obliged to examine the delivered Products, the Software and/or the Services for visible defects and deficiencies upon delivery. If the other party finds visible defects or shortcomings, it must immediately, but no later than within two days after delivery, inform the 'Sales' department of FAST & FLUID in writing and with an explanation. The other party must inform the 'Sales' department of FAST & FLUID of defects that are not visible in writing within two working days after discovery, but in any event within twelve months after delivery or within six months after delivery, insofar as the defect is related to the Software. The possibility to lodge a complaint lapses if the defect can be attributed to the other party.
- 11.2 Claims and defences based upon the alleged non-conformity of the delivered Products are time-barred upon the expiry of one year after delivery. Such claims and defences with respect to the Software are time-barred upon the expiry of six months after delivery.
- 11.3 After lodging a complaint to FAST & FLUID with respect to a defect or shortcoming in the delivered Products, the other party is obliged to grant FAST & FLUID full cooperation in order to examine the complaint on its merits.
- 11.4 With due observance of the provisions in Article 11.7, FAST & FLUID guarantees the correct operation of the Products it delivers during a period of one year after delivery. With respect to the Software, FAST & FLUID then guarantees its correct operation for six months to be counted from the time of delivery on the basis of Free Carrier Sassenheim ("FCA" Sassenheim) Fast & Fluid as defined in Incoterms 2010. Inspection work carried out by FAST & FLUID in order to investigate whether a defect is covered by the guarantee is reimbursed by the other party if it appears that such a defect is not covered by the guarantee. If it appears that a defect is covered by the guarantee, FAST & FLUID is only obliged to comply with the provisions in Article 11.6. The guarantee obligation described in said Article only applies if the Products and/or Software delivered by FAST & FLUID are used in accordance with the manual.  
Hours spent on guarantee activities, including travelling time as well as travel and accommodation expenses, are charged at the prevailing rates.
- 11.5 FAST & FLUID will send product information to the other party at its request. FAST & FLUID is not liable for any advice it provides concerning the quality and composition or the operation (if necessary, in combination with other goods) of the Products and services to be provided for projects/problems formulated by the other party.
- 11.6 If the delivered Products do not comply with the contract, or there is a defect that is not covered by the guarantee in accordance with the provisions of Article 11, FAST & FLUID is only obliged – at its discretion – to deliver the missing Products or repair (at a location to be determined by FAST & FLUID) or replace the delivered Products, or refund the purchase price in full or in part. In the case of repair or replacement of a defect in the delivered Products, FAST & FLUID supplies the relevant Products or parts for its own account; the time spent on work carried out under guarantee including repair, installation or replacement, including travelling time and travel and accommodation expenses, will be charged at the prevailing rates.
- 11.7 In deviation from the warranty provisions in Articles 11.4 and 11.6, FAST & FLUID is not obliged to comply with these, and FAST & FLUID's warranty does not cover, extend to or apply in any of the following circumstances:
- A) the Products have been tampered with, disassembled, repaired, modified, altered, changed or otherwise worked on by anyone other than FAST & FLUID or one of its authorized service representatives without the prior written authorization of FAST & FLUID, used to mix or dispense material that the Product was not designed to mix or dispense or otherwise used for a



purpose or other conditions that differ from those for which the Product was designed, or subjected to abnormal use or service, or has had its serial number removed or altered (*if Product is tested and certified for use with a particular colorant or paint base, and such Product is used with a colorant or paint base other than the particular colorant or paint base for which it was tested and certified or the colorant or paint base for which it was tested or certified is modified, altered or changed in any way by the manufacturer or otherwise, such Product shall be deemed to have been “used to mix or dispense material that the Product was not designed to mix or dispense”*);

- B) Field repair, removal, installation, reinstallation or other similar tasks have been performed by parties other than FAST & FLUID or one of its authorized service representatives;
- C) FAST & FLUID demonstrates that the defect does not become manifest from the above-mentioned examination;
- D) the other party has not punctually informed FAST & FLUID of the defect with due observance of the provisions in Article 11.1 and/or has not fully complied with the instructions of FAST & FLUID;
- E) the Products have not been used or maintained in accordance with FAST & FLUID's recommended operating and maintenance manuals, instructions and procedures; the damage is the result of causes that cannot be observed by FAST & FLUID that have taken place during transportation or installation;
- F) a Product failure or malfunction that FAST & FLUID or one of its authorized service representatives determines to have been caused by or attributable to damage after shipment, colorant in the wrong canister, colorant related issues (e.g. beads in colorant, colorant contamination, colorant thickening, changes in colorant viscosity, defective/recalled colorant, etc.), overfilling of canisters, improper operation or misuse, lack of daily maintenance, power surge, power outage, voltage incompatibility, fire, flood, water leakage, accident, acts of god, casualty, or similar causes. (*For the avoidance of doubt, issues with motors, circuit boards and other electrical components that could have been avoided with the use of a power conditioner are not covered*).
- G) the defects are the result of normal wear and tear;
- H) the claim relates to mistints or misfills;
- I) the defect relates to computer or computer-related equipment such as laptops, monitors, printers and other third-party equipment supplied with the Products (in the case of computer and computer-related equipment such as laptops, monitors, printers and other third-party equipment, any warranty is limited to a pass through to the other party of any warranty received from the equipment manufacturer, and is subject to any terms, conditions and limitations imposed by the equipment manufacturer;
- J) the defect relates to third party software supplied with the Products (in the case of third-party software, any warranty is limited to a pass-through to the other party of any warranty received from the software provider and is subject to any terms, conditions and limitations imposed by the software provider;
- K) any Product or part failure or malfunction that FAST & FLUID or one of its authorized service representatives determines to have been caused by or attributable to any computer or computer-related equipment, other peripheral equipment, accessories, formulations, software or other items provided by anyone other than FAST & FLUID (including the other party); or
- L) if a PU is or will be used in combination with other programs than the Software.

- 11.8 The provisions set forth in this article are applicable as appropriate to the performance of Services.
- 11.9 The other party is obliged to observe the instructions/safety regulations issued by FAST & FLUID and also to do everything necessary to prevent damage being caused by the possession or use of the delivered Products. The other party indemnifies FAST & FLUID from claims by third parties that are associated with the delivered Products, Services and/or the Software.
- 11.10 FAST & FLUID will defend itself against claims by third parties (not affiliated with the other party) in respect of an infringement of copyright in connection with the possession or use of the Software by the other party and/or all other intellectual property rights and/or every other claim that is based on the possession of the Software by the other party and/or the documentation is in conflict with the rights of third parties, but only if:
- A) the other party immediately informs FAST & FLUID in writing of such claim;
  - B) FAST & FLUID gains overall control of both the defence that will be put forward in respect of such claim as well as of all relevant negotiations, with the condition also applying that the other party will not accept any liability in connection with such claim without the prior written consent of FAST & FLUID;
  - C) the other party will provide all documents and information to FAST & FLUID and will provide FAST & FLUID with all assistance that FAST & FLUID can reasonably expect in connection with these claims.
- 11.11 All the rights and claims of the other party in respect of the payment of a sum of money, and/or repair of Products, and/or replacement of Products or addition to that which is missing, on whatever grounds, as well as any right to terminate the contract expires on the first of the following dates: (a) late reporting pursuant to Article 11.1, or (b) twelve months after delivery of the relevant Products and, in the case of Software, six months to be counted from the time of delivery on the basis of Free Carrier Sassenheim ("FCA" Sassenheim) Fast & Fluid as defined in Incoterms 2010.
- 11.12 THE WARRANTY IN THIS ARTICLE 11 IS THE SOLE AND EXCLUSIVE WARRANTY MADE BY FAST & FLUID WITH RESPECT TO PRODUCTS OR PARTS AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH OTHER WARRANTIES ARE EXPRESSLY EXCLUDED.

## **12. Figures, measurements, weights and further particulars**

- 12.1 Slight deviations in measurements, weights, figures, colours, and other particulars will not be regarded as shortcomings.
- 12.2 Trade customs will determine whether the deviations are slight.

## **13. Rescission/Release**

- 13.1 If the other party does not, not timely, or not properly fulfil any obligation under the contract, and also in the event the other party is declared bankrupt, is granted an official moratorium, or is placed in a legal guardianship, or its business ceases operations or is liquidated, FAST & FLUID is entitled, at its discretion, without any obligation to pay damages and without prejudice to any other rights it may have, to rescind the contract in whole or in part, or to suspend the performance (or further performance) of the contract. In those instances FAST & FLUID will

moreover be entitled to demand immediate payment of all amounts owed to it and the other party is obliged to pay this.

13.2 If proper performance by FAST & FLUID is impossible in whole or in part, either temporarily or permanently, as a result to one or more circumstances for which FAST & FLUID cannot be held responsible, including those set forth in the following paragraph, FAST & FLUID is entitled to rescind the contract, or suspend the (further) implementation of the contract and FAST & FLUID is entitled to redistribute the production capacity among its customers at its discretion without being held responsible for compensation of damages.

13.3 Circumstances for which FAST & FLUID cannot in any case be held responsible are:

- conduct, with the exception of intent or gross negligence, of persons that FAST & FLUID makes use of during the performance of the contract;
- exercise of one or more rights by a third party against the other party in respect of a failure to fulfil a contract concluded between the other party and that third party with respect to the Products delivered by FAST & FLUID;
- strikes, lockouts, disease, import, export and/or transit prohibitions, transportation problems, non-compliance of the obligations by suppliers, disruptions in production, natural and/or nuclear disasters and war and/or threat of war, fire, flood and government intervention.

13.4 If the other party, after FAST & FLUID has given it seven days notice, does not cooperate in respect of the delivery, FAST & FLUID is entitled to terminate the contract with immediate effect.

## **14. Liability**

14.1 The liability of FAST & FLUID and the rights, claims and remedies of the other party in respect of the Products delivered, Software and/or the Services rendered or otherwise, on any grounds whatsoever, are limited to the obligation of FAST & FLUID as described in Article 11. FAST & FLUID accepts no liability for damages resulting from an attributable shortcoming, unlawful act or that can be based on any other legal grounds.

14.2 Under no circumstances shall FAST & FLUID have any liability in connection with any Product, Software or Services for any indirect, special, punitive or consequential damages, including, but not limited to, loss of sales, loss of profits, loss of material being dispensed, down time, loss of production, loss of contracts, or damage to reputation or goodwill, whether or not FAST & FLUID was aware of or advised of the possibility of such damages.

14.3 FAST & FLUID is entitled to assert all available legal and contractual means of defence in defending against its own liability to the other party, as well as against the liability of persons under its control and persons that are not under its control for whose conduct it may be (vicariously) liable by law.

14.4 The provisions contained in this article do not affect FAST & FLUID's liability under mandatory law.

14.5 Without prejudice to Article 11.10, the other party will indemnify FAST & FLUID against claims from third parties in connection with Products supplied and to be supplied and/or services performed or to be performed.

14.6 In any event, FAST & FLUID's total liability in connection with any individual Product shall be limited to the net price paid to FAST & FLUID for such Product.

## **15. The rendering of Services**



- 15.1 If FAST & FLUID must perform Services in connection with the contract, it will exercise due care and consideration.
- 15.2 In the event of an attributable shortcoming in connection with or arising from the Services performed or to be performed, FAST & FLUID will perform these Services (again) or at its discretion refund the amount received in this connection in full or in part. The provisions set forth in Article 14 are applicable as appropriate.

#### **16. Applicable law/Competent court**

- 16.1 Dutch law is applicable to all legal relationships between FAST & FLUID and the other party. The UN Convention on the International Sale of Goods (CISG) is not applicable.
- 16.2 All disputes between FAST & FLUID and the other party will be adjudicated exclusively by the competent court in The Hague. FAST & FLUID reserves the right, as plaintiff or petitioning party, to elect the competent court at the other party's domicile or place of business.

#### **17. Conversion**

If and insofar as no rights can be derived from any provision in these general terms and conditions, that provision will be interpreted, as regards its content and effect, as closely as possible to the text as written but in such a way that rights can indeed be derived therefrom.

#### **18. Dutch text prevails**

The Dutch text of these general terms and conditions prevails over any translation thereof.