

# FFDM TIVOLY

## General Terms and Conditions of Sale

### 1 – Application of General Conditions

#### **1.1 - Customary professional practice**

These General Conditions constitute a set of rules of customary practice certified and based on the technical features of the profession. As such, these General Conditions constitute the reference for professionals in the trade.

#### **1.2 – Application**

These General Conditions define the rights and obligations of the two Parties and are designed to apply to all contractual relations between the company FFDM TIVOLY and the corporate customer, hereinafter referred to as the “Customer” and define their rights and obligations.

In accordance with Article L441-6 of the French Commercial Code, these General Conditions constitute “the basis for commercial trading”. They form the legal basis for contracts subject to special conditions. The Customer's purchasing conditions are valid as an offer only. These General Conditions supersede all clauses to the contrary formulated in any way whatsoever by the Customer if FFDM TIVOLY has not explicitly accepted them. Any derogation from these General Conditions in the Customer's favor may justify consideration. Any order or acceptance of FFDM TIVOLY's offer automatically entails acceptance of these General Conditions.

If any of the clauses of these General Conditions becomes null and void, this shall in no way affect the validity of the other clauses contained herein.

#### **1.3 – Legal status of the contract**

These General Conditions are governed by French laws on work contracts (*contrat d'entreprise*) when they apply to the production of equipment on the basis of specifications or to the provision of services. These General Conditions are governed by French laws on sales only when they apply to the supply of standard products. FFDM TIVOLY reserves the right to set a ceiling of outstanding amounts beyond which a cash payment may be required.

### 2 – Contractual Documents

The following constitute an integral part of the contract:

- these General Conditions,
- the Special Conditions accepted by both Parties,
- the accepted order,
- the documents from FFDM TIVOLY supplementing these General Conditions,
- the offer, the studies and the technical documents provided prior to the signature of the main contract and accepted by the Parties,
- the delivery slip, the invoice.

The following do not constitute part of the contract: commercial documentation, catalogues, advertising, correspondence, price lists that are not expressly mentioned in the Special Conditions.

### 3 - Orders

#### **3.1 – Acceptance**

The contract shall not be valid unless express acceptance of the order or of the letter of intent has been given by FFDM TIVOLY. Acceptance of the order may be given using any means in writing. All orders accepted by FFDM TIVOLY shall be deemed to entail acceptance by the Customer of FFDM TIVOLY's offer.

The contract shall be limited to the supplies and services expressly stipulated therein.

#### **3.2 – Amendments**

Any amendment to the contract requested by either Party is subject to the express acceptance of the other Party.

However, FFDM TIVOLY may make any technical modifications to the product when such modification has no negative impact on the useful value or the performance of the product ordered.

#### **3.3 – Cancellation**

An order conveys the Customer's consent on an irrevocable basis. Therefore, orders cannot be cancelled without the express, prior agreement of FFDM TIVOLY. Consequently, if the Customer requests the cancellation of all or part of an order, FFDM TIVOLY shall have the right to demand performance of the contract and full payment of the amounts set forth therein.

In the event the contract is terminated on an amicable basis, the Customer must compensate FFDM TIVOLY for all expenses incurred and for all direct and indirect consequences resulting therefrom. In addition, the installments already paid shall be vested in FFDM TIVOLY as initial compensation.

### 4 – Cooperation of the Parties

The production of a product when designed or adapted based on the specific requirements of the Customer can only be fully completed through close cooperation between the Parties.

#### **4.1 – Supplier's duties**

FFDM TIVOLY must take into account the Customer's requirements and shall comply with them up to the limits of feasibility, contract compliance and rules of the trade. The Supplier shall inform the Customer, up to the limits of its technical knowledge, of any restrictions placed on production and potential effects the Supplier may be familiar with in connection with the use of the product.

#### **4.2 – Customer's duties**

The Customer is a professional with skills in its specialized field of trade in its capacity of user and it is the sole party in charge of defining its requirements and restrictions, together with the end result of the product.

The Customer has the obligation to supply all information and specifications that are complete, precise and reliable, concerning in particular:

- clearly expressed requirements,
- operating conditions and environment of the product,
- composition and special features of materials used with the products.

The satisfaction of the Customer's requirements shall depend to a great extent on this information.

FFDM TIVOLY cannot be held liable for the consequences of any omission or error in the information provided by the Customer as regards the features expressly defined in the contract or the Supplier's technical notice. This cooperation extends also to the study, production and fine-tuning stages of the products.

## **5 - Intended use and status of products**

### **5.1 - Intended use**

FFDM TIVOLY undertakes to deliver products in compliance with technical regulations applicable to those products and to the technical specifications the Supplier has explicitly certified that the products are in compliance with.

The Customer is responsible for implementing the products under normal conditions of use and in compliance with legislation on safety and the environment in force at the place of use, as well as according to the rules of the Customer's trade.

It is the Customer's responsibility to select products that correspond to the Customer's technical requirements and if necessary, to ensure that products match the application contemplated and that they are in compliance with the regulations in force.

Unless otherwise expressly stated on the product label, the products delivered are not designed to operate in an explosive environment.

### **5.2 – Packaging**

Packaging is performed according to FFDM TIVOLY's standards and is not returnable for refund. Packaging shall be in compliance with applicable environmental regulations depending on the intended use of the products. If the Customer wants special packaging, FFDM TIVOLY must be expressly asked for this at the time the contract is entered into. Packaging is at the Customer's expense. The Customer agrees to dispose of the packaging in compliance with local environmental laws.

## **6 - Prices**

Prices are stated in Euros, not including VAT, customs duties, shipping, insurance, packaging and unless otherwise agreed, are "ex-works" at FFDM TIVOLY's (ICC Incoterms in force at the date of contract).

Unless agreed otherwise, prices offered remain valid for two months, beyond which they may be updated taking into account changes in cost prices.

Prices correspond exclusively to those products and services specified in the offer. Additional services rendered, together with additional supplies or supplies delivered during assembly shall be invoiced in addition.

Unless otherwise agreed, specific studies and preliminary or application studies are not included in the price.

## **7 - Delivery**

### **7.1 – Expenses and liability for risks**

Delivery is deemed to have been performed when the order is made available in FFDM TIVOLY's plant. Shipping, insurance, customs and handling and are at the cost, expense and risk of the Customer. Beyond 230 €, our shipments are made in franco, for metropolitan France.

Once the order is made available, all liability for risks is transferred to the Customer.

The Customer must take out insurance to cover all risks related to the product as of said availability. Such insurance must include a waiver of claims by the Customer and its insurers against FFDM TIVOLY and its insurers.

The immediate transfer of liability for risks shall not prevent FFDM TIVOLY from enforcing its seller's lien or its right to retain ownership of the property.

### **7.2 - Verification**

In all cases, the Customer must, at its expense and under its responsibility, verify or have verified, the compliance of the products with the contract.

If necessary, the Customer must issue reserves or take action against shippers within the legal time limits.

The statement "reserve made for unpacking" is not legally valid and cannot constitute a reserve.

### **7.3 - Delivery or performance dates**

Delivery or performance dates "ex works" start running as of the date FFDM TIVOLY gives its final acceptance of the order in writing. However, this time period shall not start running if the Customer has not complied with one or several of its obligations, including, *inter alia*, down payment if agreed to, supply of all information or necessary documents to manufacture and authorizations required, validation of plans for specific products or agreement on execution methods. Delivery and performance dates shall be suspended in the event of *force majeure*.

Delivery or performance dates, unless otherwise specified, are given as an indication only and shall be maintained to the extent possible. Delays compared to time periods specified may in no event be used as grounds for cancellation of the order or termination of the contract, nor give rise to penalties, except if specifically provided for in the contract.

Partial deliveries are authorized unless otherwise provided for in the contract.

FFDM TIVOLY is automatically released from all obligations related to contractual time limits in the event the Customer fails to perform any of its contractual obligations.

### **7.4 - Quantities delivered**

According to customary professional practice, if special tools are manufactured, the quantities delivered may vary by more or less 10% compared to quantities ordered. For small series (quantities of less than 10), customary practice dictates that + or - 2 units compared to those ordered is acceptable, unless otherwise specified in the Special Conditions.

### **7.5 - Return of standard products**

The return, i.e., recovery of products and issuing of a credit slip to the benefit of the Customer shall only be valid upon the express, prior and written agreement of FFDM TIVOLY. The fact that FFDM TIVOLY agrees to the return of a given product shall not give the Customer the right to obtain the return of other products, even if they are identical.

In the event FFDM TIVOLY agrees to the return of a product, the following conditions must be met in the aggregate:

- Returns are only authorized for those products contained in FFDM TIVOLY's catalogue in force at the time of the request for the return,
- The Customer must return the product carriage paid at its expense and risk,
- The product must be returned to the place indicated by FFDM TIVOLY or failing specifications, to the address it was sent from,
- The product must be returned in perfect condition, protected or packaged in its original packaging,
- Return of the product shall give rise to the issuing of a corresponding credit slip in the amount of the price of the relevant products after verification of the products' physical state, less a lump-sum charge for administrative processing of the return and any potential decrease in value.

The credit slip may be drawn up in connection with an order to set off the return.

In the event of a product manufactured based on technical specifications requested by the Customer, these provisions shall not apply.

### **7.6 – Product responsibility**

- In case of missing documents to be supplied by the buyer (drawings, tracing, type of body...), FFDM TIVOLY is not able to control the piece conformity with the specifications given by the customer and will therefore consider the body conforms for carrying out the required work, on the account of our product responsibility. FFDM TIVOLY denies then all responsibility relative to the conformity of body supplied by the customer.

- If the customer wants FFDM TIVOLY to make the control, FFDM TIVOLY will ask the customer to send all necessary documents within 48 hours. The control will be made on receipt of the answer within this time and will be invoiced. After this time limit of 48 H, FFDM TIVOLY will consider having the customer's agreement for carrying out the order with body in the state.

## **8 – Trials and acceptance**

The following provisions apply to the manufacturing of specific products and/or when it has been agreed that the assembly, installation and/or putting into service are to be ensured by FFDM TIVOLY (which may delegate or subcontract, in full or partially, to any person of its choice).

### **8.1- Trials**

Contractual trials or tests may be provided for at FFDM TIVOLY's premises or on the Customer's site per specific agreement. For this purpose, the Customer shall provide FFDM TIVOLY at the Customer's expense with all materials, utilities, power and skilled personnel required and in sufficient quantity needed for these trials.

### **8.2 – Technical Assistance, Maintenance**

Technical assistance related to effective putting into operation, as well as maintenance and upkeep of the products are at the Customer's expense. These services may be covered under a specific agreement.

### **8.3 – Acceptance of delivery**

The Customer is obligated to accept delivery of the products. Through this procedure, the Customer acknowledges that the products are in compliance with the contract. FFDM TIVOLY shall notify the Customer in writing of the date scheduled for acceptance to take place in the presence of both Parties. If the Customer has been duly notified thereof with 10 days' notice and is not present at acceptance, acceptance shall nevertheless be deemed to have been given by the Customer.

The contract shall provide for the acceptance conditions and an official report of acceptance.

Any full or partial use or putting into service of the equipment shall automatically entail acceptance.

### **8.4 – Performance bond**

In the event the Parties agree to a performance bond to secure performance of the works and satisfy, when applicable, reserves made at the time of acceptance, this performance bond must mandatorily comply with the provisions contained in French Law No. 71-584 dated July 16, 1971, which is a matter of public policy.

## **9 - Payment**

### **9.1 – Conditions**

The payment dates and conditions shall be determined by way of contract. For the case of specific products, FFDM TIVOLY may request a down payment of 30%, payable at the time the order is placed.

Payment dates agreed to by the Parties cannot be deferred for any reason that is not attributable to FFDM TIVOLY, even if the event originating the relevant payment is deferred.

VAT shall be payable immediately upon delivery in accordance with the terms of Articles 256 II and 269 of the French Tax Code.

### **9.2 – Terms**

Down payments must always be paid in cash.

Except for derogation, all our sales are payment at 30 days end of month.

Any clause or request for the purpose of setting or obtaining a payment date which exceeds this maximum period may be deemed to be abusive within the meaning of Article L.442-6 I 7 of the French Commercial Code as resulting from the law of modernization of the economy No 2008-776 dated August 4, 2008, and is liable in particular to a civil fine of up to two million Euros.

Payment dates agreed to contractually cannot be unilaterally challenged by the Customer on any pretext whatsoever, including in the event of litigation. Advance payments shall be made without discounting unless specifically agreed otherwise. In the case of payment by way of trade note, acceptance must be given within seven days of the date the note is sent, which is the customary time period in accordance with the provisions contained in Article L511-15 of the French Commercial Code.

### **9.3 - Late Payment**

In accordance with Article L.441-6 Paragraph 12 of the French Commercial Code as resulting from the law of modernization of the economy No 2008-776 dated August 4, 2008, any late payments shall give rise to the application of late payment interest at the most recent refinancing rate of the Central European Bank, increased by ten percentage points and cannot be less than three times the legal interest rate.

Any delay in the payment of an installment shall, at FFDM TIVOLY's discretion, entail the immediate maturity of the contractual payment and all amounts owed shall become immediately due and payable.

In the event FFDM TIVOLY exercises its rights under either of these provisions, this shall in no way deprive the Supplier from the right to implement the clause relating to its seller's lien contained in Article 10.

In the event of late payment, the Supplier shall benefit from a right to retain ownership of the equipment in accordance with Article 2286 of the French Civil Code.

### **9.4 - Change in the Customer's situation**

In the event the Customer's situation is downgraded by a financial institution or ascertained by way of a significant payment delay or when the Customer's financial position is significantly different from the data available to the Supplier, deliveries shall only be performed in consideration for effective payment.

In the event of sale, transfer, pledge or contribution to a company of the Customer's business or a significant part of its assets or equipment, the Supplier reserves the right without giving prior notice to:

- notify the Customer of the immediate maturity of payments and consequently demand the immediate payment of all amounts owed on any account whatsoever,
- suspend all shipments,
- on the one hand, officially take note of termination of all of the current contracts and on the other hand, retain all installments received and parts in its possession until potential compensation has been set.

Invoices shall record the date and place of payment.

### **9.5 – Prohibition of automatic debit notes**

In accordance with Article L 442-6 I 8 of the French Commercial Code, all automatic debit or credit notes are prohibited.

Any automatic debit shall constitute an unpaid invoice and shall give rise to the application of the provisions contained in Article 9.3 governing late payment.

### **9.6 – Minimum order value**

Taking into account the high cost inherent to small amount invoices, the minimum order value is fixed at: € 100.

## **10 - Seller's Lien**

In accordance with Articles 2367 *et seq.* of the French Civil Code, FFDM TIVOLY shall retain ownership of the products delivered until effective payment of the full price in principal and incidental expenses. Default of payment on any due date whatsoever may entail a claim for the return of the equipment by the Supplier.

However, as of the date the equipment is made available, the Customer shall bear all liability for loss or damage to this equipment, as well as all liability for the damage the equipment may cause.

In the event this Seller's Lien is implemented, the installments already paid shall be fully and finally vested in FFDM TIVOLY as compensation, without prejudice to FFDM TIVOLY's right to obtain full compensation for the damages it has suffered.

The Customer has no right to resell the equipment that has not been fully paid for without FFDM TIVOLY's agreement.

## **11 - Intellectual Property - Confidentiality**

### **11.1 - Intellectual Property**

All plans, studies, descriptions, technical documents and quotes remitted to the other Party are communicated within the framework of a loan for use whose outcome is the assessment and discussion of FFDM TIVOLY's commercial offer, followed by, in the event of an order, performance of the contract. They may not be used by the other party for other purposes or communicated to third parties without the prior agreement of the Party owning these documents.

The Parties maintain all material and intellectual property rights to their documents that they may loan. These documents must be returned upon first demand.

In addition, FFDM TIVOLY's studies, even if designed according to specifications and even if they lead to an improvement in the product's usage value, remain the exclusive property of FFDM TIVOLY and cannot be communicated, produced or copied without the Supplier's written authorization.

Payment for studies in no way entails any transfer of any intellectual property rights whatsoever to the principal. Any transfer of intellectual property rights must be covered under a written agreement.

The price of the equipment and/or the services does not include the transfer of intellectual property rights and the know-how behind those rights which remain the full property of FFDM TIVOLY, including intellectual property rights to software, applications and specific developments performed pursuant to the contract.

There are no legal provisions that require FFDM TIVOLY to remit the manufacturing plans to the Customer.

Prototypes supplied to the Customer shall remain strictly confidential. They may not be communicated to third parties without FFDM TIVOLY's express authorization.

### **11.2 – Confidentiality**

The parties commit themselves on a reciprocal basis to a general obligation of confidentiality bearing on all verbal or written confidential information of any kind whatsoever and on any media whatsoever (reports on discussions, plans, exchange of computerized data, business activities, facilities, projects, know how, products, etc.) exchanged in connection with the preparation and the performance of the agreement except for that information generally known to the public or that becomes known to the public through other means than due to the fault or action of one of the Parties.

Consequently, the Parties hereby agree to:

- keep totally secret all confidential information and in particular, to never disclose or communicate in any way whatsoever, directly or indirectly, all or part of such information to any person whatsoever, without the prior written consent of the other Party;
- not to use all or part of the confidential information for purposes or for business other than the performance of the contract;
- not to copy or imitate all or part of the confidential information.

The Parties agree to take all measures required in order to ensure that this confidentiality obligation is complied without throughout the entire duration of the contract and even after its expiration and further guarantee that all of their employees will comply with this obligation. This obligation constitutes the obligation to achieve a certain result under French law (*obligation de résultat*).

The Parties represent and warrant that at the time the contract is entered into the contents of the contractual documents and their conditions of implementation do not make use of intellectual property rights or know-how owned by a third party. They further warrant that they are free to dispose of them without violating a contractual or legal obligation.

The Parties mutually guarantee and hold each other harmless against all direct or indirect consequences of any legal action taken to incur their liability, in particular on the grounds of infringement of copyright or unfair competition.

## **12 – Unforeseeable event and *force majeure***

### **12.1 – Unforeseeable events**

If an outside event that is beyond the control of the Parties occurs which compromises the balance of the contract to the point that it causes a prejudice to one of the Parties to perform its obligations, the Parties agree to negotiate in good faith to amend the contract. The following events, *inter alia*, are referred to here: change in the price of raw materials, change in customs duties, change in currency exchange rates, and change in legislation. If the Parties are unable to agree, they shall engage in conciliation with the Presiding Judge of the Commercial Court having jurisdiction who shall act as an arbitrator.

### **12.2 – *Force majeure***

Neither Party to the contract may be held liable for delay or default to perform any of its obligations under the contract if such delay or default is the direct or indirect effect of a *force majeure* event, such as:

- occurrence of a natural disaster,
- earthquake, storm, fire, flood, etc.,
- armed conflict, war, attacks,
- labor conflicts, total or partial strike at the Supplier's or Customer's,
- labor conflicts, total or partial strike at suppliers', service providers', transport companies, postal services, public services, etc.,
- mandatory order by the public authorities (import prohibition, embargo),
- operating accidents, breakdown of machinery, explosion,
- default of a supplier.

Each Party shall immediately inform the other Party of any occurrence of a *force majeure* event it becomes aware of and that it believes is likely to impact the performance of the contract.

If the duration of the event preventing performance exceeds one month, the Parties must promptly meet to examine the future of the contract in good faith.

## **13 – Warranty and liability**

### **13.1 – Warranty**

FFDM TIVOLY agrees to remedy any operating default originating from a defect in the manufacturing, the materials or the performance up to the limits contained in the following provisions. FFDM TIVOLY's obligation does not apply in the event of a defect originating either from a design or implementation imposed by the Customer.

### **13.2 - Duration and starting point of the warranty**

This warranty commitment, unless specifically provided for otherwise, shall only apply to defects that become apparent during a period of 12 months or 3,600 hours, whichever occurs first (warranty period) as of the date of delivery.

This duration is applicable to use in accordance with the information defined by the Parties.

The warranty is limited to the repair or replacement of parts acknowledged by FFDM TIVOLY to be defective which are returned to the Supplier's workshop at the Customer's expense and risk.

Only the spare parts supplied, modified or revamped by FFDM TIVOLY are covered by warranty and only throughout the warranty period covering the main equipment.

### **13.3 - Customer's Obligations**

In order to claim the benefit of these provisions, the Customer must promptly inform FFDM TIVOLY in writing of the defects it attributes to the equipment and supply all proof that such defects are real. The Customer must facilitate access to FFDM TIVOLY for the purpose of officially acknowledging such defects.

### **13.4 – Liability**

FFDM TIVOLY's liability is strictly limited to the obligations defined herein and with the exception of bodily injury or gross negligence, it is expressly agreed between the Parties that FFDM TIVOLY may not be held liable for any compensation, including for intangible, consequential, non-consequential or indirect damages, including *inter alia*, loss of profits, operating losses, loss of earnings, third party claims, etc.

FFDM TIVOLY's liability shall be limited to direct tangible damages caused to the Customer, excluding all items built in or added on by the Customer and that result from a fault exclusively attributable to FFDM TIVOLY in connection with the performance of the contract.

In any event, FFDM TIVOLY's civil liability cannot exceed the amount paid for the products delivered.

The Customer and its insurers waive all claims against FFDM TIVOLY and its insurers for damages excluded under these General Conditions or under the contract.

### **13.5 - Exclusions from warranty and liability**

All warranty and liability are excluded for incidents related to *force majeure* events, or in the following cases, *inter alia*:

- normal wear and tear of the products,
- damage or accidents originating from negligence, supervision failure,
- failure to comply with maintenance instructions for the products, with rules of the trade applicable to the Customer's profession, with periodic inspections recommended by FFDM TIVOLY or per regulation,
- failure to comply with rules on safety and the environment applicable to the Customer,
- Abnormal use of the products,
- Lack of competence of users of the products.

Any intervention on the products by the Customer or a third party: modifications, repairs, addition of spare parts that are not original or that are revamped without FFDM TIVOLY's express agreement shall entail the exclusion of all liability and warranty for the products.

The warranty shall also cease to apply in the event the Customer fails to pay on one of the payment due dates provided for.

### **13.6 – Compliance with Technical Directives**

FFDM TIVOLY shall ensure regulatory compliance of the products' components.

Any intervention on the products by the Customer or a third party (not approved by FFDM TIVOLY) engages its responsibility. Therefore, it is responsible for any damage caused to products or to any third party because of rendered defective products, either by quite different conditions of storage or preservation defective or not corresponding to the specific conditions of the product or to the rules) of best practices. More generally, the Customer will be kept for person in charge of any wrongful action or omission.

## **14 – Disputes**

These General Conditions and the contracts related hereto shall be governed by French law.

In the event of export, they shall be governed by the 1980 United Nations Convention on the International sale of goods, known as the Vienna Convention, supplemented by French law.

The Parties agree to attempt to settle their disputes on an amicable basis before laying the case before the court having jurisdiction.

**If the Parties are unable to reach an amicable agreement, any dispute or litigation related to the contract shall be subject to the exclusive jurisdiction of the courts competent in the jurisdiction where FFDM TIVOLY's head office is located, even in the event of an impleader or multiple defendants.**