

Fender Innovations B.V.

General Terms and Conditions

Article 1. Definitions

- 1.1. In these general terms and conditions the following terms shall have the following meaning, unless expressly indicated otherwise or unless the context requires otherwise:
 - a. Fender Innovations B.V.: the user of these general terms and conditions: Fender Innovations B.V., having its registered office at the Ambachtsweg 6 in Den Helder, registered with the Chamber of Commerce under registration number 58237089;
 - b. customer: the company that concludes an agreement with Fender Innovations B.V. or that has received an offer / proposal from Fender Innovations B.V. or that is in any legal relationship with Fender Innovations B.V. or that Fender Innovations B.V. carries out any legal act for;
 - c. agreement: the agreement between Fender Innovations B.V. and the customer.

Article 2. General

- 2.1. These general terms and conditions are applicable to all offers, proposals and agreements concerning the performance of deliveries and/or the supply of services and/or the performance of activities by Fender Innovations B.V. to the customer and in addition to all (other) legal acts between Fender Innovations B.V. and the customer, including negotiating and other pre-contractual situations.
- 2.2. The present general terms and conditions are equally applicable to all agreements with Fender Innovations B.V. for the implementation of which third parties must be involved.
- 2.3. Possible deviations from these general terms and conditions are only valid if they have expressly been stipulated in writing or electronically.
- 2.4. The applicability of possible purchasing or other terms and conditions of the customer is expressly rejected.
- 2.5. If one or more provisions of these general terms and conditions are invalid or cancelled then the other provisions of these general terms and conditions shall remain in full force and effect. Fender Innovations B.V. and the customer shall then enter into discussions in order to agree on new provisions in replacement of the invalid and/or cancelled provisions in the course of which the objective and the scope of the original provision shall be taken into account as much as possible.

Article 3. Proposals and offers

- 3.1. Each and every offer of Fender Innovations B.V. is subject to contract. Fender Innovations B.V. can still revoke its offer shortly after receipt of the acceptance thereof.
- 3.2. Each and every offer is based on implementation under normal conditions and on information, data, documents, and the like furnished by the customer. The customer guarantees the correctness and completeness of the requirements and specifications and other data on which Fender Innovations B.V. bases its offer provided to Fender Innovations B.V. by or behalf of the customer.
- 3.3. Proposals and offers are not automatically applicable to future assignments.
- 3.4. Apparent errors or mistakes on the website and in folders, offers or publications of Fender Innovations B.V. shall not be binding on Fender Innovations B.V..
- 3.5. The models, images, drawings and dimensions that are added to, shown or communicated with the offers only give a general impression of the offered work. Changes in construction as a result of which the actual implementation slightly deviates from the intended models, images or dimensions but as a result of which no essential change is made in the technical and/or aesthetical implementation of the assignment shall not oblige Fender Innovations B.V. to pay any compensation and shall not entitle the customer to suspend payment of the invoiced amount.
- 3.6. The offers / proposals and other documents supplied to the customer by Fender Innovations B.V. can without consent of Fender Innovations B.V. not be reproduced or made available to third parties.
- 3.7. The customer must handle the information from the offer confidentially and cannot use this for its own benefit or for the benefit of third parties or make the same available to third parties.

- 3.8. If an agreement is not concluded on the basis of the offer then the offer and all there to pertaining documents must on demand of Fender Innovations B.V. immediately be returned to Fender Innovations B.V. by the customer at the expense and risk of the latter.

Article 4. Implementation of the agreement

- 4.1. Fender Innovations B.V. shall start the implementation of the agreement when the down payment, 50% of the offered amount, has been received.
- 4.2. Fender Innovations B.V. shall implement the agreement to the best of its ability and knowledge and in accordance with good business practices.
- 4.3. Fender Innovations B.V. is entitled to have specific activities carried out by third parties.

Article 5. Obligations of the customer

- 5.1. The customer shall see to it that all data, equipment and areas of which Fender Innovations B.V. indicates that they are required or of which the customer must within reason understand that they are required for the implementation of the agreement are timely made available to Fender Innovations B.V.. If the customer does not comply with this obligation then Fender Innovations B.V. shall be entitled to suspend the implementation of the agreement and/or to charge the additional costs deriving from the delay to the customer according to the common fees.
- 5.2. If the data supplied by the customer are incomplete and/or incorrect then this shall fully be at the expense and risk of the customer. The customer is responsible for the calculations, designs and drawings supplied by or on behalf of the customer as also for the suitability of the materials supplied by or on behalf of the customer.
- 5.3. To the extent that the customer committed within the framework of the implementation of the agreement to deliver certain materials and/to carry out or have carried out specific activities, the customer shall be responsible for the timely supply and/or performance. Should this not take place in a timely manner then the customer shall be liable for the same.
- 5.4. The customer is held to forthwith inform Fender Innovations B.V. of facts and circumstances that might be relevant in connection with the implementation of the agreement.
- 5.5. The customer must refrain from any act that makes it impossible for Fender Innovations B.V. to properly implement the agreement. The customer shall enable Fender Innovations B.V. to carry out the activities uninterruptedly, in a good and safe manner, timely, completely and in conformity with the agreement.
- 5.6. At the previously indicated working hours the customer must grant Fender Innovations B.V. access to the location or locations in which or at which the activities must be carried out.
- 5.7. If the customer is not present at the stipulated location and time, as a result of which Fender Innovations B.V. cannot carry out the activities, then the customer shall be liable to pay the additional costs (including the call-out charges) deriving there from to Fender Innovations B.V..
- 5.8. Fender Innovations B.V. assumes that the customer shall comply with all its other statutory obligations.
- 5.9. The customer indemnifies Fender Innovations B.V. against any and all claims of third parties who incur damages in connection with the implementation of the agreement and that can be attributed to the customer.
- 5.10. The customer is solely responsible for the observance of all statutory and otherwise applicable regulations applicable in the country where the customer holds its registered office in connection with the possession, encumbrance, use and installation, in any way whatsoever, of the delivered products.
- 5.11. If the dimensions given or confirmed by or on behalf of the customer on the basis of which Fender Innovations B.V. manufactured the products with accessories to be delivered by the same do not correspond with the actual dimensions then Fender Innovations B.V. shall be entitled to payment by the customer of all costs associated with the adjustment of the delivered products. Should adjustment appear to be impossible then the customer shall compensate Fender Innovations B.V. for all costs, e.g. use of materials, incurred by the same. The delivery time shall in that case be extended as deemed reasonable taking all circumstances into account.
- 5.12. The customer is held to exclusively use the products delivered by Fender Innovations B.V. in accordance with the instructions or the technical specifications.
- 5.13. Should the customer not, not timely or not properly comply with its obligations vis-à-vis Fender Innovations B.V. then the customer shall be liable for all damages consequently incurred by Fender Innovations B.V..

Article 6. Change of the agreement

- 6.1. If it becomes apparent during the implementation of the agreement that a proper implementation necessitates a change of or a supplement to the agreement then the parties shall timely and in mutual consultation adjust the agreement accordingly.
- 6.2. If the parties agree that the agreement is changed or supplemented, the time of completion of the implementation can thus be affected. Fender Innovations B.V. shall forthwith inform the customer of the same.
- 6.3. Should the change of or the supplement to the agreement have financial and/or qualitative consequences then Fender Innovations B.V. shall inform the customer of the same in advance.

Article 7. Prices and transport costs

- 7.1. The prices or fees included in offers or proposals are in EUR and excluding VAT.
- 7.2. Indicated prices for products are excluding transport costs. The transport costs are communicated to the customer separately.
- 7.3. Fender Innovations B.V. shall be entitled to increase a fixed stipulated price if it becomes apparent during the implementation of the activities that the originally stipulated or expected amount of work was estimated insufficiently at the time of the conclusion of the agreement and cannot be attributed to Fender Innovations B.V. such that it can within reason not be expected of Fender Innovations B.V. to carry out the stipulated activities against the originally stipulated price.

Article 8. Delivery / completion

- 8.1. The delivery or completion times specified by Fender Innovations B.V. can never be qualified as fatal deadlines.
- 8.2. The products are transported by Fender Innovations B.V. to the address indicated by the customer or Fender Innovations B.V. shall hire a transport company for the transport of the products.
- 8.3. Should the delivery or completion time stipulated with the customer be exceeded as a result of an event beyond the control of Fender Innovations B.V. and cannot be attributed to an act and/or omission of the same, e.g. as described in article 15 of these general terms and conditions, this time shall automatically be extended by the period that it was exceeded as a result of this kind of event.
- 8.4. Should the indicated delivery or completion time be exceeded then this shall never entitle to compensation.
- 8.5. The customer is held to take receipt of the delivered products.
- 8.6. Should the customer not take receipt of the purchased products then they shall be stored at the expense and risk of the customer.

Article 9. Materials

- 9.1. Upon the performance of the assignment Fender Innovations B.V. shall, when it comes to the materials to be delivered and processed by the same, make use of materials of the usual common commercial quality.
- 9.2. A minor difference in a feature of a material, of any nature whatsoever, shall not be cause for the customer to reject the use thereof. Upon the assessment as to whether, as the occasion arises, it regards a minor difference an average of the relevant material shall be assumed.

Article 10. Complaints

- 10.1. The customer must immediately inspect the delivered products. Possible defects must be reported to Fender Innovations B.V. immediately after the delivery.
- 10.2. The customer is deemed to immediately after completion of a work proceed with the inspection thereof and to forthwith report observed defects to Fender Innovations B.V.. The customer must give Fender Innovations B.V. the opportunity to check this notification and to yet carry out the stipulated activities.
- 10.3. Should the customer demonstrate that a defect of the performed work and/or the delivered product is caused by a technical shortcoming for which Fender Innovations B.V. is responsible then Fender Innovations B.V. shall, at its sole discretion, again carry out the activities and/or repair the product, deliver a new component, deliver an alternative product or repay (a part of) the purchase price to the customer.

- 10.4. If it becomes apparent during the repeated performance of the stipulated activities that the defect is not caused by an act and/or omission on the part of Fender Innovations B.V. then all costs of these activities shall be charged to the customer.
- 10.5. Complaints about the delivered products are not handled if:
- a. the customer does not immediately after detection of the defect inform Fender Innovations B.V. in writing or by email;
 - b. the customer and/or third parties have carried out activities and/or changes and/or repairs with regard to the delivered products;
 - c. the user instructions provided by Fender Innovations B.V. and inspections are not accurately observed;
 - d. defects are the result of injudicious use or default on the part of the customer or its staff;
 - e. the delivered products are not used in accordance with the stipulated designated use and, failing the same, the common designated use;
 - f. defects are the result of normal wear and tear;
 - g. defects are the result of any official regulation concerning the nature or the quality of the applied materials;
 - h. the damages are caused by third parties (vandalism);
 - i. there is question of a minor difference common in the trade and/or technically inevitable;
 - j. defects are the result of components and/or products that were not delivered by Fender Innovations B.V.;
 - k. defects are the result of use that goes beyond the technically allowed specifications.

Article 11. Invoicing and payment

- 11.1. Invoicing takes place as follows:
- a. 50% of the offered amount upon conclusion of the agreement;
 - b. 40% of the offered amount upon commencement of the activities;
 - c. 10% of the offered amount prior to the delivery / completion.
- 11.2. Should the customer not pay an interim invoice in a timely fashion then Fender Innovations B.V. shall be entitled to suspend the implementation of the agreement until the full outstanding amount has been paid. Fender Innovations B.V. shall not be liable for possible damages incurred by the customer as a result of the suspension.
- 11.3. Should the customer not pay the invoiced amount within the imposed payment term then the customer shall be in default and the statutory commercial interest shall be charged to the customer. All judicial and extrajudicial collecting costs incurred by Fender Innovations B.V. in order to collect the claim from the customer shall be at the expense of the customer. The extrajudicial collecting costs are set at 15% of the principal amount, with a minimum of EUR 100.00.
- 11.4. In case of liquidation, insolvency, attachment or suspension of payment on the part of the customer the claims of Fender Innovations B.V. vis-à-vis the customer shall immediately fall due.
- 11.5. Each and every payment by the customer shall first be applied to settlement of the payable interest and then to payment of the costs payable in respect of the collection. Only after payment of these amounts shall any payment by the customer be applied to the outstanding principal amount.

Article 12. Reservation of title and retention

- 12.1. All delivered and still to be delivered products remain the exclusive property of Fender Innovations B.V. until all claims that Fender Innovations B.V. has or shall acquire vis-à-vis the customer have been paid in full.
- 12.2. As long as the title of the products has not transferred to the customer, the customer cannot:
- a. pledge the products;
 - b. grant third parties any rights in respect of the products;
 - c. resell the products beyond the scope of its normal business operations.
- 12.3. The customer is held to store the products that have been delivered under reservation of title with the necessary care and recognisable as the property of Fender Innovations B.V..
- 12.4. Fender Innovations B.V. shall be authorised to take back the products that were delivered under reservation of title and that are still present at the customer should the customer fail to comply with its payment obligations or be or threaten to be in payment difficulty. The customer shall at all times grant Fender Innovations B.V. free access to its premises and/or buildings to inspect the products and/or to exercise the rights of Fender Innovations B.V..

- 12.5. If Fender Innovations B.V. cannot rely on its reservation of title as the delivered goods have been mixed, deformed or acceded then the customer shall be held to pledge the newly formed goods to Fender Innovations B.V..
- 12.6. Fender Innovations B.V. can retain the goods, products, property rights, data, documents, data files received or generated within the framework of the agreement, despite an existing obligation to release the same, until the customer has paid all amounts payable to Fender Innovations B.V..

Article 13. Suspension and dissolution

- 13.1. Fender Innovations B.V. shall be authorised to suspend the performance of the assignment with immediate effect if:
- a. during the performance of the assignment Fender Innovations B.V. threatens to be exposed to substances that impose a health risk;
 - b. the material with which as well as the circumstances under which the assignment must be carried out do not comply with the requirements imposed on the same;
 - c. after the conclusion of the agreement circumstances have come to the knowledge of Fender Innovations B.V. that give good reason to fear that the customer shall not comply with the obligations. Should there be good reason to fear that the customer shall only comply partly or improperly then the suspension shall only be allowed to the extent that it is justified by the default.
- 13.2. Fender Innovations B.V. shall be authorised to dissolve the agreement if the customer does not, not timely or not properly comply with the obligations on account of the agreement and the customer does not comply with a despatched notice of default.
- 13.3. Fender Innovations B.V. shall also be authorised to dissolve the agreement if circumstances occur that are of such nature that compliance with the agreement has become impossible or can, according to the principles of reasonableness and fairness, no longer be expected or if circumstances otherwise occur that are of such nature that unchanged preservation of the agreement can within reason not be expected.
- 13.4. Fender Innovations B.V. shall be authorised to dissolve the agreement if the customer applies for or is granted suspension of payment, if the customer is declared insolvent or a corresponding application is filed, if the customer is unable to pay its debts, proceeds with termination or liquidation of its business, is placed under guardianship or if a receiver or administrator is appointed.

Article 14. Liability and prescription

- 14.1. Fender Innovations B.V. cannot be held liable to pay compensation for any damages that are the direct or indirect result of:
- a. an event that is actually beyond its control and cannot be attributed to an act and/or omission of the same, e.g. as described in article 15 of these general terms and conditions;
 - b. any act or omission on the part of the customer, its subordinates, or other people that are employed by or on behalf of the customer.
- 14.2. Fender Innovations B.V. shall not be liable for damages, of any nature whatsoever, because Fender Innovations B.V. assumed incorrect and/or incomplete information furnished by the customer.
- 14.3. Fender Innovations B.V. shall not be liable for possible accidents with the products delivered by Fender Innovations B.V. resulting from, for instance, incorrect or injudicious use or use in breach of the user instructions.
- 14.4. By no means shall Fender Innovations B.V. be liable for damages that are caused by or are the result of the fact that the customer used the products delivered by Fender Innovations B.V. for a purpose other than for which the products were purchased.
- 14.5. If the customer or a third party implements any changes in the products delivered by Fender Innovations B.V. then Fender Innovations B.V. excludes any liability with regard to the effect and possible (consequential) damages.
- 14.6. Fender Innovations B.V. does not accept any liability whatsoever if the customer demands, against the advice of Fender Innovations B.V., that specific activities are yet carried out.
- 14.7. The customer shall be liable for loss of and/or damage to goods, materials, tools, machines and the like that Fender Innovations B.V. stores at the customer during the performance of the activities.

- 14.8. Fender Innovations B.V. shall not be liable for damages of any nature whatsoever deriving from or attributable to goods and/or structures of the customer at which or on which Fender Innovations B.V. carries out activities.
- 14.9. Fender Innovations B.V. shall never be liable for damages like lost turnover that are the result of a shortcoming of a vessel or any other failure in the business operations of the customer during or by the activities. This kind of shortcoming or failure shall be at the risk of the customer. Should the customer wish to be covered against damages deriving there from then the customer can conclude insurance for this.
- 14.10. Fender Innovations B.V. shall never be held to pay compensation for consequential damages. Consequential damages is in any case understood as lost turnover, lost profit, lost savings, production losses, trading losses, operational breakdowns, business interruption losses, losses due to delays and indirect damages, regardless of their origin.
- 14.11. Fender Innovations B.V. shall not be liable for damages due to non-compliance by the customer with obligations deriving from these general terms and conditions, pursuant to the agreement or the law.
- 14.12. Should Fender Innovations B.V. be liable for any damages then the liability of Fender Innovations B.V. shall be limited to the amount that is paid out by the insurer of Fender Innovations B.V.. Should the insurer, as the occasion arises, not proceed with the payment of any benefit then the liability of Fender Innovations B.V. shall be limited to the amount of the invoice, at least that part of the agreement to which the liability is related.
- 14.13. The limitations of liability included in these general terms and conditions are not applicable if the damages can be blamed on intent or gross negligence on the part of Fender Innovations B.V. or its subordinates.
- 14.14. Rights of claim and other authorities of the customer on any account whatsoever vis-à-vis Fender Innovations B.V. shall in any case expiry after the lapse of 1 year as from the moment that a fact occurs as a result of which the customer can exercise these rights and/or authorities vis-à-vis Fender Innovations B.V..
- 14.15. The customer indemnifies Fender Innovations B.V. against any and all claims of third parties on account of product liability as a result of a defect of a product that has been delivered to a third party by the customer and that (also) consisted of products and/or materials delivered by Fender Innovations B.V..

Article 15. Force majeure

- 15.1. Fender Innovations B.V. shall not be held to comply with any obligation if it is prevented from doing so as a result of force majeure. Force majeure is in any case understood as extreme weather conditions or natural phenomena; terrorism; impediments by third parties, including official authorities; transport obstructions; industrial action; riots, war or threat of war; loss of or damage to goods during the transport thereof; failing or late delivery of goods to Fender Innovations B.V. by its suppliers; export and import bans; fire, breakdowns and accidents at the company of Fender Innovations B.V. or its suppliers; burning of transport means of Fender Innovations B.V. or the hired transport company, the occurrence of breakdowns of the same, the involvement in accidents of the same; measures of any domestic, foreign or international government.
- 15.2. Force majeure is also understood as a shortcoming on the part of suppliers of Fender Innovations B.V..
- 15.3. Should there be question of force majeure then Fender Innovations B.V. cannot be held to pay compensation for any damages that are the direct or indirect result thereof and it shall, for the time being, be released from its obligation to deliver or to carry out the stipulated activities. It shall depend on the relevant circumstances as to whether this shall fully or partly be or remain the case or as to whether there shall only be question of suspension of the delivery and/or completion. Should it be possible to yet and/or in a changed manner deliver and/or perform then Fender Innovations B.V. and the customer shall, possibly upon adjustment of the amounts payable by the customer, be held to make use of this possibility.
- 15.4. Should the situation of force majeure continue for more than 2 months then the parties shall be entitled to terminate the agreement through written dissolution. That which has already been delivered pursuant to the agreement shall be settled proportionately.

Article 16. Confidentiality

- 16.1. Both parties are bound by confidentiality with regard to all confidential information that they obtain from each other or from a different source within the framework of their agreement.

Information shall be deemed to be confidential if this has been communicated by the other party or if this follows from the nature of the information. The party receiving confidential information shall only use this for the objective for which it is made available.

- 16.2. Should Fender Innovations B.V. in pursuance of a statutory provision or a judicial order be held to supply confidential information to a third party designated by the law or the competent court and Fender Innovations B.V. cannot rely on a statutory privilege or a privilege acknowledged or allowed by the court then Fender Innovations B.V. shall not be held to pay any compensation or provide indemnification and the customer shall not be authorised to dissolve the agreement on account of any damages consequently incurred.

Article 17. Intellectual property

- 17.1. Fender Innovations B.V. shall at all times retain all intellectual property rights with regard to concepts, documents, images and drawings prepared and made available by the same.
- 17.2. The customer is not allowed to without written consent of Fender Innovations B.V. copy, reproduce or disclose the available concepts, documents, images and drawings, either in full or in part, other than for internal use.

Article 18. Closing provisions

- 18.1. The Dutch text shall always be decisive for the interpretation of the content and the scope of these general terms and conditions.
- 18.2. Dutch law is applicable to each and every agreement between Fender Innovations B.V. and the customer.
- 18.3. All disputes concerning agreements between the customer and Fender Innovations B.V. are brought to the cognisance of the competent court in the district in which Fender Innovations B.V. holds its registered office.