

## Terms of sale and delivery

Flextrack

Skagerrakvej 1, DK-6715 Esbjerg N

CVR no 19 67 05 46

Version 1.0

Valid from 2020.01

### 1. General information

- 1.1 The present terms of sale and delivery shall apply between Flextrack (hereinafter referred to as "Flextrack") and the customer (hereinafter referred to as the "Customer") in connection with any sale unless they have explicitly been deviated from or modified by other written agreement and it can be established without any doubt that the intention was to deviate from the present terms. The customer accepts the terms by placing his order or confirming an offer from Flextrack.
- 1.2 Flextrack may refuse to deliver if the Customer does not accept the present terms of sale and delivery.
- 1.3 Flextrack employees shall not be authorised to enter into oral agreements in addition to or contrary to the present terms of sale and delivery.
- 1.4 The customer is informed that Flextrack may on an ongoing basis change the terms, and the Customer is therefore requested to take note of the terms whenever an agreement is made with Flextrack.

### 2. General contact and business information

- 2.1 The full name, physical address and contact information of Flextrack are as follows:  
Flextrack  
CVR 19 67 05 46  
Skagerrakvej 1  
DK-6715 Esbjerg N
- 2.2 The customer may contact Flextrack support during the opening hours of Flextrack, i.e. Monday – Thursday 8.00 am – 4.00 pm and Friday 8.00 am – 3.30 pm at +45 76 13 44 44.

### 3. Technical information, information, product information, drawings, catalogues descriptions, etc.

- 3.1 The illustrations, dimensions, weights, etc., in the brochures, sales materials, etc., of Flextrack are only for your information and shall only be binding to the extent to which explicit reference has been made to them in offer or order confirmation.
- 3.2 Flextrack reserves the right to change the execution without prior notice to the customer. Changes made and consequent cancellation of the purchase shall not entitle the customer to any type of compensation.
- 3.3 All drawings and technical documents handed over to the Customer before or after conclusion of the agreement shall remain the property of Flextrack. Drawings and technical documents shall only be used for manufacturing, commissioning, operation and maintenance of the goods delivered and shall not without Flextrack's written consent be copied and/or used towards a third party.

#### **4. Conclusion of agreement – offer and order confirmation**

- 4.1 A binding agreement shall not have been made until the Customer has accepted a written offer in accordance with the content of the offer, or until Flextrack has either started delivery or forwarded written order confirmation regarding a customer offer.
- 4.2 The Customer shall only be entitled to claim the content of individual agreements and order confirmations and the information stated in connection with the order. In case of inconsistencies between offer, information stated and order confirmation, the order confirmation shall prevail.
- 4.3 Any offers made shall be considered subject to confirmation and shall – unless otherwise stated – apply for 30 days from the date of the offer. Furthermore, offers shall always be subject to the goods being unsold, even if this does not appear explicitly from the offer.
- 4.4 The Customer shall be obliged to check order confirmations forwarded. Any objections to the content of the order confirmation shall be made immediately and in writing.

#### **5. Prices**

- 5.1 Unless otherwise explicitly stated, all prices shall be in DKK exclusive of VAT. All prices shall be current prices, and Flextrack shall be entitled to change the prices; however, this shall not apply to the prices for goods and/or services for which orders have already been placed.
- 5.2 Reservations are made for price changes, errors, wrongly stated prices and other circumstances which may lead to incorrect prices. In such cases, Flextrack shall be entitled to cancel an agreement which has been concluded and shall not be liable for losses as a consequence thereof.
- 5.3 Unless otherwise agreed in writing, the costs of installation and commissioning shall not be included in the prices stated.

#### **6. Payment**

- 6.1 Payment shall be made in accordance with the order confirmation or invoice forwarded by Flextrack. Unless otherwise stated in the order confirmation or the invoice, the purchase amount shall be due for payment 14 days after the date of the invoice. Flextrack shall be entitled to issue invoice as soon as the order has been registered.
- 6.2 Flextrack shall be entitled to demand that delivery and/or production of goods can only be effected against full or partial advance payment.
- 6.3 Flextrack shall be entitled to examine the Customer's creditworthiness and obtain information about the employees of the Customer who are entitled to make purchases, etc.
- 6.4 If the terms of payment are exceeded, the Customer shall pay interest at 2 per cent per month or fraction thereof on the balance due from the due date until payment is made. Flextrack shall be entitled to charge a reminder fee of DKK 100.00 for each reminder.
- 6.5 In case of default on payment, Flextrack shall be entitled to withhold other supplies to the Customer which are in progress but which have not yet been effected. Flextrack shall furthermore be entitled to

prevent the handing over of goods forwarded and to cancel offers and/or order confirmations previously issued, until the Customer has paid the purchase amount and any interest. Although other terms of payment may previously have been agreed with Flextrack, Flextrack shall in case of delayed payment of the purchase amount be entitled to make future deliveries conditional on cash payment or on the Customer's provision of necessary security.

- 6.6 If delivery is postponed due to circumstances with the Customer, the terms of payment shall not change.
- 6.7 The Customer shall not be entitled to withhold payment of invoice amounts. This shall also apply in case of complaints made before the due date of the invoice.

## 7. Delivery

- 7.1 The time of delivery shall be calculated from the latest of the following dates:
  - a) Confirmation by Flextrack of the Customer's order.
  - b) Clarification of all technical and commercial issues.
- 7.2 The expected time of delivery shall appear from the offer made. The time of delivery has been fixed as exactly as possible according to the best possible estimate. Flextrack accepts no liability for direct or indirect losses as a consequence of exceeding the time of delivery.
- 7.3 If the offer contains no information about time of delivery, delivery shall be made within a reasonable period, which may always be at least 30 days. Part delivery may be made.
- 7.4 Flextrack shall inform the Customer of possible deviations from the estimated time of delivery stated.
- 7.5 INCOTERMS 2010 EXW shall apply. Unless otherwise agreed, delivery shall always be made ex factory. If another place of delivery has been agreed, the Customer shall cover the costs of transport and carry the risk regarding the transport of the goods. This means that the risk passes to the Customer when the article has been made available to the Customer at the address of Flextrack or has been handed over to a carrier.
- 7.6 If delivery cannot be made because of the Customer's circumstances, the goods shall remain at the Customer's expense and risk in the warehouse of Flextrack or a third party. Flextrack shall be entitled to charge warehouse rent and to have its costs, etc., covered.
- 7.7 If because of Flextrack's material delay, the Customer chooses to cancel the agreement, the Customer shall only be entitled to repayment of any payment already made regarding the delayed service and not to compensation for any other payments made. The Customer shall have no other remedies for breach regarding the delay and shall thus not be entitled to claim any type of compensation, including compensation for operating loss, consequential loss or other indirect losses.
- 7.8 If Flextrack's delay is due to circumstances for which the Customer is responsible, Flextrack's time of delivery shall be extended by the number of days corresponding to the delay. If because of delay on the part of the Customer, Flextrack cannot use its internal resources as expected, Flextrack shall be

entitled to claim payment for the employees which were to deliver the service and for the extraordinary resources which Flextrack had to use as a consequence of the delay.

- 7.9 Flextrack makes reservations for goods sold, any price errors, unexpected interruptions of operations, and delays and failure to deliver on the part of sub-suppliers. The Customer shall be informed immediately when the order has been placed.

## **8. Delay**

- 8.1 If delivery is not made by the time of delivery agreed, cf. item 7, the Customer shall make a claim to Flextrack and fix a reasonable deadline for delivery. If delivery has not been made by such deadline, the Customer shall by written notice to Flextrack be entitled to cancel the agreement unless the delay is due to force majeure, cf. also item 14.
- 8.2 If the delay entitling the Customer to cancel the agreement covers only part of the total supply, the Customer shall only be entitled to cancel the agreement regarding the part of the supply which is delayed.
- 8.3 The Customer shall have no other remedies for breach in case of delay.

## **9. Complaint and defects**

- 9.1 A complaint shall only be considered justified when the Customer has met his general duty to examine immediately on delivery according to the general rules of Danish law. Complaints towards Flextrack regarding defects which were or ought to have been discovered in connection with such examination shall be made no later than two (2) weeks after the Customer has received the article and/or the service. Otherwise the complaint shall be rejected as having been made too late.
- 9.2 Complaints regarding deviating volume shall be made no later than eight (8) days after delivery. Otherwise the complaint shall be rejected as having been made too late.
- 9.3 The complaint shall be in writing. A complaint shall not exempt the Customer from observing the terms of payment agreed, cf. also item 6.7.
- 9.4 Complaints regarding defects which were not and ought not to have been discovered in connection with the duty to examine on delivery shall be made immediately when the defect can be discovered and no later than by the end of the warranty period.
- 9.5 The Customer's complaint shall be accompanied by pictures which document visually that the article and/or the service is defective.
- 9.6 For hardware, Flextrack shall for a period of 12 consecutive months after invoice date undertake to redeliver or repair at the option of Flextrack in case of defects due to defects in construction, materials or manufacturing.
- 9.7 For software, Flextrack shall for a period of six (6) months after invoicing undertake to remedy possible defects.

- 9.8 For software delivered by a third party, Flextrack shall have no responsibility but shall transfer rights granted to the Customer.
- 9.9 The responsibility of Flextrack for defects shall not include defects which are due to construction or execution prescribed by the Customer. Flextrack shall not be responsible for defects which are due to changes, repairs or use which have not been approved in writing by Flextrack.
- 9.10 Flextrack shall decide whether defects shall be remedied at the Customer's address or with Flextrack. The liability to remedy defects shall not include costs of transport, travelling and/or forwarding.
- 9.11 Costs in connection with demounting and mounting shall not be covered by the liability to remedy.
- 9.12 Defective parts to be replaced or repaired shall be the property of Flextrack and shall be returned to Flextrack at the Customer's expense.
- 9.13 Flextrack shall not accept any responsibility or liability for damage to other materials or other property, operating loss, loss of profit or any other consequential loss, regardless of the reason for such loss.
- 9.14 The Customer shall have no other remedies for breach against Flextrack.

## **10. Conditional sale**

- 10.1 The sale of the article was a conditional sale and the article shall remain the property of Flextrack until the Customer has paid the entire purchase amount plus interest and costs and any costs regarding the article sold which may have been paid by Flextrack on behalf of the Customer.

## **11. Product liability**

- 11.1 Flextrack assumes product liability for injury or damage caused by products or services delivered by Flextrack in accordance with the stipulations of the legislation on product liability provided that the damage is due to a defect in the product delivered and provided that the product was used in accordance with its purpose and the accompanying instructions. Any product liability on the basis of case law is explicitly waived.
- 11.2 The product liability of Flextrack shall not include damage to the product itself.
- 11.3 Furthermore, the product liability shall not cover financial loss in connection with replacement, repair, etc., of the defective product delivered, operating loss, loss of time, lost profit, and similar indirect losses as a consequence of damage or injury otherwise covered.
- 11.4 Furthermore, the product liability shall not cover damage to or loss regarding objects which the defective product has been made part of, integrated into or included in, or loss regarding objects for the production or processing of which the defective product is used.
- 11.5 The product liability shall only include damage caused by a product or service delivered when the product/service has been used in Denmark.

- 11.6 To the extent that product liability is imposed on Flextrack towards a third party, the Customer shall be obliged to indemnify Flextrack to the extent that Flextrack's liability is limited in the present terms of sale and delivery. If a third party makes a claim against one of the parties regarding liability according to the present item 11, such party shall immediately inform the other party accordingly. Flextrack and the Customer shall be mutually obliged to accept legal proceedings at the court or arbitration court dealing with claims for compensation made against one of them on the basis of damage or loss allegedly caused by the supply.
- 11.7 The maximum claim which can be made against Flextrack for product liability for damage to property shall be DKK 10 million.

## **12. Particularly about software**

- 12.1 "Software" shall include all software products delivered, including back-up copies, documentation and software media.
- 12.2 Software and all associated rights, including copyrights and industrial rights, etc., shall remain the property of Flextrack, unless they are delivered by a third party in which case the terms of such third party shall apply.
- 12.3 The end customer shall not be entitled to sell, pledge, hand over, lend or let software, fully or in part, to others regardless whether this is done free of charge or against payment.
- 12.4 The Customer shall, however, be entitled to transfer his rights and obligations, provided that the Customer himself stops any use of software and associated hardware.
- 12.5 The Customer shall not be entitled to remove trademarks, brand names, etc.

## **13. Limitation of liability**

- 13.1 Flextrack shall not be liable for a) delay, b) cancellation of order, c) violation of third party rights.
- 13.2 Regardless of the basis of a claim and regardless of the extent of negligence, Flextrack shall not be liable for indirect loss or consequential loss, such as operating loss, loss of profit, loss of data or costs in connection with reestablishment of data, loss of goodwill, corruption of messages, loss of expected savings, etc. The liability of Flextrack for any loss or damage shall be limited to the amount paid by the Customer for the article (or lack thereof) on which the claim is based.
- 13.3 The financial liability of Flextrack, where such liability has not been waived, shall always be limited to the price of the defective article.
- 13.4 To the extent that liability towards a third party is imposed on Flextrack, the Customer shall be obliged to indemnify Flextrack to the extent of the limitation of Flextrack's liability according to the present item 13.

## **14. Force majeure**

- 14.1 Flextrack shall not be liable towards the Customer when circumstances occur after the conclusion of the agreement which prevent or delay Flextrack's fulfilment of the agreement.

Such circumstances may be war, mobilisation, riots and unrest, acts of terrorism, natural disasters, strikes, lockout, computer virus, hacking, requirements of public authorities and/or owners of rights, or other circumstances beyond the direct control of Flextrack.

### **15. Personal information**

15.1 By accepting these terms of sale and delivery, the Customer also accepts that Flextrack may process the Customer's personal information which the Customer discloses to Flextrack in connection with the order. Flextrack shall not without the Customer's consent use such information for any other purposes than those stated in the present terms of sale and delivery or disclose them to others. Furthermore, Flextrack shall be entitled to disclose such information if Flextrack is requested to do so according to legislation or in reply to a valid request from a law enforcement authority or a public authority.

### **16. Governing law and venue**

16.1 Any dispute which may occur between Flextrack and the Customer shall be governed by Danish law, excepting CISG and rules regarding conflicts of law.

16.2 Any dispute which may occur between Flextrack and the Customer shall be decided by arbitration at Danish Arbitration according to the rules issued by Danish Arbitration which apply when the arbitration is initiated.

### **17. Other conditions**

17.1 If any part of these terms of sale and delivery is considered illegal or invalid and cannot be enforced, this shall not affect the validity and enforcement of the remaining part of these terms of sale and delivery.