

General Terms and Conditions of Business of Skinrock AG

I. Scope, Applicability and Amendments

1. These general terms and conditions of business (herein after referred to as the “**T&C**”) of Skinrock AG (“**Skinrock**”) apply to any offers, solicitations for offers, sales, distributions and deliveries of Skinrock to any of its distribution partners and end-users (all of them hereinafter the “**Customer(s)**”) and any related issues.
2. These T&C are part of any offer or confirmation which Skinrock will dispatch to any Customer or any agreement or similar undertaking which will be concluded between Skinrock and any Customer.
3. Any agreement between Skinrock and any counterparty shall be subject to the respective general terms and conditions of Skinrock which are in force at any given time.
4. The prevailing version of these T&C may be obtained free of charge from the websites of Skinrock at www.skinrock.ch.
5. Skinrock shall have the absolute and unrestricted right to amend these T&C as well as any Product Specifications at any time in any respect without any prior notice to any Customers.

II. Definitions and Interpretation

1. Definitions

Unless stated otherwise in any offer or confirmation of Skinrock or a frame work agreement between Skinrock and any Customer, the following terms shall have the meaning given to them below:

“**Business Day**” shall mean any day other than a Saturday or Sunday which is not a public holiday at the registered offices of the Principal, the Manufacturer or the respective Customer.

“**Container**” shall mean a quantity of 4’500 square meters (m2) of Products (excl. Additives).

“**Force Majeur**” shall mean an event or circumstances which occur in a Party’s sphere of risk, prevents it completely from performing its duties and fulfilling its obligations under this Agreement, is beyond the respective Party’s reasonable control and could typically not be insured, such as industry- or country-wide strikes organised by the respective trade union, official decrees, traffic blockades, civil conflicts (including acts of piracy), natural hazards such as floods or earthquakes, and limited or no availability of the raw materials due to limited resources or a prohibition to dig or export the raw materials.

“**Intellectual Property**” shall mean any intellectual property and related rights such as patents, designs, trademarks, copy, name and personal rights and rights related to knowhow.

“**Invoice Amount**” shall mean the amount which a Customer has to pay for a Product including the Price and any taxes (such as VAT), duties and levies and any costs for packaging, transportation, insurance and delivery.

“**Large Quantities**” shall mean quantities of Products (excl. Additives) of $\geq 4’500$ m2 per one single order.

“**Product(s)**” shall mean any Skinrocks, i.e. a wafer-thin cut of stone with a fibre glass (or other material) seal on the back, which are currently produced by Skinrock Natural Stones India Pvt. Ltd. (the “**Manufacturer**”), including any related products such as, but not limited to, cleansing supplies, adhesives, impregnations, joint materials (such products together the “**Additives**”), which the Principal has offered, offers and will offer at any time in the future under the name and brand which is subject to these T&C and any related agreement, offer or confirmation, the specifications of the Products being set

out in the Product Specifications.

“**Price**” and “**Prices**” shall mean the price of a Product.

“**Product Specifications**” shall mean the specifications of the Products as set forth on the websites of Skinrock www.skinrock.ch.

“**Small Quantities**” shall mean quantities of Products (excl. Additives) of < 4'500 m² per one single order.

“**Writing**” shall mean any document in writing, whether physically or electronically, in which the characters have not been set manually but by machine (e.g. typed or printed letter or fax, e-mail).

2. Interpretation

- 2.1 In case of a conflict between an order of a Customer and the confirmation of Skinrock, the confirmation shall prevail.
- 2.2 In case of a conflict between a confirmation of Skinrock and a frame work agreement, the confirmation shall prevail.
- 2.3 If a frame work agreement contradicts these T&C, the frame work agreement shall prevail.
- 2.4 If these T&C and any general terms and conditions of a Customer contradict, these T&C shall prevail, even if the parties shall not have expressly agreed on or noted such precedence.

III. Object of Sale and Purchase

1. In General

- 1.1 Object of the distributions and sales by Skinrock are the Products.
- 1.2 Skinrock shall have the right to amend the specifications of any Products (including the respective Product Specifications) as well as its line and range of products at any time without any prior notice to any Customer.

2. Discrepancies and Variances

- 2.1 It is hereby understood and accepted by any Customer that the Products are natural products whose appearance, quality and quantity could vary by nature. Accordingly, variances may occur between samples of Products and the Products delivered to a Customer as well as between different lots, pieces or series of the same Product. Such variances may include, but shall not be limited to variances of colour, structure and pattern including pattern repeat and sizes.
- 2.2 Accordingly, the following, for example, but not limited to, shall not constitute a Defect:
 - slight variances in colour within the same coil of a Product or between different coils of the same Product;
 - deviations of measurements and pattern repeats up to 1 per cent.;
 - variances in colour and patterns which are material-based.
- 2.3 If a Customer requires identity of lots or pieces (*Partiegleichheit*) of any Products, it shall explicitly order such identity in its respective order.
- 2.4 If a Customer orders a special, tailor-made design, it shall accept any production-based surpluses of up to 5 per cent.. If it has ordered such tailor-made design in Small Quantities, it shall accept any surpluses.

IV. Offers, Conclusion and Content of Agreements

1. Any marketing documents such as catalogues and the like, in particular prices and technical details

provided therein are made and published for information and marketing purposes only and are without any obligations of Skinrock. Such documents may be amended by Skinrock at any time in any way without any prior notice.

2. Offers of Skinrock

2.1 Offers of Skinrock are only valid if made in Writing.

2.2 Any offers of Skinrock shall remain valid for such period of time which is stated in the offer or the respective frame work agreement. If neither of them states any respective period of time, an offer of Skinrock shall remain valid for 10 Business Days from the date on which Skinrock has dispatched the offer (post stamp or sending date in case of e-mails).

3. Orders of Customers

3.1 Any orders which a Customer places with Skinrock orally (e.g. over the phone) shall only be binding upon Skinrock if repeated in Writing, unless Skinrock decides otherwise in its sole and absolute discretion, even by implied action.

3.2 Any orders of a Customer shall be binding upon such Customer for such time which either the respective order or the respective frame work agreement states, in any case at least 10 Business Days upon Skinrock having received such order.

4. Confirmations of Skinrock (of an order of a Customer)

4.1 Any confirmation of Skinrock shall be binding upon a Customer unless the Customer opposes to such confirmation by the third Business Day after the Customer has received such confirmation.

4.2 Skinrock shall be free in accepting any unsolicited orders of a Customer (i.e. orders without preceding offer of Skinrock) either by confirming such order or by directly delivering the ordered Products within the time frame set forth in clause IV.3.2.

5. Confirmations of Customers (of an offer of Skinrock)

Any confirmations which a Customer places with Skinrock orally (e.g. over the phone) shall only be binding upon Skinrock if repeated in Writing, unless Skinrock decides otherwise in its sole and absolute discretion, even by implied action.

6. An agreement with respect to a specific order shall be deemed to be concluded if:

- in case of a solicited order of a Customer (i.e. with an offer of Skinrock and confirmation by a Customer): upon reception of the respective confirmation by Skinrock if such confirmation entirely conforms with the offer of Skinrock; the respective agreement consists of these T&C, any frame work agreement, the offer of Skinrock and any additional terms and conditions set forth in the delivery slip.
- in case of an unsolicited order of a Customer (i.e. an order of a Customer without a preceding offer of Skinrock) and a confirmation by Skinrock: upon receipt of such confirmation by the Customer; the respective agreement consists of these T&C, any frame work agreement, the confirmation of Skinrock and any additional terms and conditions set forth in the delivery slip.
- in case of an unsolicited order of a Customer (i.e. an order of a Customer without a preceding offer of Skinrock) and direct delivery of the Products by Skinrock: upon Skinrock, the Manufacturer or any commissioned third party having shipped the respective Products; the respective agreement consists of these T&C, any frame work agreement, the delivered Products together with the Product Specifications and any additional terms and conditions set forth in the delivery slip.

V. Prices; Surpluses for Packaging, Transportation, Insurance and Delivery

1. Unless provided for otherwise, any Prices are stated exclusive of any taxes (such as VAT), duties and levies and any costs for packaging, transportation, insurance and delivery.

2. Skinrock shall have the right to change any Prices at any time without any prior notice to any Customer.
3. A specific order of a Customer shall be subject to the Prices which are prevailing on the date on which Skinrock has dispatched the respective offer to the Customer (in case of a solicited order) or on the date on which Skinrock issues the respective confirmation (in case of an unsolicited order).

VI. Payments

1. Unless not stated otherwise in an offer or confirmation of Skinrock or a frame work agreement, the Invoice Amount shall be due and payable within 30 Business Days following the date of the respective invoice.
2. In case of any delayed payment, a Customer is obliged to pay late payment interest of 5 per cent. p.a. from (and including) the date immediately following the last day of the payment period set forth in clause VI.1.
3. Unless a Customer has made an objection to an Invoice Amount within 10 Business Days from the date of the respective invoice, the Customer shall be deemed to have accepted the Invoice Amount and to have admitted the respective claim of Skinrock. An invoice to which a Customer has not timely objected shall, together with such Customer's order, be deemed to be a promissory letter in terms of article 82 of the Swiss Debt Collection and Bankruptcy Act (*Schuldbetreibungs- und Konkursgesetz*).
4. In case of any objections (irrespective of whether to the Invoice Amount or to any Product(s)), a Customer shall neither be allowed to retain the payment of an Invoice Amount nor to offset such amount with its own claims (if any; irrespective of whether existing, justified or asserted).
5. In case of any late payment as well as any enforcement, execution, bankruptcy, moratorium and the like, any rebates and other benefits shall cease to exist and the Invoice Amount shall become immediately due and payable together with the respective amounts.

VII. Terms of Performance

1. Performance

- 1.1 Subject to section VIII, Skinrock shall be deemed to have performed if it has delivered the Products to the Place of Performance which has been designated in the respective frame work agreement or confirmation.
- 1.2 Unless expressly stated otherwise by Skinrock in a confirmation due to a respective express request of a Customer in its order (in case of an unsolicited order) or a by a Customer in its confirmation (in case of a solicited order) and the respective consent of Skinrock (if such statement deviates from Skinrock's offer) or in a frame work agreement, any delivery times which Skinrock has indicated in its confirmation are deemed to be approximate times and delays do neither entitle a Customer to withdraw from the respective agreement nor claim any damages or demand payment of any contractual penalty.

2. Transfer of Ownership and Risk

Ownership and risk of loss and damage of a Product shifts from Skinrock or any third party manufacturer, respectively, to a Customer upon the Product having been delivered to the Place of Performance which has been designated in the respective frame work agreement or confirmation.

3. Force Majeure

- 3.1 A party shall be released from its duties and obligations under an agreement for the duration and to the extent and effect of an event of Force Majeure.
- 3.2 It lies with the party in whose sphere of risk an event of Force Majeur occurs to undertake whatever is possible to still perform its duties and fulfil its obligations under the respective agreement. As soon as and to the extent an event of Force Majeur has discontinued, the party in whose sphere of risk such event of

Force Majeur has occurred shall continue to perform its duties and fulfil its obligations under the respective agreement and, to the extent reasonably possible, shall catch up on such duties and obligations under such agreement which it could not perform or fulfil while the event of Force Majeur persisted.

VIII. Warranties for Improper Quantity or Quality of Products (*Rechts- und Sachmangel*)

1. Examination

- 1.1 A Customer shall thoroughly examine each Product immediately upon its delivery either at the Destination or, if this is not possible, already at the Place of Performance. It shall report any damage or nonconformity of the Product (*Rechts- oder Sachmangel*) or insufficient quantity existing at the time of the examination (herein after together referred to as “**Defect**”, and a Product with a Defect as a “**Defective Product**”) to Skinrock first by phone and then by e-mail together with substantial proof of such Defect (e.g. photos) (a “**Notice**”) within 2 Business Days from the date of examination, otherwise its rights with respect to a Defective Product as set forth in sub-clause VIII.2 shall be forfeited.
- 1.2 If a Defect could not have been detected either at the Destination or the Place of Performance despite a thorough examination, the respective Customer shall render Skinrock a Notice within 2 Business Days from the date on which it has detected or learned of such Defect, otherwise its rights with respect to a Defective Product as set forth in sub-clause VIII.2 shall be forfeited.
- 1.3 The right of a Customer to claim a Defect which could not have been detected despite its thorough examination at the Destination or the Place of Performance as per sub-clause VIII.1.2 shall prescribe five years after the Delivery Date.

2. Rights of Customers

- 2.1 Upon such timely given Notice, Skinrock shall timely verify the Defect/Defected Product and the provided proof.
- 2.2 If Skinrock concludes in its sole and absolute discretion that the damage or nonconformity of the Product (*Sach- oder Rechtsmangel*), insufficient quantity or a late delivery constitutes a Defect, it shall replace the Defective Product with an intact Product or with a Product which meets the requirements or provide the respective Customer with the correct quantity of the respective Product, unless such replacement or supplementation is impossible within the time in which the respective Customer requires the respective Product. If Skinrock can replace a Defective Product with an intact Product or a Product which meets the requirements or deliver additional Products, it shall make it available to that Customer at the Destination at its own costs within such period of time or on such date which such Customer and Skinrock have agreed on. If Skinrock cannot replace a Defective Product with an intact Product or a Product which meets the requirements or provide such Customer with additional Products, it shall repay the Invoice Amount prorated to the amount of Defective Products to the Customer within 30 Business Days from the date on which such Customer has shipped the Defective Products to Skinrock.

3. Dependent Warranty (*unselbständige Garantie*)

- 3.1 Unless not stated otherwise in an offer or confirmation of Skinrock or a frame work agreement and within the limits provided for in sub-clause VIII.3.4 below, Skinrock warrants that the delivered Products are fit for the Designated Use for the duration of five years from the Delivery Date.
- 3.2 If a Customer deems a Product not fit for the Designated Use, sub-clauses VIII.1 and VIII.2 shall apply accordingly.
- 3.3 Skinrock does not take any other responsibility that the Products qualify for a specific Designated Use, nor any other use of the Products.

- 3.4 Only such characteristics of the Products shall be deemed to be warranted which the Product Specifications relating to the respective Product, any offer or any confirmation of Skinrock may provide for. Characteristics provided for in a confirmation override those in an offer which themselves override those in the Product Specifications.
- 3.5 The warranty period provide for in this clause VIII.3 shall run anew for any Product which has been delivered in accordance with sub-clause VIII.2.2, provided, however, that such period of time shall be limited to the warranty period of the Product which has initially been delivered plus six months.

4. Limitations

- 4.1 The liability of Skinrock set forth in this section VIII shall be its sole and exclusive liability towards any Customer and any of the employees, appointees, customers and providers of such Customers. Article 205 (actions for rescission of an order or reduction of the purchase price) as well as articles 201 (notification of defects) and 210 (statute of limitations with respect to warranty for non-conformances) Swiss Code of Obligation shall not apply.
- 4.2 In particular, Skinrock shall not be liable for any direct or indirect, immediate or mediate damages or losses of any Customer, its employees, appointees, customers and providers including, but not limited to, lost profits, secondary, subsequent, consequential or collateral damages or losses, punitive damages as well as any damages in terms of "product liability".
- 4.3 Each Customer is deemed to have full knowledge the characteristics of the Products and the prerequisites of the workmanlike, professional use (e.g. storage, transportation, fitting, processing, use, care and maintenance) of the Products. If not, each Customer is obliged to obtain any information which is necessary to have the requisite knowledge of said use of the Products. Skinrock explicitly rejects any liability which may be related to lack of knowledge of a Customer with respect to such characteristics and prerequisite of use of the Products.
- 4.4 It is understood by any Customer that the Products are natural products whose appearance, quality and quantity could vary by nature. To the extent any defects claimed by a Customer relate to such variances in appearance, quality and quantity by nature (cf. clause III.2), such defects are not Defects in the sense of these T&C any Customer's rights under section VIII shall be precluded.
- 4.5 Skinrock's liability shall further be precluded if the respective Products have not been used for the Designated Use or a Customer, its customers or any other users have not fully adhered to any instructions of Skinrock, in particular with respect to laying and installation. Within the limits provided by this section VIII, Skinrock's liability shall be limited to damages which are adequately caused by defects in the material and or in the manufacture of the Products.

5. Return Shipments

- 5.1 Subject to Skinrock's consent and below conditions, a Customer may return purchased Product(s) to Skinrock if they inform Skinrock in Writing not later than 30 Business Days from the date on which it has received such Product(s)
- 5.2 Return Shipment shall only be admissible if the Products still are in their initial wrapping. No return shipment shall be permissible for any Products the wrapping of which has already been opened, any custom-made Products and any Additives. Any return shipment shall be made at the risk of, and any related costs and expenses shall be borne by, the respective Customer.
- 5.3 Skinrock shall repay the Invoice Amount under deduction of the respective reduction amount within [30 Business Days] upon reception of the returned Products, whereby reduction amount shall be determined by Skinrock in its sole and absolute discretion, depending, amongst others, on the conditions at which the returned Products have arrived at Skinrock and any costs and expenses which Skinrock may incur in relation to such return shipment.

IX. Intellectual Property

1. Nothing in any agreement shall be construed as a transfer of any Intellectual Property from the Skinrock or the manufacturer of the Products to any Customer of Skinrock or any of its employees, appointees or contractors.

X. Confidentiality, Non-Competition and Non-Solicitation

1. Each Party undertakes, and procures that its employees, appointees and contractors undertake, to hold in absolute confidence all and any business or trade secrets or other confidential information relating to the other Party and its business as well as the relationship contemplated by this Agreement which it may receive by virtue of this Agreement and any related discussions and communications, and not to use, disclose or reproduce such information other than provided for herein.
2. A Customer shall neither directly nor indirectly (e.g. by inducing any of its employees, appointees or contractors or any other third parties), and shall procure that any of its employees, appointees and contractors do neither directly nor indirectly, enter into any direct or indirect business relationship with the Manufacturer, build up a business which is equal or similar to the businesses of the Principal, of the Manufacturer or the Products or distribute or market otherwise any products which could directly or indirectly compete with the Products, the Principal or the Manufacturer without the prior written consent of the Principal which the Principal may give or deny in its sole and absolute discretion.
3. Skinrock shall have the right to judicially enforce the confidentiality as well as the non-competition and the non-solicitation undertaking of any Customer.

XI. Communications and Notices; Fulfilment of Terms

1. Any notice under any agreement shall be made to the other party in Writing to the address stated on the front page of the respective agreement or, if a party has provided the other party with its e-mail address, to such e-mail address.
2. The party who sends a notice to another party shall bear the risk that the notice is received.
3. Each party acknowledges that any e-mail which the other party receives from it shall be deemed to be written and dispatched by the person who shall be attributed to the address of the sender, irrespective of whether such e-mail has effectively been written by such sender or has reached the other party unaltered. If a party transmits statements and instructions via e-mail, the other party may assume that the person who has sent such statement or instruction has been authorized to do so.
4. Any notice or payment shall be deemed to be made within the time frame stated in these T&C or any agreement, order, confirmation or other document made under the inclusion of these T&C if, (a) with respect to a notice, such notice has either been received by the receiving party within such time frame or has been dispatched by the dispatching party and the post stamp (letter) or sending date (fax, e-mail) lies within such time frame, and (b), with respect to payments, the amount has been credited to the account of the receiver within such time frame.

XII. Miscellaneous

1. Unless not otherwise provided in an offer or confirmation of Skinrock or the respective frame work agreement, the Parties may exercise or waive any rights in their sole and absolute discretion, subject, however, to the principle of utmost good faith.
2. The failure of a party to enforce any of the provisions of an agreement or any rights in relation thereto shall in no way be considered as a waiver of such provisions or rights or in any way affect the validity of the respective. Any waiver of any claim under or in connection with any agreement shall only be valid if made in Writing.

3. Any amendments to any agreement must be made in writing duly signed by all parties thereto.
4. No party may transfer an agreement or any of its duties, obligations or rights thereunder, whether fully or partially, to any third party without the prior written consent of the other party, except as provided for in the respective agreement.
5. The invalidity or unenforceability of any provision of a confirmation, a frame work agreement or these T&C or part thereof shall not affect the validity or enforceability of the remainder of the respective confirmation, frame work agreement or these T&C. The invalid or unenforceable provision or part thereof shall be replaced by a new provision, valid and enforceable, which preserves the original intention of the parties, including without limitation the economic intention.

XIII. Governing Law and Jurisdiction

1. These T&C and any agreement which is made with the inclusion of these T&C as well as any orders which are placed under such an agreement and any issues arising therefrom or in connection therewith shall be governed by, and construed in accordance with, the laws of Switzerland, under the exclusion of any laws of conflict (such as the Swiss Private International Law (*Bundesgesetz über das internationale Privatrecht*)) and any international laws such as the United Nations Convention on Contracts for the International Sale of Goods.
2. Skinrock and any Customer undertake to amicably settle any disputes arising out of or in connection with these T&C and/or any agreement or order which has been made with the inclusion of these T&C. For any such dispute which Skinrock and any Customer may not settle amicably within one month following the date on which Skinrock or the Customer has placed a claim with the other party, the Commercial Court of the Canton of St. Gallen, Switzerland shall have exclusive jurisdiction.
3. If a party other than Skinrock has its registered seat or moves its registered seat outside Switzerland, it shall be deemed to have elected St. Gallen as its special domicile in accordance with article 50 of the Swiss Debt Enforcement and Bankruptcy Act (*Schuldbetreibungs- und Konkursgesetz*) for the performance of any duties arising hereunder or in connection with any agreement (including any order placed thereunder) made with inclusion of these T&C.

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