

# General Terms and Conditions of Business

## FRANK EUROPE GMBH

### 1. scope of application

1) All offers, deliveries and services on our part are made exclusively on the basis of these General Terms and Conditions of Sale and Delivery, even if (e.g. in the case of future deliveries) the validity of these terms and conditions is not expressly agreed again. They shall not apply if the customer is a consumer within the meaning of § 13 BGB (German Civil Code).

2) We do not recognise the customer's general terms and conditions - even if we do not object to them in individual cases - insofar as they deviate from or conflict with our General Terms and Conditions of Sale and Delivery. They shall also not apply insofar as they deviate from statutory provisions. We expressly reject such terms and conditions of the customer.

3) These General Terms and Conditions of Sale and Delivery can only be effectively deviated from if we confirm these deviations in writing in advance.

### 2 Offer and conclusion of contract

1) Our offers are subject to change unless we expressly designate them as binding in writing. A contract shall only be concluded with legal effect when we confirm the orders or declarations of acceptance of the customer in writing. Similarly, any subsequent amendments or additions to the order or contract must be made in writing in order to be effective. This shall also apply in particular to any amendment of this written form clause.

2) Samples, drawings, illustrations, dimensions, weights or other information provided by us are only binding with regard to the quality of our products if this is expressly agreed in writing. We expressly reserve the right to make technically necessary as well as reasonable and expedient changes to the products.

3) If the order deviates from our offer, the customer must expressly inform us of this. This applies in particular if the ordered products are not only suitable for normal use or are to be used under unusual conditions. We shall not be liable for errors due to unclear or misleading orders.

### 3. special production / assembly

1) If the subject matter of the contract is the manufacture and delivery of a custom-made product according to the special wishes and ideas of the customer, we shall not assume any liability for defects in the product or restrictions in its use, the cause of which lies in faulty sketches, drawings and other documents made available to us as well as incorrect or incomplete information provided. Furthermore, it is agreed between the customer and us that the custom-made product is to be accepted in the ordered and confirmed quantity if it complies with the specifications set out in the order. A return of the product is excluded.

2) In the event that we also contractually assume assembly services in relation to our products, the customer shall provide us with the necessary information on the assembly site in good time prior to assembly. Upon request, we shall inform the customer after conclusion of the contract in detail which information is required. If the customer fails to provide such information, we shall not be responsible for any delays

that may occur as a result. If structural changes at the installation site are necessary for the installation, these must be arranged and carried out by the customer in good time. We shall not be liable for delays which are due to the fact that the necessary structural changes or prerequisites have not been created. Similarly, we shall not be liable if the information provided by the customer on the installation site is incorrect and the product can therefore not be installed or can only be installed at considerable additional cost.

#### **4. prices**

- 1) Unless otherwise agreed in writing, we shall be bound by the prices offered for 30 days from the date of submission of the respective offer. Orders received later shall be deemed to be a new offer to conclude a contract. Agreed prices do not also apply to subsequent orders without a separate written agreement.
- 2) All prices quoted are in euros and are net prices. They apply ex works, costs of packaging and shipping are charged separately. If the return of packaging has been agreed, the customer shall return the packaging to us. Until the return, he shall also be liable for the accidental loss of the packaging.
- 3) If, after conclusion of the contract, the costs of materials, wages, auxiliary materials or statutory levies change for reasons for which we are not responsible, we shall be entitled to increase the originally agreed price in accordance with the extent of the cost increase, disclosing the original calculation affected and the specific explanation of the increased cost factors.

#### **5 Transfer of risk / acceptance**

- 1) The risk shall pass to the Purchaser when the goods are made available and the Purchaser is notified that the goods are ready for dispatch.
- 2) If the goods are shipped to the customer at the latter's request, the risk of accidental loss shall pass to the customer at the latest when the goods are handed over to the carrier. This shall apply irrespective of who bears the freight costs and whether the shipment is made from the place of performance.
- 3) If we have also contractually assumed the assembly of the product, the risk shall pass to the customer upon completion of the assembly work, unless the product comes into the possession / care of the customer earlier.

#### **6 Delivery time, delay**

- 1) Delivery dates and deadlines are only binding for us if this has been expressly agreed in writing. In the event of delays in delivery for which we are not responsible, the agreed delivery period or delivery date shall be extended accordingly.
- 2) The start of the agreed delivery period presupposes that all technical questions have been agreed, all individual specifications have been provided by the customer and the customer has duly fulfilled all his obligations in good time. The delivery period shall be deemed to have been met if the goods have left our delivery works or notification of readiness for dispatch has been given by the time the delivery period expires.
- 3) We are entitled to make partial deliveries to a reasonable extent.
- 4) In the event of a delay for which we are responsible, the customer shall be entitled to withdraw from the contract after the unsuccessful expiry of a reasonable grace period of at least two weeks and to demand the repayment of any down payments made.

5) If the customer is in default of acceptance or otherwise culpably violates duties to cooperate, we are entitled to demand compensation from the customer for the resulting damage. Further claims shall not be affected by this.

## **7 Warranty**

1) A defect of the product does not exist if there are customary or such deviations in the dimensions, shapes, colours, etc. which are within the generally applicable tolerances and which do not impair the intended use. Wear and tear typical for use shall also not constitute a defect. The same applies in the event of unsuitable or improper use, improper storage at the customer's or a third party's premises, non-compliance with the installation and operating instructions as well as incorrect or negligent handling of the goods. Furthermore, we shall not be liable for defects caused by unsuitable operating materials or by climatic and other effects, insofar as these circumstances are not attributable to any fault on our part. If the customer specifies the design of the goods or the material to be used, liability for defects based on these specifications is also excluded, unless we had to recognise the faulty design or the unsuitability of the material or expressly informed the customer of this in writing. In all other respects, we shall provide a warranty for defects in the goods solely in accordance with the following provisions.

2) The purchaser shall inspect the goods immediately after receipt to the extent that is customary in the trade and shall notify us in writing of any defects and deviations in quantity discovered within 7 days of receipt of the goods at the latest. If defects occur later within the limitation period, which could not be discovered even with careful incoming goods inspection, the customer must notify us of these in writing immediately after discovery. The receipt of the letter by us shall be decisive for the timeliness of the complaint. If the customer does not comply with these duties of inspection and notification of defects or does not comply with them in time, all warranty rights shall be excluded unless we or our vicarious agents have fraudulently concealed the defect (§ 377 HGB).

3) At our discretion, we shall repair defects or deliver defect-free goods or parts as a replacement. At our request, the defective goods shall be sent to us. In the event of a defect, we shall bear the costs incurred within Germany up to the amount of the most favourable shipping option. In this case, we shall also bear the costs of returning the goods to the customer, whereby we shall be free to choose the type of shipment. If the subsequent performance remains unsuccessful twice for reasons for which the customer is not responsible, if it is not possible or if it is not carried out by us within a reasonable period of time, the customer may withdraw from the contract or reduce the remuneration proportionately.

4) The warranty period for our products and spare parts for them is 24 months. Unless otherwise expressly stipulated, the warranty period shall commence upon handover of the goods to the carrier or upon notification of readiness for dispatch if the goods have been completed within the agreed period and are not yet to be dispatched at the request of the customer. If we have also contractually assumed assembly services, the period shall commence upon completion of the work and handover of the assembled product to the customer. The aforementioned provisions shall not apply to a claim under a right of recourse by the customer under § 478 para. 1 and para. 2 of the German Civil Code (BGB). In this case, only the statutory provisions shall apply. Rectification or replacement deliveries shall always be made without recognition of a legal obligation and shall not cause the warranty period for the newly delivered or rectified goods to start anew.

- 5) Guarantees or warranties requested by the customer shall only be validly given by us if they have been expressly agreed in writing.
- 6) Warranty claims of the customer against us can only be effectively assigned to third parties with our prior written consent.

## **8 Liability**

- 1) We shall be liable without limitation for damages arising from culpable injury to life, limb and health as well as for other damages based on breaches of duty committed by us, our legal representatives or vicarious agents through gross negligence or with intent. The same applies to liability due to fraudulent concealment of a defect and the assumption of a guarantee for the quality of the goods as well as in the case of § 478 para. 2 BGB. Finally, liability under the Product Liability Act shall also remain unaffected by the following provisions.
- 2) In all other respects, liability for breaches of duty committed through slight negligence is excluded. This shall not apply in the event of culpable breach of a contractual obligation, compliance with which is of particular importance for achieving the purpose of the contract (cardinal obligation). In this case, we shall only be liable for the concretely proven damage to the extent that it was foreseeable for us at the time of conclusion of the contract as a consequence of the breach of duty with regard to the occurrence of the damage and the amount of the damage and was not avoidable for the customer. Liability for loss of profit and non-material damage to the customer is excluded.
- 3) The above limitation of liability shall also apply, with the exceptions stated in 1), to claims arising from culpa in contrahendo, the breach of ancillary obligations and, in particular, to claims arising from producer's liability pursuant to Section 823 of the German Civil Code (BGB).

## **9 Withdrawal**

Apart from the statutory provisions, we are additionally entitled to withdraw from the contract without compensation if

- a) the customer objects to the validity of these General Terms and Conditions;
- b) the opening of insolvency proceedings against the assets of the ordering party is applied for;
- c) the ordering party fails to fulfil existing, essential obligations towards us despite due date and written reminder without justifiable reasons;
- d) the fulfilment of the obligation to perform is no longer possible for us by means which are reasonable taking into account our interests and those discernible at the time of conclusion of the contract as well as the agreed counter-performance.

## **10 Retention of title**

- 1) Our goods remain our property until all claims against the customer have been settled. He must treat the reserved goods with care and may not pledge them to third parties or assign them as security.
- 2) The customer is entitled to resell the reserved goods in the ordinary course of business. In doing so, he shall agree a corresponding reservation of title with the purchaser. By way of security, he shall assign to us in full all claims accruing to him from the resale or for any other legal reason in this connection upon conclusion of the delivery contract. We accept the assignment. He shall remain authorised - until revoked by us - to collect the assigned claims in his own name for our account. Our authority to collect the claim ourselves remains unaffected. However, we shall only

make use of this and of the aforementioned revocation if the customer does not properly fulfil his payment obligations. As soon as we assert the retention of title against the customer, the customer's right to resell the goods subject to retention of title shall expire.

3) If the delivered goods are mixed or combined with other objects, the ordering party shall already assign its rights of ownership and co-ownership to the newly produced objects to us upon conclusion of the delivery contract and shall hold them in trust for us free of charge.

4) In the event of access by third parties to the goods subject to retention of title, the customer shall point out our ownership and notify us immediately. Any costs and damages incurred in this connection shall be borne by the customer.

5) In the event of behaviour by the customer in breach of contract, in particular if the customer ceases payments or an application is made to open insolvency proceedings against its assets, we shall be entitled to take back or mark the goods subject to retention of title and to enter the customer's premises for this purpose.

6) At the request of the customer, we shall release goods subject to retention of title in the customer's custody at our discretion if the invoice value of the existing securities exceeds our claims to be secured by more than 20 %.

#### **11. terms of payment and set-off**

1) Unless expressly agreed otherwise in writing, our invoices shall be payable within 7 days of the invoice date and delivery/service at the latest. If this payment period or any other agreed payment period is exceeded, the customer shall be in default without any further reminder.

2) Cheques or bills of exchange shall only be accepted, if at all, on account of performance, whereby we reserve the right to return bills of exchange if necessary and to demand immediate payment or the provision of other security instead if it is to be feared that the bills of exchange do not provide sufficient security. Discount and bill charges shall be borne by the customer and are due immediately.

3) If we become aware of circumstances which indicate that the financial circumstances of the customer have deteriorated significantly after conclusion of the contract, in particular if the customer does not settle our due claims and payment claims therefore appear to be at risk, we shall be entitled to make deliveries only concurrently against full or partial payment or provision of security.

4) The customer shall only be entitled to offset against our payment claims if the counterclaim is recognised by us, is undisputed or has been legally established. Excluded from this are claims of the customer due to defects of the delivered goods.

#### **12 Industrial property rights**

1) If we have to deliver according to drawings, models, samples or using parts provided by the customer, the customer shall be responsible for ensuring that industrial property rights of third parties in the country of destination of the goods are not infringed thereby. We shall inform the customer of all rights known to us, but shall not be obliged to make special enquiries in this respect. The customer shall indemnify us against claims of third parties and pay compensation for the damage incurred as a result of an infringement of property rights. If we are prohibited from manufacturing or delivering by a third party with reference to an industrial property right belonging to him, we shall be entitled - without examining the legal situation - to stop work until the legal situation has been clarified by the customer and the third

party. Should the continuation of the order no longer be reasonable for us due to the delay, we shall be entitled to withdraw from the contract.

2) Drawings and samples provided to us which have not led to an order shall be returned on request. Otherwise, we shall be entitled to destroy them three months after submission of the offer.

3) We reserve all property rights, copyrights, other industrial property rights and know-how rights to models, moulds and devices, drafts, illustrations, drawings, calculations, technical calculations, expert opinions, other documents and software provided by us, regardless of whether they were created by us or by third parties. They must be kept secret from third parties and may only be used for the execution of the respective order.

### **13. final provisions**

1) The contractual relationship shall be governed solely by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

2) If the customer is a registered trader, our registered office shall be the place of performance for all obligations arising from the contractual relationship.

3) Our registered office shall also determine the place of jurisdiction for all disputes arising from or in connection with the contractual relationship with the customer if the latter is an entrepreneur within the meaning of the German Civil Code (BGB), a legal entity under public law or a special fund under public law. The same applies if the customer does not have a general place of jurisdiction in the Federal Republic of Germany or moves its place of residence/business or usual place of residence abroad after conclusion of the contract.

4) Should individual provisions of these Terms and Conditions of Sale and Delivery be or become invalid, the validity of the remaining provisions shall remain unaffected. The contracting parties are required to replace the invalid provision with a legally valid provision that comes as close as possible to the economic sense and purpose of the invalid provision.

Bad Kreuznach, January 2019