

## **General Terms and Conditions**

### **Hans Frintrup GmbH**

#### **I. Scope of application**

1. The supplies, services and offers of the supplier are based exclusively on these General Terms and Conditions. Any different or deviating conditions of the customer shall be excluded, unless their validity has been agreed upon in writing. The present General Terms and Conditions shall also apply when the delivery of the seller has been accepted unconditionally in the knowledge of the conflicting or differing Conditions of the seller.
2. The present General Terms and Conditions shall apply for any future businesses with the customer even if they have not been expressly agreed upon again.

#### **II. Offer and conclusion of contracts**

1. Offers of the supplier are subject to changes unless otherwise stipulated in the order confirmation. Statements of acceptance and orders require the written confirmation of the supplier to be legally effective.
2. Drawings, images, metrics and weights are only binding if expressly agreed.

#### **III. Terms of delivery, delay**

1. The compliance of the supplier's obligations and terms of delivery shall be subject to the customer's due fulfillment of his contractual obligations in good time. The defense of an unfulfilled contract remains reserved.
2. In case of a customer's delayed acceptance or a culpable breach of his other duties to co-operate the supplier shall be entitled to claim compensation by the customer for the resulting damages, including any additional expenses. Any further claims shall be reserved.

In case of a customer's delayed acceptance or a culpable breach of his other duties to co-operate the risk of accidental loss or other depreciation in value of the goods passes to the customer.

3. The supplier shall be liable according to the statutory provisions insofar as the contract between the parties is a transaction at a fixed date as defined by § 286 para 2 no. 4 German Civil Code or § 376 German Commercial Code.

The supplier shall further be liable according to the statutory provisions insofar as the customer is, in consequence of the delay for which the supplier is responsible, entitled to assert that his interest in the further performance of the contract has discontinued. The legal liability further applies if the delay in delivery is based on an intentional or grossly negligent breach of contract for which the supplier is responsible. Insofar as the relevant breach of contract is not based on an intentional conduct of the supplier, the compensation for damages shall be limited to the predictable and typically occurring damage.

The legal liability shall also apply insofar as the delay in delivery for which the supplier is responsible, is based on a substantial breach of contract.

In these cases the compensation for damages shall be limited to the predictable and typically occurring damage.

4. If the supplier is in default the customer shall be entitled – if it shows that it suffered a loss as a result of the default – to 0,5%, but a maximum of total of 5%, of the delivery value.

Claims for damages of the customer for late deliveries exceeding the above mentioned thresholds are excluded also in case of a lapsed period of grace granted to the supplier. This is without prejudice to the compulsory statutory liability in cases of intentional or gross negligent conduct or injury to life, body or health.

5. If the supplier is temporarily prevented from performing, the term of delivery shall be extended by the reasonable period during which the supplier is temporarily prevented from performing especially in cases of force majeure, strike, traffic jams and other obstacles to performance that could not have been prevented by due care and for which the supplier is not responsible even if these obstacles occurred at the premises of the suppliers or manufacturer.

In any such case the supplier shall immediately inform the customer about the anticipated duration of the delay.

6. The provisions of the paragraphs 3 through 5 are not intended to make any changes to the statutory burden of the proof to the detriment of the customer.
7. The provisions of the paragraphs 3 through 5 shall leave the statutory rights of withdrawal of the customer unaffected.

#### **IV. Scope of delivery**

1. The scope of delivery shall be determined by the written order conformation of the supplier.
2. The delivery is performed in packaging units which are quoted on the price list of the supplier valid at the date of the order.
3. Partial deliveries within the agreed upon delivery terms are permitted insofar as they do not result in any disadvantages of use.

#### **V. Cancellation charges**

If the customer withdraws from a confirmed order, the supplier is without prejudice to the possibility to claim for actually higher incurred damages, entitled to claim 15% of the purchase price for the expenses incurred by the processing of the order and for loss profits. The customer reserves the right to prove that damage does not exist or has a lower value.

#### **VI. Packaging and shipment**

Plastic containers for transportation shall remain property of the supplier. The ownership in other packaging materials shall pass to the customer and are charged by the supplier. Postage and packaging expenses are charged separately. The choice of mode of shipment will be as deemed fit by the supplier.

#### **VII. Acceptance and passing of risk**

1. The customer is obliged to accept the delivery. If the customer delays the acceptance for more than 14 days from receipt of the delivery notification, the supplier shall be entitled to rescind from the contract and claim damages after the lapse of the said 14-days period. If the Customer seriously and finally rejects the delivery or is manifestly incapable of paying the purchase price upon delivery, the supplier is not requested to observe the 14-days period.
2. The delivery is performed based on the commercial clause determined on the order confirmation which is interpreted according to the INCOTERMS, as amended, valid at the date of the contract.

### **VIII. Change of prices**

Changes of prices are permitted if there are more than four months between the conclusion of the contract and the agreed delivery date. If, in the period of time between this and the completion of the delivery, the wages, costs of material or initial costs in line with market conditions increase, then the supplier shall be entitled to adequately increase the price according to the increase in costs. The customer shall only be entitled to withdraw if the price increase considerably exceeds the increase in the general cost of living between the time the order was placed and the delivery. If the customer is a merchant, a legal person under public law or a special fund under public law, changes in prices shall be permitted according to the aforementioned regulation if there are more than six weeks between the conclusion of the contract and the agreed date of delivery.

### **Xi. Warranty**

1. Legal rights accruing from defects are subject to compliance of the customer with his obligation of inspection and notification in accordance with § 377 German commercial Code.
2. If a defect appears within the limitation period the supplier shall at his option rectify the defect or deliver a substitute at no cost for the customer if the cause of the defect already existed at the time of passing of risk.  
When rectifying the defect the expenses necessary to this purpose, in particular costs of transportation, infrastructure, labor and material are borne only to that extent that such expenses are not increased due to the fact that the delivery item has subsequently been brought to a place other than the agreed place of performance.  
If and when the subsequent performance fails, the customer will be entitled, at his choice, to reduce the purchase price or to rescind.
3. The limitation period for claims for defects is 12 months commencing with the passing of risk.  
The limitation period according to §§ 438 para 1 no. 2 and § 634a German Civil Code shall remain unaffected.
4. In the event of complaints with respect to defects the customer shall be entitled to retain payments to an extent reasonably proportional to the defects occurred. The customer shall only be entitled to retain payments, if a complaint for defects is still permitted.
5. In case of a complaint for defects without cause, the supplier shall be entitled to claim the expenses incurred to him from the customer.

6. Complaints for defects are excluded in cases of only minor deviations of the agreed condition, only insignificant reductions of the usefulness, usual wear or damages occurred after the passing of risk as a consequence of incorrect or negligent handling, excessive use or special external circumstances which are not presupposed in accordance with the contract.
7. The production of special designs and customized commissioned work shall be performed at the customer's risk. Any representation as to the properties is determined expressly on the order confirmation in writing. The customer shall be liable for the correctness, completeness and feasibility of his technical specifications, even to third parties. The customer shall be further liable for customized series manufacture which are commissioned without prior prototype production unless in cases of gross negligence.
8. To the extent that the customer asserts claims for damages which are based on the intentional or gross negligent conduct of the supplier, the supplier shall be liable according to the statutory provisions. However, in cases of not intentional breach of contract, the liability of the supplier shall be limited to the foreseeable, usually occurring damages.

The supplier shall further be liable according to the statutory provisions in cases of culpable breach of an essential contractual obligation; however, in these cases the liability of the supplier shall be limited to the foreseeable, typically occurring damage. The above standing shall leave the liability of the supplier for culpable injury of life, body and health as well as the mandatory provisions of the product liability laws unaffected.

The above provisions do not impose a change of the burden of proof.

9. Unless otherwise stated in this Paragraph (IX.) the liability of the supplier is excluded.

#### **X. Retention of ownership**

1. The supplier retains title to the deliveries until receipt of all payments arising out of the business relationship with the customer.
2. The customer is not entitled to pledge the delivered goods subject to retention or transfer them by way of security.
3. In case of seizure or other interference of third parties affecting the delivered goods subject to retention the customer shall inform the supplier immediately both verbally and in writing. In these cases the supplier shall be entitled to take legal actions against the pledging party by way of the third party interference proceedings. To the extent that the pledging or the third party, respectively are not able to reimburse the court and out-of-court expenses of the supplier according to § 771 German Code of Civil Procedure, the customer shall be liable for the loss occurred.
4. The supplier shall be entitled after a reasonable deadline to return the deliveries in case of conduct of the customer which is contrary to the contract, in particular in case of delay of payment. The customer is obliged to surrender the goods. The taking back of the goods constitutes a withdrawal from the contract. The pledging of the deliveries also constitutes a withdrawal from the contract.
5. The customer shall be entitled to resell the deliveries in the ordinary course of business but in doing so he hereby assigns to the supplier all receivables in the amount of the

purchase price for the deliveries agreed between the customer and the seller (including VAT) which the customer receives from reselling against his customers or third parties. The customer shall be entitled to collect these receivables even after the assignment. This shall not affect the supplier's authority to collect the receivables; however the supplier undertakes not to collect these receivables as long as the customer fulfills its payment obligations and is not in default. In case of default, however, the supplier is entitled to demand that the customer announces the assigned receivables and their debtors, gives all information necessary for the collection, submits all associated documents and notifies the debtor/third parties of the assignment.

6. The supplier shall be obligated, upon customer's request, to release the collateral to which he is entitled insofar as the value thereof exceeds the value of the outstanding receivables which are to be secured by more than 10%.

#### **XI. Impossibility, Contract modification**

1. The customer shall be entitled to claim damages according to the statutory provisions or to rescind from the contract if the delivery is impossible. The entitlement of the customer to claims for damages in addition to or instead of delivery and to compensation of futile expenses is limited to the amount of 10% of the value of the goods which cannot be delivered as a consequence of the impossibility. Further claims of the customer in relation to the impossibility are excluded.
2. This limitation shall not apply for the liability for intentional conduct, gross negligence and injury to life, body and health.
3. The above provisions do not impose a change in the burden of the proof.
4. If an unforeseeable event within the meaning of clause III.5. occurs which after the conclusion of the contract materially changes the basis of those circumstances which have formed the basis of the contract, in particular when the economic meaning or the content of the delivery materially change or affect the business of the supplier, the supplier is entitled to demand the modification of the contract according to § 313 German Civil Code or should this be impossible or unreasonable, the supplier shall be entitled to rescind from the contract. The same shall apply to the customer.

#### **XII. Further claims for damages**

1. Further claims for damages exceeding the liability for damages provided for in clause IX. shall be excluded regardless of the nature of the claim. This applies in particular to claims for damages for defaults when signing the contract, other violation of obligations or tortious claims for compensation for property damages according to § 823 German Civil Code.
2. The same shall apply to the assertion of compensation for futile expenses instead of damages.

#### **VIII. Terms of payment, Set-off**

1. The purchase price and the compensation for additional services are due for immediate payment.

2. The statutory value added tax is not included in the purchase price. It will be separately stated on the invoice at the applicable rate at the date of the invoice.
3. Any discount requires a special written agreement.
4. The customer shall only be entitled to set-off any amounts if the counter claims are lawfully determined, uncontested or recognized by the supplier. The customer shall be entitled to withhold any amounts insofar as his counter claim is based on the same contractual relationship.
5. Cheques and bills of exchanges are only valid after cashing at a bank for payment. The acceptance of a bill of exchange requires the prior written agreement. When accepting any bills of exchange the customary discount and collection charges will be charged to the customer.

**XIV. Place of jurisdiction, applicable law, contract language and place of performance**

1. If the customer is a merchant the place of jurisdiction is the company seat of the supplier. However, the supplier shall be entitled to sue the customer at the court of his place of residence.
2. Exclusively German law shall apply with the exclusion of the UN Sales Convention and other foreign laws.
3. Contract language shall be German. The German version of all contractual agreements shall prevail in cases of disputes between the parties.