

FRIZLEN GmbH u. Co KG. **General Terms of Purchase**

1. Scope

1.1 Our Terms of Purchase shall apply exclusively. The previous terms and conditions are hereby replaced.

1.2 We do not acknowledge contradictory terms and conditions of the supplier or terms and conditions which deviate from our terms and conditions unless we had explicitly approved their validity in writing. Our Terms of Purchase shall also apply if we accept the delivery without reservation in the knowledge of contradictory terms and conditions or those which deviate from our terms and conditions.

1.3 Our Terms of Purchase shall only apply towards companies within the meaning of § 14 BGB [Civil Code] if the contract belongs to the business of the company as well as towards legal entities under public law and special assets under public law within the meaning of § 310 Par. 1 BGB.

1.4 Our Terms of Purchase shall also apply to all future business with the supplier.

2. Conclusion of contract and offer documents

2.1 The supplier undertakes to accept our order within a period of notice of two weeks and to send us a corresponding order confirmation.

2.2 The price, discount, binding delivery date as well as all numbers and reference numbers must be seen from the order confirmation. Offers, blueprints, specimens and samples of the supplier are free of charge for us and do not substantiate any liabilities for us.

2.3 Remuneration and compensation for visits or the drawing up of offers, brochures, etc. are not provided in the absence of any agreement otherwise.

2.4 We can request technical modifications to the goods and/or the temporal delivery within the framework of that which is deemed reasonable for the supplier. Implications, in particular with regard to the additional and shortfall in costs as well as the delivery dates are to be regulated reasonably by mutual agreement.

2.5 We reserve the property rights and copyrights to diagrams, drawings, calculations and other offer documents; they may not be made accessible to third parties without our explicit written consent. They are to be used exclusively for the production based on our order; they are to be returned free of charge and without request after the processing of the order. They are to be kept secret towards third parties.

3. Prices and terms of payment

3.1 The prices stated by us are binding; this shall also apply to framework orders over the whole duration of the agreement including addendum and supplementary orders. If no prices are stated the current list prices of the supplier shall apply with the deductions which are customary for the trade.

3.2 All prices are deemed "free house" to the delivery address stated by us, including the applicable rate of value added tax and packaging whereby we are entitled to determine the type of the packaging, the choice of the transport means and the transportation route as well as the transport insurance.

3.3 With the acceptance of premature deliveries the due date shall be oriented to the agreed delivery date. If the charged goods arrive at a later time than the invoice then the incoming goods date shall be deemed as the invoice date.

3.4 Insofar as not otherwise agreed in writing payments shall be made at our choice either within 14 days after receipt of the invoice with the deduction of 3% cash discount or within 60 days after receipt of the invoice net; the deadline shall however not begin before the full satisfaction of the service by the supplier.

3.5 Invoices are to be sent to us in duplicate with shipment of the goods, however separately from the goods. The order number and order date are to be stated in each invoice. Invoices which have not been properly prepared shall not be deemed as issued.

3.6 Insofar as a delivery or service can be taken into consideration which is exempted from value added tax the supplier undertakes to provide the necessary proof or to assist in its provision. For deliveries within the European Union the supplier has to be notified of its VAT identification no., prove his capacity as entrepreneur as well as assist the export in terms of the books and receipts – respectively assist in proof of import.

3.7 In case of faulty delivery we are entitled to withhold the payment with the pro rata value until the proper satisfaction. Payments made do not on the other hand mean any acknowledgement that the delivery is in line with the contract.

3.8 The supplier is not entitled without the prior written consent – which may not be unreasonably refused – to assign his claims against us or have these collected by third parties.

3.9 The supplier is responsible for all consequences and disadvantages which are incurred and suffered owing to non-compliance with these obligations insofar as he does not prove that he is not responsible for these.

4. Delivery time and delay in delivery

4.1 The delivery times stated by us are binding. Decisive for the adherence to the delivery date or the delivery deadline is the receipt of the goods at the place of receipt of use stated by us.

4.2 If the supplier recognises that an agreed delivery time cannot be adhered to for any reasons then he has to inform us thereof immediately in writing by stating the reasons and the duration of the delay.

4.3 In the event of the delay in delivery we are entitled to request a conventional penalty in the amount of 1% of the order value – a maximum however of no more than 10% - per completed week of the delay. The right is reserved to further statutory claims. We are obliged to declare the reservation of the conventional penalty by no later than with the payment of the invoice.

4.4 If the agreed delivery time is not within the agreed time we are entitled to cancel the contract after expiry of a reasonable final deadline set by us, irrespective of further statutory claims. If the supplier is responsible for the delay then we can, at our choice, request compensation of the damages suffered by us due to the delay or, after expiry of the afore-mentioned deadline, damages instead of the service or reimbursement of fruitless expenses.

4.5 Force majeure, industrial disputes or other unavoidable and unforeseeable events shall only release the supplier from the service obligations for the duration of the interference and to the extent of its effect. The supplier undertakes to provide the necessary information immediately within the framework of that which is deemed reasonable and to adjust its obligations to the changed circumstances in good faith. We are released from the obligation to accept the ordered delivery/service in full or in part and insofar entitled to cancel the contract if the delivery/service can no longer be used owing to the delay caused by such circumstances by us – by taking such financial aspects into consideration.

4.6 In case of an earlier delivery than agreed we reserve the right to carry out the return shipment at the supplier's costs. If the goods are not returned in case of premature delivery then the goods shall be stored in our company until the agreed delivery time at the costs and risk of the supplier.

5. Delivery, passing of risk and packaging

5.1 We shall only accept partial deliveries at an explicit agreement. The remaining residual quantity is to be listed with agreed partial shipments.

5.2 A delivery note in a single copy is to be enclosed with the goods, which contains our precise order data in addition to the exact designation of the scope of the delivery according to articles, type and quantity etc. If the supplier fails to do this, then delays in the processing are unavoidable for which we do not have to assume responsibility.

5.3 The risk shall pass at the delivery address stated by us.

5.4 The place of service for the take-back obligation of the supplier according to the § 4 VerpackV [German Packaging Regulations] is the place at which the goods are handed over.

5.5 Charged packaging is, insofar as it can be re-used, to be credited at the full charged value upon return. The credit note is always to be submitted as a single copy by stating the invoice, with which the debit was carried out.

6. Defects of property and title

6.1 All objects delivered by the supplier and all services provided by him must comply with the newest status of technology, the relevant legal provisions and the regulations and guidelines of authorities, trade associations and specialist associations. Insofar as deviations from these regulations are necessary in an individual case the supplier must obtain our written consent hereto.

A part of basis of the individual procurement contracts are the details of the order placed by us together with the associated documents such as drawings, technical terms of delivery, building as well as material regulations.

6.2 If the supplier has misgivings about the type of execution requested by us then he has to inform us thereof immediately in writing.

6.3 The delivery is always accepted subject to a check of quantity- and quality control. A responsibility for examination shall only exist with regard to obvious or easily recognisable deviations in quantity and quality. We must report determined deviations to the supplier immediately. The complaint shall in any case be deemed as submitted in time insofar as it is received by the supplier within a deadline of 8 days, beginning from the receipt of the goods or with hidden defects from discovery.

6.4 In the case of a defect we shall be entitled to the statutory rights including the rights to recourse according to §§ 478, 479 BGB without reduction, whereby the place of the warranty is the stated place of use. We shall also be entitled to the rights to recourse against the supplier according to §§ 478, 479 BGB in the corresponding application if only delivered parts for the object which was newly produced by us.

6.5 If the supplier is in delay with the substitute delivery or remedy of the defects we are entitled to carry out the substitute procurement or remedy of defects ourselves or have these carried out by third parties at the costs of the supplier. The same shall apply in case urgency is required and the supplier cannot be contacted in time or is not in the position to remedy the defect or procure a substitute in time.

6.6 Claims owing to defects of quality and title shall become statute-barred in 36 months from the passing of risk insofar as not explicitly otherwise agreed. For delivery parts, which could not remain in the plant during the examination of the defect and/or the remedy of the defects this statute-of-limitations or an ongoing guarantee shall be extended by the time during which the operation is interrupted. The statute-of-limitations or guarantee shall begin to apply new for improved or newly delivered parts at this time – beyond the statutory inhibition.

7. Product liability, indemnification and liability insurance cover

7.1 Insofar as the supplier is responsible for damages to a product it undertakes to indemnify us insofar from claims for damages of third parties upon first request if the cause lies in its scope of control and/or organisation and its is liable itself in the external relationship.

7.2 Within the framework of its liability for damages within the meaning of Subclause 7.1 the supplier is also obliged to reimburse possible expenses according to §§ 683, 670 BGB as well as according to §§ 830, 840, 426 BGB, which is derived from or in connection with a recall action carried out by us. We have to inform the supplier – insofar as possible and deemed reasonable – about the contents and scope of the recall measures which are to be carried out and to give it the opportunity to make a statement. This shall have no effect on other statutory claims.

7.3 The supplier undertakes to maintain product liability insurance with a sum insured of EUR 5 million per physical injuries/property damages – flat rate; if we are entitled to further claims for damages these shall remain unaffected.

8. Construction protection and property rights

8.1 Insofar as the ordered goods are parts own construction or the tools and production means are our property the supplier undertakes neither to deliver these now nor at a later time to another party, nor to offer these still. Models, drawings, tools, samples etc., which we make available to the supplier in order to execute an order, shall remain our property and are to be returned or stored with the settlement of the order with a report.

8.2 The supplier shall be liable towards us for ensuring that no rights of third parties are infringed in connection with its delivery, whereby it is known to the supplier that the sell end products - worldwide.

8.3 If a claim is therefore asserted against us by a third party then the supplier undertakes to indemnify us from these claims upon first written request. We are not entitled to reach any agreements with the third party – without the consent of the supplier – in particular not to reach a settlement.

8.4 The indemnification obligation of the supplier refers to all expenses necessary accrued to us in connection with the assertion of a claim by a third party.

9. Reservation of title and provisions

9.1 An extended or expanded reservation of title on the part of the supplier with regard to the goods delivery to us is not recognised.

9.2 Materials or parts provided by us shall remain our property. They may only be used within the framework of our order. The processing of the materials and the assembly of the parts by the supplier are carried out for us. In case of connection, mixing or processing of our materials and parts with other objects which do not belong to us we acquire the co-ownership to the new object in the ratio of the value of our materials and parts to the other processed objects at the time of the connection, mixing or processing. If the object of the supplier is to be seen as the main object then it is deemed as agreed that the supplier assigns pro rata co-ownership to us. Our sole ownership and the co-ownership are stored by the supplier free of charge for us.

10. General provisions

10.1 The supplier is not entitled to forward the order to third parties without our prior consent.

10.2 We will treat the personal data of the supplier in line with the Federal Data Protection Act.

10.3 Insofar as not otherwise explicitly agreed the place of performance for the delivery obligation is the delivery address or place of us requested by us. The place of performance for all other obligations of both parties is our registered seat.

10.4 The place of jurisdiction is our registered seat.

10.5 The contract is subject to the law of the Federal Republic of Germany under the exclusion of the law on conflicts, the standard UN Convention on the International Sale of Goods or other conventions concerning the law of the purchase of goods.

11. Written form, partial nullity

11.1 Amendments to these General Terms of Purchase are only valid if they are agreed in writing.

11.2 Should one provision of the contract and the General Terms of Purchase be invalid or non-enforceable for any reason then this shall have no effect on the validity of the other provisions. The invalid/unenforceable provision shall be replaced by a provision which is equivalent from a financial point of view as far as possible. The afore-mentioned shall apply accordingly to contractual loopholes.

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