

General terms and conditions for customers outside the EU – Frenzelit Werke GmbH, 95460 Bad Berneck

I. Basic Terms

These present Conditions of Sale are applicable to each and every offer and accepted order as well as for every delivery effected by us; they also apply to every future business relationship between us and anyone placing an order. Other conditions than the present ones, including but not limited to purchasing conditions of the customer, are inapplicable even if not explicitly or otherwise rejected. By accepting goods, the customer waives any application of its own conditions of business, even if those imply exclusivity. Oral agreements or warranties are invalid without our written confirmation.

II. Prices

- (1) Our prices are net, in Euro, generally ex works, not including packaging, value added tax to be added.
- (2) In case that after our offer or after order confirmation, essential cost factors change considerably prior to delivery, supplier and customer will come to terms concerning an adaptation of prices.

III. Technical Modifications

- (1) Technical modifications increasing or maintaining the value of the products we sell and not limiting their functionality are reserved till delivery.
- (2) In as far as nothing is agreed explicitly, we can determine technical characteristics or measures of performance or delivery in accordance with tolerance values customary in trade. The consideration of tolerance values customary in trade is understood to be agreed.

IV. Customer's Technical Indications

- (1) We do not have to examine any information or technical specification given by a customer upon which production and/or delivery of the objects of an agreement is based.
- (2) We are entitled to base the production and delivery of subject matters of all contracts upon technical indications, product descriptions, or product characteristics, given by the customer. Doing so will not constitute the breach of any duty of ours.
- (3) In as far as we have to deliver in accordance with drawings and/or by using parts submitted by the customer, the latter has to warrant that no industrial property rights of any third party will be violated thereby. The customer has to inform us about existing industrial property and other rights known to the customer. The customer has to keep us harmless of any claim raised by third parties and to indemnify us for damage suffered by ourselves.

V. Call-off Orders

- (1) In as far as downtime, production time or acceptance periods for call-off orders are not fixed by agreement, we can demand a binding determination thereof no later than three months after the order was placed and confirmed.
- (2) If nothing is explicitly agreed to the contrary, we have the right to deliver and invoice the entire quantity of a call-off order no later than twelve months after date of order.
- (3) In as far as the customer does not comply with this demand within 3 weeks after reception, we can fix an additional respite of at least 2 weeks and after this additional respite's expiration withdraw from contract and/or claim indemnity on grounds of non-fulfilment.

VI. Payment

- (1) If not agreed otherwise, payments are due immediately upon date of invoice, net without any deduction.
- (2) The customer is in default at latest 30 days after due date and reception of the counter-performance. From the beginning of default, interest for default amounting to 8 percent points above the basic rate of interest of the European Central Bank can be claimed in as far as the customer is not a final user. Claiming further default damage is explicitly reserved.
- (3) In case of customer's payment delay, we also can, irrespective of payment periods agreed, demand immediate payment of all pending credits and/or withdraw from any supply contract still existing including contracts without payment delay, or optionally claim indemnity on grounds of non-fulfilment.
- (4) We are not obliged to accept payment by bill of exchange or cheque. If nevertheless we do so, this will only be done on account of performance.
- (5) On principle, any payment is accounted for the oldest debt, irrespective of diverging provisions on the part of the purchaser. Part deliveries and part performances can be invoiced separately.

VII. Uncertainty Objection

- (1) We can withhold our performance if, after contract conclusion, we realise that our claim for consideration is jeopardised by a lack of customer's solvency. This right of refusal expires when counter-performance is effected or safety bonded.
- (2) We also have the right to fix an adequate period during which the customer against performance can in its discretion either counter-perform or grant security. After period's ineffectual expiration, we can withdraw from contract.

VIII. Risk's Passing, for Delivery

- (1) Risk passes to the customer upon dispatch, also in case of delivery on a DDU/DDP basis. Purchased goods are insured only upon customer's written demand, at the customer's expense, and against the risks indicated by the customer.
- (2) In as far as no diverging instructions are given in writing, we are free to choose the shipping route, mode of transport and packaging.

IX. Delivery Periods

- (1) We indicate adequate delivery periods in our discretion without any binding effect and do our best to respect them. In case of force majeure; operational disturbances; lacking workmanship, energy or raw materials; strike; or other events beyond our control, delivery date is postponed by the length of the disturbance and of its effects. In as far as no binding period of time are explicitly agreed, delivery is due no earlier than one month after the end of the non-binding date of delivery.
- (2) Part deliveries on our part are admissible any time. Permissible variations in quantities ordered are admissible up to +/- 10%. The price has to be adapted in proportion with changed quantities of delivery.
- (3) If the period of delivery is exceeded by more than two months, the customer can withdraw from contract, any other claim being excluded. To this end however, beforehand the customer has to grant us an adequate additional respite for delivery. By no means is the customer entitled to replacement purchase, indemnity or other claims towards us for non-fulfilment or delayed delivery, except in case of gross negligence on our part. Part deliveries and part services on our part are admissible.

X. Default in Acceptance

- (1) Should the customer not accept certain deliveries or part deliveries, or should the customer refuse acceptance, we can fix an adequate period for the customer's acceptance. Should the customer not accept the goods within this period, we can withdraw from contract or claim indemnity for non-fulfilment.
- (2) In that case, the customer has to compensate for the entire damage including transport costs. We then are free to optionally prove our damage or – without any evidence – demand damage amounting to a flat-rate 30 % of the net value of the delivery not accepted, plus cash expense incurred. The damage will be fixed higher or lower if we prove a higher or the customer proves a lower damage, respectively.

XI. Retention of Title

- (1) For any delivery, our ownership is reserved, also if some or all of our claims are gathered in one current account and the balance drawn and recognised.
- (2) Delivered goods remain our own till entire payment of all claims resulting from the business relationship including all collateral claims (in case of payment by bill of exchange or cheque: till cashing).

- (3) The customer can neither pledge nor chattel mortgage goods subject to ownership reservation. About third parties' seizures of goods subject to ownership reservation, the customer has to inform us immediately, as fast as possible, in a suitable way. If the customer delays payment to us, we are entitled to take back goods subject to ownership reservation, and to this end to enter the customer's premises.

- (4) The customer can intermingle goods subject to ownership reservation with third parties' goods within the framework of usual business procedures; in that case, we acquire co-ownership in the new material created by commingling, and this in proportion with the value of the material intermingled or newly produced, in accordance with § 947 I BGB. For cases where the customer alienates the material intermingled or newly produced and subject to our co-ownership, the customer right now cedes to us for security its sales price claim towards its client in proportion with the value of our co-ownership and hereby authorises us to collect the relative credit on our own behalf. The customer can alienate the goods within the framework of usual business procedures.

- (5) The customer right now cedes to us for security all of its claims towards the new possessor based upon the alienation. The customer is authorised and obliged to collect such credits for as long as we do not revoke this authority. The customer's authority to collect expires without explicit declaration on our part if the customer suspends its payments. We shall not make use of our authority to collect for as long as the customer complies with its financial obligations.

- (6) Should the securities' value exceed that of pending claims by more than 20 %, we shall release the exceeding amount of securities upon customer's request.

XII. Liability for Defects

- (1) A particular use of a contract matter is considered as agreed only if an explicit written agreement to this effect was made in writing between us and the customer.
- (2) If such an agreement is not made, we warrant that the products sold are fit for the usual kind of use and that they show the qualities which are usual for that kind of material and can be expected by the purchaser in view of the nature of the matter.
- (3) We warrant certain qualities only after having guaranteed them in writing. Any mere reference to technical standards will contain only a certain specification of service and merchandise, but will not constitute any agreement as to the merchandise's aptitude exceeding the usual possibility of the material stipulated in the contract.
- (4) The purchaser has to examine goods acquired from us for defects immediately after delivery, and to inform us about recognisable defects within a period of 8 days from reception. In case of this period's ineffectual expiration, the customer loses any claim for later fulfilment or warranty towards us. To hidden defects the legal ruling applies, § 377 HGB.

- (5) The purchaser is not entitled to process without our consent goods concerning which defect complaints were raised. In case of processing such goods, any claim arising from or because of alleged defects or in consequence of processing are excluded.

- (6) In any case of justified complaint for defects or for another violation of our duties, we are entitled and obliged to remedy the defect or violation by later fulfilment. The customer is entitled to abatement or withdrawal from contract or indemnity instead of fulfilment only after failure of two attempts of remedy despite adequate additional respite. We shall owe indemnity only under the condition indicated in par. 2 above.

XIII. Limitation of Liability

- (1) In case of slight negligence of breach of duty by us or our legal representatives or agents our liability shall be limited to the losses which can typically be foreseen at the time of conclusion of the contract.
- (2) We are not liable if there is only a slight negligence of duty of non essential contractual obligations and our contractual partner is a company or a businessman.
- (3) Limitation of liability shall also apply to competing claims for tort.
- (4) Nothing in this shall affect claims for injuries to life, body or health if we or our legal representative is responsible for this. Liability due to the Product Liability Act remains unaffected.

- (5) All rights and claims on the part of the customer in connection with material damages shall become statute-barred one year after delivery. Notwithstanding the above provision, the statutory limitation period shall apply in the following cases: claims for damages based on intent or gross negligence or for injuries to life, body or health.

XIV. Limitation of Liability in Time

Warranty claims against us become statute-barred after 12 months, if our contractual partner is a company. In as far as the law implies binding periods of liability (§ 38 I n° 2 BGB, § 479 I BGB, § 634 I n° 2 BGB), those will apply.

XV. Retention/Compensation

Any right of retention, or of compensation with counter-claims, is excluded between the Parties hereof except if the claim towards us is established by a final court verdict, or is explicitly recognised by us, or is ready for decision.

XVI. Indemnity in Case of Sale of Consumption Goods

If a newly produced object bought from us was sold by the customer to the consumer and has to be taken back by the consumer on grounds of defects, or if the consumer reduces the price, any damage claim towards us is excluded. This does not apply to defects caused by violation of a duty, committed at least in gross negligence.

XVII. Factoring

Only after announcement to us and with our consent can claims subject to our prolonged and extended reservation of ownership (item X above) be ceded or transferred for collection to a factoring company by the customer.

XVIII. Cession

We have the right to cede our claims.

XIX. Industrial Property Rights

We reserve all author's and other industrial property rights concerning drafts and drawings produced by us and concerning models designed by us. Any use of such a right is possible only on grounds of an explicit written agreement made beforehand.

XX. Place of Performance

- 1) Place of fulfilment and performance for any obligation arising in context with our deliveries is Bad Berneck.
- (2) The language of contract and of performance is only German. The present translation is tentative and only made for the purpose of information.

- (3) The Parties agree upon the exclusive application of the internal law of the Federal Republic of Germany, where as the applicability of the United Nations' Convention of April 11, 1980 on contracts concerning the international sale of goods is excluded.

XXI. Arbitration

Any dispute arising out or in connection with this contract including any question regarding its existence, validity or termination shall be finally and legally binding settled according to the arbitration rules of the national Chamber of Commerce (ICC) in force on the date, when notice of the Arbitration is submitted, without recourse to the ordinary courts of law. The arbitration tribunal may also decide on the validity of this arbitration agreement. The arbitration tribunal shall consist of three arbitrators. The place of arbitration shall be Zürich. The language of the arbitration shall be German.

XXII. Data Protection

In accordance with Datenschutzgesetz, we hereby announce that by means of electronic data processing, we store and process all data referring to clients and suppliers.