

FRIZLEN GmbH u. Co KG. **General Terms of Sale and Delivery**

1. General information

1.1 Our Terms of Sale and Delivery shall apply exclusively; we do not acknowledge contradictory, supplementary business terms of the orderer or business terms which deviate from our Terms of Sale and Delivery unless we had explicitly approved their validity in writing. Our Terms of Sale and Delivery shall also apply if, in the knowledge of contradictory, deviating or supplementary terms and conditions of the orderer, we carry out the delivery to the orderer without reservation. Our previous Terms of Sale and Delivery are hereby replaced.

1.2 All agreements, which are reached between us and the orderer for the purpose of executing this contract, are recorded in this contract in writing.

1.3 Our Terms of Sale and Delivery shall only apply towards entrepreneurs 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 Sale and Delivery shall also apply to all future business with the orderer in case of permanent business relationships.

2. Offers and offer documents / placement of order

2.1 Our offer is without obligation until the final written order confirmation.

2.2 If the order is to be qualified as an offer according to § 145 BGB then we can accept this within 4 weeks, if we are not granted any longer acceptance deadline.

2.3 A contract shall only be concluded if the order has been accepted or confirmed by us in writing. This shall also apply if merely announced orders should become binding for us after the delivery schedule (fixed release order) by the orderer.

2.4 Oral agreements or promises or agreements or promises by telephone require our written confirmation in order to be valid. This shall also apply to collateral agreements or amendments to the contract.

2.5 The technical data of our catalogues, lists and drawings including all further technical details have been created carefully, errors excepted. The same shall apply to all data of our sales documents. Such details do not represent any guarantee promises; guarantee promises require in each case an explicit confirmation by us.

2.6 We also reserve the right to set out changes, which serve the technical progress, after the order confirmation.

2.7 We reserve the property rights and copyrights to diagrams, drawings, calculations and other documents, upon which we based our offer (offer documents) to an unlimited extent. They may not be made accessible to third parties without the prior written consent on our part.

If not explicitly otherwise agreed in writing drawings, construction plans and documents do not belong to the scope of delivery, even if they have been especially produced by us for this order. We also reserve all property rights and copyrights to these documents. They may also be used otherwise by us. A forwarding or granting of accessibility to third parties, the publication, the reproduction, the change or use otherwise requires our explicit, prior and written consent.

2.8 All documents, in particular those listed under Subclause 2.7 if the order was not placed, are to be returned to us upon request.

2.9 Protective equipment is insofar also delivered to the extent that this was stipulated by law or was explicitly agreed in writing.

3. Scope of the delivery, passing of risk and shipment

3.1 Our written order confirmation is decisive for the scope of the deliveries in case of doubt. Partial deliveries are permitted to a reasonable extent. Delivered objects are, even if these feature insignificant conditions, to be accepted by the orderer.

3.2 A surplus or shortfall in delivery up to 10% compared with the contractually agreed quantity is still as per contract.

3.3 The regulations of the Association of German Electrical Engineers, insofar as these can come into consideration for the safety of the

deliveries, shall apply to all deliveries. Deviations are permitted insofar as the same safety is guaranteed in another manner.

3.4 The risk shall pass to the orderer with the hand-over to the carrier or freight forwarder, by no later however than when they leave the plant or the delivery warehouse. This shall also apply if freight-free delivery was agreed. The shipment is carried out by order of the orderer.

3.5 If the shipment is delayed as a result of circumstances, for which the orderer is responsible, then the risk shall pass to the orderer from the day upon which the goods are ready for shipment. Upon request of the orderer the shipment shall be insured at the cost of the orderer against breakage, transport, theft, fire and water damages.

4. Delivery time and delay in delivery

4.1 Delivery deadlines shall begin on the date of the order confirmation, however not before the timely and proper satisfaction of the obligations of the orderer; in particular thus not before the provision of all documents, permits, releases, which are to be delivered by the orderer, the timely clarification and approval of the plans as well as before receipt of the agreed down payment and other obligations, which according to the contract are the pre-requisite for the execution of the contract. If these pre-requisites are not fulfilled in time then the deadline shall be extended by a reasonable extent.

4.2 Delivery deadlines and delivery dates have been adhered to if the object of delivery has left the plant or the delivery warehouse, has been picked up or notification has been given that they are ready for shipment until their expiry. This shall not apply if an acceptance has been exclusive as per contract or if an assembly obligation was agreed.

4.3 In the event of force majeure or other unforeseeable, exceptional circumstances for which the parties are not at fault, e.g. in case of interference to operation, strike, lock-out, difficulties with energy supply, mobilisation, war, etc.. The delivery time shall be extended, if we are hereby prevented from the timely satisfaction of our obligation, by the duration of the impediment plus a reasonable start-up period. This shall also apply if these circumstances occur at a preliminary supplier. The start and end of such circumstances will be notified by us to the orderer as soon as possible in important cases.

If this hereby leads to an actually occurred delay in delivery of more than 3 months, the orderer can cancel the contract if an adherence to the contract is deemed unreasonable for him by taking into consideration the reciprocal interests. The orderer shall in this case not be entitled to further rights, in particular claims for damages.

4.4 If the delivery or the service becomes impossible or deemed unreasonable due to the stated circumstances then we shall be released from the delivery obligation. If the delivery is extended or if we are released from the delivery obligation then the orderer cannot derive any claims for damages from this. Insofar as we are released from the delivery obligation we shall refund possible provided preliminary services of the orderer.

4.5 If we are in delay of delivery the orderer can only assert the claims or rights to which it is entitled if it has once again set us a reasonable deadline in writing of at least 2 weeks and the delay in delivery continues still. The compliance with our delivery obligations presumes the timely and proper satisfaction of the obligations of the orderer. The plea of the non-fulfilled contract remains reserved.

After expiry of the 2 week deadline and with the continuation of the delay in delivery the orderer is then entitled to request a flat rate compensation for default in the amount of 3 % of the delivery value and a maximum however of no more than 10 % of the delivery value for each further completed week of delay. Further claims for damages and reimbursement of expenses of the orderer owing to the delay in delivery are excluded – insofar as permitted by law.

This shall not apply insofar as liability is mandatory in cases of wilful intent or the gross negligence or for injury to life, the body or the health; this does not hereby involve a change to the burden of proof for the disadvantage of the orderer.

4.6 The statutory right to cancellation of the orderer remains unaffected, however provided that we are responsible for the delay. The orderer undertakes upon request by us to declare within a reasonable period of time whether it cancels the contract after expiry of the deadline owing to delay in the delivery and/or to request damages instead of the service or reimbursement of expenses or insists on the delivery.

4.7 If the shipment is delayed at the orderer's request it will be charged – beginning 1 month after report of the readiness for shipment – of the costs incurred by the storage. The storage fee is limited to 0.5 % of the invoice amount per started month as well as further to 5% in total unless higher costs are proven. We are in addition entitled, after setting and the expiry of a reasonable deadline and after a corresponding prior announcement to

dispose otherwise of the object of delivery and to supply the orderer with a reasonable extended deadline.

4.8 If the orderer is in delay of acceptance or if it breaches other acceptance obligations we are entitled to request compensation for the damages suffered by us, including possible additional expenses. In this case the risk of an accidental loss or an accidental deterioration to the object of delivery shall also pass to the orderer at the time, in which it is in default of acceptance or debtor default. We reserve the right to further claims.

5. Reservation of title

5.1 We reserve the property to the delivered goods until the receipt of all payments from the business relationship with the orderer. In case of a conduct of the orderer, in breach of the contract, in particular with default of payment, we are entitled to request that the delivered goods be returned. The taking back or assertion of the reservation of title does not request any cancellation by us. These acts or the attachment of the delivered goods by us does not represent any cancellation of the contract unless we had explicitly declared this in writing. We are entitled to take the delivered goods back for their sale. The sales proceeds are to be offset against the liabilities of the orderer – minus reasonable sales costs.

5.2 The orderer undertakes to treat the delivered goods with care and attention and to sufficiently insure these against damages upon request by us for the duration of the reservation of title. The orderer hereby now already assigns claims against the insurance to us.

5.3 In case of attachments or other interventions of third parties the orderer has to inform us immediately in writing so that we can file an action according to § 771 ZPO [Code of Civil Procedure]. Insofar as the third party is not in the position to reimburse us the out-of-court and in court costs of an action according to § 771 ZPO the orderer shall be liable for the loss suffered by us.

5.4 The orderer is entitled to resell the delivered goods in the proper course of business; however he hereby now already assigns us all claims in the amount of the final invoice amount including value added tax which is incurred to him from the resale against his buyers or third party irrespective of whether the delivered goods were resold without or after processing.

The orderer shall also remain authorized to collect these claims after the assignment; our authorization to collect the claim ourselves remains unaffected hereby. We undertake however not to collect the claim as long as the orderer satisfies its payment obligations from the collected proceeds, is not in default of payment and in particular no application has been filed for the opening of insolvency proceedings or there is a suspension of payments. If the obligation for non-collection ceases to apply we can request that the orderer announces the assigned claims to us and their debtors, provides all information which is necessary for the collection, hands over the documents which are relevant in this respect and informs the debtors of the assignment.

5.5 The processing or conversion of the delivered goods by the orderer is always carried out for us. If the delivered goods are processed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of the delivered goods to the other processing objects at the time of the processing. Incidentally the same shall apply to the object produced by the processing as to the goods delivered under reservation of title.

5.6 If the delivered goods are inseparably mixed with other objects which do not belong to us we shall acquire the co-ownership to the new object in the ratio of the value of the delivered goods to the other mixed objects at the time of the mixing. If the mixing is carried out in the manner that the object of the orderer is to be seen as the main object then it shall be deemed as agreed that the orderer assigns us pro rata co-ownership. The orderer shall store the thus produced sole or co-ownership for us.

5.7 In order to secure our claim the orderer also assigns all claims to which it is entitled against third parties including secondary rights to which it is entitled by the connection of the delivered goods with a property.

5.8 We undertake to release the collateral to which we are entitled upon request of the orderer to the extent that the realisable value of our collateral exceed the claims which are to be secured by more than 10 % or the nominal amount by more than 50 %; the selection of the collateral items which are to be released is our responsibility.

5.9 Insofar as the law, in the scope of which the object of delivery is located, does not permit a reservation of title, the seller can exercise all rights, which it can reserve to the object of delivery. The orderer undertakes to assist with measures of the seller which it intends to take for the protection of its property right or instead of another collateral right to the object of delivery.

6. Defects of quality and title

6.1 We provide the promised services according to the status of technology applicable at the time when the order is placed as well as the relevant legal provisions and by complying with the customary care and attention.

6.2 Insofar as our services feature a defect of quality and title (hereinafter: defect) within the statute-of-limitations, the cause of which already existed at the time when the risk was passed, the order has at our choice an entitlement to subsequent satisfaction by subsequent improvement or subsequent delivery. We shall only bear the expenses which are necessary in this respect such as e.g. wage, material, transport and route costs insofar as these expenses are not increased by the fact that the object of delivery was subsequently taken to another location than the registered seat of the orderer unless this transport corresponds with the use as intended. Replaced parts shall become our property.

6.3 If the subsequent improvement fails then the orderer is at its choice entitled – irrespective of possible claims for damages or reimbursement of expenses according to Subclause 8 – to reduce the remuneration or – insofar as our breach of duty is not just insignificant – to cancel the contract.

6.4 The pre-requisite for our liability for defects is that

- a) these are not due to unsuitable or improper use, faulty assembly or commissioning by the orderer or by third parties, natural wear and tear, faulty or negligent handling, unsuitable work equipment, replacement materials, faulty building work, chemical, electro-mechanical or electrical influences – insofar as these are not a result of our fault;
- b) the orderer has properly satisfied its examination and reporting responsibilities owed according to § 377 HGB [Commercial Code]. Defects are insofar to be reported within 10 days after gaining knowledge thereof;
- c) the orderer – by taking into consideration a reasonable warranty retention according to Subclauses 7.8 – is not in default of payment.

6.5 In order to undertake all improvements and substitute deliveries which appear necessary to us at our reasonable discretion the orderer has, after agreement with us, to give the necessary time and opportunity. Otherwise we are indemnified from the consequences of the damages, which occur because the orderer did not give us the necessary time and opportunity to take the necessary measures for remedying the defects or for the substitute deliveries. Only in urgent cases of the danger to the operating safety and to defend disproportionate greater damages – whereby we are to be notified immediately - or if we are in default with the remedying of the defect is the orderer entitled to remedy the defect itself or have this remedied by third parties and to request reimbursement of the necessary costs.

6.6 Claims for defects shall become statute-barred in 12 months. This shall not apply insofar as the law according to §§ 438 Par. 1 Nr. 2 (objects for buildings), 479 Par. 1 (claims for recourse), 634 a Par. 1 No. 2 (building defects) BGB stipulates longer deadlines. We shall be liable for substitute pies or subsequent delivery until the expiry of the warranty deadlines applicable to the original object of delivery.

6.7 Claims for recourse of the orderer shall only exist to the extent that the orderer has not reached any agreements with its buyer beyond the statutory claims for defects. Subclause 6.2 Sentence 2 shall apply accordingly to the scope of the claims for recourse.

6.8 In case of reports of defects payments of the orderer may only be retained to an extent which is in a reasonable ratio to the occurred defects, if the claims of the orderer are undisputed or have been declared final and binding. If the report of the defects has been made unjustifiably we are entitled to request reimbursement of the expenses incurred to us by the orderer.

7. Claims for damages and expenses

7.1 We shall be liable according to the statutory provisions insofar as the orderer asserts claims for damages or reimbursement of expenses (hereinafter: claims for damages), which are due to wilful intent or gross negligence – including wilful intent or gross negligence of our representatives or vicarious agents. We shall further be liable according to the statutory provisions if we have culpably breached an essential contractual obligation as well as in the cases of the injury to life, the body or the health and insofar as we have assumed guarantees.

7.2 The damages for the breach of an essential contractual obligation is limited to the foreseeable, typically occurring damages and the statute-of-limitations of Subclause 6.6 above shall apply insofar as there is no wilful intent or gross negligence and insofar as no liability is held for the injury to life, the body or the health or from assumed guarantees.

7.3 Incidentally the liability for damages – irrespective of the legal nature of the asserted claim – is excluded. We shall in particular not be liable for damages, which were not suffered to the object of delivery itself.

7.4 The mandatory provisions of the Product Liability Act shall remain unaffected.

7.5 Claims for expenses of the orderer are limited to the amount of the interest which he has in the satisfaction of the contract.

7.6 Insofar as our liability is excluded or limited this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

8. Prices and terms of payment

8.1 Insofar as not otherwise derived from the order confirmation our prices are deemed ex works including loading in the plant, however excluding packaging, freight, transfer, insurance, customs duties and the respective applicable rate of value added tax.

8.2 Insofar as the prices are not exclusively described as fixed prices in our offers and order confirmations we reserve the right to accordingly increase our prices after the expiry of four months after the conclusion of the contract if after conclusion of the contract cost increases occur, in particular owing to collective wage agreement conclusions or material price increases. We shall prove these towards the orderer upon request. The packaging will be charged at self-costs and not taken back.

Up to a goods value of € 500.00 per invoice we shall charge a processing surcharge (BZ) of a max. of € 30.00. The amount of the surcharge can be taken from the actual offer or our order confirmation. Further the surcharges listed below can be charged:

AgZ.: Silver price surcharge with silver contacts and silver solder;
MTZ.: Inflation surcharge with more than average increase in the cost prices for copper, brass, nickel and alloys.

8.3 Insofar as not otherwise derived from the order confirmation the purchase price is due and payable after a maximum of 8 days with 2% cash discount or after a max. of 30 days without any deduction. We explicitly reserve the right to carry out deliveries against cash on delivery or advance payment.

8.4 Insofar as no deviating terms of payment were agreed, default shall occur 30 days after invoicing. Interest on default shall be charged with 8 % p. a. above the respective base lending rate according to § 247 BGB. The assertion of further damages is not excluded hereby.

8.5 Bills of exchanges will only be accepted by us after prior agreement. The acceptance of bills of exchange and cheques is only carried out as conditional payment; the costs of the discounting and the debt collection shall be borne by the orderer. After the acceptance of bills of exchange we are entitled to return these if their acceptance is refused by the Landeszentralbank [Regional Central Bank].

8.6 The orderer shall only be entitled to rights to offset if its counter-claims have been determined final and binding, are undisputed or have been recognised by us. In addition the orderer is only authorized to exercise a right of retention to the extent that its counter-claim is based on the same contractual relationship. The orderer is not entitled to a right of retention owing to partial services according to § 320 Par. 2 BGB.

8.7 Insofar as a delivery or service exempted from value added tax can be taken into consideration the orderer undertakes to provide the necessary proof or to assist in providing this. For intra-community deliveries according to § 6 Subclause a UStG [Value Added Tax Act] the orderer has to notify of its VAT identification no., prove its capacity as entrepreneur as well as assist in the export proof in terms of the books and receipts.

If the exemption from value added tax is not recognised by the Inland Revenue Office then the orderer has to indemnify us from the value added tax, from interest, from surcharges due to default and other incidental costs or pay these to us unless the non-recognition is our responsibility.

We are only obliged to file legal remedies at the request of the orderer if it makes a reasonable advance payment of costs for the legal remedy proceedings in addition to the indemnification according to the above paragraph.

8.8 If we become aware of facts after acceptance of the order which allow justified doubts about the solvency of the orderer then we are entitled to request full payment before the delivery or corresponding provision of collateral or after the unsuccessful setting of a deadline to cancel the contract. In addition to already occurred default of payment information of a bank, credit agency a company which maintains a business relationship

with the orderer, etc. provided according to the due care and attention of an ordinary merchant shall be deemed as proof of an essential deterioration to the assets.

If the delivery has already been carried out the invoice amounts in question will be due and payable immediately irrespective of the agreed terms of payment possibly by returning the bills of exchange.

9. Place of performance, place of jurisdiction and applicable law

9.1 The place of performance for the delivery is the manufacturing plant or our delivery warehouse. The place of performance for the payment is our registered seat.

9.2 The place of jurisdiction is our registered seat. We are however also entitled to file action against the orderer at any other statutory place of jurisdiction.

9.3 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.

10. Escape clause

Should individual provisions of the contract with the orderer including these General Terms of Sale and Delivery be or become invalid in full or in part this shall have no effect on the validity of the other provisions. The full or partial invalid provision shall be replaced by a regulation, the financial success of which shall as far as possible correspond to the invalid provision. The same shall apply to non-enforceable provisions and with loopholes in the contract.

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