

# **Frauenthal Group General Delivery and Payment Terms and Conditions for Supplies and Services within the Federal Republic of Germany**

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## **1 Scope of Application**

These terms and conditions of sale apply vis-à-vis entrepreneurs, public-law legal entities and public-law special funds. These terms and conditions apply exclusively to this and any repeat transactions with the purchaser. Any contradictory terms and conditions of the purchaser will not be valid unless this is an individual arrangement. Conflicting purchasing terms and conditions of the purchaser shall not apply, even if they are included in a confirmation note from the purchaser following our contract confirmation and we fail to object to them. Our silence will be deemed to be a rejection. Our terms and conditions will be deemed accepted upon receipt of the goods by the purchaser at the latest, in particular for orders placed by telephone. Any deviations due to individual arrangements must be recorded in writing.

## **2 General Provisions**

Supply agreements come into effect either upon our written order confirmation following a written order or upon delivery. Any verbal ancillary and supplementary arrangements, especially those made by telephone and including those regarding execution of the order, require our separate written confirmation in order to be valid.

Any documentation included in the offer, such as diagrams, drawings, weights and dimensions, are only approximate unless expressly referred to as binding.

The specified delivery periods will be adhered to providing the purchaser performs all necessary technical and commercial preliminary work in a timely manner and providing the materials, components and resources required for the service are available within the required processing times. If this is not the case, the delivery period will be extended accordingly. The same will apply in cases of force majeure pursuant to Section 15.

## **3 Long-Term and Call-Off Contracts, Price Adjustment**

Open-ended contracts may be terminated with 6 months' notice. In the event of a significant change to the wage, material or energy costs for long-term contracts (contracts with terms longer than 24 months and open-ended contracts), each contracting partner will be entitled to demand a reasonable price adjustment taking these factors into consideration.

If no binding order quantity is agreed upon, we will base our costing on a non-binding order quantity (target quantity) expected by the purchaser for a specific period of time. If the purchaser takes less than the target quantity, we will be entitled to apply a reasonable increase to the unit price. Where the purchaser takes more than the target quantity, we will reduce the price accordingly providing the purchaser gives at least 6 months' advance notice of the additional requirements. For call-off supply agreements, unless otherwise specified, we must be informed of binding quantities at least 2 months prior to the call-off delivery date.

Additional costs resulting from a delayed call-off or subsequent changes to the call-off in terms of time or quantity attributable to the purchaser will be borne by the latter. Our costing will be authoritative in such scenarios.

#### **4 Confidentiality**

Each contracting partner shall use all documents (including samples, patterns and data) and knowledge received during the course of the business relationship only for the jointly pursued purposes and keep them secret from third parties with the same due care as exercised in respect of their own documents and knowledge where the other contracting partner designates them as confidential or has an obvious interest in maintaining their secrecy. This obligation will commence upon first receipt of the documents or knowledge and will end 36 months following the end of the business relationship. The obligation will not apply to documents and knowledge in the public domain, or which are already known to the contracting partner upon receipt, without the latter being obliged to confidentiality, or transmitted to them subsequently by a third party authorised to disclose the same, or developed by the recipient contracting partner without the use of confidential documents or knowledge belonging to the other contracting partner.

#### **5 Drawings and Descriptions**

Where one contracting partner provides the other with drawings or technical documents concerning the goods to be supplied or their manufacture, these will remain the property of the contracting partner providing them and may not be disclosed to third parties without the providing partner's express consent.

#### **6 Samples and Manufacturing Equipment**

Unless otherwise agreed, the manufacturing costs for samples and manufacturing equipment (tools, moulds and templates, etc.) will be invoiced for separately to the goods to be supplied. The same will apply to manufacturing equipment that requires replacement due to wear and tear. Maintenance and proper storage costs and the risk of damage or destruction of the manufacturing equipment will be borne by Frauenthal. If the purchaser suspends or terminates the collaboration during the manufacturing period for the samples or manufacturing equipment, it shall bear all production costs incurred up to that point. Even if paid for by the purchaser, the manufacturing equipment will remain in our possession at least until the supply agreement has been executed. Thereafter, the purchaser shall be entitled to demand the return of the manufacturing equipment if a mutual agreement has been reached regarding a return date and providing the partner has performed its contractual obligations in full. We will retain the manufacturing equipment free of charge for three years following the final delivery to our partner. After that, we will ask the purchaser in writing to indicate their intention, within 6 weeks, regarding further use. Our obligation to retain the equipment will end if no indication of intent is provided or if no new order is placed within those 6 weeks.

#### **7 Prices**

Our prices are ex works/warehouse in euros, excluding statutory value added tax at the applicable rate, packaging, freight, postage and insurance.

## **8 Payment Terms**

Our payment claims become due 30 days following receipt of the service to be provided. If we send an invoice or equivalent payment request following receipt of the service, said period will only commence upon receipt of the invoice or payment request. Where we have undisputedly supplied some defective products, the purchaser will still be obliged to make payment for the portion of the delivery without defects, except where the partial delivery is of no interest to it. The purchaser may only offset legally established or undisputed counterclaims. All payments must be made by bank transfer. Cheques and bills of exchange are not accepted.

Receipt of the payment by Frauenthal will be decisive for determining the timeliness thereof. In the event of late payments, we will be entitled to charge default interest at the same rate we are charged by the bank for overdraft facilities, but at least at the statutory rate pursuant to Section 288 of the German Civil Code (BGB). In the event of payment arrears, we will be entitled to cease performance of our obligations until such time as payment is made following written notification sent to the partner.

If it becomes apparent that our payment claim is in jeopardy due to the buyer's capacity to pay, we may refuse performance and give the purchaser a reasonable period in which it must pay or provide security upon each delivery. If the purchaser refuses, or if the deadline expires unheeded, we will be entitled to withdraw from the contract and demand compensation.

The purchaser may only offset undisputed counterclaims that are acknowledged by Frauenthal or have been legally established. The purchaser is only authorised to exercise a right of retention where its claim results from the same contractual relationship.

## **9 Delivery**

Unless otherwise agreed, we will deliver "ex works/warehouse". Our notice of readiness for dispatch or collection will be authoritative for determining compliance with delivery dates or deadlines. The delivery period will commence when we send out our order confirmation and will be extended accordingly if the prerequisites set out in Section 2 apply.

Partial deliveries are permitted to a reasonable extent. These will be invoiced separately. Frauenthal reserves the right to deliver quantities of 10% more or less than the quantity ordered.

## **10 Shipping and Transfer of Risk**

Shipping will be at the purchaser's risk and expense. Goods declared ready for dispatch must be accepted by the purchaser without delay. Otherwise, we will be entitled, at our own discretion, to dispatch or store the goods at the partner's cost and risk. In the absence of any specific agreement, we will select the means of transport and the transport route. The risk will pass to the purchaser when the goods are handed over to the railway, carrier or forwarding agent, or at the start of the storage, but at the latest upon leaving the factory or warehouse, even where we have undertaken to perform the delivery. At the purchaser's request and expense, the consignment will be insured against theft, breakages and transport, fire and water damage, and any other insurable risks.

Frauenthal will not take back any transport packaging or other disposable packaging.

### **11 Delivery Delays**

Where it is foreseeable that we will be unable to deliver the goods within the delivery period, we will inform the purchaser thereof in writing and without delay, stating the reasons and, where possible, specifying the new estimated delivery date. The purchaser will only be entitled to withdraw from the contract where the failure to meet the delivery date is attributable to us and providing it has granted us a grace period that has also expired without success.

In the event of minor negligence, compensation will be limited to additional freight charges, additional installation costs and, following an unsuccessful grace period being granted or where interest in the delivery lapses, any additional expenditure incurred for covering purchases.

### **12 Retention of Title**

We will retain title to the goods supplied until such time as all claims under the business relationship with the purchaser have been satisfied.

The purchaser may dispose of such goods during the ordinary course of business providing their obligations to us under the business relationship are fulfilled on time.

The purchaser may not pledge the retained goods or assign the same as security. The purchaser shall safeguard our rights when reselling the retained goods on credit. In the event of breaches of obligations by the purchaser, and in the case of late payment in particular, we will be entitled, following the unsuccessful expiry of a reasonable period granted to the purchaser to perform, to withdraw from the contract and take back the retained goods. The statutory provisions under which a grace period is not necessary will remain unaffected. The purchaser is obliged to return said goods. We will be entitled to withdraw from the contract in particular where an application is made to initiate insolvency proceedings in respect of the purchaser's assets.

The purchaser hereby assigns all claims and rights from the sale of goods over which we have retained ownership, or any rental of such goods the purchaser may have been granted consent for, to us as collateral. We hereby accept said assignment. The purchaser will always undertake any handling or processing of the retained goods on our behalf. Where the retained goods are processed or inseparably mixed with items not belonging to us, we will acquire co-ownership of the new item in proportion to the invoice value for the retained goods to the other processed or combined items at the time of the processing or mixing. Where our goods are combined with other movable objects into one single item, or are inseparably mixed with the same, and where the other item is considered the main item, the purchaser will transfer pro-rata co-ownership to us where the main item belongs to the purchaser. The purchaser will retain ownership or co-ownership on our behalf. In all other respects, the same provisions will apply to the item arising from the processing, combining or mixing as to the retained goods.

The purchaser must notify us without delay of any third-party enforcement measures over the retained goods, the claims assigned to us or over other forms of collateral, providing us with the documentation necessary for intervention. The same applies in the event of any damage whatsoever.

Where the value of the existing collateral exceeds the secured claims by more than 20 percent in total, we will be obliged, at our discretion, to release collateral accordingly upon the purchaser's request.

### **13 Material Defects**

The condition of the goods will comply with the agreed technical supply conditions. Where we are required to supply in accordance with the purchaser's drawings, specifications and samples, etc., the purchaser will accept the risk of suitability for the intended purpose. The time of the transfer of risk pursuant to Section 10 will be decisive for determining the contract-compliant condition. We will not be responsible for material defects arising due to unsuitable or improper use, incorrect assembly or operation by the purchaser or a third party, usual wear and tear, or incorrect or negligent handling, nor will we be responsible for the consequences of any improper modifications or repairs performed without our consent by the purchaser or third parties. The same applies to defects that simply significantly reduce the value or suitability of the goods.

The limitation period for claims for damages for material defects will lapse 12 months following successful delivery. This will only apply where the law does not make longer periods compulsory. Where an acceptance inspection of the goods or initial-sample inspection is agreed upon, any complaint regarding defects that the purchaser would have been able to detect during a careful acceptance inspection or initial-sample inspection is hereby excluded.

Any defect found by the purchaser must be reported to Frauenthal in writing without delay. Frauenthal must be given the opportunity to verify the reported defect. Any goods subject to such a complaint must be returned to us without delay. We will pay the transportation costs if the defect complaint is justified. If the purchaser fails to comply with these obligations, or makes modifications, without our consent, to goods for which a complaint has already been made, any claims for material defects will become void. If the complaint by the purchaser is justified, the latter will be entitled to request the supplementary performance of rectification or a replacement. We will be entitled to refuse the selected supplementary performance type where it is only possible with disproportionately high costs, or where the chosen supplementary performance method is more expensive than the other, and where it does not involve any significant detriment to the purchaser compared with the other supplementary performance method.

In the case of a justified defect report submitted on time, we will, at our discretion, either rectify the defective goods or supply a replacement. If we fail to comply with these obligations, or fail to do so in accordance with the contract, within a reasonable period, the purchaser may grant us one last grace period in writing within which to fulfil the justified claims for defects. If this period expires unsuccessfully, the purchaser may demand a price reduction, withdraw from the contract or perform the necessary rectification themselves, or have the same performed by a third party, at our cost and risk. Any reimbursement of costs is hereby excluded where the expenses increase due to the goods being taken to a different location after our delivery, except where this is in keeping with the intended use of the goods. The purchaser's statutory rights of recourse against us only exist where the purchaser has not entered into agreements with their own purchaser that go beyond the statutory claims for defects.

The following deviation applies to the supply of large pistons:

The warranty will end upon expiry of 12 months following initial operation but upon expiry of 24 months from delivery to the purchaser at the latest. The provisions above will apply if rectification or replacement fail.

### **14 Other Claims, Liability**

Unless otherwise specified below, all other claims and claims of a wider scope by the purchaser against Frauenthal are hereby excluded, in particular where the loss or damage in question is not attributable to us. This applies in particular to claims for damages or compensation due to a breach of contractual obligations and for tortious acts. We will therefore not be liable for damage that does not occur to the delivered goods themselves. In particular, we will not be liable for lost profit or other financial losses for the purchaser.

The above-mentioned liability limitations will not apply in case of intent or gross negligence by our legal representatives or senior employees, or in the event of a culpable violation of material contractual obligations. In the event of a culpable violation of material contractual obligations, we will only be liable – except in cases of intent or gross negligence by our statutory representatives or senior employees – for reasonably foreseeable damage that is typical for the contract. This liability limitation will also not apply in cases of liability under the German Product Liability Act for personal injuries or damage to privately used property due to defects in the supplied goods. It will also not apply in the case of injury to life, limb or health and in the event of the lack of guarantees regarding quality or durability, where and to the extent that the purpose of said guarantee was to safeguard the partner against damage not arising to the supplied goods themselves. Where our liability is excluded or limited, this will also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents. This will not affect the statutory provisions regarding the burden of proof.

### **15 Design, Tools**

The purchaser's tests and trials will be authoritative for determining the faultless suitability of the design and materials of the parts manufactured by Frauenthal. All proposals, design drawings and other documents provided to the purchaser by Frauenthal will remain the property of Frauenthal and may not be disclosed to third parties without written consent. The purchaser will be liable for the lawfulness of Frauenthal's use of any drawings, sketches and patterns etc. provided.

Models, casting moulds, dies, pressing tools, devices and other equipment will be charged for separately. They will remain the property of Frauenthal, even where the customer has been charged for part of the costs.

### **16 Force Majeure**

Force majeure, industrial disputes, official measures, non-arrival of deliveries from our own suppliers and other unforeseeable, unavoidable and serious incidents will exempt the contracting partners from their obligations to perform for the duration of the disruption and to the extent of its impact. The same will apply where such incidents occur when the contracting partner in question is in default except where the default was caused through intent or gross negligence. The contracting partners shall, where reasonable, provide the necessary information without delay and adapt their obligations to the changed circumstances in good faith.

### **17 Place of Fulfilment, Place of Jurisdiction and Applicable Law**

Unless otherwise stipulated in the order confirmation, our registered office will be the place of fulfilment. Our registered office will be the place of jurisdiction for all legal disputes arising within the framework of a bill of exchange or cheque process. We are also entitled to bring proceedings before the courts in the place where the purchaser has its registered office. The law of the Federal Republic of Germany will apply to the contractual relationship to the exclusion of any other law.

Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG – "Vienna Sales Convention") of 11 April 1980 is hereby excluded.

In the event of a provision of these terms and conditions, or part of a provision, being or becoming invalid, this will not affect the validity of the remaining clauses, or the remaining part of that clause. In such a scenario, the parties will replace said provision with one that most closely reflects the intentions of the parties when concluding the contract.