

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

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## **Sec. 1 Scope of application**

These conditions of sales apply to companies, legal persons under public law, and public-law special funds. Our deliveries and services shall be carried out exclusively on the basis of the terms and conditions stated below. Any terms and conditions of the customer that are not expressly recognized by us shall not apply. This shall also apply where deliveries or services are carried out unconditionally while aware of other contradictory terms and conditions.

## **Sec. 2 General Terms and Conditions**

The contractual partners shall promptly confirm any oral agreements in writing. Should an order qualify as an offer in the sense of Sec. 145 of the German Civil Code, Frauenthal can accept it within four weeks. Orders shall only become binding upon our order confirmation. The requirement for acceptance of the offer or order confirmation to be made in writing can be met by a fax or email. Frauenthal will take the creation of a transmission report for a fax or email containing such a statement as proof that the customer has received the fax or email.

The specifications and images contained in brochures and catalogs are deemed approximate values in keeping with customary industry practice unless we have expressly characterized them as binding.

Compliance with specified delivery deadlines is subject to the customer's timely completion of all required technical and commercial preliminary work, and to its making the materials, components and resources required for the service available within the specified processing period. If this is not the case, the delivery period shall be extended as necessary. This shall also apply in the case of force majeure in accordance with Sec. 15.

## **Sec. 3 Long-term and call-off contracts, price adjustment**

Unlimited contracts may be canceled with a notice period of 6 months. Should a significant change occur in the costs of wages, materials or energy during long-term contracts (contracts with a duration of more than 24 months and unlimited contracts), each contractual partner is entitled to request a reasonable adjustment of the price in consideration of these factors.

Should binding agreement not be reached regarding an order quantity, we shall take as the basis for our calculations the customer's expected non-binding order quantity (target quantity) for a specified time period. Should the customer purchase less than the target quantity, we are entitled to increase the unit price accordingly. Should the customer purchase more than the target quantity, we shall decrease the unit price accordingly, provided the customer has notified us of its increased demand at least six months prior to delivery. In the case of call-off contracts, the customer shall notify us of binding amounts by call-off at least 2 months prior to the delivery deadline unless otherwise agreed.

Additional costs resulting from the customer's delayed call-off or subsequent modification of the call-off with respect to deadline or amount shall be borne by the customer, with our calculation being authoritative.

#### **Sec. 4 Confidentiality**

Each contractual partner shall utilize all documentation (including samples, models and data) and knowledge that it has received in the course of the business relationship only for the common objective, and shall maintain confidentiality vis-a-vis third parties, just as it would with its own documents and knowledge, with respect to documentation which the other contractual partner has characterized as confidential or where the other contractual partner has a manifest interest in the confidentiality of such documentation. This obligation shall begin upon the initial receipt of documentation or knowledge and shall end 36 months after the end of the business relationship. The obligation shall not apply to documentation or knowledge that is generally known or that was already known by the contractual partner at the time it was received when the contractual partner was not subject to a confidentiality obligation, or that is subsequently transferred to it by a third party entitled to disclose it, or that is developed by the receiving contractual partner without utilization of the other contractual partner's confidential documentation or knowledge.

#### **Sec. 5 Drawings and descriptions**

Should one contractual partner make available to the other drawings or technical documentation regarding the goods to be delivered or their manufacture, these shall remain the property of the contractual partner making them available and may not be disclosed to third parties without the express approval of the partner making them available.

#### **Sec. 6 Patterns and production materials**

The costs of producing samples and production materials (tools, molds, templates etc.) shall be invoiced separately from the goods to be delivered unless otherwise agreed. This shall also apply to production materials that must be replaced as a result of wear and tear. The costs of maintenance and proper storage of the production materials and the risk of their damage or destruction shall be borne by Frauenthal. Should the customer suspend or end its agreement whilst the samples or production materials are being produced, all production costs incurred up to that point shall be borne by the customer. Even where the customer has paid for the production materials, they shall remain in our possession at least until the end of the delivery contract. The customer is thereafter entitled to demand surrender of the production materials if an amicable arrangement has been achieved concerning the time at which these materials will be surrendered, and the partner has fully complied with its obligations under the contract. We will store the production materials at no cost for three years following the final delivery to our partner. The customer will then be given 6 weeks to state its view regarding further use. Our storage obligation shall end if, after 6 weeks, no view has been stated nor a new order placed.

#### **Sec. 7 Prices**

Our prices are understood to be ex factory/storage in euros excluding value-added tax at the respective statutory rate, packing, freight, postage costs and insurance.

#### **Sec. 8 Conditions of payment**

All invoices are payable within 30 calendar days following the invoice date without payment discount. In the event that some of the goods we have delivered are indisputably defective, the customer is nonetheless obligated to effect payment for the goods that are not defective unless it has no interest in taking partial delivery. The customer is only entitled to offset counterclaims that have been established with legal

effect or that are not in dispute. All payments must be effected through bank transfer; checks and bills of exchange are not acceptable.

Receipt at Frauenthal shall be authoritative in determining timeliness of payment. In the event of payments becoming overdue, we are entitled to charge interest on arrears at the rate that our bank charges us for overdrafts, but minimally at the statutory rate established in Sec. 288 of the German Civil Code. In the event of default of payment, and upon written notification to the partner, we can suspend the fulfillment of our obligations until payment is made.

Should it become evident following the conclusion of the contract that our claim to payment is jeopardized by the customer's inability to pay, we can refuse to perform the service and can determine a reasonable deadline for the customer either to make step-by-step payments against delivery or to furnish security. In the event of the customer's refusal or the expiration of the deadline without an agreement, we are entitled to withdraw from the contract and claim compensation for damages.

The customer may only offset counterclaims that are undisputed, acknowledged by Frauenthal or established with legal effect. The customer is only authorized to exercise its rights of retention provided its claim is based on the same contractual relationship.

### **Sec. 9 Delivery**

Unless otherwise agreed, we deliver "ex factory/storage". The date of our report of readiness for dispatch or pickup shall determine our compliance with the delivery deadline or delivery period. The delivery period shall begin with the dispatch of our order confirmation and shall be reasonably extended should circumstances described in Sec. 2 arise.

Partial deliveries shall be permitted to a reasonable extent. These will be invoiced separately. Frauenthal reserves the right to deliver quantities amounting to 10% above or below the ordered quantities.

### **Sec. 10 Dispatch and transfer of risk**

Dispatch shall occur at the customer's risk and expense. Goods reported as ready for dispatch shall be promptly accepted by the customer. We are otherwise entitled at our discretion either to dispatch the goods or to store them at the customer's risk and expense. In the absence of a specific agreement, we will select the means and route of transport. Risk shall pass to the customer upon transfer to the railroad, forwarder or carrier or upon the start of storage, but at the latest upon leaving the factory or storage facility, even if we have undertaken to carry out the delivery. At the customer's request and at its expense, the consignment of goods can be insured against theft, breakage, damage from transport, fire or water, and other insurable risks.

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

### **Sec. 11 Late delivery**

Should it become apparent that the goods cannot be delivered within the delivery period, we will promptly inform the customer in writing, provide the reasons for the delay, and as far as possible, designate the expected delivery date. The customer is

only entitled to withdraw from the contract if we are responsible for failure to meet the delivery deadline and the customer has granted us a reasonable grace period which has lapsed.

In cases of slight negligence, damages shall be limited to additional charges for freight or retrofitting costs or, following unsuccessful lapse of a grace period or in the event the customer is no longer interested in the delivery, to the additional expenses for replacement purchases.

### **Sec. 12 Retention of title**

We retain title of the delivered goods until all claims arising from the business relationship with the customer have been settled.

The customer is entitled to modify these goods in the normal course of business provided that it meets its obligations arising from the business relationship in a timely manner.

The customer may neither pledge the reserved goods nor assign them as security. The customer is obligated to protect our rights to credited resale of the reserved goods. In the event that the customer breaches its obligations, especially through payment default, and following unsuccessful expiration of a reasonable period imposed on the customer to comply, we are entitled to withdraw from the contract and reclaim the goods; statutory provisions regarding lack of a need to stipulate a deadline remain unaffected. The customer is obligated to release the goods. We are particularly entitled to withdraw from the contract in the event that a claim is made to start insolvency proceedings against the customer's assets.

All claims and rights arising from the sale or – if necessary and the customer has received approval – lease of the goods over which we exercise property rights are hereby assigned to us as security. We hereby accept this assignment. Any possible processing or modification of the reserved goods shall always be done by the customer on our behalf. Should the reserved goods be processed or inseparably mixed with other objects that do not belong to us, we thereby acquire joint ownership of the new item in proportion to the invoiced value of the reserved goods relative to the other processed or mixed objects at the time of their processing or mixing. Should our goods be combined with other movable objects into a single item or inseparably mixed in such a way that the other object is seen as the primary item, the customer shall transfer proportional joint ownership to us insofar as the primary item belongs to the customer. The customer shall keep the property or joint property on our behalf. Concerning the item produced through the processing or combining or mixing, the same shall apply as applies to the reserved goods.

Regarding third-party enforcement measures against the reserved goods, against the claims relinquished to us, or against other securities, the customer must promptly inform us by transferring the documentation necessary for an intervention. This shall also apply to other sorts of interference.

Should the value of the existing securities exceed the insured claims by more than 20 percent, we are obligated, upon the customer's request, to respectively release corresponding securities of our choice.

### **Sec. 13 Material defects**

The condition of the goods shall comply with the agreed technical delivery specifications. In the event that we are to supply goods in accordance with the customer's drawings, specifications, samples etc., the customer shall assume the risk that these are suitable for the intended purpose. The moment of risk transfer in

accordance with Sec. 10 shall be authoritative for the goods conforming with the contract. We do not assume any responsibility for defects arising from unsuitable or improper use, faulty assembly or commissioning by the customer or a third party, normal wear and tear, faulty or negligent handling, nor for the consequences of modifications or maintenance work by the customer or a third party carried out improperly or without our consent. The same shall apply to defects that only slightly reduce the value or suitability of the goods.

The material defect claim period shall expire 12 months after successful delivery. This shall only apply in instances where the law does not prescribe a longer mandatory period. Should agreement be reached regarding acceptance of the goods or initial sample testing, exclusion is made for complaints regarding defects that the customer should have been able to identify through careful acceptance inspection or initial sample testing.

Frauenthal must be promptly informed in writing concerning defects identified by the customer. Frauenthal shall be given the opportunity to inspect the identified defects. Rejected goods shall be promptly returned to us at our request; we will assume the transport costs of verifiably defective goods. Should the customer fail to meet these obligations or should it perform modifications without our approval on goods already rejected, it shall forfeit the possibility of claiming material defects. With respect to justified complaints over defects made within the established time period, we will, at our discretion, either repair the rejected goods or deliver replacement goods. Should we fail to meet these obligations or should a grace period for meeting them, as stipulated by the contract, expire, the customer can establish in writing a final deadline by which time the justified complaints over defects are to be rectified. Following the unsuccessful expiration of this time period, the customer may demand reduction of the price, withdraw from the contract, or contract a third party to perform the necessary improvements at our expense and risk. If the goods are being used in a location other than that to which we delivered them, resulting in increased expenses, reimbursement of costs is excluded unless this corresponds to the intended use of the goods. The customer shall have statutory recourse against us only insofar as the customer has not reached any agreement with its buyer that goes beyond the statutory claims of defect.

The following deviations shall apply to the delivery of large-bore pistons:

The warranty shall end 12 months after commissioning but no later than 24 months after delivery to the customer. Should repair or replacement delivery be unsuccessful, the above regulations shall apply.

#### **Sec. 14 Other claims, liability**

Unless otherwise stated below, other and further claims by the customer against Frauenthal are excluded, in particular where we are not at fault for the damage. This shall especially apply to claims for compensation due to breach of contractual obligations or for tortious acts. We are therefore not liable for damages not caused by the delivered goods themselves. In particular, we are not liable for loss of profit or other financial losses to the customer

The above limitations of liability shall not apply to cases of intent or gross negligence by our legal representatives or senior management, nor to cases of culpable breach of significant contractual obligations. In the case of culpable breach of significant contractual obligations, our liability – except in cases of intent or gross negligence by our legal representatives or senior management – extends only to reasonably foreseeable damage typical for the contract. Moreover, limitations of liability shall not apply in cases where there is liability for personal or material damages for defects in

goods delivered for private use according to the German Product Liability Act. It shall also not apply to damage to life, body or health or to lack of quality or durability guarantees if and to the extent that the specific purpose of the guarantee was to cover the partner against damages that are not caused by the delivered goods themselves. To the extent that our liability is excluded or limited, this shall also apply to personal liability on the part of our employees, workers, associates, legal representatives and vicarious agents. The statutory regulations regarding burden of proof remain hereby unaffected

### **Sec. 15 Design, tools**

The customer's trials and tests are authoritative in determining the trouble-free suitability of the design and materials employed in the parts to be produced by Frauenthal. All recommendations, design drawings and other documentation provided to the customer by Frauenthal remain the property of Frauenthal and may not be made available to third parties without its written approval. The customer shall be liable for the lawful use of the drawings, outlines, models etc. made available by Frauenthal.

Models, molds, dies, pressing tools, devices and other operating material shall be charged separately. They remain the property of Frauenthal even where a proportion of costs has been charged to the customer.

### **Sec. 16 Force majeure**

Force majeure, labor disputes, unrest, official measures, failure to deliver on the part of our suppliers and other unforeseeable, unavoidable and serious events shall relieve the contractual partners from their duties to perform for the duration of the disruption and within the scope of their effect. This shall also apply if these events occur at a time when the affected contractual partner is in default unless it has brought about the default intentionally or out of gross negligence. To the extent reasonable, the contractual partners are obligated to provide the required information promptly and to adapt their obligations to the changed conditions in good faith.

### **Sec. 17 Place of fulfillment, jurisdiction and applicable law**

Unless otherwise stated in the order confirmation, our company headquarters shall be the place of fulfillment. Our company headquarters shall be the place of jurisdiction for all legal disputes including any actions related to bills of exchange or checks. We are also entitled to bring suit at the headquarters of the customer. The law of the Federal Republic of Germany shall apply exclusively to the contractual relationship. Application of the April 11, 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG - Vienna Purchasing Convention) is excluded.

Should any provision of these terms and conditions or a portion of a provision be or become invalid, the remaining provisions or the remaining portion of the provision shall remain valid. In that event, the parties shall replace this provision with a provision that most closely reflects the parties' contractual intent.