

# General Terms and Conditions

## Fritz Stephan GmbH, Kirchstr. 19, 56412 Gackebach

### 1. General

- (1) The concluded Contract shall be governed exclusively by our General Terms and Conditions (hereinafter: GTC); we will not accept any terms and conditions of the Client that conflict with or differ from our GTC, unless we have expressly approved their validity in writing. Our GTC shall also apply when we unconditionally perform our contractual obligation in the knowledge of any terms and conditions of the Client that conflict with or differ from our GTC.
- (2) Our GTC are solely applicable to an entrepreneur (Sections 310 I, 14 of the German Civil Code), a public-law corporation or a special fund under public law. If our offer is submitted for the purposes of a tender under the Construction Tendering and Contract Regulations or other public competitive tendering procedure, our GTC shall be subordinate to the terms and conditions that govern the tender or the award of the contract; in the event of discrepancies, the terms and conditions that govern the tender or the award of the contract shall prevail.
- (3) All agreements that are made between us and the Client for the purpose of amending or performing this Contract shall be set out in writing. This shall also apply to additions. The written form requirement may only be rescinded in writing on a case-by-case basis.
- (4) Our GTC shall also apply to all future transactions with the Client.
- (5) If the Client is a businessman, public-law corporation or a special fund under public law, our registered office shall be the place of jurisdiction; we are however also entitled to issue proceedings against the Client at the competent court where his registered office is situated.
- (6) Unless stated otherwise in the order confirmation, our registered office shall be the place of performance.
- (7) The Agreement shall be governed by German substantive law.

### 2. Offer

- (1) Our offer is without obligation and is subject to prior sale and timely delivery by our suppliers.
- (2) Documents, such as advertising brochures and so forth, submitted prior to the offer as well as documents that form an integral part of the offer, such as illustrations, drawings, indications of weight and dimensions are subordinate to the performance specifications in our offer, unless they are expressly stated to be binding and prevailing. In the event of discrepancies between the performance specifications and the aforementioned documents, the performance specifications in the offer shall prevail. The same shall apply to advertising information.
- (3) If the order has to be described as an offer pursuant to Section 145 of the German Civil Code, we may accept such an offer within 3 weeks, unless a shorter or longer acceptance deadline is agreed in writing.
- (4) We reserve title to and copyrights in quotations, drawings and other documents, which shall not be made accessible to third parties. This particularly applies to written documents that are marked "confidential"; the Client requires our expressed approval to forward such documents to third parties. We agree to obtain the approval of the Client before making plans submitted by the Client that are marked confidential accessible to third parties.

### 3. Prices – Terms of Payment – Offsetting/Retention – Price Adjustment

- (1) Unless stated otherwise in the order confirmation, our prices are quoted "ex works", and are exclusive of packaging and transport; which shall be paid separately. The minimum order value is € 100.00 net. If the value of the order is below € 100.00 net, we will calculate a minimum quantity surcharge of € 20.00 plus statutory value added tax.
- (2) Unless stated otherwise in the order confirmation, the purchase price, including the price of additional services and overheads, is payable within 10 days from the invoice date at 2% discount or net within 30 days from the invoice date. If the Client falls into arrears, Section 288 of the German Civil Code shall apply.
- (3) Our prices are exclusive of statutory value added tax; the statutory amount is shown separately on the invoice on the billing date.
- (4) The Client only has set-off rights when his counterclaims are legally established, undisputed or are acknowledged by us. The Client is moreover only permitted to exercise a right of set-off under the above-mentioned conditions if his counterclaim is based on the same contractual relationship.
- (5) Our prior agreement is required for the return by the Client of goods that we have supplied under the Contract for reasons that fall exclusively within his area of responsibility. If goods are returned, a lump sum of 15% of the value of the goods, but at least € 50.00, shall be payable for each item that is returned to cover the administration costs and the loss of value of the goods.
- (6) In the event of increases in our staff costs, the market prices of the materials that we require or our other acquisition costs, we are entitled to increase our offer price accordingly, provided more than 6 weeks have lapsed between the conclusion of the Contract and our delivery. In the event of an increase that far exceeds (over 10%) the increase in the general cost of living pursuant to the 4-person household index, the Client is entitled to rescind the Contract if we do not wish to perform the Contract under the old terms. The Client is not entitled to claim damages in this case, unless the increase was foreseeable upon conclusion of the Contract and was not taken into consideration due to gross negligence.

### 4. Damages for Undue Rejection

- (1) If the Client unduly rescinds the Contract or fails to take charge of the goods within the agreed deadline or other reasonable deadline specified in the notice of readiness for dispatch, we may in turn rescind the Contract and claim damages. In this case, the risk of accidental destruction or accidental deterioration of the goods shall pass to the Client when the Client rejects the delivery.
- (2) The Client shall pay 20% of the net invoice amount as damages; if we are able to prove a greater loss, damages shall be paid in respect of such loss. The Client is entitled to prove that we did not sustain any loss or that our loss was lower.

### 5. Delivery Period

- (1) Unless binding delivery periods are expressly agreed, the specified delivery periods are not binding. The delivery period shall commence upon receipt of the order confirmation by the Client. The commencement of the delivery period specified by us presupposes clarification of all technical questions, insofar as notifications and explanations by the Client are necessary.
- (2) The delivery period shall be extended by the period in which we are affected by industrial action, in particular strikes and lockouts, including delayed delivery by a supplier of parts that are essential for manufacturing the goods as a consequence of the aforementioned industrial action. The same shall apply to other unforeseen exceptional events over which we have no control, such as in particular serious extraneous interruption of our operations or parts required by a supplier.
- (3) If our deliveries are delayed for reasons for which we are responsible, a potential claim for damages arising from such delay shall be confined to a maximum 10% of the net delivery value. If the delay is caused by willful intent or gross negligence or by the breach of a fundamental term of the Contract, the statutory provisions concerning liability shall apply; the same shall apply to damages for injury to life, body or health.
- (4) If, after we have defaulted, the Client sets a reasonable deadline for fulfilment or subsequent performance, the Client is entitled to rescind the Contract upon the expiry of this deadline without result; the Client is only entitled to claims for damages instead of performance in the amount of the foreseeable loss if the delay is caused by willful intent, gross negligence or a fundamental breach of the Contract or is related to injury to life, body or health.
- (5) Compliance with our delivery obligation requires timely and proper performance of the duties of the Client to cooperate.
- (6) If the Client gets into arrears or breaches other duties to cooperate, we are entitled to rescind the Contract upon the expiry without result of a reasonable deadline we have set or to claim the losses that we have sustained, including any additional expenditure. Damages of 30% of the net value of the goods plus the statutory value added tax shall be payable. We may claim higher damages in individual cases if we provide evidence of greater loss. The Client has the right to provide evidence that no loss or a lower level of loss has occurred.

- (7) Part deliveries may also be made before the agreed delivery date subject to prior notification, unless the Client raises an objection to the delivery immediately upon receipt of the notice of part delivery.

## **6. Changes to the Design**

- (1) Changes to the design or form of the goods, which are based on a technical improvement that becomes known after the conclusion of the Contract or on a statutory regulation or on DIN/EN standardization that comes into effect after the conclusion of the Contract, shall also be permitted after the conclusion of the Contract, provided the delivery item is not fundamentally changed as a result and the Client can reasonably be expected to accept the changes. Otherwise both Parties may rescind the Contract without claiming damages.

## **7. Transfer of Risk**

- (1) Unless stated otherwise in the order confirmation, delivery "ex works" is agreed.  
(2) If, notwithstanding the above, "carriage-free" delivery was expressly agreed, this will not affect the transfer of risk upon surrender of the goods to the forwarding agent. In order to protect his rights under the forwarding contract, the Client is obliged to inspect the goods immediately upon receipt and to notify any damage in transit immediately, but at the latest within one week from receipt of the goods. At the request of the Client, we will insure the goods in transit; the costs of such insurance shall be payable by the Client.

## **8. Retention of Title**

- (1) We shall retain title to the goods until all of our claims against the Purchaser from the business relationship are settled, including future claims arising from contracts that were concluded simultaneously or subsequently. This shall also apply when individual claims or all our claims have been consolidated in one current account and the balance is drawn and acknowledged. In the event of a breach of contract by the Client, in particular in the event of late payment, we are entitled to take back the goods. Taking back the goods is not tantamount to rescinding the Contract, unless we have expressly stated this in writing. Distraint upon the goods by us invariably involves rescinding the Contract. We are permitted to recycle the goods when we take them back; the proceeds from recycling the goods shall be offset against the liabilities of the Client – less reasonable recycling costs.  
(2) The Client is obliged to handle the goods with care, and is specifically obliged to take out adequate replacement value insurance cover for fire, water and theft at his own expense. If maintenance work and inspections are required, the Client shall undertake such work and inspections in a timely manner at his own expense.  
(3) In the event of distraint or other encroachments by third parties, the Client shall notify us immediately to enable us to institute legal proceedings pursuant to Section 771 of the Code of Civil Procedure. If the third party is not in a position to reimburse our court and out-of-court expenses in respect of legal proceedings instituted under Section 771 of the Code of Civil Procedure, the Client shall be liable for the loss we have incurred.  
(4) The Client is entitled to resell the goods in the ordinary course of business; he hereby assigns to us all claims for the total amount of the invoice (including VAT) agreed with us, which accrue to the Client from reselling to his customers or to third parties, namely irrespective of whether the goods have been resold without or after processing. The Client remains entitled to collect this debt after assignment. This shall not affect our right to collect the debt ourselves. However, we agree not to collect the debt as long as the Client fulfils his payment obligations from the proceeds generated, is not in arrears and in particular as long as an application to commence insolvency proceedings has not been made or payments have not been suspended. However, if this is the case, we may ask the Client to disclose the assigned debts and their debtors to us, provide all the information that is required for collection, surrender the relevant documents and inform the debtor (third party) of the assignment.  
(5) The Client will invariably process or remodel the goods for us. The Client's contingent right to products shall extend to the converted goods. If the goods are processed with other items that do not belong to us, we will acquire joint ownership of the new item in proportion to the objective value of our goods compared to the other processed items at the time of processing. The same shall also apply to the item that is the result of processing as it does to goods that are supplied with reservations.  
(6) If the goods are blended with other items that do not belong to us, we will acquire joint ownership of the new item in proportion to the objective value of our goods compared to the other blended items at the time of blending. If the blending takes place in such a manner that the item owned by the Client must be regarded as the principal item, it is agreed that the Client will transfer joint ownership to us pro rata. The Client shall safeguard the resultant sole or joint ownership for us.  
(7) To secure our claims against him, the Client also assigns to us such claims as arise against a third party as a result of goods being incorporated into real estate.  
(8) We agree to release securities to which we are entitled, at the request of the Client, provided the marketable value of our securities exceeds the claims to be secured by more than 10% or their nominal amount by more than 50%; we are at liberty to choose the securities to be released.

## **9. Assignment Clause**

- (1) We are entitled to assign the claims from our business relationships.

## **10. Payment of the Claims by the Factor against the Debtor**

- (1) If the purchaser is in arrears with any payment obligations towards us, all existing claims shall be payable immediately.

## **11. Warranty**

- (1) Only the description of the service stated in the order confirmation or in the Contract is relevant for determining the contractual quality of the goods. We only assume a warranty when this has been expressly agreed in writing and the agreement is described as a "warranty".  
(2) The warranty rights of the Client are contingent upon the latter having duly fulfilled his obligations to inspect the goods and notify defects pursuant to Section 377 of the Commercial Code. Apparent defects shall be notified within one week from receipt of the goods by the purchaser and latent defects within one week from their detection.  
(3) If the goods are defective, we are entitled to effect subsequent performance (we have the option of remedying the defect or supplying an item that is free of defects). The Client may not without our prior approval undertake work to remedy the defects himself or by third parties; we will not assume the costs of such work. If we remedy the defects, we are obliged to pay all the expenditure that is necessary to remedy the defects, in particular the costs of transport, travel, labor and material, provided they are not increased by bringing the goods to a place that is not the place to which we delivered the goods or which was specified in the Contract as the destination.  
(4) If it is not possible or if we refuse to remedy the defects or if we refuse to deliver an item that is free of defects, the Client has the option of either rescinding the Contract or demanding a corresponding decrease in the purchase price (reduction).  
(5) Unless stated otherwise below (sub-clause 6), further claims by the Client – regardless of the legal reasons – are excluded. We are consequently not liable for financial loss that is not sustained to the delivery item itself; we are in particular not liable for lost profit or other financial loss sustained by the Client.  
(6) If the loss is caused by willful intent or gross negligence, we are liable under the statutory provisions. If we culpably breach a fundamental contractual obligation or a "cardinal obligation", liability is limited to the loss that is typical for the contract; liability is excluded in all other respects under sub-clause (5).  
(7) The warranty is valid for 1 year from the transfer of risk. This shall not apply to a delivery that has been installed in a building as intended and has given rise to a defect.

## **12. Impossibility**

Should delivery be impossible for reasons for which we are responsible, the Client may claim up to 20% of the net amount of the delivery having become impossible without prejudice to his right to rescind the contract; this limitation shall not apply in the event of willful intent, gross negligence or is related to injury to life, body or health. This provision does not imply any shift of the onus of proof to the detriment of the customer.

**13. Other Claims to Compensation of Damage**

- (1) Claims to damages and reimbursement of expenditure of the customer, regardless of the legal reason, in particular due to breach of duties from a contractual relationship, which are not considered warranty claims, are ruled out.
- (2) This shall not apply to the extent that we are cogently liable, e.g. according to the Product Liability Act, in cases of gross negligence, on account of injury of life, limb or health or breach of basic contractual obligations. In the case of breach of fundamental contractual obligations compensation claims are limited to the foreseeable loss or damage typical for such contracts, except in cases where it can be shown that it was attributable to deliberate act or gross negligence or where death or bodily or health injury occurs. This provision does not imply any shift of the onus of proof to the detriment of the customer.

**14. Place of Jurisdiction**

The place of performance and place of jurisdiction for all parties is Montabaur or Stuttgart.

**15. Severability Clause**

If a regulation of this contract is or becomes ineffective, the validity of the rest of the contract is unaffected. Upon such determination that any term or other provision is invalid, the parties hereto shall negotiate to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner. This shall also apply if the above provisions contain an unintended loophole in regulations.