

General terms of delivery and payment

November 09

They apply to this transaction and to all further transactions, tenders, contracts, deliveries and services even if they are not more specifically agreed for further transactions. The trading conditions of the purchaser or other contractual partner shall apply only if they have been accepted by us in writing and shall not involve us in any obligation, even if such obligation is not expressly refused. By accepting our trading conditions on the confirmation of order or in any other way, the purchaser recognises their validity in respect of all transactions with us. They shall also apply in respect of any advisory services, information and the like provided by us in this connection. Statements to the contrary by the customer with reference to its own trading conditions are hereby refuted.

Clause 1 Contractual agreement

- The contract shall become effective only following our written confirmation of order or the signing of a sales contract by our representative.
- The sending of tenders, price lists, circulars or general offers does not constitute a tender binding on us within the meaning of Section 145 of the Civil Code.
- Subsidiary agreements, modifications or additions to orders already placed or these conditions or contracts already concluded shall be legally effective only if they have been confirmed by us in writing. The obligatorily applicable written form may be dispensed with only if this is confirmed by us in writing.

Clause 2 Documents

We reserve the rights of ownership and copyright for all documents such as drawings, samples and documents included in our tenders; they may not be shown to third parties or competing companies. Documents such as drawings, specifications, illustrations, prospectuses and the like are only approximately authoritative and not binding on us unless they are expressly and bindingly designated as such. Where it appears advisable in terms of technical progress and taking into account the interests of the supplier, we reserve the right to make suitable modifications acceptable to the customer.

Clause 3 Prices

- Unless otherwise indicated, prices shall be regarded as net ex-works before statutory Value Added Tax, excluding packaging. All ancillary costs such as the costs of packaging, freight and insurance of export, transit, import and other licences, certification by a notary and calibration under working conditions shall be borne by the customer.
- If there is an interval of more than four months between the signing of the contract and the agreed delivery date and it was not otherwise agreed at the time the contract was signed, our prices applicable at the time of delivery or availability shall apply.
- Unless otherwise stated in our confirmation of order or the purchase contract, assembly and erection of the equipment shall be carried out on a cost basis.

Clause 4 Delivery

- The delivery period shall commence with the despatch of the confirmation of order, but not before production of the documents, consents and releases to be provided by the customer or before receipt of any agreed advance payment.
- The delivery period shall have been complied with if by the time of its expiration the goods to be delivered have left the works or notification has been given that they are ready for despatch.
- In the case of force majeure or other unforeseeable, unusual or unmerited circumstances - such as for example shortages of materials, shutdowns, strikes, lock-outs, lack of means of transport, official interventions, power supply difficulties, mobilisation, war, war-like circumstances, local prohibition of imports and exports, etc., the delivery period shall be extended, if we are hindered in the prompt fulfilment of our obligations, by the length of time we suffer such hindrance. If owing to the aforesaid circumstances the delivery or service cannot be provided or reasonably expected, we shall be released from the obligation to make delivery. If the delivery period is extended or we are released from the obligation to deliver, this shall not give the customer any right to compensation. The supplier shall also not be held responsible for the above-mentioned circumstances if they arise during the course of an already existing delay. The supplier shall notify the customer of the commencement and ending of such hindrances.
- Should the customer suffer loss owing to a delay for which the supplier is to blame it shall be entitled, to the exclusion of any further claims, to claim compensation for delay. This shall amount to 1/2 per cent for each full week of delay, but not more than 5 per cent in all, of the value of that part of the total delivery which as a result of the delay cannot be used in good time or in accordance with the contract.
- If despatch is delayed at the request of the customer the latter can be charged, commencing one month after notification of readiness for despatch, the costs arising from storage, and in the case of storage in the supplier's works at least 1/2 per cent of the amount of the invoice for each month. The supplier shall however be entitled after setting a reasonable time limit which expires to no effect to make use of the goods elsewhere and to supply the customer within a reasonably extended time limit.
- Observance of the delivery period is subject to the customer meeting its contractual obligations.
- If there is a delay in performance and the customer grants the supplier who is in delay a reasonable further period with the express declaration that on expiration of this period it will refuse to accept the service, and such further period is not complied with, the customer shall be entitled to withdraw from the contract. Further claims shall be excluded unless loss arising from wilful default or gross negligence is involved.
- Part deliveries shall be permitted.
- Making a statutory declaration on a list of assets (formerly called an "oath of disclosure") getting into difficulties in making payment, its becoming known that the financial circumstances of the customer have materially deteriorated or a change in ownership of the customer's company shall entitle us to deliver only against security or to withdraw from the contract.

Clause 5 Despatch and transfer of risk

- We reserve the right to decide the best method of despatch without having to ensure that it is the cheapest. It is left to the customer to take out transport or other insurance.
- The risk shall be transferred to the customer, even if "freight paid" delivery is agreed, at the time when the goods being delivered leave the works or are handed over to the transport company, or the customer is notified that they are ready for despatch. If despatch is delayed through the fault of the customer, the risk shall be transferred, even without notification, to the customer, on the day the goods are ready for despatch.
- Goods supplied, even if they have minor defects, shall be accepted by the customer, without prejudice to the rights under Clause 6.

Clause 6 Guarantee and other liability of the supplier

- Our guarantee extends to 12 months for satisfactory operation, in accordance with the recommendations of the VDMA (Verein Deutscher Maschinenbau-Anstalten = Federation of German Engineering Institutes), provided there are no abrasive substances or foreign bodies in the liquids and the instructions for installation and commissioning are complied with.
- We shall rectify justified complaints as we think fit or provide a replacement free of charge. A right to cancellation or reduction exists only if in our opinion rectification or supply of a replacement cannot be carried out or the time limit for this or through the fault of the supplier a reasonable further period has not been adhered to. In the case of definite failure to rectify the fault or supply a replacement, the customer can demand a reduction in the compensation or optionally cancellation of the contract. Further claims by the customer, particular a claim to compensation for loss or damage, are excluded unless the supplier is guilty of causing the loss or damage deliberately or through gross negligence.
- Costs incurred in rectifying or replacing the supplied goods shall be borne by the supplier - provided the complaint proved to be justified - including the costs of the replacement part and its delivery and the reasonable cost of dismantling and installation and further, if this can be fairly demanded in the circumstances of the individual case, the costs of any necessary attendance of the supplier's fitters and auxiliary personnel. Costs shall otherwise be borne by the customer.
- In the case of newly manufactured sales goods we assume liability for guaranteeing that they are free from manufacturing defects. No guarantee liability is assumed in the case of used sales goods. The suitability, quality and serviceability of our goods shall be determined solely in accordance with the description of performance and technical specifications used by us in commercial transactions. If goods are installed in production plants or incorporated, machined or treated in other such systems by the customer without being released by us in writing, any guarantee is precluded. The guarantee lapses if persons other than those authorised by us carry out repairs or other operations or modifications on the sales goods or use unsuitable accessories, insofar as the defects which have arisen have a causal relation therewith. In the case of equipment intended for use in areas where there is a risk of explosion, we guarantee that the equipment is suitable according to the indicated specifications for use in the areas concerned in compliance with the ExExV (Order on electrical installations in areas where there is a risk of explosion). Delivery is made solely on the basis of the information given us by the customer/orderer. The division into zones, i.e. the arrangement of the area of use for the equipment, shall be the sole responsibility of the customer/orderer. If the supplier, Fricktechnik GmbH & Co. accepts no responsibility for the area suitability of the equipment denoted by the operating instructions and the inscription of the equipment being identical with the conditions existing at the customer's place of employment.
- Rectification or exchange of faulty goods shall be carried out at the place of installation of the purchased goods or on our premises or on the premises of a subsidiary, as we may choose. If rectification takes place at the place of installation of the purchased goods, the customer shall allow our representative to have access, unimpeded as regards time and space, to the goods. The customer may require the guarantee work to be carried out only during our usual hours of business. If such work is carried out at the request of the customer outside our usual hours of business, the customer shall pay the costs additional to our prices applicable at the time. Should the customer request special services which go beyond the scope of the guarantee work, our prices applicable at the time will be charged for these.

Clause 7 Other liability of the supplier

Claims for compensation by the customer for specific breach of contract, for infringement of liabilities when negotiating the contract or for tort are precluded. This shall not apply if the supplier or its statutory or other agents are guilty of wilful default or gross negligence.

Clause 8 Payment

- Our claims are payable from the date of issue of the invoice. Payment shall be made within 10 days from the date of the invoice net without deduction of discount. In the case of a total order value of more than DM 30,000.00, payment shall be made as follows, net without deduction of discount: 30 % when the order is issued, 60 % on notification of completion of manufacture and 10 % following installation.
- We expressly reserve the right to refuse cheques or bills of exchange, which will be accepted only for payment. The purchaser shall bear the discount and exchange costs and pay them immediately.
- Should the customer fall wholly or partly in arrears in making payment, all its obligations to make payments to us shall fall due with immediate effect without taking into account the period to maturity of any bills of exchange taken in. This shall also apply in respect of any other contracts not yet completely fulfilled by both parties, from which in such case we can also withdraw. We shall also be entitled to require security for all our claims and to carry out still outstanding deliveries only against payment in advance or the furnishing of securities.
- Payments can be accepted as satisfactory only if made to our accounts or on our premises.
- The customer shall be entitled to offset or retain payments only if its counter-claim is uncontested or established as legally binding, provided this is admissible in law.

Clause 9 Reservation of title

- We reserve the right of title in all goods supplied until all amounts payable to us have been paid in full.

- Machining and processing are carried out for us without any acquisition of title in accordance with Clause 950 of the Civil Code.
- In the case of association, mixing or blending with other goods not belonging to us, we shall acquire co-ownership of the new article according to the ratio between the goods supplied by us and the other goods at the time of such association, mixing or blending. The new article shall be regarded as a separate item within the meaning of these conditions.
- The customer shall assign to us as of now amounts payable to it from an onward sale of the separate item to an amount corresponding to the value of the separate item. This shall apply even in the case of a sale together with other goods at an overall price.
- If the separate item is installed by the customer as a material component on the property of a third party, the customer shall as of now assign to us its claims against the third party deriving there from in the amount corresponding to the invoice value of the separate item plus a contingency supplement of 20%. The date of our first confirmation of order shall apply in establishing the priority of the assignments in Clauses 9.4 and 5.
- In the case of conduct in contravention of the contract on the part of the customer, particularly delay in payment, the supplier shall be entitled after giving due warning to withdraw from and the customer shall be required to relinquish the contract, except to the extent that the Law on payment in advance applies. Assertion of reservation of title shall not be regarded as withdrawal from the contract.
- The customer shall not be entitled to dispose of or pledge the separate item or assign it as security. Re-sellers shall be entitled to dispose of the item in the regular course of business provided they also reserve ownership.
- The supplier undertakes to release at the customer's request the securities belonging to it according to the above conditions as the supplier chooses, to the extent that their realisable value exceeds the claims to be secured by more than 20%.

Clause 10 Acceptance, compensation claims

If the purchaser / customer is in arrears by reason of wilful default or gross negligence in accepting the purchased object by more than 14 days following receipt of a notification of availability, we can fix a further time limit of 14 days for the purchaser / customer with a declaration that on expiration of this period we shall refuse to make delivery. On expiration of the time limit to no effect, we shall be entitled to withdraw from the contract by a written declaration to this effect or to demand compensation for non-fulfilment of the contract.

We shall not be required to request acceptance or to set a further time limit if the purchaser / customer positively and definitely refuses acceptance or will obviously not be in a position to pay the purchase price if a further time limit is granted. Should we demand compensation, this shall amount to 15% of the purchase price. The amount of loss shall be set higher or lower if the seller can show that the loss is higher or the purchaser that it is lower. The same shall apply if the customer cancels the contract within the meaning of Clause 649 of the Civil Code.

Clause 11 Exploitation of patent

If the goods are manufactured and supplied in the design especially stipulated by the customer (according to a drawing, specimen or other specific information), the customer shall assume the guarantee that the design does not infringe the rights of others, and in particular patent, design and other protective rights and copyrights. The customer shall be required to release us from all claims by third parties deriving from such an infringement.

Clause 12 Place of performance and jurisdiction

- The place of performance shall be Minden.
- The place of jurisdiction for any disputes arising from the supply contracts or associated legal relationships shall be for both parties the municipal or the district court, as we may choose, if the customer is a full trader, a legal entity in public law or a special fund under public law.
- This applies also in respect of legal documents, bills of exchange and obligations arising from cheques.

Clause 13 Invalidity of individual parts of the contract

Any invalidity of individual parts of the contract shall not make the contract invalid as a whole. The other provisions of the contract shall instead continue to exist as an independent contract. Invalidity of individual parts of the contract shall in particular not release the purchaser from the contract. Any invalid or void provisions shall be replaced by such legally admissible provisions as most closely approximate to the intentions of the seller as aimed at in the deleted provisions.