

# General Conditions of Sale of Max Frank GmbH & Co. KG

## § 1 General – scope

- (1) Our Conditions of Sale apply exclusively to the legal relations between Max Frank GmbH & Co. KG and the Buyer. We shall not recognise the Buyer's conditions to the contrary or such that vary from our Conditions of Sale unless we expressly approved of their validity in writing. Our Conditions of Sale shall also apply if we deliver to the Buyer without reservation although we are aware of the Buyer's conditions to the contrary or those that vary from our Conditions of Sale.
- (2) Agreements or subsidiary agreements that vary from these conditions shall only be deemed valid if confirmed in writing by us.
- (3) Our Conditions of Sale also apply to all future transactions entered into with the Buyer.
- (4) Our Conditions of Sale only apply to companies within the meaning of Section 310, sub-section 1, German Civil Code (BGB).

## § 2 Offer – offer documents

- (1) Our offers are subject to confirmation.
- (2) A delivery contract shall only come into being following written confirmation of order by us, at the latest upon delivery. Forwarding per data communication is deemed sufficient in respect of the written form.
- (3) If the order is to be qualified as an offer pursuant to Section 145 BGB, we may accept it within two weeks.
- (4) We reserve the proprietary rights and copyrights to drawings, calculations and other documents. This also applies to written documents that are described as "confidential". The Buyer is to obtain our express, written, approval prior to forwarding such documents to third parties.

## § 3 Receipt of letters of intent

If we can furnish proof by presenting a telephone invoice and a fax journal, that we have sent the letter of intent per facsimile or data communication, it shall be assumed that the Buyer has received such a letter of intent.

## § 4 Prices – terms of payment

- (1) Only the prices we confirm in writing are deemed valid. These are to be construed ex works plus the statutory value added tax, postage, packaging, freight and insurance etc. A € 10.00 surcharge shall apply in the case of small orders valued at less than € 50.00.
- (2) We reserve the right to amend our prices accordingly if, once the contract is entered into, cost reductions or increases apply in particular due to increases in wage costs or material price changes. On request we shall provide the Buyer with proof in this respect.
- (3) Our invoices shall fall due within 10 days subject to 2% trade discount, or within 30 days without deductions.
- (4) Means of payment other than cash, bank transfer or presenting a cheque shall be subject to a special agreement. Receipt at our company shall be deemed authoritative in respect of timely payment.
- (5) The statutory regulations regarding the consequences of default in payment are deemed applicable.
- (6) The Buyer may only set off using counterclaims that we recognise or such that have become res judicata. The Buyer shall only be entitled to exercise a right of retention insofar as its counterclaim refers to the same contractual relationship.
- (7) If once the contract has been entered into we become aware of circumstances that call into question the Buyer's creditworthiness, or if our claim for payment is considerably jeopardised due to a dwindling of the Buyer's assets, or if the Buyer defaults in respect of paying the purchase price, we may demand an advance payment or a security within a reasonable period and refuse performance until our demand has been met. If the Buyer refuses to comply, or in the event that the period expires in vain, we shall be entitled to withdraw from the contract either in full or in part and claim damages in lieu of performance

## § 5 Product adjustments

We reserve the right in any case to carry out construction, form and technical improvements in line with the respective engineering standards up until delivery.

## § 6 Deliveries, delivery time, default in delivery

- (1) The start of the delivery and performance dates stated by us are conditional on the fact that all technical matters have been clarified and the Buyer's obligations are honoured in good time and in a proper manner. If this is not the case, the deadline shall be extended accordingly. The parties reserve the right to object to a contract that is not executed.
- (2) The delivery period shall be extended in the case of force majeure, strikes or delays that are not our responsibility for the duration of the obstruction.
- (3) We are entitled to provide partial deliveries insofar as this does not result in disadvantages in respect of use. Delivery quantities that either exceed or fall short of the agreed quantity by 10% shall be deemed proper execution of the contract.
- (4) If the Buyer defaults in acceptance or culpably violates other collaboration duties, we shall be entitled to give preference to other third party orders and extend the delivery time accordingly. Irrespective of further claims, we shall be entitled insofar to demand compensation for the damage we suffer, including additional expenses that may apply. Irrespective of more far-reaching rights, we may, in particular, charge for each month storage fees of 0.5%, at most however 5% of the price of the delayed delivery.
- (5) Insofar as the conditions of sub-section (4) apply, the risk of possible loss or possible deterioration of the purchased item shall pass to the Buyer at the time

at which the Buyer defaults in acceptance or defaults as the debtor.

- (6) In the case of blanket orders we may charge storage fees of 0.5% of the price of the delayed delivery. Furthermore, in the case of blanket orders we may, once 12 months have lapsed following confirmation of an order, set a one-month subsequent period for acceptance and subsequently invoice the goods or performance that have not been accepted or charge fees for keeping goods or services available.
- (7) We shall be liable in accordance with the statutory provisions insofar as the delivery delay is attributable to wilful or gross negligent breach of contract for which we are responsible. Culpability on the part of our representatives or vicarious agents is to be attributed to us. In the event of a grossly negligent breach of contract, our liability for damages shall be limited to foreseeable and typical cases of damage. An alteration to the burden of proof to the Buyer's detriment is not associated with this regulation.
- (8) We shall be liable in accordance with the statutory provisions insofar as the delivery delay for which we are responsible is based on a culpable violation of a key contractual obligation. However, in such a case the liability for damages shall be limited to foreseeable and typical cases of damage unless we or our vicarious agents are accused of intent or gross negligence.
- (9) Insofar as default in delivery is our responsibility in accordance with these provisions, our liability for each full week of delay shall be limited to compensation of 0.5%, at most however totalling 5%, of the price for the part of delivery that cannot be used due to the delay.
- (10) The Buyer undertakes at our request to state within a reasonable period whether, in view of the default in delivery, it will withdraw from the contract or insists on the delivery.
- (11) Other statutory claims and rights to which the Buyer is entitled in the event of default are reserved.

## § 7 Passing of risk – cost of packaging

- (1) Insofar as nothing to the contrary is specified in the confirmation of order, deliveries are agreed upon as "ex works/warehouse". We shall at our discretion specify the shipping type and route. Goods shall be shipped at the Buyer's risk and for its account. This also applies to returns.
- (2) Transport and all other one-way packaging shall not be taken back.
- (3) Small and punched parts shall be delivered as bulk. Single item or special packaging shall only be used following an appropriate agreement.
- (4) At the Buyer's request we shall take out transport insurance coverage for the delivery. Costs incurred in this respect shall be borne by the Buyer.
- (5) In the case of deliveries abroad, the Buyer shall carry all costs associated with the transport ex works. This means we will have executed the contract of purchase following hand-over of the goods to the shipping agent – all additional costs and risks (customs duties, freight, loss, damage) shall pass to the Buyer (EXW clause of the International Commercial Terms – Incoterms).

## § 8 Rights in respect of defects and liability

- (1) Customary variations in the case of deliveries from various manufacturing series are not deemed defects. The same applies in the case of generally acceptable variations in deliveries of samples and specimens. Technical data, specifications and performance data in offers, contracts, Annexes, advertising brochures and documents etc. merely describe the quality of products and do not constitute any guarantees unless they are described as such.
- (2) Notification of defects must be given in writing and without delay, at the latest within a period of 8 days. In the case of obvious defects, the period shall commence upon delivery, while in the case of hidden defects once such defects are discovered. The delivery shall be deemed accepted if the Buyer fails to provide notification.
- (3) Insofar as the purchased item contains a defect, we shall be entitled at our discretion to provide subsequent performance in the form of rectification of defects or replacement delivery of a new, defect-free, item. In the case of rectifying defects we undertake to carry all expenses required to rectify the defects, in particular the cost of transport, travelling, work and materials insofar as these do not increase because the purchased item has been taken to a location other than place of performance. We may reject providing subsequent performance if it is only associated with unacceptably high or disproportionately high costs.
- (4) If the subsequent performance fails, the Buyer shall – irrespective of claims for damages that may apply – at its discretion be entitled to withdraw from the contract (rescission of contract) or to a price reduction (reduce the remuneration).
- (5) Warranty claims shall not apply in the case of a merely an insignificant deviation from the agreed quality or the agreed delivery quantity, in the case of merely inconsiderable impairment in respect of use, in the case of natural wear-and-tear or damage caused once the risk has passed due to faulty or negligent handling, excessive stress, unsuitable operating material, inappropriate use, improper use, faulty assembly, failure to observe maintenance and operating instructions or due to particular external influences that are not assumed in the contract. A deviation in delivery quantity of up to 10% is deemed insignificant. If the Buyer or third parties make improper alterations, these and the subsequent consequences shall not be subject to warranty claims.
- (6) In any case we may render the subsequent performance (subsequent improvement or replacement delivery) conditional on whether an appropriate part of the agreed remuneration has already been paid that is proportionate to the scope and severity of the defect.
- (7) The Buyer shall support us in identifying and remedying defects, provide us with comprehensive information and consult us. It is to give us the opportunity to review the case of damage.

- (8) We shall be liable in accordance with the statutory provisions insofar as the Buyer asserts claims for damages that are based on intent, gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, liability for damages shall be limited to foreseeable and typical cases of damage.
- (9) We shall be liable in accordance with the statutory provisions insofar as we culpably violate a key contractual obligation. However, in such a case the liability for damages shall be limited to foreseeable and typical cases of damage unless we or our vicarious agents are accused of intent or gross negligence.
- (10) Insofar as the Buyer is entitled to compensation for damage in lieu of performance, our liability shall be limited to compensation of foreseeable and typical cases of damage.
- (11) This shall not affect the liability due to culpable damage resulting from injury to life, body or health. This also applies to the mandatory liability in accordance with the German Product Liability Act.
- (12) An alteration to the burden of proof to the Buyer's detriment is not associated with this regulation.
- (13) In the absence of agreements to the contrary, the period of limitation in respect of warranty claims in the case of items that were used for a structure in accordance with customary usage, and that are responsible for faults in the structure, is 36 months from the passing of risk. In the case of other items the period of limitation is 12 months. This shall not affect the period of limitation in the case of delivery recourse pursuant to Sections 478 and 479 BGB. In other respects the statutory period of limitation shall apply to cases of damage resulting from injury to life, body or health, intentional or grossly negligent violation of an obligation and in the case of fraudulent concealment of a defect. These provisions shall not affect the statutory regulations on the start of the limitation and the suspension, hindrance and new start of the periods.
- (14) The Buyer shall only be entitled to recourse against us pursuant to Section 478 BGB (recourse on the part of the businessman) insofar as the Buyer has not entered into any agreements with its customer that extend above and beyond the statutory warranty claims. These regulations apply accordingly to the scope of our liability for damages.

#### § 9 Industrial proprietary rights, defect in title

- (1) The Buyer undertakes to inform us without delay of third-party claim to proprietary rights in respect of the supplied products and to leave any legal defence to us at our expense.
- (2) We are entitled to implement modifications at our own cost in the case of third-party claims to proprietary rights, even in the case of supplied and paid goods.
- (3) The Buyer's claims shall be excluded insofar as it is responsible for the violation of proprietary rights. The Buyer's claims shall be further excluded insofar as the violation of proprietary rights is caused by the Buyer's special requirements, by an application that we could not foresee or because the Buyer's delivery is modified or used in conjunction with products that we have not delivered.

#### § 10 Overall liability

- (1) Liability for compensatory damages that exceeds that provided for in Sections 8 and 9 is excluded – without consideration to the legal nature of the asserted claim. This applies, in particular, to claims for damages from culpability in the case of entering into a contract, other violations of obligations or due to tortious claims in respect of compensation of material damage pursuant to Section 823 BGB.
- (2) The demarcation according to sub-section (1) also applies insofar as the Customer demands compensation of useless expenses instead of the performance in lieu of a claim for compensatory damages.
- (3) Insofar as liability for damages is excluded or limited in dealings with us, this shall also apply in respect of the personal liability for damage of our salaried staff, workers, employees, representatives and vicarious agents.

#### § 11 Customised products, cost of tools

- (1) In the case of delivering customised products we shall charge proportionate and one-off costs in respect of manufacturing appropriate tools.
- (2) The tools shall remain our property. The Buyer may demand that such tools may only be used for orders it has placed. In other respects we reserve the right without restrictions to all copyrights and ancillary copyrights to the tools.
- (3) If customised products contain defects, the Buyer shall initially be entitled to assert a claim for subsequent performance. If the Buyer demands subsequent performance, we may at our discretion rectify the defect or manufacture a new item. If the subsequent performance fails, the Buyer shall – irrespective of claims for damages that may apply – be entitled at its discretion to withdraw from the contract (rescission of the contract) or to a price reduction (reduction of remuneration). In other respects the provisions of Sections 8 to 10 apply mutatis mutandis to the abatement and our liability.

#### § 12 Reservation of title

- (1) We reserve the right to ownership of the purchased item up until receipt of all payments resulting from the business association (including all balance claims from the current account) entered into with the Buyer. If the value of the items surrendered to us as a security and which are subject to the reservation of title exceed our total claim by more than 20%, we shall, at the Buyer's request, be under obligation to (proportionately) release the security.
- (2) In the case of breach of contract on the part of the Buyer, in particular in the case of default in payment, we shall be entitled to take back the purchased item after setting a reasonable period. Taking back the purchased item shall constitute withdrawal from the contract on our part. After having taken back the purchased item, we shall be entitled to sell it. The proceeds from the sale are to be counted towards the Buyer's liabilities – less appropriate utilisation costs.

- (3) The Buyer may neither pledge nor transfer ownership of the delivery items prior to payment of the purchase price. In the case of seizure and confiscation or other intervention on the part of third parties, the Buyer is to inform us without delay and provide us with all information and documents required to safeguard our rights. Enforcement officers or third parties are to be informed of our property. Insofar as the third party is not in a position to compensate us for court and out-of-court costs in respect of an action pursuant to Section 771 German Code of Civil Procedure (ZPO), the Buyer shall be liable for the loss we suffer.
- (4) The Buyer is entitled to sell the delivery items in the ordinary course of business. However, he hereby assigns to us at this point in time all claims in the sum of the purchase price agreed upon between us and the Buyer, including value added tax, due to the Buyer from its customers or third parties as a result of the sale, irrespective of whether the delivery items are sold without or after processing. The Buyer shall be also authorised to collect such a claim after the assignment too. This shall not affect our authority to collect the claim. However, we undertake not to collect the claim as long as the Buyer properly honours its payment obligations and does not default in payment. However, if this is the case, we may demand that the Buyer inform us of the assigned claims and the appertaining debtors, that it provide us with all the necessary details, surrender the pertinent documents and inform the debtors (third parties) of the assignment.
- (5) The processing or remodelling of the goods by the Buyer shall at all times be carried out on our behalf. If the delivery items are processed with other items that we do not own, we shall acquire co-ownership in the new item in the proportion of the value of the delivery items to that of the other processed items at the time of processing. In other respects the provisions that apply to the delivery items subject to reservation apply by the same token to the item created by processing.
- (6) If delivery items are inseparably linked to other items that we do not own, we shall acquire co-ownership in the new item in the proportion of the value of the delivery items to that of the other linked items at the time of linking. If the mixing is carried out such that the Buyer's item is to be regarded as the principal item, it is deemed agreed that the Buyer shall assign to us proportionate co-ownership. The Buyer shall store the solely owned or co-owned item created thus on our behalf.
- (7) The Buyer also assigns to us the claims against a third party for securing our claims against the Buyer that arise on the basis of linking the purchased item to a plot of land.
- (8) We undertake at the Buyer's request to release the securities due to us insofar as the realisable value of our securities exceeds by more than 10% the claims that are to be secured. We are free to select the securities that are to be released.

#### § 13 Secrecy and data protection

- (1) The contracting parties shall treat in confidence all verbal and written information or such of which they otherwise gain knowledge, or such that is described as confidential or which on the basis of its nature is normally to be regarded as confidential, and treat in confidence documents during the period of the contractual relationship and for two years following the end of the contract, solely use such information as part of the services set out in this contract and without approval by the respective other party neither forward it to third parties nor otherwise make it available to third parties, and undertake all precautionary measures to rule out and avoid access thereto by any third party.
- (2) This obligation to maintain secrecy does not apply to information and documents that
  - are already in the public domain at the time knowledge is gained of it, i.e. is available to any third party without further action,
  - are legally made available to a contracting party, following disclosure, by a third party that in this respect is not under any obligation to the other contracting party to maintain secrecy,
  - at the request of the authorities or an otherwise entitled third party are to be disclosed to such a party subject to a requirement,
  - must be made available to legal or tax advisers of the respective partner for the purpose of consulting.
- (3) We undertake as part of our services as per agreement not to violate data protection provisions. We shall place our employees under obligation to adhere to the data protection provisions and place these persons under an obligation to maintain secrecy. Data protection sensitive activities shall be co-ordinated with the Buyer's data protection officer.

#### § 14 Place of jurisdiction – place of performance

- (1) Our respective registered office is deemed the place of jurisdiction. However, we are entitled to bring an action against the Buyer at the court with jurisdiction for its place of residence too.
- (2) The law of the Federal Republic of Germany is deemed applicable to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (3) Insofar as nothing is specified to the contrary in the confirmation of order, our registered office is deemed the place of performance.

#### § 15 Miscellaneous

- (1) In the event that individual provisions of the contract are or become invalid, this shall not affect the validity of the other provisions. It is agreed upon that in lieu of the invalid provision a condition should apply that comes closest to the economic purpose intended by the invalid provision.
- (2) Amendments and supplementary information are subject to the written form.