

General Terms and Conditions of Sale and Delivery of Franz Kiel GmbH, Nördlingen

Last updated: 1 July 2005

1. General/Scope of Application/Conclusion of Contract

1.1. These General Terms and Conditions (hereinafter referred to as GTCs) apply to all current and future business transactions between us and the other contractual party (hereinafter referred to as Customer) and to all services and deliveries, even if subsequent contractual relations do not involve their express inclusion and handover. The Customer's general terms and conditions only apply insofar as we give our express written consent to them; for the rest we hereby expressly reject them. Any subsidiary agreements, reservations or amendments to the Contract or these GTCs must be confirmed by us in writing in order to be valid.

1.2. German law applies exclusively; in particular the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) are not applicable.

1.3. Our offers in whatever form submitted are always subject to confirmation. They should be considered only as a request to submit an offer. Contracts, irrespective of where initiated and by whom, will only be binding on us following our written confirmation together with the contents of the confirmation supplemented with these GTCs. Should there be no written confirmation, the Contract will become binding when the commission or order is executed; in this case the delivery note or invoice will be considered to be the written order confirmation.

1.4. The nature of the object of the Contract, also with regard to dimensions, weight, depiction etc., is defined exclusively by the relevant written agreements/order confirmation documents, without these representing a guarantee for the nature of the object or work. Details contained in other documents, e.g. brochures, price lists, assembly diagrams are not binding. We must give our express written consent before providing a guarantee.

1.5. We reserve all property rights and copyright without limitation to the use of the documents that we supply (quotations, drawings etc.). Such documents may only be made available to third parties with our prior consent. They must be returned to us on request unless the Customer has justifiable interests to the contrary.

2. Prices/Terms of Payment/Security

2.1. Our prices are for the net value of the goods/services without any service performance at the Customer's location and exclude the legally applicable rate of VAT. They are quoted ex factory or ex warehouse, loaded on collection vehicle, and do not include costs, packaging, freight, shipment, interim storage, any insurance that the Customer may desire etc.

2.2. Part payments in an acceptable amount may be required for services/deliveries performed or held in stock. Part deliveries, which are permitted to an acceptable extent, can be billed immediately and are individually payable immediately.

2.3. It is only possible to offset our claims with undisputed or legally established counterclaims. No right of retention arising from other transactions of the current contractual relationship may be applied. Any assignment of claims requires our written consent.

2.4. If specific remuneration has not been agreed, the remuneration demanded by us on the day of performance shall be considered to apply.

2.5. We are entitled, in appropriate application of Art. 648 a, subsections 1, 2, 3, 5 and 7 of the German Civil Code (BGB), to demand security for services to be rendered including relevant incidental service charges.

3. Delivery Dates/Delay

3.1. Delivery dates/periods specified or confirmed by us are without obligation and merely indicate an approximate point in time unless they have been expressly designated and confirmed by us as binding. In any case the delivery period will not begin to apply until the Customer has met his/her duty to cooperate in full and in good time, in particular by punctually submitting all customer-specific details for the ordered goods. It will be extended by the period with which the customer is in default in meeting his/her contractual obligations, including those connected with other Contracts in the context of the current business relationship.

For-make-and-hold orders, the call order must be placed at an adequate interval prior to the desired delivery date; we may demand that the customer specify the desired delivery date at the latest three weeks following conclusion of the contract.

3.2. All execution and delivery dates will be prolonged commensurately - even if we are behind schedule - in the case of force majeure and when any hindrances occur beyond our control. Delivery of the goods to the Customer is subject to correct and punctual supply to ourselves. We will inform the Customer immediately if the delivery item is not available and, in the event of cancellation, we will refund any corresponding payment immediately.

3.3. The Customer may only withdraw from the contract if, in the event of a delay in delivery, he/she has set us an adequate extension period amounting to at least 3 weeks and we fail to perform our obligations within this period.

3.4. For delays in meeting our obligations we shall be liable in cases of intent or gross negligence on our part or on the part of a representative or vicarious agent in line with legal provisions. However, in cases of gross negligence our liability shall be limited to foreseeable damage typical for this type of contract, unless one of the exceptions listed in clause 5 of this provision applies. For the rest, our liability for delay in meeting obligations for damages incidental to performance and damages in lieu of performance shall be limited to 5 % of the price for that part of performance that could not be put into intended operation due to the delay. All further claims on the part of the Customer are excluded - also after expiry of a deadline for performance that was set for us. The aforementioned restrictions do not apply to liability for damage to life, body or health.

4. Execution of Delivery/Transfer of Risk/Packaging

4.1. If we are commissioned to arrange delivery or shipment, we will have the right to choose the route and means of transport.

4.2. Transport will be at the Customer's risk even if delivery carriage paid is agreed. Risk will pass to the Customer as soon as the consignment is made ready for dispatch or collection at our factory at the beginning of the dispatch/loading process, even for carriage-free delivery.

4.3. We are entitled to choose the type of packaging. Non-returnable packaging will be charged and becomes the Customer's property with the transfer of risk. They will not be taken back. Re-usable loading aids will be charged to account and must be returned by the Customer at his/her own cost. Damage and loss must be replaced by the Customer.

4.4. If dispatch or delivery is delayed for reasons for which the Customer is liable, or if the Customer delays acceptance of the goods for other reasons, risk will be transferred to the Customer at the beginning of the delay.

5. Retention of Title

The following securities shall be granted to us until all claims have been settled (including all open balances on the current account) that are due to us now or in future on any legal grounds. We shall release these securities on request at our option if their realisable value, including securities granted outside these provisions, effectively exceeds the value of the claims by more than 10 %.

5.1. The goods (goods to which we reserve title) remain our property and must be stored by the Customer at his/her own cost and risk separately and correspondingly labelled.

5.2. Part payments for delivered goods do not cause a transfer of title, not even partially.

5.3. Any processing, reworking or change of goods to which we reserve title is always effected for us as manufacturer, but without any liability for us, in particular without any guarantee on our part. The processed, reworked or changed goods are also deemed to be goods to which we reserve title in the sense of these provisions. Should our (co-)ownership cease due to combination or processing with other objects that do not belong to us, it is agreed that the Customer's co-ownership of the aggregate object shall be transferred to us in the proportion of the value (proportion of the invoice value of the goods to which we reserve title to the invoice value of the other goods used). The Customer shall store our (co-)owned property safely and free of charge. Goods to which we have a right of (co-)ownership are also designated goods to which we reserve title in the following.

5.4. Supplemental to the provisions concerning right of retention, should the goods to which we reserve title be installed in a third-party product/vehicle, the Customer shall assign to us any claim that he/she may have to a security mortgage on a third party's property in accordance with Art. 648 of the German Civil Code (BGB) in the amount of the claim secured by the right of retention.

5.5. Subject to revocation, the Customer is entitled to process and sell the goods to which we reserve title in the normal line of business. Selling the goods also includes installing them in a building provided the conditions of Section 5.8 Clause 1 apply and on further condition that he/she also make arrangements regarding the retention of title and the extended retention of title that correspond to these arrangements between him/her and us. Pledging or transferring the goods to which we reserve title by way of security is not permitted.

The Customer assigns to us any future claims relating to the goods to which we reserve title from the resale, reworking or other legal reasons (e.g. insurance, illicit action etc) - including all open

balances on the current account - if necessary as a proportion of the value (Section 5.3), and consents to their being paid out to us direct. We herewith accept this assignment. We hereby revocably authorise the Customer to collect claims assigned to us. This authorisation to collect can be revoked in the event of circumstances that give us power to collect in accordance with Section 5.6. The Customer is obliged to disclose the name of the third-party debtor and to inform him/her of this assignment. A disposal of such assigned claims in the way of further assignment, including factoring, is subject to our consent.

5.6. We are entitled to collect the claims if the conditions contained in Section 5.8. Clause 1 exist, whereby the Customer forfeits his/her right to resell or rework the goods. The collected claim will only be utilised to the extent that it is necessary to meet any residual claims including interest and costs.

5.7. When third parties avail themselves of the goods to which we reserve title the Customer shall indicate that they are our property and shall inform us immediately.

5.8. The Customer shall forfeit the right to resell or rework the goods in accordance with Section 5.5 in the event that payment is endangered in accordance with Art. 321 of the German Civil Code (BGB), unless the customer can prove the contrary, or in the event of other behaviour that is in breach of contract. In such cases we are also entitled to withdraw from the contract and to take possession of the goods to which we reserve title and to enter the Customer's factory premises for this purpose. The Customer must handover the goods to which we reserve title immediately on demand and, where applicable, to assign to us any claims for the handover thereof vis-à-vis third parties.

5.9. All securities also cover such claims that may be based by a liquidator on the exercise of his/her rights in accordance with Art. 103 of the German Insolvency Code (InsO).

5.10. The Customer is obliged at his/her own cost to take out and maintain adequate insurance against all risks for the goods that are subject to retention of title He/she herewith consents to the disbursement of insurance payments to us.

5.11. Should the Customer breach his/her obligations, in particular should he/she delay payment, we will be entitled to demand the immediate surrender of the delivered items and/or to withdraw from the contract without notice. Demanding the surrender of goods does not constitute withdrawal from the contract unless this is expressly declared.

6. Warranty/Notice of Defect/Liability/Damages

6.1. The Customer is obliged to inspect and test the goods carefully immediately on arrival, even in the event of part delivery. This is particularly necessary because such a test cannot be performed by us, e.g. when components are supplied.

We must be informed in writing of any defects found in the course such inspections/tests and of all visible defects within 10 days of delivery, and in any case before the goods are installed, processed or reworked. Any other obligations incumbent upon on the Customer arising from Art. 377 of the German Commercial Code (HGB) remain unaffected. Should the Customer infringe these provisions, his/her rights will lapse unless the requirements of Art. 444/639 of the German Civil Code (BGB) apply. A similar case applies to defects that are not visible and to defects that

are not found during inspection/testing from the moment that they are recognised.

6.2. The Customer is still obliged to accept the goods and store them appropriately in the event of a notice of defect. Before disposing of, processing, destroying etc. the goods the Customer must give us the opportunity to examine the defects complained of and, if necessary, to conduct an independent process to gather evidence, unless this is unreasonable for the Customer and no evidence is lost. Otherwise the Customer's rights will lapse, unless the requirements of Art. 444/639 of the German Civil Code (BGB) apply.

6.3. Deviations in dimensions, contents, weight or colour that are commercially standard practice, caused by the production process or are due to the type of material are not deemed to be defects unless the requirements of Art. 444/639 of the German Civil Code (BGB) apply. DIN standards and our factory standards apply to any tolerances, if such exist.

6.4. Warranty for defects due to the Customer's information, calculations and documentation is excluded unless the requirements of Art. 444/639 of the German Civil Code (BGB) apply.

6.5. We provide warranty for the period of one year beginning with the transfer of risk unless a longer period is legally stipulated, e.g. in cases of fraudulent intent.

6.6. Warranty for defects initially involves supplementary performance at our option (remedy of defects or replacement). Should supplementary performance fail, or if it is unreasonable for the Customer, the Customer may demand reduction or may withdraw from the contract. The right of withdrawal is excluded for minor defects/contractual infringements. Any further claims against us or our agents, in particular for damages including reimbursement of expenses, irrespective of legal reasons, are excluded, unless we or our agents have acted grossly negligently, personal injury occurs, the requirements of Art. 444/639 of the German Civil Code (BGB) apply, there is an infringement of contractual obligations that are in keeping with its character, or we are necessarily liable for other reasons, e.g. according to the Product Liability Act.

If compensation claims are not excluded by the foregoing, they shall become time-barred when the time limitation for defects in quality expires in accordance with the preceding Section 6.7. with the exception of claims for damages according to the Product Liability Act, provided the legal provisions regarding statutes of limitations apply.

6.7. The Customer will bear any expenses incurred for the purpose of supplementary performance insofar as they are incurred through the delivery/service being transferred to a different location from the original place of delivery. This also applies when the transfer accords with conventional use.

6.8. We are not liable for defects in the quality of supplies and components that we obtain from third parties and pass on to the Customer unchanged; warranty and compensation claims are therefore excluded. Liability for intent or negligence is governed by Section 3.4 accordingly. Those components that we simply install in the product that we supply are also deemed to be passed on as unchanged. We are prepared, at the Customer's request, to assign to the Customer any claims against our suppliers which we may be entitled to, however limited to the extent that such claims have arisen for the Customer due to defects in quality.

7. Compensation for Withdrawal

Should we withdraw from the contract for reasons for which the Customer is liable, in particular

subject to the requirements of Art. 321 of the German Civil Code (BGB), we shall be entitled to require a lump sum compensation payment amounting to 20 % of the agreed price unless the Customer proves a lower level of damage or that no damage has been incurred. Our right to claim compensation upon proof of higher damage incurred remains unaffected.

8. Final Provisions

8.1. Place of fulfilment is our supplying factory.

8.2. Provided the requirements of Art. 38 of the German Code of Civil Procedure (ZPO) apply, the place of jurisdiction is our place of business in Nördlingen (Nördlingen district court / Augsburg regional court), including for actions relating to cheques and other notes.

8.3. Should individual provisions of the Contract with the Customer be or become completely or partially invalid, the validity of the remaining provisions shall not be affected. The completely or partially invalid provision must be replaced by one whose economic intent comes closest to that of the invalid one. The same applies to any possible omission in the Contract.