

General Terms and Conditions for Delivery and Services (GTCDs)

1. General, Scope

- 1.1. All our deliverables and services are exclusively performed based on our general terms and conditions for delivery and services (GTCDs).
- 1.2. Dissenting, conflicting or additional provisions will only be integral part of the agreement if we have accepted them explicitly in writing. Any General Terms and Conditions of customer are explicitly excluded, unless we have explicitly consented to them being a part of the agreement in writing.

2. Delivery Period and Default of Delivery

- 2.1. Delivery periods declared or confirmed by us when accepting the order shall only be binding if they have explicitly been marked as binding. Otherwise, this is only a reference of estimated delivery periods or times.
- 2.2. If we are unable to keep binding delivery periods for reasons that we are not responsible for (Non-Availability of Service), we will inform customer without undue delay and communicate the estimated new delivery period. Should the service not be available at the new delivery period, we have the right to rescind from contract in total or partially. As case of Non-Availability of Service, to that effect, especially shall be considered the non-timely self-delivery by our supplier or non-contribution of customer that is not attributable to Franke.
- 2.3. Default of delivery by us occurs according to the legal regulations. In any case, customer shall send us a reminder. Any claims to damages by customer on basis of such default are excluded.

3. Delivery, Passing of Risk, Acceptance, Default of Acceptance

- 3.1. The delivery takes place „Ex Works“ according to Incoterms 2010, unless for the particular case other provisions have been agreed.
- 3.2. We have the right to perform partial deliveries and services, unless unacceptable for customer).
- 3.3. Should customer come into default of acceptance, should he omit an action of cooperation or is there a delay of delivery due to reasons the customer is liable for, we have the right to claim damages arising thereof including additional costs (e.g. storage costs).

4. Pricing and Payment Conditions

- 4.1. Unless otherwise agreed, our prices are net, namely „Ex Works ...“ (Place of Destination) and not including VAT, packaging, duties, levies and the like.
- 4.2. The agreed price is due and payable within 30 days upon invoicing, unless other provisions have been stipulated.

5. Retention of Title

- 5.1. Until complete payment of all our present and future claims arising from the contract and any and all existing business relationships (Secured Claim) we reserve the right of title of the sold Goods.

- 5.2. The Goods under retention of title must neither be pledged to third parties nor be transferred by way of security. Customer shall inform us without undue delay in writing if and when third party access to the Goods belonging to us takes place.
- 5.3. Customer has the right to resell and/or process the Goods under retention of title within the proper course of business, in the event that payment has been made in full to Franke or if it has expressly informed the buyer of the goods in writing of the fact that Franke has retained title over the goods in question.
- 5.4. Customer already assigns to us the claims against third parties arising from resale of Goods in the amount of our respective joint ownership as a security.
- 5.5. In the event of a breach of contract, including in particular payment default notwithstanding a reminder, if so requested by FRANKE the Customer shall be obliged to return the goods DDP (Incoterms 2010) to the facility of FRANKE (including unloading at the risk and cost of the Customer).
- 5.6. In the event that the law of the country in which the goods are located does not permit the retention of title provided for or only permits it in limited form, Franke may secure other rights over the goods. The Customer shall be obliged to cooperate in all necessary action (e.g. registration) in order to give effect to the retention of title or the rights established in place thereof and in order to protect these rights.

6. Project services

- 6.1. Franke will perform all project services on the prototype or any manufacturing clarifications with the care as is usual in the ordinary course of business and will comply with the agreed quality standards. Franke will render the agreed services with qualified employees or sub-contractors and Franke will be directly liable to customer even in the latter case.
- 6.2. Franke assigns all intellectual property of the prototype to the customer. However, intellectual property rights with regards to technical drawings, know-how, concepts, manufacturing techniques and –methods, software and models which are used or contributed by Franke for manufacturing remain unaffected and in the property of Franke.

7. Customer's Rights to Claim for Defects

- 7.1. Concerning the customer's rights in case of defect as to quality or defect of title the statutory provisions apply unless stated otherwise in the following.
- 7.2. We warrant delivery in the quality set out in the agreement (but not on suitability for the intended use).
- 7.3. In case of defects of components made by other manufacturers that we cannot remediate due to license rights or actual reasons, we will, at our choice, claim our rights for defects towards the manufacturers and suppliers for the account of customer or assign our rights to customer. Customer can only claim his rights in case of defects towards us according to the other provisions and

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as set out in this GTCDs only in case the judicial enforcement of the aforementioned claims against the manufacturer and supplier remained ineffective or is pointless, e.g. due to insolvency. For the duration of the litigation the limitation period of the respective customer's rights to claim for defects towards us is suspended

- 7.4. The right to claim for defects is not applicable if customer, without our consent, amends the delivered Good himself or has it amended by third parties and the remedy of defects is therefore rendered impossible or unreasonably difficult. In any case customer has to bear the additional costs of remedy resulting from the amendment of the goods. The right to claim for defects is also excluded:
 - a. With regard to a deterioration of such parts that are subject to natural wear and tear, unless the deterioration has any other reason than wear or tear, or
 - b. If operating or maintenance instructions or if mandatory legal provisions concerning the operation or maintenance are not kept, unless the defect or the deterioration is due to another reason than the non-compliance with such instructions or provisions.
- 7.5. The customer's rights to claim for defect imply that customer has complied with his legal obligation of inspection and notification in writing within 10 working days from the date of receiving the goods at the place of destination. If later a defect shows that could not be identified by careful inspection within this period, customer has to inform us immediately in writing as soon as they become known.
- 7.6. Notwithstanding the legal limitation periods the general limitations period for claims arising due to material and legal defects is two years from delivery respectively from notification that dispatch is ready, or 1 year from installation, depending on the period that ends first.
- 7.7. If the delivered good is defective, we at first have the right to choose if supplementary remedy takes place by way of repair („Nachbesserung“) or if we deliver a non-defective good (replacement against return of the defective good). Supplementary performance does neither include the dismantling of defective good nor the re-mounting if we initially did not have the duty to install.
- 7.8. The expenses necessary for inspection and supplementary performance, especially the costs for transportation, travelling, work and material (not including dismantling and re-mounting) will be borne by us if there really is a defect. However, should it become evident that the claim of elimination of defects by customer is unjustified, we have the right to claim such costs from customer.
- 7.9. If supplementary delivery has failed the customer can rescind from contract or claim for a reduction of the price. In case of an insignificant defect customer does not have a right to rescission from contract. In the event of exercising its right to rescission after failed remedy the customer has no further right for any consequential or indirect damage compensation.
- 7.10. The customer's rights to claim damage or reimbursement of frustrated expenditures are only given according to no. 8 and are excluded in any and all other cases.

- 7.11. If and to the extent that customer provides its own material for us to process according to our mutual contract ("Free Issue Material"), the customer automatically represents and warrants with any delivery of such material that the provided Free Issue Material conforms to contractual specifications, is free of defects as to its quality and has all the qualities required for its intended processing purposes. We are under no obligation to inspect the provided Free Issue Material; in the event a defect is discovered nonetheless, we will notify customer accordingly within 5 working days from discovery; all contractually agreed delivery times for concerned goods are extended by the time period it takes the customer to provide flawless Free Issue Material. Any costs related to the provision of faulty Free Issue Material, rectification measures and delays are borne by the customer. We exclude any liability, and type of guarantee or warranty and any claim to damages for defective goods for the event that faulty Free Issue Material has been incorporated into such goods in good faith, i.e. the faulty quality of the Free Issue Material has only been discovered after the fulfilment of our contractual obligations.

8. Liability

- 8.1. We shall be liable for damages – no matter what legal ground – in case of intentional act or gross negligence. In case of slight negligence we are only liable
 - a. For damages due to injury of life, body or health,
 - b. For damages due to infringement of essential contractual obligations obligation the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer regularly relies and may rely); however, in such cases our liability is limited to the compensation of the foreseeable, typically incurring, direct damage. In the event that claims of the customer in relation to or in connection with the contract or the breach thereof should exist, the total amount of such claims is restricted to the price paid by the customer for the defective specimens of the goods. This limitation applies equally to damages or any other compensation claims in the event of a contract withdrawal according to § 364 BGB by a customer who had provided faulty Free Issue Material and took possession of goods made out of or containing such material on account of performance. In no case whatsoever shall the customer be entitled to claim damages other than compensation for the costs of remedying defects in the good. This in particular refers, but shall not be limited, to loss of production, loss of use, loss of orders, recall costs, loss of profit and other direct or indirect or consequential damage.
- 8.2. This limitation does not apply for customer's claims arising from the Product Liability Act (Produkthaftungsgesetz).

9. Data protection and Processing

- 9.1. Personal data is any information relating to an identified or identifiable natural person ('Data Subject') as defined in the applicable data protection law.
- 9.2. Personal data will be gathered, processed and used by FRANKE in compliance with the applicable data protection law and all of our employees, FRANKE group com-

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panies and third party service providers who have access to personal data are obliged to respect the confidentiality of the personal data.

- 9.3. In the event that FRANKE is provided and receives personal data via Customer or a point of sale for such purpose describe above, FRANKE is an independent controller under applicable data protection law.
- 9.4. FRANKE collects personal data when customer submits it to us, through registration, completion of forms or e-mails, as part of an order for products or services, after-sale support for products or services, inquiries or requests about products being ordered and similar situations in which data subject has chosen to provide the information to FRANKE or via a point of sale to FRANKE.
- 9.5. Some personal data provided (name, address, phone number and email address) will be processed by FRANKE for marketing, advertising or promoting purposes. We assume that this is of mutual interest for our Customer and for the Data Subject to upkeep a good business relationship and the respective Data Subject can object to the processing of his/her data for this purpose at any time without giving reasons by contacting FRANKE.
- 9.6. Some of the personal data provided may be stored or processed in other jurisdictions, such as the United States, whose data protection laws may differ from this jurisdiction. In such cases, FRANKE ensures that appropriate protections are in place to require the data processor in that country to maintain protections on the personal data that are equivalent to those that apply in the country of FRANKE.
- 9.7. Customer is obliged to inform any point of sale and its end-users that it complies with applicable data protection law and personal data will be processed by FRANKE according to the terms and limitation set forth in this Clause. Customer shall, without limitation, defend, hold harmless and indemnify FRANKE in the event of damage that is attributable to Customer's transferring of personal data or in breach of applicable data protection law.
- 9.8. Our full privacy statement can be found on our website: www.frankeindustries.com.

10. Tools and appliances

Specifically manufactured tools and appliances for customer remain in the ownership of Franke until receiving full payment. Intellectual property rights of it vest in Franke. Franke receives custody of the tools and appliances until five years after the last use for production processing. Upon request of customer Franke undertakes to mark the tools and appliances as property of customer. During the custody of Franke the tools and appliances are used only for production processing. The tools and appliances are insured against loss and damage for its replacement value. Costs for repair due to wear and tear or for modification are borne by customer. After expiry of the custody term Franke will give written notice to customer to pick-up the tools and appliance within 60 days. If they are not collected within such term then Franke has the right to dispose of it without further notice, including the right for its destruction.

11. Export control

The customer recognizes that the supplies may be subject to Swiss and/or foreign legal provisions and regulations on export control and are not allowed to be sold, leased or otherwise transferred or used for a purpose other than the agreed without an export or re-export permit of the competent authority. The customer undertakes to comply with such provisions and regulations. He is aware that these may change and that they apply to the contract in the current valid wording.

12. Choice of Law and Place of Jurisdiction

- 12.1. For these GTCDS and all legal relationships between us and the customer the law of the Federal Republic of Germany with exclusion of the international uniform law, especially the UN Sales Convention. Conditions and effects of the retention of title according to no. 6 are subject to the law prevailing at the respective location of the good, as long as according to this law the choice of law made at favor of the German law is inadmissible or invalid.
- 12.2. If the customer is merchant according to the German Commercial Code, legal person or special fund under public law sole – and also international - place of jurisdiction for any and all disputes arising from the contractual relationship is our seat. Nevertheless, we have the right to sue the customer at the general place of jurisdiction of customer.