

# **FKM Walzentechnik Dr. Freudenberg GmbH – General Terms of Sale (as of June 2020)**

## **1. General, Scope**

1.1 These General Terms of Sale (GTS) shall apply to all business relations of FKM Walzentechnik Dr. Freudenberg GmbH with its customers (purchasers) who are not consumers (Section 13 of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB)).

1.2 The GTS shall in particular apply to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as the "Goods"), no matter whether we manufacture the Goods directly or purchase them from suppliers (Sections 433, 650 BGB). The GTS as amended shall also apply to any future contracts for the sale and/or delivery of movable Goods with the same Purchaser as a master agreement, without requiring repeated reference to them from case to case.

1.3 Our GTS shall apply exclusively. Any deviating, conflicting, or supplementary general terms of the Purchaser shall only become part of the contract if and as far as that we have explicitly agreed to their application. This requirement of consent shall apply in any case, e.g., even if we deliver them to the Purchaser without any reservation in the knowledge of the Purchaser's general terms.

1.4 Individual agreements made with the Purchaser from case to case (including any collateral agreements, supplements, and amendments) shall take precedence over these GTS. A written contract or our written confirmation shall be decisive for the content of such agreements.

1.5 Legally relevant declarations and notifications by the Purchaser concerning the contract (e.g., setting of deadlines, notification of defects, withdrawal, or reduction) must be made in writing, i.e., in written or text form (e.g., letter, email, fax). Legal formal requirements and further evidence, in particular in cases of doubt regarding the legitimacy of the notifying party, shall not be affected.

## **2. Conclusion of the Contract**

2.1 Our offers shall be subject to confirmation and non-binding. This shall apply even if we have provided the Purchaser with any catalogs, technical documentation (e.g., drawings, plans, size or cost calculations, references to DIN standards), other product descriptions, or documents – also in electronic form – in which we reserve title and copyrights.

2.2 The order of the Goods by the Purchaser shall be considered a binding offer of contract. Except where otherwise stated in the order, we shall have the right to accept this offer of contract within 2 weeks of receiving it.

2.3 Acceptance may be declared either in writing (e.g., by order confirmation) or by delivery of the Goods to the Purchaser.

## **4. Delivery Deadline and Default of Delivery**

4.1 The delivery deadline shall be agreed individually or indicated by us upon acceptance of the order.

4.2 If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Purchaser of this without undue delay, including the expected new delivery deadline. If the service is not available within the new delivery deadline either, we shall have the right to withdraw from the contract wholly or in part; we shall reimburse any consideration already paid by the Purchaser without undue delay. Non-availability of the service within this meaning shall in particular include delayed deliveries made to us by our supplier if we have entered into a congruent covering transaction, neither we nor our supplier are at fault, or if we are not obligated to procure the goods from case to case.

4.3 Occurrence of our delivery default shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Purchaser shall be required.

4.4 The Purchaser's rights in accordance with item 9 of these GTS and our statutory rights, in particular in case of exclusion of the obligation to perform (e.g., because performance and/or subsequent performance is impossible or not reasonable), shall not be affected.

## **5. Delivery, Passing of Risk, Acceptance, Default of Acceptance**

5.1 Delivery shall be made EX WORKS (INCOTERMS 2020), Stempelstraße 2-4, D-47167 Duisburg, which shall also be the place of performance for the delivery and any subsequent performance. At the Purchaser's request and expense, the Goods shall be shipped to a different destination (mail-order purchase). Except where otherwise agreed, we shall have the right to determine the type of shipment (in particular transport company, shipping route, packaging).

5.2 The risk of accidental loss and accidental deterioration of the Goods shall pass to the Purchaser at the latest upon handover. However, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of default shall pass upon delivery of the Goods to the forwarding agent, the carrier, or any other person designated to perform the shipment already for mail-order purchases. As far as acceptance has been agreed, this shall be decisive for the passing of risk. In any other respect, the statutory provisions of the law on contracts for work and services shall apply to an agreed acceptance accordingly. Handover or acceptance shall be deemed to have taken place if the Purchaser has entered default of acceptance.

## **6. Prices and Terms of Payment**

6.1 Unless otherwise agreed from case to case, our prices as applicable at the time of conclusion of the contract shall apply, specifically EX WORKS (INCOTERMS 2020) Stempelstraße 2-4, D-47167 Duisburg, plus statutory value added tax.

6.2 The Purchaser shall bear the transport costs ex warehouse and the costs of any transport insurance as requested by the Purchaser for mail-order purchases (item 5.1). Any customs duties, fees, taxes, and any other public charges shall be borne by the Purchaser.

6.3 Except if otherwise agreed, the purchasing price shall be due and payable within 14 days of invoicing and delivery.

6.4 The Purchaser shall enter default upon the end of the above payment deadline. Interest on the purchase price shall be charged at the statutory default interest rate applicable from time to time during the period of default. We reserve the right to assert further damage caused by default. Towards merchants are concerned, our claim to the commercial interest on maturity (Section 353 of the German Commercial Code (*Handelsgesetzbuch*; HGB)) shall not be affected.

6.5 The Purchaser shall only be due any rights of set-off or retention as far as their claim has been finally established or is undisputed. If there are any defects to the delivery, the Purchaser's rights in return shall remain unaffected, in particular in accordance with the second sentence of item 8.4 of these GTS.

6.6 If it becomes apparent after conclusion of the contract that our claim to the purchase price is jeopardized by the Purchaser's inability to perform (e.g., when an application for opening of insolvency proceedings is filed), we shall have the right to refuse performance in accordance with the statutory provisions and – if necessary, after setting a deadline – to withdraw from the contract (Section 321 BGB). The statutory provisions on waiver of setting of a deadline shall not be affected.

## **7. Reservation of title**

7.1 We reserve title in the Goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

7.2 The Goods subject to reservation of title must not be pledged to any third parties or assigned as collateral before the secured claims have been paid in full. The Purchaser must inform us without undue delay in writing if and as far as third parties access the Goods belonging to us.

7.3 If the Purchaser is in breach of the contract, in particular if they do not pay the purchase price when due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand return of the Goods based on the reservation of title. If the Purchaser does not pay the purchase price when due, we must only assert these rights if we have previously unsuccessfully set a reasonable deadline for payment for the Purchaser or if setting such a deadline can be dispensed with based on the statutory provisions.

7.4 The Purchaser shall have the right to resell and/or process the Goods subject to reservation of title in their ordinary course of business. In this case, the following provisions shall apply additionally.

a) The reservation of title shall extend to the full value of the products created by processing, blending, or combining our Goods, for which we shall be deemed the manufacturer. If any third parties retain their title if the Goods are processed, blended, or combined with any goods of third parties, we shall acquire joint title at the ratio of the invoiced values for the processed, blended, or combined Goods. The resulting product shall be subject to the same provisions as the Goods delivered subject to reservation of title apart from this.

b) The Purchaser hereby assigns any claims against third parties arising from resale of the Goods or the product to us as collateral in total or in the amount of our potential joint title in accordance with the above item. We accept this assignment. The Purchaser's obligations from item 7.2 shall also apply concerning the assigned claims.

c) The Purchaser shall remain authorized to collect the claim in addition to us. We commit to not collecting the claim while the Purchaser meets their payment obligations towards us, does not enter default of payment, while no application for the opening of insolvency proceedings has been filed, and while there is no other defect to their solvency. If this is the case, however, we may demand that the Purchaser inform us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents, and inform the debtors (third parties) of the assignment. Furthermore, we shall be entitled to revoke the Purchaser's authority to resell and process the Goods subject to reservation of title in this case.

7.5 If the value that can be realized from the collateral exceeds our claims by more than 10%, we shall release collateral of our choice upon the Purchaser's request.

## **8. Purchaser's Warranty Claims**

8.1 The statutory provisions shall apply regarding the Purchaser's rights in cases of defects of material or title, except if otherwise stipulated below.

8.2 The Purchaser's claims for defects assume that they have met their statutory obligations to examine the Goods and to inform us of any defects (Sections 377, 381 HGB). In the case of Goods intended for installation or other further processing, an inspection is required immediately before processing in any case. If any defect becomes apparent during delivery, inspection, or at a later point of time, we must be notified without undue delay in writing. In any case, any apparent defects must be reported in writing within 7 working days of delivery. Any defects that cannot be detected during the inspection must be reported within the same period after their discovery. If the Purchaser fails to conduct a proper inspection and/or to report any defects, our liability for the defect not reported in time or in due form shall be excluded in accordance with the statutory provisions.

8.3 If the delivered item is defective, we may initially choose to render subsequent performance by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse subsequent performance subject to the statutory conditions shall not be affected.

8.4 We shall be entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. However, the Purchaser shall be entitled to retain an appropriate portion of the purchase price in relation to the defect.

8.5 The Purchaser must give us the time and provide the opportunity we need to render the subsequent performance owed, in particular to hand over the rejected Goods for inspection. If a replacement delivery is made, the Purchaser must return the defective item to us in accordance with the statutory provisions. Subsequent performance shall only include removal of the defective item or its re-installation if we were originally obligated to install it.

8.6 We shall bear or reimburse the expenses necessary for inspection and subsequent performance, in particular transport, travel, labor, and material costs and, if applicable, any removal and installation costs, in accordance with the statutory provisions if a defect is actually present. Otherwise, we may demand reimbursement of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs) from the Purchaser, except if the lack of a defect was not apparent to the Purchaser.

8.7 The Purchaser's claims for damages or reimbursement of expenses made in vain shall only apply in accordance with item 8. They shall otherwise be excluded.

## **9. Other Liability**

9.1 As far as nothing different arises from these GTS, including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

9.2 We shall be liable for damages, no matter the legal grounds, in cases of intent and gross negligence. In cases of simple negligence, we shall only be liable

a) for damage from injury to life, body, or health,

b) for damage from the breach of essential contractual obligations (obligations the compliance with which is required for proper execution of the contract and on compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation of the foreseeable, typical damage.

9.3 The limitations of liability resulting from item 9.2 shall not apply if we have fraudulently concealed a defect or have guaranteed the quality of the Goods. The same shall apply to any claims the Purchaser may have in under the Product Liability Law (*Produkthaftungsgesetz*).

## **10. Expiration**

10.1 The expiration period for any claims due to defects of material and defects of title shall be one year from delivery. As far as acceptance has been agreed, the expiration period shall commence upon acceptance.

10.2 This shall not affect special statutory regulations on expiration (in particular Section 438 (1) (1), (3), Sections 444, 445b BGB).

10.3 The above expiration periods under sales law shall also apply to contractual and non-contractual claims for damages of the Purchaser due to any defect of the Goods, except if application of the regular statutory expiration period (Sections 195, 199 BGB) would lead to a shorter expiration period from case to case. However, claims for damages on the part of the Purchaser in accordance with sentences 1 and 2(a) of item 9.2, as well as in accordance with the Product Liability Act shall expire only in accordance with the statutory expiration periods.

## **11. Jurisdiction and Venue**

11.1 The contractual relationship shall be governed by German law, subject to exclusion of the UN Convention on Contracts for the International Sale of Goods.

11.2 The exclusive place of jurisdiction, also internationally, shall be Duisburg.