

## **General Terms and Conditions of Business of the Fröhlich & Dörken GmbH Online Shop (b2b)**

### **1. General, Scope of Application**

The following terms and conditions of business (the "Terms and Conditions") apply to all offers, supplies and deliveries of goods and services under purchase contracts, contracts for work and services and contracts of any other kind, including those arising from future business agreements and continuous contractual obligations. The application of any general terms and conditions of business of the Customer is expressly barred.

### **2. Customer Registration, Offers, Order Confirmation**

#### **2.1**

In our dealings through this Online Shop, we conclude contracts with entrepreneurs only, i.e. natural persons or legal entities or partnerships with legal capacity acting in exercise of their commercial or self-employed activity. The Customer warrants that he is purchasing in his capacity of entrepreneur.

#### **2.2**

Registration is necessary for use of the Shop. On completion of registration, the Customer is furnished with the access data, consisting of user name and password.

#### **2.3.**

When registering, the Customer undertakes to furnish particulars that are truthful and, to the extent needed for registration, complete and to keep the data provided up to date at all times. This also applies if registration is performed by personnel of our company at the request and on behalf of the Customer. If registration data items are incorrect or become incorrect in the course of time, the Customer shall inform us of the change without delay either in writing or by telephone. Use of the Online Shop is permitted for the Customer's own commercial purposes only. The Customer shall take care that information from our Shop does not come to the knowledge of commercial third parties. This applies in particular to images, prices, product information, product specifications and concepts. The Customer shall ensure compliance with this obligation when passing on data and information from our Online Shop within the Customer's own enterprise. By agreeing to these Terms and Conditions, the user undertakes to pay to us for each case of culpable unauthorized disclosure of his personal access data or of images, prices, product information or product specifications from the Online Shop to third parties a penalty in an amount to be set by us at our own reasonable discretion. The Customer shall have the right to show that the loss or damage sustained by us was of a lesser amount.

#### **2.4**

We reserve the right to verify the accuracy of the registration information, in particular through the "Post-Ident" procedure or by requesting copies e.g. of identity cards or trade registration certificates.

#### **2.5**

If the Customer orders goods through electronic channels, we will acknowledge receipt of the order immediately. The acknowledgement of receipt is not a firm acceptance of the order. The acknowledgement of receipt can be combined with a declaration of acceptance.

#### **2.6**

Unless expressly agreed otherwise, our offers on the Internet are without engagement. They are an invitation to submit a bid and are without engagement on our part. The Customer shall be bound for three weeks by an order placed by the Customer. An order shall only be deemed accepted by us if it is confirmed by us in writing or if we have begun delivery within the aforesaid period.

#### **2.7**

Information, drawings, illustrations and performance descriptions (subject to technical changes without notice) which are shown in our Online Shop or documents appurtenant to an offer constitute approximate values only in the manner customary in the trade unless they are expressly stated in the order confirmation as being binding.

#### **2.8**

Every contract concluded is conditional on correct and timely supply by our suppliers. However, this only applies in cases where non-delivery is not due to our fault, especially if matching coverage transaction has been concluded with our supplier. We expressly do not assume any procurement risk.

#### **2.9**

If, together with an offer for goods, we also submit a leasing or financing offer, such offer is conditional on the leasing contract or financing also being accepted or agreed to by the leasing company or bank. If the Customer's application is refused by the aforesaid, we shall have the right to rescind our offer.

### **3. Prices and Payments**

#### **3.1**

The prices agreed at the time of conclusion of contract shall apply. These can be found in our price list for services in the version in force at the respective time.

#### **3.2**

The prices are quoted exclusive of packing. Delivery and transport costs are invoiced as separate items.

#### **3.3**

Payments may only be made to us or persons authorized by us in writing. Payments must be made within 10 days from receipt of the goods provided nothing has been agreed to the contrary in writing in relation to periods for payment and cash discounts. Payments shall only be deemed received when they have been credited to our bank accounts. In the absence of any other indication relating to payment, payments will be deemed overdue 30 days after receipt or due date of the invoice or receipt of the goods. For deliveries ordered to be made abroad, the full net amount shall be due and payable in advance unless agreed otherwise in writing. We will supply new customers or individual orderers in return for payment in advance or cash on delivery. During any delay in payment or if payment is deferred or payment in instalments is agreed, interest shall be payable on the principal amount at a rate of 8% above the base interest rate. We also reserve the right to claim for higher damage for delay if we furnish evidence for such higher damage. The Customer hereby already authorizes us in any such case to enter the Customer's business premises and to take back goods already delivered.

#### **3.4**

Fault search times count as work time and will be charged to the Customer as such, whereby the price list for services in the version in force at the respective time shall apply.

#### **3.5**

The Customer is only entitled to make offset with own claims of the Customer's that have been finally and absolutely established at law or are uncontested.

### **4. Delivery**

#### **4.1**

Dates and deadlines shall only be deemed firm if they have been expressly confirmed as such by us in writing. Dates and deadlines shall be deemed met if by the time they have expired the goods have left our delivery depot or we have advised the Customer of our readiness to perform. Unforeseen circumstances and events, such as events of a force majeure nature, government measures, non-issue of official permits, labour disputes of all kinds, sabotage, shortage of raw

materials, delays in supplies of materials through no fault of our own, war, civil unrest etc. shall cause the delivery date or deadline to be extended accordingly, even if they occurred while we were already in delay.

#### **4.2**

If we exceed a delivery date which has been agreed as firm and the Customer cannot be reasonably expected to wait any longer, the Customer may, after the start of the delay and after issuing us with a reminder with the allowance of reasonable additional time for delivery and the threat of refusal to accept delivery, assert further rights. In this case, a claim of the Customer to damages is barred unless the delay is due to wilful intent or gross negligence on our part or the part of our legal representatives or vicarious agents. The same also applies to breach of duties during contract negotiations.

#### **4.3**

If the Customer is in delay with acceptance, we shall have the right, after expiry of a reasonable additional period of time allowed by us, to refuse to fulfil the contract and to claim damages. We may instead dispose otherwise of the goods and supply the Customer within a reasonable new period of time.

#### **4.4**

If we dispatch the contractual goods on the Customer's request, we shall do so for the account and risk of the Customer. In the case of all deliveries, the risk of loss or destruction of the goods shall pass to the customer on delivery of the goods into the custody of the freight forwarder, carrier or other person or persons entrusted with carriage.

### **5. Reservation of Title**

#### **5.1**

Each item delivered by us shall remain our property until payment of the purchase price in full and until such time as all our claims arising from our business relationship with the Customer have been settled in full (extended reservation of title). The Customer may not dispose of the goods to which we reserve title in any manner except in the regular course of the Customer's business. On no account, however, may the goods be assigned as security to third parties within the scope of the Customer's regular course of business.

#### **5.2**

In the case of resale of the goods in the Customer's regular course of business, the purchase price paid therefor shall take the place of the goods. The Customer hereby already assigns the claim arising from any such resale to us. The Customer is authorized to collect such claims for as long as the Customer fulfils his own payment obligations towards us. In view of the extended reservation of title (assignment in advance of the respective purchase price claim), any assignment to third parties, in particular to a bank, would be in breach of contract and is therefore not permitted. We shall have the right at any time to inspect the Customer's sales records and to inform the Customer's own customers of the assignment.

#### **5.3**

If the Customer's claim has been placed on current account, the Customer hereby already assigns the current account claim against his customer to us. The assignment shall be for a sum equivalent to the amount we invoiced to the Customer for the goods which are subject to our reservation of title and which have been resold by the Customer.

#### **5.4**

We must be informed immediately of any attachment of the goods while in the custody of the Customer; the information must be accompanied by a copy of the writ of enforcement and an affidavit that the attached goods are goods which were supplied by us and are subject to our reservation of title.

#### **5.5**

If the value of the security to which we are entitled pursuant to the foregoing subsections of this section exceeds, for the foreseeable future, the amount of the outstanding claims secured by the security by more than 20% after deduction of the costs of the security, the Customer has the right to demand that we release a portion of the security equivalent to the excess amount.

### **6. Delay, Impossibility, Rescission**

#### **6.1**

If we fall into delay with the supply of an item and if we are at fault for the delay due to gross negligence or wilful intent, we will compensate the Customer for all loss or damage sustained by the Customer as a result. In the case of ordinary negligence, claims of the Customer are barred.

#### **6.2**

In the case of non-delivery by our supplier, both parties shall have the right to rescind the contract.

#### **6.3**

We shall have the right to rescind the contract for the following reasons:

##### **6.3.1**

If, contrary to the assumption at the time of conclusion of the contract, it emerges that the Customer is not creditworthy. The Customer can be assumed to be non-creditworthy without the need for further evidence in any case of protest of a bill or cheque, suspension of payments by the Customer, or an unsuccessful attempt to levy executions on the Customer. It is not necessary for any of the aforesaid to take place in the business relationship between ourselves and the Customer.

##### **6.3.2**

If it emerges that the Customer has given false information regarding his creditworthiness and this information was of material importance for conclusion of the contract.

##### **6.3.3**

If goods which are subject to our reservation of title are disposed of in any way other than in the Customer's regular course of business, in particular through assignment as security or giving in pledge. The only exception shall be if we have given our written consent to such disposal.

##### **6.3.4**

We may also rescind the contract if, after conclusion of the contract, circumstances material to performance of the contract have developed, through no fault of our own, in such a way as to render performance of the contract impossible or unreasonably difficult for us (e.g. because of non-delivery by our supplier through no fault of our own or ability to supply only under significantly more difficult conditions).

##### **6.3.5**

We shall also have the right to rescind the contract if the Customer breaches material contractual duties, in particular if the Customer commits an infringement of the duty to exercise due care with regard to the handling of goods which subject to our reservation of title.

##### **6.3.6**

In all other respects, our right to rescind and the Customer's right to rescind shall be governed by the statutory regulations.

#### **6.4**

In the event of any delay on our part, the Customer may set us a reasonable deadline for performance. On expiry of the deadline, the Customer may rescind the contract in whole or in part and claim damages in lieu of performance. Instead of damages in lieu of performance, the Customer may demand reimbursement of expenses pursuant to § 284 BGB[German

Civil Code]. In this case, the limitations of liability as set forth in the relevant provisions of this contract shall apply. The Customer shall have a duty, in response to our inquiry, to inform us whether he wishes to rescind the contract because of the delay or whether he insists on performance. This inquiry must be made within the additional time allowed by the Customer at a reasonable time before the end of that period. If we have received no response from the Customer by the time the period has expired stating that the Customer no longer wishes performance after expiry of the period, we shall remain entitled to provide performance.

## 7. Special Provisions for Servicing and Repair Work

If we perform servicing and repair work, such work shall be subject to the terms and conditions agreed therefor in addition to these General Terms and Conditions.

### 7.1

Our servicing and repair work shall constitute services. The prices therefor shall be as set forth in the price list for services in the version in force at the respective time. Travel costs, material costs and such like will be additionally charged for in accordance with our relevant price lists.

### 7.2

If the customer requests a cost quotation, we will study the matter and then submit our cost quotation. The costs for this study shall likewise be borne by the Customer. The costs for the study will be charged on the basis of the time and expenses incurred and will only be credited towards a subsequent repair or servicing contract if an express agreement has been made to this effect in advance.

## 8. Warranty

### 8.1

Our warranty is as follows:

#### 8.1.1

For newly manufactured items: 12 months; for used items, warranty is barred. The warranty period shall begin on the transfer of risk to the Customer.

#### 8.1.2

The delivered goods must be inspected without delay for defects and any evident defects notified to us in writing within a period of two weeks from receipt of the goods; otherwise, the assertion of warranty claims is barred. The period of two weeks is met provided the notice of defects is dispatched in a timely manner. The full burden of proof for the claim, in particular for the defect itself, for the time of discovery of the defect and for the timeliness of notification of the defect, shall be on the Customer.

#### 8.1.3

Notices of defects will only be recognized by us if submitted to us in writing. Claims for defects made to field sales staff or carriers or any other third parties shall not count as formally correct or timely notices of defects.

#### 8.1.4

In the event that a replacement delivery is made on the strength of a justified notice of defect, the provisions relating to the time of delivery shall apply *mutatis mutandis*. For the remedy of defects by repair, we must be allowed a reasonable period of time of at least three weeks.

#### 8.1.5

The existence of a defect identified and notified in a due and timely manner shall give rise to the following rights for the Customer:

- In the event of defectiveness of an item, the Customer may first of all demand remedy. Remedy will be effected, at our choice, either by repair or replacement.

- The decision whether to replace or repair will be made by us at our own reasonable discretion. We shall further have the right, if an attempt at remedy fails, to make a further attempt at remedy within a reasonable period of time. Only when the second attempt has failed shall the Customer have the right to rescind the contract or to reduce the purchase price.

### 8.2

The Customer may claim damages or reimbursement of futile expenses only in cases where we have failed in our duty to supply items which are free of defects as a result of gross negligence or wilful intent. The Customer must furnish proof both of the fact of the loss or damage and of the amount thereof. The same shall also apply to the futile expenses.

### 8.3

The burden of proof for the existence of a defect shall lie with the Customer.

### 8.4

The warranty does not cover damage caused after the transfer or risk through faulty or negligent treatment, excessive stress or strain, unsuitable operating equipment, materials, supplies or resources, and chemical, electrochemical, electrical or atmospheric influences.

### 8.5

Customer's claims to damages on grounds of a defect shall lapse one year after delivery of the goods.

This shall not apply if we are culpable of gross fault or in the event of damage or injury to health or life of the Customer for which we are responsible.

### 8.6

The warranty shall also not apply in the case of defects which are caused by the Customer having mounted additional devices without our approval or having had work carried by persons not authorized by us or the manufacturer of the goods or by the goods having been altered or added to by the Customer himself or by the identity mark (barcode label or manufacturer's seal) having been damaged, unless the Customer can show that the alterations or additions were not the cause of the damage. If the defect reported by the Customer cannot be found on examination, the costs of the examination shall be borne by the Customer if the Customer is a registered trader.

### 8.7

If claims are asserted against the Customer for infringement of German proprietary rights through items supplied or licensed under these Terms and Conditions, we will reimburse the Customer for all costs and damages payments imposed on the Customer by final and absolute judgment, provided we are informed of such claims without delay in writing, are furnished with all necessary information by the Customer, the Customer fulfils his general duties to assist, we are able to make the final decision as to whether the claim should be defended or settled amicably, and we are at fault for the infringement of the proprietary rights. If it is found by final and absolute judgment that further use of the items would constitute an infringement of German proprietary rights or if in our opinion the risk of legal action for infringement of proprietary rights exists, we may, at our choice and our expense and if and insofar as we are liable, either procure for the Customer the right to continue to use the items or exchange the items or so modify the items that they are no longer a cause of infringement or take back the items and refund their value to the Customer after deduction of appropriate damages for the use up to that time. Damages for use are calculated on the basis of a notional period of depreciation of 3 years, so that for each one month of use, 1/36 of the price shall be payable.

#### 8.7.1

We may only be held liable for loss or damage resulting from the defectiveness of an item if the defectiveness is due to a

breach of duty caused by least gross negligence on the part of ourselves, our legal representative or our vicarious agents. The foregoing restriction shall expressly not apply if a culpable breach of duty on the part of ourselves, our legal representative or our vicarious agents should give rise to liability for damages for causing damage or injury to life, limb or health.

If we have given a guarantee for a specific nature or quality of the goods sold for a specified period of time, the foregoing provisions relating to the duty to inspect and notify defects or to the number of attempts at remedy shall not apply.

## **9. Handling of Third-Party Guarantees**

Guarantees are performance promises given by the manufacturer to the Customer. They therefore do not give rise to any obligations on our part. The Customer therefore has a duty to create at its own expense the conditions necessary for exercising the claims under the guarantee. The Customer bears, in particular, the costs of transport to and collection from the manufacturer as well as installation and dismantling and, if need be, the costs of a replacement unit.

We are expressly prepared to perform the foregoing tasks on the Customer's behalf. To do so, however, a special service order of the Customer is necessary, which is subject to payment.

## **10. Other Liability Provisions in Case of Breach of Duty**

### **10.1**

Notwithstanding the provisions relating to warranty and other special provisions of these General Terms and Conditions, the following shall apply in cases in which we have committed a breach of duty:

### **10.2**

We are liable for our employees, servants and assistants in unlimited amount even in the case of minor negligence leading to injury or damage to life, limb or health of persons;

### **10.3**

Otherwise, we shall only be liable in the following scope:

### **10.4**

The Customer may claim damages only in cases of breach of duty caused by gross negligence or wilful intent on our part; damages in lieu of performance (in the case of non-fulfilment, § 280 (3) BGB in conjunction with § 281 BGB) and damage caused by delay (§ 280 (2) BGB in conjunction with § 286 BGB) is limited to the negative interest, while damages for non-performance or failure to render performance as owed (§ 282 BGB) is limited to the amount of the purchase price or the annual utilization fee.

### **10.5**

Damages in lieu of performance in the case of exclusion of the duty to perform (impossibility) is excluded.

### **10.6**

Our liability for fraud or under the provisions of the German Product Liability Act shall not be affected by the foregoing.

### **10.7**

If the Customer is solely or predominantly responsible for circumstances which would entitle it the Customer to rescind the contract or if the circumstance entitling the Customer to rescind the contract occur while the Customer is in delay, rescission by the Customer is barred.

### **10.8**

The Customer must allow any contributory fault, e.g. inadequate performance of duties to assist (including e.g. inadequate reports of faults/defects, organizational shortcomings or inadequate data security) to be counted against him. We shall be liable for the recovery of data only if

the Customer has taken the customary and appropriate precautions for backing up data and has thereby made sure that the data and programs which exist in machine-readable form can be reconstructed without unreasonable effort and expense. The Customer has, in particular, to undertake data backup before each of the aforesaid activities and to verify that the backup has been successful. If the Customer has not done so, it has a duty to inform our employee accordingly before the start of any work. If it is requested that data backup and verification that it has been successful be done by our personnel, the costs therefor shall be borne by the Customer. The costs shall be as set forth in our price list in the version in force at the respective time.

## **11. Prohibition of Assignment, Offset, Withholding**

Except with our written consent, the rights of the Customer arising from the Customer's business dealings with us are not assignable.

The Customer may only set off his own claims against our claims if his own claims are undisputed or have been finally and absolutely established.

The Customer may exercise a right to withhold payment only if his claim to do so and the payment involved derive from one and the same contractual relationship.

## **12. Data Protection**

Our order handling is done with the use of automatic data processing equipment. The Customer hereby expressly consents to processing of the data which becomes known to us within the framework of the contractual relationships and which is necessary for order handling.

The Customer also gives his consent to our using, in conformity with the provisions of the German Data Protection Act, the data received by us in connection with the business relationship also for business purposes within our group of companies.

## **13. General**

### **13.1**

Should any of the foregoing provisions be or become invalid or be found to contain a gap or omission, this shall have no effect on the validity of any of the other provisions.

### **13.2**

Anything agreed in deviation from or in addition to the provisions of these Terms and Conditions shall only be valid in the form of a written supplementary agreement to the contract concluded between the parties, in which reference to the amended conditions is made. Any waiver of this requirement of the written form must also be agreed in writing.

### **13.3**

The exclusive legal venue for all disputes arising from a contractual agreement or relating to the effectiveness of such agreement shall, where the Customer is a merchant registered in the commercial register, a legal entity organized under public law or a separate asset fund organized under public law or is domiciled in another country, be the courts having jurisdiction either for our own place of business or that of the Customer, as we may prefer.

### **13.4**

The contractual relationship between the parties shall be governed exclusively by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods is expressly barred.

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