

# General Terms and Conditions of Sale

## Of the firms:

- **Freese AG**, Carl-Benz-Str. 29, 28327 Bremen
- **G. Theodor Freese GmbH**, Carl-Benz-Str. 29, 28327 Bremen
- **Freese Fußbodentechnik GmbH**, In der Aue 7, 07407 Rudolstadt
- **FTK Förde Tischlerei Kiel GmbH**, Marie-Curie-Strasse 12, 24145 Kiel-Wellsee

## 1. Scope and form

1.1 The present General Terms and Conditions of Sale apply to all of our business relationships with our customers ("buyers"). The General Terms and Conditions of Sale only apply if the buyer is a businessman (Article 14 of the German Civil Code), a legal entity according to public law, or a special fund or special asset according to public law.

1.2 The General Terms and Conditions of Sale especially apply to contracts about selling or delivering chattels ("goods"), or both, without considering whether we manufacture the goods ourselves or buy them from suppliers (Articles 433 and 650 of the German Civil Code). They also apply to the services that we provide in connection with the goods, insofar as nothing else is agreed. The edition of the General Terms and Conditions of Sale that is valid when the buyer places the purchase order, or the edition that was lastly notified to him in textual form as a basic or outline agreement in any case, also applies to similar future contracts without us needing to refer to it again in every single case.

1.3 Our General Terms and Conditions of Sale apply exclusively. The buyer's diverging, opposing or supplementing general terms and conditions of business will only become part of the contract whenever and insofar as we have expressly consented to their validity. This requirement of consent applies in every case and typically whenever we unreservedly make deliveries or provide services to the buyer too, while being aware of his general terms and conditions of business.

1.4 Individual agreements that are made with the buyer in particular cases (including collateral agreements, supplements and alterations) take precedence over these General Terms and Conditions of Sale in every case. A written contract or our written confirmation is decisive for the content of such agreements, subject to proof of the contrary.

1.5 The buyer's legally relevant declarations and notifications with reference to the contract (e.g., setting a time limit, notifying defects, withdrawing from the contract or reducing the price) must be given in writing, i.e., in written or textual form (e.g., a letter, e-mail or fax). The legal formal regulations and further proofs about the declaring party's legitimation remain unaffected especially in doubtful cases.

1.6 References to the validity of legal regulations only have a clarifying significance. Therefore, the legal regulations apply even without such a clarification, insofar as they are not directly altered or expressly excluded in these General Terms and Conditions of Sale.

## 2. Conclusion of the contract

2.1 Our quotations are subject to change without notice and they are given without engagement. This rule also applies if we have handed over to the buyer, - also in electronic form - catalogues, technical documentation (e.g., drawings, plans, computations, calculations and references to the DIN standards), other descriptions of the products or supporting documents to which we reserve the right of ownership and copyright.

2.2 The purchase order for the goods that the buyer issues applies as a binding contractual offer. We are entitled to accept this contractual offer within 2 weeks after we have received it, insofar as nothing else arises from the purchase order.

2.3 The acceptance can be declared either in writing (e.g., by means of a confirmation of order) or through delivering the goods to the buyer.

### **3. Delivery deadline and delayed delivery**

3.1 The delivery deadline will be agreed individually or we will state it when accepting the purchase order. Insofar as this is not the case, the delivery deadline is about 3 weeks after concluding the contract.

3.2 Insofar as we cannot comply with the delivery deadlines because of reasons for which we are not responsible (unavailability of the performance), we will inform the buyer about the matter immediately and we will simultaneously notify the probable new delivery deadline to him. If the performance is unavailable even within the new delivery deadline, then we will be entitled to withdraw from the contract entirely or partly; we will immediately reimburse any payment that the buyer has made already [as quid pro quo]. The untimely self-supply by our suppliers especially applies as a case of unavailability of the service in this sense if we have concluded a congruent hedging transaction, or if neither ourselves nor our suppliers are to blame, or if we are not obligated to the procurement in individual cases.

3.3 The onset of our delayed delivery is determined according to the legal regulations. However, the buyer needs to issue a reminder in every case. If we are delayed with the delivery, then the buyer can demand reimbursement as a lump sum for his damages resulting from the delay. The all-inclusive compensatory damages are 0.5 % of the net price (delivery's value) for every completed calendar week but not more than 5 % of the delivery's value of the belatedly delivered goods. We reserve the right to prove that the buyer did not suffer any damages at all, or that he has only suffered essentially less damages than the aforementioned lump sum.

3.4 The buyer's rights according to Article 8 of these General Terms and Conditions of Sale and our legal rights - especially in the case of excluding the duty of performance (e.g., because the performance or subsequent performance is impossible or unreasonable, or both) - remain unaffected.

### **4. Delivery, passage of risk, acceptance and delayed acceptance**

4.1 The delivery will be made ex-stock from our warehouse, which is also the place of performance or domicilium executandi, when any subsequent performance must take place. The goods will be despatched to another place of destination (sale by despatch<sup>1</sup>) in response to the buyer's demand and at his cost. We reserve the right to determine the type of despatch (especially the transporter, route of the despatch and packaging), insofar as nothing else is agreed.

4.2 The risk of accidental destruction and accidental deterioration of the goods will pass to the buyer at the latest when they are handed over to him. However, the risk of accidental destruction and accidental deterioration of the goods already passes to the carrier or haulage contractor, or to other person or establishment that is specified for carrying out the

despatch, when the despatch is made in the case of sale by despatch. Insofar as an acceptance is agreed, this is decisive for the passage of risk. The legal regulations of the law regarding work contracts also apply accordingly to an agreed acceptance otherwise. The handover is deemed to be equivalent to the acceptance whenever the buyer delays the acceptance.

4.3 If the buyer delays the acceptance, or if he refrains from taking cooperative action, or if our delivery is delayed for reasons that are the buyer's responsibility, then we will be entitled to demand compensation for the damages that we have incurred because of that, including extra expenses (e.g., storage costs). We will charge for reimbursement as a lump sum of 0.5 % of the net price (delivery's value) per calendar week for this purpose (but limited to the maximum of 10 % of the net price (delivery's value) in the case of non-acceptance), beginning on the delivery deadline or when notifying the readiness to despatch the goods for the lack of a delivery deadline.

The proof of higher damages and our legal claims (especially to compensation for extra expenses, reasonable reimbursement and cancellation) remains unaffected; however, the lump sum must be set off against further monetary claims. The buyer is permitted to prove that we have not suffered any damages at all, or that we have only suffered essentially less damages than the aforementioned lump sum.

## **5. Prices and terms of payment**

5.1 Our prices that are respectively current at the point in time of concluding the contract apply, insofar as nothing else is agreed in individual cases: namely, ex-stock plus the statutory rate of turnover tax.

<sup>1</sup> sale by despatch to a destination other than the place of performance, according to the buyer's instructions (Article 447 of the German Civil Code).

5.2 The buyer bears the transporting costs ex-stock and the costs of any transport insurance that the buyer requests, in the case of sale by despatch (Article 4, Para. 1).

The buyer bears any customs duties, fees, taxes any other fiscal charges.

5.3 The purchase price including incidental expenses is due for payment and it must be paid within 14 days from presenting the invoice and delivery or acceptance of the goods. However, we are also entitled within the framework of a current business relationship to only make a delivery entirely or partly in return for cash in advance. We will declare an appropriate reservation when confirming the order at the latest.

5.4 The buyer will be in default when the aforementioned time limit for payment expires. The purchase price will attract interest at the legal rate of interest on arrears that is respectively applicable during the default. We reserve the right to assert a claim for further damages resulting from the default. Our claim vis-à-vis businessmen to the commercial rate of interest on maturity (Article 353 of the German Commercial Code) remains unaffected.

5.5 The rights of setoff or retention are only vested in the buyer, insofar as his claim is legally established or undisputed. The buyer's reciprocal rights in the case of defects in the delivered goods, - especially those according to Article 7, Para. 6, Line 2 of these General Terms and Conditions of Sale - remain unaffected.

5.6 If it is recognizable after concluding the contract (e.g., through an application to open insolvency proceedings) that our claim to the purchase price will be jeopardized by the buyer's deficient performance or his inability to pay, then we will be entitled to withdraw from the contract (Article 321 of the German Civil Code) according to the legal regulations about

refusing payment and after setting a time limit, if applicable. We can declare the withdrawal from the contract immediately in the case of contracts about manufacturing unwarranted articles (batch production); the legal regulations about the dispensability of setting a time limit remain unaffected.

## **6. Reservation of ownership**

6.1 We reserve the right of ownership to the sold goods until all of our present and future debt claims arising from the contract of sale (secured debt claims) and a current business relationship have been fully paid.

6.2 The goods that are subject to the reservation of ownership are not allowed to be mortgaged to third parties or pledged as security before the secured debt claims have been fully paid. The buyer has to notify us immediately in writing whenever an application is made for opening insolvency proceedings, or insofar as third parties encroach on the goods that belong to us (e.g., seizures).

6.3 We are entitled to withdraw from the contract or to demand [return of] the goods on account of our reservation of ownership, or both, according to the legal regulations, in the case that the buyer's conduct breaches the contract and especially if he does not pay the due purchase price. The demand for payment does not simultaneously constitute the declaration of withdrawal; on the contrary, we are entitled to demand that only the goods be returned and we reserve the right of withdrawal. If the buyer does not pay the due purchase price, then we can only assert these rights whenever we have set the buyer a reasonable time limit for payment beforehand without success, or if setting such a time limit is indispensable according to the legal regulations.

6.4 The buyer is authorized to resell the goods that are subject to the reservation of ownership during the ordinary course of business or to process them, or both, according to (c) below and until revocation. The following provisions apply supplementarily in this case.

6.4.1 The reservation of ownership extends to processing, mixing or connecting our goods with the resulting products at their full value: whereby we apply as the manufacturer. If a third-party reservation of ownership continues to exist in the case of processing, mixing or connecting the goods, then we will acquire the co-ownership in relation to the invoiced values of the processed, mixed or connected goods. The same thing applies otherwise to the resulting products as for the delivered goods that are subject to the reservation of ownership.

6.4.2 The buyer herewith assigns to us as security his debt claims against third parties arising from reselling the goods or products as a whole, or those amounting to any share that we have in the co-ownership, according to the aforementioned paragraph. We accept the assignment. The buyer's duties that are mentioned in Para. 2 also apply regarding the assigned debt claims.

6.4.3 The buyer remains empowered to collect the debt claim besides us. We undertake not to collect the debt claim while the buyer complies with his obligations of payment vis-à-vis ourselves, provided that his performance or his ability to pay is not deficient and we do not assert the reservation of ownership through exercising a right according

to Para. 3. However, if this is the case, then we can demand that the buyer announces the assigned debt claims and their creditors to us, as well as that he gives us all of the information that is required for the collection, hands over the associated documents and notifies the assignment to the debtors (third parties). Apart from that, we are entitled in this case to revoke the buyer's authorization to resell and process the goods that are subject to the reservation of ownership.

6.4.4 If the achieved value of the securities exceeds our debt claims by more than 10 %, then we will release the securities at our discretion and in response to the buyer's demand.

## **7. The buyer's claims arising from defects**

7.1 The legal regulations apply to the buyer's rights in the event of material defects and defects of title (including wrong delivery and inadequate delivery as well as improper assembly or defective assembly instructions), insofar as nothing else is determined in the following text. The special legal regulations remain unaffected in all cases of finally delivering the unprocessed goods to a consumer or customer, even if this consumer or customer has reprocessed them (supplier's regress according to Article 478 of the German Civil Code). The claims arising from the supplier's regress are excluded, if the defective goods have been reprocessed by the buyer or by another businessman, e.g., through installing them in another product.

7.2 The agreement about the goods' quality is primarily the basis of our liability for defects. All descriptions of products (including the data sheets about products, etc.) and the manufacturer's information, which are an object of the individual contract or which we announced publicly (especially in catalogues or in our home page on the internet) at the point in time of concluding the contract, apply as the agreement about the goods' quality.

7.3 Insofar as the quality has not been agreed, it must be assessed whether or not a defect is present according to the legal regulation (Article 434, Para. 1, Lines 2 and 3 of the German Civil Code). However, we do not accept any liability for public statements that are made by the manufacturer or by other third parties (e.g., advertising statements) which the buyer has not advised us were decisive for his purchasing decision.

7.4 The buyer's claims arising from defects require as a prerequisite that he has complied with his duties of inspection and complaint (Articles 377 and 381 of the German Commercial Code). An inspection must be made immediately before the processing in the case of building materials and other goods that are specified for installing or other reprocessing. If a defect is evident from the delivery, or from the inspection, or at any later point in time, then we must be notified about it immediately in writing or in textual form. Apparent defects must be notified to us within 5 working days from the delivery and any defects that are undetectable during the inspection must be notified to us within the same time limit from discovering them in every case. If the buyer neglects to make the proper inspection or to notify the defect, or both, then our liability will be excluded for the defect that was not notified promptly or that was notified improperly according to the legal regulations.

7.5 If the delivered article is defective, then we can choose first of all whether we provide subsequent performance through remedying the defects (repair) or by delivering a flawless article (replacement delivery). Our right to refuse the subsequent performance according to the legal regulations remains unaffected.

7.6 We are entitled to make the owed subsequent performance dependent upon the buyer paying the due purchase price. However, the buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.



7.7 The buyer has to give us the requisite time and opportunity for the owed subsequent performance and especially for the purposes of checking the criticized goods. The buyer has to give the defective article back to us according to the legal regulations in the case of a replacement delivery. The subsequent performance does not include dismantling the defective article or reinstalling it, if we were not obligated to the (re)installation.

7.8 We will bear or reimburse the expenses that are required for the purposes of checking and subsequent performance - especially the costs of transport, routing, work and materials as well as any dismantling and (re)installing - according to the legal regulation, if a defect actually exists. Otherwise, we can demand from the buyer [reimbursement of] the costs that arose from his unjustified demand to remedy the defect (especially the checking and transporting costs), unless the lacking defectiveness was undetectable for the buyer.

7.9 The buyer has the right in urgent cases, e.g., if the operating safety is jeopardized or in order to avert disproportionate damages, to remedy the defect himself and to demand reimbursement from us of the objectively requisite expenses for this purpose. We must be notified in advance about the buyer's intention to remedy the defect himself, if at all possible. He will not have the right to remedy the defect himself, if we would be entitled to refuse a corresponding subsequent performance according to the legal regulations.

7.10 If the subsequent performance has failed, or if the reasonable time limit that the buyer set for the subsequent performance has expired unsuccessfully or it is indispensable according to the legal regulations, then the buyer can withdraw from the contract or reduce the purchase price. However, there is not any right of withdrawal in the case of a negligible defect.

7.11 The buyer's claims to compensatory damages or to reimbursement of the alleged expenses in the case of defects also exist but only according to Article 8 and they are excluded otherwise.

## **8. Other liability**

8.1 Insofar as nothing else arises from these General Terms and Conditions of Sale, including the following provisions, we are liable in the case of infringing the contractual or non-contractual duties according to the legal regulations.

8.2 We are liable for compensatory damages in the case of (criminal) intent and gross negligence - irrespective of whatever legal reason - within the framework of culpable liability. We are only liable in the case of simple negligence, subject to the legal limitations of liability (e.g., diligence in our own matters; negligent infringement of duties):

8.2.1 for damages arising from injury to the life, limb or health,

8.2.2 for damages arising from infringing an essential contractual duty (only fulfilment of the obligation enables the contract to be properly implemented at all and the contracting parties regularly rely and must rely on compliance with it)); however, our liability is limited to the foreseeable, typically arisen damage in this case.

8.3 The limitations of liability that arise from Para. 2 also apply to infringements of duty by or in favour of persons for whose culpability we have to be responsible according to the legal regulations. They do not apply insofar as we remain fraudulently silent or we have undertaken a guarantee for the goods' quality, nor do they apply to the buyer's claims

according to the Product Liability Law.

8.4 The buyer can only withdraw or cancel the contract because of infringing a duty that is not based on a defect, if we are responsible for infringing the duty. The customer's free right of cancellation (especially according to Articles 650 and 648 of the German Civil Code) is excluded. The legal prerequisites and legal consequences apply otherwise.

## **9. Statutory limitation**

9.1 The general statutory period of limitation for claims arising from material defects and defects of title, which diverges from Article 438, Para. 1, No. 3 of the German Civil Code, is half a year from the delivery. The statutory limitation begins with the acceptance, insofar as an acceptance is agreed.

9.2 The aforementioned statutory periods of limitation according to the Sale of Goods Law also apply to the buyer's contractual and non-contractual claims for the compensatory damages that are based on a defect in the goods, unless applying the regular statutory limitation (Articles 195 and 199 of the German Civil Code) would lead to a shorter period of limitation in individual cases. However, the buyer's claims for compensatory damages according to Article 8, Para. 8.2, Lines 8.2 and 8.2.1, as well as according to the Product Liability Law, will be time-barred solely according to the statutory periods of limitation.

## **10. Export regulations and lists of sanctions**

10.1 The buyer is obligated to comply with all of the applicable export-control regulations and sanctions regulations with reference to the goods.

## **11. Recommendations**

11.1 The technically applicable recommendations in speech and writing do not release the buyer from being responsible himself to check (also through processing of samples) the goods that we have delivered regarding their suitability for the intended purpose.

## **12. Choice of law and place of jurisdiction<sup>1</sup>**

12.1 The Law of the Federal Republic of Germany applies to these General Terms and Conditions of Sale and to the contractual relationship between ourselves and the buyer, subject to excluding internationally uniform law and the United Nations Convention on Contracts for the International Sale of Goods in particular.

12.2 If the buyer is a businessman or a legal entity according to public law, or a fund or special asset according to public law for the purposes of the German Commercial Code, then the sole international place of jurisdiction for settling all disputes arising directly or indirectly from the contractual relationship is our place of business or registered office in

Bremen (for Freese AG, for G. Theodor Freese GmbH and for Freese Oberflächentechnik GmbH), or in Rudolstadt (for Freese Fussbodentechnik GmbH), or in Kiel (for Förde Tischlerei which is a limited liability company in this case). The same rule applies if the buyer is a businessman for the purposes of Article 14 of the German Civil Code. However, we are also entitled in all cases to sue the buyer or bring a lawsuit against him at the place of performance<sup>2</sup> of the delivery obligation according to these General Terms and Conditions of Sale or a preferential individual agreement, or at the buyer's general place of jurisdiction<sup>1</sup>. The preferential legal regulations, especially those concerning sole jurisdiction, remain unaffected.

<sup>1</sup> domicilium disputandi

<sup>2</sup> domicilium executandi