

# FRITZMEIER Group

## General Terms and Conditions for B2B Sales

### I. Scope

(1) These General Terms and Conditions for B2B Sales („GTC“) apply to all our contractual relationships with our business customers („Customers“). A business customer is an entrepreneur as defined under Section 14 of the German Civil Code Bürgerliches Gesetzbuch („BGB“), a legal entity under public law or a special fund under public law.

(2) These GTC apply in particular to contracts pertaining to the sale and delivery of goods, regardless whether we manufacture the goods ourselves or purchase from suppliers. These GTC may be revised from time to time. Unless agreed otherwise, any purchase order or contract offer submitted by a Customer to us shall be governed by the latest version of these GTC or, as the case may be, the version last communicated to the Customer at least in text form. These GTC form a framework that applies for all future purchase orders or contract offers submitted by a Customer, regardless whether we have formally included them into our order or contract confirmation.

(3) Our business relationship to our Customers is governed by these GTC exclusively, and any deviating, contrary or supplementary terms and conditions of the Customer do not become part of the contract without our express consent. This applies even if we choose to carry out the delivery unconditionally despite knowledge of the deviating, contrary or supplementary terms and conditions.

(4) Individual contractual arrangements with the Customer (including collateral agreements, additions and amendments) enjoy priority over these GTC. Subject to proof of the contrary, a written agreement or written order confirmation shall be authoritative for the content of such individual arrangement.

(5) Any legally relevant declaration or statement of intent of the Customer pertaining to the contract (e. g. setting of deadlines, notification of defects, cancellation, rescission, price reduction demands) must be submitted in writing or in text form (e. g. letter, e-mail, fax). This does not apply where statutory requirements apply a stricter form, particularly where the power of representation of the acting person is in doubt.

(6) Any quotation of statutory provisions in these GTC is made for clarification purposes only. Even without such clarification, all relevant statutory provisions apply unless they are directly amended or expressly excluded in these GTC.

### II. Order Mechanism

(1) All our offers are noncommittal and subject to alteration. For the avoidance of doubt, this also applies where we have provided the Customer with catalogs, technical documentation (e.g. drawings, plans, calculations, calculations, references to DIN/EN/ISO standards), other product descriptions or documents in which we retain all intellectual property rights.

(2) The order of the goods by the Customer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept or decline this contract offer within two weeks following receipt.

(3) We may accept the Customer's offer either in writing (e.g. by order confirmation) or by delivery of the goods to the Customer.

### III. Delivery time and delivery delay

(1) Any delivery period shall be agreed individually or, absent such agreement, specified by us when accepting the order. Absent both, the delivery period is a maximum of 52 weeks from the conclusion of the contract.

(2) If we cannot comply with a binding delivery deadline for reasons beyond our reasonable control, we will inform the Customer without undue delay, and provide a new delivery deadline. If we repeatedly fail to comply with a revised delivery deadline for reasons beyond our reasonable control, we are entitled to withdraw from the contract as a whole or in part. In this event, we will reimburse any consideration already provided by the Customer immediately. For the avoidance of doubt, reason beyond our reasonable control shall mean, without limitation, incorrect or delayed deliveries by our own suppliers, unless we and our suppliers have negligently or willfully delayed or impeded such delivery, or where, as the case may be, we are not obliged to procure.

(3) The occurrence of default is determined by the relevant statutory provisions. In any event, an overdue notice from the Customer is required. If we fall into arrears with deliveries, the Customer may demand a flat-rate compensation for the losses incurred by the Customer due to the delay. The compensation shall be 0.5% of the net order value for each completed calendar week of default, but in total not more than 5% of the net order value of the delayed deliveries. We reserve the right to prove that the Customer has incurred no or a lower damage than the flat rate.

(4) The foregoing provisions do not affect the rights of the Customer under Section 8 GTC and our statutory rights, in particular where we are no longer obliged to perform due to impossibility.

### IV. Delivery, Transfer of Risk, Default

(1) Deliveries shall be made ex warehouse. This also determines the place of performance for our deliveries and any supplementary performance. At

the request and expense of the Customer, we will ship the Customer's goods to another destination (sale by dispatch). Unless agreed otherwise, we may determine the shipment details at our discretion (in particular carrier, shipping route and packaging).

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer upon handover latest. In the event the Customer requests us to sell by dispatch, however, the risk of accidental loss and accidental deterioration as well as the risk of delay shall pass to the forwarder, carrier or the person or institution otherwise responsible for carrying out the delivery. Where, as the case may be, a formal acceptance requirement of the goods has been agreed individually, risk shall transfer upon acceptance. Notwithstanding this, the law on contracts for work and services (Sections 634pp BGB) shall apply accordingly where an acceptance requirement has been agreed. Should the Customer fall into arrears with accepting the transfer or declaring acceptance, risk shall pass upon falling into arrears.

(3) Should the Customer fall into arrears with accepting the goods, fail a duty to cooperate or should our delivery be delayed for other reasons for which the Customer is responsible, we may demand reimbursement of the resulting damages including additional expenses (e.g. storage cost). For this, we may charge a lump sum compensation of 50 EUR (net) per calendar day, starting with the delivery date or – absent a delivery period – when we inform the Customer the goods are ready for shipment. We reserve the right to prove that the damages are higher. Our statutory rights (in particular compensation for additional expenses, appropriate compensation, termination) shall remain unaffected; the lump-sum payments made under the above provisions shall however deducted from damages claims. The Customer reserves the right to prove that we have incurred no damage or a lower damage than the above lump sum.

### V. Price, Payment Terms

(1) Unless otherwise agreed in individual cases, our current prices at the time of the conclusion of the contract shall apply, ex warehouse, plus statutory sales tax.

(2) In the case of sale by dispatch (Section 4.1), the Customer shall bear the transport cost ex warehouse and the costs of any transport insurance requested by the Customer. Any duties, fees, taxes and other public charges shall be borne by the Customer.

(3) The purchase price is due and payable within 14 days after invoicing and delivery or acceptance of the goods. However, we are also entitled, at any time during an ongoing business relationship, to require advance payment before carrying out a delivery. If so, we must declare so with the order confirmation latest.

(4) Upon expiry of the above payment period, the Customer is in default. During the default period, the overdue amount shall bear interest at the applicable statutory default interest rate. We reserve the right to assert further default damages. Our entitlement to commercial maturity interest remains unaffected.

(5) The Customer may set off against our claims or retain only insofar as his counter-claim has been finally adjudicated or has remained undisputed. This does not apply in the case of defects, where the Customer's rights under Section 7 para. 6 sentence 2 remain unaffected.

(6) If, after conclusion of the contract, it becomes apparent (e.g. by application for opening of insolvency proceedings) that our entitlement to the purchase price is at risk due to a possible inability to perform, we may refuse performance on our part, and – if necessary after setting a deadline – withdraw from the contract under Section 321 BGB. Where a contract pertains to the production of custom-made or bespoke goods, we may withdraw immediately; the statutory provisions under which setting a deadline may be dispensable remain unaffected.

### VI. Retention of Title

(1) We reserve and retain title and ownership in all goods sold („Retention of Title“), subject to the condition precedent of full payment of all our present and future claims under the current contract and any debt from the business relationship between us and the Customer („Secured Claims“).

(2) Any good subject to Retention of Title may not be pledged, transferred as collateral or otherwise used as security to third parties, unless the Secured Claims have been fully settled and all debt from our business relationship has been retired. The Customer shall notify us immediately in writing if an application for the opening of insolvency proceedings has been filed or if foreclosure measures (e. g. seizure, confiscation) affect the goods belonging to us.

(3) In the event of breach of contract by the Customer, in particular in the event of non-payment, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to reclaim any goods which are subject to Retention of Title. For the avoidance of doubt, reclaiming the goods in which we retain title does not include withdrawal from the contract unless expressly declared. As such, we may reclaim the goods and reserve the right of withdrawal. If the Customer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set a reasonable deadline for payment or if such deadline is dispensable under statutory provisions.

(4) The Customer may, until further notice in accordance with item (c) below, in his ordinary course of business resell or process the goods subject

to Retention of Title. In this event, the following provisions apply additionally: (a) The Reservation of Title extends to the products resulting from the processing, mixing or combination of our goods („Resulting Products“), at their full value, and processing shall be deemed to have taken place on our behalf. Should third parties also maintain property rights in the Resulting Products, we shall acquire co-ownership in the Resulting Products, together with the third parties, it being understood that the co-ownership shares shall be proportionate to the invoice value of the contributions of the us and the third parties to the Resulting Products. The covenants herein covering Retention of Title shall also apply to the Resulting Products. (b) The Customer hereby assigns to us all claims arising from the sale of the goods (or Resulting Products) against third parties (or, as the case may be, claims to the amount of our co-ownership share in accordance with item (a) above). We hereby accept such assignment, and the obligations of the Customer stipulated in para. 2 above shall apply to the assigned claims. (c) The Customer remains authorized to collect the claims. While we are also entitled to collect the claims, we undertake not to do so as long as the Customer meets its payment obligations towards us, the Customer's credit rating is acceptable, and we do not exercise the Reservation of Title under para. 3 above. Should we however exercise the Reservation of Title, we may demand that the Customer provides us with full information relating to the assigned claims and their debtors and any information necessary for debt collection, including access to the related documents. We may also demand that the Customer notifies the debtors of the assignment. We may also revoke the purchaser's authority to resell and process the goods subject to Retention of Title. (d) Should the realizable value of all credit securities provided by the Customer hereunder exceed our claims by more than 10%, we shall, at the Customer's request, release securities of our choice so that the 10% threshold is met.

## VII. Rights of the Customer in case of defects

(1) The rights of the Customer in case of defects (including wrong and short delivery as well as improper installation or faulty assembly instructions) or defective title (jointly hereinafter: „Defect Claim“) shall be governed by statutory provisions, unless otherwise stated below. Notwithstanding the above, the statutory provisions pertaining to defects within a delivery chain (Sections 478, 479 BGB, from 1 January 2018: Sections 445a, 445b BGB) shall remain unaffected by the provisions below.

(2) Whether a product bears a defect shall predominantly be determined by the contractual agreements relating to the quality of the product, in particular the product description. Drawings, illustrations, dimensions, weight or other performance data shall become part of the contract only if part of the product description or expressly agreed.

(3) In the event no agreement has been made as to the quality of the product, defectiveness shall be determined by statutory standard (Sections 434 para 1 sentence 2 and 3 BGB). We assume no liability for public statements of a third-party manufacturer or other third parties (e.g. advertising statements).

(4) Any Defect Claim requires that the Customer has complied with his statutory inspection and complaint obligations (Sections 377, 381 HGB). Should a defect be manifest or occur at delivery, during incoming inspection or at any later time, the Customer must notify us in writing without delay. Notwithstanding this, obvious defects must be reported in writing within three working days from the date of delivery, and any defect that cannot be identified during the incoming inspection within the same period from discovery of such defect. If the Customer fails to properly and timely inspect and report a defect, our liability for this defect is excluded.

(5) If the delivered goods are defective, we may, at our discretion, render subsequent performance by repairing the defect (rectification) or by delivering a defect-free item (replacement delivery). Our right to refuse supplementary performance under statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance subject to the condition that the Customer has paid the outstanding purchase price. The Customer may, however, retain a proportionate part of the purchase price which appears fair and reasonable in relation to the defect.

(7) The Customer must grant us sufficient time and opportunity for carrying out subsequent performance, in particular hand over the relevant goods for examination and repair. In case of replacement, the Customer has to return the defective item according to the statutory provisions regulations. We will bear the cost of removal of the defective component and installation of a defect-free component only if we were originally obliged to install the component. This does not apply to removal and reinstallation of a defective Purchaser Selected Component (as defined in para 12 hereto); in relation to which the Customer bears all cost of removal and reinstallation.

(8) In the event of subsequent performance, we will bear the cost and expense of testing and subsequent performance, in particular transport, travel, labor and material costs (but not dismantling and installation costs) if a defect actually exists. Otherwise, we may demand reimbursement for all cost and expense incurred in connection the unjustified defect claim (in particular inspection and transport cost), unless the lack of defect was not apparent to the Customer.

(9) In urgent cases, for example in the event of danger to operational safety or to ward off disproportionate damage, the Customer may remedy the defect itself and demand compensation of expenses from us. The Customer must, however, inform us immediately and if possible beforehand of such self-assertion. The right to self-assert does not exist if we were entitled to

refuse a corresponding subsequent performance according to statutory provisions.

(10) If a supplementary performance has failed or a reasonable period to be set by the Customer for the supplementary performance has expired without success or is dispensable under statutory provisions, the Customer may withdraw from the purchase contract or reduce the purchase price. In a minor defect, however, there is no right of withdrawal.

(11) Unless stipulated otherwise in Section 8, all damages claims of the Customer relating to defects shall be excluded.

(12) In the event we purchase, following the instruction or recommendation of the Customer or based on a contract entered into by the Customer and a third party, an object („Purchaser Selected Component“) from a third party („Vendor“) which is subsequently installed into a product sold hereunder to the Customer, the following warranty agreement shall supersede the previous provisions: We hereby assign our own warranty claims against the Vendor with regard to the Purchaser Selected Component to the Customer, who accepts this assignment. The assigned warranty claims against the Vendor apply in lieu of any statutory and contractual warranty obligation we may have vis-à-vis the Customer, and replace them completely. Therefore, if a defect of an item purchased hereunder is due to the fact that a Purchaser Selected Component is defective, the Customer shall deal with the Vendor. In return, all warranty claims of the Purchaser against us due to defects of the Purchaser Selected Component are excluded.

## VIII. Liability

(1) In the event of a breach of contractual and non-contractual obligations, we shall be liable in accordance with statutory provisions, unless these GTC, including the following provisions, stipulate otherwise.

(2) In the event of fault-based liability, we shall be liable for damages – based on whatever legal ground – only in the event of intent and gross negligence. In event we are liable for plain negligence, we are liable – save a statutory milder standard – only for (a) damages arising from injury to life, body or health, and for (b) any damage arising from not insignificant breach of a material contractual obligation, it being understood that the latter is any obligation, the fulfillment of which enables the proper execution of the contract in the first place and the compliance of which the contractual partner regularly trusts and may trust; however, in this case (b), our liability is limited to foreseeable, typically occurring damage.

(3) The limitations resulting from para. 2 also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for under statutory provisions. They do not apply if we fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the Customer under the Product Liability Act.

(4) If a defect constitutes a breach of contract, the Customer may only resign or terminate if we are responsible for the breach of duty. Any right of free termination of the Customer (in particular according to Sections 651, 649 BGB) is hereby waived and excluded. If not stipulated otherwise herein, statutory conditions and legal consequences apply.

## IX. Statute of limitations

(1) Notwithstanding Section 438 para. 1 no. 3 BGB, the general period of limitation for claims arising from material and legal defects is one year from delivery. Where a formal acceptance requirement of the goods has been agreed individually, the period of limitation begins with the acceptance. Notwithstanding the above, any binding statutory regulations pertaining to the statute of limitations (e. g. Section 438 para. 1 no. 1, para. 3, Sections 444, 479 BGB) remain unaffected.

(3) The above limitation periods of the purchase right shall apply accordingly to damages claims (contractual and non-contractual) of the Customer which are based on a defect of the goods, unless the application of the statutory provisions (Sections 195, 199 BGB) would lead to a shorter term. However, claims of the Customer under Section 8 para. 2 sent. 1 and 2 (a) as well as under the Product Liability Act shall be time barred after the statutory limitation periods.

## X. Choice of law and jurisdiction

(1) These GTC and the contractual relationship between us and the Customer shall be construed and governed by the laws of the Federal Republic of Germany, excluding the UN Convention on the Sales of Goods.

(2) If the purchaser is a merchant or entrepreneur within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship shall be Munich, Federal Republic of Germany. However, we may, at our discretion, also file claims at the place of performance of the delivery obligation (determined in accordance with these GTC), at any individually agreed place of jurisdiction or at the general place of jurisdiction of the Customer. There foregoing does not apply where the law stipulates a binding place of jurisdiction, in particular an exclusive responsibility of a certain court.

**As from January 2018**