

General Sales and Delivery Conditions of FRENDSCH GMBH

I. General

For the general business relationship between FRENDSCH GMBH and the customer these General Sales and Delivery Conditions apply exclusively. Other purchasing conditions or general business conditions of the customer are hereby countermanded. They will not apply.

If a framework agreement exists between the customer and FRENDSCH GMBH, these General Sales and Delivery Conditions apply to both the framework agreement and the individual orders. FRENDSCH GMBH is entitled to amend its General Sales and Delivery Conditions after appropriate notification with effect for the future business relationship with the customer.

II. Exchange of contract

1. Offers by FRENDSCH GMBH are subject to change and non-binding. The documents relating to the offer, such as illustrations, drawings and weight and dimension statements, provide approximate values only unless expressly declared to be binding.
2. For the contents of orders and agreements the written confirmation from FRENDSCH GMBH is exclusively decisive unless promptly countermanded by the customer in writing. This applies in particular to verbal or telephone orders and agreements. Verbal supplements or incidental agreements to a contract are effective in written form only.
3. Statements about particular characteristics of the purchase object or specific usability of the purchase object are agreed on a binding basis only if expressly described as such in the contract. Samples, specimens, dimensions, DIN/EN provisions, performance specifications and other statements about the characteristics of the delivery object serve the purpose of specification and contain no guarantee. To the extent that the goods delivered are specified, this guarantees only agreement with the specification and not the suitability of the goods for a particular purpose. FRENDSCH GMBH is obliged to make statements about the usability of the purchase object only in the case of its evident unsuitability.

III. Delivery date, delivery scope, delivery default and non-fulfilment

1. FRENDSCH GMBH is entitled to make part deliveries provided that they do not exceed a reasonable minimum.
2. Delivery dates and times are deemed to be agreed only on an approximate basis unless FRENDSCH GMBH has made an express written commitment that they are binding. If the customer fails to clarify all details of the order in good time or fails to carry out all actions of advance performance in good time, the delivery times will be extended reasonably. In the case of delivery delays as the result of business disruptions, official measures, absence or shortage of input deliveries to FRENDSCH GMBH or force majeure, the delivery time will be extended reasonably. Force majeure is also constituted by labour dispute measures including strikes and legitimate lockouts in the business establishment of FRENDSCH GMBH or input suppliers of FRENDSCH GMBH.
Delivery dates are deemed to have been met on notification of readiness for dispatch.
3. If the reasonable delivery times or dates are exceeded by more than six weeks the customer is entitled to make a written demand to FRENDSCH GMBH for delivery and set a reasonable period of grace. At the end of this period the customer may withdraw from the contract. FRENDSCH GMBH is on its side entitled to withdraw from the contract if supply problems outside its control occur not just temporarily. FRENDSCH GMBH may in addition withdraw from the contract if, at the end of the period of grace set by the customer, the customer fails within a reasonable period set by FRENDSCH GMBH to declare whether it still demands fulfilment or wishes to withdraw from the contract. In the case of withdrawal by FRENDSCH GMBH, the customer is entitled to give back any part deliveries to FRENDSCH GMBH if it has a justified interest in refusing the part delivery. Further claims, particularly damage compensation claims, are excluded in accordance with the regulations in section VII (general limitation of liability).
4. The customer is obliged to accept the delivery object as agreed. In the absence of a written agreement to the contrary, notification of readiness for dispatch is sufficient to establish the acceptance obligation. FRENDSCH GMBH is entitled to offer performance before the performance time agreed on a non-binding basis unless delivery was agreed for a fixed date in the interests of the customer.

IV. Prices, payment terms

1. The prices do not include value-added tax, loading, freight, customs duty, packaging, insurance and other expenses.
2. FRENDSCH GMBH reserves the right to adjust the agreed price of the contract object if more than two months lie between order placement and the planned delivery time and in the meantime expenses for wages and input products have substantially changed.
3. FRENDSCH GMBH may stipulate that delivery of the contract object is dependent on receipt of payment. In the absence of an agreement to the contrary, payments are otherwise due on readiness for dispatch and receipt of the invoice. Invoices are payable within ten days from the invoice date with 2% cash discount or within thirty days from the invoice date net. FRENDSCH GMBH is not obliged to accept checks or bills of exchange. If a check or bill of exchange is accepted, payment is deemed to have been effected only on disbursement or unconditional credit of the payment amount to a bank account of FRENDSCH GMBH.
4. Offsetting of a counterclaim is permissible only if the relevant counterclaim has been established with final legal effect or is undisputed or is recognised by FRENDSCH GMBH. Pursuit of retention rights because of a claim which is not based on the same contractual relationship is excluded.

V. Passing of risk, acceptance, transportation

1. FRENDSCH GMBH delivers ex works by the transportation route chosen by it unless the customer collects the goods or arranges for them to be collected. If FRENDSCH GMBH enters into transportation contracts, this is done on the account of the customer. The risk passes to the customer at the start of loading or on dispatch of the object. It is the responsibility of the customer to take out insurance for transportation.
2. If dispatch is delayed for reasons for which the customer is responsible, the risk passes to the customer on the date of notification of readiness for dispatch.
3. Immediately after receipt the customer must examine the contract object for defects or damage in transit. Damage in transit must be promptly reported to FRENDSCH GMBH and the transportation contractor and noted on the transportation contractor's freight papers. Claims for damage in transit against the transportation contractor must be pursued by the customer itself in court or out of court to the extent that the customer is entitled to do so according to the provisions of the contract or the law which apply for transportation of the contract object.
4. The provisions of § 377 of the German Commercial Code/HGB otherwise apply if the customer is a registered trader.

VI. Guarantee

1. Legal defects

- a. FRENDSCH GMBH guarantees that the contract object is, in the country of the delivery destination, free of rights preventing the contractual purpose, particularly industrial property rights of third parties, as far as the contractually agreed or foreseeable use of the contract object extends. If the customer makes special stipulations about the design of the product, it is itself responsible for ensuring that these stipulations are not contrary to any third-party industrial property rights at the delivery location. The same applies if the customer or other persons in the supply chain use or modify the contract object or combine it with other objects in a manner which is not contractually agreed or foreseeable.
- b. If a third party justifiably claims an industrial property right, FRENDSCH GMBH will provide subsequent performance by, at its own expense, either acquiring a utilisation right for the contract object or modifying the contract object in such a way that the property right is no longer infringed.
- c. The customer is obliged to notify FRENDSCH GMBH promptly in writing about any claims pursued by third parties, to refrain from recognising any infringement towards the third party, and to keep open for FRENDSCH GMBH all defence measures and settlement possibilities towards the third party. If the customer stops using the contract object because of the damage reduction duty or other good reasons, it is obliged to inform the third party that discontinuation of use does not indicate recognition of a property right infringement. This obligation must also be imposed by the customer on its customers. The guarantee is excluded if the customer or further persons in the supply chain have, through an infringement of these obligations, frustrated subsequent performance.

2. Material defects

- a. FRENDSCH GMBH guarantees that the contract object accords with the contractually agreed or stipulated characteristics and the status of safety and technology within the parameters of the regulations applicable in the European Union. For compliance with technical regulations outside the European Union FRENDSCH GMBH provides a guarantee only if such regulations are named by the customer before exchange of contract and examined by FRENDSCH GMBH and recognised by it in writing as a contractual component. For performance and dimension deviations the contractual agreed tolerances apply in each case. Minor deviations in the external appearance (shape, colour) of the goods from specimens or the same products in another production series do not constitute defects. FRENDSCH GMBH may refuse to guarantee lighting equipment delivered with or installed in the goods if it assigns to the customer its claims against the supplier of this lighting equipment and notifies to the customer the contract data required by it for pursuit of the assigned claims.
- b. Subsequent performance will be provided at the choice of FRENDSCH GMBH either through repair of the defective goods or a replacement delivery. Repeated subsequent performance is permitted. The goods must be sent by the customer at the expense of FRENDSCH GMBH to a place designated by FRENDSCH GMBH. Assumption of costs is excluded to the extent that the purchase object has been taken to a place other than the contractually stipulated destination.
- c. If the customer identifies a defect it may not alter or process the delivery object or pass it to third parties but must give FRENDSCH GMBH adequate opportunity and time to satisfy itself about the defect and carry out any necessary subsequent performance (repair or replacement delivery). Regardless of the existence of a defect, defect liability claims lapse if alteration or repair work is carried out on the side of the customer or a third party without the approval of FRENDSCH GMBH.

3. Withdrawal, price reductions, damage compensation

If a reasonable period for subsequent performance is set for FRENDSCH GMBH and during this period it fails to correct a legal or material defect or supply a replacement or if subsequent performance proves impossible or is unsuccessful or if FRENDSCH GMBH refuses subsequent performance for other reasons or setting of a period is dispensable in accordance with § 478 of the German Civil Code/BGB, the customer will only be entitled to withdraw from the contract or demand a reasonable reduction in the purchase price. Further claims for damage compensation are excluded unless FRENDSCH GMBH has fraudulently concealed the defect from the customer or guaranteed its absence. Further claims for reimbursement of expenses in accordance with § 478 (2) BGB may be pursued by the customer to the extent that repair expenses by the customer have unavoidably become necessary despite observation of the rules under no. 1 c and 2 c above. In the event of withdrawal, the reciprocal claims of the parties to the contract are in accordance with the provisions of the law. The cost of return transportation of the goods will not be borne by FRENDSCH GMBH if and to the extent that the purchase object has been taken to a place other than the contractually stipulated destination.

4. Statute of limitation

Unless § 479 BGB stipulates a longer limitation period, the limitation period with regard to claims relating to the contract object for subsequent performance, price reductions, rescission or compensation for damages or expenses is six months for jointly-delivered lighting equipment and otherwise twelve months from the passing of risk unless a defect in the contract object has been fraudulently concealed or a guarantee of characteristics is not fulfilled.

VII. Compensation for damages

FRENSCH GMBH is liable towards the customer for damage compensation for whatever legal reason only in the case of:

- Wilful intent or gross negligence
- Culpable injury to life, body or health
- Consequential damage resulting from defects which FRENSCH GMBH has fraudulently concealed from the customer or whose absence FRENSCH GMBH has guaranteed
- Defects in the delivery object to the extent of liability under the Product Liability Law for personal injury or material damage in the case of privately used objects
- Culpable infringement of substantial contractual duties, but limited to damage typical of the contract and reasonably foreseeable on exchange of contract. Any claim by the customer for loss of profit in this regard will be limited in amount to 10% of the agreed price for the part of the contract object to which the performance fault relates.

VIII. Retention of title

FRENSCH GMBH retains title to the delivery object until receipt of all payments under the delivery contract. In the case of conduct by the customer in breach of contract, particularly payment default, and in the event of an application for insolvency proceedings to be opened, FRENSCH GMBH is entitled to take back the delivery object and the customer is obliged to surrender it. In the case of attachment or other third-party interventions, the customer must notify this to FRENSCH GMBH without delay.

IX. Place of performance and jurisdiction, applicable law

1. In the absence of a contractual agreement to the contrary, the place of performance for payments and the goods delivery is the business base of FRENSCH GMBH.
2. If the customer is a registered trader, a legal entity under public law or a special fund under public law, the business base of FRENSCH GMBH is the place of jurisdiction for all litigation including proceedings relating to bills of exchange and cheques; actions against FRENSCH GMBH may only be tried here.
3. The contract, product-liability, criminal and other civil and commercial law of the Federal Republic of Germany will have exclusive application to the exclusion of UN purchasing law (CISG).

X. Legal effectiveness, data protection

1. If any of the provisions in these General Sales and Delivery Conditions should be ineffective this will have no influence on the effectiveness of the contract in other regards. In its place, the legal regulation will apply. Under no circumstances will the provision in these General Sales and Delivery Conditions be replaced by the business conditions of the customer.
2. Any amendments or supplements to the contract are effective only after written confirmation by FRENSCH GMBH; this also applies to any waiver of the contractual requirements for the written form.
3. Legally significant declarations of intent such as notice of termination, withdrawal declarations, and demands for a purchase price reduction or damage compensation are effective in written form only.
4. The person-related data about the customer which are received in connection with the business association, including data originating from third parties, may be processed and stored by FRENSCH GMBH – or third parties commissioned by FRENSCH GMBH – in accordance with the Federal German Data Protection Law.