

# GENERAL TERMS AND CONDITIONS FOR THE DELIVERY OF MACHINES AND MACHINE PARTS OF OSKAR FRECH GMBH + CO. KG

**FRECH®**

Zukunft aus einem Guss

## § 1 Introduction

1. These terms and conditions apply exclusively. Adverse or deviating terms and conditions of purchaser are not binding for supplier, unless supplier declares his consent in writing.
2. In case of an ongoing business relationship (at least for a period of 2 years) these terms and conditions become part of every purchase order even if not expressly referred to.

## § 2 Offer

1. An offer by the supplier is non-binding. A purchase order is deemed to be accepted only, when confirm by supplier in writing.
2. In case that an offer refers to weight and other stated dimensions, for example references to technical designs, they are not to be considered as one hundred percent precise within the framework of commercially accepted tolerances, unless explicitly declared as binding.

## § 3 Scope of Delivery

A written purchase order is crucial for the scope of delivery. An offer providing a deadline requires a timely acceptance of the offer, if there is no order confirmation at the time. Every additional agreement – orally or on the telephone – requires confirmation in writing by the supplier.

## § 4 Prices

1. Unless there is a specific price agreement, prices are calculated ex works and include the loading at the factory, but exclude packaging and unloading. The Value Added Tax (VAT) is added as currently prescribed by law.
2. Prices are based on the costs of material and salaries at the time of entering the agreement. Where such circumstances change in a wide range prior to delivery the price can be adapted according to the change of percentage of costs of materials and salaries, i.e. price correction corresponds only to the change of materials. The current status of production will be considered when changes of costs of materials or changes of salaries have become effective.

## § 5 Payments

1. Unless otherwise agreed payments have to be effected without any deduction as follows:
  - a) Machines and all accessories: Without any deduction, 1/3 down payment within 10 days of date of order confirmation, 1/3 within 10 days when the purchaser is informed, that the main parts are ready to be sent off, the remainder is due the following month.
  - b) Spare parts and wear parts: Irrespective of receiving the merchandise within 30 days of date of invoice, within 2 weeks a 2 % cash discount can be deducted.
  - c) Engineering and other services: Payment is due within 8 days of date of invoice.
2. Cheques and bills of exchange are accepted in payment, pending full discharge of the debt. Payment is only fulfilled after final crediting is confirmed by the bank. Bill of exchanges are only accepted, if specifically agreed in the purchase order. Supplier is not liable for the timely and formal handling of a bill of exchange. All additional transaction costs resulting out of the use of a bill of exchange are to be reimbursed by the purchaser.
3. If payments are deferred or paid later than agreed, purchaser is to pay interest in respect of the period of delay in the amount of at least 8 % points over the current basic interest rate of the European Central Bank. Giving notice of default is not required.
4. Purchaser only has a right of retention or compensation in the case of counter-claims, if counter-claims are uncontested or settled by a final court verdict.
5. The outstanding claim becomes due, if purchaser does not fulfil his duty to pay, becomes insolvent or has a cheque or bill of exchange bounced or if supplier obtains information about an economic deterioration of purchaser that may jeopardise the purchase price. The total outstanding claim becomes due, even if these bills of exchange are for payments due in the future. If the outstanding claim is not paid immediately, purchaser loses the right of usufruct of the object of delivery. Supplier is entitled to take back the object of delivery or to cancel the agreement without renouncing his claim until full payment has been made. If purchaser has caused the cancellation of the agreement, supplier is entitled to ask for compensation for the use of the object of delivery as well as an abatement of purchase price as well as lost profits. Any repossession of the object of delivery is at the expense of purchaser.

## § 6 Time of Delivery

1. Time of delivery starts when the confirmation of order is served, however not before receipt of all documents, such as clearance certificates, required to be presented by purchaser, as well as the effected payment of an agreed down payment.
2. The deadline of delivery is met once the object of delivery has been shipped from the factory or readiness for the shipment has been announced. In the case that an acceptance certificate was agreed, then the time of the acceptance certificate is decisive, at least when readiness for carrying out the acceptance procedure was notified. This does not apply if refusal of the goods is justified.
3. The period of delivery extends in the case of labour unrest as well as unforeseen events beyond control of supplier that influence the production or delivery of the object of delivery. The same applies in respect of similar circumstances affecting sub-suppliers. Furthermore it is not to be considered a delay if required administrative or other permissions of third parties are necessary and documents for export have not arrived at the supplier on time. A subsequent amendment to a confirmed order by purchaser interrupts the period of delivery with the consequence that the deadline starts anew after an agreement about the requested amendment was entered. The circumstances described above do not fall into the responsibility of the supplier, if they occur during a running delay period. Supplier accepts the responsibility to inform purchaser about the beginning and the end of such interruption to the running time as soon as possible.

4. In the case that there is a delay of shipping caused by purchaser of more than a month after announcing readiness for shipment then all costs of storage will be calculated as follows: if stored at the factory of supplier, storage charges amount to 0,5 % of the purchase price. Supplier reserves the right to present evidence about higher or lower storage costs. Supplier is entitled to dispose of the object of delivery otherwise, provided supplier has set an appropriate deadline before. Further claims caused by delay can be raised at the discretion of supplier.

5. To meet the agreed deadline requires the fulfilment of all duties of the purchaser. The meeting of the agreed deadline requires the purchaser to fulfil all of his duties.

## § 7 Passage of Risk and Insurance

1. All risks pass to the purchaser as soon as the object of delivery has been shipped, even if there were only partial shipments or if supplier had accepted other services, such as paying shipping costs, or shipping by himself and setting up the object. To the extend a certificate of acceptance is to be carried out then this is the moment of passing the risk. The certificate of acceptance has to be issued immediately at the time agreed, as soon as possible after the announcement of supplier about readiness for the certificate of acceptance. Purchaser cannot refuse to issue a certificate of acceptance, if there is only a defect that cannot be considered as substantial.
2. Except when requested explicitly by purchaser shipment will be insured at his expense against theft, breakage, damage of transport, damages caused by fire or water leaks as well as other insurable risks.
3. If purchaser has caused delay of shipment the risk passes as of the declaration of readiness for shipment and its communication to purchaser. However, supplier is obliged to enter an appropriate insurance-contract at the request and at the costs of the purchaser.
4. In spite of § 9 purchaser is obliged to accept the object of delivery, even there are defects that can be considered not substantial.
5. Partial shipments are permitted.

## § 8 Retention of Title and Insurance

1. Supplier retains title and the extended reservation of title to the goods delivered pending performance of all of the suppliers claims against purchaser including costs and interest. The same procedure applies for the extended reservation of title. A foreign purchaser is obliged to respect as close as possible according to the local law the extended reservation of title. A foreign purchaser is obliged to negotiate this subject with supplier. Any transformation of the object of delivery with other objects lead to the consequence of a joint ownership of the new product.
2. Purchaser is obliged to take special care of the object of delivery until property passes. Supplier is entitled to insure the object of delivery at the expense of purchaser against theft, breakage, fire, water leaks and other damages unless purchaser has given documented evidence that he has entered an insurance contract himself. Purchaser has to pay for necessary service and repair works at his own costs in due time.
3. Purchaser is not entitled to pledging, leasing, renting out, selling to third parties or assigning the goods delivered as collateral. In case of pledging, confiscation or other dispositions by third parties, supplier has to be informed immediately. Purchaser is obliged to reimburse justified in or out of court interventions, such as filing legal action in accordance with § 771 of the Code of Civil Procedure (ZPO).
4. If purchaser is in breach of contract, in particular in the case of delay, supplier may return – after a warning – the goods as a collateral.
5. If the behaviour of the purchaser is in breach of contract, in particular in the event of a delayed payment, purchaser is obliged to surrender possession. If purchaser sells the goods delivered in violation of the agreement, purchaser now already assigns to supplier all claims arising therefrom (including VAT). Supplier accepts the assignment. Supplier is entitled to collect the assigned claim against the third party. Supplier is also entitled to raise reservation of title to the goods delivered. Purchaser has to notify supplier about all details of the assignment by providing him all necessary documentation and notifying the third party of the assignment. Any change or transformation of the object of delivery by purchaser is carried out on behalf of supplier. Supplier will be joint owner calculated as quota of the sales price compared to the value of the other material added at the time. Any connection of the object of delivery with other objects not owned by purchaser also creates a joint ownership with the corresponding value of the object of delivery with the third owner at that time. If the object of delivery is connected with real property, purchaser assigns to supplier that claim arising for purchaser against a third party as a result of the connection of the goods delivered with the real property. That claim includes VAT. Supplier hereby accepts the assignment.
6. Retention of title and extended reservation of title to the goods are agreed under the condition that full payment transfers property and all assigned claims automatically to purchaser.
7. Supplier may cancel the agreement and may immediately request the return of the object of delivery in case of an insolvency procedure.

## § 9 Liability for Defects of Delivery

For any defects of delivery that include the non-fulfilment of explicitly guaranteed characteristics of the object of delivery, supplier is responsible as follows by the means of excluding further claims irrespective cipher 4:

### Physical defects of the objects of delivery

1. All parts have to be repaired or renewed at the discretion of supplier if the object of delivery cannot be used or if usage is substantially impaired. This requires that a defect comes up within twelve months of use of the object of delivery caused by circumstances

before passage of risk. Examples of such defects are a faulty construction of the object, materials of bad quality or an imperfection of usability. Such defects have to be communicated to supplier in writing immediately. The parts in issue have to be sent to supplier immediately, if requested. Replaced parts become property of supplier.

2. Purchaser has to grant sufficient time and opportunity to supplier to carry out all repairs and replacements deemed necessary by supplier. Otherwise supplier is released from liability and its consequences. Purchaser is entitled to correct the default himself or through third parties and ask for reimbursements of such costs provided there is an emergency along the lives of security concerns of the purchaser or to avoid huge damages.
3. Supplier bears all direct costs for repair or replacement, provided that all the purchaser's claims prove to be fully justified and were raised in time. The scope of costs for replacement includes costs of shipment within the country or to the border and includes all appropriate costs on the site. According to the individual situation it may be reasonable to claim the costs of technicians and assistance. Such costs are reimbursed to the extent that they are incurred within Germany. All other costs become the responsibility of purchaser.
4. In the case supplier ignores an appropriate deadline for repair or replacement, purchaser is entitled to cancel the agreement in accordance with the law. In the case there is a defect that cannot be considered substantial, purchaser is limited to claim a reduction of the price only. The reduction of the purchase price remains excluded otherwise.
5. Warranty is excluded for wear parts and in the following cases: inappropriate use, inappropriate services when setting up the object of delivery by the purchaser or third parties, natural wear and tear, incorrect or negligent use of the object, incorrect services, use of inappropriate lubricants, use of inappropriate material when exchanging certain parts of the object of delivery, inappropriate storage rooms, chemical, electrochemical or electrical influences – as long as such circumstances do not fall into the control of the supplier. Supplier is not liable as far as corrosion of the used materials is concerned. Corrosive influences can lead to considerable changes during time of usage.
6. In the case purchaser or third parties carry out any changes or repairs without prior permission of supplier then all liability for all consequences of such steps is suspended. This applies also for the usage of spare parts not delivered by supplier, that need to be original spare parts in order to guarantee the functionality of the object of delivery.
7. In the case supplier accepts repairs without legal obligation, an agreement has to be entered into accordingly. The same applies for the observation of technical and legal rules outside the territory of the Federal Republic of Germany.

#### Legal infirmity

8. In the case that the use of the object of delivery violates any industrial property rights or intellectual property, supplier will as a matter of principle and at his expense make sure that purchaser will be reinstated in his rights of usage. Supplier has the option to change the object of delivery in an appropriate manner designed to avoid further violations of industrial property rights. Outside the territory of the Federal Republic of Germany such an obligation requires an agreement in writing. Purchaser may cancel the agreement if reinstatement of his rights is impossible due to unreasonable economic burdens or reinstatement cannot be carried out within reasonable time. Supplier is also entitled to cancel the agreement under the same conditions. Moreover supplier will indemnify purchaser of uncontested claims of third parties claiming of industrial property rights. The same applies if the third party holds a final judgement in his favour.
9. All obligations according to cipher 8 have to be fulfilled only, if
  - purchaser informs supplier about the asserted violation of law immediately.
  - purchaser supports supplier adequately when defending such claims.
  - supplier reserves all rights of defence including agreements in court and out of court.
  - the legal infirmity was not caused by an instruction of purchaser
  - the violation of law was not caused by any changes to the object of delivery by purchaser or where the use of the object contravened the agreement.

#### § 10 Liability

1. If the object of delivery has not been used by purchaser properly because supplier violated duties of information or other contractual secondary duties, in such a case § 9 and § 10.2 apply accordingly. Further claims are excluded.
2. Supplier, irrespective on what legal grounds, is liable for damages occurring other than to the object of delivery itself, only in the following circumstances:
  - a) when acting with intent;
  - b) in case of negligence, unless we are looking at slight negligence, or gross negligence in case of employees without being at the managing level;
  - c) when at fault causing death, bodily injury, impairment of health;
  - d) undisclosed defects with intent to deceive or a guarantee that certain defects will not occur;
  - e) defects of the object of delivery that prompt liability claims according to the compulsory Rules of the Product Liability Act. In case of claims according to Product Liability Act supplier is entitled to assign his claims of the insurance company, if legally permitted. If such claims are assigned and accepted on the basis of the Product Liability Act all claims are thereby settled.
  - f) in the event of a breach of a so-called cardinal-obligation, that is, a breach of contractual duties that are an essential requirement to the execution of the contract and on which the purchaser may reasonably rely on in which case, also for gross negligence of employees not being on the manager level or for slight negligence; in the last case claims are limited to damages typical and foreseeable for such contracts.Claims arising out of delay are limited to 5% of the sales price with the reservation of further claims/rights of the purchaser. Within the scope of an insurance contract for property damage of supplier the exemption clauses do not apply.
3. All other claims are excluded.

#### § 11 Right of purchaser to cancel the agreement

1. Purchaser is entitled to cancel the agreement without notice, if the delivery of the object becomes impossible before passing the risk. Purchaser may also cancel the agreement, if the execution of the order of confirmation becomes partially impossible and if purchaser has a justified interest to deny a partial delivery. If this is not the case, the purchaser has to pay for a partial delivery part of the contractual price. The same applies if supplier is unable to deliver, see reference in § 10.2.

If the impossibility to deliver occurs during a delay of purchaser or purchaser is solely or largely responsible for such circumstances, purchaser remains obligated to pay.

2. If purchaser sets an appropriate deadline and the deadline is not respected, purchaser is authorized to cancel the agreement in accordance with the law. All other claims based on delay are regulated exclusively according to § 10.2.

#### § 12 Adjustment of Contract, Right of Supplier to cancel the Agreement

1. The agreement has to be adjusted in good faith if foreseeable events acc. to § 6.3 change the economic significance or its contents or have a significant influence on the company of the supplier. In the case that such an adjustment would be unreasonable economically, the supplier is entitled to cancel the agreement. If supplier wants to invoke his right of cancellation of the agreement, he is obliged to inform purchaser about the scope of this event immediately, even then if a prolongation of the period of delivery is agreed.
2. Delays and cancellations of purchaser keeps supplier in the same position as if the agreement had been carried out according to the agreement. Only damage claims that are specified and can be foreseen and calculated in advance are reimbursable. Loss of profit, lawyer's and court costs are part of such concrete and foreseeable claims of reimbursement.

#### § 13 Statutes of limitation

All claims of purchaser - no matter on what legal grounds - are statute- barred within 12 months unless there is an opposing special compulsory law. Visible defects have to be communicated in writing to the supplier within 14 days of receipt in order to avoid the loss of remedies. In case of repair or replacement the claims are statute- barred after six months. This period cannot end earlier than the original period on the Statutes of limitation.

#### § 14 Software Licensing

In the event the object of delivery includes software, purchaser obtains a non-exclusive license to use the software on the basis of the enclosed instruction book. It may be used on specifically designed hardware. Multiple-use of the software requires written permission. Software delivered to purchaser cannot be changed without written permission.

#### § 15 Assembly

1. Installation works have to be remunerated, unless otherwise agreed. In the case there is a delay of the assembly or bringing the machine into service without being the fault of supplier, purchaser has to reimburse the expenses for waiting-time and further necessary travels.
2. Any defects of the assembly follows the above Rules accordingly.

#### § 16 Confidentiality, Industrial Property Rights

1. Supplier reserves the right of property and copyrights on all designs, plans, instruction books, technical descriptions, costs, estimates and other physical, intangible or electronic information. Such documents cannot be copied nor used for non-contractual purposes without written permission. Access cannot be given to third parties (not even on the basis of any request). The documents cannot be published. The same applies for any trade secrets, know-how or secrets of any production process, that has been made known to the purchaser or becomes known to him otherwise.
2. Purchaser acknowledges all patent rights, copyrights and other industrial property rights of the supplier including the software, irrespective whether such rights are governed by German or foreign law. The protection of the software extends also to the protection of copies of the software. No sublicense can be granted to third parties without written permission of the supplier.
3. Any reproduction of machines, installations, components or parts of the object of delivery is not permitted. Any violation will be pursued by supplier without exception on a worldwide basis by exploiting all legal remedies of the Civil and Criminal Law. If permitted by law, not only the actual damage, but also punitive damages will be pursued.
4. Reverse engineering, i.e. the analysis of the structure and the function of the software of supplier is not permitted. Cipher 3 applies accordingly.

#### § 17 Place of Performance and Venue

1. The factory of supplier is place of the performance for delivery and services.
2. All written communications to the supplier, required by these General Terms and Conditions have to be sent directly to the headquarters of the supplier in  
D-73614 Schorndorf.
3. In the event of any dispute arising from the contractual relationships between the parties, the Courts of Stuttgart shall have jurisdiction and venue. Supplier does, however, also have the right to bring an action against the purchaser at the Courts with jurisdiction over the purchaser.

#### § 18 Applicable Law

1. These General Terms and Conditions of Sale and Delivery and the entire legal relationship between supplier and purchaser shall be exclusively construed in accordance with the Laws of the Federal Republic of Germany including the application of the UN-Convention on the International Sale of Goods (CISG). The text of the UN-Convention is available at [www.frech.com/e/impressum/impressum.html](http://www.frech.com/e/impressum/impressum.html).
2. Should any provision in these General Terms and Conditions of Sale and Delivery or any provision within the frame-work of other contracts be or become invalid, this shall not affect the validity of all other provisions or contractual agreement. The parties are obliged in such a case to replace the invalid clause by a valid clause which should be in economic terms as close as legally possible as the previous regulation.
3. Any alterations and amendments require written confirmation by supplier to be effective.