

## **General Terms of Sale, Delivery and Payment**

### **§ 1 Area of application**

(1) All our deliveries, services and offers shall be affected exclusively based on these General Terms of Sale, Delivery and Payment. Even if they are not again explicitly agreed upon, these terms shall also apply to future business relations.

(2) Any other terms shall not be valid unless confirmed in writing by our firm.

### **§ 2 Offers**

(1) Offers shall be affected without commitment and shall not be binding until final order. Declarations of acceptance shall not be legally binding unless confirmed in writing by our firm.

(2) Drawings, illustrations, measurements, weights, or other product information shall not be binding unless explicitly agreed in writing.

### **§ 3 Data and Documents**

(3) Technical documents such as drawing, descriptions, illustrations, any specifications as to measurements, properties, or weights as well as the reference to standards are only for the purpose of information. In accordance with technical progress Freiler GmbH reserves the right to perform respective amendments if necessary. This shall also apply to respective information in brochures, price lists, publicity leaflets etc.

(2) All technical documents shall remain intellectual property of Freiler GmbH and shall not be used for the agreed purposes.

(3) Within the framework of the contractual relationship with the customer the processing of personal data shall also be necessary. The customer declares his consent for such processing and agrees that, for the purpose of conclusion and cultivation of business relations, Freiler GmbH has the right to announce the data to third parties (e.g. subcontractors etc.) at home and abroad.

### **§ 4 Prices**

(1) Unless otherwise agreed upon, our prices are ex-works (Incoterms 2000) excluding freight, value added tax, insurance as well as further additional costs. The final prices are determined by the prices valid on the day of dispatch.

### **§ 5 Delivery, Transfer of Risk**

(1) The delivery is effected ex-works (Incoterms 2000).

(2) The risk will be transferred to the buyer from the time the goods are handed over to the haulage firm or have left our plant and warehouse. This shall also apply if the carriage is born by our firm. Complaints arising from damage in transit are to be raised by the buyer directly with the haulage firm

within the respective specific deadlines. It is at the total discretion of the buyer to take out a transport insurance or any other insurance.

(3) The risk will be transferred to the buyer with the notification of readiness to dispatch provided that we are not liable for the impossibility of dispatch.

#### **§ 6 Period of Delivery, Obstacles in Delivery**

(1) Compulsory periods of delivery require our explicit agreement. We shall be entitled to effect delivery or service in part. Respective deliveries or services may be invoiced partially by our firm.

(2) Provided that the buyer fulfils his obligations correctly and in time, we shall be obliged to deliver goods and to provide service.

(3) In the case of sudden operating failures, expiry of the deadline for delivery or absence of delivery by our suppliers, shortage of labour, energy or raw material, strikes, lockouts, difficulties in providing means of transport, obstruction of traffic, official directions and force majeure we shall be released from the obligation to deliver for the duration of the effects arising from such obstacles in delivery. We shall inform the buyer immediately if such an obstacle of delivery occurs. If delivery is thus delayed for more than one month, the buyer shall be entitled to withdraw from the contract with regard to the amount of goods affected by the failure of delivery excluding any further claims.

(4) Our obligation to deliver shall be suspended as long as the buyer is in default with a due payment. The buyer shall not be entitled to claim subsequent deliveries for those goods which are not delivered due to the buyer's default of payment. Further rights of our firm shall not be affected hereby.

(5) In the case of culpable expiry of the period of delivery the buyer shall be entitled, excluding any further rights, to withdraw from the contract or to claim compensation for damages on the expiry of an appropriate extension granted in writing by the buyer. However, claims for damages of the buyer due to delay and/or default are limited to the amount of the invoiced value of the goods which will not be delivered at all or in time unless our liability shall be unlimited according to conclusive legal provisions due to intent or gross negligence.

(6) If the buyer withdraws from purchase through no fault of Freiler GmbH, Freiler GmbH is not liable for damages.

#### **§ 7 Payment**

(1) Our invoices are due within a period of 30 days after date of invoice. The payment is effected in time as soon as the money has been received on our account.

(2) Payment by bills of exchange is not accepted. Cheques are only accepted on account of compliance. Charges and further costs are to be born by the buyer. We shall not assume any warranty for punctual submission and protest of the bills of exchange.

(3) In the case of default of payment we shall be entitled to invoice interest rates to the amount of the credit costs paid by us but at least to the amount of 8 % more than the respective reference interest rate of the European Central Bank while reserving the right to claim compensation for subsequent damage. In the case of default of payment or justified doubts concerning the ability to meet financial obligations or the solvency of the buyer we shall be entitled - irrespective of further rights – to demand pre-payment for pending deliveries as well as to set due all outstanding invoice amounts including the extended invoice amounts.

(4) The buyer shall waive his assertion of a lien arising from past or other contracts of the pre-sent business transaction. The buyer shall only set off against unchallenged or legally valid counterclaims.

### **§ 8 Retention of Title**

(1) The delivered goods shall remain our property until payment of all existing claims arising from the business transaction will be effected.

(2) The buyer shall be entitled to dispose of the goods under retention of title in keeping with customary business practice as long as he fulfils in due time the obligations arising from the business transaction with our firm. Pledging or transfer of ownership is not permitted.

(3) If our goods are processed by the buyer, we will be considered as manufacturer and will acquire ownership on the thus resulting goods. If processed with other materials, we will acquire joint ownership on the goods in the proportion of the invoiced value of our goods to that of the other materials.

(4) If the contract is violated by the buyer – especially in the case of default of payment – we shall be entitled to reaccept the goods under retention of title or, if necessary, to request the assignment of the buyer's claims on return of the goods against third parties. The re-acceptance or the seizure of the goods under retention of title by our firm shall not be deemed as withdrawal from the contract.

(5) All claims resulting from the sale of the goods on which we have the right of ownership are already now assigned for security to our firm by the buyer in the proportion of our share of ownership on the sold goods.

(6) At our request the buyer shall be obliged to provide all necessary information with regard to the supply of goods under retention of title and of claims assigned to us resulting from the sale of the goods under retention of title and, moreover, he shall be obliged to notify his customers of the assignment.

### **§ 9 Notification of Defects, Guarantee**

(1) Amount and quality of delivered goods are to be controlled immediately. The haulage firm/carrier is to be notified of faulty amounts and visible damages (taking down of facts)

(2) The buyer has to control the delivered goods with regard to the quality agreed in contract and with regard to the required purpose. If the goods are not controlled at all or not controlled to the necessary extent or if we are not notified of visible defects immediately or within 8 days at the latest after receipt of goods, the goods shall be deemed as approved concerning such defects. Invisible defects shall be deemed as approved if we are not immediately notified on detection of such defects or at the latest until expiry of the duration of the legal warranty after de-livery of goods at place of dispatch. Claims for warranty have to be raised in writing indicating the order specifications. Goods shall only be returned with our explicit consent.

(3) On notification of defects by the buyer within the time specified we shall, at our choice, repair the defects or deliver a replacement. If the repair of the defects or delivery of a replacement is not possible or if such a repair or delivery is not performed within an adequate period of time or is delayed or denied culpably by our firm, the buyer shall be entitled to request cancellation of contract or reduction in purchase price.

(4) If low-quality goods are sold (not A1-qualities), the guarantee is excluded unless the delivered goods differ from the agreed low quality.

(5) Liability for normal wear and tear as well as for defective storage, maintenance or use shall be excluded.

(6) Regulations out of relevant technical standards on laying, maintenance and use of the products have to be kept to.

(7) After verification of the reason of the fault Freiler GmbH reserves the right to recoup himself on his own suppliers by means of recourse.

#### **§ 10 Liability, Withdrawal**

(1) The buyer shall only be entitled to claim compensation for damages or to withdraw from the contract in such cases and to such extent as explicitly determined in these terms; further liability of our firm – irrespective of the legal cause, even for violation of collateral obligations arising from the contract and for tortuous act - shall be excluded unless our liability is unlimited due to intent or gross negligence according to conclusive legal provisions. Our liability according to the Law regulating Product Liability and further claims arising from the product liability shall not be affected.

#### **§ 11 Time Limitation**

(1) Unless otherwise expressly laid down in these terms, claims of the customer arising from the contract or its winding up irrespective of the legal cause, especially due to reduction in price, withdrawal from contract or positive breach of contract, shall expire 6 months at the latest after their origination.



## **§ 12 Place of Jurisdiction, Applicable Law, Partial Invalidity**

(1) Place of jurisdiction even in case of legal proceedings concerning cheques shall be Leoben. The national law of Austria shall apply to these General Terms of Sale, Delivery and Payment as well as to all legal relations between our firm and the buyer.

(2) If a provision of these General Terms of Sale, Delivery and Payment or any other provision within the framework of further agreements is or becomes invalid, the validity of the remaining provisions or agreements shall not be affected hereof.

**fast - efficient - reliable**

**WOLFGANG FREILER GES.M.B.H.**

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