

## **Terms and Conditions of Sale of FRITZ FINKERNAGEL DRAHTWERK GmbH & Co. KG**

The customer recognises by his order the following terms and conditions.

### **1. Application of the Terms and Conditions**

**1.1** Subject to differing agreements made in the individual case, these terms and conditions of sale apply exclusively. We do not acknowledge terms and conditions of the customer which are contrary or which vary from our terms and conditions of sale, unless we have expressly agreed in writing to their application. Our terms and conditions of sale apply even when we make the supply to the customer without reservation while being aware of terms and conditions of the customer which are contrary or which vary from our terms and conditions of purchase. Our terms and conditions of sale also apply for all future transactions with the customer.

**1.2** All agreements which are made between us and the customer for the purpose of fulfilling this contract are to be specified in writing in this agreement.

**1.3** Our terms and conditions of sale apply only for companies in accordance with § 310 para. 1 German Civil Code (Bürgerliches Gesetzbuch, BGB).

### **2. Proposal**

**2.1** Our proposal is without obligation. Where the order of the customer is to be qualified as an offer in accordance with § 145 BGB, we can accept this within two weeks.

**2.2** We reserve rights of ownership and copyright to all materials specifications, drawings, models and other documents. It is not permitted to make these accessible to third parties without our express approval in writing.

### **3. Obligation to deliver and hindrances to delivery**

**3.1** We are entitled to make partial deliveries to an extent that the customer can reasonably be expected to accept.

**3.2** Production-related over and under-quantities within a tolerance of 10% of the total order quantity are permissible.

**3.3** We do not – subject to differing agreements in the individual case – enter into any obligation to supply without a binding obligation on the part of the customer to accept. Supplying the customer – even over an extended period of time – does not without an express agreement form the basis for an obligation to supply in the future. In particular, the receipt of a delivery sample or comparable supporting items by the customer without contradiction does not form the basis for a corresponding obligation on our part to supply.

**3.4** Where we have in the individual case entered into an open-ended obligation to supply without establishing a total delivery quantity (continuing delivery contract), we have a right to ordinary termination, giving three months notice. Conversely, the customer also has this right of termination where he enters into an open-ended obligation to purchase without establishing a total delivery quantity.

**3.5** We reserve the right to buy in the goods supplied.

**3.6** In cases of force majeure and other hindrances to supply which it was not possible for us to foresee and for which we are not to blame – which include also industrial strife, deficiency of raw materials, operational disruptions, transport hindrances, official measures – in each case also at our suppliers – we are entitled to postpone the delivery for the duration of the hindrance to delivery. If, as a consequence of the disruption, the agreed delivery date is missed by more than eight weeks, both parties have the right to withdraw from the contract. We will inform the customer without delay of the non-availability or non-availability in good time of the subject of

supply, and in the case of our withdrawal from the contract, we will return the customer's counter-performance without delay.

#### **4. Delivery dates**

**4.1** The delivery period nominated by us does not begin until all technical questions have been resolved.

**4.2** Correct fulfilment in good time by the customer of his obligations is a prerequisite for observance of our obligation to deliver. The objection of unfulfilled contract remains reserved.

**4.3** Where the customer falls into arrears with acceptance or culpably infringes other duties of co-operation, we are entitled to require reimbursement of the damages resulting therefrom including any additional expenses. Further entitlements remain reserved.

**4.4** Insofar as the preconditions of section 4.3 are met, the risk of accidental loss or accidental deterioration of the subject of sale transfers to the customer at the point in time at which he falls into acceptance arrears or infringes other duties.

**4.5** If we fall into arrears or our obligation to supply is excluded due to impossibility in accordance with § 275 para. 1 BGB or if we are able to refuse performance in accordance with § 275 para. 2 and 3 BGB, we are then liable only to the extent determined in section 9 of these Terms and Conditions of Sale.

**4.6** The limitations of liability stated in section 4.5 do not apply to fixed transactions in the sense of § 286 para. 2 No. 4 BGB or of § 376 HGB.

#### **5. Transfer of risk and packaging**

**5.1** Insofar as nothing else is specified in the order confirmation, delivery from works is agreed.

**5.2** The risk of accidental loss or accidental deterioration of the subject of sale transfers to the customer on dispatch even when we have accepted the costs of shipment or other additional services or a partial delivery is made.

**5.3** Insofar as the customer requests it, we will arrange for the delivery to be covered by transport insurance. The costs thereby incurred are borne by the customer.

**5.3** Insofar as not otherwise agreed or ordinary commercial practice, the goods are delivered unpacked and without protection against rust. Subject to legal requirements to the contrary, packaging will not be removed. Exceptions are Euro pallets and carriers, which remain our property and are to be returned at the expense of the customer.

#### **6. Prices**

**6.1** Insofar as nothing different is specified in the order confirmation, our prices are stated from works, exclusive of packaging. We reserve the right to alter our prices appropriately when cost reductions or cost increases occur, particularly in consequence of tariff agreements or fluctuations in materials prices. We will document this for the customer on request.

**6.2** VAT is not included in our prices. It is stated in the invoice as a separate item at the rate legally required on the date of preparation of the invoice.

#### **7. Payment terms**

**7.1** Insofar as nothing different is specified in the order confirmation, the sale price is due for payment net (without deduction) within 30 days from the date of invoice. Rapid payment discount is granted only in accordance with special agreements. The legal regulations regarding the consequences of payment arrears apply.

**7.2** The customer is only entitled to offset payment when his counterclaims have been determined as having legal effect, are undisputed, or are acknowledged by us. The customer is also entitled to retention only in these circumstances.

## **8. Claims of deficiency**

**8.1** Claims of deficiency of the customer are dependent on the customer having correctly fulfilled his obligations of inspection and notification in accordance with § 377 HGB. Deficiencies that are recognisable in a reasonable goods receipt inspection are to be notified to us by the customer within seven days after receipt of the goods at the latest, irrespective of the legal requirements for inspection and notification. This must be carried out in writing.

**8.2** Insofar as there is a deficiency in a subject of sale, we are entitled at our discretion to subsequent fulfilment in the form of rectification of the deficiency or to delivery of new defect-free goods. In the case of rectification of the deficiency, we are obliged to bear all expenses necessary for the purpose of rectifying the deficiency, particularly transport, travel, work and materials costs, insofar as these are not increased by having to bring the subject of sale to a location other than the place of fulfilment.

**8.3** If the subsequent fulfilment is unsuccessful, the customer is entitled to the other legal claims of deficiency. The customer is only entitled to claims for compensation for damages in accordance with section 9 of these terms and conditions of sale.

**8.4** Claims of deficiency of the customer expire in accordance with section 10.1 of these terms and conditions of sale.

## **9. Liability**

**9.1** We are liable for compensation for damages exclusively as regulated by the following.

**9.2** We are liable in accordance with the legal regulations insofar as the customer claims compensation for damages based on intent or gross negligence, including intent or gross negligence of our representatives or auxiliary agents. Insofar as we are not charged with intentional or grossly negligent breach of contract, the liability for compensation for damages is limited to the foreseeable, typically occurring damage.

**9.3** We are liable in accordance with the legal determinations insofar as we culpably infringe an essential contractual obligation. In this case, however, the liability for compensation for damages is limited to the foreseeable, typically occurring damage.

**9.4** Insofar as the customer is entitled to compensation for damages in place of performance, our liability is limited to the foreseeable, typically occurring damage as within the framework of section 9.3.

**9.5** Liability for culpable injury to life, limb or health is unaffected. This applies also to the compulsory liability under the German Product Liability Act (Produkthaftungsgesetz) and liability within the framework of a warranty.

**9.6** The preceding limitations of liability also apply insofar as the customer in place of an entitlement to compensation for damages requests compensation for fruitless expenditure in place of performance.

**9.7** Insofar as our liability for compensation for damages is excluded or limited, this applies also with respect to the personal liability for compensation for damages of our appointed staff, employees, representatives and auxiliary agents.

## **10. Limitation**

**10.1** The limitation period for claims for deficiency is 12 months from the start of the legal period of limitation.

**10.2** For the limitation of other claims of the customer which are not subject to the limitation period for claims for deficiency, an exclusion period of 18 months applies. It begins with knowledge of the damage and of the person responsible for the damage.

**10.3** The legal periods of limitation remain unaffected by the preceding regulations in the

following cases:

- in the case of delivery recourse in accordance with §§ 478, 479 BGB;
- for damages arising the injury to life, limb or health;
- in the case of intent or malice or gross negligence by us, our legal representatives, or auxiliary agents;
- for the right of the customer to free himself from the contract in the case of an infringement of duty for which we are not responsible, which does not consist in a deficiency of the subject of sale or of the work;
- for claims within the framework of a warranty.

## **11. Retention of ownership**

**11.1** We retain the ownership of the subject of sale until receipt of all payments from the business relationship with the customer. In the case of behaviour of the customer contrary to the contract, in particular in the case of payment arrears, we are entitled to take back the subject of sale. Taking back the subject of the sale by us constitutes withdrawal from the contract. After taking back the subject of sale, we are entitled to dispose of it. The proceeds of the disposal are to be offset against the liabilities of the customer, after deduction of appropriate disposal costs.

**11.2** The customer is obliged to treat the subject of sale with care. In particular he is obliged to insure it sufficiently for replacement value against damage resulting from fire, water and theft. Insofar as maintenance and inspection work is necessary, the customer must carry these out in good time, at his own expense.

**11.3** In the event of distraints or other interventions of third parties, the customer has to inform us in writing, without delay, in order that we can bring suit in accordance with § 771 German Code of Civil Procedure (Zivilprozessordnung, ZPO). Insofar as the third party is not in a position to reimburse us for the court and extra-court costs of bringing suit in accordance with § 771 ZPO, the customer is liable for any shortfall.

**11.4** The customer is entitled to sell on the subject of sale in the ordinary course of business. However, he assigns to us now, immediately, in the amount of the final invoice amount 0.00 of our claim all claims against his purchaser or third parties which arise for him from the onward disposal, irrespective of whether the subject of sale is sold on after further processing or not. The customer remains authorised to collect these claims even after the assignment. Our empowerment to collect these claims ourselves remains unaffected by this. However, we undertake not to collect the claims so long as the customer fulfils his payment obligations to us from the proceeds obtained, does not fall into payment arrears, and in particular that no application is made to open composition or insolvency proceedings and that payments do not cease. Should such, however, be the case, we can require that the customer discloses the claims assigned and their debtors, provides all information necessary for collection, hands over the associated documents, and informs the debtors (third parties) of the assignment.

**11.5** The processing or transformation of the subject of sale by the customer is always carried out on our behalf. If the subject of sale is processed together with other materials which do not belong to us, we acquire co-ownership of the new thing in the proportion of the value of the subject of sale (final invoice amount including VAT) to the other materials processed at the time of the processing. Further, the same applies to the thing created by processing as to the subject of sale supplied under retention of ownership.

**11.6** If the subject of sale is inseparably mixed with other materials which do not belong to us, we acquire co-ownership of the new thing in the proportion of the value of the subject of sale (final invoice amount including VAT) to the other materials mixed at the time of the processing. If the mixing is carried out in such a way that the thing of the customer is to be seen as the principal thing, it is deemed to be agreed that the customer transfers ownership to us proportionally. The

customer thus preserves for us the sole ownership or co-ownership arising.

**11.7** The customer also assigns to us as security for our claims against him the claims which he acquired against a third party through the combination of the subject of sale with a property.

**11.8** We undertake to release the securities to which we are entitled on the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released lies with us.

## **12. Special conditions for contract work**

**12.1** Insofar as nothing different arises from the following, these terms and conditions of sale and payment terms also apply for contract work.

**12.2** Charging is carried out on the basis of the weight delivered to us. Any shortfall is at the expense of the customer.

**12.3** The customer has himself to keep his goods insured for their full value.

**12.4** We acquire a legal right of distraint of the material which the customer makes available to us for processing and which comes into our direct or indirect possession. This right of distraint applies to all claims which we have against the customer. The right of distraint also extends to future or contingent claims, and expires as soon as the material, with our consent, leaves our direct or indirect possession. The legal provisions apply to the utilisation of the distraint, with the proviso that the value of the distraint is determined as binding by an expert to be nominated by us.

## **13. Place of fulfilment and place of jurisdiction**

**13.1** Insofar as the customer is a merchant, place of jurisdiction is our headquarters in Altena (Westph.). However, we are entitled additionally to bring suit against the customer at the court of his place of residence.

**13.2** The law of the Federal Republic of Germany applies. The application of UN sales law is excluded.

**13.3** Insofar as nothing different arises from the order confirmation, our headquarters in Altena (Westph.) is the place of fulfilment.

## **14. Final provisions**

**14.1** Should any of the above provisions be or become ineffective, this does not affect the effectiveness of the remaining provisions. The ineffective provision shall be replaced by such regulations as come as close as possible to the economic intent of the agreement while preserving the interests of both sides.

**14.2** All our earlier terms and conditions of sale are hereby overridden.

**Statement in accordance with § 33 German Data Protection Act (Bundesdatenschutzgesetz, BDSG): data of the customer will be electronically processed.**

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