

Standard Terms and Conditions of Delivery and Payment of FTRJ GmbH, Anger 4, D 96110 Scheßlitz:

- here in after referred to as FTRJ -

I. Definition, scope

1. The following standard terms and conditions shall not apply vis a vis consumers.
2. The following standard terms and conditions shall apply exclusively; Any other conditions of the orderer FTRJ only accepts if it has expressly agreed to their validity in writing. The following terms and conditions shall apply even if FTRJ makes the delivery to the orderer without reservation, in full awareness of conflicting or deviating terms and conditions of the orderer.
3. Any agreements or ancillary agreements deviating from these terms and conditions shall not be valid unless they are confirmed in writing by FTRJ.
4. These terms and conditions shall also apply to future contracts within the framework of ongoing business relationships.

II. Offers - offer documents, confirmation of orders

1. If the order is to be qualified as a bid within the framework of § 145 German Civil Code (BGB), FTRJ shall be entitled to accept it within 4 weeks.
2. FTRJ shall retain all property rights and copyrights for images, drawings, calculations and other documents. This shall also apply to written documents which are designated as "confidential". Any disclosure to third parties shall require the express written consent of FTRJ.
3. A delivery contract shall only be deemed to have been entered on a written confirmation of the order and no later than upon delivery. If FTRJ can prove through the submission of a transmission report that it forwarded a declaration by fax or data transmission, it shall be assumed that the orderer received said declaration.

III. Call orders

1. If call orders have been placed, the period for taking delivery shall be 12 months from the day of confirmation of the order unless any deviating written agreement has been entered into.
2. At the end of the term, the residual stocks may be delivered.
3. In the event of call orders without any agreement on terms, manufacturing lot sizes and/or delivery dates, FTRJ shall be entitled to request a binding scheme no later than three months after confirmation of the order.

IV. Prices - terms of payment

1. All prices quoted by FTRJ shall be deemed to be ex-works FTRJ plus value added tax applicable at the time of billing, without packaging, freight and transport insurance; the latter shall be billed separately.
2. Payments are due upon delivery without any deduction unless different payment terms are specified in the invoice or agreed specifically.
3. The day of receipt of payment shall be deemed for all means of payments to be the day on which FTRJ or third parties, who have a claim against FTRJ, may dispose of the amount. Payment by bill of exchange shall not be deemed to be a cash payment. Acceptance, also of so-called refinancing bills, shall be subject to special agreement. Cheques and rediscountable bills shall only be accepted on account of performance; all costs incurred shall be at the expense of the orderer.
4. In the event of default of payment by the orderer, FTRJ shall be entitled to retain all deliveries or services.

V. Retention of title

1. FTRJ shall retain title to the delivery items until receipt of all payments under the business relationship with the orderer.
2. The assertion of the retention of title and the pledging of the delivery items by FTRJ shall not be deemed to be a rescission of the contract unless expressly declared in writing by FTRJ.
3. The orderer shall be entitled to continue to sell the delivery items in the ordinary course of business; however, it shall already now assign all accounts receivable to FTRJ in the amount of the purchase price (including value added tax) agreed between FTRJ and the orderer which arise for the orderer as a result of reselling, regardless of whether the delivery items are sold on with or without processing. The orderer shall be entitled to collect these accounts receivable after their assignment. The right of FTRJ to collect the accounts receivable itself shall not be affected; FTRJ undertakes, however, not to collect the accounts receivable as long as the orderer meets its payment obligations and is not in default of payment. If the orderer is, however, in default of payment, FTRJ may require the orderer to disclose its assigned accounts receivable and their debtors, to make all information available which is necessary for collection, to submit the corresponding documents and to inform the debtors (third parties) about the assignment.
4. The processing or transformation of the goods by the orderer shall always be for FTRJ. If the delivery items are processed together with other items which do not belong to FTRJ, FTRJ shall acquire co-ownership of the new item in the proportion of the value of the delivery items to the other processed items at the time of processing.
5. If the delivery items are mixed in an inseparable manner with other items which do not belong to FTRJ, FTRJ shall acquire co-ownership of the new items in the proportion of the value of the delivery items to the other mixed items. The orderer shall hold the co-owned items in safe custody for FTRJ.
6. The orderer may neither pledge nor transfer the delivery items to assign it to third parties for collateral. In the event of attachment or seizure or other disposals by third parties, the orderer shall inform FTRJ without delay and provide it with all information and documents which are necessary for it to secure its rights. Enforcement officers and/or third parties must be informed of the property rights of FTRJ.
7. FTRJ undertakes to release the collaterals to which it is entitled when requested by the orderer in so far as the realisable value of the collaterals exceeds by more than 20% the accounts receivable to be secured. FTRJ shall select the collaterals to be released.

VI. Deliveries, delivery period, delivery quantities

1. Compliance with agreed dates of delivery and performance shall presuppose that all technical issues have been clarified and payments or other obligations of the orderer have been made and/or fulfilled in due time. If this is not the case, the period of time shall be extended in a reasonable manner. Delivery periods shall be interrupted by any changes in design and alterations of items requested by the customer. They shall resume as soon as the changes are released by the customer.
2. FTRJ shall deliver the contractual goods to the orderer in accordance with its delivery possibilities.

3. Partial deliveries shall be admissible provided that they do not result in any disadvantages in terms of use.
4. The delivery period shall be extended in the event of force majeure, strike, inability to perform without attributable negligence as well as unfavourable weather conditions for the period of hindrance.

VII. Shipment - passing of risk

1. Unless otherwise laid down in the confirmation of order, delivery "ex works" shall be deemed to have been agreed. Shipment shall be at the risk and for the account of the orderer. This shall also apply to return shipments.
2. Packing material shall be selected with reasonably exercised discretion and invoiced at cost price. Container and wagon rents shall be borne by the recipient.
3. If FTRJ is obliged under the German Packaging Ordinance to take back the packaging used for transport and/or sale, the orderer shall bear the costs for the transport back and the reasonable costs of utilisation or, if this is possible and considered as purposeful by FTRJ, the reasonable costs which arise in addition for the reuse of the packaging. The orderer undertakes and confirms upon the placement of its order vis-à-vis FTRJ to direct any packaging, which is not sent back, to utilisations stipulated under the German Packaging Ordinance.

VIII. Property rights

1. The orderer undertakes to inform FTRJ immediately of property rights asserted by third parties concerning the supplied products and to let FTRJ assume legal defence at its expense. FTRJ shall be entitled to carry out the necessary alterations following property right assertions of third parties at its own expense, even for goods already supplied and paid.
2. If FTRJ is prohibited from producing or delivering by a third party invoking a property right belonging to it, FTRJ shall be entitled – without examination of the legal situation – to suspend its work pending the clarification of the legal situation by the orderer or the third party. If FTRJ cannot be reasonably expected to continue work in respect of the order because of the delay, FTRJ shall be entitled to rescission.
3. The orderer shall be liable to FTRJ for services of third parties being free of property rights of third parties and shall indemnify FTRJ against all corresponding claims of third parties.
4. FTRJ shall be entitled to the copyrights and possibly to the industrial property rights, particularly to all rights of use and exploitation for the models, moulds and devices, drafts and drawings.

IX. Liability in case of delay

1. FTRJ shall be liable for delay according to the statutory provisions as far as the relevant purchase contract is an agreement of the parties making time of the essence of the contract ("Fixgeschäft" = "short selling") as provided by section 286 paragraph 2 # 4 of the German Civil Code ("Bürgerliches Gesetzbuch", "BGB") or section 376 German Code of Commerce ("Handelsgesetzbuch", "HGB"). FTRJ shall also be liable according to the statutory provisions if the purchaser is entitled to claim that he is no longer interested in further fulfilment of the contract as a result of a delay for which FTRJ is responsible.
2. FTRJ shall be liable for delay according to the statutory provisions if the supplier makes claims for damages due to intention or gross negligence of FTRJ's agents or auxiliary persons. Should FTRJ not be accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
3. FTRJ shall be liable for delay according to the statutory provisions if FTRJ culpably commits a fundamental breach of contract. As far as FTRJ in this case is not accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
4. Claims for damages caused by delay regarding culpable infringements of human life, body or health shall remain unaffected.
5. As far as nothing different has been stipulated beforehand, all claims for damages caused by delay shall be excluded.

X. Liability for defects

1. In case of a product being specified, it is free from defects if approved tolerances for fabrication have been complied with. The purchaser can invoke an intended purpose of application only if it was explicitly agreed upon in writing. In the case of selling used goods to merchants all claims for damages shall be excluded.
2. FTRJ has to be informed immediately of evident defects. Any potential liability for defects of plants in operation is conditional on a proof of proper operational management and maintenance in accordance with the FTRJ operating instructions.. Should FTRJ be responsible for a defect, FTRJ will rectify or replace at its own decision FTRJ can also replace just defective parts.

In case of rectification of defects ("Beseitigung des Mangels" according to § 439 (1) S.1 BGB), FTRJ will bear all necessary costs, in particular costs of transport, travel, work and material, unless these costs are enhanced because the sold good has been brought to a place other than the place of performance.

3. If supplementary performance fails, the purchaser shall be at his discretion entitled to either rescind from contract or to claim reduction of the purchase price as provided by section 441 German Civil Code ("BGB").
4. FTRJ shall be liable according to the statutory provisions to the extent that FTRJ has willingly concealed a defect or accepted a guarantee for the constitution of the sold good.
5. FTRJ shall be liable according to the statutory provisions if the supplier makes claims for damages due to intention or gross negligence of FTRJ's agents or auxiliary persons. As long as FTRJ is not accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
6. FTRJ shall be liable according to the statutory provisions if FTRJ culpably commits a fundamental breach of contract. As long as FTRJ in this case is not accused of deliberate breach of contract, the liability for damages shall be limited to typically occurring, foreseeable damages.
7. Claims for damages regarding culpable infringements of human life, body or health shall remain unaffected as well as the liability for the product liability law.
8. As far as nothing to the contrary has been stipulated beforehand, all claims for damages shall be excluded.
9. Claims according to section 437 German Civil Code ("BGB") shall be time-barred after the expiry of 12 months from passing of the risk unless goods are concerned which have been used according to their common way of application for construction and which have caused the defectiveness of the building.

10. The period of prescription in case of regress to the supplier as stipulated by sections 478 and 479 German Civil Code ("BGB") shall remain unaffected. This period shall be 5 years, beginning with delivery of the defective good.

XI. Total liability

1. For further claims for damages FTRJ shall be liable – regardless of the legal character of the asserted claim, in particular for default in conclusion of contract, other breaches of duty or tortious claims to compensation of damages according to section 823 German Civil Code ("BGB") – as stipulated above under X.5, 6 and 7. For all other claims liability shall be excluded.

2. As far as claims for damages against FTRJ are excluded or limited as a result of this article XI, these exemptions and limitations shall also apply as far as personal liability of FTRJ's employees, jobholders, personnel, agents and auxiliary persons is concerned.

3. All claims that are not subject to prescription in connection with a default of goods shall be time-barred after the expiry of 18 months. This period starts when the purchaser obtains knowledge of the damage and the person who caused it or with the time when the purchaser would have obtained knowledge of these circumstances without getting down to gross negligence.

XII. Construction, tools

1. The trouble-free suitability of the construction and the material of the parts to be manufactured by FTRJ shall be determined by the tests and trials of the orderer. All proposals, construction drawings and other documents made available to the orderer by FTRJ shall remain the property of FTRJ and may not be disclosed to third parties without FTRJ's written consent. FTRJ shall have the sole right to use these construction drawings and any tools and/or equipment manufactured on their basis. The orderer shall be liable for the legality of the use of drawings, sketches, models etc. sent to FTRJ.

XIII. Counterclaims, transferability

1. The orderer shall only have offsetting rights if its counterclaims have been identified as legally valid and are uncontested or recognised by FTRJ. Moreover, the orderer shall be entitled to exercise a right of retention in so far as its counterclaim is based on the same contractual relationship.

2. The orderer shall not assign any rights under agreements entered into with FTRJ unless it has obtained the consent of FTRJ.

XIV. Spare parts

After expiry of the defects liability period FTRJ is only obliged to deliver spare parts if this has been agreed upon in writing between FTRJ and the purchaser.

XV. FTRJ's right to rescind from contract

In the case of eventualities for which FTRJ is not responsible and which significantly change the meaning of fulfilment of the contract or which considerably affect FTRJ's business and in case the fulfilment emerges as impossible without FTRJ's fault in retrospect, FTRJ shall be entitled to rescind from contract as a whole or in part unless rescindment in part cannot reasonably be expected of the purchaser. Further statutory rights to rescind from contract shall remain unaffected by this provision.

XVI. Place of Performance, place of jurisdiction, applicable law, miscellaneous

1. Unless expressly otherwise agreed, the registered office of FTRJ shall be the place of performance.

2. If the orderer is a merchant, a public law entity or a special federal fund, the place of jurisdiction shall be the competent court at the place of business of FTRJ. FTRJ shall, however, be entitled to sue the orderer also at any other admissible court.

3. The present terms and conditions shall be exclusively governed by German law excluding the UN sales convention (CISG).

4. Should a provision of these terms and conditions or part of such a provision be or become invalid, the remaining provisions and/or the remaining part of the provision shall remain valid.

5. The contractual language shall be German. The German language shall take priority over any other language that may be used.

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