

General Terms and Conditions of Sale ("Terms") of Max Frank GmbH & Co.KG and Max Frank Pressig GmbH ("FRANK")

Rev: 01.01.2016



1. General

- 1.1. The following Terms shall exclusively apply to individuals and legal entities or incorporated partnerships who, at the conclusion of a transaction, are acting in the performance of their commercial or self-employed business activity (entrepreneurs as defined in Section 14 of the German Civil Code [BGB]).
- 1.2. We sell goods or provide services to companies solely on the basis of these Terms. These Terms shall also apply to all future transactions with the customer, without the need for us to refer to them again in each individual case; the latest version of the Terms is available on www.maxfrank.de. Any deviating terms or conditions of the customer which we have not expressly accepted shall not become a part of any contract, even if we have not expressly contradicted them. Our Terms shall apply even if we perform deliveries to the customer without reservation although we are aware of terms or conditions of the customer's that contradict or deviate from our Terms.

2. Offer – Offer Documents

- (1) Our offers are subject to change without notice.
- (2) By placing an order with us, the customer will be entering into a legally binding contract. We shall be entitled to accept the customer's offer of contract within 2 weeks from receipt.
- (3) A contract for delivery shall only be established through our written order confirmation, at the latest with delivery. Transmission by means of data telecommunication will meet the requirement of written form.
- (4) We reserve all title and copyrights in drawings, estimates and other documents. This shall also apply to those written documents that are classified as "confidential". The customer shall not disclose any such documents to any third party without our prior express written consent.

3. Receipt of Declarations

If, by submitting a telephone bill and a transmission report, we are able to prove that we have sent a declaration by fax or data telecommunication, it will be assumed that such declaration has been received by the customer.

4. Prices – Terms of Payment

- (1) Only those prices that have been confirmed by us in writing shall be valid. Prices quoted are ex works, exclusive of VAT, postage, packaging, freight, insurance, etc. For very small orders of less than €50.00, we will charge an extra amount of €10.00. (2) We reserve the right to change our prices in a reasonable fashion in the event of any decreases or increases in costs, in particular as a result of increases in wage costs or changes in material prices occurring after conclusion of contract. We shall furnish proof of such circumstances if the customer so requests.
- (3) Our invoices shall be payable within 10 days less 2 % cash discount, or 30 days net.
- (4) On expiry of the aforesaid deadlines, the customer shall be in default of payment, with default interest to be paid on the purchase price at the current rate as legally stipulated. Furthermore we reserve the right to claim compensation for any damage that may result from the customer's default. With respect to businesspeople, our entitlement to overdue interest according to Section 353 of the German Commercial Code [HGB] shall remain unaffected. Otherwise the legal regulations regarding the conditions and consequences of default in payment shall apply.
- (5) Any means of payment other than cash, bank transfer or cheque shall require a separate agreement. The date of receipt by us shall be the decisive criterion for payment to be in time.
- (6) Any set-off by the customer shall only be possible against counterclaims that are undisputed or have been recognized by us or have been legally established. The customer shall be entitled to exercise a right of retention only in the event that his counterclaim is founded on the same contractual relationship.
- (7) If, after conclusion of contract, we learn of circumstances which question the creditworthiness of the customer, or in the event of a substantial risk that payments owed to us will not be settled due to a deficiency of assets on the part of the customer, or if the customer falls behind with the payment of the purchase price, we shall be entitled to demand payment in advance or provision of security within a reasonable period of time and to refuse performance until our demand has been satisfied. In the event of the customer's refusal or if the period set has lapsed without success, we shall be entitled to withdraw from the contract in full or in part and to claim damages in lieu of performance.

5. Product Adjustments

In any case, we reserve the right, until delivery, to make improvements to products in terms of design, shape and technology in adjustment to the current state of the art.

6. Delivery Period, Delay in Delivery

- (1) When stating a date for delivery or performance, we will assume that all technical issues have been clarified and that the customer's obligations will be performed in time and due form. If this is not the case, the delivery period will be extended appropriately. The right to the plea of non-performance of contract shall remain reserved.
- (2) In the event of force majeure, strike, or delays due to circumstances beyond our control, the delivery period will be extended by the duration of the impediment.
- (3) We shall be entitled to make partial deliveries, provided this will not cause disadvantages concerning the use of products. The contract shall be deemed to have been fulfilled upon delivery of a quantity within 10 % plus or minus of the agreed quantity.
- (4) If the customer defaults on acceptance or culpably violates any other obligations under the contract, we shall be entitled to give priority to orders from other customers and to extend the delivery period as appropriate. Notwithstanding any other rights, we shall be entitled to claim compensation for any damage incurred as a result of the customer's breach of contract, including any and all additional expenses. In particular, we shall be entitled, without prejudice to any other rights we may have, to charge warehousing fees in the amount of 0.5 % per month, no more however than 5 %, of the price of the goods delayed. Furthermore, in the case of call-off orders, we shall be entitled, after twelve months have elapsed since confirmation of order, to set a deadline of one month for acceptance, whereafter we shall be entitled to invoice the goods or services not accepted, and to charge reasonable fees for warehousing and for holding such goods available, until such time as delivery is accepted.

- (5) Where circumstances as described in sub-clause (4) above exist, the risk of accidental loss or deterioration of the purchased goods shall pass to the customer at the time when the same fails to accept delivery or defaults on any other obligation under the contract.
- (6) We shall be liable in accordance with the relevant statutory provisions insofar as delay in delivery results from willful or grossly negligent breach of contract on our part; any fault of our representatives or agents shall be deemed our responsibility. In the event of grossly negligent breach of contract, our liability for damages shall be limited to foreseeable typical damage. This provision shall not involve any change in the burden of proof to the disadvantage of the customer.
- (7) Insofar as, under these provisions, we are responsible for any delay in delivery, our liability shall be limited to compensation in the amount of 0.5 % for every full week of delay, not exceeding, however, a total of 5 % of the price of that part of the delivery which cannot be used as a result of our default.
- (8) At our request, the customer shall declare, within a reasonable period of time, whether he wishes to withdraw from the contract as a result of the delay in delivery, or whether he insists on delivery.

7. Delivery, Transfer of Risk – Cost of Packaging

- (1) Unless otherwise stated in the order confirmation, delivery will be "ex works/warehouse". Upon the customer's request and expense, the goods will be shipped, at the customer's risk, to a different place of destination. In such case the customer shall bear the cost of transport from the warehouse. Any customs duties, fees, taxes or other public charges shall be borne by the customer. The mode and route of transport will be chosen at our reasonable discretion.
- (2) Transport packaging as well as any other disposable packaging materials shall not be returned.
- (3) Small and punched parts will be delivered in bulk. Individual or special packaging will require a separate agreement.
- (4) If the customer so wishes, we will arrange transport insurance for the delivery; the cost of such insurance shall be borne by the customer.
- (5) In the case of deliveries to destinations outside Germany, the customer shall bear all costs of transport from the plant. This means that we will have performed the contract as soon as the goods have been handed over to the carrier – any and all further expenses and risks (customs, freight, loss, damage) will pass to the customer (EXW Clause in the International Commercial Terms – Incoterms 2010).

8. Rights in Case of Defects, Liability

- (1) Our deliveries shall be deemed free of quality defects if having the agreed quality and properties at the transfer of risk. Agreed properties of the object of sale shall be those described in the product descriptions and specifications in our catalogues and price lists on the basis of the relevant standards (e.g. DIN, ISO). Any other or different properties or features than those expressly agreed for the goods to be delivered shall not be owed. Any warranty in respect of any special use or fitness for any particular purpose, duration of use or durability after the transfer of risk beyond the warranty regarding agreed properties will only be assumed to the extent that it has been expressly agreed in writing; otherwise the risk regarding the fitness and use of the products shall lie solely with the customer. Customary variations in goods delivered from different production series shall not be regarded as defects. The same shall apply to generally acceptable variations in samples. Technical data, specifications and performance details in offers, contracts, attachments, commercial brochures and documentations, etc., merely characterise the properties of products and shall not constitute any guarantees unless they are so designated.
- (2) Defects must be notified immediately and in writing no later than within a period of 8 days. In the case of obvious defects, this period shall commence on delivery, and in the case of hidden defects as soon as the defect is discovered. If the customer fails to notify us, the delivery shall be deemed approved.
- (3) In the event of a defect in the goods sold, we shall be entitled to rectify the fault by, at our discretion, either eliminating the defect or making a delivery of new faultless goods. Where we choose to eliminate the defect, we shall bear all necessary expenses involved in eliminating the defect, in particular transport, travel, labour and material costs, to the extent that those costs will not be increased by that fact that the goods in question were transferred to a place different from the place of performance. We may decline to rectify the defect if this is to involve unreasonable or inappropriate costs. However, where a request by the customer for rectification of a defect proves to be unjustified, we shall be entitled to claim reimbursement from the customer for the costs incurred by us as a consequence.
- (4) If rectification of the defect fails, the customer – notwithstanding any other rights he may have – shall be entitled, at his discretion, to either withdraw from the contract or claim a reduction in price.
- (5) No claims for warranty will be accepted in the event of only insignificant deviations from the agreed quality or from the agreed quantity to be delivered, only minor impairment of usability, natural wear and tear or damage caused after the passing of risk as a result of incorrect or neglectful treatment, excessive strain, unsuitable equipment, inappropriate and/or improper use, faulty assembly, disregard of maintenance and operating instructions, or damage resulting from special external influences not taken into consideration under this contract. Deviations of up to 10 % of the quantity delivered shall be deemed insignificant. Furthermore, no claims for warranty will be accepted in the event of improper changes to products made by the customer or any third party, nor for any consequences resulting therefrom.
- (6) In any case, we will make any rectification of defect or delivery of replacement goods dependent on whether a part of the agreed purchase price that is adequate in proportion to the significance of the defect has already been paid.
- (7) The customer shall support us in identifying and eliminating the defect, and he shall fully inform and consult us. The customer shall give us the opportunity to investigate the damage event.
- (8) We shall be liable in accordance with the relevant statutory provisions insofar as the customer will raise claims for damages based on intention or gross negligence, including intention or gross negligence on the part of our representatives or agents. Unless we are held liable for intentional violation of contract, our liability for damages shall be limited to foreseeable typical damage.
- (9) We shall be liable in accordance with the relevant statutory provisions insofar as we culpably violate an essential obligation under the contract; in this case, however, liability shall be limited to foreseeable typical damage unless we or our

- representatives or agents are guilty of intent or gross negligence.
- (10) Insofar as the customer is entitled to damages in lieu of performance, our liability for damages shall be limited to foreseeable typical damage.
 - (11) Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act.
 - (12) The foregoing provisions shall not involve any change in the burden of proof to the disadvantage of the customer.
 - (13) Unless otherwise agreed, the period of limitation for warranty claims regarding goods which, according to their usual purpose, have been used in the construction of a building and have caused the defectiveness of the same, shall be 36 months as from the transfer of risk. The period of limitation in respect of other goods shall be 12 months. The period of limitation for recourse claims pursuant to Sections 478, 479 BGB shall remain unaffected. The statutory period of limitation in cases of injury to life, limb or health, intentional or grossly negligent violation of duty and fraudulent non-disclosure of a defect shall remain unaffected. Statutory provisions concerning the beginning, suspension, interruption and new commencement of periods of limitation shall not be affected by these provisions.
 - (14) Recourse claims of the customer against us according to Section 478 BGB (recourse of the entrepreneur) shall only exist insofar as the customer has not made any arrangements with his buyer that exceed the statutory warranty claims. The foregoing provisions shall apply accordingly in respect of the extent of our liability for damages.

9. Industrial Property Rights; Defects in Title

- (1) We shall be liable to the customer for violations of intellectual property rights in connection with the sale of our products insofar as, by using the goods in accordance with the contract, such intellectual property rights have been violated as are valid and have been published in the Federal Republic of Germany at the time we effected delivery, and we shall be liable as follows:
 - a) we will, at our discretion and expense, either obtain the right to use the product, or change the product in such a way that the intellectual property right in question will not be violated, or replace the product. If this is impossible for us on reasonable conditions, we shall take the product back and reimburse the purchase price.
 - b) The foregoing obligations shall only apply to us if the customer has informed us in writing and without delay of the claims raised against him by the third party affected, if he has not recognised any violation and leaves any and all measures of defence and negotiations for a settlement to us. In the event that the customer discontinues using the product in order to minimise damage, or for any other important reasons, he shall point out to the third party that by such discontinuation of use he does not recognise the existence of any violation of intellectual property rights.
- (2) Any claims by the customers shall be ruled out insofar as he is responsible for the violation of intellectual property rights. Furthermore, any claims by the customer shall be ruled out insofar as the violation of intellectual property rights has been caused by special instructions on the part of the customer, or by a mode of application that we could not foresee, or by the fact that the customer has changed the goods delivered or used them together with products not delivered by us.

10. Joint Responsibility

- (1) Any liability for damages in excess of the limits set out in clauses 6, 8 and 9 above shall be ruled out – irrespective of the legal nature of any claims raised. This shall apply in particular in the event of damage claims due to culpa in contrahendo, or breach of other duties, or tortious claims for compensation for damage to property pursuant to Section 823 BGB.
- (2) The limitation in sub-clause (1) shall also apply insofar as the customer, instead of a claim for damages, demands compensation for useless expenses instead of performance.
- (3) Insofar as our liability for damages is ruled out or limited, this shall also apply with respect to our employees', representatives' and agents' personal liability for damages.

11. Custom-made Products; Cost of Tools

- (1) When supplying custom-made products, the cost of manufacturing appropriate tools will be charged on a pro-rata and one-time basis.
- (2) The tools will remain our property. We reserve, without limitation, all copyrights and intellectual property rights in respect of the tools.
- (3) If a custom-made product exhibits a defect in terms of clause 8 sub-clause 1 hereof, the customer shall be entitled to claim rectification. If the customer claims rectification, we may, at our discretion, eliminate the defect or manufacture a new tool. If rectification fails, the customer – notwithstanding any rights to damages – shall be entitled, at his discretion, to either withdraw from the contract or claim a reduction in price. Otherwise the provisions of clauses 8 to 10 hereof shall apply analogously in respect of defects and our liability.

12. Reservation of Ownership

- (1) We reserve the right of ownership of the goods until all amounts receivable arising from the current business relationship with the customer (including all current account balances due) have been settled in full. In the event that the value of goods, delivered under reservation of ownership, which serve as security for us, exceeds the total of our claims by more than 10 %, we shall, upon the customer's request, release the security (on a pro rata basis).
- (2) In the event of any breach of contract by the customer, in particular in the case of default of payment, we shall be entitled, after setting a reasonable deadline, to retrieve our goods. Retrieval of goods by us shall represent our withdrawal from the contract. After retrieval, we shall be entitled to exploit the goods; the proceeds of such exploitation – less reasonable exploitation costs – shall be credited against the customer's liabilities.
- (3) Prior to payment of the purchase price, the customer must not pledge the goods nor transfer ownership of them by way of security. In the event of any attachment or garnishment or any other encroachment by a third party, the customer shall immediately notify us thereof and make all information and documents available to us that will be needed to protect our interests. Our right of ownership shall be pointed out to executors and third parties. Insofar as the third party is not in a position to reimburse the costs involved in legal proceedings under

Section 771 of the German Code of Civil Procedure [ZPO], the customer shall be liable for any loss incurred by us.

- (4) The customer shall be entitled to resell the goods in the ordinary course of business; however, he shall hereby assign to us all claims in the amount of the purchase price as agreed between us and the customer, inclusive of VAT, arising to him from such resale in respect of his buyers or any third parties, irrespective of whether the goods supplied are resold without or after having been processed. Notwithstanding such assignment, the customer shall retain the right to collect such claims. Our right to collect the claims ourselves shall not be affected hereby. However, we undertake not to collect any claims as long as the customer meets his payments and does not fall into arrears. In such case, however, we may demand that the customer shall disclose to us the claims assigned and the respective debtors, provide us with all the information and documents necessary for collection, and inform the debtor (third party) of such assignment.
- (5) Any processing or transformation of goods made by the customer shall be on our behalf. If goods supplied by us are processed together with other goods that do not belong to us, we shall acquire co-ownership of the new product in proportion of the value, at the time of processing, of the goods supplied by us to the other goods processed. Otherwise the same provisions shall apply in respect of the product resulting from processing as apply to goods supplied under reservation of title.
- (6) If goods supplied by us are inseparably mixed with other goods that do not belong to us, we shall acquire co-ownership of the new product in proportion of the value, at the time of mixing, of the goods supplied by us to the other goods mixed. If the goods are mixed in such a way that the part of the customer's goods is to be regarded as the main part, it shall be deemed agreed that the customer will transfer proportional co-ownership to us. The customer shall, on our behalf, preserve the rights to sole or co-ownership thus acquired.
- (7) The customer shall, as security for our claims against him, also assign to us any claims arising against a third party as a result of combining the goods supplied by us with a piece of real estate.
- (8) In the event that, at a place outside Germany where the goods are situated after collection or delivery, special provisions are required for the reservation of title or assignment to be effective, the customer shall immediately inform us of such requirements and, at his own expense, take all measures necessary in that respect. If, at a place where the goods are situated after delivery, reservation of title or any other of the aforementioned rights is not possible, the customer shall, at his own expense, take all measures necessary to obtain for us such security rights in respect of the goods delivered as are closest to the aforesaid rights or to provide at least equivalent security for our claims.

13. Privacy and Data Protection

- (1) During the duration of the contract and for two years after its termination, the parties to the contract shall treat confidential all information and/or information materials marked as confidential or by their nature being deemed confidential that will become known to or obtained by them in connection with the contract, whether in verbal, written or any other form, directly or indirectly, and they shall use them for no other purpose than the performance of this contract, and they shall not without the other party's consent disclose them to any third party nor make them available to any third party in any other way, and they shall take all reasonable precautions to prevent and avoid access to them by any third party.
- (2) This obligation of secrecy shall only exclude such information and information materials as are already generally known, i.e. readily available to any third party, at the time of being disclosed, or are rightfully made available, after becoming known, to one of the parties hereto by a third party that is not under any obligation to the other party to maintain secrecy with respect to such information, as well as information that has to be disclosed to an authority or other authorised third party upon their demand, or information required by the other party's legal or tax advisors for performing their services.
- (3) We undertake not to offend against any data protection regulations in performing or in connection with the performance of this contract. We will oblige our employees to comply with the relevant data protection regulations, and we will oblige them to secrecy. In matters regarding sensitive data to be protected, we will consult with the customer's data protection officer.

14. Place of Jurisdiction, Place of Performance, Changes

- (1) The place of jurisdiction shall in each case be our respective place of business; we shall, however, also be entitled to sue the customer in the court having jurisdiction at his place of residence.
- (2) The contract shall be subject to the laws of the Federal Republic of Germany. The provisions of the UN Convention on the International Sale of Goods shall not apply.
- (3) Unless otherwise specified in the order confirmation, our principal place of business shall be the place of performance.
- (4) Any changes or additions to this contract must be in writing.

This translation is provided for convenience only.

In the event of any discrepancy between the translated version and the German version, the German version shall prevail.