

General Terms and Conditions of Purchase / FRoSTA AG

1.0 General, offer, conclusion of contract

1.1 We place orders based on our General Terms and Conditions of Purchase. Any other terms and conditions shall not become a part of the contract even if we do not expressly object to them. Where we accept a delivery or service without express objection, this shall in no event be interpreted as acceptance by us of your terms and conditions of delivery. These General Terms and Conditions of Purchase shall apply to all our present and future orders of deliveries and other services.

1.2 If you do not acknowledge our order in writing within two weeks of receipt, we shall be entitled to cancel our order. Any acknowledgement received at a later time or any deviating acknowledgement shall be interpreted as a new offer which we may accept within a reasonable period of time.

1.3 Any order shall be legally binding only if placed in writing. Orders placed verbally or by telephone shall require our subsequent written confirmation to become legally valid. Any collateral agreement or amendment to the contract shall likewise require subsequent written confirmation. Any change of the contract agreed expressly after its conclusion shall be valid even without written confirmation. Orders or delivery call-offs and any change and/or supplement to them may also be made in electronic form or by means of remote data transfer or machine-readable data carriers.

1.4 You shall maintain secrecy about the fact that a contract has been concluded and may make reference to the business relationship with us in advertising materials only with our prior written consent.

1.5 The contracting parties undertake to treat as business secrets any and all commercial and technical information which is not obvious and of which they learn through the business relationship. Any subcontractor shall be put under an appropriate obligation to the same effect. Should one of the contracting parties realize that information to be kept secret has been disclosed to an unauthorised third party or any document to be kept secret has been lost, it shall without delay inform the other contracting party.

1.6 We shall be entitled to demand alterations to the delivery item even after conclusion of the contract where this is acceptable to you. In the event of such a change to the contract, we shall appropriately take account of the effects on both contracting parties, in particular with regard to additional or reduced costs and delivery times.

2.0 Prices, dispatch, packaging

2.1 The prices agreed are fixed prices. The cost of packaging and transport to the shipping address or place of use specified by us is included in the prices. Where we take over these costs notwithstanding the above provision, you shall make shipment at the lowest costs in each individual case. We shall not absorb any additional costs incurred for express delivery to adhere to a delivery deadline. However, we shall be entitled at any rate to specify a certain mode of transport. Where no price is specified on an order, your current list prices with the deductions customary in the trade shall apply. The kind of pricing term shall not change the agreement regarding the place of fulfilment.

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2.2 No compensation shall be paid for business calls or the preparation of quotations, projects etc.

2.3 Any delivery shall be accompanied by a delivery note stating the contents in detail and the complete order identification. Until this information is provided completely, the goods shall be stored at our premises at your risk and expense. A copy of the delivery note shall be sent to us simultaneously with the goods but by separate mail or by fax. Any delivery of deep-frozen goods shall be notified to us no later than by noon on the day prior to arrival.

2.4 Your obligation to take back packaging shall be as provided by statutory regulations. The goods shall be packaged in such a way that damage in transit is prevented. Packaging materials shall be used only to the extent which is necessary to achieve that purpose. Only environmentally compatible packaging materials must be used.

3.0 Force majeure

Any event of force majeure (unforeseen circumstances and events not caused by us which we could not have avoided even if we applied the due diligence of a prudent businessman such as war, threat of war, riot, use of force by third parties against objects or persons, acts of sovereign power, industrial action at us or at our suppliers or customers, fire, interruption of the intended transport links and lack of raw materials or energy) which makes acceptance or receipt by us impossible shall entitle us to appropriately postpone acceptance or receipt and no default of acceptance shall be construed from this. Should the impairment prevail for a period of more than three months, you shall be entitled after fixing a reasonable respite to rescind the contract with regard to the part not yet fulfilled. Our entitlement to rescind the contract shall be governed by the statutory provisions.

4.0 Invoices and payment

4.1 Invoices shall be accepted in electronic form only and shall be sent via the web portal or data transmission through the computer system. You shall state the order identification and the number of each individual item in your invoices. You shall state the statutory value-added tax separately in your invoices which applies at the time of delivery or service provision. If the information specified here is missing, incorrect or incomplete, the respective invoice amount shall not become due and payable. You shall be responsible for any and all consequences of non-observance of this obligation, unless you prove that you cannot be held liable for them.

4.2 Unless special agreements exist, we shall make payment by bank transfer in each case deducting any discount agreed separately or net within one month. Times allowed for payment shall start at the time the following conditions have been met:

- a) Complete provision of your services
- b) Receipt of a properly issued delivery note
- c) Receipt of a properly issued invoice by us
- d) If agreed as per section 4.3 hereof, receipt of the material test certificate

4.3 Where the provision of material test certificates is agreed, they shall be an integral part of the delivery and shall be sent to us together with the delivery. However, they shall be available to us at the latest ten calendar days after receipt of the invoice.

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4.4 Should any delivery be faulty or incomplete, we shall be entitled to retain payment pro rata of the value until proper delivery has been made.

4.5 Discounts shall also be admissible if we make a set-off or retain a reasonable amount of the payment due to defects. In the event of any defective delivery or service, payment shall not be interpreted as acknowledgement of the delivery or service as being according to contract.

4.6 Where you demand partial payment, you shall issue a separate partial payment invoice. The provisions of sections 4.1 to 4.5 hereof shall apply by analogy to partial payment invoices.

5.0 Delivery, delivery deadlines, passing of the risk, delayed delivery

5.1 We accept partial delivery only on the basis of an express agreement. The quantity remaining to be delivered shall be stated upon agreed delivery of a partial quantity.

5.2 We will only accept the quantities or numbers of pieces ordered by us. Any delivery of quantities greater or less than those ordered shall be permissible only by prior arrangement with us.

5.3 The delivery dates agreed are binding. The time relevant to adherence to a delivery date or deadline shall be the date on which the goods are received at the place of receipt or use specified by us or successful acceptance in due time.

5.4 You shall bear the risk of accidental loss or deterioration of the delivery item, in the case of deliveries until receipt at the place of receipt specified by us and in the case of other services until acceptance.

5.5 Where you realize that an agreed deadline cannot be met for whatever reason, you shall inform us forthwith in writing stating the reasons and expected duration of the delay.

5.6 If you are in default of delivery, we shall be entitled to the statutory claims. We shall in particular be entitled to claim damages instead of performance and/or rescind the contract in compliance with the statutory provisions.

5.7 You shall be entitled to claim that you have not received any document to be provided by us only if you have sent a written reminder to provide the document and have not received it within a reasonable period of time.

5.8 Should you make any delivery earlier than agreed, we reserve the right to return the goods at your expense. If in the event of delivery earlier than agreed we do not return the goods, they shall be stored by us at your risk and expense until the delivery date. In the event of delivery earlier than agreed, we reserve the right to make payment only at the agreed payment date.

6.0 Warranty

6.1 In addition to guaranteeing that your delivery/service is free from defects of quality and title, you warrant in particular that any delivery/service you provide meets

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the state of the art and complies with the relevant legal requirements and the regulations and standards defined by the authorities, the employers' liability insurance associations and the professional associations. This shall in particular apply in respect of all German food law regulations. Where in isolated cases it is necessary to deviate from these regulations, you shall be required to obtain our written consent. Such consent given by us shall not limit your liability for defects. Should you have any reservations as to the kind of performance desired by us, you shall forthwith inform us in writing about them.

6.2 You undertake to use environmentally compatible products and methods for your deliveries/ services and also the supplies provided by your subcontractors or the ancillary services of third parties have to be environmentally compatible as regards products and methods, within the bounds of what is economically and technically feasible. You shall be liable for the environmental compatibility of the products and packaging materials delivered by you and for all consequential damage caused by you violating the statutory disposal obligations. You shall hand over together with any delivery the safety data sheets relevant to your delivery. You shall indemnify us from and against any and all recourse claims raised by a third party where you, through your own fault, fail to submit the safety data sheets to us or submit them late or submit incorrect safety data sheets. The same shall apply by analogy to any later alteration.

6.3 We shall without delay notify you in writing of any apparent defects in your deliveries/services as soon as we detect them in the ordinary course of our business. Such notification shall be deemed to be without delay if we send it within ten calendar days of receipt by us of the respective goods or services. Any latent defect shall be deemed to have been claimed in time if we send the notification within ten calendar days of detection of the defect.

6.4 You shall upon request forthwith and free of charge, including any ancillary costs, rectify any defect in the delivery or service notified to you during the warranty period, which shall include any failure to achieve guaranteed data and the non-provision of warranted characteristics, at our option by means of subsequent improvement or by replacing the defective parts or by delivering new parts. Moreover, we shall be entitled to rescind the contract, demand abatement and claim damages as provided for by the statutory provisions.

6.5 Should you fail through your own fault to meet your warranty liability obligations within a reasonable time limit fixed by us, we shall be entitled to take the necessary actions ourselves or have them taken by a third party at your risk and expense. In urgent cases, we may by prior arrangement with you rectify a defect ourselves or have it rectified by a third party. Minor defects the rectification of which does not cost more than €1,000 net may be rectified by us without prior consultation in the course of our duty to minimize damage without this meaning any limitation of your warranty liability obligations. We shall be entitled then to charge the necessary expenses to you.

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6.6 The warranty period shall be three years, unless expressly agreed otherwise, a longer statutory limitation period applies or the provisions of Sections 478 and 479 of the German Civil Code apply. The warranty period shall start upon handover of the delivery item to us or to the third party specified by us at the place of receipt or use specified by us.

6.7 The warranty period for parts delivered the operation of which has to be interrupted during the examination and/or rectification of a defect shall be extended by the time of interruption of operation. The warranty period for parts repaired or newly delivered under a warranty shall start anew upon completion of subsequent improvement or, if acceptance inspection is agreed, upon acceptance. If applicable, acceptance inspection has to be applied for to us in writing.

7.0 Special agreement regarding machines and mechanical systems

7.1 The warranty period for machines and mechanical systems shall be three years. Where statutory regulations define a longer warranty period, the longer statutory period shall apply. For installations, machines and systems, the warranty period shall start at the acceptance date stated in our written acceptance certificate and when all necessary documents such as operation manuals, wiring and hydraulic diagrams etc. have been provided. Should acceptance be delayed through no fault of yours, the warranty period shall be three years starting at the time the delivery item is submitted for acceptance inspection.

7.2 The limitation period for warranty claims shall be suspended by the receipt of the first written notice of a defect. Should subsequent improvement be necessary, you shall be obligated at our request to carry out the subsequent improvement work outside of our usual working hours and not be entitled to claim a particular compensation for this.

7.3 You warrant that the machines and mechanical systems delivered by you do not cause any inadmissible food physiological changes in the food produced with them. You shall be obligated to properly dispose of or supply to reuse/recycling at your expense all materials that arise such as packagings, chemicals, oils etc. You shall prove this to us in an appropriate fashion. In the event of a breach of this duty for which you are to blame, you shall indemnify us from and against all claims and legal disadvantages should claims be asserted against us.

8.0 Product liability, indemnification and liability insurance cover

8.1 If a claim is made against us based on domestic or foreign product liability regulations or public safety regulations, you are obligated to indemnify us upon first demand from claims for damages asserted by a third party in this respect, provided you are responsible for the product defect that gives rise to the liability. Should we have contributed to causing the loss suffered by the third party, application of Section 5 of the German Product Liability Act and Section 426 of the German Civil Code shall not be affected. You shall mark any goods delivered in such a way that they will permanently be identifiable as your products.

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8.2 You shall operate a state-of-the-art quality assurance system which is suitable with regard to kind and scope and prove existence and operation of the same to us upon request. You shall conclude an appropriate quality assurance agreement with us if we believe this to be necessary.

8.3 In the context of your liability for damages within the meaning of section 8.1 above you are also obligated to reimburse us for any expenses, e.g. in accordance with Sections 683, 670 or in accordance with Sections 830, 840, 426 of the German Civil Code, resulting from or in connection with a product recall carried out by us. To the extent this is possible and reasonable, we will inform you of the content and extent of the product recall to be carried out and give you an opportunity to make representations. Other statutory claims shall not be affected.

8.4 You undertake to take out and maintain reasonable product liability insurance cover which shall also cover the costs of any product recall for the duration of this agreement, however, in each case until expiry of the warranty period for the respective delivery or service. You are obligated to prove to us without being asked that you have taken out the insurance. At our request, you shall prove to us existence of the insurance and payment of the insurance premiums. Any other claims for damages to which we may be entitled shall not be affected.

9.0 Industrial property rights

9.1 You warrant that in the Federal Republic of Germany, in countries in which you manufacture the products of the delivery or service or have them manufactured and in countries of which you could have realized that we are selling the purchased products there, no third-party rights are infringed by or in connection with your delivery/service.

9.2 Should a third party assert a claim against us based on an infringement of such a right, you shall be obligated to indemnify us from and against the claim at first written demand. In such a case, we shall also be entitled to acquire at your expense the necessary licence from the holder of the right if and to the extent to which you fail to provide the licence to us within a reasonable time limit fixed by us and the cost of this would not exceed the claim to be compensated for by you as per sentence 1. The above shall not apply where the part of the delivery/service that infringes the third-party right stems from us or has been acquired by us.

9.3 Your duty of indemnification shall extend to all necessary expenses incurred by us due to or in connection with the claim asserted by a third party and our defense against it.

9.4 The statute of limitations shall be three years starting at the time the risk passes.

10.0 Final provisions

10.1 Should any individual provision of these General Terms and Conditions of Purchase be ineffective, this shall not affect the validity of the remaining provisions.

10.2 Without our prior written consent you shall not be entitled to employ a third party to fulfil the contract or any essential part of it.

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10.3 Assignment of any receivables due from us shall require our written consent. The title to deliveries and/or services paid for shall not be retained in any way whatsoever.

10.4 Unless expressly agreed otherwise, the place of fulfilment for the delivery obligation shall be the shipping address or place of use desired by us, and Bremerhaven for all other obligations of either of the contracting parties.

10.5. You are obligated to observe the provisions in force within the scope of competition protection and the anti-trust law. If a Court or a prosecuting agency shall find, that You act in a manner infringing these provisions as far as the offered prices or trade conditions are concerned, then You shall have to pay on our behalf the lump-sum indemnity in the amount of 5% of the price of goods purchased in the given period of time, unless You are not liable for infringement of law. You shall have the right to prove, that no considerably smaller loss or damages occurred on our side. We shall have the right to prove a higher damage. More far-reaching claims and rights on our side shall remain unchanged.

10.6 Should you suspend your payments, a preliminary insolvency administrator be appointed, insolvency proceedings be instituted against you, institution of insolvency proceedings be dismissed for lack of assets or one of your bills of exchange or cheques be protested, we shall be entitled to rescind the contract in whole or in part and you shall not be entitled to derive any claims from this.

10.7 The exclusive place of jurisdiction for any dispute arising directly or indirectly from or in connection with the contractual relationship shall be Bremerhaven. This shall also apply if you are a corporate body under public law or a special fund under public law or if you do not have a domestic place of general jurisdiction or if, after conclusion of the contract, you change your domicile or habitual residence to a place abroad or if your domicile or habitual residence is not known at the time an action is brought against you. However, we shall be entitled to opt to sue you also at your general place of jurisdiction.

10.8 These General Terms and Conditions of Purchase shall be governed by the law of the Federal Republic of Germany excluding application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).