



## **General Terms and Conditions Frerk Aggregatebau GmbH**

### **§1 Scope of application**

1. Our general terms and conditions (GTC) apply exclusively. We do not recognise any terms and conditions of the Buyer that conflict with or deviate from our Terms and Conditions.
2. Our GTC apply to all contracts between Frerk Aggregatebau GmbH (Frerk) and entrepreneurs in accordance with §14 BGB (German Civil Code).

### **§2 Offer, Order und Contract**

1. Our offers are subject to change.
2. The contract is formed by our written order confirmation. Our written order confirmation is authoritative for the scope of delivery, unless the Buyer immediately objects to any deviations. Amendments and supplements to the contract shall only be binding if they are made in writing with mutual consent of both parties.
3. We reserve the right to make alterations to the design, shape and material of the subject matter of the contract, if it is not materially altered as a result and the alteration is reasonable for the purchaser.
4. We reserve title and copyright to illustrations, drawings, calculations and other documents. Without our consent, these documents may not be made available to third parties.

### **§3 Prices and payment terms**

1. Unless otherwise stated in the order confirmation, all prices are ex works (EXW Schweringen, Incoterms 2020) excluding packaging and plus statutory VAT. Shipping costs shall be borne by the Buyer.
2. Any additional public charges such as customs duties, taxes or other fees shall be borne by the purchaser.
3. The amount is payable without deduction (discount) 30 days after receipt of the invoice.
4. If the purchase price is not paid on time, the Buyer shall be in default after a reminder and the setting of a reasonable deadline. If the Buyer defaults on payment, interest on arrears at 9% above the base rate shall be payable.
5. The Seller reserves the right to reasonably adjust the sales prices due to changes in the cost of labour and materials within the meaning of §313 BGB.



## **§4 Delivery, delivery period, delay**

1. The place of delivery shall be the Seller's registered office at Industriestraße 1A, 27333 Schweringen, Germany.
2. The start of the delivery period presupposes that all technical questions have been resolved and that the order has been placed in a timely and proper manner in accordance with §2 of these GTC.
3. The delivery period shall be extended by a reasonable period of time if the provision of the goods is delayed through no fault of the Seller or due to force majeure, without the Seller being in breach of the contract.
4. The risk shall pass when the goods are ready for dispatch. If the Buyer is in delay of acceptance, he shall bear the risk of accidental loss.
5. If the buyer remains in delay of acceptance for 14 days after notification that the goods are ready for dispatch, Frerk is entitled to withdraw from the contract after setting a reasonable period of grace. There is no need to set a grace period if the buyer seriously and definitively refuses to accept the goods. We reserve the right to claim damages for delay.

## **§5 Warranty and defect claims**

1. The statutory provisions of the BGB shall apply to the defect and warranty rights.
2. If the Buyer discovers a defect as defined by the German Civil Code (BGB), the Buyer must notify the Seller immediately in accordance with § 377 of the German Commercial Code (HGB) in order to be able to assert any claims for defects.
3. In the event of a material defect, we may, at our option, remedy the defect or deliver a new item free from defects.
4. All claims for defects shall expire after twelve (12) months.
5. If the Buyer uses the product contrary to the contractual purpose, he is not entitled to any claims for defects. The burden of proof lies with the Buyer.
6. Claims for defects shall also not exist if the quality or usability deviates only insignificantly from the contract, in the case of natural wear and tear or damage which arises after the transfer of risk as a result of faulty or negligent handling, excessive strain, unsuitable operating materials or as a result of special external influences which are not provided for in the contract.



7. If the Buyer or a third party makes any improper alterations or repairs to the goods during the warranty period, the warranty will also be void.

## **§6 Product Liability**

1. We shall only be liable for intent and gross negligence.
2. We shall only be liable for ordinary negligence - except in cases of injury to life, limb or health - if essential contractual obligations (cardinal obligations) are breached.
3. In other respects, liability for gross negligence shall be limited to foreseeable damage typical of the contract in the case of damage to property and financial loss.

## **§7 Retention of ownership**

1. The goods remain our property until full payment is received.
2. The Buyer shall treat the Goods with care. He is obliged to insure them at his own expense against fire, water damage and theft at original value. If maintenance and inspections are necessary, the Buyer must carry them out promptly at his expense.
3. If the Buyer resells the goods, he shall immediately assign the claim against the end customer to us. Authorisation to collect the claim shall only exist if the Buyer is in default of payment of the purchase price. If the buyer is in default, he is obliged to provide us with all information necessary for collection and to inform his debtor of the assignment.
4. If the Buyer processes the goods within the meaning of § 950 BGB, he shall transfer to us the ownership of the newly manufactured item in proportion to the value of the subject matter of the contract. If the goods are mixed with other items, we shall acquire co-ownership of the product in proportion to the value of the contractual product, which the Buyer shall keep in safe custody for us.

## **§8 Anticorruption**

1. The customer declares that he has not been a party to any unauthorised agreement in restraint of trade within the last two years and that no proceedings are pending against him under competition law or trade law.
2. Without prejudice to other rights of termination and cancellation, we are entitled to terminate the contract without notice if the customer or his employees
  - a. directly or indirectly offer, promise or grant benefits or other advantages to our employees who are entrusted with the preparation, conclusion or execution of the contract.



- b. commits an offence against us or aids and abets an offence under §298 StGB, §299 StGB, §333 StGB or §334 StGB.
3. In the event of a breach of paragraphs 1 and 2, the Buyer is obliged to pay a contractual penalty of 10% of the net order value. We reserve the right to claim further damages.

## **§9 Exportcontrol**

1. The Buyer must comply with the applicable provisions of national and international (re-)export control law, including any embargoes, sanctions or other restrictions on the movement of goods, when passing on the goods delivered by us to third parties. The Buyer shall in any case comply with the (re-)export control regulations of the Federal Republic of Germany, the European Union and the United States of America when passing on our goods to third parties.
2. The Buyer shall in particular check and take appropriate measures before passing on the goods delivered by us to third parties to ensure that
  - a. he does not violate an embargo of the European Union, the United States of America and/or the United Nations - also taking into account any restrictions on domestic trade and any prohibitions on circumvention.
  - b. such goods will not be exported or re-exported to Russia, including export for use on the territory of Russia
  - c. such goods are not intended for a prohibited use or a use requiring a licence for armaments, nuclear or weapons technology, unless any necessary licences have been obtained
  - d. the provisions of all relevant sanctions lists of the Federal Republic of Germany, the European Union and the United States of America regarding business transactions with companies, persons or organisations named therein are complied with.
3. The Buyer shall provide us with all information on the consignee, the final destination and the intended use of the goods delivered by us as well as any export control restrictions applicable in this respect without delay upon request if this is necessary for the performance of export control checks by the authorities.
4. The Buyer indemnifies us fully against all claims made against us by authorities or other third parties due to the Buyer's failure to comply with the above export control obligations and undertakes to reimburse us for all losses and expenses incurred in this connection.



## **§10 Applicable Law**

1. This Agreement shall be governed by the laws of the Federal Republic of Germany under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **§11 Arbitration clause**

1. All disputes shall be settled by arbitration by the International Chamber of Commerce (ICC).
2. Where arbitration is not possible, the jurisdiction of the courts shall be determined in accordance with the provisions of the German Code of Civil Procedure (ZPO).