

Sec. 1 General / Scope

- (1) Our Terms and Conditions of Delivery shall apply exclusively; we do not accept any deviating customer's terms and conditions and such terms and conditions to the contrary, except where we would have explicitly accepted their applicability in writing. Our Terms and Conditions shall also apply, even where we effect delivery to the customers without reservation, in full knowledge of customer's deviating terms and conditions or customer's terms and conditions to the contrary..
- (2) All agreements entered into between us and the supplier for the purpose of performing this contract, are set out in writing in this agreement.

Sec. 2 Offer – Offer Documents

Our offers shall always be subject to change and without obligation. Where an order is to be qualified as an offer within the meaning of sec. 145 BGB (German Civil Code), we may accept such offer within 2 weeks..

Sec. 3 Prices – Terms of Payment

- (1) Where nothing to the contrary ensues from the order confirmation, our prices are quoted "EXW" (= "Ex Works" within the meaning of INCOTERMS 2010), packing excluded; this will be charged separately.
- (2) The statutory VAT is not included in our prices; it shall be shown separately at the statutory rate in the invoice on the day of invoicing.
- (3) Where nothing to the contrary ensues from the order confirmation, the purchase price shall be due and payable net (without deduction) within 30 days following the invoice date. The statutory rules concerning the consequences of default in payment shall apply. Any deductions of early payment discounts shall be subject to a special written agreement.
- (4) The customer shall not be entitled to invoke set-off rights, except where his counterclaims were recognized by final judgment, are undisputed or are accepted by us..

Sec. 4 Delivery Item and Proviso for unilateral Changes

- (1) The particulars as to the delivery item (e.g. dimensions, measures, ability to withstand stress, tolerances, technical data or manufacturer's data in relation to parts and components etc.) as well as our drawings and pictures hereto merely serve to describe and designate the delivery item and do not constitute any guaranteed characteristic features. Any deviations customary in trade and deviations by reason of legal rules and provisions or deviations constituting technical improvements as well as the substitution of components by equivalent components (e.g. use of RoHS-compliant standard-resistors and capacitors instead of other manufacturers' non-compliant standard-resistors and capacitors) shall be permissible even without the customer granting separate approval, if and to the extent that the delivery item's suitability for the purpose stipulated in the contract is not adversely affected thereby.
- (2) In order to meet production requirements and also to guarantee the minimum order quantity, Frank Elektronik is entitled to an overdelivery and underdelivery tolerance of 10% per production lot.

Sec. 5 Time of Delivery

- (1) The beginning of any time for delivery shall be subject to the clarification of all technical questions.
- (2) Any adherence to our obligation to deliver shall in addition be subject to the customer performing his duties properly and in due time. The defence of unperformed contract shall be reserved.
- (3) Where we fail to deliver the goods ordered, because our suppliers, despite being under such contractual obligation - without us having responsibility for this – fail to supply us at all, properly or in good time, we shall be entitled to withdraw from the contract. In this event, we will inform the customer without undue delay that the order cannot be processed; we shall reimburse to the customer without undue delay what has been received in performance effected on that order.
- (4) .Where the customer is in default of acceptance or where he intentionally or negligently breaches other duties to cooperate, we shall be entitled to claim compensation for damages suffered in this respect, including any additional expenditures incurred. Further reaching rights and claims shall be reserved.

- (5) We shall be liable pursuant the statutory provisions, to the extent that the underlying purchase agreement is a transaction, where time is of essence within the meaning of sec. 286 subsec. 2, no. 4 BGB (German Civil Code) or of sec. 376 HGB (German Commercial Code). We shall also be liable pursuant to the statutory provisions, where the customer is entitled to claim, that his interest in any further performance of the contract has ceased as a result of our responsibility for a default in delivery.
- (6) Furthermore, we shall be liable pursuant to the statutory provisions, where the default in delivery is due to any intentional or gross negligent breach of contract for which we are responsible; any fault on the part of our representatives and of people whom we use to perform our obligations shall be attributed to us. Where the default in delivery is due to a gross negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable and typically occurring damage.
- (7) We shall even be liable pursuant to the statutory provisions to the extent that the default in delivery for which we are responsible is due to an intentional or a negligent breach of a material contractual duty (= duty, the fulfilment of which enables the proper performance of the contract to begin with and having the customer regularly trusting its fulfilment); in such event, our liability for damages shall however be limited to the foreseeable and typically occurring damage..
- (8) For the rest, in the event of a default in delivery and under a flat-rate compensation for damage resulting from default, we shall, for every full week of default in delivery, be liable for payment of 0.5 %, however, in total not exceeding 5% of the stipulated purchase price.
- (9) Any further reaching statutory customer rights and claims shall be reserved..

Sec. 6 Passing of Risk – Packing Costs

Where nothing to the contrary ensues from the order confirmation, agreement shall have been made to delivery “EXW” (= “Ex Works” within the meaning of INCOTERMS 2010).

Sec. 7 Liability for Defects

- (1) The customer’s claims for defects are subject to him fulfilling his duty to inspect for and to give notification of defects under sec. 377 HGB (German Commercial Code).
- (2) Where the delivered goods are defective, we shall, at our option, be entitled to cure by way of remedying the defect or by delivering new goods free from defects. Where cure is chosen, we shall bear the expenditures required up to the amount of the purchase price.
- (3) Where cure fails, the customer shall, at his option and subject to statutory requirements, be entitled to claim withdrawal from the contract or reduction in price.
- (4) We shall be liable pursuant to the statutory provisions, where the customer asserts claims for damages based on intent or gross negligence, including the intent or gross negligence of our representatives or of persons whom we use to perform our obligations. To the extent that we are not accused of an intentional breach of duty, our liability for damages shall be limited to the foreseeable and typically occurring damage.
- (5) We shall be liable pursuant to the statutory provisions, where we breach a material contractual duty intentionally or negligently (comp. the definition in sec. 5 subsec. 7); in this. event, our liability for damages shall however be limited to the foreseeable and typically occurring damage as well.
- (6) This shall be without prejudice to any liability for intentional and negligent violation of life, body and health; this shall also apply to any compulsory liability under the Produkthaftungsgesetz (German Product Liability Act).
- (7) In the absence of any stipulations to the contrary hereinabove, liability shall be excluded..
- (8) The period of limitation for claims arising from defects shall be 12 months counting as of the passing of risk.
- (9) This shall be without prejudice to the period of limitation for recourse of the entrepreneur against the supplier for delivering defective goods (delivery recourse) under sec. 478, 479 BGB (German Civil Code); it shall be five years counting as of the delivery of the thing.

Sec. 8 Total Liability

- (1) Any liability for damages reaching further than provided for in sec. 7 shall – without regard to the legal nature of the asserted claim – be excluded. This shall particularly apply to claims for damages for culpa in contrahendo, for other breaches of duty or to tortious claims for compensation of property damages under sec. 823 BGB (German Civil Code).
- (2) The limitation under sec. 1 shall also apply, to the extent that the customer, instead of claiming damage in lieu of performance, claims reimbursement of useless expenses.
- (3) To the extent that liability for damages against us is limited or excluded, this shall also apply with regard to the personal liability for damages of our white collar workers, employees, staff, representatives and of persons whom we use to perform our obligations.

Sec. 9 Collateral by way of Retention of Title

- (1) We shall retain title to the goods until reception of all payments owed under the delivery contract. Where the customer is in default of payment, we shall be entitled to take back the goods delivered. Our taking back the goods shall constitute a withdrawal from the contract. Upon taking back the goods, we shall be entitled to liquidate them; the liquidation proceeds shall be credited to the customer's debt – minus reasonable liquidations costs.
- (2) The customer shall be under an obligation to treat the goods with care; he shall in particular and at his own cost be under an obligation to adequately insure them against damage caused by fire, water or theft at replacement value.
- (3) The customer shall inform us in writing and without undue delay of any seizure or other third party encroachments.
- (4) The customer shall be entitled to resell the goods in the ordinary course of business; however, he now already assigns all claims up to the amount of the billing total (including VAT) of our claim, which arise against his buyer or third parties from the resale, and to be specific, regardless of whether the good was resold without or after being processed. The customer shall remain entitled to collect the debt even after the assignment.

This shall be without prejudice to our right to collect the debt ourselves. However, we undertake not to collect the debt, as long as the customer fulfils his payment obligations resulting from the proceeds collected, does not default in payment and in particular as long as no application for the opening of insolvency proceedings is filed or payments are stopped. However, in such an event, we may demand, that the customer disclose to us the claims assigned and the debtors thereof, that he give full particulars required for collection, that he hand over all appertaining documents and that he transmit to the debtors (third parties) the assignment.

- (5) Any processing or transformation of the goods by the customer shall always be performed on our behalf. Where the goods are processed together with other goods not belonging to us, we shall acquire joint ownership of the new thing in relation of the value of the goods (invoice total, including VAT) to the value of the other items processed at the time of processing. By the way, what applies to the goods delivered under retention of title shall apply accordingly to the thing generated by processing.
- (6) Where the goods are inseparably intermixed with other goods not belonging to us, we shall acquire joint ownership of the new thing in relation of the value of the goods (invoice total, including VAT) to the value of the other items intermixed at the time of intermixing. Where intermixing is performed in such a way, that the customer's thing is to be regarded as the main thing, agreement shall be deemed made to the effect that the customer transfers to us proportional co-ownership. The customer shall keep in safe custody on our behalf any sole or co-ownership so generated..

**Sec. 10 Customer compliance with the
ElektroStoffV**

Please be advised, that everyone of our customers shall, in his own responsibility, be under an obligation to comply with the provisions concerning him in relation to the goods delivered by us laid down in the Directive 2011/65/EU (Directive on the Restriction of Use of certain Hazardous Substances in electrical and electronic Equipment) of 08.06.2011 and of all following versions of this Directive as well as with the national rules laid down in implementing this Directive within the European Union, in Germany this being the Ordinance on the Restriction of Use of certain Hazardous Substances in electrical and electronic Equipment (ElektroStoffV)..

Sec. 11 Packaging Material

In order to protect the resources and in the spirit of economic efficiency, we do environmentally friendly dispose of packaging material, not accruing in the end-user segment. In order to avoid the environmental impact generated by packaging material, we do sustain a system of reusable package to this effect.

Sec. 12 Venue / Place of Performance

- (1) Where the supplier is a merchant, our place of business shall be the venue; we shall however be entitled to sue the customer at his general venue.
- (2) The laws of the Federal Republic of Germany shall apply; the application of the UN Convention for the International Sale of Goods shall be barred.
- (3) Where nothing to the contrary ensues from the order confirmation, our place of business shall be the place of performance.