

# **General Delivery Conditions**

## **FRISTAM Pumpen Schaumburg GmbH 2018**

### **I. General**

1. All deliveries and performances by FRISTAM Pumpen Schaumburg GmbH are to be based upon these General Delivery Conditions as well as any other special contractual agreements. They shall also apply to all future deliveries and/or performances to the purchaser, even if they have not again been specifically agreed upon. These General Delivery Conditions are based on the VDMA Delivery Conditions 2018, but contain changes and amendments.
2. Diverging, conflicting or supplementary purchase conditions or other general terms and conditions of the purchaser shall not be recognized as applicable, even upon order acceptance or if the supplier does not contradict them and/or performs delivery without any reservation. Unless otherwise agreed, a contract shall be deemed effective with the written order confirmation of the supplier.
3. Any references to the application of statutory provisions are for clarification purposes only. Even without such clarification the statutory provisions shall apply as far as they have not been directly changed or explicitly excluded.
4. The supplier reserves all property and intellectual property rights/copyrights regarding samples, cost estimates, drawings and similar information of a physical or non-physical nature (including electronic material), and such may not be made available to third parties. The supplier is obliged to obtain approval of the purchaser before passing on any information and documents indicated as confidential by the purchaser.

### **II. Price and Payment**

1. Unless otherwise agreed, the prices are given ex works, including loading at the factory, however, excluding packing and unloading. Amounts of statutory value-added tax at the relevant legal rate, in case of export deliveries also custom(s) as well as fees and other public duties, are added to the prices.
2. Unless otherwise agreed, payment is to be made without any deductions into the account of the supplier as follows:  
  
1/3 down payment upon receipt of the order confirmation,  
  
1/3 payment as soon as the purchaser is notified that the main parts are ready for shipment,  
  
the balance to be paid within one month after the passing of risk.
3. The purchaser is only entitled to withhold payments if his counterclaims are undisputed or have been finally and non-appealably established or are directly related and stand in reciprocity with the payment claim(s) of the supplier.
4. The supplier is entitled to withhold his still outstanding deliveries and performances in relation to all still outstanding and due payments arising out of the entire business relationship with the purchaser, i.e. in case of direct or indirect payment claims under this or other contracts concluded with the purchaser.
5. The supplier is entitled to execute any outstanding deliveries only against advance payment or securities, if after the conclusion of the contract circumstances become known to him which are of a nature to considerably reduce the creditworthiness of the purchaser and through which the payment of the outstanding claims of the supplier by the purchaser from the respective contract relationship (including other individual orders, for which a framework contract/master agreement applies) will be endangered.

6. The purchaser is only entitled to offset payments if his counterclaims are undisputed or have been finally and non-appealably established or are directly related and stand in reciprocity with the payment claim(s) of the supplier.

### **III. Delivery Time, Delay in Delivery**

1. The delivery time shall be agreed upon by the contractual parties. Time periods and deadlines communicated by the supplier for deliveries and/or performances are deemed to apply only approximately unless a fixed period or time has been specifically promised and agreed upon. Such fixed period of time can only be observed by the supplier provided that all commercial and technical queries between the parties have been clarified and the purchaser has fulfilled all his obligations, such as providing requisite official certificates or permits, or complying with his pre-payment duties. Should this not be the case, the delivery time will be extended appropriately. This shall not apply if the purchaser is responsible for the delay.
2. The maintenance of delivery periods by the supplier is subject to proper and punctual supply by his own suppliers. The supplier is to advise the purchaser of any foreseeable delays as soon as possible.
3. The delivery period shall be recognized as observed when the object of delivery has left the supplier's factory before expiry of this period or when readiness for shipment has been notified. In case a shipment has been agreed, any delivery times and periods relate to the date/time of handing over the goods to the forwarder, carrier or other person/third party specified to carry out the shipment. If an acceptance test is to take place, the date for this or, alternatively, the notification of readiness for inspection, shall apply – except in the case of legitimate refusal of acceptance.
4. If the purchaser is responsible for delay in shipment or acceptance of the object of delivery, he will be charged the costs incurred by the delay, commencing one month after notification of readiness for shipment/acceptance.
5. The supplier shall not be liable for impossibility of delivery or delays in delivery to the extent that they are caused by force majeure events or other events beyond the supplier's control that were not foreseeable upon conclusion of the contract (this includes – without any claim for completeness – operational interruptions of any kind, difficulties of material or energy supply, delays in transport, strikes, legitimate lockouts, shortage of workforce, energy or raw materials, difficulties obtaining the necessary permissions from authorities, measures imposed by regulatory authorities, non-delivery, incorrect or untimely delivery by third parties). Where such events make it much more difficult or impossible for the supplier to deliver the goods and/or provide the services and the hindrance is not only temporary, the supplier shall be entitled to withdraw from the contract. In the event of temporary hindrances, the delivery or performance periods shall be extended and the delivery or performance dates shall be postponed by the duration of the hindrance plus a reasonable start-up period. The supplier shall advise the purchaser of the commencement and termination of such circumstances as soon as possible. As far as the purchaser cannot be reasonably expected to accept the delayed goods or services, he shall be entitled to withdraw from the contract by submitting an immediate written declaration to the supplier.

6. The purchaser can withdraw from the contract without notice if the entire performance of goods and services proves conclusively impossible for the supplier before the passing of the risks. In addition, the purchaser can withdraw from the contract if the supply of any part of his order becomes impossible and when he has a legitimate interest in the refusal of the partial remaining and possible delivery. If this is not the case, the purchaser is to pay the contract price of the partial delivery. The same shall apply in the case of incapacity of the supplier. Otherwise section VII.2 and 3. shall apply. Should the impossibility or incapacity occurs during default of acceptance or the purchaser is solely or mainly responsible for these circumstances, he shall remain obliged to effect his counter-performance.
7. Should the supplier default on delivery and the purchaser suffers damage due to this, he shall be entitled to demand a lump-sum compensation for the delay. This shall amount to 0.5 % for each whole week of the delay, but, altogether, not exceeding 5 % of the value of that part of the entire delivery that cannot be utilized on schedule or according to the contract. Should the purchaser grant the supplier – under consideration of the statutory exceptions – a reasonable time period for delivery after the due date and should this time period not be complied with, the purchaser is then entitled to withdraw from the contract in accordance with the statutory regulations. Upon request of the supplier, he undertakes within a reasonable time to declare whether he intends to exercise his right to withdraw from the contract.

Further claims resulting from delays in delivery are to be regulated exclusively in accordance with section VII.2 and 3. of these terms.

#### **IV. Delivery, Place of Performance, Passing of Risk, Acceptance**

1. Deliveries are made ex works, where also the place of performance for all obligations shall be. The risk passes to the purchaser when the object of delivery has left the factory, even if partial deliveries are effected or the supplier has assumed other performances such as shipping costs or delivery and erection. If an acceptance test is to take place, this shall be authoritative for the passing of risk. This must take place promptly on the scheduled date, alternatively, after the readiness for inspection has been notified by the supplier. The purchaser may not refuse acceptance on account of a minor defect.
2. Should shipment or acceptance be delayed or fail to take place as a result of circumstances that cannot be attributed to the supplier, the risk passes to the purchaser as of the day of notification of readiness for shipment and/or acceptance. The supplier undertakes to effect the insurances the purchaser requires at the purchaser's expense.
3. Partial deliveries shall be permitted as far as this is reasonably acceptable for the purchaser.

#### **V. Reservation of Ownership**

1. The supplier reserves the ownership in the object of delivery pending receipt of all payments under the supply contract.
2. The supplier is entitled to insure the object of delivery, at the purchaser's expense, against theft, damage by breakage, fire, water and other damage, unless the purchaser proves he has already taken out this insurance himself.

3. The purchaser may not sell or pledge the object of delivery or use it as collateral. In cases of seizure, attachment or other interventions by third parties, the purchaser must inform the supplier immediately.
4. In the event of contractual infringement on the part of the purchaser, particularly in case of delay in payment, the supplier shall, after reminding the purchaser, be entitled to reclaim the object of delivery, and the purchaser shall be obliged to return the property.
5. Due to the reservation of ownership, the supplier can only demand return of the object of delivery if he has withdrawn from the contract.
6. The supplier is entitled to withdraw from the contract and to demand the return of the object of delivery, if the purchaser becomes insolvent, discontinues his business operations or if an application for the opening of insolvency proceedings has been filed by the purchaser.
7. The purchaser has the right to resell the delivered goods in the regular course of business. However, all the receivables the purchaser incurs from the resale to a buyer or third party shall be preassigned to the supplier to the invoice value of the conditional goods. The purchaser is also authorized after the assignment to collect these receivables, provided he is not in breach of contract or insolvent. The supplier's right to collect the receivables himself remains unaffected by this; however, the supplier undertakes not to collect the receivables as long as the purchaser duly meets his financial obligations to the supplier and there is no case of insolvency. Otherwise, the supplier can request the purchaser to disclose the assigned receivables and their debtors, to hand over all the information and documents required for collection, and to notify the debtors of the assignment. The supplier is under obligation to release the securities to which he is entitled in so far as their value exceeds that of the receivables to be secured by more than 25 % and provided they have not been settled.  
  
If the conditional goods are processed, reconstructed or come together with other items not belonging to the supplier, the supplier will acquire the joint ownership of the object in the proportion of his invoice value to the value of the new object at the time of processing. The same applies to the object resulting from processing as for the conditional goods.

## **VI. Claims on Defects**

The supplier shall warrant for material and legal defects of the delivery, excluding any further claims – save as provided in section VII – as follows:

### Material defects

1. Any parts which prove to be defective as a consequence of circumstances occurring before the passing of risk are to be improved or re-supplied (subsequent performance) in perfect condition at the discretion of the supplier free of charge. The supplier is to be informed immediately in writing after such defects have been ascertained. The purchaser's claims for defects presume and require that he has satisfied his statutory obligations for inspection and reporting of complaints (§§ 377, 381 HGB).
2. Replaced parts are to become the property of the supplier.

3. The purchaser must reach an agreement with the supplier to allow sufficient time and opportunity to carry out all the improvements and/or re-supply the replacement parts deemed necessary by the supplier; otherwise the supplier is to be discharged from the liability for the subsequent consequences arising from this. The purchaser shall only have the right to eliminate the defect himself or appoint a third party to do so, in cases of emergency where operational safety is threatened and/or exceptional damage must be prevented. The supplier must be informed immediately. In such cases, the purchaser is entitled to demand reimbursement of the necessary costs from the supplier.
4. As long as a complaint proves to be justified and it would not result in unreasonably high costs for the supplier, he bears any necessary expenses related to subsequent performance(s). Furthermore, in accordance and to the extent of his statutory obligations, the supplier, in case of the sale of a newly manufactured item, also bears the afforded expense(s) of the purchaser in the event of recourse claims in the supply chain. The subsequent performance neither covers the disassembly of the defective product nor its installation, if the installation was not originally a contractual requirement. The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs shall be borne by the supplier in accordance with the statutory provisions, if there is actually a defect. Otherwise the supplier is entitled to reclaim the costs connected with the unjustified purchaser's demand for subsequent performance (in particular inspection and transport costs), unless the lack of a defect could not be detected by the purchaser.
5. The purchaser shall have the right, within the scope of statutory regulations, to withdraw from the contract if the supplier – under consideration of the statutory exceptions – fails to comply with any reasonable time period for making improvements or replacement deliveries resulting from a material defect. In cases of a minor defect, the purchaser shall only be entitled to a reduction of the contract price. The right to a reduction of the contract price remains otherwise excluded.
6. Any other claims are to be regulated under section VII.2 and 3 of these terms.
7. No warranty shall be given in the following particular cases: Unsuitable or incorrect use, defective assembly and/or commissioning on the part of the purchaser or a third party, natural wear and tear, incorrect or careless treatment, improper servicing, unsuitable operating materials, defective construction work, unsuitable building land, chemical, electrochemical or electrical influences – in as far as these are not the responsibility of the supplier.
8. Should the purchaser or third parties undertake improper improvements, the supplier shall not be liable for the subsequent consequences. The same applies for any other alterations carried out on the object of delivery without prior approval of the supplier.
9. Any warranty becomes invalid and lapses, if the purchaser without approval of the supplier carries out alterations himself or by third parties and thus makes the correction of deficiencies impossible or unacceptably difficult. In any event the purchaser has to bear the additional costs for the correction of deficiencies connected with the alteration.

Legal Defects

10. Should the use of the object of delivery lead to the infringement of commercial protection rights or copyrights in Germany, the supplier shall, at his expense, provide the purchaser with the right for further use or modify the object of delivery in a way that is acceptable to the purchaser, so that any infringement of protection rights is removed.

Should this be impossible on commercially reasonable terms or within a reasonable period of time, the purchaser is entitled to withdraw from the contract. The supplier shall also have the right to withdraw from the contract on the aforementioned grounds. In addition, the supplier shall release the purchaser from any undisputed or legally non-appealably established claims of the relative proprietors of protection rights.

11. The aforementioned duties of the supplier described in Art. VI.10 are to be conclusive for the case of infringement of protection or copyrights subject to Art. VII.2.

They shall be effected only when

- the purchaser immediately informs the supplier of any asserted protection/copyright infringements,
- the purchaser supports the supplier to a reasonable extent in contending the asserted claims and/or enables the supplier to carry out the modification measures according to Art. VI.10,
- all measures of contention, including settlements out of court are to be left to the supplier,
- the legal defect is not due to any instructions by the purchaser and
- the legal infringement was not caused by the purchaser's unauthorized alteration to the object of delivery or by his use of it in a non-contractual manner.

**VII. Liability, Limitation and Exclusion of Liability**

1. When the object of delivery cannot be utilized according to the contract through the fault of the supplier as a result of his failure to act (or act appropriately) on proposals and advice made before or after conclusion of the contract, or through the infringement of other secondary contractual duties – in particular the instructions for operating and servicing the object of delivery – then the provisions in Arts VI. and VII.2 shall apply accordingly, with the exclusion of all other claims by the purchaser.
2. The supplier shall only be liable for damages not occurring at the object of delivery itself – irrespective of the legal grounds – in cases of:
  - a. willful intent,
  - b. gross negligence of the proprietor, the corporate organs or executive employees,
  - c. culpable death, injury and damage to health, or freedom,
  - d. defects which he deceitfully concealed or warranted the absence of,
  - e. within the scope of a guarantee promise,
  - f. defects in the object of delivery, in as far as liability exists under the product liability law for personal injury or material damage in respect of privately used subject matter.

In cases of culpable infringement of major contractual duties (i.e. duties/obligations without the fulfilment of which due performance of the contract would not be possible and the adherence/observance of which the contractual partner regularly relies and is entitled to rely upon) the supplier shall also be liable for the gross negligence of non-executive employees and for slight negligence; in the last instance this shall be limited to contractually typical and reasonably foreseeable damage.

Material contractual obligations – without any claim for completeness – include the obligation of timely delivery and installation of the delivered item (if the installation formed part of the contractual agreement), its freedom from legal as well as material defects which affect its functionality more than just insignificantly, as well as the duties of advice, protection and care which are to enable purchaser to use the delivered item in the contractually agreed manner or are aimed at protecting the life and limb of purchaser's personnel or his property from considerable damage.

All other claims are to be excluded.

3. In the event of slight negligence the liability of the supplier to pay compensation for material damage and any resulting additional financial loss, also in case of an infringement of major contractual duty/obligation, shall be limited to an amount of EUR 1,000,000.00 (in words: one million) per claim and a maximum liability of EUR 10,000,000.00 (in words: ten million) for all damage suffered by the purchaser in the calendar year (in accordance with the current sum insured of our company and product liability insurance). This limitation shall not apply to the liability of the supplier in case of wilful intent, death, injury to life, body or health or liability of the supplier in accordance with the Product Liability Act.
4. The foregoing exclusions and limitations of liability shall apply to the same extent in respect of our executive bodies, legal representatives, staff members and other agents of the supplier.

#### **VIII. Statute-Barring**

All claims of the purchaser – irrespective of the legal grounds – become statute barred one year after the start of the statutory period of limitation. This also applies for any limitation of recourse claims in the supply chain according to § 445b para. 1 BGB, if the last contract in the supply chain is not a consumer good purchase. The statutory provisions on the suspension of time as per § 445 para. 2 BGB shall remain unaffected.

The statutory limitation periods shall apply for the compensation claims under section VII.2 a – d and f. They shall also apply to defects in a building construction or for objects of delivery that were used in a building construction in accordance with their usual manner of use, and caused its defectiveness.

#### **IX. Use of Software**

Should software be included in the scope of delivery, the purchaser will be granted a non-exclusive right to use the supplied software and its associated documentation. It is made available for use specifically on the object of delivery for which it is intended. It is not permitted to use the software on more than one system.

The purchaser may only copy, process, translate the software within the statutory scope permitted under 69 a seq. of the “UrhG – Urhebergesetz” (German Copyright Act), or convert such software from the object code to the source code. The purchaser undertakes not to remove any manufacturers' data – especially references to copyright – or to alter such without the prior express approval of the supplier.

All other rights applying to the software and the documentation, including the copies, shall remain the property of the supplier and/or the software supplier. The granting of sublicenses is not permissible.

**X. Applicable Law, Place of Jurisdiction**

1. All legal relationships between the supplier and the purchaser shall be governed solely by German law under the exclusion of International Private Law, in particular the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention; CISG).
2. Provided the purchaser is a merchant within the meaning of the German Commercial Code, a legal person under public law, or a special asset ("Sondervermögen") under public law or does not have a general place of jurisdiction in Germany, the place of jurisdiction shall be the competent court of the registered office/headquarters of the supplier. The supplier shall, however, be entitled to institute proceedings at the domicile of the purchaser. Mandatory statutory provisions governing exclusive jurisdiction shall remain unaffected by this regulation.

**XI. Priority of the German version**

In case of doubt as to the interpretation and in the event of a conflict or uncertainties between the English and the German version of these General Delivery Conditions, the German version shall prevail.