

§ 1 Introduction

1. The Oskar FRECH GmbH + Co. KG, Schorndorf, hereinafter the "Supplier", sells and delivers solely according to the following terms and conditions. Adverse or deviating terms and conditions of Purchaser are not binding for Supplier, unless Supplier declares its consent in writing. Even if Supplier carries out orders although he was aware of such terms and conditions, this does not constitute and cannot be deemed to constitute acceptance of such other terms and conditions.
2. In case of an ongoing business relationship, these terms and conditions do not require an express reference and become part of every purchase order.

§ 2 Offer and Acceptance of Order

1. An offer by Supplier is non-binding. A purchase order is deemed to be accepted only, when confirmed by Supplier in writing.
2. If and insofar as an offer refers to weight, stated dimensions or similar specifications, for example references to technical designs and images, they are not to be considered as one hundred percent precise within the framework of commercially accepted tolerances, unless explicitly declared as binding.

§ 3 Scope of Delivery

The written order confirmation is decisive for the scope of delivery; in the absence of such confirmation, Supplier's offer shall prevail. Any and all oral side agreements with Supplier's employees, side-agreements and modifications with employees of Supplier require confirmation in writing by Supplier to be effective. Supplier's right to technically modify the article of sale is reserved, as long as such modifications do not affect its technical function.

§ 4 Prices

1. Unless agreed otherwise, prices are calculated "ex works" and include the loading at the factory (EXW Incoterms 2010), but exclude packaging, transport, insurance, customs tax and unloading. These costs will be charged separately, as well as assembly, if applicable. Prices do not include Value Added Tax (VAT), which is added in the respectively current statutory amount.
2. Pricing is based on the costs of material, e.g. of energy, steel and standard wages at the time of conclusion of contract. Should these costs change by more than 10% between start of production and delivery, either party may ask for a price adjustment in accordance with percentage of the changes, i.e. price correction corresponds only to the change of the costs of materials. The respective current status of production will be taken into account when establishing change of such costs of materials or of salaries.

§ 5 Payments

1. Unless otherwise agreed, payments have to be effected without any deduction as follows:
 - machines and accessories: Without any deduction, 30 % down payment after receipt of order confirmation, 60 % upon notice to Purchaser, that the main parts are ready for shipment, and the remainder within 30 days upon notification of total readiness for shipment.
 - spare parts and wear parts: Irrespective of the receipt of the goods by net payment within 30 days of the date of invoice or within 2 weeks with a 2 % discount.
 - Field service and other services: By net payment immediately upon receipt of invoice.
2. Cheques and bills of exchange are accepted in payment only pending full encashment. Payment is only fulfilled after final crediting is confirmed by the bank. Bills of exchange are only accepted, if specifically agreed in the order confirmation. Supplier is not responsible for timeliness of presentation to the drawee or of protesting.
3. If payments are deferred or paid later than agreed, Purchaser is to pay interest in respect of the period of delay in the amount of at least 8 percentage points above the base lending rate of the European Central Bank. Giving notice of default is not a requirement. Supplier is entitled to claim a higher interest if proving a different legal basis.
4. Purchaser only has a right of retention or compensation in the case of counter-claims, if such counter-claims are uncontested or settled by a final court verdict or are otherwise payable and certain.

5. The total outstanding claim becomes due, if Purchaser does not pay his dues, becomes insolvent or a cheque or bill of exchange is not being honoured or if Supplier obtains information about an economic deterioration of Purchaser that may jeopardise the purchase price claim. The total outstanding payment becomes due, even if bills of exchange are in place for payments due in the future. If the total outstanding claim is not being paid immediately, Purchaser loses the right of usufruct regarding the object of delivery. Supplier is entitled to take back the object of delivery or to cancel the contract without renouncing his claim until full payment has been made. If Purchaser has caused the cancellation of the contract, Supplier is entitled to ask for compensation for the use of the object of delivery as well as for any depreciation in value and any lost profits. Any repossession of the object of delivery is at the expense of Purchaser.

6. If a lack of Purchaser's creditworthiness or another cause for a temporary or final jeopardy for the performance of duty of payment transpires after the conclusion of contract, Supplier may suspend deliveries or other contractual performances, if simultaneously giving notice to Purchaser, and requiring payment in advance, bank guarantee or security deposit for providing an otherwise given adequate guarantee for further fulfilment of the contract.

7. In foreign business transactions this right of suspension also applies in cases of currency fluctuations to the disadvantage of Supplier of at least 10% with the relevant period being between the conclusion of the contract and first delivery; the parties commit to negotiate about a solution.

§ 6 Time of Delivery

1. Time of delivery starts upon receipt of the confirmation of order, however not before compliance with the following requirements:
 - receipt of all documents, such as licences, approvals, e.g. of plans, required to be presented by Purchaser,
 - receipt of an agreed down payment and
 - fulfilment of further obligations necessary for the smooth processing of the order.

Otherwise the deadline of delivery is extended accordingly, unless Supplier is responsible for the delay.

2. The deadline of delivery is met once the object of delivery has been shipped from the factory or notice of readiness for the shipment has been given. If the contract requires a final inspection or testing, the date of such is decisive for the time of delivery, or, if rejected, the date of notice of readiness for inspection, unless such rejection is justified. Correct and timely supply to Supplier is reserved.

3. The period of delivery is extended accordingly in the case of labour disputes, in particular strikes and lockouts, as well as of other obstacles, which are unreasonable for Supplier and are beyond his control, if and insofar as they are of influence on the production or delivery of the object of delivery or, if so agreed, its assembly. Such unreasonable obstacles are in particular:

- civil war, mobilizations, blockades, acts of war, riots, sabotage,
- hurricane, tornado storms, flood/low water, earthquakes, seismic/tsunami waves or other extreme natural hazards,
- substantial shortage of certain foreign exchange required for the payment of components
- loading or transport obstructions
- fire, explosion, total or partial destruction of production plants, warehouses,
- machinery breakdown, other damage to machines or machine parts,
- consequences of an energy crisis with impact to national economy, shortage of fuel, auxiliary material or energy,
- labour shortage caused by diseases or epidemics,
- administrative, in particular regulatory and similar action, whether domestic and abroad,
- imminent infringement of national or international regulations,
- in particular of import or export regulations regarding the delivery, or any delays by licensing procedures required under such statutory regulations; Purchaser's obligation to timely present any declarations, documents and other information required and to be obtained by Purchaser under such regulations remains unaffected.

The same applies in respect of similar obstacles affecting sub-suppliers. Even in the event of default, Supplier is not responsible for the aforementioned obstacles. Supplier will inform Purchaser about such obstacle, its ending and the expected new delivery time according to his production and other conditions without delay.

If an unreasonable obstacle persists for more than six months, the terms of the contract shall be adjusted in good faith. If the adjustment is economically unreasonable for one of the parties, such party can withdraw from the contract. If Supplier wishes to withdraw from the contract, he has to inform Purchaser as soon as he becomes aware of the scope of the event, even if an extension of time of delivery had been agreed.

4. Furthermore, Purchaser is not in default with the delivery, if Supplier does not receive on time administrative or other permissions of third parties required for the contractual performance or any documents or information from Purchaser required for the delivery. Subsequent request for changes by Purchaser interrupt the period of delivery, which will only start again upon agreement as to the requested change.
5. If there is a delay of shipping caused by Purchaser of more than a month after notice of readiness for shipment, costs of storage will be charged to Purchaser: If stored at the factory of Supplier, storage charges amount to 0.5 % of the purchase price per each month that had begun and up to the maximum amount of 5 % of the purchase price. The right to prove higher or lower storage costs is reserved. Supplier is entitled to dispose of the object of delivery otherwise, if Purchaser failed to meet a given sufficient deadline to facilitate delivery. Further claims of Supplier because of default in acceptance remain unaffected.
6. If Supplier is in default with delivery or contractual performance, and Purchaser suffers damages because of that, Purchaser is entitled to claim in damages per each week of default 0.5%, in total up to a maximum of 5% of the value of the respective part of delivery that could not be used due to the delay. Further claims for damages are exclusively subject to § 10. Any statutory right to rescind the contract after having given reasonable time, unless legally omissible, is reserved.

§ 7 Terms of delivery, Passage of Risk and Insurance

1. Unless otherwise agreed, deliveries will be executed ex works (EXW Incoterms 2010). If Supplier owes shipment, he has the choice of way and modalities of shipping. Assembly requires acceptance upon inspection.
2. All risks pass to Purchaser as soon as the object of delivery has been shipped, even in the case of partial shipments or if Supplier accepted other duties such as paying shipping costs, shipping and installation. To the extent a certificate of acceptance is required, this is the moment of passing of the risk. Inspection for approval needs to take place without delay at the agreed time and, if no such time was agreed, upon notice of readiness for inspection and acceptance. Purchaser cannot refuse to issue a certificate of acceptance for only minor defects.
3. If shipment is delayed because of circumstances Supplier is not responsible for, the risk passes to Purchaser 10 days after the notice of readiness for shipment. Supplier has to take out sufficient insurance, though, at the request and the expense of Purchaser.
4. Only at the request of Purchaser and at his expense shipment will be insured against theft, damages due to breakage, transport, fire or water as well as other insurable risks.
5. Purchaser is obliged to accept the delivery of goods, irrespective of minor defects; his rights according to § 9 are reserved.
6. Partial shipments are permitted.

§ 8 Retention of Title and Insurance

1. Supplier retains title and the extended reservation of title to the objects of delivery until full payment of all of Supplier's claims including any costs and interest out of all business between Supplier and Purchaser. A foreign Purchaser is obliged to secure the retention of title to the best of his ability under local laws and to inform Supplier about any required additional acts on Supplier's behalf. If the object of delivery is connected to or becomes part of other machinery, bigger construction or plant, the retention of title rests in full force and effect.

2. Purchaser is obliged to take special care of the object of delivery until property passes. Supplier is entitled to insure the object of delivery at the expense of Purchaser against theft, breakage, fire, water and other damages, unless Purchaser proves own such insurance. Purchaser has to effect any necessary service and repair works at his own costs in due time.
3. Purchaser is not entitled to pledging, leasing, renting out, transferring ownership by way of security, selling to third parties or assigning the goods delivered as collateral. In case of pledging, confiscation or other dispositions by third parties, Supplier has to be informed immediately. Purchaser is obliged to bear and to reimburse justified in or out of court intervention costs, such as for the filing of legal action in accordance with Sect. 771 of the Code of Civil Procedure (ZPO).
4. If Purchaser is in breach of contract, in particular in the case of significant delay with payments or of dispositions regarding the object of delivery in violation of the contract (e.g. pledge or transfer of ownership by way of security), Supplier may claim back – after a warning – the goods as a collateral. Such claim for repossession of goods shall not be deemed as a notice of withdrawal. Any additional costs incurred by Supplier shall be borne by Purchaser.
5. If Purchaser sells the goods delivered to a third party in violation of the agreement or with Supplier's consent, Purchaser in this contract already assigns to Supplier in advance his right to and claim for the purchase price under such sale in the amount of Supplier's purchase price claims (including VAT). Supplier accepts this assignment. Supplier is entitled to collect the assigned claim against such third party. Supplier is also entitled to assert and enforce reservation of title to the goods delivered without limitation. Purchaser has to notify Supplier about all details regarding the third party required for collection purposes, provide him with all necessary documentation and notify the third party of the assignment.
6. Any change to or transformation of the object of delivery by Purchaser is always carried out on behalf of Supplier. Supplier will be joint owner calculated as quota of the total sales price (incl. VAT) compared to the procurement value of the other connected material at the time.

If Purchaser connects the object of delivery with other objects not owned by Supplier, Supplier acquires joint ownership calculated as quota of the corresponding total purchase value of the object of delivery (including VAT) to the procurement value of the other objects at that time. If such connection causes Purchaser's objects to be looked at as and/or constitute the main object, Purchaser transfers joint ownership to Supplier. Purchaser possesses such joint or sole ownership in the name of and for Supplier.

If the object of delivery is connected with real estate of a third person, Purchaser assigns to Supplier by way of security any rights and claims arising for Purchaser against such third party as a result of such connection in the amount of the purchase price claim of Supplier (incl. VAT). Supplier hereby accepts the assignment. The assignment of claims to third parties is not permitted.

7. Retention of title and extended reservation of title to the goods are agreed to the effect that upon full payment property and all assigned claims automatically pass to Purchaser. If payment by cheque or bill of exchange has been agreed upon, Purchaser has not fulfilled his payment duties, if and for as long as Supplier remains liable to third parties, in particular a bank.
8. Supplier will, upon request, release collateral, if and insofar as its practically collectable value exceeds the secured claim by more than 10%. Which of the securities to release, is at Supplier's sole discretion.
9. Supplier may rescind the contract, and request the immediate return of the object of delivery in case of an application for insolvency procedures.

§ 9 Liability for Defects of Delivery

If objects of delivery show a defect or lack a guaranteed quality, Supplier is in addition to § 10 liable as follows:

Material defects

1. All parts proving unusable, in particular because of faulty design, poor quality or poor workmanship, or are only of substantially impaired use due to circumstances preceding the passage of risk, are, at the reasonable discretion of Supplier, either to be repaired or to be replaced. Purchaser has to notify Supplier without delay about any detected defects in writing and provide to Supplier upon request the respective parts without delay. Replaced parts become property of Supplier.

2. Purchaser has to grant Supplier, after coordination, sufficient time and opportunity to carry out all tests, repairs and replacements deemed necessary by Supplier; otherwise Supplier is released from liability for any resulting consequences. Purchaser is only entitled to cure a defect himself or through third parties and ask for reimbursement of reasonable and necessary expenses, if there is an emergency due to imminent danger to the operational safety or due to the prevention of disproportionately great damage. In such case, Purchaser has to inform Supplier immediately.

3. If and insofar as a complaint proves justified and timely, Supplier bears the direct costs for repair or replacement as follows:

The costs of the replacement part including domestic shipping or free-at-frontier and including reasonable costs of removal and reassembly. If and insofar as reasonable under the circumstances, Purchaser may also claim reimbursement for required provision of fitters and auxiliary personnel. Such costs are reimbursed to the extent that they incur domestically. All other costs are to be borne by Purchaser.

4. If Supplier fails to meet a reasonable deadline set to cure a defect by replacement, Purchaser may rescind the contract in accordance with the statutory law, in particular requiring, if applicable, three unsuccessful attempts to cure the defect, where necessary and reasonable due to particular complexity, constraints affecting earlier curing attempts or other complicating factors. If a defect cannot be considered substantial, Purchaser may only claim a reduction of the purchase price. Otherwise, a reduction of the purchase price is excluded. If Purchaser rescinds the contract, Supplier takes back the object of delivery in return for the purchase price deducting a compensation for actually possible use, which is to be calculated based on a reducing balance depreciation over the period of use of 8 years referring to goods with a value of over 100,000.00 €, otherwise it is based on a period of use of 4 years.

5. Warranty is excluded for wearing parts and in particular in the following cases:

Improper or inappropriate use, faults regarding assembly or putting the object of delivery into operation by Purchaser or third parties, natural wear and tear, incorrect or negligent handling, wrong servicing, use of inappropriate operating equipment or substitute materials, unsuitable location, chemical, electro-chemical or electric influences – unless such circumstances are part of Supplier's responsibility. Supplier is not liable for the corrosion resistance of the materials used. Corrosive influences may under the circumstances be subject to considerable changes during the operating time.

6. Supplier is not liable for any consequences due to improper modifications or maintenance conducted by Purchaser or by third parties. The same applies with regard to the use of third party products as spare parts, where the original parts are required to guarantee the functionality of the object of delivery.

7. Supplier accepts liability for maintenance provided without any legal obligation only if and insofar as agreed in writing. The same applies regarding the compliance with technical and legal rules outside of the territory of the country Purchaser holds his main seat of business in.

Defect in title

8. If the use of the object of delivery violates any industrial property rights or intellectual property in the country Purchaser holds his main seat of business in, Supplier will at his expense either facilitate the right of Purchaser to continue his use or modify the object of delivery in a way reasonably acceptable to Purchaser so that further use does not constitute such violation.

If the aforesaid is not possible due to unreasonable economic burdens or not possible within reasonable time, Purchaser may rescind the contract. Under such conditions, Supplier is also entitled to rescind the contract.

In addition Supplier will indemnify Purchaser against any uncontested or unappealable and binding claims of third party holders of industrial property rights. The same applies, if the third party holds a final judgement in his favour.

9. All obligations according to para. 8 have as a requirement that
- Purchaser informs Supplier about the asserted infringement without delay,
 - Purchaser supports Supplier's defence against such claims appropriately,
 - Any measures of defence including agreements in court and out of court are reserved for Supplier.
 - The defect of title is not a consequence of an instruction of Purchaser.
 - The infringement is not a result of an unauthorized modification to the object of delivery or a use of it contrary to the contract on the part of Purchaser.

§ 10 Liability

In a case of an injury to life, limb or health or of an act of intent, Supplier is liable in accordance with the statutory law without limitation. The same applies to acts of gross negligence by his legal representatives and his executive staff and regarding liability under the German Product Liability Act (Produkthaftungsgesetz - ProdHaftG). In the event of a breach of a so-called "cardinal-obligation", which is a breach of contractual duties that are essential to the execution of the contract and on which Purchaser may reasonably rely, and in the event of defects which have either been fraudulently concealed or constitute a breach of a guarantee that such defect will not occur, Supplier's liability is limited to such damages insurable, foreseeable and typical for the contract.

Supplier will assign to Purchaser any insurance claims regarding product liability or third-party liability, who will in return release Supplier from any liability in the amount of such insurance cover. Further claims of Purchaser for damages or reimbursement of expenses are excluded, in particular claims for consequential damages such as loss of production, loss of use, loss of profit. These provisions do not affect or alter the burden of proof.

§ 11 Impossibility of Performance, Inability, Default of Delivery

1. Purchaser is entitled to rescind the contract without prior notice, if the performance of the whole contract becomes impossible before passing of risk. Purchaser may also rescind the contract, if the execution of an order becomes partially impossible and if Purchaser has a legitimate interest to object to a partial delivery.

Otherwise, Purchaser has to pay the contractual price reflecting the partial delivery.

The same applies if Supplier is unable to deliver. Any further liability is exclusively subject to § 10.

If Purchaser is in default with accepting delivery, when such situation of impossibility or inability of delivery arises, Purchaser's payment obligation survives and continues in effect.

2. If Supplier is late with the performance of the contract and Purchaser sets a reasonable deadline, unless such is not required under the law, and Supplier fails to meet this deadline, Purchaser may rescind the contract in accordance with the statutory law. Any further rights and claims for default are exclusively subject to §§ 6, 10.

§ 12 Statute of Limitations

1. Warranty claims are statute-barred within 12 months from the date of passing of risk or, if applicable, from the date of an agreed acceptance upon inspection. The statutory period of limitation concerning buildings and such objects of delivery, which are usually used for buildings and have caused their faultiness, remain unaffected (Sect. 438 para. 1 No. 2, Sect. 634 para.1 No. 2 of the German Civil Code (BGB)).

Regarding repair work or replacements, such claims are statute-barred after six months, not earlier than according to the original period according to the initial period of limitation, though.

2. Claims for damages of Purchaser are time-barred after 18 months from awareness of both the damage and who is responsible.

§ 13 Software Licensing

If the object of delivery includes software, Purchaser obtains a non-exclusive license to use the software on the basis of the enclosed manual. Provision of software is for use on the agreed hardware only. Use of software on more than one system requires written approval. Software delivered to Purchaser is not to be modified without written permission.

§ 14 Special Terms and Conditions, Installation, Assembly and Acceptance upon Inspection

1. If deliveries include the installation and, where applicable, the assembly, the General Terms and Conditions for the Assembly of Machines and Machine Parts of Oskar Frech GmbH + Co. KG or respectively the General Terms and Conditions for Services of Oskar Frech GmbH + Co. KG apply as currently valid apply.
2. The scope of the order as stipulated in the contract determines, which of the following additional services are to be performed:
 - 2.1. Test run at manufacturer's factory
The usual scope of an order does not include a test-run, without metal, at the factory of the manufacturer. The Purchaser will upon delivery obtain together with the documentation the assembly instructions and installation instructions according to the 9th Statutory Order to the German Equipment and Product Safety Act in conjunction with the EC-Directive 2006/42.
 - 2.2. Acceptance upon inspection
Upon delivery of the machinery as ready for use and, if applicable including peripherals, installation, putting-into-use and notice of readiness for acceptance, Purchaser has to inspect the machinery and accept the delivery, where applicable, by executing the certificate of acceptance. Unless otherwise agreed, the inspection run takes place "dry" without metal.
Acceptance is deemed to be effected, if Purchaser does not raise justified warranty claims in writing within 8 weeks in regards of machines with peripherals, otherwise within 4 weeks, respectively from the date of delivery.
Acceptance is also to be deemed as effected, if Purchaser refuses the acceptance test-run without justified reason. Purchaser is not entitled to refuse the acceptance because of minor defects, which do not affect the quality, productivity or safety of the machine. Acceptance cannot be refused, if Purchaser uses the object of delivery for production.
 - 2.3. Installation and initial use
Installation, initial use at Purchaser's plant and training of operating staff have to be commissioned separately.

Performance of services according to para. 2.1, 2.2 and 2.3 does not constitute a placing on the market nor a start of operations of the same by Supplier according to the 9th Statutory Order to the German Equipment and Product Safety Act in conjunction with the EC-Directive 2006/42.

§ 15 Confidentiality, Industrial Property Rights

1. Supplier reserves the right of property, copyright and all other industrial property rights and his know-how regarding all and any designs, plans, user manuals, technical descriptions, costs, estimates and other tangible, intangible or electronic information. Such documents are not to be copied, nor to be used for non-contractual purposes without written permission, nor to be made available to third parties (not even as part of enquiries), nor to be published. The same applies to any trade secrets, know-how or secrets in relation to Supplier's business or to any production process disclosed to Purchaser or otherwise having come to his knowledge.
2. Purchaser acknowledges all patent rights, copyright and other industrial property rights of Supplier, also regarding any software provided, irrespective of whether such rights are governed by German or applicable foreign law. This protection also extends to the protection of any copies of any software provided. Sub-licensing to third parties is not permissible without written permission of the Supplier.
3. Any reproduction of any machinery, plants, components or parts delivered by Supplier is not permitted. Supplier will exhaust every means under civil and criminal law available worldwide to pursue any violation without exception. As far as permitted by law, not only claims for actual damages, but also for punitive damages will be asserted.
4. So-called reverse engineering, i.e. the analysis of the structure and the function of the software provided by Supplier is also not permitted. Para. 3 applies accordingly.
5. These above obligations only cease, if and insofar as any such data can be shown and proven to having been already in Purchaser's possession prior to Supplier's transmission, or to which Purchaser was given access by a duly authorized third party independent from the present sales and delivery process, or where already made public independent from the sales and delivery process without Purchaser's fault.

§ 16 Privacy

All data of Purchaser are being kept as confidential. According to Sect. 33 German Federal Data Protection Act (BDSG), Purchaser is advised that Supplier files the contract data in machine-readable form solely in the scope of the purpose of contract.

§ 17 Place of Performance and Venue

1. The factory of Supplier is the place of performance for deliveries and for services.
2. All written communications to Supplier, provided for in these GTD, need to be sent directly to the headquarters of Supplier in DE-73614 Schorndorf, Germany.
3. In the event of any dispute arising out of or in relation to the contractual relationship between the parties, the courts competent for Schorndorf have jurisdiction and venue. Supplier does, however, also have the right to bring an action against Purchaser at the courts with jurisdiction over Purchaser.

§ 18 Applicable Law

1. These present GTD and the entire legal relationship between Supplier and Purchaser shall be exclusively construed in accordance with and governed by the Laws of the Federal Republic of Germany excluding the application of the UN-Convention on the International Sale of Goods (CISG).
2. Should any provision in these present GTD or any provision within the framework of the present contract be or become invalid, this shall not affect the validity of all other provisions of this present contract. The parties undertake to replace such invalid clause by a valid clause which proves to be in economic terms as close as legally possible to the previous provision.
3. Any amendments or side agreements require written confirmation by Supplier to be effective.