

# **Sales Terms and Delivery Conditions of Frank Bürsten GmbH**

## **1. Scope**

(1) For all contracts with a company, the following Sales Terms and Delivery Conditions shall exclusively apply. We shall not acknowledge any sales terms and delivery conditions, which contradict or differ from our Sales Terms and Delivery Conditions, unless we have explicitly consented to their validity in writing.

(2) All agreements, which are concluded between us and the ordering party for the purpose of fulfilling this contract, are to be confirmed in writing.

## **2. Offers**

(1) Our price offers are subject to confirmation and shall become binding on the basis of our written order confirmation.

(2) Price increases after conclusion of a contract shall be admissible, if one of the raw material prices unforeseeably increases by more than 5%.

## **3. Prices, payment terms**

(1) If not otherwise stated, all prices are in euro and without VAT.

(2) If not agreed otherwise, the prices shall be valid ex factory Schönau, plus freight and packaging. These shall be invoiced separately.

(3) If not agreed otherwise, the net invoice amount shall be payable thirty days after receipt of the invoice. After the expiry of this period, the buyer shall enter into default, also without a separate demand note. In the case of payment default by the buyer, we shall be entitled to demand default interest in the amount of eight percentage points over the base interest rate. The assertion of a further loss shall not be excluded by this.

## **4. Delivery, call-off orders**

(1) If we do not comply with the delivery period, the buyer shall be entitled and obligated to set an adequate grace period for the delivery for us in writing. After unsuccessful expiry of this grace period, the buyer shall be entitled to withdraw from the contract.

(2) Fulfilment of our delivery obligation is subject to timely and proper fulfilment of the ordering party's obligation.

(3) The ordering party shall only be entitled to compensation claims in the amount of the anticipated loss, if the default is based on a deliberate act or gross negligence.

(4) The buyer shall only be entitled to claim compensation for a maximum of up to the order sum.

(5) Partial deliveries are admissible.

(6) For call-off orders, we shall be entitled to procure the material for the entire order and immediately produce the entire order quantity.

## **5. Transfer of risk, shipping**

- (1) If not agreed otherwise, the delivery shall apply ex factory Schönau.
- (2) If no other instructions from the buyer exist, the delivery shall always take place using the delivery method, which we regard as being most favourable.
- (3) The transfer of risk shall take place according to the Incoterms and will be agreed in the order confirmation. If no agreement exists, the risk shall transfer to the buyer, as soon as the goods leave the factory.
- (4) For deliveries with a goods value below EUR 1,000.--, the buyer shall bear the shipping costs.
- (5) For deliveries with a goods value from EUR 1,000.--, if not agreed otherwise, we shall deliver at our expense, either
  - DAP (delivered at place) to an address in Germany or
  - FCA (free carrier) to a harbour in Germany or
  - CIP (carriage and insurance paid to) to an airport in Germany or
  - DAF (delivered at frontier) Germany.
- (6) We use Euro pool palettes in Germany and the Netherlands which must be exchanged.

## **6. Warranty for defects, compensation**

- (1) If not agreed otherwise, with timely and justified notification of defects regarding the goods, we shall be entitled, at our option, to take the goods back and replace them with goods that comply with the contract or repair the delivered goods. If the ordering party has set a further grace period for us after an initial request, without a result, or if the repair or replacement delivery should fail, the ordering party shall be entitled to withdraw from the contract or demand a reduction in the purchase price.
- (2) Our liability for compensation will be based on the legal regulations, if the loss is due to a deliberate act or gross negligence. Liability for slight negligence is excluded, as long as no culpable infringement of a material contractual obligation exists. The liability limitation shall not apply to injury to life, limb or health of a person, with guarantee liability and also not for claims asserted on the basis of the product liability law.
- (3) With slightly negligent infringement of a material contractual obligation, the compensation claims of the buyer shall be limited to the typical, foreseeable loss.

## **7. Reservation of ownership**

- (1) The goods shall remain our property until receipt of full payment.
- (2) The buyer must immediately notify us, if measures by third parties or other events should jeopardise our rights. In the case of distraint or seizure of the goods, the buyer must notify the third party regarding ownership by the seller. He must notify us immediately in writing about such measures or events.
- (3) The buyer shall be entitled to sell the goods on during the ordinary course of business. However, he already assigns all claims to us now, which he acquires from onward sales, in their full amount. The buyer shall also be entitled to collect these claims after their assignment. The collection authorisation can be revoked, if the buyer enters into payment default or has filed an application for bankruptcy or composition.

## **8. Legal jurisdiction, law**

(1) The legal jurisdiction is Schönau im Schwarzwald, as far as it is legally admissible.

(2) The law of the Federal Republic of Germany shall apply, excluding the UN Convention on the International Sale of Goods.

## **9. Miscellaneous**

(1) Custom-made products will not be taken back. We reserve the right to an excess or shortfall delivery by up to 10%.

(2) Order quantities which deviate from standard packaging quantities will be rounded up or down to the respective quantities.

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Geschäftsführer: Stefan Ganzmann

As of 01.11.2021