

## General Terms & Conditions of Purchase Frerk Aggregatebau GmbH

### **§1 Scope of application**

1. Enquiries, Orders, Order acknowledgements and the receipt of deliveries and services are based on these General Terms & Conditions of Purchase (GTCP), complemented by our GTC. Opposing Terms & Conditions from our Contractors won't be acknowledged, unless we have explicitly agreed to their validity in writing. Our GTCP shall apply even if we accept the Contractor's delivery, knowing their GTC are contrary or deviate from our GTCP.
2. All Agreements must be made in writing.
3. Our GTCP apply to all contracts between Frerk Aggregatebau GmbH (Frerk) and entrepreneurs in accordance with §14 BGB (German Civil Code).

### **§2 Offer, Order and Contract**

1. These GTCP are applied to all contracts under which we receive Deliveries and Services.
2. Offers being sent by the Contractor are valid for a period of 60 days.
3. Our orders require written form to be deemed valid. All documents submitted (e.g. drawings, samples, specifications acc. to §4) are part of the order.
4. The Contractor's confirmation of our order must be declared via Order Acknowledgement without delay, but no later than 5 working days after the receipt of our order. After this period, our order is pending ineffective. We are entitled to cancel or confirm our order.
5. If the parties agreed to a separate Quality Assurance Agreement (QAA), this QAA as well as the specified delivery and packaging instructions form an integral part of our order.

### **§3 Prices, payment terms and invoicing**

1. The prices are fixed prices. They include all expenses relating to the Deliveries and Services provided by the Contractor. Statutory VAT is not included.
2. Frerk pays after performance of the Contract and receipt of an orderly invoice Frerk pays either in 14 days with a 3% discount or within 45 days net.
3. If the Contractor fails to deliver the documentation within 14 days of performance as per par.4, Frerk will withhold 10% of the net order sum.
4. All invoices need to include Frerk's order number and PO number.
5. Invoices can't be sent with the shipment but must be sent per mail to invoice@ferk-aggregatebau.com or as an e-invoice.



6. According to the statutory provisions, Frerk shall be entitled to retention and set-off. The assignment of claims to third parties is not permitted.

## **§4 Documentation**

1. The complete technical documentation of all delivered components needs to be provided as first issue on delivery and sent via mail in PDF-format to [dokumentation@ferk-aggregatebau.com](mailto:dokumentation@ferk-aggregatebau.com).
2. The digital documentation contains:
  - Technical documents (e.g. Schematics, bill of materials, drawings)
  - Proof of conformity to standards (e.g. DIN EN 61439)
  - CE Declaration of Conformity
  - Operating and maintenance manual
  - Test protocols (e.g. Factory Test report, parts certificate for switchgear assembly)
  - Spare parts list
  - Further relevant documents (e.g. Safety data sheets, certificates)
3. Project specific requirements for the documentation, software and special formats of the documentation will be explicitly specified in our order.  
These contain:
  - Special requirements for structure or level of detail of the documentation
  - Specification for construction and planning software (e.g. EPLAN, Auto-CAD) and the release
  - Requirements for the formats of the digital documents (e.g. DWG, DXF, PDF).
4. The specifications in the order are obligatory.
5. The documentation shall be retained throughout the life cycle of the product and made available on request.
6. A copy of the relevant documents will be released to the end customer.
7. Compromised data, e.g. ZIP files cannot be accepted due to firewall restrictions. Single files or uncompressed data must be used. For larger files a download link can be provided (e.g. secure cloud provider, internal server) The link can be sent directly to the Contractor's mail.



## **§5 Delivery, delivery period, delay and examination obligation**

1. Delivery periods and dates are binding. Delivery periods shall begin upon receipt of the order acknowledgement. Changes and additions to the order will not affect the delivery date unless otherwise agreed.
2. Deliveries will be made according to CIP (Carriage Insurance Paid, Incoterms 2020) to the specified delivery address, incl. packaging. Incoming goods must be delivered during our business hours (as per our website).
3. Deliveries and Services from a foreign country in the EU must include the VAT identification number.
4. Taxes must be paid on imported goods. The Contractor shall, at his own expense, provide declarations and information in accordance with Regulation (EC) No 1207/2001. He must allow inspections by the customs authorities and provide the necessary official confirmations.
5. Authorisation requirements for exports and re-exports need to confirm to the German, European and US-American export and customs regulations. Export and customs regulations of the exporting country must be expressly declared in writing by the Contractor.
6. Dispatch notes must be issued in good time, stating the order, order number and item number. Our shipping instructions must be followed. The Contractor shall be liable for any damage caused by non-compliance.
7. Unless otherwise agreed, the goods must be packed in a dry and transportable manner. At our request and after notification, the Contractor shall be obliged to take back the packaging at its own expense.
8. The Contractor warrants that the materials supplied are not contaminated. If costs are incurred for the removal of contamination, the Contractor shall reimburse these costs.
9. If an agreed interim or final deadline cannot be met, the Contractor shall immediately give notice thereof in writing, stating the reasons and the expected duration of the delay. Any additional costs shall be borne by the Contractor.
10. In the event of a delay, a penalty of 0.2% per calendar week shall be payable, maximum 5% of the net order value. The contractual penalty doesn't need to be reserved when accepting the performance and can be asserted until the final invoice is issued.
11. After expiry of a reasonable grace period, we are entitled to refuse acceptance, withdraw from the contract or claim damages for non-performance. If the Contractor is not liable for the delay, the right of withdrawal shall remain unaffected. Any additional costs incurred by



us as a result of the delay, e.g. due to a covering purchase, shall be reimbursed by the Contractor.

12. Early and partial deliveries shall only be permitted with our express written consent. We reserve the right to refuse acceptance in the event of early delivery.

## **§6 Acceptance and transfer of risk**

1. The risk shall pass upon successful completion of the acceptance. Commissioning or use does not replace the declaration of acceptance.
2. If no acceptance is intended, the risk shall pass upon acceptance of the goods at the place of performance.
3. Title shall pass on delivery of the goods.
4. There shall be no extension or prolongation of the retention of title.

## **§7 Defects and warranty**

1. Immediately upon delivery, the shipment shall be inspected for the quantity and type ordered, externally recognisable transport damage and defects. The Customer shall not be subject to any further inspection obligations in express limitation of §377 HGB.
2. If defects other than those covered by par. 1 are discovered and notified only during installation or in-service, the obligation to inspect and notify shall be complied with.
3. The Contractor shall indemnify us against third party claims in the event of a defect in title.
4. The Contractor shall remedy the defect or supply a replacement in the event of a material defect. The necessary cost shall be borne by the Contractor. This is without prejudice to our right to compensation for damages.
5. The warranty period shall be 36 months after transfer of risk unless a longer warranty is required by law.
6. If we incur transport, labour or material costs as a result of the defective delivery, these costs shall be borne by the Contractor.

## **§8 Product guarantee**

1. The contractor shall compensate us for the damage incurred if a claim is made on the basis of product liability directives. The costs of any necessary recall shall also be included in this damage.
2. The Contractor is obliged to maintain business liability insurance with a cover of at least EUR 5.000.000 per claim.



## **§9 Free-issued material**

1. The ownership of free-issued material shall remain with Frerk.
2. The material shall only be used for its intended purpose. Any instructions for processing or merging must be given in writing.
3. In case of processing or merging of the free-issued products, co-ownership of the new product shall be transferred in proportion to the value of the free-issued component.

## **§10 Force Majeure**

1. Unforeseeable, unavoidable and/or extraordinary events for which we are not responsible (Force Majeure) and which affect our operations shall release us from our obligation to accept.
2. We are entitled to cancel the contract if such an event lasts longer than three months, unless it is a bespoke product.
3. The Contractor shall not be entitled to any damages incurred by Force Majeure.

## **§11 Copyright & Commercial IP rights**

1. Drawings, samples, procedures, etc. provided with our orders shall remain our property. The contractor undertakes not to use the aforementioned documents for purposes outside the fulfilment of the contract. They shall be returned to us no later than the final completion date of the order.
2. These documents may only be disclosed or made available to third parties if it is essential for the fulfilment of the contract and our written consent has been obtained.
3. All non-public commercial and technical details of our business relationship shall be treated confidentially and shall not be disclosed to third parties.
4. The Contractor shall be liable for ensuring that the use or resale of the goods or services ordered does not infringe the industrial property rights of third parties (patents, utility models, trademarks, licence rights, etc.).
5. The Contractor shall indemnify us against all claims in case of infringement of third-party rights for which he is liable. In the event of infringement of third-party industrial property rights, we shall be entitled to cancel the contract and claim compensation.
6. We shall be entitled to all industrial property rights arising from an invention and/or know-how acquired in connection with the fulfilment of the contract.



7. We are entitled to sole ownership and copyright of drawings, models, tools, devices or software which serve as aids for the fulfilment of the contract. We are entitled to make these available to third parties or to use them ourselves.

## **§12 Safety, Documentation**

1. The Contractor's performance must comply with applicable legislation, standards and guidelines
2. The relevant certificates, test reports and verifications must be supplied free of charge and are an integral part of the contractually owed documentation. Documentation also includes the EC Declaration of Conformity in accordance with the applicable Machinery and EC Directives.
3. The delivery obligation is not fulfilled until the complete documentation has also been submitted.
4. Software specifically created for us must also be supplied in the source format.
5. If the Contractor carries out deliveries or services on our premises, the Contractor is obliged to comply with the instructions on safety, environmental protection and fire protection for third parties

## **§13 Anticorruption**

1. The Contractor confirms that he has not been involved in any unlawful agreements restricting competition in the last two years and that no antitrust or commercial law investigations are pending against him.
2. Without prejudice to any other rights, we shall be entitled to terminate the contract without notice if the Contractor or his employees
  - a. promises, offers, grants gifts, other benefits or other advantages to our employees entrusted with preparing, concluding or executing the contract,
  - b. commits or aids and abets criminal offences against us under § 298 StGB (agreements restricting competition in invitations to tender), § 299 StGB (bribery and corruption in business transactions), § 333 StGB (granting of advantages), § 334 StGB (bribery).
3. In the event of a breach of par. 1 or 2, the Contractor is obliged to pay a contractual penalty of 5% of the net order value. Further claims for damages shall remain unaffected.



## **§14 Place of fulfilment and jurisdiction**

1. Place of fulfilment is the residence of the buyer: Industriestraße 1a, 27333 Schweringen, Germany.
2. Place of jurisdiction is the residence of the Contractor. We shall also be entitled to sue at the registered office of the contractor.
3. This Agreement is governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods. (CISG).