

# General Terms and Conditions of Delivery

## 1. General Information, Orders

- 1.1 These General Terms and Conditions of Delivery govern all deliveries or services ("Deliveries") by FRÄNKISCHE in transactions with businesses. Regarding existing business relationships, the latest version of these General Terms and Conditions of Delivery applies. If the customer's General Terms and Conditions differ, effected Deliveries do not constitute an acceptance of the customer's General Terms and Conditions.
- 1.2 Individual agreements expressly deviating from these General Terms and Conditions of Delivery take precedence.
- 1.3 Technical and design deviations from descriptions and data in brochures, catalogues, written documents, and data media as well as model, design, and material changes in the course of technical progress or in the case of changes in the market situation remain reserved without allowing the customer to derive therefrom any rights against FRÄNKISCHE. FRÄNKISCHE is in particular entitled to make reasonable and appropriate changes to products and production processes required for an adaptation to technical conditions that have changed after contract conclusion. Customary quality tolerances do not constitute a deviation from the contractually agreed performance.
- 1.4 If the order confirmation differs from the customer's order, FRÄNKISCHE will only be bound to the order if FRÄNKISCHE has subsequently consented to the order in writing. In particular, FRÄNKISCHE will only be bound to the customer's general terms and conditions insofar as these are in compliance with the latest version of FRÄNKISCHE's General Terms and Conditions of Delivery or if FRÄNKISCHE has consented to the customer's general terms and conditions in writing. Any changes or amendments to the order confirmation by the customer will only be effective if confirmed by FRÄNKISCHE in writing.

## 2. Prices, Terms of Payment

- 2.1 All prices are ex works exclusive of packaging and plus applicable VAT.
- 2.2 Payments are due within 30 days from invoicing. After the due date, default interest of 9 % above the respective base interest rate per year will be charged. Furthermore, FRÄNKISCHE reserves the right to claim a lump-sum compensation in the amount of EUR 40.00. FRÄNKISCHE also reserves the right to claim further damage caused by delay, which is to be offset against the lump-sum compensation.

## 3. Industrial Property Rights

- 3.1 Deliveries by FRÄNKISCHE to the customer do not constitute a transfer of any rights of use (e.g., licences) of the underlying industrial property rights and copyrights. With regard to standard software, the customer has the non-exclusive right of use with the agreed performance characteristics in unchanged form on the agreed devices. The customer may create two backup copies without an express written agreement.
- 3.2 Unless otherwise agreed in writing, FRÄNKISCHE is obliged to effect the Delivery free of industrial property rights in the country of the place of delivery only.
- 3.3 FRÄNKISCHE reserves its absolute rights of property and use of copyright in respect of cost estimates, drawings, and all other documents (hereinafter referred to as "Documents"). The Documents must only be disclosed to third parties with FRÄNKISCHE's prior written consent and must be returned immediately without request if the order is not placed with FRÄNKISCHE or when the order has been completed. The foregoing applies accordingly to the customer's documents; however, these may be disclosed to such third parties to which FRÄNKISCHE has permissibly transferred (partial) deliveries.

## 4. Title, Retention of Title, Tools

- 4.1 The title to all Delivery items remains with FRÄNKISCHE until all claims arising from the business relationship due to FRÄNKISCHE against the customer have been fulfilled.
- 4.2 Any tools manufactured for the Delivery, even individual ones, remain the property of FRÄNKISCHE, even if the customer reimburses the development of tools completely or proportionately. If tools pass into the customer's or a third party's ownership in accordance with a separate agreement, the tools will nevertheless remain with FRÄNKISCHE. FRÄNKISCHE has a respective right of ownership unlimited in time. The customer bears the risk of accidental perishing or accidental deterioration and all costs and measures for maintaining the tool.
- 4.3 FRÄNKISCHE's provisions as to "BASIC AND EXTENDED RETENTION OF TITLE" are part of these General Terms and Conditions of Delivery and the Deliveries by FRÄNKISCHE. Regarding existing business relationships, the latest version of these provisions applies. FRÄNKISCHE makes these provisions available for inspection or consignment and on its website under *Download*.

## 5. Delivery, Default

- 5.1 Partial deliveries are admissible insofar as they are reasonable for the customer.
- 5.2 Adherence to agreed periods of delivery depends on all documents, necessary permits and approvals, in particular plans, to be provided by the customer being supplied in time, and on the customer's compliance with the terms of payment and any other obligations. If these requirements are not met in time, the delivery periods will be extended appropriately; this does not apply if FRÄNKISCHE is responsible for the delay.
- 5.3 If non-compliance with the delivery periods is attributable to a force majeure, e.g., mobilization, war, riot, embargo, or similar events such as strike or lockout, the periods will be extended appropriately.
- 5.4 If dispatch or delivery is delayed at the customer's request by more than two weeks after notification of readiness for dispatch, the customer can be invoiced storage charges in the amount of 1 % of the delivery price per month or part thereof, however, not exceeding 5 % of the delivery price in total. The contracting parties are free to prove higher or lower storage costs.
- 5.5 In the case of default of acceptance or any other culpable breach of duties to cooperate on the part of the customer, FRÄNKISCHE will be entitled to compensation for the resulting damage, including any additional expenditures. Any further claims remain reserved.

## 6. Passing of Risk

- 6.1 The risk passes to the customer as follows – even in cases of carriage paid deliveries: a) If delivery does not include setup or assembly: when dispatched or collected; at the customer's request and cost, deliveries by FRÄNKISCHE can be insured against the usual transport risks. b) If delivery includes setup or assembly: on the day of receipt by the customer or, if agreed separately in writing, after a successful trial run.
- 6.2 If the dispatch, delivery, commencement, execution of setup or assembly, receipt by the customer, or test operation is delayed for reasons the customer is responsible for, or the customer is in default of acceptance for other reasons, the risk of accidental perishing or accidental deterioration will pass to the customer.

## 7. Setup, Assembly, Acceptance

- 7.1 The customer is obliged to bear the costs for and provide in time: (i) all extra work outside the particular sector of industry, including necessary skilled and unskilled labour, building materials, and tools; (ii) the commodities and materials required for assembly and commissioning such as scaffolding, lifting gear, and other devices, fuels and lubricants; (iii) energy and water at the site of use, including connections, heating, and lighting; (iv) at the assembly site, suitable and sufficiently large dry and lockable space for storing machine parts, equipment, materials, tools, etc., and suitable work and recreation rooms for the assembly personnel, including suitable sanitary facilities; (v) protective clothing and safety devices that are necessary at

the assembly site due to special circumstances; (vi) besides, the customer is obliged to take those measures for the protection of the property of FRÄNKISCHE and the assembly personnel at the construction site that the customer would take to protect their own property.

- 7.2 Before assembly work commences, the customer must provide without request the necessary information on the position of concealed power, gas, and water supply lines or similar installations, as well as the required static data.
- 7.3 Before setup or assembly commences, the provisions and items required to commence work must be available at the place of setup or assembly and all preliminary work must have progressed so far that setup or assembly can be commenced as agreed and performed without any interruptions. Access roads and the setup or assembly site must be flattened and cleared.
- 7.4 If setup, assembly, or commissioning is delayed due to circumstances FRÄNKISCHE is not responsible for, the customer must bear all reasonable costs incurred by FRÄNKISCHE for the waiting period and for additionally necessary travels of FRÄNKISCHE or the assembly personnel.
- 7.5 The customer must immediately attest to FRÄNKISCHE the assembly personnel's working time as well as the completion of setup, assembly, or commissioning.
- 7.6 If FRÄNKISCHE demands acceptance of the Delivery in the case of work performance after completion or another agreed acceptance of Delivery, the customer must perform this within two weeks. If the customer fails to do so, the acceptance will be regarded as performed. Acceptance will equally be regarded as performed if the Delivery has been brought into use – if applicable, after completion of an agreed trial phase.
- 7.7 After delivery and even after passage of title, the customer grants FRÄNKISCHE or any third parties commissioned by FRÄNKISCHE – in justified cases and within reason – access to all goods delivered by FRÄNKISCHE, in particular in the event of necessary investigations to reveal defects (alleged by the customer or third parties) or necessary inspections by test and certification bodies as well as authorities.

## 8. Warranty, Liability

- 8.1 Claims based on defects are excluded in the case of a merely insignificant deviation from the agreed quality, an only insignificant impairment of the usability, wear and tear, or any damage occurring after the passing of risk as a result of improper or careless handling, excessive use, unsuitable equipment, defective construction work, unsuitable subsoil, or particular external circumstances not anticipated in the contract, as well as in the case of non-reproducible software errors.
- 8.2 If the customer or a third party performs improper actions, modifications, or repair work, no claims for defects or any other claims can be asserted for these or the resulting consequences.

- 8.3 The customer may not refuse acceptance of Deliveries due to insignificant defects.
- 8.4 The customer must immediately notify FRÄNKISCHE of any defects in writing.
- 8.5 In the case of a notice of defects, the customer may withhold payments to an extent that reasonably reflects the occurred defects. The customer may only withhold payments if the validity of the notice of defects asserted is beyond doubt. If the notice of defects proves to be unjustified, FRÄNKISCHE will be entitled to claim from the customer compensation for the expenses incurred.
- 8.6 Contrary to Section 438 (1) no. 3 and Section 634a (1) no. 1 of the German Civil Code (BGB), the limitation period for claims for defects is 12 months after the passing of risk.
- 8.7 First, FRÄNKISCHE is to be given the opportunity to effect subsequent performance within a reasonable period. At FRÄNKISCHE's choice, all those parts of a Delivery are to be repaired or newly delivered free of charge that show a defect within the limitation period, provided that its cause already existed at the time of passing of the risk.
- 8.8 If the subsequent performance fails after three unsuccessful attempts to repair, the customer may withdraw from the contract or reduce the payment — irrespective of any claims for damages. The customer may not claim compensation for wasted expenditure.
- 8.9 Claims by the customer due to the expenses necessary for the subsequent performance, in particular costs for transport, travel, labour and material, are excluded insofar as the expenses increase because the delivery item was subsequently transported to a location other than the customer's premises, unless the transport is in compliance with the proper use of the item.
- 8.10 Claims for damages by the customer are excluded, for whatever legal reason, in particular all claims based on breach of contract or tort. This does not apply in cases of compulsory liability, e.g., in accordance with the German Product Liability Act, in cases of wilful intent, gross negligence, injury to life, limb or health, or on account of a breach of fundamental contractual obligations in the case of simple negligence.
- 8.11 Compensation for a breach of fundamental contractual obligations is, however, limited to the foreseeable damage typical of this type of contract, unless caused by wilful intent or gross negligence or on account of a liability for injury to life, body or health, or under a guarantee. The aforesaid provisions are not associated with a reversal of the burden of proof to the detriment of the customer.
- 8.12 If a third party raises justified and not statute-barred claims against the customer based on the infringement of industrial property rights by Deliveries effected by FRÄNKISCHE and used in accordance with the contract, FRÄNKISCHE will be liable to the customer within the warranty period (Section 8.6) as follows: (i) At its own choice and at its own expense, FRÄNKISCHE will either obtain a right of use for the

relevant Deliveries, modify the Deliveries such that they do not infringe any industrial property right, or exchange the Deliveries. If this is not possible for FRÄNKISCHE at reasonable conditions, the customer will be entitled to the statutory right of withdrawal or to reduce the price. The customer may not claim compensation for wasted expenditure; (ii) FRÄNKISCHE's obligation to pay damages is governed by this Section 8; (iii) FRÄNKISCHE's obligations as stated above only apply insofar as the customer immediately informs FRÄNKISCHE in writing of the claims raised and all defence measures and settlement negotiations remain reserved for FRÄNKISCHE; if the customer discontinues the use of the Delivery for mitigation or other reasons, they are obliged to inform the third party that the discontinuance of use does not constitute an acknowledgement of the infringement of an industrial property right.

Claims of the customer are excluded insofar as he is responsible for the property right violation.

Claims of the customer are also excluded insofar as the infringement of an industrial property right is caused by particular customer specifications, by an application that was not foreseeable for FRÄNKISCHE, or because the customer modified the Delivery or used it in combination with products not supplied by FRÄNKISCHE.

## 9. Assignment, Set-off, Retention

- 9.1 FRÄNKISCHE may assign claims.
- 9.2 The customer may only offset claims against FRÄNKISCHE or exercise a right of retention if such claims are acknowledged, legally established or ready for decision.
- 9.3 FRÄNKISCHE is entitled to offset all claims of any kind against all claims of the customer and its affiliated companies against FRÄNKISCHE or its affiliated companies, even if the claims have different maturities.

## 10. Data protection

- 10.1 With regard to your personal data, FRÄNKISCHE will comply with the relevant statutory regulations, in particular the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (Bundesdatenschutzgesetz (BDSG)), particularly within the scope of processing in accordance with Art. 6(1)(b), (c) and/or (f) GDPR (hereinafter referred to as "Processing").
- 10.2 FRÄNKISCHE will process your personal data if and to the extent to which and as long as this is necessary for the establishment, implementation and termination of our contract. Your personal data will only be processed further if and to the extent to which this is required or permitted by any legal regulation or you have given your consent.
- 10.3 You are aware that the implementation of pre-contractual measures and fulfilment of our contract requires processing on the basis of Art. 6(1)(b) GDPR of, among others, employee names, entrepreneurial status, address, date of birth and bank account.

- 10.4 FRÄNKISCHE is entitled – to the extent that is legally permissible – to assess the risk of non-payment on your part for the purpose of deciding on the establishment, implementation and termination of the contract.
- 10.5 For this assessment, XY will make use of services of credit agencies such as SCHUFA Holding AG or other third parties and transmit your data to them or request your data from them for this purpose. The processing of data for this purpose is based on Art. 6(1)(b) GDPR.
- 10.6 FRÄNKISCHE is entitled to communicate your data to third parties if and to the extent to which this is necessary for the implementation of pre-contractual measures and fulfilment of this contract (e.g., for shipping, invoicing or customer support) in accordance with Art. 6(1)(b) GDPR or compliance with a legal obligation within the meaning of Art. 6(1)(c) GDPR. FRÄNKISCHE may also – to the extent that is legally permissible – pass on these data to third parties (e.g., debt collection agencies) for the purpose of debt enforcement in accordance with Art. 6(1)(b) and/or (f) GDPR.
- 10.7 FRÄNKISCHE will – under the statutory prerequisites, upon request and free of charge – provide you with access to the stored personal data concerning you. You have the right – under the statutory prerequisites – to request the rectification, erasure, restriction of processing or transfer of your data to a third party. In addition, you have the right to lodge a complaint with a supervisory authority.

## 11. Final Provisions

- 11.1 The place of performance for all Deliveries is Königs- berg, Germany.
- 11.2 The exclusive place of jurisdiction is Königsberg, Ger- many. FRÄNKISCHE is entitled, however, to sue the customer at its place of general jurisdiction or at any place of performance.
- 11.3 The laws of the Federal Republic of Germany apply, excluding the United Nations Convention on the Inter- national Sale of Goods of 11 April 1980 and the conflict of laws regulations. If the customer is not domiciled within the Federal Republic of Germany, FRÄNKISCHE can also assert the law that applies at the customer's domicile or the law of the place of per- formance.
- 11.4 These General Terms and Conditions of Delivery remain binding in general even if individual provisions are legally invalid.