

## **Terms and Conditions of Sale of Fritz Finkernagel Drahtwerk GmbH & Co. KG**

By placing an order, the customer recognises the following terms and conditions.

### **1. Application of the Terms and Conditions**

**1.1** Subject to differing agreements made in the individual case, these terms and conditions of sale apply exclusively. We do not acknowledge terms and conditions of the customer that are contrary to or that vary from our terms and conditions of sale, unless we have explicitly agreed in writing to their application. Our terms and conditions of sale apply even when we supply the customer without reservation while being aware of terms and conditions of the customer that are contrary to or vary from our terms and conditions of sale. Our terms and conditions of sale also apply to all future transactions with the customer.

**1.2** All agreements which are made between us and the customer for the purpose of fulfilling this contract are to be specified in writing in this agreement.

**1.3** Our terms and conditions of sale apply only for companies in accordance with § 310 para. 1 German Civil Code (*Bürgerliches Gesetzbuch, BGB*).

### **2. Offer**

**2.1** Our offer is non-binding. Where the order of the customer is to be qualified as an offer to enter into a contract in accordance with § 145 *BGB*, we can accept this within two weeks.

**2.2** We reserve rights of ownership and copyright to all materials specifications, drawings, models and other documents. It is not permitted to make these accessible to third parties without our explicit approval in writing.

### **3. Obligation to deliver and hindrances to delivery**

**3.1** We are entitled to make partial deliveries to an extent that the customer can reasonably be expected to accept.

**3.2** Production-related over and under-quantities within a tolerance of 10% of the total order quantity are permissible. Payment shall be accordingly adjusted.

**3.3** We do not – subject to differing agreements in the individual case – enter into any obligation to supply without a binding obligation on the part of the customer to accept. Supplying the customer – even over an extended period of time – does not constitute the basis for an obligation to supply in the future without our explicit agreement. In particular, the receipt of a delivery sample or comparable documents of the customer without contradiction does not form the basis for a corresponding obligation on our part to supply.

**3.4** Where we have in the individual case entered into an open-ended obligation to supply without establishing a total delivery quantity (long-term supply contract), we have a right to ordinary termination, giving three months notice. Conversely, the customer also has this right of termination where he enters into an open-ended obligation to purchase without establishing a total delivery quantity.

**3.5** The right to receiving the goods correctly and punctually remains reserved.

**3.6** In cases of *force majeure* and other hindrances to supply that are not possible for us to foresee and for which we are not to blame – which include also industrial strife, defective raw materials, operational disruptions, transport hindrances, official measures – in each case also at our suppliers – we are entitled to postpone the delivery for the duration of the hindrance to delivery. If the agreed delivery date is exceeded by more than eight weeks due to the disruption, both parties have the right to withdraw from the contract. We will immediately notify the customer regarding the non-availability of the delivery item or if it is not available in good time, and in the case of our withdrawal from the contract, we will immediately return the customer's consideration.

### **4. Delivery dates**

**4.1** The delivery period stipulated by us does not begin until all technical questions have been resolved.

**4.2** Correct fulfilment in good time by the customer of his obligations is a prerequisite for observance of our obligation to deliver. The objection of unfulfilled contract remains reserved.

**4.3** Where the customer falls into arrears with acceptance or culpably infringes other duties of co-operation, we are entitled to require reimbursement of the damages resulting therefrom including any additional expenses. Further entitlements remain reserved.

**4.4** Insofar as the preconditions of section 4.3 are met, the risk of accidental loss or accidental deterioration of the object of sale transfers to the customer at the point in time when he defaults on acceptance or defaults on debt payment.

**4.5** Our liability to pay compensation for damage in the event of delay in delivery is exclusively determined in accordance with section 9 of these terms and conditions of sale.

## **5. Transfer of risk and packaging**

**5.1** Insofar as nothing else is specified in the order confirmation, delivery from works is agreed.

**5.2** The risk of accidental loss or accidental deterioration of the object of sale transfers to the customer on dispatch even when we have accepted the costs of shipment or other additional services or a partial delivery is made.

**5.3** Insofar as the customer requests it, we will arrange for the delivery to be covered by transport insurance. The costs thereby incurred are borne by the customer.

**5.4** Insofar as this is not ordinary commercial practice or is not otherwise agreed, the goods are delivered unpacked and without protection against rust. Subject to any statutory obligations to the contrary, we will not take back any packaging. Exceptions are EUR-pallets, coiling stands, lifting lugs and cardboard cores, which remain our property and are to be returned at the expense of the customer.

## **6. Prices**

**6.1** Insofar as nothing to the contrary is specified in the order confirmation, our prices apply “ex works”, excluding packaging; this is separately invoiced. We reserve the right to alter our prices appropriately when cost reductions or cost increases occur, particularly due to collective bargaining agreements or fluctuations in material prices. We are obliged to respond in the same way to cost reductions. As soon as and insofar as these occur, we shall document both cost reductions and cost increases to the customer upon request.

**6.2** VAT is not included in our prices. It is stated in the invoice as a separate item at the rate legally required on the date of preparation of the invoice.

## **7. Payment terms**

**7.1** Insofar as nothing to the contrary is specified in the order confirmation, the sale price is due for payment net (without deduction) within 30 days from the date of invoice. Statutory regulations regarding the consequences of payment arrears apply.

**7.2** The customer is only entitled to offset payment when his counterclaims have been deemed legally valid, are undisputed, or are acknowledged by us or if this involves a counterclaim that is in a relationship requiring reciprocal performance of contractual main obligations (so-called synallagmatic claim). Only in these circumstances is the customer also entitled to retention.

## **8. Claims for defects**

**8.1** Customer’s claims for defects require that the customer has properly fulfilled his obligations of inspection and notification of defects in accordance with § 377 German Commercial Code (*Handelsgesetzbuch, HGB*). Defects that are recognisable in a proper goods receipt inspection are to be notified to us by the customer within seven days after receipt of the goods at the latest, irrespective of the legal requirements for inspection and notification. This must be made in writing.

**8.2** Insofar as the object of sale is defective, we are entitled at our discretion to subsequent fulfilment through rectification of the defect or delivery of new flawless goods. In the case of rectification of the defect, we are obliged to bear all expenses necessary for the purpose of rectifying the defect, particularly transport, travel, work and material costs, insofar as these are not increased by having to bring the object of sale to a location other than the place of fulfilment.

**8.3** If the subsequent fulfilment is unsuccessful, the customer is entitled to the other legal claims for defects. Customers are entitled to claims for compensation for damages only in accordance with section 9 of these terms and conditions of sale.

**8.4** Customer's claims for defects expire in accordance with section 10.1 of these terms and conditions of sale.

## **9. Liability**

**9.1** We are liable for compensation for damages exclusively in accordance with the following provisions.

**9.2** We are liable in accordance with statutory regulations insofar as the customer claims compensation for damage based on intent or gross negligence, including intent or gross negligence of our representatives or auxiliary agents. Insofar as we are not charged with intentional or grossly negligent breach of contract, the liability for compensation for damages is limited to the foreseeable, typically occurring damage.

**9.3** We are liable in accordance with statutory regulations insofar as we culpably infringe an essential contractual obligation. In this case, however, the liability for compensation for damage is limited to the foreseeable, typically occurring damage.

**9.4** Insofar as the customer is entitled to compensation for damage in place of performance, our liability is limited to the foreseeable, typically occurring damage as within the framework of section 9.3.

**9.5** Liability for culpable injury to life, limb or health is unaffected. This applies also to the compulsory liability under the German Product Liability Act (*Produkthaftungsgesetz*) and liability within the framework of a warranty.

**9.6** The preceding limitations of liability also apply insofar as the customer requests compensation for futile expenditure instead of entitlement to compensation for damages.

**9.7** Insofar as our liability for compensation for damage is excluded or limited, this applies also with respect to the personal liability for compensation for damage of our appointed staff, employees, representatives and auxiliary agents.

## **10. Limitation**

**10.1** The limitation period for claims for defects is 12 months from the start of the statutory period of limitation.

**10.2** For the limitation of other claims of the customer that are not subject to the limitation period for claims for defects, an exclusion period of 18 months applies. It begins with awareness of the damage and of the person responsible for the damage.

**10.3** The statutory periods of limitation remain unaffected by the preceding regulations in the following cases:

- in the case of delivery recourse in accordance with §§ 478, 479 *BGB*;
- for the defects in building structures/construction materials cited in §§ 438 para. 1, no. 2; 634a para. 1, no. 2 German Civil Code (*BGB*);
- for damage arising from injury to life, limb or health;
- in the case of intent or malice or gross negligence by us, our legal representatives, or auxiliary agents;
- in the case of violation of culpable violation of an important contractual obligation;
- for the right of the customer to free himself from the contract in the case of an infringement of an obligation for which we are not responsible, which does not consist of a defect of the object of sale or of the work;
- for claims within the framework of a warranty.

## **11. Retention of ownership**

**11.1** We retain the ownership of the object of sale until receipt of all payments from the business relationship with the customer. In the case of behaviour of the customer in breach of the contract, in particular in the case of payment arrears, we are entitled to take back the object of sale. Taking back the object of sale by us constitutes withdrawal from the contract. After taking back the object of sale, we are entitled to sell it. The proceeds of the sale are to be offset against the liabilities of the customer, after deduction of appropriate sales costs.

**11.2** The customer is obliged to treat the object of sale with care. In particular he is obliged to insure it sufficiently for replacement value against damage resulting from fire, water and theft.

Insofar as maintenance and inspection work is necessary, the customer must perform this in good time, at his own expense.

**11.3** In the event of liens or other interventions of third parties, the customer must inform us in writing, without delay, to enable us to file a lawsuit in accordance with § 771 German Code of Civil Procedure (*Zivilprozessordnung, ZPO*). Insofar as the third party is not in a position to reimburse us for the court costs and extrajudicial costs of filing a lawsuit in accordance with § 771 ZPO, the customer is liable for any payment loss we incur.

**11.4** The customer is entitled to sell the object of sale in the ordinary course of business. However, he immediately transfers to us all claims against his purchaser or third parties that arise for him from the further sale, irrespective of whether the object of sale has been sold after further processing or not, in the amount of the final invoice amount (including VAT) of our claim. The customer remains authorised to collect these claims even after the assignment. Our authority to collect these claims ourselves remains unaffected by this. However, we undertake not to collect the claims so long as the customer fulfils his payment obligations to us from the proceeds obtained, does not fall into payment arrears, and in particular no application is made to open composition or insolvency proceedings and that payments do not cease. Should this be the case, however, we may require that the customer discloses the claims assigned and their debtors, provides all information necessary for collection, hands over the associated documents, and informs the debtors (third parties) of the assignment.

**11.5** The processing or transformation of the object of sale by the customer is always carried out on our behalf. If the object of sale is processed together with other materials that do not belong to us, we acquire co-ownership of the new object in the proportion of the value of the object of sale (final invoice amount, including VAT) to the other materials processed at the time of the processing. Furthermore, the same applies to the object created by processing as to the object of sale supplied under retention of ownership.

**11.6** If the object of sale is inseparably mixed with other materials that do not belong to us, we acquire co-ownership of the new object in proportion to the value of the object of sale (final invoice amount, including VAT) to the other materials mixed at the time of the processing. If the mixing is performed in such a way that the object of the customer is to be seen as the principal object, it is deemed as agreed that the customer proportionally transfers ownership to us. The customer thus preserves for us the sole ownership or co-ownership arising in this way.

**11.7** The customer also transfers to us as security for our claims against him the claims which he acquired against a third party through the combination of the object of sale with a property.

**11.8** We undertake to release the securities to which we are entitled on the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. We are entitled to select the securities to be released.

## **12. Special conditions for contract work**

**12.1** Insofar as nothing to the contrary is stipulated in the following, these terms and conditions of sale and payment terms also apply for contract work.

**12.2** Charging is carried out on the basis of the weight delivered to us. Any shortfall is at the expense of the customer.

**12.3** The customer himself must keep his goods insured for their full value.

**12.4** We acquire a legal right of lien of the material that the customer makes available to us for processing and which comes into our direct or indirect possession. This right of lien applies to all claims that we have against the customer. The right of lien also extends to future or contingent claims, and expires as soon as the material, with our consent, is no longer in our direct or indirect possession. The legal provisions apply to the utilisation of the lien, with the proviso that the value of the lien is determined as binding by an expert to be nominated by us.

## **13. Place of fulfilment and place of jurisdiction**

**13.1** Insofar as the client is a merchant, place of jurisdiction is our headquarters in Altena (Westph.), Germany. However, we are entitled additionally to file a lawsuit against the customer at the court of its place of residence.

**13.2** The law of the Federal Republic of Germany applies. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**13.3** Insofar as nothing to the contrary arises from the order confirmation, our headquarters in Altena (Westph.), Germany, is the place of fulfilment. Place of fulfilment

**14. Final provisions**

**14.1** Should any of the above provisions be or become ineffective, this does not affect the effectiveness of the remaining provisions.

**14.2** All our previous terms and conditions of sale are hereby replaced.

**Statement in accordance with § 33 German Data Protection Act (*Bundesdatenschutzgesetz, BDSG*): data of the customer will be electronically processed.**

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