

# General Terms and Conditions of Purchase (GTCP) of Max Frank GmbH & Co. KG

## 1. General

1.1. The below mentioned GTCP apply solely to natural persons or legal entities or partnerships with legal capacity who act in the conclusion of transactions of a legal nature in the exercise of their trade or independent professional activity (companies in the meaning of Section 14 BGB – German Civil Code).

1.2. We order goods or services from companies solely on the basis of our below mentioned GTCP. These Terms and Conditions also apply to all future orders placed with a Supplier even if they have not been expressly agreed for such orders. Any departing conditions of the Supplier, which we do not expressly acknowledge, do not form part of the contract even if we do not expressly object to such conditions. If we accept the delivery or service without reservation, this should in no case be understood as tacit acknowledgement or acceptance of deviating conditions.

## 2. Order

2.1. Our offer to sign a purchase/ service contract (order) is only binding on us if we have submitted same in text form (in writing, by fax or e-mail). Agreements are only binding after confirmation by our purchasing department and must be rendered in written form promptly by the responsible contact persons of the parties. The same applies to any amendments and supplements to purchase orders.

2.2. We are bound to our order for two weeks after submission of the order unless agreed to otherwise in writing. You may accept our contractual offer only within this two week period by means of a written declaration.

2.3. Technical specifications and instructions for use must be supplied on delivery for equipment as well as any documentation required for the use of the equipment, if applicable. For software products, the supply obligation is only fulfilled once the complete (systems and user) documentation thereto is provided. For programs created especially for us, the source format of the program must also be provided at program handover.

## 3. Delivery – Delivery Date - Default

3.1. All deliveries must be accompanied by a delivery note which must include our order number and a description of the content according to type and quantity.

3.2. You are entitled to make part deliveries/ provide part services only with our prior consent in written form.

3.3. You are responsible for ensuring that the goods are packaged appropriately for shipping and secured for transport. If a certain type of packaging has been specified in the order you are responsible for adhering to these specifications.

3.4. You must ensure that appropriate insurance cover is taken out for the transport of the goods and provide us with proof of transport insurance on request.

3.5. The agreed delivery dates stipulated for the deliveries and services are binding. If any delays are anticipated or occur you must inform us of such promptly in written form.

3.6. We are entitled to the statutory claims if you should fall in arrears. If we assert claims for compensation of damages you will be entitled to prove that you are not responsible for the violation of the obligation. If you do not deliver the goods or provide the services within the period of grace set by us we shall be also entitled to withdraw from the contract. We shall also retain this right of withdrawal if you are not responsible for the infringement of the obligation. Any additional costs incurred by the delay shall be borne by you in particular if it becomes necessary to procure the contractual object by alternative means.

3.7. We retain the right to demand an agreed contractual penalty due to improper performance (§ 341 BGB/German Civil Code) until the final payment.

## 4. Invoices – Payments – Assignment - Offsetting

4.1. Unless otherwise agreed to between the parties, the below mentioned shall apply: The price stated by us on the order is binding and is quoted carriage-paid (for import business: DDP pursuant to INCOTERMS 2000). All ancillary costs, e.g. delivery costs, packaging costs, and costs of transport insurance are included in the price. The price quoted includes value added tax at the current statutory rate.

4.2. Invoices must be sent to us by separate letter and must state our respective order number (cf. Clause 3.1).

4.3. Unless agreed to otherwise in writing in a specific case, payment shall be made within 14 days less 3% discount or within 40 days net. The payment period commences on the date of receipt of the invoice at the invoice address specified by us, however not prior to receipt of goods.

4.4. We reserve the right to determine the means of payment.

4.5. For payments made by bank transfer or cheque, the payment obligation is deemed having been fulfilled in a timely manner once the bank transfer instruction has been transmitted to our bank or the cheque has been sent to you.

4.6. You bear all the risks pertaining to the sending of cheques. In addition to the risk of theft and unauthorised encashment you also assume responsibility for all additional damages which may arise in particular, but not limited to, any bank charges incurred for stopping the cheque.

4.7. Payments do not indicate any acknowledgement of the deliveries or services being in accordance with the contract. In the event of faulty or incomplete delivery or service we are entitled, without prejudice to any other rights, to withhold payments on claims from the business relationship at the appropriate amount until proper performance.

4.8. The assignment of claims against us to third parties is excluded. § 354 a HGB remains unaffected.

4.9. You may only offset such claims or demands for payment as are undisputed or legally established. The company, FRANK, is entitled to offset all

due and not due demands for payment by the Supplier, directed against FRANK or a company of the FRANK Group with its own demands for payment or demands for payment by the companies mentioned. Companies which form part of the FRANK Group are listed at <http://www.maxfrank.de/Das-Unternehmen/Standorte/>; it is against these companies that these demands for payment must be discharged.

## 5. Import and Export Provisions, Customs Duties

5.1. The EU VAT code must be stated for supplies and services which originate from an EU country outside of Germany.

5.2. Imported goods must be delivered as cleared. You shall, in the context of Directive (EC) no. 1207 / 2001 issue the required declarations and information, permit the customs authorities to conduct inspections and furnish the required official confirmations at your own cost.

5.3. You shall inform us, in full and in writing, free of charge, of any obligations to obtain permits for (re-) exports pursuant to the German, European and U.S. export and customs provisions as well as the export and customs provisions of the respective country of origin of the goods and services.

## 6. Safety, Environmental Protection

6.1. Supplies and services must comply with the statutory provisions, in particular the safety and environment protection provisions including the directives pertaining to hazardous materials, the German Electrical and Electronic Equipment Act (ElektroG) and the safety recommendations by the responsible German professional bodies and groups or professional associations such as the VDE, VDI, and DIN. The appropriate certificates, certification reports and verifications must be supplied together with the goods or services free of charge. You shall adhere to the respectively valid relevant statutory regulations of the European Union and the Federal Republic of Germany, e.g. the REACH Directive (Directive EC no. 1907/2006).

6.2. You shall determine and adhere to the latest applicable guidelines and laws pertaining to the components with respect to substance restrictions.

Furthermore, you shall not use prohibited substances. Dangerous and hazardous substances as defined by the valid laws and guidelines must be stated on the specifications. Where applicable, the safety datasheets must be submitted together with the offers and on first delivery with the delivery note (at least in German or English). We must be informed immediately of any violations of substance restrictions and of any deliveries containing prohibited substances.

6.3. You are solely responsible for adhering to the accident prevention regulations when making deliveries and providing services. Any protective measures as well as any instructions by the manufacturer required to comply with these regulations must be supplied together with the goods or services free of charge.

6.4. If you make deliveries or provide services on our business premises you are further obliged to adhere to our instructions pertaining to safety, environmental protection and fire prevention for external parties in the latest valid version. We will be pleased to make these available to you on request.

## 7. Passing of Risk, Acceptance, Proprietary Rights

7.1. Unless agreed to otherwise, risk shall pass to us on delivery on receipt at the delivery address specified by us (for imports: DDP pursuant to the INCOTERMS 2000). If, in individual cases, set-up or installation is a contractual obligation in addition to the delivery, risk shall pass to us on successful completion of acceptance by us. Formal acceptance is agreed; start of operations or use does not replace our acceptance declaration.

7.2. We acknowledge a simple reservation of title with respect to unprocessed goods. Ownership in the delivered goods passes to us once payment has been received therefor. Any extended or further reservation of title is excluded.

## 8. Inspection Obligation and the Obligation to give Notice of Defects

8.1. An inspection of incoming goods will be undertaken with respect to obvious defects. We will notify you of any hidden defects as soon as these are detected in the ordinary course of business.

8.2. A notification of the defect shall be deemed as having been given in good time if it reaches you within an appropriate period of time, normally within a period of two weeks; in the event of obvious defects this period commences on delivery of the goods and in the event of hidden defects this period commences on its discovery.

## 9. Guarantee

9.1. Guarantees are governed by the statutory provisions unless agreed to otherwise below:

9.2. For the period in which the goods are not in our custody as a result of a request to remedy a defect, you shall bear the risk of accidental destruction or accidental deterioration.

9.3. If you do not meet your obligations for supplementary performance within a period as determined by us, we will ourselves undertake the necessary measures at your cost and risk or have such undertaken by third parties. In urgent cases (in particular if operational safety is compromised, to prevent extremely high damages or to prevent our own delay in delivery) and for the rectification of minor defects, we may undertake the subsequent performance ourselves, or shall have it undertaken by a third party, in the form of a rectification of defects at your cost, after having provided prior notification of defects and by setting a period of grace appropriate to the situation or after relevant consultation with you.

9.4. The period of limitations for our claims arising from material defects is 36 months from passing of risk pursuant to Clause 12.1; the period of limitations for our claims arising from defects in title is ten years from passing of risk pursuant to Clause 12.1.

## 10. Guarantees - Warranties

10.1. If your delivery or service is based on our plans, drawings or other specific requirements, the delivery or service shall include a warranty that the delivery or service complies with the requirements.

10.2. If a warranted characteristic should be lacking we may, at our option, withdraw from the contract or reduce the consideration and, in addition, demand compensation for damages.

## 11. Repeated Impairments of Performances

If basically the same or similar delivery of goods or rendering of services by the same Supplier is repeatedly delivered or rendered as defective or delayed, we reserve the right to withdraw in this respect after prior written warning; this right of withdrawal shall apply to such supplies and services which the Supplier is obliged to deliver or render from this contract or another contractual relationship in the future.

## 12. Right of Withdrawal due to Insufficient Performance

If, on signing of the contract, it becomes apparent that our entitlement to supply is at risk due to obstacles to performance which were not foreseeable and which cannot be overcome with reasonable expense we shall be entitled to withdraw from the contract. This shall apply, in particular but not be limited to, in the event of impossibility of performance or a threat to the entitlement of supply posed by *force majeure*, strike or natural catastrophe. Any obstacle to performance which we are responsible for however does not entitle us to a withdrawal.

## 13. Technical Documentation, Tools, Manufacturing Equipment

13.1. Any technical documentation, tools, standard instruction sheets, manufacturing equipment, data etc. made available by us remain our property; all trademark, copyright and other proprietary rights remain vested in us. Such materials, including all copies made, must be returned to us, without this being especially requested, promptly after execution of the order or on request; in this regard you are not authorised to assert a right of retention. You may use the mentioned items only for the execution of the order and not surrender them, or make otherwise accessible, to unauthorised third parties. Duplication of the mentioned items is only permitted to the extent required for the execution of the order.

13.2. You are obliged to care for, maintain the above mentioned items and remedy normal wear & tear thereon free of charge. If a sub-contractor is engaged to manufacture of tools and samples for the execution of our order, any claims against the sub-contractor for the transfer of ownership of the tools and samples shall be assigned to us.

## 14. Proprietary Rights

14.1. You warrant that in the delivery and contractual use of the goods or services no trademark, patent, licensing or other proprietary rights or, at the time of acceptance any available proprietary rights applications, of third parties have been infringed. This will not be especially confirmed by us again.

14.2. You shall inform us promptly of any alleged cases of infringement or risks of infringement of which you may become aware.

14.3. If the use of the performance rendered by the Supplier is prohibited by a court decision or if, in the view of a party, legal action may be threatened for the infringement of proprietary rights the Supplier shall ensure remedy unless the Supplier is not responsible for the infringement. This remedy may consist of the Supplier obtaining the rights in dispute or changing his contractual performance in some way or providing the performance again for FRANK so that proprietary rights are no longer infringed. If such remedy does not occur or remains unsuccessful, FRANK shall be entitled to withdraw. If any claims are asserted against us by third parties because you have culpably infringed a statutory proprietary right of a third party due to your supply/service you shall, on first request, release us from these claims and all the necessary expenses which were incurred in relation to the claims made by the third party and the defence thereof. We will not without your written consent acknowledge claims made by third parties and/or conclude pertinent agreements with the third party. The period of limitations for these release claims is 36 months after passing of risk.

14.4. The regulations contained in § 14, paragraph 14.3 do not apply if you have manufactured the goods or services in accordance with the drawings, models or any descriptions equal to such drawings and models or information supplied by us and were not able to recognise that you would violate any proprietary rights with the developed products.

## 15. Release - Recourse – Product Liability

15.1. If claims are made against us by third parties for damages arising from a product defect which you are responsible for, you shall, on first request, release us from all claims by third parties as well as from any costs necessarily incurred in defending the claim and legal proceedings if and to the extent that you are directly liable in the external relationship to the third party.

15.2. If, as a result of such an event (15.1) we have to undertake a product recall campaign you shall, on first request, release us from all expenses and costs arising in this regard to the extent that you are liable pursuant to §§ 830, 840, and 426 BGB – German Civil Code. This applies in particular, but is not limited to, any product recall campaigns in the context of the Product Safety Act. We will inform you, to the extent possible and reasonable, of the content and scope of the product recall measures to be undertaken and provide you with an opportunity to comment. Other legal claims remain reserved.

15.3. You shall take out product liability insurance coverage of a minimum of 10 million euros per damage event and maintain this for the duration of the contract; we are entitled to request a corresponding confirmation of cover from your insurer. This does not apply to cases in which this insured sum is disproportionate to the foreseeable damage. In such cases, sentence 1 shall apply with the proviso that product liability insurance be taken out with sufficient coverage.

15.4. You shall release us from all claims of third parties – irrespective of the legal grounds – due to material defect or defect in title or any other fault in the product supplied by you which may be asserted against us and reimburse us the costs of our legal proceedings in this regard.

15.5. If our customers assert claims against us in the context of the sale of consumer goods and the assertion of these claims is based on a defect in the goods delivered by the Supplier, our entitlements to recourse will only prescribe on expiry of a period of three years calculated from the date of delivery of the item by the Supplier to us.

## 16. Confidentiality, Rights in the Products

16.1 All business, commercial or technical documentation, information and data, in particular but not limited to, personal data in connection with this business relationship or any information or experience gained from the business relationship shall be kept secret from third parties and treated in the strictest of confidence. Such information and experience may only be made available to such persons in your own company who must be consulted for the utilisation of such information and experience and who are likewise subjected to the confidentiality obligation by means of a written agreement. This information remains our sole property. Such information – except for the purposes of this contractual relationship – may not be exploited, copied or used on a professional basis without our prior express agreement. You shall continue to treat as confidential all the knowledge, information and data acquired in the context of this contractual relationship even after termination of the contract.

16.2. This confidentiality obligation does not apply to the extent that information, secrets or know-how are generally known or become or became known without you being responsible for such, or were already known to you prior to the conclusion of this contract or if such information is requested to be divulged, or is compulsorily obligated to divulge such, to an official authority or any other third party entitled thereto.

16.3. Products which were manufactured especially for us by you in accordance with any documents such as drawings, models or other sources of know-how designed by us or made available by us or in accordance with confidential specifications submitted to you by us or with the work materials designed or made available by us may not be used by you without our prior written agreement nor be disclosed or offered to third parties.

16.4. The company, FRANK, reserves all rights to information pursuant to § 16 paragraph 16.1 (including copyrights and the right to apply for industrial proprietary rights such as patents, utility models etc.). If information pursuant to § 16 paragraph 16.1 is made accessible to third parties, this reservation of rights shall also apply to third parties.

## 17. Data Protection

17.1. You acknowledge and agree that we will collect, store, process and use personal data relating to you in connection with our business relationship with you and that we will also transmit such data to the companies affiliated to the FRANK Group in order to maintain the proper and orderly ordinary course of business and in the processing of payments. We will ensure that your legally protected interests are not adversely affected.

17.2. The statutory and operational provisions pertaining to data protection must be observed. The Supplier shall ensure that any employees and vicarious agents who are involved in the contractual performance are correspondingly obligated and shall present to FRANK the record of this obligation on request. If personal data is processed or used in the contractual relationship the parties must promptly conclude a data protection agreement in accordance with the provisions of the German Federal Data Protection Act (BDSG).

## 18. Code of Conduct

In the context of the business relationship, the BME Code of Conduct of the Bundesverband Materialwirtschaft, Einkauf und Logistik e.V. in the version valid at the time of contract conclusion shall apply and is accessible at [http://www.bme.de/fileadmin/bilder/foerderpreise/Code\\_of\\_Conduct.pdf](http://www.bme.de/fileadmin/bilder/foerderpreise/Code_of_Conduct.pdf).

## 19. Applicable Law

This Agreement is subject to German law. The provisions of the Vienna UN convention concerning the international sale of goods (CISG - United Nations Convention on Contracts for the International Sale of Goods) do not apply.

## 20. Place of Performance

Unless otherwise agreed to in individual cases, the place of performance of the delivery shall be our respective location from which the purchase order was issued or where the contract was concluded. The place of performance for any payments to be made to us shall be our head office in Leiblfing.

## 21. Place of Jurisdiction

The place of jurisdiction for all disputes arising from business transactions with entrepreneurs, legal entities under public law and public-law special assets domestically or abroad shall be the court competent for our head office in Leiblfing. This also applies to actions for bills of exchange and cheques.

## 22. Severability Clause

Should any individual provisions of these General Terms and Conditions of Purchase be ineffective, wholly or in part, this shall not affect the validity of the remainder of the regulations. The parties shall replace an ineffective provision with an effective provision which is as close as possible to the commercial intent of the ineffective regulation. This does not apply to provisions being rendered ineffective due to infringement of Section 2 of Volume 2 of the BGB with the heading "Drafting contractual obligations by means of standard business terms". In this case, statutory regulations shall apply unless supplementary contractual interpretations for purposes of filling omissions are necessary.

**Effective: 10/2009**