

General Terms and Conditions of Purchase (“Terms”) of Max Frank GmbH & Co. KG and Max Frank Pressig GmbH (“FRANK”)

Rev: 01.01.2016



1. General

- 1.1. The following Terms shall exclusively apply to individuals and legal entities or incorporated partnerships who, at the conclusion of a transaction, are acting in the performance of their commercial or self-employed business activity (entrepreneurs as defined in Section 14 of the German Civil Code [BGB]).
- 1.2. We order goods or services from entrepreneurs solely on the basis of our following Terms. These Terms shall also apply to all future orders from a supplier, without the need for us to refer to them again in each individual case; the latest version of the Terms is available on www.maxfrank.de. Any deviating terms or conditions of the supplier's which we have not expressly accepted shall not become a part of any contract, even if we have not expressly contradicted them. If we accept deliveries or services without reservation, this shall not on any account be regarded as acceptance or approval of any deviating terms or conditions.

2. Ordering

- 2.1. Our offer to conclude a purchase/service contract (order) shall only be binding on us if submitted in writing (by mail, fax, or e-mail). Verbal agreements shall only be binding if confirmed by our purchasing department and shall be put down in writing without delay by the parties' responsible employees. The same shall apply to any alterations and/or additions to orders.
- 2.2. Unless otherwise expressly agreed, we shall be bound by our order for a period of two weeks after submission of the order. Provided that no change to the order is necessary on the part of the supplier with respect to quantity, price or delivery date, we will generally not require a written order confirmation. On our express demand, however, the supplier shall confirm the order in writing within (2) weeks or perform delivery without delay and without reservation.
- 2.3. In the case of devices, a technical description and operating instructions as well as any other documents necessary to be able to use the devices shall be supplied free of charge. In the case of software products, this obligation will not be fulfilled until the complete relevant (system and user) documentation has been handed over as well. In the case of programs that are specially designed for us, delivery of the program shall also include the program in source format.

3. Delivery – Delivery Dates – Delay in Delivery

- 3.1. Each delivery shall be accompanied by a delivery note including our purchase order number as well as a description of the contents by nature and quantity.
- 3.2. Any partial deliveries of goods or services shall be contingent upon our prior written consent.
- 3.3. It is your responsibility to make sure that the goods are adequately packed and safely loaded for transport. Where our orders specify a certain mode of packing, it shall be your responsibility to meet those specifications.
- 3.4. It is your responsibility to provide appropriate insurance for the transport of goods, and you shall provide proof of transport insurance to us upon request.
- 3.5. Agreed dates of delivery of goods and services shall be binding. In the event of anticipated or actual delays, you shall immediately notify us thereof in writing.
- 3.6. If you are in delay, we shall be entitled to exercise our statutory rights. If we claim damages, you shall be entitled to provide proof to the effect that the breach of your obligations was due to circumstances beyond your control. If you still fail to perform delivery of goods or services within a deadline set by us after the due date, we shall further be entitled to withdraw from the contract. This right to withdraw shall not be affected by whether or not you were responsible for the breach of obligations. Any extra costs we may incur due to the delay, in particular through the necessity to obtain the goods or services in question from another source, shall be at your expense.
- 3.7. Until final payment is made, we reserve the right to claim a contractual penalty as agreed upon for improper performance (Section 341 BGB).

4. Invoices – Payment – Assignment – Set-off

- 4.1. Unless otherwise agreed between the parties, the following shall apply: The prices indicated by us in the purchase order shall be binding and delivery shall be Free Domicile (DDP named place of destination according to INCOTERMS 2010) to the place specified in the order. The place of destination specified shall also be the place of performance (“seller's obligation to deliver”). Any and all additional costs, e.g. the cost of delivery, packing, transport insurance, etc., shall be included in the price. Prices shall be exclusive of VAT.
- 4.2. Invoices shall be submitted to us under separate cover and must show our purchase order number (cf. sub-clause 3.1.).
- 4.3. Unless otherwise agreed in writing, payment shall be effected within 14 days less 3 % cash discount, or net within 40 days. The period allowed for payment shall begin on the date on which the invoice is received at the invoice address specified by us; not, however, prior to receipt of the goods.
- 4.4. We reserve the right to choose the mode of payment.
- 4.5. Where payment is made by bank transfer or cheque, the obligation to pay shall be deemed duly fulfilled as soon as the transfer order has been transmitted to our bank or when the cheque has been posted to you.
- 4.6. All risks involved in sending the cheque shall be borne by you. In addition to the risk of theft and unauthorised cashing, you shall also assume the responsibility for any and all additional damage incurred by us as a result thereof, in particular banking fees for stopping cheques.
- 4.7. The making of any payment shall not be considered an acknowledgement of the delivery of goods or services as being in compliance with the contract. In the event of faulty or incomplete delivery of goods or services, we shall be entitled, irrespective of any other rights, to withhold a reasonable amount of payments owed to the party in default until such party's obligations have been properly fulfilled.
- 4.8. Any assignment of accounts receivable from us to any third party shall be ruled out. Section 354a of the German Commercial Code [HGB] shall remain unaffected.
- 4.9. Set-off is only possible against undisputed or legally established claims. This shall not apply to claims being in a reciprocal relationship. FRANK shall be entitled to set off any and all of the supplier's accounts receivable, due or not, which are owed by Frank or a company of the Frank Group, against accounts receivable by Frank or any of the companies named. The companies of the Frank Group are listed at <http://www.maxfrank.com/intl-de/kontakt/frank-international.php>.

5. Import and Export Regulations, Customs

- 5.1. In the case of goods and services delivered from an EU country outside Germany, the EU VAT ID number has to be indicated.

- 5.2. Imported goods shall be delivered duty paid. It shall be your responsibility, at your expense, to make declarations and give information, allow inspections by customs authorities and provide official certificates as required pursuant to Regulation (EC) no. 1207/2001.
- 5.3. You shall provide us with a detailed written notification, free of charge, in the event of any (re-)exports requiring permission under German, European and US export and customs regulations as well as export and customs regulations of the country of origin of the goods or services in question.

6. Safety, Environmental Protection

- 6.1. Goods and services delivered must be in compliance with the relevant legal regulations, in particular safety and environmental protection regulations including the German Hazardous Substances Ordinance, the German Electrical and Electronic Equipment Act (ElektroG) as well as the safety recommendations of the competent German expert bodies and expert associations, such as VDE, VDI, DIN. Relevant authentications, test certificates and documents shall be supplied free of charge. In effecting your deliveries, you shall act in compliance with the relevant legal regulations of the European Union and the Federal Republic of Germany, such as the REACH Regulation (Regulation (EC) No. 1907/2006).
- 6.2. It shall be your responsibility to be up to date on and comply with relevant directives and laws regarding restrictions on substances. Furthermore you shall not use any banned substances. Substances to be avoided or hazardous substances according to the relevant laws and directives shall be indicated in the specifications. Where applicable, safety data sheets shall be supplied (at least in German or English) with the offers and with each first delivery together with the delivery note. Any indication of violations of substance restrictions or delivery of banned substances shall be notified to us immediately.
- 6.3. Compliance with accident prevention regulations when delivering goods or services shall be your sole responsibility. Any subsequently necessary protective devices as well as any instructions of the manufacturer shall be supplied free of charge.
- 6.4. When performing deliveries of goods or services on our premises, you shall furthermore act in compliance with our instructions on safety, environmental and fire protection for external persons (as amended), which will be made available to you upon request.

7. Transfer of Risk, Acceptance, Ownership

- 7.1. Unless otherwise agreed, the risk shall be transferred to us when delivery is received at our specified delivery address (DDP named place of destination according to INCOTERMS 2010). In cases where the contract specifies setup or installation in addition to delivery, the risk shall be transferred to us upon final inspection and acceptance. Formal acceptance shall be deemed agreed; operation or use shall not replace our declaration of acceptance.
- 7.2. Simple reservation of ownership regarding unprocessed goods will be recognised by us as far as applicable. Ownership of goods delivered shall pass to us upon payment of the same. Any prolonged or extended reservation of ownership shall be ruled out.

8. Inspection of Goods and Notification of Defects

- 8.1. Incoming goods will be inspected for patent defects. As far as acceptance has been agreed, there shall be no duty of inspection. Latent defects will be notified by us as soon as they are discovered in the normal course of business.
- 8.2. Notification of defects shall be deemed to have been given in time if received within a reasonable period of time; as a rule, such period of time shall be two weeks, beginning on delivery of the goods in the case of patent defects, and beginning on discovery in the case of latent defects.

9. Warranty

- 9.1. Warranty shall be subject to the applicable legal regulations, unless otherwise agreed in the following:
- 9.2. During any time in which goods are not in our custody as a result of a claim for rectification of defects, you shall bear the risk of accidental loss or deterioration.
- 9.3. If you do not fulfil your duty of rectification within a reasonable period of time set by us, we shall be entitled to take any necessary measures ourselves, or have them taken by a third party, at your expense and risk. In urgent cases (in particular in the event of a risk to operational safety or to prevent extreme damage or to avoid our own deliveries being delayed) and in order to remedy minor defects, we shall be entitled, after prior notification of defects and having set a reasonable deadline for rectification, or after consultation with you, to remedy defects ourselves or have them remedied by a third party at your expense.
- 9.4. Notwithstanding Section 442, subsection 1, sentence 2 BGB, we shall be entitled to unrestricted warranty claims even in the event that a defect remained unnoticed due to gross negligence at conclusion of contract.
- 9.5. Any and all costs incurred by the supplier for the purpose of investigating and remedying defects (including, where applicable, any costs of removal and installation) shall be borne by the supplier even if it is found that no defect actually existed. FRANK's liability for damages in the event of an unjustified demand for rectification of defects shall remain unaffected; however, FRANK shall only be held liable if FRANK realised, or did not realise due to gross negligence, that no defect existed.
- 9.6. If the supplier fulfils his obligation of rectification by way of replacement, the period of limitation for the goods delivered as replacement shall start again upon delivery of the same, unless the supplier has expressly and appropriately stated to be delivering the replacement only by way of goodwill, to avoid disputes, or in the interest of continuing the business relationship.
- 9.7. The period of limitation for our claims regarding defects of quality shall be 36 months as from the transfer of risk according to sub-clause 7.1; the period of limitation for our claims regarding defects in title shall be ten years as from the transfer of risk according to sub-clause 7.1.

10. Guarantees – Warranted Qualities

- 10.1. Where your goods or services shall be in accordance with our plans, drawings or other special requirements, compliance of the goods or services with such requirements shall be deemed expressly warranted.
- 10.2. If warranted qualities are missing, we may choose to withdraw from the contract or reduce payment and in addition claim damages in either instance.

11. Repeated Impairment of Performance

In the event of repeated defective or delayed delivery of basically the same or similar goods or services by the same supplier, we reserve the right to withdraw from the contract, after prior written warning, even in respect of goods or services that the supplier has yet to deliver to us in future on the grounds of this or any other contract.

12. Right of Withdrawal due to Lack of Ability to Perform

Where it becomes obvious after conclusion of contract that the performance of our delivery is jeopardised on account of an unforeseeable impediment which cannot be overcome using reasonable endeavours, we shall be entitled to withdraw from the contract. This shall apply in particular in the event of impossibility of performance on your part or risk to performance due to force majeure, strike or natural disaster. In the event of an impediment for which we are responsible, we shall not be entitled to withdraw.

13. Technical Documents, Tools, Equipment

13.1. Any technical documents, tools, technical data sheets, manufacturing equipment, data, etc., provided by us, including all trademarks, copyright and other intellectual property rights shall remain our property. They shall be returned to us, together with any and all duplicates made, without delay and without special request on completion of our order, or at any time upon request; you shall have no right of retention in this respect. You must not use the aforesaid items for any purpose other than the execution of the respective order, and you must not give or make them available in any other way to any unauthorised third parties. Duplication of the items mentioned shall only be allowed to the extent that it is necessary for executing the order.

13.2. You shall, on a free-of-charge basis, take care of and maintain the aforesaid items and repair normal wear and tear. If a sub-supplier is commissioned to manufacture tools and samples in connection with the execution of our order, any and all claims against such sub-supplier regarding the transfer of ownership of such tools and samples shall be assigned to us.

13.3. Any technical or other documents, drawings, diagrams, schemata, charts, photographs, layout templates or other documentations created by the supplier in connection with the execution of our order – whether on data storage media, in printed form or as materials for printing preparation or printing – as well as any and all samples, tools, materials or other means of production shall become the property of FRANK on being made available. Furthermore, FRANK shall receive – to the extent allowed by the law – any and all rights regarding the ownership, use and exploitation of the aforesaid copyrightable works. No extra remuneration shall be owed by FRANK for the transfer of the aforesaid rights; such transfer shall be fully included in the prices stated in the purchase orders.

14. Intellectual Property Rights

14.1. You shall make sure that no trademarks, patents, licences or other intellectual property rights, or third-party applications for intellectual property protection pending at the time of acceptance of delivery, are violated by the delivery and the agreed use of the goods and/or services. This will not be verified on our part.

14.2. You shall immediately inform us of any cases of claimed infringement or risk of infringement which become known to you.

14.3. If the use of deliveries made by the supplier has been prohibited by a court order, or if in the opinion of either party legal proceedings on the grounds of infringement of intellectual property rights are imminent, the supplier shall provide a remedy unless he is not to be held responsible for such infringement. Such remedy can consist in the supplier procuring the rights at issue to FRANK or modifying or re-performing his contractual obligations in such a way that intellectual property rights are no longer violated. If remedy is not provided or remains unsuccessful, FRANK shall be entitled to withdraw from the contract. In the event that we are held liable by any third party because you negligently violated a third party's intellectual property rights by delivering your goods/services, you shall, upon our first demand, indemnify us against such claims and any and all expenses necessarily incurred in connection with being held liable by such third party and in defending their claims. We will not recognise any claims of any third party without your written consent, nor will we make any agreement with the third party in such respect. The period of limitation for such rights of indemnity shall be 36 months as from the transfer of risk.

14.4. The provisions of sub-clause 14.3. shall not apply where goods or services are based on drawings, models or any other equivalent descriptions or specifications provided by us and if it was impossible for you to realise that the products you developed would infringe on intellectual property rights.

15. Indemnity – Damages – Product Liability

15.1. In the event of claims made on FRANK on product liability grounds, the supplier shall indemnify us against such claims insofar as the damage has been caused due to a fault in the goods delivered by the supplier. In cases of liability based on fault, this shall however only apply if the supplier actually is at fault. Insofar as the cause of damage lies within the supplier's sphere of responsibility, the supplier shall have to prove that the fault lies not with him.

15.2. As part of his obligation of indemnification, the supplier shall assume all the costs and expenses arising from or in connection with third-party liability claims, including any recalls made by FRANK. Prior to any recall, FRANK will inform the supplier, enable him to participate adequately and consult with him on how to best proceed; this shall not be requisite in cases where notification or participation of the supplier is not possible due to extreme urgency.

15.3. You shall take out product liability insurance with a minimum cover of €10 million per event and maintain the same during the duration of the contract; we shall be entitled to request confirmation of cover from your insurer. This provision shall not apply in cases where said insurance cover will be out of proportion with any foreseeable damage; in such cases, sentence 1 shall apply on the understanding that product liability insurance shall be taken out to provide sufficient cover.

15.4. You shall indemnify us against any and all claims which any third parties – no matter on what legal grounds – may raise against us in respect of any defect in quality or in title or due to any other fault in a product delivered by you, and you shall reimburse to us any and all costs necessarily incurred in asserting our legal rights in such event.

15.5. In the event that our customer raises claims against us in connection with a purchase of consumables and those claims are due to a fault in goods delivered by the supplier, the period of limitation for our rights to damages shall be three years starting from the date on which the supplier delivered the goods to us.

16. Minimum Wages

16.1 Without our prior written consent, the supplier shall not be entitled to have the service owed to us performed by any third party (e.g. subcontractors, freelance employees).

16.2. The supplier agrees and confirms that all of his employees are paid at least in accordance with the provisions of Sections 1, 2 and 20 of the German Mini-

imum Wage Act [Mindestlohngesetz] as well as any other legal regulations and collective agreements for the observance of which we are responsible pursuant to Section 14 of the German Employee Assignment Act [Arbeitnehmerentsendegesetz] and/or other comparable regulations.

16.3. The supplier shall pay the employees assigned to perform the services ordered according to the underlying contract at least minimum wages pursuant to the Minimum Wage Act of 11 Aug. 2014. We shall be entitled, at any time during the duration of the services ordered, to demand from the supplier written proof of payment of minimum wages, in which case the supplier shall furnish such written proof without delay, at the latest however within three working days from receipt of the demand.

16.4. The supplier shall, upon our first demand, indemnify us against all claims made in the event of a violation of the provisions of the Minimum Wage Act by the supplier or any of his subcontractors. Irrespective of any other rights of termination or withdrawal, we shall be entitled to withdraw from the contract or terminate the contract with immediate effect if the supplier and/or any of his subcontractors culpably violated the aforementioned regulations and/or the Minimum Wage Act of 11 Aug. 2014. The supplier shall compensate us for any and all damage incurred by us as a result of such withdrawal or termination. Any claims on the part of the supplier for non-performance shall be ruled out. Otherwise the consequences of withdrawal or termination shall be subject to the applicable legal regulations.

17. Confidentiality, Title to Products

17.1 All business, accounting or technical documents, information and data, in particular personal data, in connection with this business relationship, or any other facts that become known to you as part of this business relationship, shall be kept secret from any third parties and shall be treated with strict confidentiality. In your own company, they may only be made available to such persons who need necessarily be involved in their use and who have also signed a written declaration of secrecy. They shall remain our exclusive property. Without our prior express consent, such information must not – except for the purposes of this contract – be used, reproduced or commercially exploited. You shall treat all the knowledge, information and data acquired in connection with this contract confidentially even beyond this contract.

17.2. This obligation to secrecy shall not apply insofar as information, secrets or know-how are generally known, or become or have become generally known without your fault, or were already known to you prior to conclusion of this contract, or have to be disclosed to an authority or another authorised third party upon their demand.

17.3. Products you have specially made for us in accordance with documents designed or provided by us, such as drawings, models or other know-how materials, or according to our confidential specifications, or using equipment designed or provided by us, must not be used nor disclosed or offered to any third party without our prior written consent.

17.4. FRANK reserves all rights in information under sub-clause 17.1 (including copyrights and the right to file applications for industrial property rights, such as patents, utility models, etc.). Insofar as information under sub-clause 17.1 has been made accessible to any third parties, this reservation of rights shall also apply in favour of such third parties.

18. Data Protection

18.1. You acknowledge and agree that we collect, store, process and use personal data connected to our business relationship with you, and that we transfer such data to affiliated companies of the Max Frank Group for the purpose of maintaining the proper course of business and settlement of accounts. We will make sure that your protectable interests will not be impaired.

18.2. Legal regulations and internal company rules regarding data protection shall be observed. The supplier shall accordingly oblige his employees, subcontractors and other persons in any way involved in performing the contract to do so and shall, on request, provide FRANK with the written record of such obligation. Insofar as any processing or use of personal data is carried out by way of a processor, the parties shall, without delay, conclude a data protection agreement in accordance with the provisions of the German Federal Data Protection Act [Bundesdatenschutzgesetz (BDSG)].

19. Code of Conduct

The Code of Conduct of the Federal Association for Materials Management, Purchasing and Logistics [Bundesverband Materialwirtschaft, Einkauf und Logistik e.V. (BME)] in the version applicable at the time of conclusion of contract, available at http://www.bme.de/fileadmin/bilder/foerderpreise/Code_of_Conduct.pdf, shall apply to all business relationships.

20. Applicable Law

This contract shall be subject to German law. The provisions of the Vienna UN Convention on the International Sale of Goods (CISG) shall not apply.

21. Place of Performance

Unless otherwise specifically agreed, the place of performance for delivery in each case shall be the site which placed the order or concluded the contract. The place of performance for any payments to us shall be Leibfing, our principal place of business.

22. Place of Jurisdiction

The place of jurisdiction for all disputes arising from contracts with companies, legal entities under public law or special assets under public law in Germany and abroad shall be the court having jurisdiction in Leibfing, our principal place of business. This shall also apply to any legal action based on a dishonoured cheque or bill of exchange.

This translation is provided for convenience only.

In the event of any discrepancy between the translated version and the German version, the German version shall prevail.