

## **1 General Provisions**

- 1.1 Any legal relationship between the Contractor and the FRÄGER Group shall exclusively be subject to the following Terms and Conditions. Any terms or conditions stipulated by the Contractor as well as any other agreements diverging from these Terms and Conditions will be applicable only if confirmed by the FRÄGER Group in writing. Otherwise, the FRÄGER Group's Terms and Conditions shall be deemed to apply even if they conflict with the Contractor's terms and conditions. Neither silence nor acceptance or payment of goods or services by the FRÄGER Group may be inferred as acceptance of the Contractor's terms and conditions.
- 1.2 The delivery contract and any amendments, ancillary agreements, declarations regarding the termination of the contract as well as any other statements or notices must be in writing, unless otherwise specified in these Terms and Conditions. Any orders and delivery requests made by the FRÄGER Group shall be deemed accepted by the Contractor, if the Contractor does not object to them in writing within one week following receipt of same. The validity of the objection shall depend on when the FRÄGER Group receives the objection. The Contractor must indicate to the FRÄGER Group upon request the time that the order/delivery request has been received by him.
- 1.3 In addition, the FRÄGER Group shall be entitled to revoke an offer within two weeks following sending the offer, if the FRÄGER Group has not previously received the Contractor's written acceptance. Prior to the execution of any order, the FRÄGER Group shall be entitled to request, in consultation with the Contractor, changes regarding the design, quantity to be delivered and time of delivery. The effects of these changes are to be arranged adequately and by mutual agreement. If no agreement can be reached, the FRÄGER Group shall be entitled to rescind/terminate the contract. The Contractor shall not be entitled to make any changes regarding design or construction, when compared with previous similar deliveries and services, without prior consultation with the FRÄGER Group.
- 1.4 Any cost estimates, initial samples and samples in general shall be binding and will not be subject to payment, unless otherwise explicitly agreed in writing.

## **2 Prices**

- 2.1 The total prices or unit prices agreed upon are to be understood as fixed prices and include valid statutory VAT. Without prejudice to the regulations stated hereinafter, subsequent increases for any reason whatsoever are excluded.
- 2.2 If in the case of long-term contracts (i. e. contracts with a term of more than 12 months or contracts of unlimited duration) any significant change occurs in respect of labour, material or energy costs, each of the contracting parties shall be entitled to request an appropriate adjustment of the price taking these factors into account. In such case, Article 313 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall apply. A price adjustment cannot be requested if the change in costs amounts to not more than 10% of the calculated costs. Moreover, no adjustment may be requested if the permanent change in the costs is objectively uncertain due to conditions outside the contract.
- 2.3 The Contractor shall not grant to the FRÄGER Group prices and terms less favourable than those granted to other purchasers, if and to the extent that, in the specific case, the latter are offering the same or equivalent conditions. If it becomes apparent during the contractual relationship that one of the Contractor's competitors is offering the same goods or services at prices or other terms more favourable to the FRÄGER Group, the FRÄGER Group shall be entitled to request that the prices be adjusted accordingly as per clause 2.2 of these Terms and Conditions of Purchase/Contract.

## **3 Delivery Dates / Delivery Periods / Delays**

- 3.1 The delivery dates and periods agreed upon shall be binding. Compliance with the delivery date or delivery period shall be determined by the date the goods are received by the FRÄGER Group or the consignee designated by the FRÄGER Group.
- 3.2 Any imminent delay in delivery must be notified to the FRÄGER Group immediately in writing, together with a statement of the reasons for and the expected duration of the delay. Any claims for damages to which the FRÄGER Group might be entitled due to the delay shall not be affected hereby. In particular, an acceptance of a delayed delivery or service without reservations shall not be construed as a waiver of the claims to compensation to which the FRÄGER Group is entitled on account of the delayed delivery or service.
- 3.3 If the reason for a delay is beyond the Contractor's control, the Contractor may invoke such reason only if he has met his obligation to notify the FRÄGER Group. The Contractor shall be entitled to furnish proof that the damage would have been incurred also in the event of a notification in due time.
- 3.4 The FRÄGER Group shall be entitled to claim damages in the following amounts: 25% of the total gross order value in the event of non-performance and 0.5% of the total gross order value per calendar week commenced up to a maximum of 25% of the total gross order value in the event of delayed performance. The FRÄGER Group may furnish proof that the damage incurred by it exceeds the above amounts, which higher damage then is to be compensated for by the Contractor. Similarly, the Contractor may furnish proof that no damage has been incurred, or that the damage incurred is substantially lower than the underlying damage.
- 3.5 In addition, the FRÄGER GROUP shall be entitled to accept excess or short deliveries.

## **4 Delivery / Shipment**

- 4.1 Delivery shall be made in accordance with an Incoterms 2011 clause agreed upon individually to the place of receipt specified by the FRÄGER Group. If no clause has been agreed upon individually, clause DDP of Incoterms 2011 shall apply. Where, in exceptional cases, the costs of the freight are to be borne by the FRÄGER Group, the Contractor shall select the mode of transportation prescribed by the FRÄGER Group, or otherwise the most favourable mode of transportation and delivery. The selection of a favourable mode of transportation must be made without detriment to transport safety.
- 4.2 Risk shall not pass to the FRÄGER Group until the goods have been accepted by the specified place of receipt. Until shipment of the goods, they shall be stored for the FRÄGER Group free of charge and at the Contractor's risk. This shall not apply to consignment stocks. In such case the terms individually agreed upon in separate consignment stock agreements shall apply.
- 4.3 Packaging shall be included in the price. If, in exceptional cases, the parties have agreed otherwise, packaging shall be charged at cost price. In the event that no specific packaging has been specified by the FRÄGER Group, the Contractor shall

select suitable packaging and ensure that the goods are protected from damage. If the goods are returned, the packaging value charged shall be credited pro rata.

- 4.4 Any extra costs for expedited transportation of the goods ordered, which may be incurred on account of non-compliance with the shipping or packaging instructions or in order to ensure compliance with the delivery date, shall be borne by the Contractor.

### **5 Payment**

- 5.1 Payments shall be effected by the FRÄGER Group at the earliest following receipt of the non-defective goods/services produced in accordance with the order; i. e. in the event that the goods delivered are defective, the FRÄGER Group shall be entitled to withhold a proportionate amount of the payment until the order has been properly filled. Any further rights shall remain unaffected. The method of payment shall be at the FRÄGER Group's discretion.
- 5.2 Any payment deadlines shall start from the date of receipt of invoice, not, however, before receipt of the goods and/or acceptance of the services and, in the event that documentations or similar documents are included in the scope of services, not before such documents have been submitted to the FRÄGER Group in accordance with the contract. In the case of early deliveries, the due date shall be determined by the agreed delivery date.
- 5.3 Payment shall be effected in EUROS. Therefore, the Contractor shall not be entitled to issue invoices in another foreign currency without the consent of the FRÄGER Group. In exceptional cases, should pricing in foreign currency have been agreed upon, the agreed price shall be understood as being based on the conversion rate between the EURO and the relevant foreign currency quoted at the Frankfurt Exchange (Frankfurter Börse) at 12 a. m. on the date of order confirmation. If there has been a change in such rate by the payment date, each party may request that the price(s) be adjusted accordingly.
- 5.4 The Contractor may not offset his claims against the FRÄGER Group, unless such claims are uncontested or have been declared final and absolute in a court of law. Moreover, the Contractor may not assign any claims arising from the business relationship to third parties without the FRÄGER Group's prior written consent.

### **6 Retention of Title**

- 6.1 Any retention of title on the part of the Contractor shall expire once the goods delivered are used for the purpose for which they were intended.
- 6.2 If goods are delivered to the Contractor by the FRÄGER Group and such goods are processed or inseparably mixed with other items that are not the property of the FRÄGER Group, the FRÄGER Group shall acquire co-ownership in the new item in proportion of the invoiced value of the goods under retention of title to the other items processed or mixed as of the date of processing and/or mixture.
- 6.3 If FRÄGER Group goods and other movable items are combined into one single item or are inseparably mixed and the other item is to be regarded as the principal item, the Contractor shall assign to the FRÄGER Group pro-rata co-ownership, provided that the principal item is his property. The Contractor shall store the property or joint property on behalf of the FRÄGER Group. Apart from that, the item arising from processing, combination and/or mixture shall be subject to the same provisions as the goods under retention of title.
- 6.4 The Contractor shall be obliged to notify the FRÄGER Group immediately of any action by third parties to seize items that are subject to co-ownership rights in favour of the FRÄGER Group within the meaning of clause 6.2 above and to deliver all the documents required for an intervention. The Contractor must specify these goods upon first request of the FRÄGER Group and indicate the third-party right asserted. Such obligation shall also apply to any other risk to the FRÄGER Group rights. Any disadvantages arising from a failure or delay in notifying the FRÄGER Group or from measures aimed at protecting any rights shall be for the Contractor's account.

### **7 Warranty / Liability**

Should any delivery/service be defective or should the Contractor breach any other obligation under the contract, the FRÄGER Group shall be entitled to statutory rights and claims without limitation. In addition, the following shall apply:

- 7.1 If, due to a defective delivery/service, operational safety is compromised and/or the FRÄGER Group or third parties are at risk of extraordinarily high levels of damage, the FRÄGER Group shall be entitled, even without contacting the Contractor beforehand, to rectify defects and to repair the damage or to make replacement purchases at the Contractor's expense.
- 7.2 If longer warranty periods have not been agreed upon in individual cases, the statutory warranty periods shall apply.
- 7.3 The FRÄGER Group's obligation to inspect the goods shall not commence until the designated consignee has received the goods with a proper dispatch note, i. e. once all of the documents which are required to accompany the Contractor's shipment have arrived, and the FRÄGER Group, following receipt, has checked completeness to an extent that is deemed reasonable and technically feasible.
- 7.4 Any complaints related to obvious defects shall be submitted within a period of 14 days and/or, in the case of drop shipments, within a period of 14 days following receipt of the goods by the FRÄGER Group purchaser. Any other defects are to be notified within 14 days following identification.
- 7.5 Where deliveries and services are found to be defective with regard to workmanship and quality and/or are effected without the accompanying documents required, i. e. without delivery notes, initial sample reports, product labelling or quality control certificates, the FRÄGER Group shall be entitled to charge, for each legitimate notice of defect, a cost flat rate of 150.00 EUROS. The Contractor may furnish proof that the costs incurred by the FRÄGER Group are lower.
- 7.6 For defects occurring at a later juncture, the obligation to give notice of same shall not commence until the defect has clearly been established. In this respect, the Contractor shall waive the right of objection for delayed notice of defects, if the delayed identification of the defect does not result from a serious disregard of the diligence customarily incumbent on him in the course of business.
- 7.7 Defective goods shall be returned "freight collect" at the expense and risk of the Contractor.
- 7.8 To the extent possible and legally permissible and without prejudice to any claims on the part of the FRÄGER Group under the preceding paragraphs, the Contractor already assigns to the FRÄGER Group any and all claims against his suppliers/subcontractors and/or insurers to which he may be entitled due to a defect established by the FRÄGER Group or a

deviation from any warranty condition identified by the FRÄGER Group. He shall submit to the FRÄGER Group upon first request any and all documents required for enforcing such claims and shall notify the third party concerned of the assignment upon request. Should the FRÄGER Group not assert said assigned rights, the Contractor may request that the rights be reassigned to him.

- 7.9 The Contractor shall, at the discretion of the FRÄGER Group, be obliged to rectify defective goods/services (*Nachbesserung*) or deliver replacement goods/services (*Nachlieferung*). The Contractor shall not be entitled to rectification of defects or replacement delivery. If, due to FRÄGER Group production processes, a rectification of defects or replacement delivery by the Contractor is not an option, because significant delays in production are likely, the FRÄGER Group therefore reserves the right to effect a rectification or replacement of defective delivery goods itself or to have same effected by third parties. The Contractor shall be informed accordingly. The ensuing costs shall be borne by him.
- 7.10 The Contractor shall bear any pre-processing costs, even in the case of proper processing by third parties before or as part of the final processing until any potential defects have been identified for the first time, as well as any potential disassembly costs as well as deinstallation and installation costs (hidden defects). In the event that the FRÄGER Group makes use of the above provision, it shall inform the Contractor accordingly. The Contractor shall be liable for the additional costs incurred due to any replacement transaction. The FRÄGER Group shall also be entitled to bring further claims for damages, e. g. for production downtimes or loss of profits.
- 7.11 Moreover, the Contractor shall be liable for any and all further damages to property, with the exception of the goods, as well as for any infringements of third party rights (consequential damages caused by defects) which occur as a result of a breach of a duty to inform, notify, provide advice or instruct.
- 7.12 If any goods prove to be defective, resulting in product recalls, or if remedy is sought from the FRÄGER Group due to a quality guarantee given by the Contractor and subsequently adopted by the FRÄGER Group pursuant to Article 443 of the German Civil Code (BGB), the Contractor shall be obliged to release the FRÄGER Group at first request from all associated claims made against it.
- 7.13 The Contractor shall be liable without limitation, also in such cases in which liability is imposed under the German Product Liability Act (*Produkthaftungsgesetz*) for personal injury or property damage to privately used property caused by defects in the goods delivered. The liability for damages shall not be precluded by the fact that the item delivered is combined with another item, if the liability of the FRÄGER Group towards third parties is at least partially caused by processing on the item delivered.
- 7.14 If the Contractor suspends delivery and the FRÄGER Group has already made arrangements in anticipation of delivery, the Contractor shall be liable, without limitation, to compensate for the damage caused by the breach of trust (*Vertrauensschaden*), also in the event that the Contractor is not obliged to effect delivery for legal reasons. The liability for damages shall not apply in the event that the FRÄGER Group had to expect that no delivery will be effected.

## **8 Right of Rescission**

- 8.1 In the event of force majeure, labour disputes, operational disruptions not the fault of the FRÄGER Group, unrest, official measures taken by authorities or other unavoidable events at the FRÄGER Group, the FRÄGER Group shall, without prejudice to any of its other rights, be entitled to rescind the contract in whole or in part, unless such events are of insignificant duration or result in a merely insignificant reduction in the FRÄGER Group's requirements.
- 8.2 If the same goods, or goods of the same type, are repeatedly delivered in a defective condition, the FRÄGER Group shall, upon receipt of another defective delivery and after issuing a written warning, be entitled to rescind the contract also with respect to goods still to be delivered.
- 8.3 Should any breach of duty by the Contractor occur, in particular delayed deliveries, the FRÄGER Group shall, following unsuccessful expiry of a reasonable period of grace set for delivery/service, be entitled to rescind the contract. In addition, the FRÄGER Group shall be entitled to appoint a third party to supply the delivery not yet effected by the Contractor at the Contractor's expense or to rescind the contract. The statutory provisions governing the dispensability of setting a time limit shall remain unaffected. There shall be no need to set a time limit, if a binding date for delivery has been agreed upon (transaction for delivery by a fixed date (*Fixgeschäft*)). Any non-performance of key principal and subsidiary obligations as well as any act undertaken by the Contractor as a result of which the necessary trust in a proper performance of the contract is permanently impaired shall also be deemed as a breach of duty.
- 8.4 Moreover, the FRÄGER Group shall be entitled to rescind the contract, if a petition for institution of insolvency proceedings in relation to the assets of the Contractor is filed, such a petition is dismissed, also if dismissed for the first time and in an appealable manner and for any reason whatsoever, or any circumstances become known that constitute an insolvency event pursuant to Articles 17, 18 and/or 19 of the German Insolvency Act (*Insolvenzordnung*, InsO). In this case, the Contractor shall be liable for compensation of the costs of necessary replacement transactions. Any further compensation for damages, e. g. due to necessary replacement transactions, shall remain unaffected.
- 8.5 If a petition for institution of insolvency proceedings in relation to the assets of the Contractor or out-of-court composition proceedings is filed, the FRÄGER Group shall be entitled to rescind the contract in whole or in part.

## **9 Materials Provided / Tools**

- 9.1 Any models, drawings, samples, dies, materials, tools, templates and/or other auxiliary equipment and documents provided to the supplier, or manufactured by the supplier according to specifications issued by the FRÄGER Group, shall not be disposed of, pledged or otherwise passed on to a third party, or used in any other way for a third party, without the written approval of the FRÄGER Group.
- 9.2 Any materials provided may be copied or duplicated only with the prior written consent of the FRÄGER Group. Such copies/duplicates shall, upon their production, become the property of the FRÄGER Group. The Contractor shall not be entitled to retain said materials for any reason whatsoever.
- 9.3 Notwithstanding any other agreement to the contrary, the FRÄGER Group shall receive full ownership or co-ownership of the tools used to manufacture the goods delivered to the extent it has contributed to the verified costs of making such tools. The tools shall, upon payment of same, become the (joint) property of the FRÄGER Group. The tools shall remain with the

Contractor on loan. The Contractor shall require the consent of the FRÄGER Group to actually or legally dispose of the tools, move them to another location or render them permanently non-functional. The Contractor shall label the tools as being the (joint) property of the FRÄGER Group. The Contractor shall bear the costs of the maintenance, repair and replacement of the tools. The FRÄGER Group shall have title in the replacement tools at the same proportion as the original tools. In cases of joint ownership of a tool, the FRÄGER Group shall have a right of first refusal with respect to the joint ownership share of the Contractor.

- 9.4 The Contractor must use the tools jointly owned by the FRÄGER Group exclusively for the purpose of manufacturing the goods delivered. Once deliveries have ceased, the Contractor must hand over the tools to the FRÄGER Group immediately upon request. In the case of tools jointly owned by the FRÄGER Group, the FRÄGER Group, once the tools have been handed over to it, must reimburse the Contractor at the then current value of the Contractor's jointly owned share. The Contractor shall in no event be entitled to retain the tools. The Contractor's obligation to hand over the tools shall apply also in the event that an insolvency petition is filed against him, as well as in the event of a longer term interruption of the deliveries. The Contractor shall insure the tools to the extent agreed upon, or, in the absence of such an agreement, to the customary extent.

### **10 Confidentiality / Information**

- 10.1 The Contractor shall keep confidential all information made available to him by the FRÄGER Group, including and without limitation, drawings, documents, knowledge, samples, production devices, models, media, etc. The Contractor shall not make such information available to third parties (including subcontractors) without the written consent of the FRÄGER Group and shall not use it for any purposes other than those determined by the FRÄGER Group. These obligations shall apply *mutatis mutandis* to copies and duplicates. This obligation does not apply to information which, when disclosed, was already legitimately known to the Contractor without being subject to an obligation of confidentiality or, subsequently, becomes legitimately known to him without being subject to an obligation of confidentiality or which is or becomes generally known to the public without any breach of contract by either of the parties or for which written permission for further use has been granted. The Contractor may not use the business relationship with the FRÄGER Group for advertising purposes without the prior written consent of the FRÄGER Group.
- 10.2 The FRÄGER Group retains title and reserves all other rights (such as copyright) to the information provided by it. Copies may be made only with the prior written consent of the FRÄGER Group. Title to the copies passes to the FRÄGER Group at the time such copies are created. The Contractor shall, at his expense, properly keep the documents and other items made available to him along with copies of same on behalf of the FRÄGER Group. The Contractor shall keep such documents and items in perfect condition, obtain insurance for them and, upon request of the FRÄGER Group, return and/or destroy them at any time. The Contractor shall not be entitled to retain such items for any reason whatsoever. The complete return and/or destruction requires confirmation in writing.
- 10.3 Any infringement of the obligations provided for in clause 10.1 above shall result in a contractual penalty of 25,000 EUROS for each case of infringement which shall be due immediately. The Contractor shall be entitled to have the adequacy of the amount of the contractual penalty verified by a court of law. Any contractual penalties paid shall be offset against any claims for damages.

### **11 Quality Control**

The Contractor shall constantly monitor the quality of his deliveries and services. He shall be obliged to comply with the FRÄGER Group's Supplier Quality Agreement (SQA) as amended from time to time. For this purpose, he shall establish and maintain a quality control system in compliance with ISO/TS 16949 or any other standard agreed with the FRÄGER Group. Any changes to the goods to be delivered shall require the prior consent of the FRÄGER Group. The Contractor shall, for all goods delivered to the FRÄGER Group, maintain written records as to when, how and by whom the defect-free manufacture of the goods delivered was ensured. These records shall be retained for a minimum of 15 years, unless otherwise required, and shall be presented to the FRÄGER Group upon request. The Contractor shall obligate his own suppliers accordingly.

### **12 Final Provisions**

- 12.1 The place of fulfilment for all deliveries and services shall be the place of destination specified by the FRÄGER Group.
- 12.2 The place of jurisdiction shall be Kassel (Germany). However, the FRÄGER Group shall also be entitled to take legal action against the Contractor at any other court of competent jurisdiction, if the Contractor qualifies for an agreement on jurisdiction (*Prorogation*) within the meaning of the legal provisions. In this case the Contractor guarantees to enter a defence on the merits at the chosen court without complaint.
- 12.3 All legal relationships between the FRÄGER Group and the Contractor shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 12.4 Should any of these Terms and Conditions or any other provision of the contract be or become invalid, such provision shall be deemed to have been agreed as comes closest to the interests of the contracting parties, giving due consideration to the interests of both parties.