

Terms and Conditions of Sale

of Emil Frei GmbH & Co. KG

As of: 01.01.2025

1.0 Scope and conclusion of the Contract

2.0
1.1 Unless otherwise agreed in writing, our Terms and Conditions of Sale shall apply exclusively to all - current and future - deliveries of goods and services (hereinafter referred to as deliveries) to the Purchaser within the meaning of Clause 1.2. The Purchaser's terms and conditions shall not apply even if we do not expressly exclude them.
1.2 These Terms and Conditions of Sale only apply to companies within the meaning of Section 14 German Civil Code (BGB), legal persons under public law and special funds under public law (hereinafter referred to as "Purchasers").
1.3 Our offers are non-binding. Contracts only come into effect by way of our written order confirmation or delivery (acceptance). Unless otherwise stipulated in the purchase order, the Purchaser is bound by its purchase order for a period of 14 days as from the date of receipt by us.
1.4 Our illustrations, drawings, colour specifications, weight specifications and measurements only represent approximate values insofar as they are not expressly identified as binding or are objectively material.
1.5 Oral ancillary agreements, amendments and deviations from these Terms and Conditions are only valid with our written confirmation.
1.6 Our product descriptions (e.g. advertising claims, the content of our brochures and/or public statements made by us, our employees or sales personnel, including sales representatives) do not constitute a specification of properties or a guarantee.
1.7 Unless otherwise agreed, customary or minor, technically unavoidable deviations in quality, colour, size or weight do not constitute defects.
1.8 Where, following conclusion of the contract, we make changes to our goods as part of the ongoing development process, we may deliver the changed version insofar as the changes are minor and it is reasonable to expect the Purchaser's acceptance.
1.9 We reserve all ownership rights and copyrights to samples, cost estimates, drawings and other documents, items and information provided and created by us. They must be treated as strictly confidential and can only be disclosed to third parties with our prior written consent, unless disclosure is required by law or court order in exceptional cases. At any time, upon our request, the Purchaser must return them or verifiably destroy them.

2.0 Prices

2.1 The agreed prices are FCA shipping point (Incoterms® 2020) net in euros plus the statutory value added tax applicable on the date of delivery.
2.2 The weight, number of pieces and quantity determined by us shall be authoritative for the calculation unless the Purchaser objects without undue delay after delivery.
2.3 In the case of orders with lead times of more than 2 months or in the case of annual contracts or other framework contracts or price agreements with a duration of more than two months, we are entitled to increase or reduce the agreed prices accordingly where, following conclusion of the contract, there are major changes in the cost of salaries, materials, energy or raw materials and we are not responsible for these changes. Any such price increase shall not be more than 10%.

3.0 Technical consultancy

Insofar as we provide consultancy services, we do so to the best of our knowledge. All details and information on the fitness and use of the goods supplied do not release the Purchaser from the obligation to carry out his own tests and trials (in particular regarding the Purchaser's intended use). This applies in particular if thinners, hardeners, additional paint or other components are added that were not purchased from us.

4.0 Lead time, transfer of risk, partial deliveries, delay in delivery, packaging

4.1 Delivery is FCA shipping point (Incoterms® 2020). Lead times commence on receipt of the order confirmation but not before all details regarding execution of the order and all technical issues have been clarified and any agreed advance payment or payment security has been received. The lead time or a delivery date is deemed to have been complied with where the goods are loaded onto the means of transport provided by the Purchaser by expiry of the lead time and/or by the delivery date. Where dispatch is delayed through no fault on our part, the lead time is deemed to have been complied with on notification of readiness for delivery.
4.2 If the Purchaser defaults on accepting the goods (e.g. fails to provide a means of transport at the allotted time), we shall be entitled (without the need for any further notification or additional offer) at our sole discretion either to send or - in the absence of any other possibility - store the goods - if necessary outdoors - at the Purchaser's expense. In this case, we shall not be liable in the event that the goods are destroyed, lost or damaged. We shall be entitled to invoice for the goods as from commencement of default.
4.3 Requests for changes made by the Purchaser shall extend the lead time by the length of time required to examine their feasibility and to apply the new requirements. Where ongoing production is suspended due to the request for changes, we may bring forward and finish other orders. We are not obliged to keep production capacity free during the period of the delay.
4.4 Our delivery obligation is subject to the proviso that we receive correct and timely delivery from our own suppliers, unless we are responsible for their incorrect, late or failed delivery. Insofar as we bear no responsibility for the incorrect, delayed or failed delivery by our own suppliers, we shall not be in default and shall be entitled to withdraw from the contract if delivery from our own suppliers does not take place within a reasonable period or at all.
4.5 The risk shall pass to the Purchaser FCA shipping point (Incoterms® 2020) and this shall be so even in the exceptional case that we have also assumed other obligations, e.g. shipping costs or arranging shipment.
4.6 Partial deliveries are permitted provided they are reasonable for the Purchaser.
4.7 In the case of customised production runs for our own customers, we are entitled to exceed or fall short of the agreed delivery quantities by 5 kg for a delivery quantity of < 50 kg and by 10% for a delivery quantity of > 50 kg. These quantity deviations shall not constitute a defect.
4.8 In the case of a delay in delivery, our liability for simple negligence shall be limited to 0.5% per full week of the delay up to a total maximum of 5% of the net invoice amount for the part of the delivery affected by the delay. This shall be without prejudice to the right to claim damages in lieu of performance pursuant to Clause 9. The Purchaser shall notify us, by no later than conclusion of the contract, of any contractual penalties agreed with its own customers.
4.9 If the delivery is made in returnable containers, these must be returned empty and carriage paid within 90 days of receipt of the delivery. Loss and damage of returnable packaging shall be borne by the Purchaser if the Purchaser is responsible for this. Returnable packaging may not be used for other purposes or to hold other products. They are only intended for transporting the delivered goods. Labelling must not be removed.
4.10 We will not accept the return of non-reusable packaging; instead, we will refer the Purchaser to a third party who will recycle the packaging in accordance with the Packaging Regulation.

5.0 Force majeure

5.1 In the event of force majeure, we shall be released from the duty to carry out our contractual obligations and from any duty to pay damages and from any other contractual remedy for breach of contract for as long as the force majeure or its effects prevent fulfilment of the contract. This also applies where our own suppliers are subject to force majeure, or during an existing period of delay.
5.2 "Force majeure" means the occurrence of an event or circumstance that prevents us from fulfilling one or more of our contractual obligations under the contract if and to the extent that: (a) this obstruction is beyond our reasonable control and (b) this obstruction was not reasonably foreseeable by us at the time the contract was concluded and (c) the effects of the obstruction could not reasonably have been avoided or overcome by us.
5.3 Force majeure is presumed in case of the following events: war, riot, acts of terrorism, currency and trade restrictions, prohibitions or restrictions under foreign trade law, e.g. embargoes and sanctions, lawful or unlawful official acts (e.g. refusal of import or export licences), compliance with laws or government orders, epidemics, extreme natural events, explosion, fire, destruction of equipment, prolonged failure of transport, telecommunications, information systems or power, general industrial unrest such as boycotts, strikes and lockouts, general shortages of materials, raw materials or power.
5.4 If the force majeure is not purely temporary, both contracting parties shall be entitled to terminate, with immediate effect, the part of the contract affected by the force majeure.

6.0 Payment

6.1 The invoice amount must be paid within 30 days of receipt of the invoice, without any deductions, free to our bank account. Compliance with the payment deadline is determined by the irrevocable receipt of payment in our bank account. Bank charges shall be borne by the Purchaser. They are due immediately.
6.2 In the event of default on payment, we will charge default interest as from the due date amounting to 9 percentage points above the base interest rate, but in any case no less than 10 %. Both we and the Purchaser retain the right to prove that loss resulting from the default was higher or lower.
6.3 The retention of payments and off-setting against counterclaims by the Purchaser is only permitted where its counterclaims are undisputed or have been upheld by a final court judgement. The right of retention is also limited to counterclaims arising under the same contract.
6.4 A delay in payment or other circumstances which indicate a significant deterioration in the Purchaser's financial circumstances after conclusion of the contract shall entitle us to demand immediate payment of all our claims which are based on the same legal relationship.

7.0 Reservation of title

7.1 We reserve title to the goods delivered until the receipt of full payment of the respective outstanding purchase price from the Purchaser.
7.2 Any treatment or processing of the reserved goods by the Purchaser shall always be undertaken on our behalf without involving any obligations on our part. Where the reserved goods are mixed or combined with other items not belonging to us we shall acquire co-ownership of the new item in accordance with the ratio of the net invoice value of the reserved goods to the other materials. The newly created item is deemed to be reserved goods within the meaning of this Clause 7.0.
7.3 The Purchaser is entitled to sell the reserved goods in the ordinary course of business but hereby assigns to us, in advance, all receivables to which it becomes entitled as a result of the resale of the respective reserved goods, as follows: (a) If the reserved goods are sold unprocessed, the Purchaser shall assign to us the full amount of the receivables arising from the resale of the reserved goods. (b) If - after being combined or mixed - the reserved goods are sold by the Purchaser along with goods which do not belong to us, the Purchaser shall assign to us the receivables arising from the resale in the amount of the value of the reserved goods together with all ancillary rights and with priority over the rest. We hereby accept these assignments.
7.4 The Purchaser is entitled to recover the receivables assigned to us subject to on-time compliance with its payment obligations arising under the business relationship with us.
7.5 Where the Purchaser ceases to meet its payment obligations to us, we may revoke its authorisation to sell and use the reserved goods, and require the Purchaser to disclose to us the assigned receivables and the respective debtors, provide us with all the information necessary to effect recovery, hand over to us all the accompanying documentation and notify its debtors of the assignment. Redemption of the reserved goods does not constitute rescission of the contract. If we withdraw from the contract we shall be entitled to sell the goods as we think fit.
7.6 The Purchaser is obliged to store the reserved goods with care and to insure them sufficiently against loss or damage, at its own expense, for the replacement value. The insurance policy and evidence of payment of the premiums must be submitted to us on request. The Purchaser hereby assigns to us any claims under the insurance policy, subject to the condition subsequent that title passes to the Purchaser. We hereby accept this assignment.
7.7 Attachment of the reserved goods by third parties must be reported to us in writing without delay. Costs arising as a result of defending an attachment shall be borne by the Purchaser insofar as they cannot be recovered from the third party.
7.8 Where the value of securities exceeds our claims by more than 20%, we shall, at the Purchaser's request, release securities in this respect at our own discretion.
7.9 If, in the case of individual purchase contracts, the reservation of title is invalid under the law of the country in which the delivered goods are located, the Purchaser shall inform us without delay and, at our request, provide security to the same value. If the Purchaser fails to comply with this request, we may require immediate payment of the outstanding purchase price under these purchase contracts irrespective of any agreed payment targets.

8.0 Claims under warranty

8.1 The Purchaser shall examine the goods upon delivery, without undue delay, for defects in quality.
8.2 Defects in quality must be reported to us, without undue delay, following delivery. Hidden defects must be reported to us without undue delay following their discovery. Notification must be in writing and precisely specify the type of defect and its extent. Where the said time limits are exceeded, all claims and rights under warranty in respect of these defects shall expire.
8.3 Where notifications of defects have been properly submitted and are justified, we will choose either to supply replacement goods or repair the defect. Where subsequent performance fails or is refused or delayed, without justification, the Purchaser is entitled to demand a reasonable reduction in the price or - in the case of significant defects rendering continuation of the contract unreasonable - to withdraw from the contract. Furthermore, if subsequent performance fails, the Purchaser is entitled to claim damages in lieu of performance in accordance with Clause 9.0.
8.4 If we deliver defective goods and the Purchaser attaches them to another item after the defect has become apparent, whereby the defect is deemed to have been apparent in the case of grossly negligent ignorance of the defect, we shall not be obliged, as part of subsequent performance, to reimburse the Purchaser for the expenses necessary for removing the defective item or for attaching the repaired or newly delivered defect-free item.
8.5 We will not assume the cost of subsequent performance which arises due to the fact that, following delivery, the item delivered is transported to a location other than the Purchaser's place of business.
8.6 Insofar as the defect arises from an essential third-party product, we are initially entitled to restrict our liability to the assignment of the claims and rights under warranty to which we are entitled as against the supplier of the said third-party product, unless satisfaction by way of the assigned claims or rights fails or cannot be obtained for some other reason. In this case, the Purchaser is entitled to the rights under Clause 8.3.
8.7 The infringement of third-party rights only represents a defect where these rights have protective effect with respect to the Federal Republic of Germany.
8.8 Re-qualification tests of our products are carried out, on defined objects and the coating materials, exclusively by prior agreement with the Purchaser.

9.0 General Liability

9.1 In the case of intent or gross negligence, fraudulent concealment of defects, death, personal injury or damage to health, or liability under the Product Liability Act, we shall be liable in accordance with the statutory provisions. Where there is a guarantee, we shall be liable in accordance with the provisions of the guarantee.
9.2 In the case of simple negligence, we are only liable for the breach of an essential contractual condition and this shall be limited to compensation for loss which is foreseeable and typical for such contracts. Such a material contractual condition is one which must be fulfilled in order for the contract to be properly implemented in the first place, and which the Purchaser generally expects, and is entitled to expect, will be fulfilled. In all other cases, our liability is excluded.
9.3 In the case of fault-based liability under the German Civil Code/Commercial Code (BGB/HGB), no claims in damages exist where we are not to blame for the breach.
9.4 We will refund the costs of disassembly and reassembly arising as a result of the replacement of defective goods provided we are responsible for the defect.
9.5 We shall bear no liability for breaches of duty caused by our suppliers, subcontractors and vicarious agents.
9.6 Claims by the Purchaser due to defects in delivered goods which, in accordance with their customary usage, have been used in a building and have caused the building to be defective, shall lapse in accordance with the statutory provisions; all other claims by the Purchaser due to defects shall lapse 12 months after the transfer of risk. All other claims shall lapse 12 months after commencement of the statutory limitation period.
9.7 In derogation from sentences 1 and 2 of this Clause 9.6, in the event of our liability (1) under a guarantee, the guarantee provisions shall apply and (2) due to fraudulent concealment of a defect and for damages under the Product Liability Act, as well as death, personal injury or damage to health and the intentional or grossly negligent breach of obligations, the statutory provisions shall apply.

10.0 Sanctions / Compliance

All our deliveries are subject to the applicable provisions of foreign trade law, in particular export control regulations and/or customs regulations as well as our Additional Agreements on Russia Sanctions and Additional Agreements on Belarus Sanctions.

Our delivery obligation is subject to admissibility under foreign trade law. Should the regulations change after conclusion of the contract so that we are unable to fulfill our obligation to deliver, Clause 5.0 shall apply.

11.0 Place of performance, place of jurisdiction and other matters

11.1 The place of performance for all payments is our registered office in Bräunlingen; the place of performance for all other obligations to be performed under the delivery contracts is our respective shipping point.
11.2 The place of jurisdiction for all disputes with Purchasers with registered office within the EU, Switzerland or the United Kingdom is our registered office in Bräunlingen. We are, however, entitled to bring actions in the court with jurisdiction over the Purchaser's registered office.

Where the Purchaser has its registered office outside the EU, Switzerland or the United Kingdom, the following applies: All disputes arising in connection with the supply relationship shall be finally decided in accordance with the arbitration rules of the German Institution of Arbitration (DIS) to the exclusion of recourse to the ordinary courts. Arbitration proceedings shall take place in Freiburg im Breisgau, Germany. The language of the arbitration proceedings is German. In the case of claims for payment of the purchase price, however, we also have recourse to the ordinary courts pursuant to sentences 1 and 2 of this Clause 11.2.
11.3 The law of the Federal Republic of Germany shall apply to contractual relationships with our Purchasers.
11.4 The Purchaser consents to the storage and processing of its data by us insofar as this is necessary for the orderly conduct of the contractual relationship.
11.5 Where these Terms and Conditions of Sale require the written form, this shall include text form.

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