

## Terms of delivery and payment

### 1. Scope

1.1 The following terms shall only apply in commercial transactions with companies, legal entities under public law or special funds under public law in the sense of Section 310 paragraph 1 of the German Civil Code [BGB]. They shall apply to all FREUDING delivery contracts and, as and where applicable, also to other services, in particular to maintenance services. They shall also apply to all future business relationships even if they are not expressly agreed again. The Client's general terms of business shall be excluded even if FREUDING has not expressly rejected them.

1.2 FREUDING's terms of delivery and payment shall apply even if FREUDING, being aware of the Client's terms and conditions which are contrary or different to these terms of delivery and payment, delivers the goods to the Client without reservation.

### 2. Quotation, order, changes

2.1 Quotations from FREUDING shall be non-binding unless they are expressly marked as binding quotations. Catalogues, printed material and price lists shall not be regarded as quotations. The delivery contract shall be established by the order confirmation of FREUDING. Written agreements shall be exclusively applicable to the content of the contract.

2.2 FREUDING is entitled to change engineering or prices until conclusion of the contract. Engineering changes shall also be possible after the contract conclusion in the interest of technical progress as long as they are acceptable to the Client within reason. FREUDING is entitled to adjust prices even after the contract conclusion if there are any changes in material prices, wages, freight or other cost factors provided a period of at least four months has elapsed between the conclusion of the contract and the delivery date. This shall not apply if FREUDING has caused the delay.

### 3. Transfer of risk, shipment, installation

3.1 The goods shall be shipped exclusively at the expense and risk of the Client. If the Client has not expressly required a specific type of shipment, FREUDING shall select the method of shipment in cases of doubt at its own discretion.

3.2 The risk of accidental loss and accidental impairment of the goods shall be transferred to the Client when the goods are handed over to the freight forwarder, but at the latest when they leave the FREUDING company site. Separate transport insurance shall only be taken out by special agreement and at the expense of the Client.

3.3 FREUDING shall only be obliged to install the goods if this has been expressly defined in the order confirmation together with an agreed date. The Client undertakes to confirm the installation work times of FREUDING by its signature.

### 4. Delivery

4.1 Compliance with the delivery date shall require the receipt in due time of all documents, licences, approvals and information required for the supplementary performance completion of the order which must be supplied by the Client.

4.2 If an export licence is required for the delivery and if this license is not available despite its application being made correctly and promptly, the delivery period shall be extended until it is issued. No claims for compensation may be made on this basis.

4.3 Delays in the delivery of goods and provision of services due to force majeure or as a result of events which make it more difficult or impossible for FREUDING to supply the goods and these are not just temporary difficulties (such events particularly include strikes, lock-outs, official orders, etc. including if they affect FREUDING's suppliers), shall not be the responsibility of FREUDING, even if binding delivery periods and deadlines have been agreed. In this case, FREUDING shall be entitled to postpone the delivery of the goods or provision of the services by the duration of the difficulty plus a reasonable start-up time or to cancel the contract in full or in part to cover the part which has not yet been fulfilled. FREUDING undertakes, however, to notify the Client of the occurrence of such events in writing and without delay.

4.4 If the force majeure or other difficulty lasts for longer than three months, the Client, after setting a reasonable extended deadline, shall be entitled to cancel the order in terms of the part which has not yet been fulfilled. If the delivery period is extended or if FREUDING is released from its duty to deliver the goods or provide services, any claims for compensation shall be excluded.

4.5 In the event of FREUDING being in delay or if delivery resp. provision of services becomes impossible due to circumstances caused by FREUDING, the Client may cancel the contract if it has set FREUDING a reasonable extended deadline in writing without success.

4.6 If the Client is in default of acceptance or if it breaches other contractual duties to co-operate, FREUDING shall be entitled to claim damages, including any additional costs. FREUDING reserves the right to lodge additional claims.

4.7 If the requirements set out in paragraph 4.6 apply, the risk of accidental loss or accidental impairment of the goods shall be transferred to the Client at the time the Client is in default of acceptance or in debtor's default.

4.8 Part shipments shall be permitted unless it is unreasonable to expect the Client to accept them.

### 5. Defect liability

5.1 FREUDING only is liable for defects and defects of title if the Client has notified FREUDING of defects which could have been identified without a detailed inspection within one week of receiving the goods and in all other cases within one week of their discovery and the Client has followed FREUDING's instructions relating to using the goods. The provi-

sion of Sect. 377 of the German Commercial Code [HGB] shall not be affected for businesses.

5.2 Liability for defects shall not include defects caused by natural wear and tear or damage caused by incorrect handling or storage, defective installation or commissioning by the Client or third parties.

5.3 If a defect is identified, the Client shall be entitled to have the goods remedied or replaced at FREUDING's discretion. The expenses incurred by supplementary performance shall be paid by the Client if they are increased by virtue of the fact that the goods are transported to a location other than the one specified in the contract unless such transport is part of their intended use.

5.4 If the remedy or replacement delivery fails at least three times, the Client shall be entitled at its own discretion to cancel the contract or demand an appropriate reduction of the purchase price (reduction). The Client shall not be entitled to make any other claims. Claims for compensation shall be based on paragraph 6.

5.5 Only the Client and its legal successors shall be entitled to lodge claims for defective goods. They shall not be assignable individually but shall only be transferred in full with the goods to the purchaser in the event that the goods undergo a change of ownership. The period of liability for defects shall start with the delivery of the goods and shall end twelve (12) months later. If FREUDING completes the delivery and installation work, the twelve-month period shall start on conclusion of the installation work, or after the installation of the goods if the installation work is completed in part, but at the latest 18 months after delivery.

## 6. Liability

6.1 If the goods cannot be used for the purpose specified in the contract by the Client at the fault of FREUDING as a result of incorrect or defaulted suggestions and advice given after the conclusion of the contract or as a result of a breach of other secondary contract duties (in particular incorrect instructions for using the goods), the provisions set out in paragraph 5 and the following paragraph shall apply with the exclusion of all other claims on the part of the Client. FREUDING is not liable for damage which may occur if and in as far as the Client fails to heed the instructions and warnings issued by FREUDING. The Client hereby agrees to indemnify FREUDING from all resulting demands, liability cases and compensation claims.

6.2 FREUDING shall only accept liability for damage not suffered by the goods themselves and not covered by the defect liability set out in paragraph 5 (regardless of their legal basis) in the event of malice, gross negligence on the part of its corporate bodies or management staff, culpable death, physical injury or health impairment, defects which it has maliciously not reported or whose absence was guaranteed or defects suffered by the goods if such liability is mandatory under the Product Liability Law for personal injury or property damage on items used in the private domain. In the event of a culpa-

ble breach of major contract duties, FREUDING is liable for gross negligence on the part of non-management staff and for ordinary negligence, with the latter case restricted to the reasonably predictable damage typical of the contract.

6.3 All other claims shall be excluded.

## 7. Prices

The specified prices shall be net prices in euros excluding the current rate of value-added tax at the time of the delivery. The Client must pay the transport costs. Additional services (special packaging, postage, insurance and duties) shall be invoiced separately where costs are incurred.

## 8. Terms of payment

8.1 Unless expressly agreed to the contrary, invoices shall be payable within 30 days of the date of the invoice without any deductions or expenses by means of bank transfer, debit or in cash. In the event of a bank transfer, payment shall not have been deemed to have been received until it has been credited to FREUDING.

8.2 In the event that the terms of payment set out in section 8.1 are exceeded, the Client shall be in default without any further notification being required. In this case, and notwithstanding other statutory claims, FREUDING shall be entitled to charge default interest of 9 percentage points above the relevant base rate p.a. without separate notification being required. If FREUDING can provide evidence that the default damages were higher, FREUDING shall be entitled to claim them.

8.3 The Client may only offset against FREUDING's claims if its claim is recognised by FREUDING or if it is *res judicata*. Furthermore, the Client shall only be entitled to exercise a right of retention if its counter claim is based on the same legal relationship.

8.4 If it becomes clear after the conclusion of the contract that the financial situation of the Client has deteriorated significantly or was not obviously negative to FREUDING when the contract was concluded, FREUDING may stop additional fulfilment of the contract until the Client has made full payment in advance or has provided a bank guarantee or comparable security as selected by FREUDING. The same shall apply if the Client is repeatedly and/or significantly in default with its payments.

## 9. Reservation of title

9.1 FREUDING shall reserve title to all goods until payment has been made in full and all other outstanding claims against the Client at the time of the delivery have been settled. If the Client is in default, FREUDING may cancel the contract after the elapse of a reasonable period of time and demand the return of the goods from the Client.

9.2 FREUDING shall be entitled to insure any goods under reservation of title at the Client's expense against fire, water or other damage if the Client has not provided evidence that it has such insurance itself and has assigned the claims from this insurance policy to FREUDING.

9.3 The Client shall be entitled to resell the goods which are still the property of FREUDING (goods that are subject to the retention of title) as part of its normal business operations. However, it hereby assigns its claims from such resale up to the delivery price to FREUDING. It shall not be permitted to pledge the goods or transfer title to the goods by way of security.

9.4 After the assignment, the Client shall be authorised to collect the outstanding claims. FREUDING reserves the right to revoke this collection authorisation and to collect the outstanding claims itself as soon as the Client fails to meet its payment obligations to FREUDING correctly, becomes in default, submits an application to open insolvency proceedings or declares insolvency. In this case, the Client undertakes to provide FREUDING with the data required to lodge its claim, to supply the required documents and to notify the third party of the assignment.

9.5 If FREUDING's title becomes null and void due to connection, processing or installation, the Client hereby transfers its title to the new goods up to the price of the goods that are subject to the retention of title to FREUDING. The resulting co-title shall be regarded as the reservation of title goods. The Client shall place the new goods in safekeeping on behalf of FREUDING free of charge, exercising the normal level of care.

9.6 If the security supplied to FREUDING exceeds the value of the outstanding claims by more than 10%, FREUDING undertakes to release parts of the security at its discretion on request.

9.7 The Client shall notify FREUDING without delay of any seizure or other attempted action against the reservation of title goods by third parties.

9.8 If, on the basis of the law in force at the Client's registered office, securing title as described in the previous provisions is not possible, the Client undertakes to provide FREUDING with commercially equivalent security which is legally valid under the legal regulations in force at the Client's registered office, for example in the form of an irrevocable bank guarantee without time restrictions.

#### **10. Duties of the Client acting as a dealer**

If the Client is a dealer, it undertakes to store, present and sell the FREUDING products correctly and to ensure that the products are installed and assembled perfectly and to demonstrate and hand them over to the customers properly. It is the Client's responsibility to carry out maintenance and repair work correctly.

#### **11. Place of fulfilment, place of jurisdiction, applicable law, severance clause**

11.1 The place of fulfilment for deliveries and payment shall be Stetten / Allgäu / Germany.

11.2 The exclusive place of jurisdiction for all disputes relating to this contract shall be the court with jurisdiction for Stetten; FREUDING shall be entitled, however, to select the Client's place of jurisdiction.

11.3 German law shall be exclusively applicable with the exclusion of the UN Convention for Contracts for the International Sale of Goods (CISG).

11.4 If any provision in these terms of delivery and sale should be or become invalid, this shall not affect the validity of the other provisions. In this case, the parties to the contract undertake to replace the invalid provision with a valid provision which comes as close as possible to the aim of the invalid provision.