

Frey & Winkler GmbH („FW“) Sales Conditions

1. Controlling Provisions.

All the provisions of these Sales Conditions shall apply between Buyer and FW, except where explicitly agreed otherwise in writing and signed by both parties. THE CONDITIONS CONTAINED HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON FW UNLESS EXPRESSLY ACCEPTED BY FW IN WRITING. These Sales Conditions apply to the items set forth in a firm offer or a Confirmation (the "Goods"). In the case of sales outside of the Federal Republic of Germany, Buyer and FW expressly agree that the provisions of the U. N. Convention on the Sale of Goods (C.I.S.G.) are herewith excluded.

2. Quotation.

A quotation furnished by FW does not constitute a firm offer and may be changed or revoked at any time. Such quotation, including calculations, descriptions, patterns, etc., made or supplied by FW ("Quotation") shall remain FW's property and Buyer agrees that such information contained in the Quotation is confidential and shall not be disclosed or otherwise used without FW's express prior written consent.

3. Contract/Goods to be Delivered on Demand.

Any agreement to which these Sales Conditions apply shall become effective on the date a written confirmation of order ("Confirmation") is mailed or otherwise delivered by FW, or by delivery of Goods ordered by Buyer. FW shall be entitled to charge separately for any additional services and for any item or packaging provided by FW at the request of Buyer in excess of the services and items explicitly set forth in the Confirmation. Unless agreed otherwise in writing signed by both parties, any orders for Goods to be delivered on demand shall be deemed as a binding contract for such Goods six (6) months following the date of Buyer's initial order, if, prior to the expiration of such date, preceded by a reasonable notice in writing by FW to Buyer requesting a demand for a request for delivery of such Goods, in whole or in part.

4. Buyer's Covenants/Tools.

Buyer warrants to FW that any components submitted to FW by Buyer are free from any defects in design or material and are free from any rights of third parties, including but not limited to, any property rights, patents, copyright, trademark, trade secret or other intellectual property right. Buyer acknowledges that the payment for parts of tools shall not constitute any other rights of Buyer therein. Such payment shall particularly not affect FW's possession rights for such parts of tools after any termination of this agreement.

5. Price/Taxes.

The price of the goods is set forth in a firm offer or a Confirmation and shall be payable immediately net cash. Any tax or other governmental charge imposed upon the sale of goods shall be paid by Buyer, and Buyer's failure to do so shall be a breach of this agreement. FW reserves the right to restrict the terms of payment or to require payment prior to time of shipment if, in FW's opinion, Buyer's financial conditions or other circumstances do not warrant shipment on the terms originally specified in the Agreement. For payments made after this stated thirty (30) day period, there will be a service charge of 1.5% of the total amount due for each month that payment is in arrears. FW's acceptance of this service charge shall not be deemed a waiver of any rights FW may otherwise have by reason of Buyer's non-payment.

6. Time of Delivery/Packaging.

FW as well as its agents will use reasonable efforts to deliver the ordered Goods as promptly as possible. A delay in delivery time, regardless of cause, shall not entitle Buyer to an offset against the purchase price or excuse any other payment or performance required by these Sales Conditions and FW's Confirmation. FW will not be liable under any circumstances for special, incidental or consequential damages resulting from delay in the time of delivery. FW shall use its standard packaging. If, at the request of Buyer, the Goods are being shipped with special packaging, Buyer will be responsible for the additional costs thereof, as provided by Section 3.

7. Costs/Identification and Risk of Loss/Passage of Title/Acceptance.

The costs for shipment of the Goods shall be borne by Buyer. The Goods shall be identified to the agreement and risk of loss shall pass to Buyer when the Goods are placed in the hands of a carrier. Title to the Goods shall not pass to Buyer until all the amounts due to FW in respect of the delivery, including any interest and costs, have been paid. In addition, Buyer herewith grants to FW a continuing security interest in and a lien upon the Goods and any additions or accessions thereof and all cash and non-cash proceeds (including but not limited to accounts receivable) and products thereof ("Collateral"). Upon Buyer's reasonable request, particularly in the event of any default in payment by Buyer, Buyer shall promptly notify Buyer's debtor of FW's rights in the accounts receivable or other Collateral. All Goods delivered are accepted based on inspection and acceptance at Buyer's premises, or at any other destination specified by Buyer. Failure by Buyer or any other designated third party to inspect the Goods within ten (10) days of delivery constitutes a waiver of the right to inspect. Once Buyer has inspected the Goods or waives the inspection, Buyer shall have no right to revoke acceptance or to reject the Goods. In the event of any delivery of Goods in mass quantities, any inadvertent discrepancy or excess of the ordered quantity by ten percent (10%) shall be deemed as accepted by Buyer. Further claims, if any, are limited to those covered by the warranties set forth below.

8. Warranties.

FW warrants that the Goods, except for any wear and tear parts, will conform to the description and specifications and be free from defects in material and workmanship for a period of six (6) months from delivery. Should any failure to conform to this warranty appear within six (6) months of delivery, FW shall, on written notification, correct such non-conformity, including non-conformance with the specifications, at FW's option, either by repairing any defective goods, or by making available a repaired or replacement item. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT. CORRECTION OF NON-CONFORMITIES, IN THE MATTER AND FOR THE PERIOD OF TIME PROVIDED ABOVE, SHALL CONSTITUTE FULFILLMENT OF ALL LIABILITIES OF FW TO BUYER, WHETHER BASED ON CONTRACT, NEGLIGENCE OR OTHERWISE WITH RESPECT TO OR ARISING OUT OF SUCH SALE OF GOODS. Neither party shall be liable for special, indirect or consequential damages. Furthermore, in the event of delivery of Goods in mass quantities, only defects in more than three percent (3%) percent of the Goods delivered shall give rise to any warranty claim hereunder. The remedies set forth in these Sales Conditions are exclusive, and the liability of FW with respect to any agreement or sale or anything done in connection therewith, whether in contract, in tort, under any warranty otherwise, shall not, except as expressly provided herein, exceed the price of the Goods on which such liabilities are based.

9. Limitation of Liability.

The warranty provided for in Section 8 shall not be applicable if Buyer is in arrears with any payments due with regard to the respective Goods. Buyer's exclusive remedy in the event of non-conforming Goods shall be a replacement of the non-conforming Goods. Any notices of warranty claims or other communication relating to Goods as well as all Goods claimed to be non-conforming must be shipped/sent to: F & W Frey & Winkler GmbH, Benzstr. 13, 75203 Königsbach-Stein, Germany. Such Goods will be returned, repaired or replaced in a reasonable time period. FW's acceptance of any Goods so shipped shall not be an admission that the Goods are non-conforming, and, if FW finds that any Goods returned are not defective, such Goods will be re-shipped to Buyer at its expense and Buyer shall be charged for the shipping costs incurred by FW. It is acknowledged that the items sold are not so unique or the circumstances such that either party shall be entitled to the remedy of specific performance.

10. FW's Agents.

Buyer acknowledges that it has been advised that no agent, employee, or representative of FW has any authority to bind FW to any affirmation, promise, representation or warranty concerning any of the Goods, and, unless such affirmation, promise, representation or warranty is specifically set forth in these Sales Conditions, it does not form the basis of the bargain between Buyer and FW and shall not be enforceable against FW.

11. Integration.

These Sales Conditions constitute the entire agreement and understanding by and between the parties with regard to the subject matter-except for the matters set forth in the Confirmation - and no other agreement, statement, promise or practice relating to the subject matter shall be binding for the parties. This agreement may be changed only by a written amendment signed by both parties.

12. Indemnification.

Buyer shall indemnify FW for all costs, damages and interests that may be incurred by the latter as a direct or indirect consequence of any action brought against it by third parties in respect to performance of this Agreement; Buyer shall be bound by virtue of this agreement to comply with a third party notice issued by FW.

13. Suspension and Cancellation.

For purposes of this Section 13, the term "Force Majeure" is defined as any and all circumstances beyond FW's reasonable control, that permanently or temporarily prevents delivery of the Goods, including fire, flood, war, civil unrest, riots, strikes, lockouts, transportation delays, failure or curtailment in FW's usual sources of supply, government decree or order, act of God and other material interruptions in the business of FW or of FW's suppliers. In the event of the inability of either party to deliver Goods as a result of Force Majeure, FW shall be entitled to suspend the delivery of the Goods for no more than six (6) months, or to cancel any pending order in full or in part, without being liable in damages and without judicial intervention being required. During the period of suspension, FW shall be entitled, and at the end of such period shall be obliged, to decide on performance or on full or partial cancellation of any order then pending. In the event of cancellation in accordance with this Section 13, FW shall refund to Buyer all amounts paid to FW in connection with the order being cancelled, plus any interest that has accrued with respect thereto. If Buyer, prior to delivery of the Goods, cancels an order after acceptance by FW, or refuses or is unable to accept delivery of the Goods, or causes FW to stop performance on delivery of the Goods, Buyer agrees that FW shall be entitled to retain the entire amount paid by Buyer upon placement of the order as liquidated damages and not as a penalty. The retention of such amount shall not preclude FW from recovering the amount of its actual damages in excess of the amount retained.

If Buyer fails to perform any obligation arising pursuant to these Sales Conditions, or an agreement connected therewith, or fails to perform properly or in a timely fashion, or serious doubt arises whether Buyer is capable of fulfilling its obligations under these Sales Conditions, or in the event of bankruptcy, suspension of payment, closing down, winding up or full or partial transfer, whether or not as security, of the business of Buyer, including the transfer of a major part of the latter's receivables, FW shall be entitled, without notice of default and without judicial intervention being required, either to suspend delivery of the Goods for not more than six (6) months, or to cancel acceptance of any pending order, in whole or in part, without being liable in damages and without prejudice to its further rights. During the period of suspension, FW shall be entitled, and at the end of such period shall be obliged, to decide on performance or on full or partial cancellation of the suspended order.

14. Setoff Claims/Retention Rights.

Buyer shall not be entitled to any setoff claims or retention rights ("Counterclaims"), unless such Counterclaims are based on claims or rights against FW that are either:

- (a) undisputed or
- (b) legally binding with final force and effect and non-appealable.

15. Miscellaneous.

- (a) All agreements to which these Sales Conditions apply shall be construed in accordance with the substantive laws of the Federal Republic of Germany
- (b) The benefits and burdens of the parties shall bind and inure to their respective successors and assigns. Buyer and FW stipulate and agree that the court of competent subject matter jurisdiction for the city of Pforzheim, Germany, shall have jurisdiction and both parties agree that such venue is proper in such courts for all actions or proceedings with respect to these Sales Conditions. Furthermore, Buyer waives any objections in regard to the enforcement of judgments under the Buyer's home country's civil procedural rules for enforcement of foreign judgments
- (c) If FW prevails in an action or suit to enforce these Sales Conditions, FW shall be entitled to recover from Buyer its costs, including attorneys' fees, incurred in such connection
- (d) Failure by either party at any time to require performance by the other party or to claim a breach of any provision of these Sales Conditions will not be construed as a waiver of any subsequent breach nor affect the effectiveness hereof, nor any part thereof, nor prejudice either party as regards any subsequent action
- (e) Should any term, warrant, covenant, condition, or provision of these Sales Conditions be held to be invalid or unenforceable, the balance of these Sales Conditions shall remain in full force and shall stand as if the unenforceable part did not exist.