

# General Terms and Conditions, Franken-Schotter GmbH & Co. KG, as at 16 January 2020

## 1. Contents of contract

- 1.1 Our offers are subject to change without notice. Technical modifications as well as changes in shape, colour and/or weight are permitted within reasonable limits. The contract is deemed concluded when our confirmation is available.
- 1.2 The General Terms and Conditions shall apply to all current and future business relations.
- 1.3 Deviating, contradictory or supplementary General Terms and Conditions of Business shall not, even upon knowledge thereof, become part of the contract, unless their application is expressly agreed to in writing.
- 1.4 The purchaser shall neither assign nor pledge his contractual claims.
- 1.5 The installation and relocation guidelines attached, namely on the last pages of the price lists, are part of the contractual agreements.

## 2. Delivery

- 2.1 With its order for goods, the purchaser makes a binding declaration that it wishes to acquire the ordered goods. We reserve the right to accept the offer of contract enclosed with the order within two weeks of receipt. Such acceptance may be expressed in writing (order confirmation) or by effecting delivery to customers concerned.
- 2.2 If the consumer places an order electronically, we shall confirm the receipt of the order at once. Confirmation of receipt does not represent a binding acceptance of the order. The receipt confirmation can be connected with the declaration of acceptance.
- 2.3 The conclusion of a contract takes place under the reservation of the correct and punctual supply to us by our suppliers. This only applies to cases in which we are not culpable for the non-delivery, in particular if a congruent coverage transaction is concluded with the supplier. The customer will be informed of the non-availability of performance without delay. The return service shall be refunded without delay. The same applies for reasons of force majeure, such as strike, shut down or interruption of operations, lack of transporters or containers, goods holds, problems in quarrying or procurement of necessary raw materials, or any other unforeseeable occurrences.
- 2.4 All deliveries are freight collected ex storehouse on account and risk of the purchaser, without liability against breakage, theft, and suchlike. This shall also apply to the acceptance of carriage paid deliveries. The risk of breakage is particularly excluded. The declaration "not properly packaged" (German: "mangelhaft verpackt") is required by railway authorities and does not hold us liable for breakage.
- 2.5 The cost of packing in accordance with transport insurance required by the purchaser is to be borne by the purchaser.
- 2.6 In case of default of acceptance on the part of the purchaser we are entitled to claim for compensation of the additional costs arising from this, particularly from storage and receipt of the owed goods. During delay in accepting the delivery of goods we are only responsible for intent.

## 3. Price, payment and security; commercial credit insurance

- 3.1 Our prices are calculated based on the current cost situation when the order is being placed. We have a legal right to adjust the prices, considering the purchaser's justified interest, should the cost situation change considerably.
- 3.2 All prices are to be understood ex works.
- 3.3 Cash discount is only granted to the price of the goods. No cash discount shall be granted to the cost of allowances, shipping, work performances, packaging, and suchlike.
- 3.4 Cheques and bills of exchange are accepted as conditional payment; bills of exchange only by arrangement. Charges shall be for the account of the purchaser. If, after conclusion of contract, we gain knowledge of circumstances which cast doubt on the creditworthiness of the purchaser, we may terminate the contract, demand advance payment, or make the specific performance of our contract dependent upon the furnishing of a security. This shall also apply in the event of non-payment of a receivable due even though a reminder had been sent.
- 3.5 The purchaser may only offset with claims that have been acknowledged, claims that are undisputed or claims that have been legally established. The purchaser shall only claim right of retention based on counterclaims that are due from the same contractual relation and either acknowledged, undisputed or legally established.
- 3.6 We are happy to provide you with small samples for free. We charge for original sample plates while the amount will be refunded when the order is placed.
- 3.7 Small dummies shall be provided free of charge. Any original sample tiles shall be charged for, however, any such amounts shall be refunded in the event of an order being placed.
- 3.8 If the payments made by the purchaser do not suffice to satisfy all our claims, then we shall decide to which debt the payment is to be applied (even in the case of allocation to a current account). We are also entitled, despite differently worded terms of repayment of the purchaser, to credit payments first of all to the purchaser's older debts. If the debtor owes interest and costs in addition to the original debt, we are entitled to first set off any payment against the costs, then against the interest and finally against the principal. We hedge our claims by a commercial credit insurance, whose rules and provisions largely characterize financial transactions. In order to obtain commercial credit insurance cover, we request the provider to grant it. In case the provider refuses to grant insurance cover, 100 % of the gross order value become due when the order is placed. The purchaser may decide whether to use the commercial credit insurance, or to offer another insurance or other valuable collateral.

## 4. Warranty

- 4.1 Unless otherwise provided in the following, the statutory provisions apply to the purchaser's rights in the event of material defects and defects in title (including incorrect and short deliveries, incorrect assembly or deficient assembly instructions). In all cases, this is without prejudice to the specific statutory provisions on final delivery of unprocessed goods to the consumer, even if the consumer has processed them. Claims in recourse against suppliers are excluded if the deficient goods have been further processed by the purchaser or a third party, for example if another product has been incorporated.
- 4.2 If the buyer is an entrepreneur, we shall first furnish a warranty against defects at our discretion by either remedying the defect or delivering an item which is free of defects. If supplementary performance fails, the customer can require a lowering of the remuneration respectively, or rescission of the contract. However, in the event of an insignificant contractual violation, particularly for insignificant defects, the customer shall not be entitled to a withdrawal.
- 4.3 For natural stones, the following applies: They only show the general appearance of the stone. Small samples can never represent all characteristics and differences in colour, marking, structure, and texture of natural stone. Differences in colour, opacities, changes, etc., that originate in the natural condition of natural stone, as well as natural deviations, such as pores, apertures, inclusions, cracks, seams of quartz, etc., do not decrease the natural value of the stone. Absolute frost resistance cannot be guaranteed. For polychrome marble and limestone, appropriate cementation, dismantling of parts in loose veins or stitches and their reassembly, strengthening by putting solid plates underneath, as well as affixing clamps, dowels, crossings according to the texture of the material are not only unavoidable but also essential requirements of processing.
- 4.4 The entrepreneurs must notify us in writing of any obvious defects within a period of eight days as of receipt of the goods, otherwise, the assertion of the warranty claim is excluded. The timely dispatch shall be enough to observe the deadline. The entrepreneur bears the full onus of proof for all preconditions for entitlement, particularly for the defect itself, for the point in time of discovery and for the timely dispatch of the notification of defects. Any warranty on our part is inapplicable if the purchaser

sells goods that were delivered by us despite visible defects, invisible defects must be reported in writing within the same period after being discovered.

- 4.5 If we are liable for the defect, the purchaser must grant us a subsequent delivery period of 14 days.
- 4.6 If, after a failed attempt at subsequent performance, the client opts, due to a legal shortcoming or to material defect, to withdraw from the contract, no further claim to compensation due to the defect exists.
- 4.7 If the customer chooses compensation after subsequent fulfilment has failed, the goods remain with the customer unless this is unreasonable. Compensation will amount at most to the difference between the purchasing price and the value of the defective goods. This does not apply in cases in which we have deceitfully brought about the breach of contract.
- 4.8 For businessmen, the limitation period is one year after delivery. For consumers, the limitation period is two years after delivery. With used goods, the limitation period is one year after delivery. This shall not apply if the customer has not notified us of the defect on time.
- 4.9 If the client is an entrepreneur, the condition of the goods is always regarded as having been agreed to solely as presented in the producers' product description. Public statements, praises or advertising of the producer do not represent any contractual indication of the quality of the goods.
- 4.10 Any liability for minor losses between the purchaser and us is expressly denied.
- 4.11 If any defect is discovered at arrival of the goods, the customer is obliged to immediately have railway officials confirm it on the bill of lading. If the goods are dispatched by trucks, a detailed report on the scope of defect must be drawn up. The driver of the truck must sign this report.
- 4.12 In the event of the purchaser being in default as regards a payment or a loan, we can deny the liability, until the purchaser meets his payment obligations to the extent of the value of the delivery minus a reduction of the purchasing price in accordance to the good's loss in value due to the defect.

## 5. Retention of Title

- 5.1 In the case of contracts with consumers, we retain ownership of the merchandise until full payment of the purchase price has been made. In the case of contracts with commercial customers, we retain ownership of the merchandise until full payment of all claims from a current business relationship have been made. The customer is obliged to store the goods separately.
- 5.2 The customer is obliged to treat the goods with care. Insofar as maintenance or care is required, the purchaser must perform such work regularly and at his own expense.
- 5.3 The customer is obliged to inform us immediately of any access of third parties to the goods, as in the case of seizure, as well as of any damage to or destruction of the goods. The client must notify us immediately of any change in the possession of the goods, as well as of any change in the client's own place of residence.
- 5.4 In the event of behaviour by the client that is in violation of contract we are entitled to withdraw from the contracts and to demand the return of the goods, particularly in cases of default on payment or in cases of violation of contract. The entrepreneur is entitled to resell the goods in the course of orderly business activities. To this end he already assigns to us all claims of his against third parties arising from the resale, up to the value of the invoice amount. We accept the assignment. After the assignment, the client is authorized to collect the claim.
- 5.5 We nevertheless reserve the right to collect the claim ourselves, as soon as the entrepreneur fails to properly honour his payment commitments and defaults on payment.
- 5.6 The entrepreneur (purchaser) always processes the goods on both our behalf and order. If they are processed together with goods not owned by us, we shall obtain the co-ownership in the new goods in the proportion of the value of the goods supplied by us to the value of those processed. The same shall apply when the goods are mixed with other goods not owned by us. In order to secure our claim, the customer shall also assign his claims against third parties to us which accrue to him due to mixing or processing the delivered goods, as well as combining the goods delivered with a property, each to the value of claims to which we are entitled according to this contractual relation. We accept the assignment even now.
- 5.7 If the customer is only able to pay due to us submitting a bill of exchange for discounting to him (that was issued by us and accepted by him; cheque-bill-of-exchange procedure), we retain ownership of the goods until the bill of exchange has been honoured by the drawee and we have thereby been exempt from bill liability.
- 5.8 If the customer is only able to pay due to us submitting a bill of exchange for discounting to him (that was issued by us and accepted by him; cheque-bill-of-exchange procedure), we retain ownership of the goods until the bill of exchange has been honoured by the drawee and we have thereby been exempt from bill liability.
- 5.9 If the value of the securities should exceed our claims by more than 25 %, we shall be obliged to release the securities we have ourselves defined when requested by the customer.

## 6. Work and work supply contracts

Work and work supply contracts, except contracts concerning work on buildings, are subject to The newest version of the German Construction Tendering and Contract Regulations Part B (VOB/B) applies to any work and work supply contract, as long as they do not concern work on buildings, no party is consumer, and they do not contradict out General Terms and Conditions.

## 7. Limitation of liability

- 7.1 In cases of slightly negligent violation of obligations our liability is limited in keeping with the nature of the goods, to foreseeable, contract-typical, direct average damage. This also applies in cases of slightly negligent violation of obligations on the part of our legal representatives or agents. Against entrepreneurs we are not liable for light negligent defects of unimportant contractual obligations.
- 7.2 The above-mentioned limitations on liability, however, do not apply to any claims based on product liability. Furthermore, the liability limitations do not apply to physical injury, damage to health or loss of life of the customer attributable to us.
- 7.3 The time period during which the customer can claim compensation is limited to one year after delivery of the goods. This does not apply if we can be blamed for fraudulent deceit, as well as in case of bodily and health damages or by loss of life of the customer attributable to us.
- 7.4 If the customer is entitled to claim compensation in accordance with article 82 of the General Data Protection Regulation, liability is limited to cases of gross negligence and intent.

## 8. Place of performance / Place of jurisdiction / Final provision

- 8.1 The law of the Federal Republic of Germany shall apply. The provisions of the UN Purchasing Convention do not apply.
- 8.2 If the customer is a businessman, a public corporation or a public-law fund, the exclusive place of jurisdiction for all disputes arising from this contract is the place of the registered address of our company. The same applies if the place of general jurisdiction of the customer is not in Germany or if the customer's place of residence or usual abode is unknown at the time of the institution of legal proceedings.
- 8.3 Place of performance for all payments is our registered seat.
- 8.4 If individual provisions of the contract with the purchaser, including these General Terms and Conditions, should be or become partly or wholly legally invalid, the validity of the remaining provisions will not be affected by this. The partly or wholly invalid clause shall be replaced by a clause as close as possible to its original commercial and intended purpose.