

# **General Terms and Conditions of Sale of Freundlinger Luft und Klima GmbH**

## **Application**

All legal transactions, deliveries, extra services and offers take place exclusively on the basis of the Terms and Conditions of Sale stated herein.

The Customer expressly confirms that we refuse to accept any deviating regulations contained in any order or other business documents issued by the Customer.

We shall not accept any deviating conditions of the Customer and, unless confirmed in writing by us, such deviating conditions shall not apply, even if we fail to object to such conditions in the individual case.

These present General Terms and Conditions shall be deemed to be a framework agreement applicable to any and all other legal transactions effected between us and the Customer.

## **Conclusion of Agreement**

All offers and price lists are non-binding and subject to change without notice.

Contract agreements shall not be legally effective unless confirmed by us in writing or when goods/services are delivered.

All other changes to the contract, including revisions or additional agreements are only effective following our written confirmation.

Except with a disclosed special power of attorney, our employees, in particular the installation technicians, are not entitled to issue legally binding declarations to the Customer.

Articles sent on approval and sampled offers in the framework of an order shall be deemed to have been approved by the customer if they are not returned within 14 days (receipt of the return/claim to us).

Technical specifications in our documentation are always approximate values only, unless explicitly determined otherwise.

In any event, we reserve the right to make construction and/or production changes and variations.

Obvious errors, such as typing and calculation errors in offers, order confirmations or invoices can be corrected by us any time.

All documents entrusted to the customer, in particular quotations, drafts, models, technical calculations, plans, sketches, descriptions, technical data and the like, remain our property.

The customer is not authorized to circulate or make these documents available to third parties.

In the event that the customer does not place an order, at our request, the customer shall immediately return these documents to us.

## Prices

All prices stated by us shall be subject to change and shall be understood to be in Euro (€), excluding VAT, unless stated otherwise. Any granted discounts, rebates, product reimbursements or the like shall be calculated based on the prices excluding VAT. Unless otherwise expressly agreed in writing, no warranty for correctness of cost estimates shall be assumed. Any changes of labor costs due to statutory regulations or regulations contained in collective agreements or due to internal agreements as well as any changes of any cost centers relevant for the calculation or of any costs required for performance such as materials, energy, transport, subcontractors, financing, etc. shall entitle us to increase our prices correspondingly. In such case, the Customer shall neither be entitled to rescind the contract nor to assert frustration of contract. All prices are stated exclusive of any additional expenses unless otherwise agreed upon in writing. Costs for packaging, shipment, customers and other services (installation, setup, etc.) shall be invoiced separately. Shipment is made at the expense and risk of the Customer. We shall not have any obligation to take out transport insurance.

Prices shall only apply if the entire offer is ordered. It is assumed that delivery and/or installation can be carried out in one single work process. Additional costs incurred due to unforeseeable interruptions in installation that became necessary in connection with construction supervision shall be invoiced separately.

Work ordered but not included in our offer shall be carried out and subject to our conditions and charge rates specified in the contract (according to actual hours needed and actual consumption).

Invoicing according to a list of actual materials used and services rendered shall take place in stages according to the progress of construction work. Within 14 days after our request, the list of materials and services shall be drawn up together with the customer. Should the Customer fail to participate in the creation of the list of materials and services, he thereby accepts our list (and/or our bill of quantities).

## Delivery

Agreed delivery periods shall begin with the date of dispatch of our order confirmation. However, the relevant period shall only commence when we have confirmed receipt of all technical or other information, documents, down payments or other services of the customer. In case of delay of agreed payments, the delivery period shall be extended accordingly. The delivery period shall be deemed observed if the delivery item leaves our warehouse prior to expiration of the delivery period or if by then we have notified the Customer of our readiness to deliver, or in case installation was agreed, if the system is ready for operation upon expiration of the delivery period. The system shall be considered ready for operation if it can be used according to its permitted use and no significant material defects impede use of the system. This shall also apply if parts which are not significant parts (e.g. insulation or coating) are completed at a later point in time, or if necessary materials and services to be provided by third parties who are commissioned with production of the system or which are to be provided by the Customer have not been provided, and thus hinder a trial operation, or if the system has not been accepted despite a deadline. If upon completion of the system, trial operation is not immediately possible due to reasons for which we are not liable; the additional costs incurred as a result thereof shall be invoiced separately.

Promised delivery dates shall be observed to the best extent possible, but shall not be binding. Any delays in deliveries or services shall not entitle the Customer to rescind the contract or to assert claims under warranty, avoidance of contract on account of mistake or claims for damages. We shall be entitled to effect and invoice partial or advance deliveries.

Excluding any liability on our part, we reserve the right to choose the type of shipping and the route. We shall, in particular, not be obliged to choose the cheapest mode of transportation.

Packaging, including packaging of partial and advance deliveries, shall be carried out according to the commercial standards. Any additional packaging shall be at the expense of the Customer. Surcharges for express deliveries and air cargo shall be invoiced separately. Transportation insurance shall only be taken out upon the order and for the account of the Customer.

Any interruptions of operations, events of force majeure and other events not within our sphere of influence, in particular delays in delivery and similar events on the part of our sub-suppliers or other third parties, shall entitle us to extend any stipulated time periods accordingly or to rescind the contract regarding the part not yet fulfilled. In such a case, the Customer shall not be entitled to assert any legal claims, in particular but not limited to warranty claims, avoidance on the ground of error or claims for damages. This shall also apply if such events occur at a time during which we are in delay.

The delivery period shall be reasonably extended if changes are required in the execution of work which require additional deliveries and/or services that become necessary due to construction reasons, requirements by public authorities or Customer requests, or if - for reasons we are not liable – a trial operation is not possible or only possible at a later point in time. Additional costs incurred as a result thereof shall be borne by the Customer.

Upon our notification to the Customer of our readiness for dispatch, at the latest upon the dispatch of goods from our storage, or from our supplier's storage in the event that the goods are to be sent directly from the supplier, the price risk and performance risk shall be transferred to the Customer, irrespective of any pricing regulation separately agreed upon for such delivery. This also applies if we shall provide any additional services (such as for example the setup or installation).

In case goods ready for dispatch cannot be dispatched or the agreed installations cannot be carried out for reasons not attributable to us, we shall be entitled to store the goods at our sole discretion at the Customer's risk and expense. In such case, delivery shall be deemed effected upon placing the goods into storage. We shall in particular be entitled to put the goods into storage ourselves or to commission a third party to store the goods for the account and in the name of the Customer at generally accepted market prices.

## **Installation**

The ground work for installation shall be carried out by the Customer in time so that installation can be started immediately after arrival of the installation staff and can be carried out without delay until acceptance by the Customer; otherwise we shall be entitled to change the date of commencement of installation without consequences of delay, and the costs incurred by then shall be invoiced to the Customer. The Customer shall ensure that the delivered parts, scaffolds and systems are protected against moisture, dust, dirt or other adverse impacts and are stored carefully. We shall not assume liability for damage caused to the system and/or the delivered material on the construction site, e.g. by fire, explosion, lightning, water, chemical impacts and/or damage to property caused by the Customer or third parties. In this case the warranty is immediately forfeited. In addition, the customer will at their own expense and risk provide any technical support necessary for the fulfillment of the contract as well as any required site services essential for the installation and operation of the merchandise, including heavy equipment such as fork lift trucks, cranes, hoists, scaffolding and any other assembly tools not normally found in a standard hand tool set as well as providing sufficient heating, illumination, power and other services including the necessary connections.

The customer must provide at their own expense and risk any interrelated works not included in the contract that are required for a successful installation (for example locksmiths, laborers, etc.).

If an installation takes place on the basis of a customer's own specification (construction plans, drawings, models, etc.) then we are not liable for the correctness of the construction and only carry the duty to ensure that the installation follows the specification laid down by the Customer.

We are not obliged to warn the customer nor are we indebted to check any documents with regards to damages of third party property rights. The customer also indemnifies us from any complaint or damages concerning any injury of any rights of any third party.

All documents (construction plans, drawings, models, etc.) which we generate for the customer remain our intellectual property and require our express consent to be passed on to a third party or to be published. This does not entitle the Customer to any rights whatsoever.

The Customer agrees that we depict the products we have manufactured for him or the systems or parts of systems delivered by us for advertising purposes together with the entire system of the Customer and otherwise present them, e.g., as samples. We may choose the design of the presentation as well as the selection of the presentation medium at our sole discretion.

After a successful delivery and/or installation, including part deliveries and subassemblies, the customer is obliged to accept the installation promptly after communication of the approval and to sign the acceptance report - if need be stating any reservations - otherwise the installation shall be deemed accepted as free from defects.

The commissioning shall be carried out in the course of the acceptance. We would like to point out that any agreed commissioning by the company Freundlinger Luft & Klima GmbH can only take place once the payments agreed upon to that date have been made. Should the commissioning be carried out by our company, then the warranty period shall begin with the starting date of commissioning. Should we not be assigned with the commissioning, then the warranty period shall begin with the date of delivery (see Item Warranty, damages, product liability).

### **Terms of payment, default, prohibition to set off, cross-border shipments**

Invoices issued by ourselves, including partial invoices, shall be due for payment 7 days after the date of issue, net, without any deductions, in particular without any cash discount or similar deductions. Bills of exchange or cheques shall not be accepted, unless otherwise specifically agreed upon. In case there are several

unpaid invoices, we reserve the right to allocate payments received to any of such invoices at our sole discretion.

In case of any delay in payment by the Customer, we shall not be obliged to perform any services or deliveries and shall be entitled to withhold outstanding deliveries or services (such as the commissioning of devices) or to demand advance payment or the provision of collateral securities. In addition, irrespective of whether such delay is attributable to the Customer's fault or not, the Customer shall be obliged to pay default interest amounting to 8.5 % per year (in accordance with § 352 of the Austrian Commercial Code). We shall be entitled to demand additional bank interest in an amount customary in the industry. In addition, the Customer shall be obliged to compensate us for any dunning and collection fees incurred. The Customer's obligation to pay is in particular restricted to the maximum compensation for the collection agency resulting from the ordinance issued by Federal Ministry of Economics and Technology on the maximum rates for collection agencies. As of the third dunning level, the Customer shall be obliged to pay an amount of EUR 15.00 for each reminder sent by us, if any. As of the fourth dunning level, an amount of €30.00 shall be charged as a dunning fee.

Should after conclusion of the contract a considerable deterioration of the Customer's financial circumstances occur or should circumstances become obvious which, in our view, reduce the Customer's creditworthiness, all receivables shall become due and payable immediately, and any additional deliveries shall be subject to advance payment.

Any counterclaims the Customer may have shall not entitle him to refuse or withhold or set off payments.

In case of export transactions, the Customer shall be solely obliged to obtain and maintain the required export, customs and other permits and similar documents at his own expense. We shall not warrant or guarantee the admissibility of the export of the purchased products. Furthermore, the customer is required to return to us all relevant original export and customs documents, otherwise the Customer shall be obliged to pay value-added tax. In addition, for export deliveries, as a prerequisite for our delivery, it is necessary to open an irrevocable documentary letter of credit with a bank of our choice which may be drawn on upon presentation of the shipping documents or forwarding certificates.

## **Property rights**

The merchandise remains our property up until the full payment of all of our invoices including interest and additional expenses, irrespective of any other legal or business claims. This clause also applies to running invoices so that all of the merchandise acts as security for the final bill.

Provided we do not declare our withdrawal from this contract – which we are unilaterally entitled to - the enacting of this proviso will not be regarded as grounds

for withdrawing from a contract and does not free the customer from other contractual duties such as further payments.

During this reservation of propriety rights any sale, pledge or use of the property as collateral for a third party is not permitted.

The reservation of propriety rights also extends to products resulting from manufacturing and machining. In case of processing, combining or mixing of our goods with other materials, we acquire joint ownership of the resulting product in proportion to the value of our goods.

Should our property nevertheless be sold or transferred by the customer, then the customer assigns his claims against his client in advance and must pay our outstanding charges.

The Customer is obliged to immediately provide us with the name and address of the subsequent buyer, as well as information on the situation and amount of claims resulting from resale, and shall also inform relevant customers of the assignment of claims.

Furthermore, the Customer is obliged to record the assignment of the claim to us in his business records.

We are entitled at anytime to inform the Customer's buyer of the assignment.

The customer shall inform us immediately of a seizure or any other impairment of our property right through the actions of a third party.

The customer is obliged to pay the expense of any measures required to return our property to us, in particular the charges of any intervention proceedings.

Should the customer not comply with their obligations or repayment plan, then the entire remaining balance becomes due, including those charges scheduled for later repayment.

In this case, we are entitled to demand the return of all of our property to us, under exclusion of the right of retention.

After redemption of the object of purchase, it remains at our discretion either to sell the purchased items and to credit the customers debt minus 20% resale charges or to deduct the value of the items from the remaining debt minus depreciation and a rental fee calculated on our standard charges for the time the items remained with the customer.

### **Warranty, compensation for damages, product liability**

Customer complaints about defects must be made directly after receipt of the delivery and at the latest in writing within ten days after dispatch and/or acceptance of the system (works) while other guarantee and damage compensation claims and/or disputes over errors are excluded. However a complaint does not entitle the customer to withhold payment or part payments.

Advice given by us orally or in writing shall be nonbinding and shall not release our customers from their own inspection of our products as to suitability for the intended purpose. Claims for damages arising from this Article are excluded. We shall not warrant that goods delivered subsequently are identical with initially delivered goods.

The **warranty period extends over 12 months** and shall neither be extended nor interrupted by attempts for improvements; this shall also apply to partial deliveries. The warranty period shall begin with the delivery date and/or with the date of commissioning (if applicable). The warranty period only applies if the system is correctly and properly maintained by a specialist company!

The customer has the duty to prove any damage or malfunction of the merchandise when accepting any goods.

The guarantee expires immediately, if without our written consent, the customer or a person empowered by the customer carries out any alterations, startups or commissioning of the delivered goods / system. In the case of any complaint, the customer first has the duty to accept the goods, to unload them carefully and to appropriately store them.

For goods that we purchase from a third party supplier, we only offer guarantees equivalent to the guarantees that the sub-contractors themselves offer. We offer guarantees on products delivered by us equivalent to the usual standard guarantees and qualities on these types of product. Any extensions to these standard guarantees and qualities, for example during special advertising campaigns or in the accompanying product documentation (also in those of the manufacturer) will only become valid if specifically written into our offer document.

Our guarantee applies to the functional ability of our systems, spare parts and appliances and does not apply to their appearance. The standard guarantee applies to any defective parts without exception, but does not cover the work, the travel expenses and/or the costs of transport required to rectify the fault.

In case of justified customer complaints we are entitled to choose between replacement, correction, price reduction or redhibitory action.

The assignment of guarantees and compensation rights is not permitted. If goods are resold by the customer, then our guarantee is no longer valid and the consumer right contained in Paragraph 933b of the General Terms and Conditions Act will be excluded.

Within the framework of damages inflicted on the customer's business due to our own gross negligence, we are liable only up to the total value of the contract, except for personal damages for which we are liable already in case of slight negligence.

Instructions that are given in brochures, manuals or other product information are to be strictly followed by the customer in order to avoid damages. Explicit warning is given for operating or using the goods outside of their designed application area.



We are not obliged to perform any tests or issue any warnings with regards to materials and/or data provided by the Customer. In particular, we are not obliged to check the correctness of data saved on provided data carriers. We assume no liability whatsoever for any direct or indirect damages caused by such data and material errors.

The warranty shall lapse immediately if the above conditions are not complied with, if a third party or a person not authorized by the company Freundlinger Luft & Klima GmbH intervenes or takes action, or if damages are caused to the systems or parts, e.g. through incorrect installation and operation/handling.

Should the Customer be held liable based on the Product Liability Act, he shall expressly waive the right to recourse in the sense of Paragraph 12 of the Product Liability Act.

If the Customer puts the goods delivered by us on the market outside the EEA, he shall be obliged to exclude the liability for damages towards his buyer to the extent possible in accordance with the law applicable to or agreed on for the transactions between the Customer and his buyers. In such a case, or in case the Customer fails to exclude his liability, the Customer shall be obliged to defend and hold us unaccountable from and against any third party claims from the warranty title.

### **Cancellation of contract**

In the case of default of acceptance by the Customer or because of any other important reason, in particularly due to bankruptcy of the customer or rejection of insolvency for lack of fortune as well as in case of default of payment of the customer then we are entitled to withdraw from any contractual obligations irrespective of any claims or damages. The cancellation of contract shall become effective upon our unilateral declaration.

A cancellation of contract by the customer is excluded in any case for custom-made items.

### **Data protection, change of address and copyright**

The Customer agrees that we shall electronically store and process any personal data contained in any contract to the extent necessary for the fulfillment of this contract.

The Customer shall be obliged to inform us immediately and without request of any change of the address of his place of residence or place of business (evidence required), if the legal transaction which forms the subject matter of the contract has not yet been mutually and completely fulfilled. If the Customer fails to inform us as described above, any notifications made to the Customer shall be deemed received if they were sent to the Customer's last known address. The Customer shall be obliged

to prove in any individual case that we received such notification of a change of address.

All plans, sketches or other technical documents remain our property, as do samples, catalogues, drawings and the like. The Customer shall not receive and/or gain any kind of right, like for example right of use or exploitation rights.

### **Place of performance, choice of law, place of jurisdiction and severability clause**

Place of performance for any and all contractual obligations of the parties shall be at our principal seat of business in Wels / Austria, irrespective of any agreement on the place of delivery and on the liability for any transport costs or on the place of payment.

This agreement is subject only to the Austrian substantive law. The conflict-of-law rules of the international civil law and the UN Convention on Contracts for the International Sale of Goods (CISG) are hereby explicitly excluded.

For the Customer, the place of jurisdiction for all disputes arising from this contractual relationship or connected to this contractual relationship is exclusively the technically competent district court in Wels / Austria. We are however entitled, at our discretion, to institute proceedings against the Customer in any other competent court according to national or international law.

The ineffectiveness of individual clauses of these General Terms and Conditions shall not affect the effectiveness of the remaining provisions of these General Terms and Conditions. The contractual parties agree to replace the ineffective provision by an effective provision which comes as close as possible to the purpose of the ineffective provision.

### **Other provisions**

The headings of the provisions included in these General Terms and Conditions of Sale are used for reference only and must not be used for interpretation.

No business development occurring between the contractual partner and ourselves, and no delay or omission regarding the execution of a right, remedy or legal means granted to us on the basis of these General Terms and Conditions of Sale, shall constitute a waiver of these rights. Any right and legal means or any remedy granted to us in this document is considered as cumulative and co-exists with the same priority alongside and in addition to other rights, legal means and remedies provided by law.

To the effect that these General Terms and Conditions of Sale require the contractual partner to use the written form, it cannot be replaced by the electronic form in terms of the Signature Act (BGBl I 1999/190).