

## • GENERAL TERMS AND CONDITIONS •

### Delivery and Payment Terms of FRANS VERMEE GmbH

#### § 1 Application of Terms

1. Any deliveries, performances and quotations of Frans Vermee GmbH shall exclusively be made on the conditions laid down herein. They shall consequently also apply to any future business, disregarding whether they will explicitly be agreed upon again or not. These conditions are considered as accepted at the latest at the time when goods or performances have been accepted or upon conclusion of a contract. A counter-confirmation of the buyer with reference to his own Terms and Conditions or Purchase Terms shall hereby be objected to.
2. Any agreement between Vendor and Buyer in order to execute a contract must be made in writing.

#### § 2 Quotations and Conclusion of Contract

1. Any quotations of Frans Vermee GmbH shall be subject to change without notice and without obligation. Declarations of acceptance and purchase orders need to be confirmed by Frans Vermee GmbH either in writing or by telex in order to be legally valid. The same applies to supplements, changes or collateral agreements.
2. Drawings, pictures, dimensions, weights or other performance figures can only be considered binding if these have been explicitly confirmed in writing.
3. Representatives and any employee of Frans Vermee GmbH are not authorized to make oral collateral agreements or guarantees which exceed the content of the written contract. Representatives and employees of Frans Vermee GmbH are not authorized to make or accept contractual declarations, neither are they authorized to receive collections unless special written authority has been given.

#### § 3 Prices

1. Unless stated otherwise, Frans Vermee GmbH feels itself bound to the prices it has quoted for 30 days from date of quotation. Relevant are those prices which Frans Vermee GmbH has stated in the order acknowledgement plus the corresponding VAT which is applicable to domestic deliveries. For deliveries into foreign countries those prices are relevant which have been stated in the order acknowledgement plus applicable costs like transport charges, taxes, customs duty etc. Additional supplies and performances like assembly, commissioning, training of personnel etc. shall be invoiced separately.
2. If not stated otherwise, all prices are to be understood ex Remagen, inclusive of standard packaging. Seaworthy packing and containerization shall generally be invoiced separately.
3. On spare parts orders below a value of 500,00 Euro we charge a surcharge of a maximum of 150,00 Euro net.

#### § 4 Delivery Time and Time of Performance

1. Delivery dates or deadlines which can be binding or not-binding need to be agreed in writing.
2. Frans Vermee GmbH cannot be made liable for delays in delivery or in the fulfilment of performances caused by force majeure or by events which make it difficult for Frans Vermee GmbH temporarily or even impossible to deliver - this comprises strikes, lock-outs, administrative orders etc., although they directly affect suppliers of Frans Vermee GmbH or their sub-suppliers, not even if a delivery time or deadline has contractually been agreed on a binding basis. Such situation gives Frans Vermee GmbH the right to postpone delivery or performance by the period of the hindrance plus an adequate start-up time or to pull out of the contract partly or entirely with regard to the remaining portion of the contract.
3. If the period of hindrance covers more than 3 months, the contracting party shall be entitled to pull out of the contract with respect to the default part if an adequate additional time has been granted. If the delivery time is prolonged or Frans Vermee GmbH is freed from its obligation, the contracting party cannot derive from it any compensation. Frans Vermee GmbH can only refer to the said conditions if the contracting party is informed immediately.
4. As far as Frans Vermee GmbH is liable for the non-compliance with binding deadlines and schedules or for being in default, the buyer is entitled to claim default damages of 1/2 % for each complete week of default, but a maximum total of up to 5 % of the invoice value of the deliveries and performances being in default. Any exceeding claims are excluded, unless the default can at least be referred to gross conscious negligence of Frans Vermee GmbH, its legal representatives or subcontractors.
5. Frans Vermee GmbH is entitled to make partial deliveries or partial performances at any time, unless any partial delivery or performance does not meet the buyer's interest.
6. Frans Vermee GmbH is committed to deliver and perform provided the buyer fulfils his obligations punctually and orderly.
7. If there is a default of acceptance on the buyer's side, this will entitle Frans Vermee GmbH to claim compensation for the damage incurred. In the event of default of acceptance the risk of an accidental worsening or accidental loss shall be passed on to the buyer.

#### § 5 Transfer of Risk with regard to Acceptance

1. The risk will be passed on to the buyer as soon as the consignment has been handed over to the person who conducts transportation, or has left the stores of Frans Vermee GmbH or its supplier in order to be transported. This also applies to assemblies carried out by Frans Vermee GmbH. If transportation is impossible without intention or negligence of Frans Vermee GmbH or will be postponed upon demand of the buyer, the risk shall then be passed on to the buyer upon advice on the readiness of the consignment for dispatch.
2. Acceptance of the installations which are to be constructed by Frans Vermee GmbH shall follow the assembly into a ready for work condition. The buyer will be demanded by Frans Vermee GmbH to accept the installation within an adequate period of time. If the buyer does not declare his acceptance within this given period, the acceptance will then be considered as executed. If the installation has completely or partly been put into operation on demand of the buyer prior to the formal acceptance, the acceptance shall then be considered as executed with the date of the initial operation. If the installation cannot be put into operation after completed assembly for reasons which lie with the buyer, the costs for decommissioning and risks involved shall then be borne by the buyer, also any costs involved with damages deriving from it like maintenance and repair.

#### § 6 Warranty

1. The products will be delivered without manufacturing and material defects; the period during which warranty claims can be asserted is one year from the date of delivery of the products.
2. If the operating and maintenance instructions of Frans Vermee GmbH are not adhered to, or modifications to the products carried out, components exchanged or expendable items used which are not equal to the original specifications, this will dismiss any claim on the products, provided the buyer cannot disprove the substantiated statement that one of these circumstances has brought the defect about. If spare parts are used which are not in compliance with the Food and Drug Act / National Food Bill, then any liability of Frans Vermee GmbH shall be excluded. In such cases, the buyer will be obliged to release Frans Vermee GmbH from claims of third parties.
3. The buyer is obliged to inform Frans Vermee GmbH in writing about any defects without delay, the latest, however within a week after receipt of the delivered goods. Defects which despite careful inspection could not be detected within this period of time must be notified to Frans Vermee GmbH in writing immediately upon detection. The buyer commits himself on behalf of Frans Vermee GmbH to keep the installation under control with respect to safety and to report any extraordinary occurrences or possible sources of damage.
4. If the buyer has informed about faulty products, Frans Vermee GmbH will demand on its own choice and its own costs that
  - a. that the faulty part or device will be sent to Frans Vermee GmbH for repair and shall subsequently be sent back;
  - b. the buyer shall keep the faulty part or device and await a technician of Frans Vermee GmbH who will repair the part or device on site. Should the buyer demand that rework shall be carried out at a location defined by him, Frans Vermee GmbH can then decide to meet this request, in which case any parts which have been exchanged will not be invoiced, but working hours and travel costs will be invoiced at the standard rates of Frans Vermee GmbH.
5. If the rework fails after an adequate period of time, the buyer shall then have the right to reduce payment or cancel the contract.
6. Any liability for normal wear-and-tear is excluded.
7. Only the buyer direct is entitled to raise warranty claims against Frans Vermee GmbH, they cannot be transferred to third parties.

#### **§ 7 Reservation of Ownership**

1. The following securities shall be granted to Frans Vermee GmbH until all payments have been made (including all balance claims of open account) to Frans Vermee GmbH by the buyer for any present or future lawful title. Frans Vermee GmbH will release the respective securities on request by its own choice, provided they exceed the receivables by more than 20 %.
2. The goods remain the property of Frans Vermee GmbH until full payment has been made. Processing or transformation always takes place on behalf of but without commitment for Frans Vermee GmbH. If the (co-)ownership of Frans Vermee GmbH becomes extinct through merger, it shall hereby be agreed that the (co-)ownership of the buyer of the unified matter will be transferred to Frans Vermee GmbH by ad valorem (invoice value). The buyer shall safely keep the (co-)ownership of Frans Vermee GmbH free of charge. Goods, for which Frans Vermee GmbH is entitled of (co-)ownership shall in the following be called reserved goods.
3. The buyer is authorized to process or sell the reserved goods under regular business transaction, provided he is not in arrears. Pledging or ownership transfer by way of security is not permitted. Claims resulting from resale or any other legal reason (insurance, prohibited act) concerning the reserved goods (including all balance claims of open account) shall hereby be conveyed by the buyer to Frans Vermee GmbH for safety reasons to the full extent. Frans Vermee GmbH gives the buyer the revocable authorization to collect the claims conveyed in his own name on behalf of Frans Vermee GmbH. This direct debiting authorization can only be revoked if the buyer does not orderly fulfil his payment obligations.
4. In case third parties seize the reserved goods, especially levies of execution, the buyer shall refer to the ownership of Frans Vermee GmbH, whom he shall inform immediately, so that Frans Vermee GmbH can enforce its rights of ownership. If the third party is not in a position to reimburse Frans Vermee GmbH for any judicial and extrajudicial costs occurring in this connection, the buyer shall be made liable.
5. Should the buyer act in violation of the contract, especially in case of arrears, Frans Vermee GmbH shall have the right to withdraw from the contract and to reclaim the reserved goods.

#### **§ 8 Payment**

1. Unless agreed otherwise, all invoices of Frans Vermee GmbH are payable net, within 14 days from date of invoice. Even if the provisions of the buyer are to the contrary, Frans Vermee GmbH shall be entitled to set the buyer's payments off against any of his older debts and shall inform the buyer about the kind of offsetting. If costs or interests have already occurred, Frans Vermee GmbH shall then be entitled to first offset the payment against the costs, then against the interest and last against the primary obligation.
2. Payment shall be considered as effected once Frans Vermee GmbH can dispose of the amount.
3. If the buyer defaults, Frans Vermee GmbH shall then be entitled to invoice interest at a rate claimed by banks for overdrafts plus applicable VAT for the period concerned. They are to be calculated at a lower rate if the buyer is able to give proof of a less charge.
4. Should Frans Vermee GmbH learn of any circumstances which call the creditworthiness of the buyer into question, especially if he dishonours a cheque or stops payments, or if Frans Vermee GmbH learns about any other circumstances which raise doubts about the creditworthiness of the buyer, then Frans Vermee GmbH shall be entitled to call the total remaining debit balance due, despite the fact that Frans Vermee GmbH has accepted cheques. Frans Vermee GmbH in such a case shall also be entitled to demand pre-payments or deposits of security.
5. The buyer shall only be entitled to offset, retain or reduce invoice amounts, even if defects or counterclaims have been notified, if the counterclaims have been legalized and are undisputed.

#### **§ 9 Design Modifications**

Frans Vermee GmbH reserves the right to apply modifications to a design at any time; and is not obliged to transfer such modifications to products which have already been delivered.

#### **§ 10 Industrial Property Rights**

1. Frans Vermee GmbH will release the buyer or his customer from claims resulting from copyright infringements, trademarks or patents, unless the draft design of a delivery item originates from the buyer. The indemnity obligation of Frans Vermee GmbH with regard to the amount involved shall be limited to the foreseeable damage. A further precondition of the indemnity obligation is that Frans Vermee GmbH shall be the only party to litigate, and that the alleged infringement of a right shall exclusively be referred to the design of the delivery item of Frans Vermee GmbH without any link to or use of other products.
2. Frans Vermee GmbH alternatively has the right to release itself from the obligations assumed under paragraph 1 by either
  - a. obtaining the required licences for the allegedly infringed industrial property rights or
  - b. making the modified delivery item or parts of it available to the buyer, which in case of an exchange against the infringing delivery item or part of it shall remove the infringement allegation concerning the delivery item.

#### **§ 11 Secrecy**

If not explicitly agreed otherwise, the information forwarded to Frans Vermee GmbH in connection with purchase orders shall not be considered as confidential.

#### **§ 12 Limited Liability**

1. Claims for damage shall be excluded independent of the kind of breach of obligations, including prohibited acts, provided no deliberate or grossly negligent action prevails.
2. In case of breach of contractual obligations Frans Vermee GmbH shall be made liable for any negligence but only to the extent of the foreseeable damage. Claims for loss of expected profit, saved costs for claims of third parties for damage and other indirect and consequential damage cannot be demanded, unless a character of the article guaranteed by the vendor aims at safeguarding the buyer against such damage.
3. The limited liabilities and exclusions stated in paragraph 1 and 2 are not applicable to claims which originate in the malicious behaviour of Frans Vermee GmbH, neither to the liability for a guaranteed character of an article, nor claims according to the product liability act as well as damage resulting from injuries to life, body or health.
4. Where the liability of Frans Vermee GmbH is excluded or limited, this shall also apply to employees, representatives and subcontractors of Frans Vermee GmbH.

#### **§ 13 Applicable Law, Place of Jurisdiction, Separability**

1. These General Terms and Conditions and the entire legal relationship between Frans Vermee GmbH and its contracting party are subject to the law of the Federal Republic of Germany. The legislations of the UN-Sales Law shall not apply.
2. Where the buyer is a registered trader in the sense of the commercial code, legal person under public law or separate assets under public law, the place of jurisdiction for any direct and indirect dispute resulting from the contractual relationship shall exclusively be Koblenz, Germany.
3. Should there be a provision contained in these General Terms and Conditions or should there be a provision within the frame of other agreements that is not binding in law or become invalid, this however shall not affect the effectiveness of all the other provisions or agreements.