



**Flanschenwerk Bebitz GmbH**

## **General Terms and Conditions of Sale and Delivery**

### **1. Scope**

- 1.1. These conditions shall govern any deliveries and offers made, and services performed, by Flanschenwerk Bebitz GmbH (hereafter referred to as FWB) vis-à-vis companies and legal persons and special funds under public law. They shall also apply, without further express reference, to any future business relations and shall be deemed to have been accepted once any goods/services have been received. Buyers' terms which are at variance with these conditions shall be void.
- 1.2. Deviations from these terms and conditions shall be effective only if expressly confirmed by FWB.

### **2. Offers, contracting**

- 2.1. FWB offers shall be without obligation. Buyers shall be bound by orders for 2 weeks. A contract has been concluded only if FWB confirms an order in writing within the a.m. period. Oral side agreements, commitments etc. made by FWB staff shall become binding only if confirmed in writing by FWB. Orders may be confirmed by fax or email.
- 2.2. Figures, dimensions, weights, prospectus data and/or other documents enclosed with the offer such as drawings, data, references etc. shall not be taken as quality descriptions. A quality shall be warranted or a guarantee issued only if separately agreed in writing.
- 2.3. FWB reserves the copyright of figures, drawings, technical data, calculations and other documents. Such copyrights may be made accessible to third parties only if FWB has given previous permission in writing.

### **3. Delivery, delivery time, delay**

- 3.1. Deadlines and dates given by FWB shall be without obligation unless agreed otherwise in writing. FWB shall not bear any supply risks.
- 3.2. Delivery deadlines may only be met if buyers fulfill their contractual obligations. A delivery period shall start, at the earliest, on the date of contract conclusion and after the buyer has submitted all required documents, specifications, etc. If buyers request subsequent modifications or supplementary delivery, the delivery period shall be extended reasonably. Delivery dates shall be deemed to have been met if the goods leave FWB's premises before the deadline, readiness for shipment has been notified and if shipment is delayed through no fault of FWB. If FWB or its suppliers are affected by unforeseen events and/or force majeure, the delivery period shall again be extended reasonably.
- 3.3. The right of proper and timely self-supply is reserved. FWB undertakes to inform buyers immediately if delivery is not available and shall promptly reimburse buyers who withdraw.
- 3.4. In cases where FWB has not delivered as agreed, buyers may not withdraw from the contract and claim damages in place of full performance or compensation for wasted expenditure if FWB's breach of duty has been negligible.
- 3.5. FWB shall default by way of reminder only where this is imperative in terms of the law of the contract. To be effective, reminders shall be transmitted, and time limits fixed, in writing.
- 3.6. FWB may choose part delivery and part performance at any time.
- 3.7. In cases where FWB fails to perform or does not perform as duly required but has performed services in part, buyers may claim damages in place of full performance only if this is required by their interest in the service as a whole. Buyers may then withdraw from the contract as a whole only if they can prove they are not interested in part performance and may not claim damages after withdrawal.
- 3.8. If FWB defaults for reasons outside its control, it shall accept no liability for damages in cases of ordinary negligence. This a.m. limitation of liability shall not apply if the default is due to a breach of essential contractual obligations on the part of FWB. FWB's liability shall in any case be limited to damage that is foreseeable and typical for the contract. If delivery is delayed for reasons under FWB's control, buyers may, after a written reminder, fix another reasonable time limit with a warning that delivery will not be accepted after expiry of the deadline. Buyers may declare their withdrawal from the contract in writing only after this time limit has expired and all other legal requirements have been met. Buyers who withdraw from the contract may not claim damages for non-performance from FWB.

### **4. Transfer of risks**

- 4.1. Unless agreed otherwise, deliveries shall be made ex works FWB, with risks passing to the buyer once the goods have left the FWB site for shipping or have been handed over to the party in charge of transport. This shall also apply if FWB uses its own resources to transport the goods on behalf of the buyer.
- 4.2. If shipment is impossible through no fault of FWB, risks shall pass to the buyer when readiness for shipment has been notified.
- 4.3. If requested by buyers, FWB will insure the consignment by taking out transport insurance at the buyer's expense.
- 4.4. Transport and other packaging material as specified in the German Packaging Ordinance shall not be returnable, with the exception of multiple use skeleton containers, pallets etc. Buyers shall dispose of one-way packaging materials at their own expense. Multiple use containers etc. will merely be on loan and shall be returned by buyers at their own cost in proper condition, without residues and in keeping with legal provisions. If containers etc. are contaminated or damaged, buyers shall bear the repair costs or pay compensation to FWB if repair is impossible. FWB may offset any resulting costs against claims for payment made on FWB.

### **5. Prices, payment**

- 5.1. Prices as per order confirmation shall be valid for delivery periods of up to four months. Where these periods are exceeded, prices prevailing on the delivery date shall be charged if FWB's prime costs for materials, wages, other production costs etc. have changed in the meantime. Unless agreed otherwise, prices shall be ex works and include normal transport packaging plus transport costs and sales tax.
- 5.2. Sales tax at the applicable legal rate will be added to prices.
- 5.3. Invoices shall be due in cash within 14 days from the invoice date with a 2% discount, or within 30 days net. Payment made within these periods shall ensure that the amount for settlement is at FWB's disposal no later than the due date.

- 5.4. Unless greater damage has been caused, default interest on FWB claims for payment shall be charged at a rate of 8% above the basic rate of the European Central Bank.
- 5.5. Buyers shall have rights of setoff only if their opposing rights have been established as legally enforceable, uncontested or recognized by FWB. In addition, buyers shall have rights of retention only if their counterclaim derives from the same contractual relation.
- 5.6. If circumstances come to FWB's knowledge which cast doubt on the buyer's creditworthiness, FWB may, without prejudice to other legal claims, demand prepayment or the furnishing of security even after contract conclusion. If the buyer refuses both, FWB shall have the right of retention or may withdraw from the contract after an unsuccessful reminder fixing a time limit for prepayment/furnishing security and shall be entitled to claim damages in addition.
- 5.7. Checks and bills, if accepted by FWB, shall be deemed as payment only when cashed/honored. Any discount/bank costs shall be borne by buyers.
- 5.8. Subject to these conditions (item 7), goods shall be delivered with reservation of ownership which shall extend to the honoring, on the part of buyers, of bills accepted by FWB in cases where FWB has agreed to the payment of the purchase price by way of checks/bills. Reservation of ownership shall also apply to a buyer's honoring of bills accepted by FWB and shall not expire when a check has been entered to FWB's credit.

## 6. **Warranty, damages**

- 6.1. To exercise warranty rights, buyers shall have made inspections and given proper notice of defects in writing immediately pursuant to § 377 HGB.
- 6.2. Buyers may legally make claims on FWB under a right of recourse only in the absence of agreements with customers which go beyond statutory warranty claims.
- 6.3. If a sales item shows a defect for which FWB is responsible, FWB shall be given an opportunity for supplementary performance within a reasonable period and may then repair the item or replace it.
- 6.4. If supplementary performance fails, the buyer may set another time limit and in case of failure, he may withdraw from the contract if legal requirements have been met, or reduce the purchase price. No extra claims may be made for damages/expenditure caused by supplementary performance, and particularly transport, labor and material costs, if expenditure was higher because an item had to be transported to a location away from the place of delivery; this shall not apply if the transfer was in compliance with the intended use of the item.
- 6.5. No claims will be accepted in the event of negligible deviations from the agreed quality, negligible impairments of usefulness, natural wear and tear and/or damage caused after the transfer of risks due to incorrect and/or negligent handling, excessive strain or stress, faulty installation and/or particular external factors and/or qualities which have not been specified in the contract.
- 6.6. FWB shall not be liable for damage caused directly, or indirectly, if instructions for use issued by FWB and/or manufacturers are not observed, unauthorized changes are made to items delivered, parts are exchanged and/or spares/materials are used which do not conform to original specifications and/or requirements; this shall not apply if proof can be given that a warranty claim is not due to one of the a.m. criteria for exclusion.
- 6.7. No liability will be accepted if the breach of obligations is only slight. After a gross or willful breach of duty FWB's liability shall be limited to foreseeable damage which is typical for the contract. The same shall apply if essential contractual obligations are breached. This restriction of liability shall not apply if damage is done to human life and the body, or health.
- 6.8. Unless provided otherwise by law, warranty claims shall expire by limitation within 12 months from the transfer of risks. Where defects are essential, considerable or detract from the usefulness of an item, the warranty period shall be extended by the time needed for supplementary performance, i.e. from the notice of defect to the completion of supplementary performance, if the defect was essential and/or considerable or detracted from the usefulness of the goods. The warranty period shall never be shorter than a year.

## 7. **Reservation of ownership**

- 7.1. After delivery, the goods shall remain FWB's property until all claims resulting from the business connection with the buyer have been paid. Ownership shall not be prejudiced by the insertion of individual claims into a current account and the acceptance of a statement of account. Payment shall not be deemed to have been effected until the money value has been received by FWB.
- 7.2. FWB may take back goods it has sold if the buyer is in breach of contract and, in particular, defaults. Such a take-back shall not be equivalent to a withdrawal from the contract except in cases where FWB has expressly declared a withdrawal in writing.
- 7.3. Any seizure by FWB of goods sold shall be equivalent to withdrawal from the contract. Goods which have been taken back may be turned to good account by FWB, with proceeds set off against the buyer's liability less realization costs.
- 7.4. In the event of seizure or other third-party intervention FWB shall immediately be notified in writing and shall be entitled, but not obliged, to file suit pursuant to § 771 ZPO. An obligation shall arise only if the buyer pre-finances the action and takes the litigation risks. If the third party is unable to refund to FWB the legal and out-of-court costs of bringing an action pursuant to § 771 ZPO, the buyer shall be liable for the loss incurred.
- 7.5. The buyer may resell the reserved goods under normal trading conditions and, to secure claims resulting from the sale as part of the business relation, hereby assigns to FWB any claims on takers or third parties in the final amount invoiced resulting from the resale (including sales tax). The buyer shall do so regardless of whether the goods were sold unprocessed or after processing. FWB hereby accepts assignment. In cases where an assigned claim on a taker of reserved goods has been included in a current account, assignment shall also relate to the accepted statement of account and, if the taker becomes insolvent, to the "causal" balance which results. The buyer shall be authorized to recover these debts even after assignment, with no prejudice to FWB's entitlement to collect. However, FWB undertakes not to recover the debts as long as the buyer meets his financial obligations, does not delay payment, no insolvency petition has been filed regarding the buyer's assets, and payments have not been suspended. Should this occur, however, FWB may demand that the buyer disclose the assigned claims or related debtors, give whatever information is required for collection, hand over relevant invoices and documents, and disclose assignment to debtors.
- 7.6. Reserved goods shall in all cases be processed or transformed on behalf of FWB. If they are processed in combination with other material that is not FWB's property, FWB shall become co-owner of the new item, the proportion being the value of the reserved goods (final invoice amount including sales tax) in relation to the other materials/items used at the time of processing. Otherwise the same shall apply to processed items as to goods delivered with reservations.

- 7.7. If reserved goods are inseparably combined/mixed with other items/materials that are not FWB's property, FWB shall become co-owner of the new item, the proportion being the value of the reserved goods (final invoice amount including sales tax) in relation to other admixed materials/items used at the time of mixing/processing. Where mixing/blending makes the buyer's item the main substance, it shall be agreed that the buyer transfers proportionate co-ownership shares to FWB. The buyer shall hold any resulting sole/joint property in safe custody for FWB.
- 7.8. At the buyer's request, FWB shall release securities to which it is entitled if their marketable value exceeds the debts to be secured by more than 10%; the securities in question shall be chosen by FWB.

**8. Place of performance, legal venue, applicable law, severability clause**

- 8.1. The place of performance shall be FWB's registered office at 06420 Koennern/ OT Bebitz.
- 8.2. The competent court for disputes arising from the business connection shall be the court which has jurisdiction for the company's domicile in Bebitz.
- 8.3. German law shall apply exclusively, to the exclusion of the U.N. Sales Convention.
- 8.4. Should any individual provision of these conditions be or become void, the validity of the remaining provisions shall in no way be affected. In such case the parties undertake to replace the void provision by an effective one coming as close as possible to the economic purpose of the void provision.
- 8.5. FWB has an energy management system according to DIN ISO 50001.

Flanschenwerk Bebitz GmbH