

General Terms and Conditions of Business

FRIMATEC Automotive GmbH

I General Provisions

The following contractual terms and conditions shall apply to all purchase, exchange and similar contracts and repairs as concluded with purchasers of our goods. We shall only be bound by differing terms and conditions on the part of the purchaser in cases where we have expressly acknowledged them in writing or where they are legally enforceable.

II Validity

1. All agreements and quotes, including all services performed by us, shall be based exclusively on these general terms and conditions of business; they shall be acknowledged when an order is placed or when a delivery is accepted.
2. Differing agreements, amendments or alterations on the part of the client that we do not expressly acknowledge in writing shall not be binding on us, even if we do not expressly contest them.
3. The provisions of Incoterms 1990 shall apply where there are no differing provisions contained in these general terms and conditions of business.

III Prices and Payment

1. All quoted prices are exclusive of VAT at the prevailing rate. Additional costs such as packaging, freight and insurance premiums, etc., shall be calculated separately.
2. The cost of orders for which no expressly fixed prices are agreed shall be calculated on the day of delivery in accordance with our price lists and pricing guidelines.
3. Our invoices are to be settled without deductions no later than 30 days after the date of invoice, unless other individual agreements apply. The date on which we receive funds or when our account is credited without restriction shall determine the timely payment of invoices. Late payment on the part of the client shall not require us to issue a reminder. In the event of late payment on the part of the client, we are entitled to add interest at a rate of 5 percentage points above the prevailing base rate as set by the German Bundesbank. The right to assert further damages for late payment, as well as other rights, is reserved.
4. We shall only accept discountable bills of exchange subject to our express agreement and pending payment of the debt. The client shall bear the discount charges. Credits from bills of exchange and cheques shall be subject to when the funds are received and with a value date being the day on which we have access to the equivalent value. Retention of title in accordance with section IV and any other securities to which we are entitled shall apply until we are released from any contingent liabilities we have entered into regarding the acceptance of bills of exchange or cheques in the interest of the client.
5. The client may not withhold payment to offset it against any counterclaims disputed by us.
6. Assigning claims to us may only take place with our consent.
7. In cases where the client is late with payment, including when the client does not redeem a cheque or bill of exchange or stops payment or if we become aware of other circumstances that lead us to question the client's credit worthiness, we are entitled to make all outstanding debts due for payment, even if we have accepted bills of exchange or cheques. In this case we are also entitled to demand payment in advance or securities for all other contracts, as well as cancelling these contracts subject to an appropriate grace period or to demand compensation for non-fulfilment.

IV Retention of Title

1. The seller reserves the right of title to the goods until all the seller's claims against the purchaser stemming from the business relationship, including future claims arising from contracts concluded at the same time or at a later date, are cleared. This shall also apply if individual or all of the seller's claims have been placed on an open account with the balance tallied and acknowledged.
2. The purchaser is entitled to resell the retained goods in accordance with due business procedure only if the purchaser hereby assigns to the seller all claims arising from the resale against the purchaser's own buyers or third parties. If the retained goods are resold in an unprocessed state or after processing or combining with items whose ownership is exclusively the purchaser's, the purchaser hereby assigns to the seller those claims arising from the resale in full. If the retained goods are resold by the purchaser following processing/combining with goods not belonging to the seller, the buyer hereby assigns to the seller those claims arising from the resale to the value of the retained goods plus all ancillary rights and priorities of rank in relation to any other claims. The seller accepts the assignment. The purchaser is authorised to collect payment, including after assignment. The purchaser's authorisation to collect payment remains unaffected; the seller shall, however, undertake not to collect payment provided the purchaser duly complies with his/her payment obligations and other requirements. The seller may request the purchaser to notify him about assigned claims and debtors, to provide all necessary information regarding payment collection, to issue relevant documentation and to inform debtors of the assignment.
3. Processing or transformation of the retained goods shall always be carried out for the seller. If the retained goods are processed with items over which the purchaser has sole ownership or with items where there is no extended retention of title, the seller shall have sole ownership of the new item. If the retained goods are processed with other items that do not belong to the seller, the seller shall be entitled to co-ownership of the new item as a proportion of the value of the retained goods to that of the other processed items at the time of processing.
4. Where recourse to a bill of exchange is established for payment of the purchase price by the purchaser, the retention of title and the claim arising from the deliveries of goods upon which the retention of title is based shall not expire until the purchaser, as the acceptor, redeems the bill of exchange.
5. If the value of the existing securities used to secure claims exceeds the latter by more than 20%, the seller shall undertake to release securities at the purchaser's request.

V Delivery Time

1. It is agreed that delivery times are indicative. We are entitled to carry out deliveries in instalments.
2. We shall make every effort to comply with the given delivery times, but information regarding delivery times is subject to change, unless expressly described as binding by us in writing. In cases where delivery times are binding, the purchaser has the right to cancel the contract subject to the provisions as laid down in art. 326 of the German Civil Code (*Bundesgesetzbuch*). A claim for compensation is excluded.
3. We are entitled to cancel the contract in full or in part or to extend delivery times without the purchaser having any entitlement to make any claims in the case of force majeure or other significant events that may adversely affect order fulfilment, including impossible situations affecting us or our suppliers and for which neither us nor our suppliers are responsible, particularly transport and operational disruption, industrial disputes or shortage of materials. This shall also apply if the events as given above occur when we are already subject to a delay.

VI Force Majeure

1. If we are prevented from carrying out our obligation as a result of unpredictable and exceptional circumstances and which despite taking all reasonable care to avert on a case by case basis and irrespective of whether such events happen to us or a supplier, we are entitled to extend the delivery term by a reasonable amount.
2. If it is not possible for us to carry out a delivery or service as a result of unacceptably difficult circumstances, we shall be released from our delivery obligation.

VII Delivery and Transfer of Risk

1. The purchaser shall be invoiced separately for any packaging and delivery costs. Unless otherwise agreed, we shall choose the most appropriate packaging and delivery type.
2. Risk shall pass to the client as soon as we hand over the goods to the forwarding agent, carrier or whoever is responsible for effecting delivery and this shall also apply in cases where freight-free delivery has been agreed. The above condition shall equally apply if delivery is carried out by us or by our performing agents.

VIII Exchange

1. Delivery of exchangeable units is dependent on the return of equally exchangeable old parts of the same type. The old parts must be returned first, otherwise a deposit shall apply. We are entitled to make an additional charge on non-exchangeable old parts.

IX Warranty

We shall be liable to the client for defects to the exclusion of further rights against us, as well as our performing and vicarious agents, in accordance with the following conditions:

1. Acceptance of incomplete goods shall be deemed approved if no complaint about the delivery has been received following the deadline for checking the delivery in accordance with due business procedure.
2. Units that do not fulfil their function as a result of incorrect handling, incorporation errors, soiling, a defective product environment and incorrect assignment/conversion shall not be recognized as warranty cases. Furthermore, natural wear and tear and units put to exceptional use, e.g. motor sports and building site vehicles, etc., are excluded from the warranty. We shall return parts not recognised as warranty cases. The freight costs for this shall be borne by the client. We may possibly offer the current value for old parts in lieu of the defective part.
3. Our warranty extends only to repair work or exchange.
4. Provided any defects are established as such and we are notified of them in a timely manner, we shall carry out our warranty and choose either to repair the defective goods or to send fully functioning replacements. The client may choose to rescind the order or request a price reduction if the repair work or replacement delivery proves unsuccessful.
5. Compensation claims on the part of the client because of defects to the item - irrespective of the legal basis, including any compensation claims arising from positive breach of contract, culpa in contrahendo or tortious acts – are excluded in accordance with section X.
6. Furthermore, we shall assume a warranty in accordance with our prevailing conditions of warranty.

X Acceptance Refusal, Cancellation

1. If the client refuses to accept delivery in full or in part or if the purchaser is responsible for the order not being carried out, we may, as the deliverer, and without prejudice to any further possible claims, in particular payment for the expenses incurred from the order and the costs to remove equipment that has already been manufactured, demand compensation amounting to 30% of the purchase price or the relevant part thereof.
2. If the client wishes to cancel or terminate the contract after an order has been placed, the contractual relationship shall only be voided if we agree to the cancellation or termination. In this case, the client shall undertake to pay us compensation at a minimum of 30% of the purchase price for the costs incurred to date and for loss of earnings.
3. If in cases pursuant to 1 and 2 above the client proves that the damage sustained by us has actually been significantly less than the lump sum amount, the compensation claim shall be restricted to the amount of actual damage incurred.

XI Liability

We shall be liable in accordance with legal provisions for damages arising as a result of malicious intent or gross negligence on the part of our legal representatives or senior management. In the case of malicious intent or gross negligence on the part of ordinary performing agents and in the case of slight negligence resulting in a breach of contractual obligations that are indispensable for achieving the purpose of the contract, we shall be liable in accordance with legal provisions to the extent that our liability shall be restricted to such damages whose extent and scope were foreseeable by us when the contract was concluded. Furthermore, compensation claims on the part of the client for indirect or direct damage – irrespective of the legal basis, including any compensation claims arising from positive breach of contract, culpa in contrahendo or tortious acts – are excluded.

1. Legal liability for any assured characteristics and any liability in accordance with the German Product Liability Act (*Produkthaftungsgesetz*) remain unaffected.

2. The liability restrictions as stipulated in section XI also apply to any liability on the part of our legal representatives, senior management and any other performing agents vis-à-vis the client.

XII Copyright

1. We reserve the right of ownership and copyright in principle to all documentation (e.g. technical information, drawings, photographs) prepared and supplied by us. Such documentation must not be passed on to third parties without our written consent.

2. Data, including relevant data files, as supplied by us to the client can only be used for the purposes as stipulated in the delivery transaction. Reproductions, including extracts, are only permitted with our written approval. Passing on data or data files to third parties is not permitted. Where reference is made to the replacement part number of automotive manufacturers or competitors, this shall only be for the purposes of comparison.

XIII Applicable Law

The law of the Federal Republic of Germany shall apply to the exclusion of its Private International Law and to the exclusion of the provisions as laid down in the UN Convention on Contracts for the International Sale of Goods (CISG).

XIV Applicability

Should a provision in these General Terms and Conditions of Business be or become inapplicable, this shall not affect the applicability of the remaining provisions. The inapplicable provision shall be replaced with a permissible regulation that comes closest to fulfilling the economic intent of the inapplicable provision.

XV Place of Fulfilment and Place of Jurisdiction

1. The place of fulfilment for our services is in principle the delivery depot. Unless otherwise agreed in writing, deliveries are ex works; we are entitled to dispatch goods to clients from another location other than that of the place of fulfilment. The place of fulfilment for other deliveries and payments is 90530 Wendelstein, Federal Republic of Germany.

2. If the client is a legal entity constituted under public law, a public law special fund or a registered trader, the place of jurisdiction for all legal disputes arising from the contractual relationship, its development and applicability is Nuremberg, Federal Republic of Germany. We are also entitled to bring an action against the contractual partner at any other established place of jurisdiction.

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FRIMATEC Automotive GmbH
Bogenstr. 1
90530 Wendelstein
GERMANY