

# General Terms and Conditions of Sale

## FRANZ HOLSTEIN GMBH

Our Terms and Conditions of Sale apply only to companies in terms of § 14 Civil Code (BGB) and are accepted through placing of order or acceptance of delivery. Contradicting terms and conditions of the buyer are hereby explicitly rejected.

### **1. Offers / Prices**

Our offers are always subject to change, as long as nothing has been agreed in writing by FRANZ HOLSTEIN GMBH (hereinafter known as seller). Technical parameters, entries and descriptions e.g. weights, performance data and pictures are only made valid when they have been expressed in writing and been confirmed in the order confirmation. Otherwise they are only in frame with standard technical tolerances. The prices are net prices in EURO "ex works", exclusive of VAT, freight- or shipping costs.

### **2. Delivery/Services**

Ex-factory, dispatch costs, including carriage and container rental, for the account of the buyer.

For deliveries (based on kg, m or m<sup>2</sup>) the seller reserves the right to make over or under-delivery of up to 10% of the quantity ordered. Subsequent delivery of the quantity difference cannot be demanded in cases of under-delivery; likewise, return of the quantity difference cannot be demanded in cases of over-delivery.

If, as a result of culpability on the part of the buyer, the goods are not taken off or are not taken off on time, the seller shall be entitled, following the setting of a period of grace of 10 days, to choose between the issuing of an arrears invoice, withdrawal from the contract or the demanding of compensation for damages in the amount of 20% of the value of the goods.

The choice of delivery and packing is to the discretion of the seller, as long as it has not otherwise been agreed in writing. Transport- and other packing will not be taken back. The costs for waste management are to be paid by the customer. The packaging is to be exposed of according to the appropriate regulations.

We are entitled to deliver in parts at any time, unless this has been agreed otherwise in writing or is not appropriate for the customer.

The delivery dead-lines are only binding, if they have been accepted in writing.

The delivery dead line is complete at the dispatch of the goods. Where an act of god, strike or lock out or other (including predictable) occurrences outside of the influence will hinders the completion of a service commitment, the dead lines for outstanding service commitments are extended to the duration of the hindrances. Included in these occurrences are also delays in deliveries from suppliers of the seller, unless the fault lies with the seller. The customer will be informed immediately from beginning to end of such hindrances.

### **3. Payment conditions**

The due date of the invoice shall be based on the date of issuing. Invoices shall be issued on the date of delivery, or on the date on which the goods are made available for delivery.

As long as it has not already been agreed in writing, invoices are due within 14 days after the invoice date without an allowance as strictly net or as Payment in advance

As a fundamental rule, the oldest or the due items, including any interest on overdue payment incurred, shall be settled. In all cases, the date of the post-mark shall apply as date of payment; with bank transfers, the day before crediting by our bank.

The buyer may only offset against claims of the seller or assert a right of withholding, if the counterclaim is undisputed or has been determined as legally binding.

### **4. Default on payment**

In the event of payment after the due date, normal bank interest on overdue payments shall be charged.

No further obligation to deliver shall apply from any current order whatsoever, until such time as complete payment has been received for all invoice amounts due, including interest on overdue payments.

If the buyer is in default with a due payment, in the event of a fundamental deterioration in his economic situation or in the event of justified doubts regarding the creditworthiness or the ability to pay of the buyer, the seller shall be entitled to demand cash payment prior to delivery of the goods, for any deliveries still outstanding from any current contract, subject to forfeiture of the period for payment. In the said cases, the seller shall also be entitled to take back the conditional commodity. Taking back of the conditional commodity shall not constitute withdrawal from the contract, unless the seller explicitly declares withdrawal from the contract.

### **5. Notification of defects, warranty**

All deliveries must be checked for correctness immediately following receipt.

Complaints of any nature can only be considered if made within 8 days of receipt of the goods.

After starting of any form of processing, all complaints shall be excluded.

Customary or minor, technically unavoidable variations in quality, colour, width, weight, quantity, finishing or design shall not constitute an entitlement to complain.

In the event of justified complaints, the seller shall have the right to choose between the delivery of defect-free replacement goods or repair. This must be carried out within the agreed delivery period, plus an appropriate period for subsequent delivery.

In all cases, return of the goods shall require the prior consent of the seller and return of goods don't release the buyer from his obligation to pay.

The liability of the seller from contract and tortious act is excluded, unless gross culpability applies. This shall also apply in particular with regard to damage not incurred directly on the goods themselves.

Warranty claims of the buyer shall remain unaffected.

## **6. Retention of title:**

The seller shall retain title to all goods delivered by him, until such time as full payment has been received for all claims of the seller, including claims arising in future.

The retention of title shall continue to apply even if individual claims of the seller are included in a current account and the balance is drawn or recognised - unless the balance has been settled.

The buyer can, however, sell or further process the goods within the scope of proper business operations. Any pledging, or transfer by way of security, of these goods or of the claims assigned, in favour of third parties, without the consent of the seller, is excluded. The buyer must notify the seller immediately in the event of attachment of these goods, or of the claim, by third parties.

The entitlement of the buyer to process and to sell conditional commodities within the course of proper business operations, shall end upon cessation of payments by the buyer, if the opening of insolvency proceedings against the assets of the buyer is applied for or if composition proceedings are applied, for in order to avoid insolvency. It shall also end if the seller demands hand-over in the cases as per no.4, paragraph3. Processing of the conditional commodity shall not result in acquisition of ownership of the new item by the buyer as per § 950 BGB (German Civil Code). Processing shall be carried out by the buyer for the seller, without this resulting in obligations for the seller.

If the conditional commodity is processed, the seller shall acquire joint ownership of the new item in the amount of the invoice value of the conditional commodity, processed into the new item.

In the event of the onward sale of processed goods, the assignment shall be restricted to the level of the invoice value of the conditional commodity that has been processed into the new item.

The seller shall not collect the claims assigned for as long as the buyer fulfils his payment obligations. Nevertheless, the buyer is obliged, upon request, to indicate the third party debtors and to notify these of the assignment. He is entitled to collect the claims himself for as long as he fulfils his payment obligations and no other instructions are received from the seller.

The seller undertakes to release the collateral, to which he is entitled as per the above provisions, in so far as the value of the collateral exceeds the claims to be secured by more than 10%, under consideration of the added value through the buyer. The choice as to which collateral is released shall lie with the seller.

The seller must be notified immediately of attachments, with details of the creditor with right of lien.

As soon as the creditor has ceased payments, indeed immediately following announcement of the cessation of payments, the buyer shall be obliged to forward the seller a list of the goods still held subject to retention of title, even if these have been processed, as well as forwarding a list of the claims to the third party debtors, plus invoice credit notes.

If the seller enters into contingent liabilities in the interest of the buyer, the prolonged and extended retention of title shall continue to apply until such time as the seller is fully released from these liabilities.

## **7. Call-off -orders**

Call-off orders must be called off in full by the final call-off date confirmed. Following expiry of this period, the seller shall be entitled to demand take-off of the quantities not yet called off, within a period of grace of 3 weeks and their immediate payment, even if these quantities have not yet been produced or delivered. Following passing of the final call-off date, the seller shall also be entitled to exercise his rights as per §326 BGB (German Civil Code) with respect to the quantities not yet called off; a period of 3 weeks shall apply as appropriate period in the sense of this regulation. If the goods have already been completed, and the seller legally demands their take-off, the goods shall be stored for the account and risk of the buyer from that time onward.

Errors and spelling mistakes in quotations, calculations, order confirmations, invoices etc. shall not bind the seller and can be corrected at any time.

Apart from this, the Uniform Terms and Conditions of the German Textile Industry in newest version, including implementing provisions, shall apply.

Should individual clauses of the present Terms and Conditions of Sale be or become invalid, either in part or in full, the validity of the other clauses or of the other parts of such clauses, shall remain unaffected.

Order confirmations are valid even if unsigned.

## **Objections**

In the event of no written objection being made within three days of receipt of acceptance of order, silence shall apply as consent to the above Terms and Conditions of Sale.

Verbal agreements, not confirmed in writing, are invalid.

## **Applicable law**

Place of performance for all performances and payments from contract of delivery shall be the business premises of FRANZ HOLSTEIN GMBH.

German Law shall apply for all legal relations between the seller and the buyer, even if the latter has his corporate domicile abroad. If agreed with the foreign buyer, the Incoterms 2000 shall apply in addition to German Law.

**Place of jurisdiction** for all legal disputes arising from the contractual relation, as well as concerning its creation and validity, is Krefeld.

The seller can also choose to take legal action in the Court responsible for the corporate domicile of the buyer.

*These Terms and Conditions of Sale are available in German and English language. In the case of discrepancy or want of clearness the German wording is relevant.*

*January 2018*