

FRANK OPTIC PRODUCTS®

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optische Technologien

more than
just optics

General Standard Terms and Conditions (GSTC) Frank Optic Products GmbH optische Technologien

General Terms and Conditions of Delivery and Payment

Issued: 01/2003

I. Scope

- 1.1 Save where otherwise agreed in writing, these Standard Terms and Conditions shall govern all contracts, deliveries and other performance provided by us, including consultancy services and information. Even though we may not expressly object to a Customer's Terms and Conditions, we shall not be bound by same unless we have expressly agreed them in writing.
- 1.2 The Standard Terms and Conditions shall also govern all future contracts with the Customer as well as any deliveries and other performance provided to him in future.

II. Contract Signature

An order placed with us by the Customer shall be a binding offer. We may choose to accept this offer within two weeks by sending an order confirmation or by sending the goods ordered to the Customer within this period. Orders, amendments or additions to contracts must be sent to us in writing. Orders placed by telephone or other means shall be deemed to have been accepted if the order is confirmed by us in writing within the aforementioned two week period or if dispatch or delivery of the goods is effected.

III. Delivery and Passage of Risk

- 3.1 The place of performance for all our delivery obligations is our works, branch or distribution warehouse where the goods are transferred to the first carrier for transportation to the Customer.
- 3.2 Our deliveries are made at the Customer's risk, even when part deliveries are effected. Failing agreement to the contrary, the risk will pass to the Customer no later than on transfer of the goods to the forwarder, carrier or other person appointed to effect dispatch. Passage of risk will take place even when delivery is made by us, when we accept the performance of other obligations at the place of delivery or when we cover the transportation costs. Should the Customer desire insurance cover, we undertake to provide this at the request and expense of the latter.
- 3.3 If the goods are collected by the Customer himself or by a haulage company instructed by the Customer, the risk shall pass to the Customer when loading commences: in such cases the Customer alone shall be competent and responsible for the operational and transportational safety of loading and unloading. Any involvement on our part will be on the instructions and at the risk of the Customer. The Customer exempts us from any claims made against us for damages arising from a failure of operational or transportational safety when loading. The Customer also exempts us from any losses and/or charges incurred by us should provisions of the (German) Road Haulage Act be infringed by a carrier appointed by him or on his instructions.
- 3.4 If dispatch is delayed due to circumstances within the Customer's control, the risk will pass to the Customer on receipt of notification that the goods are ready for dispatch. Agreed delivery dates will be extended appropriately if there arise unforeseen obstacles beyond our control. Such circumstances will be beyond our control even if we have already failed to meet the date agreed.
- 3.5 Part deliveries are permissible if these are standard commercial practice or are based on the quantity and/or material characteristics of the item supplied.

IV. Modifications, Information and Industrial Property Rights

- 4.1 Save where other arrangements have been expressly agreed we reserve the right to vary designs, shapes or shades or alter the scope of delivery during the delivery period providing the item purchased is not materially modified and the change is reasonable to the Customer.
- 4.2 Documentation included in our offers, e.g. illustrations and drawings, statements of weights and dimensions, are only approximate and are subject to change following contract signature under circumstances which necessitate a change and which could not have been foreseen, providing this is reasonable in a particular case and in consideration of the Customer's interests; if the change in the deviation is advantageous or at least not disadvantageous for the Customer, unforeseen circumstances shall also form grounds for a deviation from the illustrations, drawings, and statements of weights and dimensions advised on contract signature, unless this would be unreasonable in a particular case in consideration of the Customer's interests. There shall be no authority for change if we expressly designate illustrations and drawings, weights and measurements as binding.
- 4.3 Our information on deliveries, services or performance of any other nature are made without obligation subject to other written agreements. The Customer must not give third parties access to documentation, offers, design drawings, samples or other paperwork received from us.
- 4.4 The Customer accepts sole responsibility for checking the reproduction rights of all drawings or samples supplied by us. The Customer exempts us from any claims made against us by third parties for breach of industrial property rights.
- 4.5 All our deliveries outside Germany are subject to the relevant export licences being granted. The Customer is responsible for compliance with regulations when the products are used abroad and exempts us from any claims for damages.

V. Delivery period

- 5.1 The delivery period stated in the offer or order confirmation is not binding in principle unless it is expressly described as binding.
- 5.1a The delivery period shall commence on dispatch of the order confirmation, though not before the purchaser has obtained the requisite materials, equipment, documents, permits, releases, and prior to receipt of an agreed payment on account.
- 5.2 Unforeseeable circumstances beyond our control (e.g., strikes, lockouts etc.) entitle us to postpone delivery for the duration of the hindrance in addition to a reasonable start-up period, or to terminate the contract on the grounds of the unperformed part; this applies irrespective of whether the aforementioned events affect ourselves or one of our suppliers. There shall be no right of termination if the events are due simply to a brief disruption of our supply capability.

VI. Prices and Terms of Payment

- 6.1 Our prices are ex works, i.e. they exclude dispatch, packaging and insurance costs as well as value added tax at the statutory rate; if a price is not specially agreed the current list price will apply.
- 6.2 The purchase price is due immediately on receipt of invoice, save where otherwise agreed. Payment must be made without deduction.. Bills of exchange and cheques are only accepted on account of performance. Bill and discount charges will be charged to the Customer. If the Customer defaults on payment we shall be entitled to charge interest on arrears pursuant to § 288 BGB. If we are able to prove higher loss due to delay we shall be entitled to claim this.

- 6.2a If part payments are agreed, the total residual debt will immediately become due for payment – regardless of the date of any bills - when
- a) a Customer not entered as a trader in the Commercial Register is late in paying the whole or part of at least two successive instalments and the amount of payment on which he is in default comprises at least 1/10 the purchase price,
 - b) a Customer entered as a trader in the Commercial Register is two weeks late in paying an instalment, stops payment or has petitioned for bankruptcy.
- 6.3 The Customer can only offset with counter-claims which are undisputed or established in law or exercise a right of retention in respect of such claims. The Customer cannot exercise a right of retention not based on the same contractual relationship.
- 6.4 If after conclusion of contract we find that the Customer's bills have been protested, that there is a levy of execution against him or that his financial position has otherwise deteriorated, we may immediately claim accounts receivable not yet due as well as such accounts receivable from the business association for which a bill or cheque has been presented, if and inasmuch as it appears from the above circumstances that the counter-performance owed us is at risk.
- 6.5 Failure to comply with these Terms of Payment shall entitle us to suspend each delivery and to deliver only against prepayment or cash payment until the arrears have been settled.

VII. Reservation of Title

- 7.1 The goods supplied shall continue to be our property pending settlement of the debt owed us on the basis of the contract governing delivery. The reservation of title shall continue to apply to any claims which we subsequently acquire against the Customer in connection with the goods supplied, e.g. as a result of repairs or replacement deliveries or other performances.
- If the Customer is a legal entity under public law, a special public fund or a merchant for whom the contract forms part of his business operation, the reservation of title shall also apply to claims owed us from our current business relationship with the Customer. We shall at the Customer's request be obliged to waive reservation of title if the Customer has met all the claims connected with the goods supplied and there is appropriate security for the other claims arising from the current business relationship. The Customer undertakes to treat the conditional products with care while the reservation of title lasts and, when requested by us in writing, to take out appropriate insurance subject to the proviso that we are entitled to the rights from the insurance.
- 7.2 The customer may only sell the delivery items subject to reservation of title (hereinafter called reserved-title goods) within the scope of normal business operations. The Customer is not entitled to pledge the reserved-title goods, to transfer title as security or to make other dispositions endangering our ownership. The Customer here and now assigns to us the claims arising from resale; we here and now accept such assignment. The Customer is authorised until further notice to collect in his own name the claims assigned to us. We may revoke this authorisation and the entitlement to resale if and inasmuch as the Customer defaults on the payments owed us.
- 7.3 We must be notified immediately of third party access to the reserved-title goods or to the claims assigned.
- 7.4 The processing or conversion of the supplied goods by the Customer is always carried out for us. If the supplied goods are processed with other items not belonging to us, we acquire joint ownership of the new item in the proportion of the value of the goods supplied (invoice value) to the other items processed at the time of processing. If the supplied goods are combined with other items not belonging to us, we acquire joint ownership of the new item in the proportion of the value of the goods supplied (invoice value) to the other item combined at the time of combining. If the customer's item is considered the principal item, the Customer must transfer joint ownership proportionately.
- 7.5 Should the Customer default on his payment obligations and fail to pay within a reasonable period set by us, we may terminate the contract and, without prejudice to our other rights, demand that he surrender the reserved-title goods.
- 7.6 If the realisable value of the securities currently with us exceeds the claims to be secured by altogether more than 20%, we shall at the Customer's request be obliged to release securities of our choosing to that extent.
- 7.7 In the event of payment in so-called "cheque and bill transactions", the parties agree that even if the cheque presented by the Purchaser is encashed, retention of ownership shall continue until the bill is returned, cancelled or recourse to the endorser is otherwise precluded.

VIII. Complaints and Warranty Rights

- 8.1 When we deliver goods not manufactured by ourselves we accept no liability for the characteristics of the goods stated by the manufacturer.
- 8.2 Goods must be checked on delivery. Any complaints must be faxed immediately, but no later than the close of the 3rd day from the date of receipt. If the Customer fails to notify a defect the goods shall be deemed to have been accepted, unless it was impossible to detect a defect during checking. The subsequent appearance of such a defect must be notified immediately it is discovered; otherwise the goods shall be deemed to have been accepted in respect of this defect as well.
- 8.3 When complaints are justified we may choose to carry out a repair or make replacement delivery. Failing these measures and where the existence of such defects constitutes a material breach of contract, the Customer shall be entitled to request termination of the contract, or a reduction of payment in all other cases..
- 8.3a We do not accept liability for claims by the Customer over and above those aforementioned, particularly claims for compensation which include loss of profits or for other financial loss by the Customer.
- 8.4 Warranty rights expire one year after passage of risk.. The same period applies to claims for compensation of consequential loss due to deficiency, providing no claims are made arising from tort.

IX. Returned Goods

Goods delivered cannot be returned unless otherwise agreed. However if goods are returned, the acceptance of returned goods does not constitute a recognition of credit even if a receipt is issued for the goods.

X. Liability

- 10.1 We do not accept liability for claims not expressly acknowledged in these Standard Terms and Conditions, particularly compensation claims by the Customer for any kind of defective performance of contract or cases of tort. Exclusion of liability does not apply to malicious intent or gross negligence. We are also liable for slight negligence to the extent of duties material to achieving the purpose of the contract and strict compliance with which can be relied upon by the Customer (“cardinal duties”).
- 10.2 The amount of our liability for compensation is restricted to contract-typical and foreseeable loss; under no circumstances will we accept contract untypical or unforeseeable loss.

XI. Place of Performance, Applicable Law

- 11.1 If the Customer is a merchant for the purposes of the German Commercial Code, a legal entity under public law, or if he is domiciled in a foreign Member State of the EU (Regulation (EC) No. 44/2001 on the legal jurisdiction and the recognition and enforcement of decisions in civil and commercial actions), any disputes arising directly or indirectly from our contractual relationship will be settled before a competent court of law in Berlin, Republic of Germany. We shall also be free to take the Customer to law at his general place of jurisdiction.
- 11.2 These Standard Terms and Conditions and the entire legal relationship between ourselves and the Customer shall be governed by the law of the Federal Republic of Germany.
- 11.3 Should one provision of these Standard Terms and Conditions or one provision forming part of other agreements be or become ineffective, the effectiveness of the remaining provisions or agreements shall be unaffected thereby.