

## 1. Scope

These conditions apply in the version valid at the time of ordering, for deliveries and services of any kind, that Hermann Franzen OHG, Königsallee 42, 40212 Düsseldorf (hereafter referred to as “Franzen”) renders to customers, insofar as no agreement to the contrary has been concluded. All agreements between the parties are stipulated in these Terms and Conditions, the confirmation of the order and, if applicable, the sales contract.

Franzen does not acknowledge any conditions issued by the customer, unless Franzen has expressly consented to them in writing. These Terms and Conditions also apply when Franzen is aware of conditions issued by the customer that contradict to these Terms and Conditions and still does not object to the application of the customer’s conditions or makes the delivery unconditionally.

Consumers are defined, for the purpose of these Terms and Conditions, as individuals with whom a business relationship is established and whose activities cannot be considered as commercial or self-employed. Businesses are defined, for the purpose of these Terms and Conditions, as individuals or legal entities or joint-stock partnerships, with whom a business relationship is established and who act in the capacity of commercial, independent professionals. The definition of customers for the purpose of these Terms and Conditions covers both consumers and businesses.

## 2. Conclusion of Contract

A contract between Franzen and its customer requires an offer by the customer and its acceptance by Franzen. An order may be carried out by transfer of the completed online order form, by transfer of the complete order data by post, fax or telephone or by order in the retail shop of Franzen, Königsallee 42, 40212 Düsseldorf, Germany. In the latter case, Franzen accepts the order orally or by handover of an confirmation of the order, otherwise by transfer of an confirmation of the order by e-mail, post or fax.

## 3. Terms of Delivery

Delivery dates or delivery delays, which have not expressly been agreed as being binding, are without obligation. As a rule, inside Germany, Franzen delivers the goods ordered within seven (7) days to the address indicated by the customer. The delivery is effected by UPS Deutschland Inc. & Co. OHG. For all other countries specific delivery times apply, which will be communicated on request. Due to the exclusiveness of the range of goods of Franzen delivery times depend on the products ordered and can amount to three months or more, if goods are procured upon special request of the customer (special order).

If Franzen is unable to meet an expressly agreed delay or falls behind schedule for other reasons, the customer shall allow a reasonable additional respite for delivery. If the additional respite expires without success, the customer may withdraw from the contract. If delivery becomes impossible for reasons outside Franzen’s control, Franzen also may withdraw from the contract.

If the customer is entitled to invoke cessation of interest in the fulfilment of the contract due to delay in performance for which Franzen is responsible, Franzen shall be liable on the basis of the applicable legal provisions. In case of delay in performance Franzen is liable according to the applicable legal provisions, if Franzen caused the default intentionally or with gross negligence. In other cases Franzen’s liability is restricted to foreseeable and typical damage.

Franzen is entitled to partial delivery if this does not result in hardship to the customer.

If the customer is in default of acceptance or if he culpably is in breach of other obligations of the contract, Franzen may – without prejudice to other rights – claim any damages, resulting from the respective breach of obligation.

**For businesses only:** Franzen reserves the right to put the goods in storage at the expense of the customer and sell them to third parties by means of an authorised private sale (“Selbsthilfeverkauf”) on the basis of commercial trade.

#### **4. Right of Revocation and Return (for consumers only)**

In the cases stipulated by law consumers residing within the European Union are entitled to revoke a contract – in particular in case of purchases in the online-shop of Franzen and in case of purchases, that are effected by orders from the catalogue of Franzen. There is no right for revocation if goods have been manufactured on the basis of the customer’s specification or if goods have been custom-built. Furthermore, goods that are by nature ineligible for reconsignment, that expire quickly or whose date of expiry would run out and unsealed CDs and DVDs are exempted from the right of revocation!

The customer may declare his withdrawal from the contract within two weeks without providing a reason in simple text without signature (such as, but not limited to post, fax, e-mail) or by returning the goods. The period for revocation commences at the earliest with receipt of this instruction. It does not commence before receipt of delivery. The period is met, if the revocation or the goods are sent to Franzen in due time. The revocation shall be addressed to Herman Franzen OHG, Königsallee 42, 40212 Düsseldorf, Germany, fax: +49-(0)211-13078-90, e-mail: info@franzen.de.

In case the customer has effectively revoked the contract the benefits received by both sides shall be returned. Insofar as the customer is unable to return the received benefit, he shall compensate Franzen. The latter shall not apply if damage to the goods is due exclusively to their being inspected as, for example, they might have been inspected by customers a retail shop. Moreover, the customer can avoid the obligation to pay compensation by not using the goods as their proprietor in a manner that detracts from their value. Goods that are suited to be returned in a package shall be sent back by the customer. Other goods will be collected by Franzen from the customer. The customer will bear the costs for the return of the goods, if the goods delivered correspond to the goods ordered and if the price of the goods returned does not exceed a sum of EUR 40,00 or in case of a higher price if at the time of withdrawal the customer has not counter-performed yet or has not effected a partial payment, which had been agreed. Otherwise, the return consignment shall be exempt from charges for the customer. The customer shall fulfil his obligations to reimburse any payments within 30 days from dispatch of the declaration of withdrawal.

#### **5. Prices, Incidental Costs**

The prices apply for articles without any decoration used in their display. Prices stated in the catalogue of Franzen as well as prices on the goods displayed for sale include value added tax (currently 19 %).

Costs for freight and packaging will be charged additionally. Currently they amount to € 7.50 for deliveries within Germany. For other countries of the EU and other countries worldwide separate forwarding and insurance charges apply and will be announced on request.

Any customs duties, other public charges, charges for dispatch documents required (such as, but not limited to certifications, import licences) and customs handling charges and the like will be charged additionally.

#### **6. Payment**

Franzen accepts all major credit cards. By providing the credit card company, credit card number, expiry date and verification number by post, fax, phone or in the online order form the customer authorises Franzen to charge the invoiced amount to the credit card specified.

Customers, who have already purchased, accepted and duly paid goods at Franzen, may effect payments by bank transfer within 14 days after receipt of the invoice.

Unless otherwise stipulated in these Terms and Conditions or in an agreement between Franzen and the customer all invoices are due immediately without deductions. If the customer fails to pay by the due date, Franzen reserves the right to charge default interest on arrears of 5 % above the base rate when dealing with consumers or of 8 % above the base rate when dealing with businesses. Franzen reserves the right to prove higher damage.

## 7. Offset, Rights of Retention and Assignment

Offsetting as well as the assertion of rights of retention are only permissible if the underlying counterclaims are undisputed or have been recognised by declaratory judgements. If this is not the case, the claim, on which the right of retention is based, must derive from the same contractual relationship as the claims of Franzen and must be in proportion to these claims.

Except for claims for payment the customer is not entitled to abdicate his rights under the contract without prior consent of Franzen. Consent shall not be unreasonably withheld.

## 8. Guarantee

Franzen grants a guarantee exclusively in accordance with the legal regulations. If the goods are defective at the time the risk is transferred, Franzen will choose to either rectify the defects or supply a replacement. If Franzen fails to meet a reasonable deadline for rectification or replacement, if subsequent fulfilment is unacceptable for the customer or if this fails, the customer can withdraw from the contract or reduce the payment due, notwithstanding any claims for damages in accordance with these Terms and Conditions. Rectification or replacement has failed after the second unsuccessful attempt. If the defect is insignificant the customer is only entitled to reduce the contract price. Claims for damages are subject to the stipulations in section 8.

**For businesses only:** The period of limitation concerning claims by reason of defects is one year from delivery. The latter does not apply, if a longer period of limitation is required by law, such as, but not limited to §§ 438 sec. 1 no. 2, 479 sec. 1 and 634a sec. 1 no. 2 BGB.

## 9. Liability

Unless otherwise agreed in this contract, Franzen is liable as follows:

Franzen shall be liable, whatever the legal grounds are, in accordance with the legal requirements, if the Customer claims damages, that are based on intent or gross negligence – including intent or gross negligence by agents or vicarious agents of Franzen – or on culpable breach of essential contractual obligations. In the event of mildly negligent breach of essential contractual obligations (defined as contractual obligations whose execution is necessary for the execution of the contract and upon which the Customer relies and may rely), the liability for damages is limited to the foreseeable, typical damage. In all other cases, Franzen accepts no liability, particularly with regard to mild negligence.

Liability due to culpable injury to life, body or health shall remain unaffected; this shall also apply to mandatory liability in accordance with the German Product Liability Act (“Produkthaftungsgesetz”).

## 10. Data Protection

The necessary information related to the person of the Customer will be provided by the Customer, stored and transmitted to third parties only if this is necessary for the execution of the contract. Franzen will treat this information confidentially and protect it according to the German Data Protection Act.

## 11. Retention of Title

Franzen shall retain full title of the goods that have been delivered to the Customer until the agreed price is paid completely.

If the Customer is in significant breach of any obligation owed to Franzen, especially in the case of payment default, Franzen may withdraw from the contract and claim restitution of the delivered goods. The claim for restitution shall be interpreted as a withdrawal from the contract. The Customer is obliged to bear all extra costs arising hereunto.

In the event of any third party action against goods delivered under retention of title, the Customer shall notify such party of our property and immediately inform Franzen about such action. The Customer may not pledge the goods delivered under retention of title.

**For businesses only:** The customer shall have the right to dispose of the goods delivered by Franzen within the ordinary course of business. The Customer hereby assigns to Franzen all claims arising from the resale of the goods delivered under retention of title. He shall be authorised to collect any receivables arising from the resale of goods until withdrawal of this authorisation by Franzen.

Should the goods be delivered to a country where the aforesaid retention of title clause is not fully valid and enforceable, the Customer is obliged to provide Franzen with equivalent security.

## 12. Final Provisions

The contract and these conditions shall be subject to the laws of the Federal Republic of Germany with exception of the Un Sales Convention (CISG).

The courts of Düsseldorf, Germany, shall have exclusive jurisdiction over all disputes arising from the customer's order if the customer is a business or a subject of public law, if he transfers his residence out of Germany after conclusion of the contract or if his residence cannot be determined when the lawsuit is filed. If the customer does not reside in Germany during the conclusion of the contract, the courts of Düsseldorf shall have jurisdiction, but this jurisdiction shall be exclusive only if the customer's general place of jurisdiction lies outside the European Union.

**For businesses only:** The place of performance shall be Düsseldorf, Germany.

The Invalidity of any provision of these Terms and Conditions shall not affect the validity of the other provisions.