

# FORMAGENDA GMBH GENERAL CONDITIONS OF SALE

## 1. SCOPE OF APPLICATION

1.1. These General Conditions of Sale, as amended by the time a contract is concluded („GCS“) apply to any business relationship between formagenda GmbH, Münchner Freiheit 24, 80802 Munich, Germany („we“, „us“, „our“) with customers. They shall also apply to all future deliveries, services or offers to the customer, regardless of whether they are separately agreed on again.

1.2. Our GCS shall apply exclusively. General terms and conditions of the customer deviating from, contradicting or amending these GCS shall only become part of the contract if and to the extent we have explicitly consented to their application. That shall also apply in case, for example, we perform a delivery to the customer while knowing such customer's general terms and conditions and not explicitly expressing reservations.

1.3. Individual agreements (including side-agreements, amendments and adjustments) reached with a customer in a given case shall always prevail over these GCS. The contents of such agreements shall be established by written contract or by written confirmation from us, unless proven otherwise.

## 2. CONCLUSION OF CONTRACT

2.1. Our offers shall be without obligation and not legally binding. This shall also apply in case we provide catalogues, technical documentation (e.g., drawings, maps, schemes, calculations), other product specifications or documents, in electronic form or otherwise.

2.2. Any purchase order of the customer shall be a legally binding offer by such customer for the conclusion of a contract. Unless provided otherwise in the purchase order, we may accept such purchase offer within 7 days after receipt.

2.3. Acceptance of the offer may be declared to the customer either in writing (e.g., by order confirmation), or by delivery of the goods.

2.4. Unless agreed otherwise, we reserve the ownership and copyrights to all submitted offers, cost estimates, drawings, depictions, calculations, brochures, catalogues, models, tools, and other documents and accessories. Absent our express consent, the customer shall refrain from (i) making these objects and documents available to third parties (as such or regarding their contents), (ii) publishing them, (iii) using or reproducing them himself or through third parties. Upon request, the customer shall return the provided objects and documents to us, and/or destroy any copies created if they are no longer needed in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. This shall not apply to the storage of data provided in electronic form for the purposes of customary data backup.

## 3. DELIVERY TIMES

3.1. The delivery time shall be individually agreed or announced by us simultaneously with acceptance of the purchase order; in all other cases, the delivery time shall be approximately 3 weeks after conclusion of the contract.

3.2. In case we are unable to meet a binding deadline for delivery for reasons beyond our responsibility (non-availability of goods), we shall inform the customer thereof without undue delay simultaneously providing the expected new delivery time. We reserve the right to entirely or partially rescind the contract in case the goods do not become available by the new delivery time. In such case we will immediately refund any payment by the customer. Non-availability of goods within the meaning of this provision shall include the case that a delivery by our suppliers to us is delayed, if (i) it relates to a congruent hedging transaction concluded by us, or (ii) such delay was neither culpably caused by our supplier nor culpably caused by us, or (iii) we do not owe the delivery in the given case.

3.3. The statutory provisions shall apply with respect to the entry of our default. In any event, a reminder by the customer shall be required. If we default on our delivery obligation, the customer shall be entitled to a fixed-rate amount of damages as a result of the default. The fixed rate shall be 0.5% of the net price (delivery value) for each completed week of default. The total liability for default shall be limited to 5% of the delivery value of the respective order. We reserve the right to demonstrate that the customer has incurred no or substantially lower damages than covered by the above fixed rate.

3.4. The rights of the customer according to Section 8 of these GCS and our statutory rights, in particular in case of exclusion of our performance duty (e.g., if the originally owed performance or the remedy is impossible or cannot reasonably be required) shall remain unaffected.

## 4. DELIVERY: PASSING OF RISK

4.1. Delivery is owed ex works (EXW according to Incoterms 2010) which is also the place of performance (Erfüllungsort) for delivery and for remedy, if applicable. If requested by the customer, the goods shall be shipped to another destination as specified by the customer (Versendungskauf) at the customer's expense. Unless otherwise agreed, we shall be entitled to determine the specifics of the shipment (including, but not limited to, carrier, route, and packaging).

4.2. The risk of accidental loss and of accidental damage to the goods shall pass to the customer no later than upon handover to the customer. In case of shipping to a destination specified by the customer (Versendungskauf), the risk of accidental loss and of accidental damage as well as the risk of any delay shall pass to the customer upon handover of the goods to the carrier (Frachtführer) or to the person/entity engaged with organizing the delivery of the goods (Spediteur), or any other person/entity engaged with conducting the delivery. In case there is a service contract requiring an acceptance of the goods, the risk of accidental loss and of accidental damage shall pass to the customer once the goods have been accepted. Besides that, the statutory provisions relating to contracts for work (Werkvertragsrecht) shall apply mutatis mutandis if the necessity of an acceptance of the goods has been agreed upon.

4.3. If the customer defaults in accepting the goods delivered to him, if the customer fails to duly cooperate, or if our delivery is delayed as a result of other reasons the customer is responsible for, we shall be entitled to claim damages incurred thereby, including additional expenses (e.g., storage costs). For the goods stored, we will charge a fixed-rate restitution in the amount of 0.25% of the amount invoiced for every full week beginning at the delivery time, or – in the absence of a specific delivery time – upon announcement that the goods are ready for dispatch.

The right to demonstrate higher actual damages and our statutory claims (including reimbursement for additional expenses, adequate compensation, and termination) shall remain unaffected. However, paid fixed-rates according to this Section 4.3 shall be considered in course of determining further damages. The customer shall have the right to demonstrate that we have incurred no or substantially lower damages than covered by the fixed-rate.

## 5. PRICES AND CONDITIONS OF PAYMENT

5.1. Unless otherwise agreed, our current prices as indicated in the price list in force on the date of the conclusion of the contract shall apply, ex works and not including statutory VAT.

5.2. In the case of shipping to another destination as specified by the customer (Versendungskauf), the customer shall bear all shipping costs (including packaging) ex works as well as the costs of transport insurance, if such insurance is requested by the customer. All applicable tariffs, fees, taxes and other public dues shall be borne by the customer.

5.3. The purchase price shall be due and payable within 14 days after receipt of an invoice and delivery or acceptance (where applicable). Even in an ongoing business relation, however, we reserve the right to perform a delivery, entirely or in part, only against advance payment. We shall, in such cases, express a corresponding reservation along with the order confirmation at the latest.

5.4. After expiry of the above payment deadline the customer shall be in default. During default, interest shall accrue from the purchase price at the statutory rate applicable at such time. We reserve the right to claim further damages caused by delay. This shall not affect our claim to interest from the original due date against merchants (Kaufleute) pursuant to Section 353 German Commercial Code (HGB).

5.5. Offsetting and withholding on the part of the customer shall only be permissible to the extent the underlying claims of the customer are undisputed or have been finally determined without further legal recourse. The rights of the customer in case of material defects of the delivered goods, in particular pursuant to Section 7.2 sentence 2 of these GCS, shall remain unaffected.

5.6. If it becomes apparent after conclusion of the contract (e.g., by a filing for the opening of insolvency proceedings) that our claim to the purchase price is in jeopardy due to a lack of financial capacity of the customer, we are entitled under statutory law to refuse performance and – where required, after warning – to withdraw from the contract (Section 321 German Civil Code, BGB). If the subject matter of the contract is the manufacturing of non-fungible goods (individual designs or modifications), we shall be entitled to withdraw from such contract immediately; the statutory provisions on the dispensability of the requirement to set a deadline shall remain unaffected.

## 6. RETENTION OF TITLE

6.1. We retain title to the delivered goods until receipt of all receivables under the respective contract as well as all receivables pertaining to prior business relations with the customer regarding similar goods, including claims under statutory law.

6.2. As long as the Customer is not defaulting, he shall be permitted to use the goods subject to the retention of title and sell them in the ordinary course of business. The customer shall be prohibited from pledging or assigning as collateral security the goods subject to the retention of title.

The customer now assigns to us as security in full all payment claims against his customers resulting from a resale of the goods subject to retention of title as well as those claims of the customer with regard to the goods resulting from any other legal ground against his customers or third parties (in particular tort claims and insurance claims) including all of the balance claims from current account.

6.3. The customer may collect these receivables assigned to us on his account in his own name for us, as long as we do not revoke this authorization. Our right to collect these claims shall remain unaffected. How-

ever, we will not assert the claims and will not revoke the direct debit authorization as long as the customer duly fulfils his payment obligations.

6.4. If, however, the customer is in breach of contract – in particular, if he is in default with the payment of a claim for payment – we may require the customer to notify us of the assigned claims and the respective debtors, to hand us all documents and to provide all the information we need to assert the claims, and to notify the respective debtors of the assignment.

6.5. Processing or transformation of the goods subject to retention of title by the customer shall always be done on our behalf. If the goods subject to retention of title are processed with other items which are not owned by us, we shall acquire co-ownership of the new item in proportion to the value of the goods (invoice amount including VAT) to the other processed items at the time of processing. The stipulations regarding the goods subject to retention of title shall apply correspondingly to the new items resulting from processing. If the goods subject to retention of title are inseparably combined or mixed with other items not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of the goods subject to retention of title (invoice amount including VAT) to the other combined or mixed items at the time of combining or mixing. If goods are connected or mixed in such a way that the customer's item is to be regarded as the main item, there is already agreement that the customer shall transfer to us a proportionate co-ownership of such item.

6.6. In case we are entitled to rescind the contract due to a customer's breach of contract, in particular in the case of a delay in payment, we shall be entitled to take back the goods not yet owned by the customer at the expense of the customer and/or demand compensation from the customer. Further claims remain unaffected.

6.7. In case of pledges, seizures or execution of enforcement measures by a third party, the customer shall immediately notify us in writing. The costs of the assertion and enforcement of our claims regarding the goods not yet owned by the customer are borne by the customer.

6.8. To the extent the value of the existing collateral exceeds our claims against the customer arising from the underlying contract and any business relations regarding similar products between us and the customer by more than 10%, we shall be obliged at the customer's request to release appropriate collateral at our discretion.

## 7. WARRANTY

7.1. In case of material and legal defects and deficiencies (including incorrect and short delivery, improper assembly or faulty assembly instructions) the statutory provisions shall apply, unless otherwise specified below. In all cases, the statutory special provisions upon final delivery of the goods to a consumer (recourse of the entrepreneur pursuant to Sections 478, 479 BGB) shall remain unaffected.

7.2. The basis for our liability for defects is the agreement regarding the nature and quality of the goods, if any. For these purposes, an agreement on the nature and quality of the goods shall mean all product descriptions specified in the individual contract or which have been made public by us (in particular in catalogues or on our website).

7.3. Insofar as the nature and quality has not been agreed upon, the assessment whether a defect exists or not shall be made in accordance with the statutory provision (Section 434 para. 1 p. 2 and 3 BGB).

7.4. The customer shall be obliged to examine the delivered goods immediately after delivery to him or to the third party designated by him. The respective product shall be deemed to have been approved by the customer in respect of obvious defects or other defects which would have been recognizable in the case of a careful examination conducted without undue delay, if we do not receive a written complaint within five working days after delivery. With regard to other defects, the goods shall be deemed to have been approved by the customer if the complaint does not reach us within five working days after the date at which the defect became apparent. If the defect was already noticeable to the customer at an earlier date given ordinary use of the goods, such earlier date shall be decisive for the commencement of the complaint period. Upon request, the defective goods must be returned to us free of shipping charges.

7.5. If the delivered item is defective, we shall be entitled to choose whether to remedy the defect (rectification) or deliver another item free of defects (replacement delivery). Our right to refuse remedy pursuant to the statutory provisions shall remain unaffected.

7.6. We shall be entitled to claim the due purchase price before we remedy any defect. However, the customer shall be entitled to withhold an appropriate portion of the purchase price in relation to the defect.

7.7. The customer shall grant us the necessary time and opportunity to remedy the defect; in particular, the customer shall provide the rejected goods for inspection purposes. In case of a replacement delivery, the customer shall return to us the defective item in accordance with the applicable statutory provisions. Unless we were originally obligated to install the item, the remedy includes neither the removal of the defective item nor the reinstallation.

7.8. The costs necessary for the purposes of inspection and remedy, in particular for transport (most inexpensive way of shipment), travel, labour, and materials (not: costs of removal and installation costs) shall be borne by us if a defect actually exists. Otherwise, we shall be entitled to claim from the customer reimbursement for the costs resulting from the unwarranted complaint, unless it was impossible for the customer to notice the absence of a defect.

7.9. In urgent cases, e.g., in case of danger to operational safety or to prevent disproportionate damage, the customer shall have the right to remedy the defect himself and to demand from us reimbursement for the objectively required expenses. The customer shall notify us without undue delay, if possible beforehand, if he remedies a defect himself. The customer shall have no right to remedy a defect himself if we would be entitled to refuse a corresponding remedy pursuant to the applicable statutory provisions.

7.10. If we fail to remedy the defect or if we fail to remedy the defect within a deadline set by the customer or if the applicable statutory provisions do not require the customer to set such deadline, the customer shall be entitled to either rescind the contract or to reduce the purchase price. However, there shall be no right to rescind the contract if the defect is immaterial.

7.11. The customer's claims for damages, or for reimbursement of futile expenses, including damages and expenses in the event of defects, can only be asserted in accordance with Section 8 and shall be excluded in all remaining cases.

## 8. LIABILITY

8.1. In case of slight negligence, we shall only be liable for the breach of material contractual obligations and limited to the foreseeable damage. This restriction shall not apply to the violation of life, body and health as well as to an intentional or grossly negligent breach of duty. We shall not be liable for damages caused by a defect of the purchased item as a result of slight negligence.

8.2. Our liability shall be independent of our negligence in case of fraudulent concealment of the defect, in case of the assumption of a guarantee, and in cases covered by the German Product Liability Code (Produkthaftungsgesetz).

8.3. We shall also be responsible if delivery becomes impossible by chance while we are in default, unless the damage would also have been incurred in case of timely delivery.

8.4. The restrictions from Sections 8.1 to 8.3 shall also apply to formagenda's legal representatives and vicarious agents, if claims are asserted against them directly.

8.5. All instructions and warnings attached to the packaging as well as in user manuals are to be observed. No liability shall be assumed for any kind of application and/or handling departing therefrom.

8.6. In cases of the manufacturing of unique items or special customizations, the customer shall bear the risks regarding such item's suitability for use and associated with its use. Unless expressly agreed otherwise, the occurrence of a specific economic success is not owed.

## 9. LIMITATION PERIOD

9.1. By way of derogation from Section 438 para. 1 no. 3 BGB, the general limitation period for claims arising out of material and legal deficiencies shall be one year from delivery. If the delivered goods require the approval of the customer (in case of unique or customized products) the limitation period shall begin upon acceptance. This shall not affect any further statutory special provisions for limitation periods (in particular Section 438 para. 1 no. 1 and Sections 444, 479 BGB).

9.2. The above limitation periods from the statutory law on sales contracts shall also apply to contractual damages claims and to torts claims of the customer which are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would in a given case result in a shorter limitation period. Damage claims of the customer pursuant to Section 8.1. s. 2 as well as pursuant to Section 8.2 shall be subject to statutory limitation periods only.

## 10. MISCELLANEOUS

10.1. These GCS between us and the customer shall be governed by the laws of the Federal Republic of Germany, excluding uniform international law, in particular the CISG.

10.2. If the customer is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity governed by public law or a special fund governed by public law, our domicile in Munich shall be the exclusive (including international) place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship.

The same shall apply if the customer is an entrepreneur within the meaning of Section 14 BGB. In each case we shall also be entitled to bring an action at the place of performance of the delivery obligation as established by these GTS or by an overriding individual agreement, or at the general court of jurisdiction of the customer. Higher-ranking statutory provisions, in particular relating cases of exclusive jurisdiction, shall remain unaffected.