

# General Terms and Conditions for Supplies by SaM Digital Solutions GmbH

The following document is a translation of the original German General Terms and Conditions. It is provided for information purposes only. The German version of the General Terms and Conditions shall be exclusively binding.

## § 1 Scope

1. All offers, supplies, services and conclusions of contracts of friendlyway will take place - even if in individual cases they are not especially mentioned, exclusively according to the following conditions. Different customer conditions, especially purchase conditions will not apply, even if they are not explicitly opposed to.

2. These General Terms and Conditions will not apply to conclusions of contracts with consumers (consumer contracts).

## § 2 Offer and conclusion of contract, working documents

1. All offers are not binding. Technical changes as well as changes in form, colour, weight and/ or size are reserved within reasonable limits.

2. A contract shall be effected only upon formal order confirmation by friendlyway.

3. All the rights for and from the working documents and the necessary tools for the execution of the order belong exclusively to friendlyway. The customer has no right to claim the delivery of working documents and tools.

## § 3 Delivery- and service time

1. Delivery-, service- and execution times are not binding for friendlyway, as far as no other agreements are made in writing. Shipping dates are approximate times and require the receipt of all necessary information, documents and parts which the customer has to deliver.

2. In the event that the parties have agreed on delivery on call the customer has to determine delivery- and performance times in such a way, that friendlyway has enough time and opportunity, to make the corresponding dispositions. If the customer – for whatever legal reason – does not meet his obligation to call deliveries and services in a proper way, friendlyway is entitled to determine the performance time and lots by itself or to cancel the contract and claim damages instead of performance.

3. A binding agreed term is considered as met:

- a) if delivered without installation and assembling, if the product is handed over to the person in charge executing the transport within the agreed delivery time, at the latest however when shipment is announced, in the event that delivery is delayed due to reasons beyond the control of friendlyway.
- b) if delivered including installation and assembling, as soon as this has taken place.

4. The conclusion of the contract shall be subject to the reservation that friendlyway receives the correct supplies on time

from the subcontractors. friendlyway is especially entitled to cancel the contract, if friendlyway has concluded a congruent covering transaction and has been let down by its subcontractor. In this case the customer has to be informed immediately on the unavailability of performance. In this case customer's claims for damages are excluded.

5. Any unforeseeable events and obstacles beyond the control of friendlyway which delay the supply or performance completely or partially, especially strikes, lock-outs, unpredictable interruption of operations in the business of friendlyway or of subcontracting companies, inevitable scarcity of raw material, destruction of services already rendered through third parties or through events of force majeure (i.e. fire, floods, earth quakes) or circumstances and obstacles for which the customer is responsible for, entitle friendlyway, after informing the customer about the obstacle, to prolong the delivery and service times for the time of the obstacle. If the obstacle lasts longer than three months, the customer is entitled to cancel the contract, if grace period of at least three weeks granted by the customer in writing has expired without results. Further rights of the customer, especially on damages are excluded.

6. friendlyway is entitled to partial delivery and performance.

7. Even if the agreed delivery and service times can be determined or calculated according to a calendar, default of performance of friendlyway requires a formal reminder by the customer.

## § 4 Passing of the Risks

1. The risk of accidental destruction or accidental deterioration of the article of delivery - in contracts on deliveries - passes on to the customer, as soon as the article of delivery has been handed over to the person in charge executing the transport, or leaves friendlyway's warehouse for the purpose of shipment.

2. If the customer does not accept the offered article of delivery or if shipment or delivery is delayed upon request of the customer, the risk of accidental destruction or accidental deterioration of the article of delivery passes on to the customer with the announcement of the shipping notice. In these cases friendlyway is, notwithstanding further rights, entitled to demand from the customer – starting one month after the announcement of the shipping notice – for every beginning month of delay a stock fee of 0,5 %, but in total not exceeding 5 % of the contractual value of the respective delivery, provided however that the customer does not prove a lower damage.

## § 5 Prices, payment conditions, late payment of the customer

1. Prices mentioned in the order confirmation are applicable. Prices are - if not agreed otherwise - ex warehouse friendlyway, plus packing, shipment, insurance and value added tax required by law at the delivery date.

2. Payments are due within fourteen (14) days as of date of invoice without deduction. After the payment term has expired the customer defaults in payment. No reminder is required. Payment terms are met if friendlyway can dispose of the payment (credited to friendlyway's account, cash cheques).

3. If the customer gets into late payment, interest of eight per cent p.a. on top of the basic interest rate have to be paid to friendlyway – notwithstanding further rights.

4. If the customer does not meet his payment obligations or if friendlyway is entitled to the right to retain performance as in § 321 paragraph 1 BGB (German Civil Code), all accounts receivable of friendlyway against the customer will fall due immediately, even if cheques and commercial bills with a later maturity have been accepted.

5. The set-off against accounts receivable is only allowed with legally assessed, undisputed or mature demands of the customer. This applies respectively for retaining liens.

### **§ 6 Reservation of title**

1. Until satisfaction of all accounts receivable and all claims - including the settlement of all outstanding current account balances and any claims pertaining to exemption from liability risks assumed at the request of the customer, held by friendlyway against the customer – for whatever legal reasons –, friendlyway is granted the following securities, which will be released upon request of the customer but at friendlyway's discretion if, and to the extent to which their value exceeds the claims against the customer by more than 20 % for more than just a temporary period.

2. All products delivered (hereafter called „reserved-title goods“) remain friendlyway's property. Processing and modifications take place for friendlyway as a manufacturer, however any obligations being occurred on the part of friendlyway. If the reserved-title goods by processing or otherwise are inseparably connected or mixed with other mobile objects not belonging to friendlyway, friendlyway becomes co-owner of the new object.

3. The customer is authorized to sell the reserved-title goods in the normal course of business, as long as he meets his payment obligations, is not in default towards friendlyway and no application for the opening of insolvency proceedings has been made. The customer is not authorized to dispose of the reserved-title goods in any other manner (transfer of ownership by way of security, pledging etc.). Claims arising from resale of the reserved-title goods or on other legal grounds (insurance benefits, debts founded on tort etc.), including all outstanding amounts from current account, herewith already are assigned to friendlyway as a security (if friendlyway is only co-owner of the reserved goods: proportionally in relation to its share of ownership). The customer is entitled to collect the claims until such power is revoked. friendlyway is entitled to revoke this power, if the customer does not meet his payment obligations. In this case the customer undertakes to give friendlyway notification of the assigned debts, provide friendlyway with all necessary informations for the collection of the debts and to

notify debtors of the assignment.

4. The customer shall store the reserved-title goods for friendlyway free of charge. He has to keep the reserved-title goods in orderly state and insure them at his own expense and to the extent to which a prudent businessman would do so. In the event of seizure by way of court order or in the event of other attachments by third parties, the customer shall notify friendlyway without delay, oppose the attachment and refer to the co-ownership of friendlyway. The costs of averting the attachment shall be borne by the customer.

5. If the customer acts in breach of the contract, especially if he comes in default, friendlyway is entitled to demand the immediate return of the reserved-title goods, to enter the business premises of the customer, to repossess the reserved-title goods and if necessary claim the assignment of the customer's claim for the return. The customer has no right of retention. The assertion of these rights, especially the repossessing of the reservedtitle goods does not constitute withdrawal from the contract.

### **§ 7 Warranty**

1. The qualities of the delivered goods are finally shown in friendlyway's product description. Statements in advertising and boosting, that only have an advertising content, shall not be regarded as statements to qualities.

2. Faulty installation instructions are representing a defect only if they prevent the orderly installation of the delivered good.

3. In order to preserve warranty rights, wrong deliveries, differing quantities and obvious defects have to be indicated formally without undue delay, at the latest one week after the delivery of the objects. Non-obvious defects have to be indicated formally and immediately after being discovered, at the latest six month after delivery of the object.

4. Delivered goods rejected have to be returned freight paid for checking and if necessary in order to eliminate the defects, to the place of destination determined by friendlyway. In case the notice of defect is justified, transport costs will be reimbursed to the customer.

5. friendlyway is entitled to eliminate defects on delivered goods either by the elimination of the defect or by the supply of a product free of defects (subsequent performance). If the subsequent performance as in § 440 clause 2 BGB fails, the customer may choose to claim a reduction of the remuneration (reduction) or withdraw from the contract. If defects are insignificant withdrawal is excluded.

6. All warranty claims are barred by the statute of limitations in one year's time as of date of delivery.

7. friendlyway does not grant guarantees in the legal sense.

8. As far as damage claims of the customer come into question, the following § 9 shall apply.

## **§ 8 Neglect of duty beyond warranty**

1. The withdrawal of the customer due to performance not rendered or not rendered in conformity with the contract is excluded, if the neglect of duty is insignificant and/or friendlyway is not responsible for it.
2. The withdrawal of contract due to a breach of a collateral duty in terms of § 241 paragraph 2 BGB (German Civil Code) only is permitted if friendlyway can be charged of intent or gross negligence and if it is unreasonable to require from the customer to adhere to the contract.
3. As far as damage claims of the customer based on the neglect of duties beyond warranty come into question the following § 9 shall apply.
4. Customer's claims based on neglect of duty beyond warranty are barred by the statute of limitations in one year's time as of date of delivery, as far as no shorter statutory periods of limitation are applicable by operation of law.

## **§ 9 Limitation of liabilities**

1. The indemnification of damages instead of performance only can be asserted if the customer has previously and formally fixed a period of time for subsequent performance to friendlyway, threatening to claim damage instead of performance and/or cancel the contract after its expiration, and such period of time expires without results. The right of the customer to require performance expires upon expiration of such period of time, at the latest however if and as soon as the customer claims damage instead of performance.
2. The indemnification of damages instead of performance due to a breach of a collateral duty in terms of § 241 paragraph 2 BGB (German Civil Code) only can be asserted if the preconditions of the right of withdrawal as in preceding § 8 subparagraph 2 are complied with.
3. In the event that friendlyway is liable for the indemnification of damages or the refund of useless expenses, for whatever legal reason, friendlyway is liable as follows:
  - a) for damages to life, body or health if friendlyway is responsible for the neglect of duty,
  - b) for willful and at least grossly negligent behavior of the managers and directors of friendlyway as well as for serious misconduct in the organization,
  - c) breach of essential contractual obligations and in the event of at least grossly negligent behavior of simple agents, limited to the amount as follows: compensation for damages may not exceed the loss occurred and the lost profit, which upon conclusion of contract, taking into consideration the circumstances which friendlyway knew or must have known, was foreseeable as a possible consequence of the breach of contract.
  - d) in any event of preceding c) any claims for the refund of useless expenses are excluded, if and as far as such expenses do not serve commercial purposes and/or for expenses on other business, which the customer has done in view of the contractual relationship to friendlyway.

4. Personal liability of friendlyway's managers and employees of friendlyway who are engaged in performing the contractual obligations is excluded.
5. The limitation of liability mentioned above also applies if friendlyway has assumed the risk of procurement.
6. Any other claims against friendlyway are excluded.

## **§ 10 Formal requirements**

To comply with the requirement of formal declaration of intention in the terms of these General Terms it is necessary and sufficient if the respective declaration of intention is transmitted in writing, by fax or electronically.

## **§ 11 Final provisions**

1. German law applies. The United Nation Convention on Contracts for the International Sale of Goods (CISG) is excluded.
2. Place of performance is Munich.
3. Munich is the place of jurisdiction for all litigation – including commercial bill or cheque claims - with businessmen, legal persons under public law and those with public law assets. friendlyway is however entitled to sue the customer at its general place of jurisdiction.
4. If individual provisions should be invalid, this shall not affect the validity of the remaining provisions. Invalid provisions shall be replaced by provisions which come closest to the purpose intended.

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