

**General Terms and Conditions of Sale of  
TMD Friction Services GmbH  
TMD Friction EsCo GmbH  
TMD Friction GmbH**

**1. General Provisions**

1.1. Our terms and conditions shall apply to any deliveries and services on the basis of orders by domestic and international customers. Such terms and conditions shall be considered as accepted upon acceptance of goods or services. No derogation from our purchasing terms and conditions shall become effective, even if their contents are identical, unless expressly confirmed by us in writing. Neither shall any general terms and conditions of sale or purchase of customer be binding upon us unless expressly confirmed by us in writing.

1.2. The terms and conditions below shall apply to any contract with an entrepreneur and with public law entities or public special funds entities.

**2. Offers, subject-matter of contracts, contract documents**

2.1. Our offers shall always be subject to confirmation.

2.2. Our written order acknowledgement shall be decisive for the subject-matter of the contract.

2.3. We shall be entitled to modify contract contents due to technical developments or improvements unless they represent a material change to the subject-matter of the contract. Where such modification entails a price rise, customer shall be entitled to withdraw from such agreement observing a period of one week after receiving our written notification on such price rise due to modification. For articles that are not in stock customer shall accept additional and short deliveries that do not exceed 10% of order amount.

2.4. Any documents forming part of our offers such as illustrations, drawings, samples, details on weight, measurements etc. shall only be considered as approximate unless we have confirmed in writing that they are binding. In general DIN ISO 2768 "medium" shall apply to any measurements without tolerances.

2.5. Where we give information on application or other directions from our own knowledge, this shall always be considered as non-binding, including information regarding property rights of third parties. Customer shall not be released from his own comprehensive inspection of our directions and goods regarding their suitability for intended purposes and processes.

2.6. We reserve our property right, copyright and any other right to drawings, models and other documents. They shall not be disclosed to third parties and they shall be returned immediately upon demand or if the contract is not executed.

2.7. Customer shall be liable for any damage if drawings, samples etc. that have been placed at our disposal by customer infringe the rights of third parties unless such damage is beyond customer's control.

**3. Prices**

3.1. Prices stated in our price list shall be ex place of despatch excluding Value Added Tax. As far as required the VAT rate in force at the date of performance shall be invoiced. Packing costs and costs for special deliveries desired by customer (e.g. express delivery) shall be invoiced separately.

3.2. Our prices shall be based on material prices, wages and salaries that are in force on the day of order acknowledgement. Where in the period between order

acknowledgement and despatch of goods and/or provision of services costs increase, in particular due to collective agreements or changes in material prices, we shall be entitled to adjust total prices respectively. Such change in total prices shall be proportional to the change in cost that has occurred. This shall also apply to callable orders unless otherwise agreed in writing.

**4. Periods of delivery, extent of obligation to perform a contract, withdrawal, interference with performance of an obligation**

4.1. Delivery times shall be approximate. Periods of delivery start on the day of our order acknowledgement and shall be subject to timely clarification of all order details.

4.2. In case of culpable delays in delivery or performance customer shall be entitled to withdraw from the agreement unless we observe an additional period of three weeks counting from receipt of a written notification.

4.3. Our obligation to perform shall be subject to correct and timely deliveries by our suppliers unless we are responsible for incorrect or late deliveries by our suppliers.

4.4. Called orders for goods and services shall be purchased within a period of 12 months after placing such order. Where such deadline has expired we can despatch the articles that have not been called so far to customer at his own cost and make an invoice of goods or we can charge a price in accordance with local custom for keeping such goods in stock.

**5. Tools, liability for using customer's tools**

5.1. Where we charge partial costs for tools such tools remain our property.

5.2. Where customer places tools at our disposal he shall be liable for any damage caused by any defect of his tools unless such damage is beyond customer's control.

5.3. Where our deliveries or services become defective due to defective tools that were placed at our disposal, customer shall only have the rights as stipulated under no. 9 below if our ignorance of such defect of the tool was at least caused by gross negligence.

**6. Payment**

6.1. Payment of our invoices shall be due within a period of 30 days after date of invoice without any deductions. Cheques shall be considered as payment after they have been definitely credited. We shall be entitled to credit customer's payments to his prior liabilities first, even if otherwise provided in customer's specifications.

6.2. Where customer fails to pay on due date we shall be entitled to charge interest amounting to the interest rate charged by business banks for open current account credits, but no less than 9 percentage points above the then current base interest rate.

6.3. Where, after entering into this contract, we recognize that our claim for payment is endangered by customer's lacking ability to perform or where customer fails to pay a considerable amount on due date or where other circumstances indicate a considerable deterioration of customer's financial situation, we shall be entitled to the rights stipulated in § 321 BGB (German Civil Code). In this case we shall also be entitled to accelerate maturity of all

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- unmatured claims arising from the business relationship with the customer.
- 6.4. No right of retention or offsetting against customer's claims shall be allowed as against our claims for payment unless such counter titles are uncontested and have become res judicata. Where customer claims a right of retention from the same agreement he shall be liable for payment if we present a security amounting to the claimed right of retention.
- 6.5. We are entitled to issue electronically signed invoices and forward those via Email. To that extend, the customer explicitly waives any entitlement to receive an invoice on paper. The invoices are signed by a qualified electronic signature according to the German Signature Law and Signature Ordinance. The customer is obliged to check the invoice immediately after receipt as well as verify the signature and record the verification. The customer is solely responsible to comply with all retention obligations according to commercial law and to take certain measures regarding the storage of electronically signed invoices in order to ensure that the invoice including all parts is archived in an unchangeable way, for example by using a revision- proof archiving system. Upon request of the customer, we will provide him with a paper invoice. In this case the customer must pay a fee of € 5 per invoice.
- 7. Reservation of title**
- 7.1. We reserve title to goods until all payments in connection with this business relation have been irrevocably credited.
- 7.2. Where customer does not act in conformity with this agreement, in particular if he fails to pay on the due date, stops payment or applies for insolvency proceedings, we shall be entitled to take back the goods. No taking back of goods shall be considered as a withdrawal from this agreement unless we explicitly declare such withdrawal in writing. Where we take back the goods due to our reservation of title, we shall be entitled to utilise such goods; the proceeds from such utilisation of goods shall be set off against customer's liabilities - reduced by reasonable utilisation costs. Customer shall bear any costs for returning goods.
- 7.3. Customer shall be entitled to resell the goods in the ordinary course of business, he shall, however, assign to us any claims amounting to the total invoice amount (incl. VAT) of our claim, that he will have from such resale against his customers or third parties, regardless of the fact whether the goods were sold with or without further processing. Customer shall be obliged to agree on a reservation of title for any resale in accordance with clause 7 above. Regardless of our right to collect claims customer shall be entitled to collect such claims even after they have been assigned. We can withdraw the direct debit authorisation if customer fails to meet his financial obligations from collected revenues or another case stipulated under clause 7.2 above occurs.
- 7.4. Any processing of goods by customer shall be made for us, provided that we acquire title to the new goods. In case of union/mixture of our goods with other items that are not our property we shall acquire co-ownership to such new goods in the proportion of the goods value to the other items on the date of union/mixture. Customer shall save such sole or co-ownership for us. For any goods created by processing or union/mixture the terms and conditions stipulated under the heading "reservation of title" shall apply.
- 7.5. We undertake to release securities that are due to us if required by customer as far as the realisable value of our securities exceeds our claims by more than 50 %. We shall have the right to select the securities to be released.
- 7.6. In case of pledges or other intervention by third parties customer shall draw their attention to our title and notify us in writing as soon as possible. Customer shall assume any cost of intervention unless they cannot be reimbursed by third parties.
- 7.7. Where an agreed reservation of title or part of it is ineffective in accordance with the law of a country where the delivered goods are, customer shall be obliged, on our request, to present a security similar to our reservation of title. Where he fails to comply with this request within the deadline fixed by us, all our unsettled invoices will become due for immediate payment regardless of the agreed date of payment.
- 8. Despatch, passing of risk, repurchase**
- 8.1. All deliveries shall be for the account and at the risk of customer. Risk shall pass on customer as soon as the goods have been handed over to the transporting person or to our own delivery staff. Where our own staff transports the goods, they are acting on behalf of customer from taking over the goods to their delivery. The mode of despatch lies within our discretion. Where despatch is impossible without any fault on our part risk shall pass on customer upon notification that the goods are ready for despatch.
- 8.2. No transport insurance policy shall be taken out unless required and paid by customer.
- 8.3. No transport and other packing in accordance with the packing regulation are taken back. Customer shall be obliged to dispose of such packing at his own cost.
- 8.4. Where we agree to repurchase delivered goods the following stipulations shall apply: The goods that have been delivered by us must be in perfect condition. Customer shall send the goods to be repurchased together with a copy of the corresponding delivery note and invoice. Any goods to be repurchased shall be returned to us freight paid and at customer's risk. Repurchased goods shall be credited to customer reduced by 15 % for overheads plus VAT. Any repurchase of custom-made goods or goods that have been ordered on the basis of customer's specifications shall be excluded.
- 9. Limitation on liability for warranties and other claims**
- 9.1. We shall be notified in writing of any material defects immediately, not later than eight days after despatch. In case of defects that cannot be detected by careful examinations within this period, we shall be notified in writing as soon as such defects are detected and before the agreed or statutory limitation period expires – at the same time any processing and manufacturing shall be discontinued.
- 9.2. In case of a justified complaint within the set period we shall have the option either to remedy such defect or to deliver faultless goods (subsequent performance). Where such subsequent performance fails or is denied customer may withdraw from the contract or reduce the purchase price after unsuccessful elapse of a reasonable period.

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Where a defect is not considerable or goods have already been processed or changed he shall only be entitled to reduce the purchase price.

- 9.3. We shall only assume expenses in connection with a subsequent performance as far as they are reasonable in the individual case, in particular in relation to the purchase price of the goods. No expenses caused by a transport of purchased goods to another location that is not customer's registered office or place of business shall be assumed unless this complies with contractual practice.
- 9.4. Our liability for a violation of contractual and non-contractual obligations, in particular due to impossibility, delay, culpa in contrahendo and tort – also on behalf of our executives and other persons employed by us in the performance of our obligations – shall only apply to wilful acts and gross negligence and shall be limited to the damage that is typical for the contract and can be anticipated upon entering into the contract.
- 9.5. These limitations shall not apply to a culpable violation of material contractual obligations, to the extent that achieving the purpose of the contract is endangered, to damage to life, body and health that has been caused in a culpable way, neither shall they apply to cases where and as far as we have given a guarantee for the quality of the sold goods nor in cases of imperative liability in accordance with the product liability law. The provisions regarding the burden of proof shall remain unaffected.
- 9.6. Unless otherwise agreed, customer's contractual claims against us that arise from and connection with the delivery of the goods shall become statute-barred one year after despatch of the goods. This period shall not apply to goods that are used for a building in accordance with their customary employment and that have caused defects to such building. Our liability for wilful and gross negligent violations of obligations, damage to life, body and health that have been caused in a culpable way as well as the limitation of actions for rights of recourse shall remain unaffected.

**10. Property Rights of Third Parties**

In face of the global market, the seller shall not guaranty that the goods supplied are not subject to property rights of a third party. The seller excludes liability for claims resulting from the fact that the goods supplied by him are subject to property rights of a third party unless the seller knows of the existence of third party rights on the point of delivery.

**11. Design modifications**

We reserve the right to modify design without special prior notice or special subsequent information. We shall not be obliged to perform corresponding modifications on products that have already been delivered.

**12. Federal Data Protection Act (BDSG)**

We store personal data. Such data are exclusively used within the framework of existing business and contractual terms and conditions.

**13. Exports**

In the case of goods and services involving an export of the goods and services from the Federal Republic of Germany, TMD reserves the right, at its option, to withdraw from the contract or to terminate it in the event that the customer or the end user of the goods or services is a person or unit listed in accordance with the then applicable German, European or US export control provisions or that the country of destination and/or the country of final destination is a country on which an embargo or other sanctions were imposed under the provisions mentioned. The purchaser agrees to inform TMD promptly if the goods or services are intended to be delivered to an end user who is listed under the provisions mentioned or subject to other sanctions.

**14. Applicable law, venue, place of performance**

- 14.1. Excluding the United Nations Convention on the International Sale of Goods of 11 April 1980, the contractual relationship and these terms and conditions shall be governed by German law.
- 14.2. The place of despatch shall be place of delivery, Leverkusen shall be place of payment.
- 14.3. The place of our registered office shall be exclusive venue, even for special procedures deciding claims arising out of a bill of exchange or cheque. We shall be entitled to sue customer at his general venue.

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