

General Terms and Conditions of Sale and Delivery (GTC)

Framo Morat, Inc.
9440-L San Mateo Blvd., NE
Albuquerque, New Mexico 87113

1. Terms

- a) These General Terms and Conditions of Sale (GTC) apply exclusively to all our quotations, deliveries and services. They are an integral part of all contracts that we make with our contractual partners. They also apply for all of our future deliveries, services or quotations, even if they are not specifically agreed to again.
- b) Differing agreements to which we have not expressly objected, particularly the purchaser's conditions of purchase, will be binding only if we have expressly confirmed them in writing. Even if we refer to a letter that contains the purchaser's terms and conditions or those of a third party or refers to such, this does not indicate any agreement to the applicability of those conditions.
- c) Any invalidity of individual provisions of these GTC shall not affect the validity of the remaining provisions.

2. Quotations, contract signature and contract terms

- a) Quotations are made without engagement and are non-binding unless they are expressly marked as binding or contain a specific acceptance deadline, and are subject to prior sale.
- b) Orders are deemed to have been accepted on issue of our order confirmation or on immediate delivery of the goods.
- c) Samples, patterns and other documentation and information such as photocopies, drawings, measurements and weights are approximations only and are supplied without engagement unless the relevant assurances have expressly been given in writing.
- d) We may base delivery on drawings, patterns, design and other information, purchaser's choice of material etc. passed to us, but there is no inspection obligation on our part and we cannot provide any guarantee. In the absence of detailed information on tolerances we shall base production on the mean dimensional variations specified in DIN 7168. The assurance of appropriate characteristics must be expressly agreed in writing.
- e) Depending on the type of manufacture we reserve the right to a margin of $\pm 10\%$ in the quantity delivered, particularly in the case of mass- and series production.

3. Price and delivery terms

- a) Price lists and other general pricing information are supplied without engagement.
- b) Our prices are exclusive of packing, loading, carriage, postage, other forwarding charges, insurance, taxes and customs duties unless expressly otherwise agreed.
- c) We reserve the right to make subsequent price alterations if material prices, wages or other cost factors change following order confirmation or if the cost of manufacture increases due to other circumstances beyond our control.
- d) Prices only apply to a particular individual order. Fixed-price contracts must be expressly agreed to in writing.
- e) The interpretation of delivery terms, e.g. "fob, cif, ex works" is governed by INCOTERMS 2010.

4. Forms and tools

- a) The purchaser will cover the cost of forms and tools produced by us or by a third party on our behalf. The price of forms and tools also includes one-time sampling costs, but not the cost of the test- and processing apparatus nor of modifications initiated by the purchaser.
- b) Absent an agreement to the contrary, the purchaser shall become the owner of the forms and tools once the costs have been paid. We shall store the forms and tools safely and securely for a reasonable time until arrangements are made for delivery of the forms and tools to the purchaser.

- c) Subject to paragraph 6 below, we will use the forms and tools solely for the purchaser's orders.
- d) Regardless of the purchaser's legal right to recover possession and the lifespan of the forms and tools, we shall be entitled to sole ownership of the forms and tools until an agreed minimum number of units has been accepted or until the contract lapses.
- e) The purchase price of a form or tool ordered and paid for by the purchaser does not include the value of the know-how contributed by us during design and construction. The purchaser will make appropriate additional payment for this when the forms and tools are handed over to him.
- f) As long as the purchaser has not fulfilled his obligations for the payment of form and tool costs and/or is late in taking delivery or paying for the formed parts supplied using the forms and tools, we shall have the right to retain the forms and tools and, furthermore, to continue using the forms and tools for as long as we wish until all the purchaser's outstanding debts have been covered, particularly by selling the formed parts produced using the form and the tools. If the purchaser has industrial property rights to the formed parts, he will grant us a free licence to manufacture and sell the formed parts for the duration of his delay.
- g) We undertake to keep the forms and tools for the formed parts safe and to look after them carefully for the purchaser's subsequent orders. The duty of safekeeping shall cease if no further orders for the formed parts are placed by the purchaser within two years of the last delivery.
- h) We will only accept liability for due care and diligence, not for damage caused despite proper handling of the forms and tools for the formed parts. We shall cover maintenance costs which become necessary during the normal use of the forms within the agreed service life.
- i) The purchaser, as the owner of the forms and tools, will carry the risk of the accidental destruction of the forms and tools as well as the full cost of the requisite insurance for the forms and tools.
- j) If the duty of safekeeping in paragraph 7 above lapses, we may request the purchaser to collect the forms and tools within a certain period. After that period we shall be entitled either to put the forms and tools into storage or scrap them at the purchaser's expense. If we keep the forms and tools beyond the two year point we shall be free from any liability in respect of the forms and tools.

5. Delivery

- a) Deadlines and dates for deliveries and services are always only approximate unless a fixed deadline or fixed date is specifically promised or agreed as binding. If shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, carrier, or other third party assigned to transport the goods.
- b) If timely dispatch cannot be effected for reasons beyond our control, the delivery period specially agreed as "binding" shall be deemed to have been met on due notification that the goods are ready for dispatch. We are not liable for the impossibility of delivery or for delays in delivery if caused by force majeure or other events not foreseeable at the time the contract was made and for which we are not at fault (e.g. operational breakdowns of any kind, difficulties in procuring material or energy, transportation delays, strikes, lockouts, shortage of labor, energy or raw materials, difficulties in procuring necessary official permits, government action, incorrect or untimely deliveries by suppliers). These stipulations shall also apply if such events occur at a time when we are in arrears. If, after we are already in arrears, the purchaser threatens refusal following a reasonable period of grace, he shall be entitled to cancel the contract if we fail to comply within this period of grace. Claims for compensation shall be determined exclusively in accordance with Section IX.
- c) We are entitled to make partial deliveries if:
 - the partial deliveries are usable for the contractual partner as part of the contractual intended use;
 - delivery of the remaining ordered goods is ensured; and
 - the partial deliveries do not impose unreasonable additional effort or significant additional costs on the contractual partner.

Partial deliveries may not be refused by the purchaser.

If the purchaser has reserved the right to call for partial deliveries, these shall be duly called for at intervals that are as regular as possible so that we can effect proper manufacture and delivery by the intended date. Unless otherwise agreed, delivery of parts that have been ordered on call and for the manufacture of which we have covered ourselves with the requisite raw materials must be taken within 12 months of the date of ordering.

6. Forwarding and passage of risk

- a) Risk shall pass to the purchaser on dispatch when the goods leave our works even when we are responsible for carriage and forwarding costs and even when part deliveries and deliveries are made subject to retention of title. Goods missing or damaged in transit will only be replaced by us on the basis of a new order charged at current valid prices.
- b) If dispatch is delayed due to circumstances beyond our control, risk shall pass to the purchaser prior to dispatch following notification that the goods are ready for dispatch; we will, however, at the purchaser's expense comply with a timely and express request for insurance coverage.
- c) In the absence of special instructions from the purchaser we may at our discretion choose the route and means of transportation, always at the purchaser's expense, without liability for the cheapest or quickest method.
- d) Returnable packaging specially indicated in the forwarding papers shall be returned forthwith carriage paid; it shall not be used for dispatch to third parties.

7. Duty of inspection and complaint

- a) The delivered goods shall be inspected immediately upon delivery to the purchaser or to a third party designated by the purchaser. The goods shall be deemed accepted unless a complaint relating to recognizable defects or other defects that would be recognized in an immediate, careful inspection is made in writing and received by us within seven working days after delivery of the object, or otherwise within seven working days after discovery of the defect or from the time in which the defect could be recognised by the purchaser in normal use without closer inspection. If the purchaser wishes to pick the goods up from us or from third parties, the date of delivery shall be deemed to be our notification that the goods are ready for pick up by the purchaser.
- b) At our request, the delivery goods complained about shall be sent back to us freight prepaid. If the complaint is justified, we will reimburse the costs of the most inexpensive means of shipment; this does not apply if the costs increase because the goods that were delivered are at a different location than that of the intended use.

8. Warranty

- a) Any parts proven to have been rendered unusable, or the use of which has been materially impaired within the warranty period as the result of a circumstance occurring prior to the passage of risk – owing in particular to faulty design, poor materials or defective workmanship – will be repaired or replaced as we deem fit (subsequent performance). Such defects must be reported to us immediately upon discovery. Replaced parts will become our property.
- b) The purchaser must allow us adequate time and opportunity in which to effect any repairs or replacements. Only in urgent cases where operating safety is threatened or to avert excessive damage shall the purchaser have the right to remedy the defect himself or arrange for a third party to do the repair and claim a refund of the cost of repair; provided, however, that we must in all circumstances be notified in advance and were given the opportunity to perform the repair ourselves.
- c) If the purchaser's claim of a defect proves justified we shall meet the following direct costs arising from subsequent performance: the cost of the replacement part including delivery, as well as the reasonable cost of dismantling and fitting, and, if the individual case justifies it, the cost of providing our fitters and assistants as necessary. In any event, the amount of costs we accept in addition to the cost of the replacement part shall be limited by the cost of the replacement part.
- d) We will not accept liability for unsuitable or improper use, faulty assembly or operation by the purchaser or third parties, natural wear and tear, faulty or negligent handling, damage in transit, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, or chemical, electrochemical or electrical influences.

Standard commercial tolerances in respect of dimensions, quantity, quality, color etc. shall not be a basis for complaint. The same shall apply to deficiencies comprising 1-5% of the goods, depending on type and manufacture. The quality of our products is governed in principle only by our product specifications. Public statements, recommendations or advertisements for our products do not constitute a contractual description of quality. Although the detailed product description contains a reference to DIN Standards, it is not a guarantee.

Modifications or repairs to the delivered goods to which we have not expressly consented in writing and that have been carried out by the purchaser or by third parties on their own initiative, shall result in the lapse of any claims under the warranty.

Advice and information of any type whatsoever shall not be contractually binding and shall be provided free of charge to the best of our knowledge, but without any guarantee or liability whatever on our part.

9. Liability

- a) We shall have no tort liability for damages arising from the negligent use of goods that were recognized, or could have been recognized, upon due inspection at delivery, to be defective or to have been damaged in transit. Our tort liability shall otherwise be limited to damages arising from willful misconduct, gross negligence, or fraud. Our contractual liability shall be limited to direct damages. We shall have no liability for indirect, consequential, incidental or special damages.

10. Statutory limitation

- a) Any contractual claims by the purchaser, including warranty claims, shall be subject to a limitation period of 12 months, notwithstanding any statutory provision that provides for a longer period.

11. Security interest

- a) We retain a security interest in those Products for which amounts remain unpaid, as of the date of delivery. Purchaser shall not otherwise sell, offer for sale or otherwise encumber, nor grant any higher priority interest in these Product(s) while any portion thereof remains unpaid.
- b) Purchaser appoint us as its attorney in fact to prepare, sign and file or record any financing statement, applications for registration and similar papers and to take any other action deemed necessary or desirable in order to perfect our security interest.
- c) Once the Product is fully paid, purchaser may request us to withdraw any financing statements previously filed hereunder.

12. Payment conditions

- a) Our default terms are "Prepayment".
- b) Payments made later than 30 days after the invoice date shall bear interest at a rate of 1.5%, or highest rate of interest allowable under applicable law, whichever is less.
- c) Payment shall be due without regard to any claims of the purchaser against us, and without offset for any amounts that we may owe the purchaser. All amounts owed to us shall be immediately due and payment in the event that the purchaser shall file a petition in bankruptcy, or have such a petition filed against it by a third party, or if the purchaser shall admit in writing its inability to pay its debts.

13. Assignment

- a) Claims arising from the purchase contract, inclusive of any warranty rights, may not be assigned to third parties without our express written consent, which consent may be unreasonably refused.

14. Place of performance, court of jurisdiction and applicable law

- a) The place of performance for deliveries, services and payments by both parties shall be Albuquerque, New Mexico, USA.
- b) The contract shall be governed by the law of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) shall not apply.
- c) All disputes shall be adjudicated in Freiburg im Breisgau.