

General Terms and Conditions of FRANKA EMIKA GmbH

I. Sphere of Applicability, Deviating Provisions

1. The following **General Terms and Conditions** (“GTC”) shall be valid for all deliveries, services and offers from FRANKA EMIKA GmbH (hereafter, “FE”) in dealings with entrepreneurs, juridical persons under public law or special foundations under public law. They shall be rendered exclusively in accordance with these Business Terms and Conditions. They shall thus also be valid for all future business relationships even if they have not once again been expressly agreed. These Terms and Conditions shall be considered to have been accepted by no later than the receipt of the good or service. The Buyer’s counter-confirmation while making reference to his Business and/or Purchasing Terms and Conditions or trading clauses (Incoterms) shall hereby be expressly rejected.
2. Agreements between the Parties or third parties, which deviate from these Business Terms and Conditions, must be fixed in writing in order to be valid. This shall also be valid for all other oral agreements – particularly agreements reached by telephone as well as for this written form requirement itself. Silence in response to offers from FE shall be considered to be a rejection of the respective offer. This shall also then be valid if FE unconditionally renders its services while being aware of Business Terms and Conditions which oppose or deviate from these GTC. FE reserves the right, regardless of the descriptions of the products, to, at any time and without advance notice, to undertake technical and optical changes to the products insofar as such descriptions have not been separately agreed in the individual contractual agreement provided that they serve the continued development of the respective product even if thus the product-specific specifications, which have been not been explicitly stated on the data sheet for the respective product, are altered, eliminated or removed. The same shall be valid for a change in models or changes to the design and materials which are considered to be necessary as the result of technical progress. The Buyer may derive no rights as the result of such modifications. Otherwise, his rights shall remain unaffected. This shall also be valid for any goods that have already been delivered.

II. Conclusion of the Agreement

1. The offers from FE – including the sales prices specified on FE’s price lists – shall be considered to be non-binding and free of obligation unless they have been expressly designated as being binding. Any oral or written orders shall constitute a binding offer to which the Customer is bound for 30 days unless something else has been agreed in the offer.
2. The Agreement shall be considered to have been concluded when the order is confirmed by FE (“Order Confirmation”), but nonetheless by no later than when FE submits the invoicing for the contractual product that has been ordered. The Order Confirmation must be sent by FE to the Buyer in text form via e-mail to the address which the Customer has provided to FE for this.
3. All amendments to and supplements of the respectively-concluded Agreement must be in writing in order to be valid. Any oral ancillary agreements or oral assurances, which extend beyond the content of the written Agreement, may not become a contractual object. The same shall be valid for the waiver of this written form requirement.

III. Product and Product Documents

1. Any documents, illustrations, sketches, data regarding performance, weights and dimensions in FE's catalogues, product sheets, data sheets and Internet site must be specified as precisely as possible, but nonetheless shall reflect only approximate values and shall constitute no quality feature data for the good unless they have been expressly designated as being binding. The right is reserved to implement improvements and dimension changes in the scope which is customary for the industry and for the Customer.
2. FE expressly reserves its ownership rights and copyrights to illustrations, sketches and other documents as well as to the licensed software (operating system, FCI, apps, etc.). Without its express written consent, they may, unless this is legally permissible, neither be copied, altered nor made accessible to third parties or be used for self-production.

IV. Prices, Payment Terms and Conditions

1. Those prices shall be valid which are stated in the Order Confirmation.
All prices shall be billed in addition to the legal VAT that is valid at the time that delivery is made. Any additional deliveries and services shall be billed separately ("ex works" (Incoterms 2020) from the following delivery point: TQ-Systems Durach GmbH, Johann-Georg-Halske-Strasse 1, D- 87471 Durach) or another loading place designated by FE in accordance with Incoterms 2020. The prices shall be considered to be without freight, customs duties, importing costs as well as any ancillary agreed provisions plus the applicable statutory VAT as well as any other taxes and levies incurred for the implementation of the order.
The shipping to Customers with their place of residence in an EU country or in an EFTA country may, upon the Customer's request, be organised by a transport service provider that is selected by FE in accordance with the respectively-current conditions. If, upon the Customer's request, the shipment is organised by FE, it shall encompass a supplemental service which shall be billed to the Customer as a separate item without the transfer of risk and costs changing in this regard.
If a shipment is made to Customers in non-EU countries, the export customs documents shall be drafted by FE, but the organisation of the transport and the corresponding pick-up by the transport service provider selected by the Customer shall, in this case, fundamentally be the Buyer's responsibility and must be undertaken in a timeframe of 5 working days after the readiness for pick-up is announced. Any exceptions in this regard must be agreed in advance.
2. Unless something else has been expressly agreed in writing, all prices shall be understood to be in EURO (€) and shall be the basis for the entire processing of the business transaction.
3. Unless the Parties have concluded a deviating, express and written Agreement, all invoices must be paid within 14 days after the invoicing date without any discounts. The receipt of the money by FE shall be prevailing for the timeliness of the payment. Upon the fruitless lapsing of this timeframe, the Customer shall be considered to be in payment default.
4. If the Customer enters into payment default, interest in the amount of 9 percentage points above the base lending rate of the European Central Bank per year that is respectively valid during the payment default timeframe shall be payable. FE shall have the right to assert higher payment default damages against documentation where applicable.
5. FE's payment claims shall become immediately payable if contractual agreements have been gravely violated by the Customer and the Customer is responsible for this. In this case, FE shall be entitled to implement or render any still-outstanding deliveries or services only

against advance payment or a security payment.

6. Any objections to the invoices must be lodged by the Customer by no later than one week after the respective invoice is received. If the Customer fails to lodge a timely objection in this regard, then the affected invoice shall be considered to have been approved.
7. The offsetting with the Customer's counterclaims or the retention of payments owing to such claims shall be permissible only insofar as the counterclaims are undisputed, a ruling is looming in this regard or they have been legally upheld.

V. Delivery

1. The stated delivery timeframes and delivery deadlines shall be considered to be only approximate. The right is reserved to make changes to the delivery timeframes. However, FE shall endeavour to fulfil the prescribed delivery timeframe.
2. The delivery timeframe shall be considered to have been fulfilled if the readiness for the shipping of the good has been announced to the Buyer.
3. Unless something else has been expressly agreed, deliveries shall be made ex works (Incoterms 2020) TQ-Systems Durach GmbH, Johann-Georg-Halske-Strasse 1, D-8747 Durach.
4. If the delivery timeframe is extended or FE is released from its obligation to make delivery, then the Buyer may derive no damage compensation claims in this regard.
5. Upon the announcement of the readiness for pick-up, the Buyer must pick up, or have the good picked-up, within a timeframe of 5 working days at the designated location. If the Buyer enters into delivery acceptance default or the delivery timeframe is postponed at the Buyer's request, then FE shall be entitled to demand compensation for the damages which it has suffered. In these cases, the Buyer must pay as customary damages a lump-sum cost amount of 0.5% of the invoiced amount per week begun to FE subject to the right to assert uncustomarily higher damages in the individual case. Upon the Customer's entering into delivery acceptance default, the risk of the accidental deterioration and the accidental destruction shall be transferred to the Buyer.
6. FE shall be entitled to render partial deliveries and partial services which are customary for the industry unless the partial delivery or partial service is unreasonable for the Customer or contractually excluded.
7. FE shall, particularly in the case of agreed partial deliveries, be entitled to withhold the fulfilment of its delivery and performance obligations until the Buyer has properly fulfilled its obligations.
8. In cases of force majeure or other events which were unforeseeable at the time that the Agreement was concluded which FE, despite exercising reasonable due care based upon the circumstances of the individual case, could not avert, e.g. war, natural catastrophes, pandemics, operational disruptions, legal strikes, lockouts or governmental decrees and interventions, energy supply difficulties, delays in the delivery by its sub-suppliers of essential raw and building materials, the delivery timeframes or delivery deadlines shall be extended until the hindrance has been eliminated as well as for an appropriate run-up period until proper business operations can start anew if the performance or delivery has not been made impossible; this shall be valid regardless of whether these events have affected FE itself or its own suppliers or sub-suppliers (proviso of delivery by one's own suppliers).

FE shall optionally be entitled to withdraw from the Agreement, in whole or in part, owing to the portion of the performance that has not yet been fulfilled. If, as the result of the aforementioned circumstances, the delivery is made impossible or unreasonable without FE

being responsible for this, FE shall be entitled to withdraw from the Agreement, in whole or in part, based upon the portion that has not yet been fulfilled. In this case, the Customer shall be entitled to no damage compensation claims against FE. Any statutory rights of rescission shall remain unaffected in this regard.

9. Insofar as the Customer must set an appropriate notice period in order to assert his rights against FE, this notice period must be at least 3 months.
10. The delivery default damages to be compensated by FE shall be valid only for binding delivery timeframes which have been designated as such by FE shall be limited to 0.5 % of the value of the late delivery or partial delivery for each full week (7 days – unless something else has been expressly agreed, deliveries shall be made based upon calendar days), but nonetheless a maximum of 10 % of the value of the late delivery or the FE-ex works late partial delivery (Incoterms 2020) ex TQ- Systems Durach GmbH, Johann-Georg-Halske-Strasse 1, D-87471 Durach.
If, upon the Customer's request, the good is shipped by FE, the Customer shall assume the costs and risk of the shipment as well as the deterioration and the accidental destruction.
11. The delivery of software components, fee-based as well as free-of-charge software being offered shall be provided for usage when ordering via the Franka World portal. The access shall be granted via a personalised customer account. The registration shall be made exclusively by the Customer. During the registration process, you shall receive access to the Usage Terms and Conditions. Upon the conclusion of a legally-valid Purchasing Agreement, the Software Licensing Terms and Conditions as well as the Usage Terms and Conditions that are required for the usage of the software shall be automatically confirmed.

VI. Material Defects, Warranty

1. FE shall be liable in accordance with the warranty upon the basis of the statutory provisions unless something else has been agreed below. The warranty timeframe shall be 12 months for manufacturing and material defects for usage in accordance with the manufacturer's data sheet and shall begin to run upon the delivery date.
2. Material defects of software shall be considered to be deviations from the performance specifications insofar as they significantly restrict the value or the suitability of the software for the customary, therein-described usage.
3. The Buyer must notify FE in writing of any defects promptly, but nonetheless by no later than within 5 working days after the receipt of the delivery good. For this, the handover report that has also been sent must be filled out and returned to FE via e-mail to: sales@franka.de. Any defects, which cannot be discovered within this timeframe despite a careful inspection having been conducted, must be reported in writing to FE promptly upon their discovery, but nonetheless by no longer than one year after the delivery date. Any transport damage and any related defects in the object delivered may only then be recognised if the Buyer has made the packaging materials available in order to clarify the cause of the damage and, upon FE's request, also presented them to FE for its own inspection. Likewise, transport damage may only be recognised if the good is still in its original packaging.
4. In the case that the Buyer makes notification that the products are defective, FE may, as it so chooses, either repair or replace the defective product or portions of this product.

Any replaced parts or products shall become FE's property. Any products replaced by FE shall trigger no new warranty period.

5. If the subsequent performance fails after an appropriate notice period has been set, the Buyer may, insofar as he is entitled to do so by law and as he so chooses, demand either the reduction of the price or rescission of the Agreement.
6. FE may, as it so chooses, demand either the return of the defective product (freight-paid return shipment to FE) or to render the subsequent performance on-site. In the case of a justified notification of defects, FE shall pay the costs for the cheapest shipping method; this shall not be valid insofar as the costs have increased because the good is located in another location than the location for the designated contractual usage.
7. The shipment must be made together with the copy of the invoice, the delivery note or a photocopy of the same. Otherwise, the Buyer must make the defective product available for the purpose of making repairs. If the Buyer requests that warranted work be conducted at a location which he designates which is not the delivery destination for the product that was sold, FE may fulfil this request in writing whereby the parts covered by the warranty shall not be billed while working time, travel costs and transport costs must be paid at FE's standard rates insofar as they exceed the costs to the delivery destination. FE's merely oral approval shall not be binding.
8. The subsequent performance shall contain neither the removal of the defective good nor the reinstallation if FE was not originally obligated to install it. FE shall provide no warranty for damages which are created because the Buyer and/or third parties have made modifications of the products, replaced parts or consumable materials which do not correspond to the original specifications. For defects which are created as the result of unsuitable and improper usage, unsuitable and improper storage, the non-fulfilment of the statutory and government guidelines as well as FE's prescribed usage guidelines that are valid for the operation and the handling of the supplied object, the flawed mounting and/or commissioning by the Customer or third parties, customary wear-and-tear, flawed handling or usage in violation of the data sheet, warranty claims shall be rendered invalid. If the quality features of the supplied good deviates only slightly from the agreed quality features, then the Customer shall be entitled merely to a right to reduce the purchase price. The warranty shall also be rendered invalid if the Customer, without FE's approval, modifies the delivery object, or has it modified by third parties, and the elimination of the defect thus becomes impossible or made unreasonably more difficult. In any case, the Customer must assume the additional costs incurred for the elimination of the defect that have been created as the result of the change.
9. Liability for normal wear-and-tear shall be excluded.
10. Only the direct Buyer shall be entitled to warranty claims against FE and shall not be assignable.
11. In the case of defects to the components from other manufacturers which FE cannot eliminate owing to licensing law or actual reasons, FE shall, as it so chooses, assert its warranty claims against the manufacturers and the suppliers on the Customer's behalf or assign them to the Customer. Warranty claims against FE shall be valid for such defects subject to the other requirements and in accordance with these General Business Terms and Conditions only if the assertion in court of the aforementioned

claims against the manufacturer or supplier was fruitless or, for example, appears to be futile, e.g. owing to a bankruptcy.

12. The Customer shall be entitled to damage compensation claims owing to defects only insofar as FE's liability has not been excluded or limited. Any more extensive or other regulated claims owing to a defect shall be excluded.
13. With regards to software, these General Terms and Conditions as well as the Usage Terms and Conditions as well as any Software Licensing Agreements shall be correspondingly valid, but nonetheless subject to the proviso that FE shall be entitled to circumvent a material defect that is discovered if the material defect itself can be eliminated only through disproportionate expenditures and the workaround solution does not detrimentally affect the run time and the response times for the software significantly.

VIII. Liability, Statute of Limitations

1. Liability claims against FE for all damages which are based neither upon a contractual violation by FE resulting from its intentional wrongdoing or its gross negligence nor upon a contractual violation by a legal representative or vicarious agent of FE resulting from intentional wrongdoing or gross negligence shall be excluded. Excepted from this provision shall be third-party liability claims owing to the loss of life, physical injury or damage to health.
2. For simple negligence, FE shall be liable – except in the case of the loss of life, physical injury or damage to health of a person – only insofar as essential contractual obligations (cardinal obligations) have been violated. The liability shall be limited to the contractually-typical and foreseeable damages, but nonetheless up to a maximum amount of 5,000 EUR. Any liability shall be limited to the damages that were foreseeable upon the conclusion of the Agreement. In any case, FE's liability in accordance with the German Product Liability Act and other claims from the manufacturer's liability shall remain unaffected. With the exception of claims arising from tortious acts including any claims from the German Product Liability Act, the Customer's damage compensation claims shall become statute-barred, for which FE's liability shall be restricted in accordance with the provisions of this Clause VIII. of the GTC, within one year after the legal statute of limitations period begins to run.

IX. Reservation of Ownership

1. Until all payment claims (including all outstanding balances from the current account) have been satisfied, to which FE is entitled from each legal reason against the Buyer – now or in the future, the supplied goods shall remain FE's property. The Customer must store the goods subject to the reservation of ownership upon a free-of-charge basis for FE. Until the payment claims have been paid in full, the reserved goods may neither be pledged to third parties nor transferred by way of security. The Customer shall be obliged to handle the reserved goods with due care. The payment claims (including all outstanding balances from the current account) which are created from the resale or any other legal reason (insurance, tortious act) with regards to the reserved goods shall already now be assigned by the Buyer in their full scope to FE for security purposes.
2. Any processing or handling of the reserved goods as well as their combining with third-party goods by the Customer or third parties shall be undertaken for FE. FE shall be entitled to co-ownership of the newly-created goods based upon the value of the reserved goods.

3. In the case of the resale of the reserved goods, the Customer shall already now, for security purposes, assign the payment claim created herefrom against the purchaser – in the case of FE's co-ownership to the reserved goods, upon a proportional basis corresponding to the co-ownership stake – to FE. The same shall be valid for any other payment claims which replace the Reserved Goods or are otherwise created with regards to the reserved goods, e.g. insurance claims or claims from a tortious act in the case of loss or destruction. FE hereby revocably authorises the Customer to collect the assigned payment claims in his own name. FE may revoke this payment claim collection authorisation only in the case of liquidation.
4. If third parties assert claims against the reserved goods – particularly seizures, the Buyer shall hereby make reference to FE's ownership and promptly notify FE so that it can assert its ownership rights. The Customer shall assume all costs which must be incurred in order to ward off the claim and to replace the reserved goods unless they can be collected by third parties.
5. If the Customer commits a contractual violation – particularly commits payment default,
 - FE can forbid the processing and handling of the reserved goods as well as their combining with other goods;
 - FE may withdraw from this Agreement; in the case of a rescission, the Customer's right to have possession of the reserved goods shall be extinguished and FE may demand the return of the reserved goods; FE shall, in consultation with the Buyer, be entitled to enter the Customer's operational premises and take possession of the reserved goods at the Customer's expense and to sell them, notwithstanding the Customer's payment and other obligations, by sale on the free market or via an auction insofar as this is possible; FE shall credit the sales proceeds to the Customer's liabilities after deducting any costs incurred; FE shall pay out any resulting surplus to it;
 - Upon request, the Customer must inform FE of the names of the debtors of any payment claims assigned to FE so that FE may disclose the assignment and collect the payment claims; all proceeds to which FE is entitled from the assignments must be forwarded to it respectively immediately upon their receipt if and as soon as FE's payment claims against the Customer become payable.
6. If the realisable value of the security provided to FE exceeds its payment claims by a total of more than 10%, FE shall, upon the Customer's request, release the security of FE's choice.
7. In the case of a bankruptcy, FE shall be entitled to demand the return of the reserved goods that have been delivered insofar as the bankruptcy administrator has not exercised his voting right and/or has rejected the fulfilment of the Agreement.

X. Third-Party Proprietary Rights

FE shall not be liable for the violation of third-party proprietary rights if the goods have been manufactured based upon the Buyer's special requests. The Buyer shall indemnify FE from third-party claims arising from the violation of copyrights, trademarks or patents – including the legal defence costs.

XI. Export control

The deliveries and services are subject to the provision that the fulfilment is not restricted by any national or international regulations, in particular export control regulations, embargoes or other sanctions.

The customer agrees to comply with the relevant export and import control regulations, as well as with all other relevant regulations.

XII. Packaging

The Customer may return packaging in accordance with the Packaging Act, at the registered office of FE, after prior agreement. For sending the packaging to be taken back according to the Packaging Act, the customer shall bear the arising shipping costs.

XIII. Place of Performance, Applicable Law and Legal Venue

1. For these Business Terms and Conditions as well as the entire legal relationships between FE and the Buyer, the law of the Federal Republic of Germany shall be valid subject to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The legal venue for all legal disputes arising from the contractual relationship as well as its conclusion and its validity shall be FE's commercial residence. The place of performance for all supply and payment obligations shall be Munich unless something else is stated on the Order Confirmation.
3. If a provision of these Business Terms and Conditions or a provision in other agreements should be discovered to be or become invalid, this shall not affect the validity of all other provisions or agreements. In this case, the Parties shall be obliged to collectively conclude a provision which most closely corresponds to the commercial sense and purpose of the invalid provision.
4. The legally-valid version of the GTCs has been drafted in the German language. An English translation shall serve merely for informational purposes and shall have no legal validity. Merely the German text shall be binding for the legal interpretation.