

**General Terms and Conditions of FrigoDynamics® GmbH located in Markt Schwaben, Germany Version: 1.01 as of 16 April 2010**

**1. Applicability**

The terms and conditions hereinafter become an integral part of any and all contracts concluded. All offers, deliveries and services arising from contracts concluded with FrigoDynamics GmbH are exclusively based on these contractual terms and conditions.

Once a contract has been concluded, these terms and conditions shall also apply to all future contracts concluded with merchants within the meaning of Section 14 BGB (German Civil Code), even if they have not been expressly agreed again in an individual case. Provisions deviating from these terms and conditions as well as contractual partners' acknowledgements referring to their own contractual terms and conditions are hereby expressly rejected. Those shall not be applicable to contracts concluded with FrigoDynamics GmbH.

**2. Offer and formation of contract**

Our offers are at all times non-binding and subject to confirmation. This shall also apply to the presentation of products in the internet.

Ancillary agreements shall be deemed ineffective unless agreed and confirmed in writing. The requirement to use the written form may be waived in writing only. FrigoDynamics GmbH expressly reserves the right of price changes, technical modifications, errors, printing errors and/or prior sale.

Orders require the written or telex confirmation by FrigoDynamics GmbH to be legally effective. The purchaser is not entitled to assign claims arising from the contract to third parties without the consent of FrigoDynamics GmbH.

**3. Prices**

The prices indicated by FrigoDynamics GmbH are net prices denominated in Euros (EUR) and subject to the statutory value-added tax in force at the time of the order. The prices charged are the prices valid at the time of the order.

The prices are EXW Germany unless otherwise stated. or agreed in writing. Orders for which no firm prices have been agreed or orders within the scope of continuous obligations shall be charged at the prices valid on the day of the delivery.

If purchase prices, transport costs, company-related taxes and other costs affecting the individual prices change unforeseeably for FrigoDynamics GmbH between the conclusion of a contract and the agreed date of delivery – in case of non-trading transactions only, when such period is longer than 4 months – each party to the contract can demand a corresponding price

adjustment. FrigoDynamics GmbH shall inform customer of price changes exceeding 5% net prior to delivery; customer may then rescind from the particular contract by written notice, which FrigoDynamics GmbH must receive within 10 days after receipt of such information by customer; however, in case of trading transactions only if the price increase demanded by FrigoDynamics GmbH does not insignificantly exceed the increase of general living costs in accordance with the authoritative and respectively applicable cost of living index in the period between order and agreed delivery. An increase of less than 10% is deemed to be insignificant.

#### **4. Payment terms**

The purchase price inclusive any and all costs shall be due for payment from the time of billing. Payment shall be effected by advance payment through remittance within seven calendar days after confirmation of the order.

Payments shall be effected net without deductions such as discounts or other deductions.

Other payment terms shall only apply in case of express written agreement. FrigoDynamics GmbH are not obliged to accept cheques or bills of exchange; in such cases, acceptance is always on account of performance only. Discount and bill charges are for the purchaser's account and immediately payable. If FrigoDynamics GmbH demand damages on account of non-performance, the damage will be calculated at 50% of the net contract value without further proof. The purchaser shall be free to prove a smaller loss or no loss at all.

The assertion of rights of retention or rights to set off against counterclaims of any kind, no matter for which legal reason, or of other deductions is inadmissible. This shall not apply, if counterclaims have been confirmed in court or are undisputed. However, the purchaser is also entitled to retention on account of counterclaims arising from the same contractual relationship.

#### **5. Delivery and delivery time**

FrigoDynamics GmbH reserve the right of construction or production changes on technical grounds and deviations of samples, as long as such changes or deviations are reasonable for the purchaser. Partial deliveries are permissible and can be invoiced separately, if the partial delivery amounts to 30% of the overall order; in such case, FrigoDynamics GmbH have an objective interest in the partial delivery. As regards the payment of partial deliveries, the payment terms as stipulated in clause 4 shall apply. In case FrigoDynamics GmbH fall behind schedule, the purchaser may rescind from the relevant contract upon the fruitless expiry of an appropriate grace period stipulated in written form that must amount to at least 1 month, if the goods have not been advised ready for dispatch by that time. In case of partial default or partial impossibility of performance, the purchaser may only rescind from the entire contract or demand damages on account of non-performance of the entire obligation only, if purchaser has no interest in the partial performance of the contract.

## **6. Transfer of risk**

The risk shall pass to the purchaser as merchant as soon as the shipment has been handed over to the person conducting the transport or has left the warehouse of FrigoDynamics GmbH or the warehouse of a sub-supplier for the purpose of shipping. If dispatch is delayed at purchaser's request, the risk shall be transferred to purchaser when readiness for dispatch is advised. The same shall apply to the assertion of rights of retention. In such case, FrigoDynamics GmbH shall be entitled to demand demurrage in an appropriate amount.

## **7. Retention of title**

Until the purchaser meets any and all claims, including all outstanding current account balances, to which FrigoDynamics GmbH are entitled now or in the future, the purchaser undertakes to provide FrigoDynamics GmbH with the following securities, which FrigoDynamics GmbH can choose to avail themselves of, inasmuch as the value of these securities is permanently in excess of their demands by more than 20%. The goods shall remain property of FrigoDynamics GmbH until full payment has been made.

In addition to personal use, the purchaser is entitled to resell goods subject to retention of title in the course of ordinary business transactions. The purchaser hereby assigns to FrigoDynamics GmbH by way of security in full extent any and all claims, including all outstanding current account balances, regarding goods subject to retention of title arising from resale or any other legal reason (insurance, tortious act).

FrigoDynamics GmbH irrevocably authorise the purchaser to collect the claims assigned to FrigoDynamics GmbH for the account of FrigoDynamics GmbH on his own behalf.

The authorisation to collect may only be revoked, if the purchaser is in arrears with his payment obligations. The purchaser is then obliged to advise the name, address and amount of claim of all persons to which he has sold goods subject to title of retention. Pledging or transfer by way of security is not admissible. As long as the purchaser is not in default of payment, FrigoDynamics GmbH shall not disclose the assignment. If third parties seize goods subject to title of retention, in particular pledges, the purchaser shall point out the property of FrigoDynamics GmbH and inform them immediately, so that FrigoDynamics GmbH can enforce their property rights. If such third party is not in a position to reimburse FrigoDynamics GmbH for the judicial or extrajudicial cost incurred in that connection, the purchaser shall be liable therefor. If the purchaser acts in violation of the contract, in particular default in payment, stoppage of payments, filing for bankruptcy, FrigoDynamics GmbH shall be entitled to take back the goods subject to retention of title or, as the case may be, request the assignment of the purchaser's claims for return of property against third parties. Any repossession or pledging of goods subject to retention of title on the part of FrigoDynamics GmbH shall not constitute a withdrawal from the relevant contract, if the purchaser is a merchant.

### **8. Warranty**

The purchaser shall notify FrigoDynamics GmbH of any evident defects upon receipt of the goods, however, no later than within 7 work days. Hidden defects that cannot be detected even after immediate examination may only be asserted against FrigoDynamics GmbH, if FrigoDynamics GmbH receives the respective notice of defects within 3 months after the goods have left the warehouse. In case of justified complaints, FrigoDynamics GmbH have the right to choose between rework or compensation delivery. If the purchaser does not provide FrigoDynamics GmbH with the opportunity of convincing themselves of a defect, in particular if the purchaser does not immediately make available the goods rejected or samples thereof at request, any and all warranty claims shall expire. Claims lodged by the purchaser with regard to partial shipments shall not entitle the purchaser to reject the remainder of the delivery. Those terms and conditions shall also apply to the delivery of goods other than those in accordance with the contract. In case used goods are delivered, any and all warranty claims on the part of merchants shall be excluded.

FrigoDynamics GmbH do not warrant the fitness of a product purchased with regard to its utilisability at the place of installation designated by the purchaser or a third party.

The information provided by FrigoDynamics GmbH on a product is – based on current knowledge - as accurate as possible.

Due to the fact that not all uses and the particular local conditions at the place of installation are known to FrigoDynamics GmbH and that the thermal performance depends on operating conditions, ambient temperatures, structural conditions, the installation position and the intensity of the required air flow, FrigoDynamics GmbH cannot assume any warranty in respect thereof. In addition, FrigoDynamics GmbH shall not be liable for damage or consequential damage not associated with the faulty manufacture of the product per se.

This disclaimer of warranty shall not apply to the defect-free manufacture and delivery of the product per se.

### **9. Terms and conditions for the supply of sample goods**

Sample goods are sold at list prices under reservation of ownership. The purchase contract is

subject to the condition subsequent that the sample goods show no signs of use upon their return. The purchase price shall become due, when the condition subsequent does not occur upon return or when the purchaser does not return the sample goods to FrigoDynamics GmbH within three months after receipt of such goods.

### **10. Limitation of Liability**

Any and all claims for damages asserted against FrigoDynamics GmbH and their performing and vicarious agents – no matter for which legal reason – shall be excluded, unless they are based on:

- Violation of material obligations ("Kardinalpflichten"),
- Intent or gross negligence,
- Damage arising from injury to life, limb or health,
- Product liability.

In any case, the performance guarantee shall be limited to foreseeable damage.

### **11. Place of performance, place of jurisdiction, applicable law**

The place of performance for any and all claims arising from a contract is Markt Schwaben/Germany.

If the purchaser is a general merchant within the meaning of the German commercial code, a public law entity or special public-law funds, Munich/Germany shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the particular contractual relationship.

These general terms and conditions shall be governed by the law of the Federal Republic of Germany, excluding the UN Convention on the International Sale of Goods

