

# FRESCOPUNK®

## CONDITIONS OF SALE.

### 1. GENERAL

These are the Conditions of Sale (“Conditions of Sale”) of Frescopunk Distribution GmbH, Dorrekstrasse 2, 5400 Hallein, Austria (hereinafter “Frescopunk” “we”, “us”, “our”).

These Conditions of Sale apply to any sales of Frescopunks products or services that you may order from Frescopunk Distribution GmbH, using the website [frescopunk.com](https://frescopunk.com) and any associated mobile or digital applications that refer to these Conditions of Sale (together, the “Platforms”) or by email or telephone via our offices (“Offices”).

Frescopunk Distribution GmbH is an affiliate of Frescopunk AG, Zurich, Switzerland, which owns and edits the Platforms pursuant to the Terms of Use, and which is responsible for our information collection practices pursuant to the terms of the Privacy Notice. By placing an order, you agree to be bound by the Terms of Use and Privacy Notice, the terms of which are incorporated into these Conditions of Sale.

Please read these Conditions of Sale carefully. These Conditions of Sale are applicable to any order placed through the Platforms or Offices (together the “Sales Channels”). Please note that before placing an order for products or services, you will be asked to agree to these Conditions of Sale. If you do not agree to these Conditions of Sale, then you will not be able to order any products or services through the Sales Channels. Sales concluded through third parties (such as authorized resellers) are not subject to these Conditions of Sale.

Only individuals who are legally capable by being of sufficient legal age or by being an authorized representative of a legal entity, for whom they are ordering, may order products through the Sales Channels.

By placing an order on this website, you confirm to be legally capable to enter into a contract.

### 2. ORDER PROCESS

Your order on the Platforms constitutes an offer to purchase under these Conditions of Sale.

After placing an order, you will receive an email from us acknowledging that we have received your order. Please note that this does not mean that your order has been accepted. We reserve the right, in our sole discretion, to refuse, cancel and terminate orders at any time for any reason.

### 3. PRICES, TAXES AND SHIPPING COSTS

All prices shown on the product pages of the Platforms or quoted by our Offices are in EURO (€) and exclude the applicable VAT, shipping costs and other taxes, unless otherwise stated.

VAT are not stated on the product pages and will be additionally charged upon delivery, according to the current VAT rates of the respective country where the shipping address is located. In some countries other taxes and customs duties might be charged additionally upon delivery.

Shipping costs are not stated on the product pages but for some countries will be approximately calculated and added to the product price after you have chosen your shipping address and your delivery options. The approximately shipping costs will be summarized before you are asked to confirm and place your order. If the final shipping costs are higher than those calculated, the additional costs will be charged upon delivery.

We reserve the right to modify prices and delivery costs at any time without prior notice.

We take reasonable care that the prices of products are correct at the time when the relevant information was entered into the system or communicated to you via our Offices. However, it is always possible that, despite our reasonable efforts, some of the products offered through our Sales Channels may be incorrectly priced. If any of the products you place an order for are incorrectly priced, we will contact you as soon as possible to inform you of this error. If we are unable to contact you using the contact details you have provided during the order process, we will cancel the order and notify you in writing. If we mistakenly accept and process your order where a pricing error occurs, we may cancel supply of the product and refund you any sums you have paid.

#### **4. PAYMENT**

We accept the methods of payment identified as part of the order process via the Sales Channels. Depending upon the means of payment, we may require additional information, including specific forms of identification.

When ordering on the Platforms, you will need to enter your payment details on the appropriate form. In the case of an order placed by email or telephone, you will need to communicate to our Offices your complete payment details. All payment card holders are subject to validation check and authorization by the card issuer. If the issuer of your payment card refuses to authorize payment to us, you will need to contact your card issuer directly to solve this problem.

Other payment methods may also be subject to validation checks and authorization by the payment system providers as well. You expressly authorize us to perform security checks, where we deem necessary, to transmit or to obtain information (including any updated information) about you to or from third parties from time to time, including but not limited to your payment card details, to authenticate your identity, to validate your payment card, to obtain an initial payment card authorization and to authorize individual purchase transactions.

The full amount of your purchase will typically be blocked on your payment card until your order is shipped, at which point you will be sent a Confirmation of Order & Shipment and your payment card will be charged the applicable purchase price.

We do accept direct bank transfers for orders. We do not charge a fee for direct bank transfers for orders made through our Sales Channels or Offices, however, some financial institutions may charge a fee for direct bank transfer. The order will not be processed until the payment has been received and confirmed by us by email. If your payment is not credited into our bank account within ten (10) days after you have placed your order, your order will be cancelled.

#### **5. ACKNOWLEDGEMENT OF ORDER**

Once you have made your choice and your order has been placed through the Sales Channels, you will receive a written Acknowledgement of Order (by email or otherwise confirming the details of your order together with an order reference number). Please make sure that you save this order reference number for any future enquiries regarding your order. This Acknowledgement of Order is not an acceptance of your order. To confirm the order, we will conduct its usual credit, anti-fraud, security and related legal checks and, if acceptable, will then process your order. Upon receipt of the Acknowledgement of Order, it is your responsibility to review it and confirm that it accurately reflects your intended order. If you have any questions or concerns or if the Acknowledgement of Order does not reflect your intentions, you should contact our Offices promptly.

These Conditions of Sale will be provided to you when we acknowledge your order.

## **6. SHIPPING POLICY**

We only accept orders for delivery to the country or countries that are identified during the Order Process. Please note that we do not ship to certain addresses, such as PO boxes. For further information, please contact our Offices.

Collection from one of our logistics terminals may be offered, free of charge. Please refer to the Platforms or contact our Offices for more information. We will inform you by email or by telephone when the product is ready for collection at the logistics terminal.

If you order several products, we will ship the order only once all products are available (there will be no partial shipments, unless otherwise communicated to you).

## **7. CONFIRMATION OF ORDER AND SHIPMENT**

Upon shipment of your order, we will send you a Confirmation of Order & Shipment in writing (by email or otherwise). This Confirmation of Order & Shipment constitutes our acceptance of your order and indicates the existence of a binding sales contract.

## **8. DELIVERY**

We will use reasonable efforts to ensure delivery by the carrier within the estimated delivery lead time from the date of our written Confirmation of Order & Shipment, except if your purchase relates to a product or service that we have explained to you will take additional time to deliver, for example in the case of products or services that we personalize or produce to your specifications.

You may be able to choose a specific delivery date. Any such specific delivery date remains subject to our confirmation.

If delivery of products is delayed by an event outside our control, we will inform you as soon as possible and will use reasonable efforts to minimize the effect of the delay. If we do not deliver within thirty (30) days from the date of the written Confirmation of Order & Shipment or any other time limit as indicated by us, you may contact our Offices to cancel the relevant order and get a refund of any sums you pre-paid us for any products which you have not received.

In any event, your sole remedy for any failure by us to deliver the order to you shall be your right to cancel the relevant order and receive a refund of sums you pre-paid us for any products which you have not received.

When estimating your delivery time, please allow time for credit approval, address verification, security checks and order processing. Please note that delivery is always subject to receiving your full payment.

We will require a handwritten or electronic signature by you, or a person at the nominated delivery address (unless arranged by you otherwise), to confirm the delivery of each product, at which point risk and responsibility for your purchased goods passes to you. If you have specified a recipient who is not you for delivery purposes, then you understand and accept that evidence of a signature by such recipient (or a person at the delivery address) is evidence of delivery and fulfilment of the sales contract by Frescopunk Distribution GmbH and transfer of responsibility to the recipient in the same way as if the product had been delivered to you. We reserve the right to deliver the products only to the person who is the intended recipient of the order as stated on the label of the parcel and to request ID check for verification purposes at the time of delivery for certain categories of products.

## **9. PASSING OF OWNERSHIP AND RISK**

Ownership of the products will pass to you upon the later of receipt by us of full payment of all sums due in respect of the products (including all delivery charges) or delivery to you of the products. We may recover any products supplied at any time prior to ownership passing if you are in breach of these Conditions of Sale.

Risk of the products passes to you upon delivery. Risk in the sense of this provision means the responsibility for damage caused to or by use, handling or storage of the products.

## **10. RETURNS AND EXCHANGES**

### **Right to cancel**

You have the right to cancel the contract created by our written order confirmation without giving any reason fourteen (14) days from the day on which you acquire, or someone you nominate (other than the carrier) acquires, physical possession of the products in your order. If you are a customer based in the European Union or the European Economic Area and have made a purchase via the Sales Channels, this is considered to be your statutory right to withdraw from the contract. To meet the withdrawal deadline, it is sufficient for you to withdraw before the withdrawal period has expired.

To cancel the contract and return your product(s), you can contact our Offices and follow the instructions that will be given to you or send us in writing an unequivocal statement such as a letter or email to: Frescopunk Distribution GmbH, Dorrekstrasse 2, A-5400 Hallein or info@frescopunk.com.

### **Return process**

Products that have been purchased through our Sales Channels may only be returned to one of our logistics terminals. Products that have not been purchased through our Sales Channels may NOT be returned to Frescopunk.

To return the products contact our Offices by phone or email.

You may either choose a) our pick-up service and agree on a pick-up date with our logistics partner or b) organize your own transport. In both cases the shipping costs must be fully covered by you.

You must keep a proof of return shipment, and we accept no liability in the event that such proof cannot be produced.

### **Condition of returned products**

Our products must be returned in a new and unused state, in perfect condition, with all protective materials in place and with the original Frescopunk delivery package. We will verify that the returned product satisfies these conditions and, if so, then proceed with the applicable refund or exchange.

### **Products you cannot return or exchange**

Orders for custom made products or products that have been personalized in any way or otherwise made for you with bespoke specifications cannot be cancelled and such products cannot be returned to us for exchange or refund.

### **Exchanges**

You may return a product purchased through the Sales Channels for exchange with another Frescopunk product, provided that the return complies with these Conditions of Sale in particular with (a) Right to Cancel and (b) Return Process above.

In any event, the sale of the returned product will be cancelled and a new order for the product ordered must be placed. If a product is returned for exchange with a more expensive product, you will have to pay the price difference.

## **11. GUARANTEES AND COMPLAINTS**

The quality of the products is defined on the basis of the prevailing international regulations applicable to the corresponding product class.

You are obliged to check the products in terms of quality and quantity within a short time after receipt and, in the case of a complaint, to notify our Offices in writing no later than ten (10) days from receipt of the products. Failure to do so will incur the forfeiture of all rights.

With the exception of the limits of acceptability foreseen by the prevailing international regulations applicable to the corresponding product class, the parties acknowledge as apparent defects those product faults that are immediately visible upon receipt thereof and that make the material unsuitable for use or that significantly reduce its value.

Products deemed to be defective must be held at Frescopunks disposal for the checks that we will consider suitable to carry out. Any further action (return, repair or other) must be authorized in advance by us in writing.

Complaints after the material has been laid shall not be taken into account if the defect reported is evident (e.g. chips, defects of size, differences in colour shade, etc.). It is agreed that the delivery may contain defective tiles up to a limit of 5% and that the colour shades of the material supplied may differ from the sample displayed, since ceramic is intrinsically variable in appearance.

Complaints attributed to latent defects must be formalized in writing within ten (10) days from their discovery and, in any case, within one year from delivery; failure to do so will incur the forfeiture of all rights for replacement of the defective product.

Frescopunks obligation is, in any case, limited to replacing the defective products only or to repairing them, with the express exclusion of other, further indemnities such as, by way of a non-limiting example, for costs of removing and re-installing furniture, equipment, machinery, etc., or loss of earnings for interruption or suspension of business, inconvenience, consequential damages, etc. The presence of defective products does not invalidate the quality of the entire supply, nor does it incur the obligation for its entire replacement.

## **12. TRANSFER OF CONTRACT**

You may not transfer your position in the contract or in individual binding agreements deriving from this without Frescopunks written acceptance: also in this case you anyway remain jointly liable with the transferee for the obligations transferred.

## **13. INTELLECTUAL PROPERTY RIGHTS AND RESALE**

Frescopunk is the owner and legal holder of the exclusive rights to brand names and designs.

Supplies received from Frescopunk and its Sales Channels are designed for installation at the end user's premises and no other form of resale to further sales agents other than the end users is permitted, unless with Frescopunks prior written authorization. Goods that are re-sold in breach of this provision must therefore be considered as not permitted and treated as an unlawful use of Frescopunks intellectual property rights, with Frescopunks right to ask for them to be seized at the premises of any holder. Frescopunk reserves the right to take legal proceedings against anyone who is involved in unauthorized re-selling.

## **14. GENERAL PROVISIONS**

If any provision, or part of a provision, of these Conditions of Sale is found to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of these Conditions of Sale, and the legality, validity or enforceability of the remainder of the provisions of these Conditions of Sale shall not be affected, unless otherwise required by operation of applicable law.

These Conditions of Sale (and associated terms incorporated by reference) constitute the entire agreement between you and us in relation to the order of products or services, and replace and extinguish all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter.

We are not responsible for any failure or delay in performing or complying with our obligations under these Conditions of Sale which arises from any cause beyond our reasonable control.

The waiver by us of a breach of any provision of these Conditions of Sale will not operate to be interpreted as a waiver of any other or subsequent breach. This contract is between us and you. No other person shall have any rights to enforce any of its terms.

## **15. APPLICABLE LAW AND JURISDICTION**

These Conditions of Sale shall be governed by and construed in accordance with the laws of Austria without reference to conflict of laws provisions. Any dispute, controversy or claim arising out of or in relation to the Conditions of Sale, including the validity, invalidity, breach or termination of the Conditions of Sale, shall be adjudicated or arbitrated in accordance with the Conditions of Sale. Where the laws of Austria are different to the mandatory consumer laws in your own country, we will afford you with similar protection.

Without any restriction to bring proceedings before a court, you and Frescopunk will first make reasonable efforts for a period of thirty (30) days to resolve amicably any dispute or failure to agree that may arise out of or relate to the product, the Conditions of Sale or any breach thereof.

## **16. CONTACT US**

If you have any questions or comments about these Conditions of Sale, or matters generally, please contact us at the address provided below.

Frescopunk Distribution GmbH  
Dorrekstrasse 2  
A-5400 Hallein  
Austria  
or via [frescopunk.com/contact-us](https://www.frescopunk.com/contact-us)