

# GENERAL TERMS AND CONDITIONS OF BUSINESS

## I. Scope of the terms, terminology

- Our deliveries and services shall be made exclusively on the basis of these terms and conditions of business.
- Our terms and conditions of business shall apply for all future business relationships, even if they are not expressly agreed again.
- Below, our business partner in question shall be termed "Customer", regardless of tenature of the contract in question and the state of the business relationship in question.
- Terms and conditions of Customer contradicting or deviating from our General Terms and Conditions of Business shall only be acknowledged if we expressly approve their validity in writing. Our terms and conditions of business shall apply even if we implement delivery to Customer without reservations despite knowledge of contradictory terms or such deviating from our General Terms and Conditions of Business or we do not expressly contradict them.
- Customer shall acknowledge our General Terms and Conditions of Business by placing an order with us.

## II. Quotation and conclusion of contract

- Our quotations shall be non-committal and subject to change without notice. Declarations of acceptance and all orders shall require our written or telex/telefax confirmation in order to become effective. The same shall apply for supplements, amendments or side-agreements.
- The documents belonging to our quotations, such as illustrations, diagrams, statements of weight and dimensions shall only be approximately decisive insofar as they are not expressly designated as being binding in writing.
- We reserve ownership rights and copyrights to estimates, diagrams and other documents. They may not be made accessible to third parties.
- Customer shall bear the sole responsibility for the documents to be provided by it, for example diagrams, templates, samples and similar. Customer shall ensure that implementation drawings presented by it do not interfere with protective rights of third parties. We shall not be obligated towards Customer to check whether protective rights of third parties are breached by submission of quotations on the basis of implementation diagrams submitted by it in the event of implementation. If liability nevertheless results for us, Customer shall hold us harmless.

## III. Scope of delivery, alterations in construction

- Our written order confirmation shall be decisive for the scope of delivery. If Customer has accepted a quotation submitted by us with a binding as regards time within the period, the contents of our quotation shall be decisive in the event of absence of punctual order confirmation. Assurance of properties, side-agreements and amendments shall require written confirmation by us in each case.
- Part deliveries shall be admissible and shall not represent defect in title.
- We reserve the right to alterations in construction and shape at any time. Customer must accept them to the extent that the alterations can be reasonably expected of it and they are not fundamental. We shall not be obliged to carry out alterations on products already supplied.

## IV. Price, payment

- The prices stated in our order confirmation shall be decisive. In absence of a specific agreement, they shall apply ex works excluding packaging and Value Added Tax to the statutory amount. Packaging shall be charged to Customer at cost price; it shall not be taken back.
  - If delivery is not to be effected within 4 months after conclusion of the contract, we shall, in the absence of a specific agreement, be entitled to charge the prices valid on the date of dispatch. The same shall apply if delivery can only be effected 4 months after conclusion of the contract for reasons for which Customer shall be answerable.
- Insofar as nothing to the contrary can be seen from the order confirmation, our invoices shall be paid net within 30 days.
- Customer can only offset with counterclaims which are undisputed or legally effective. This shall also apply if a right of retention is claimed by Customer.
- We shall be released from further obligations to delivery until complete payment of mature invoices.
- We shall be entitled to offset payments from Customer against its older debts, despite provisions to the contrary from Customer. We shall inform Customer of the nature of the offsetting implemented. If costs and interest have already been incurred, we shall be entitled to offset the payment against the costs to start with, then against the interest and only then against the main payment.
- A payment shall only be deemed effected when we can dispose of the amount. We shall only accept cheques and bills of exchange in the event of express agreement. In such cases, payment shall only be deemed effected when the amounts have been credited to us and we have been released from liability. In cases of financing with acceptance (reversal) bills, payment of the purchase price shall be deemed effected when we have been released from the liability for the bill. Cheque and bill expenses shall be charged to Customer.
- If circumstances questioning Customer's creditworthiness become known to us, in particular if it does not honour a cheque or bill of exchange or stops or has stopped its payments or other circumstances questioning Customer's creditworthiness become known to us, we shall be entitled to make the residual debts due for payment immediately or to withdraw from the contract.

## V. Delivery period

- Delivery dates or delivery periods shall be in writing. They can be agreed with a binding or a non-binding effect.
- The delivery period shall commence with the order confirmation, albeit not before provision of the documents, approvals and releases to be procured and before receipt of an agreed down-payment.
- The delivery period shall be complied with if the object of delivery has left our factory or notification of readiness for dispatch has been notified to Customer before its expiry.
- We shall not be responsible for delays in delivery or performance on the basis of force majeure and incidents making delivery more difficult or impossible for us for which we shall not be answerable, in particular including strikes, lock-outs, official orders etc., even if they occur with our downstream suppliers, even in the event of deadlines or periods agreed as being binding. Such incidents shall entitle us to postpone the delivery or service for the duration of the prevention plus a suitable run-up time. We can partly or totally withdraw from the contract on account of deliveries or services or parts of deliveries or services not yet performed insofar as the incidents stated in sentence 1 of the present sub-section have lasted for more than 3 months.
- If the prevention pursuant to sentence 1 of the aforementioned sub-section V.4 lasts for longer than three months, Customer shall be entitled to withdraw from the contract with regard to the part not yet performed following the setting of a suitable subsequent period. If the delivery period is extended or if we are released from our obligation to perform, Customer shall not be able to derive any claims to damages therefrom. We can only make reference to the aforementioned circumstances if we notify Customer forthwith.

## VI. Passage of risk and transport insurance

- Risk shall pass to Customer upon handing over of the delivery to the haulage contractor or forwarder.
- In dispatch abroad, risk shall pass upon crossing the border, FOB port in the event of marine freight.
- If dispatch becomes impossible through no fault of ours, risk shall pass to Customer upon notification of readiness for dispatch.
- We shall conclude transport insurance at our expense. In the event of transport damage, Customer shall notify us forthwith in writing and obey our instructions.

## VII. Defects in quality.

- In defects in quality, the selection of right of subsequent performance shall exclusively accrue to us. We shall be liable for defects in quality as follows:
- Claims to defects in quality shall be barred by limitation in 12 months. This shall not apply to the extent that law prescribes longer periods pursuant to § 438, sub-section 1, no. 2, German Civil Code (buildings) and in cases of injury to life, limb and health in breach of obligations by Customer by malice aforethought or gross negligence and by malicious silence with regard to a defect. The statutory regulations with regard to suspension of the statute of limitations, suspension of prescriptive period and re-commencement of periods shall be unaffected.
  - Claims on account of defects shall not exist in the event of only inconsiderable deviation from the agreed properties and for damage caused by unsuitable or improper use, faulty assembly or commissioning, faulty or negligent treatment by Customer or third parties, by natural wear and tear, unsuitable operating equipment, replacement materials or false information from Customer or its consultants concerning the operational and technical prerequisites and the chemical/physical conditions for the use of the object of delivery.
  - We shall only be liable for defects in the material supplied by Customer if we ought to and could have recognised the defects with due commercial care.
  - For outside products, our liability for quality shall be limited to cession of our claims to warranty against our suppliers. Only to the extent that the claim by Customer against the originator shall have failed extra-judicially without Client having caused this lack of success in a way for which it shall be answerable shall claims to warranty pursuant to the present terms and conditions of business against us accrue to Customer.

- Customer shall notify us forthwith of a defect in writing, albeit not later than one week after arrival of the object of delivery on its premises. Defects which cannot be discovered within this period even with careful examination shall be notified to us in writing immediately after they have been discovered.
- To start with, we shall be granted the opportunity of subsequent performance within a reasonable period. If subsequent performance fails, Customer can withdraw from the contract or demand a reduction in the purchase price, notwithstanding all and any claims to damages.
- Claims of Customer on account of expenditure necessary for the purpose of subsequent performance, in particular transport, travel, working and material costs, shall be ruled out insofar as the expenditure is increased because the object of delivery has subsequently been taken to a place other than Customer's headquarters, unless the movement matches is customary use. Subsequent performance shall be ruled out to the extent that it shall only be possible with disproportionate means.
- Liability for wear and tear shall be ruled out.
- Claims for defects in quality against us shall only accrue to our direct contractual partner in the case in question and shall be non-transferable.
- Apart from this, Section VIII. shall apply for claims to damages. Claims of Customer against us or our vicarious agents on account of a defect in quality exceeding or other than those regulated in the present section shall be ruled out.

## VIII. Claims to damages

- Claims to damages and reimbursement of expenditure by Customer for whatever legal reason, in particular on account of breach of obligations from the contractual relationship and from tort, shall be ruled out.
- This shall not apply to the extent that mandatory liability exists, e.g. according to the Product Liability Act, in cases of malice aforethought, gross negligence, injury to life, limb and health and breach of cardinal contractual obligations. However, the claim to damages for a breach of cardinal contractual obligations shall be limited to the foreseeable damage typical for the contract to the extent that there is no liability for malice aforethought, gross negligence, injury to life, limb and health. An amendment of the onus of proof to the detriment of Customer shall not be connected with the present regulation.
- To the extent that claims to damages accrue to Customer according to the above regulations, they shall be barred by limitation with the expiry of the periods for limitation applicable for the claims for defects in quality. The statutory barring provisions shall apply for claims to damages according to the Product Liability Act.
- The amount of our liability shall be limited to 20% of the contractual sum. This shall not apply to the extent that there is liability for malice aforethought, gross negligence, injury to life, limb and health.

## IX. Right of retention, transfer by way of security

- Until fulfilment of all claims (including all balance claims from current account) accruing to us against Customer now or in future regardless of the legal reason, the following securities shall be granted to us, and we shall release them at our option upon request to the extent that their value lastingly exceeds the claims by more than 20%. If we have negotiated acceptance (reversal) bills for the purpose of obtaining the payment of the purchase price, the following securities shall remain in existence until we have been released from the liability under the bill.
- The commodities shall remain our property, processing or reshaping shall always be done on our behalf as manufacturer, albeit without obligation for us. If our ownership or co-ownership expires by combination, it is here and now agreed that the ownership or co-ownership of Customer to the unified commodity shall pass to us in the ratio of the proportion of the invoice value. Customer shall keep our ownership or co-ownership free of charge. Commodities to which ownership or co-ownership accrues to us shall hereinafter be termed conditional commodities.
- Customer shall be entitled to process and sell the conditional commodities in the normal course of business as long as it is not in arrears. Seizures of transfers by way of security shall be inadmissible. The claims resulting from the sales of the conditional commodities or from any other legal reason (insurance, tort) with regard to the conditional commodities (including all balance claims from current account) are here and now ceded to us by Customer to the complete extent by way of security. We accept the cession. We revocably empower it to collect the claims ceded to us in its own name and for our account. This power of collection can only be revoked if Customer fails to comply with its payment obligations to us properly.
- In the event of interventions of third parties against the conditional commodities, Customer shall be obliged to make reference to our ownership and to notify us forthwith.
- In the event of conduct by Customer in breach of contract - in particular in arrears in payment - we shall be entitled to take the conditional commodities back or, if applicable, to demand cession of Customer's claims to return against third parties. Return and seizure of the conditional commodities shall not represent a withdrawal from the contract.

## X. Lump-sum claim to damages

If Customer dissolves the contract without justification, it shall be obliged to pay us a lump sum for damages of 15% of the net purchase price, unless Customer can prove that no damage even occurred or the damage was considerably lower than the lump sum. On the other hand, we reserve the right to claim unusually high damages in lieu of the lump sum in individual cases.

## XI. Impossibility of performance; adaptation of the contract

- To the extent that delivery is impossible, Customer shall only be entitled to demand damages if we are answerable for the impossibility. However, Customer's claim to damages shall be limited to 10% of the value of the part of the delivery which cannot be put into purposeful operation as a result of the impossibility. This limitation shall also apply to the extent that there is mandatory liability in cases of malice aforethought, gross negligence and injury to life, limb and health; an amendment of the onus of proof to Customer's detriment is not connected herewith. Customer's right to withdrawal from the contract shall be unaffected.
- If unforeseen incidents considerably amend the economic significance or the contents of the delivery and have a considerable effect on our operations, the contract shall be adapted accordingly in good faith. To the extent that this is not economically justifiable, the right to withdraw from the contract shall accrue to us. We shall notify Customer thereof forthwith, even in cases in which an extension of the delivery period has been agreed with Customer to start with.

## XII. Place of performance; place of jurisdiction

- Place of performance shall be Knittlingen.
- Exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Maulbronn. This shall also apply for proceedings in connection with documents, cheques or bills of exchange. However, we shall also be entitled to sue at headquarters at our option.

## XIII. Applicable law, partial ineffectivity

- These business relationships and the legal relationships between Customer and ourselves shall be governed by the law of the Federal Republic of Germany, excluding standardised international purchase law.
- If a provision is or becomes ineffective within the framework of other agreements, the effectivity of any other provision or agreement shall not be affected.

## XIV. Data storage

The data occurring in connection with the contractual relationship may be stored by us.

## XV. Terms on Export Control

- Compliance with Export Control Regulations
  - If Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by KIESELMANN or works and services (including all kinds of technical support) performed by KIESELMANN to a third party worldwide Purchaser shall comply with all applicable national and international (re-) export control regulations.
  - If required to conduct export control checks, Purchaser, upon request by KIESELMANN, shall promptly provide KIESELMANN with all information pertaining to particular end customer, destination and intended use of goods, works and services provided by KIESELMANN, as well as any export control restrictions existing.
- Reservation Clause  
KIESELMANN's obligation to fulfill this agreement is subject to the proviso that the fulfillment is not prevented by any impediments arising out of national and international foreign trade and customs requirements or any embargos and/or other sanctions.