

General Terms and Conditions of Sale and Payment of the Kesseböhmer Group

Last Revised 05.2018

I. Scope of Application

We conclude any and all contracts solely and exclusively on the basis of the following Terms and Conditions. Deviations from the Terms and Conditions below shall not be effective unless we have confirmed their application in writing. Customer's terms and conditions of business, which we have not accepted in writing shall not be binding on us even if we have not expressly objected to their application. These Terms and Conditions also apply to all future orders even if their application is not expressly agreed again. The written form within the sense of these Terms and Conditions shall be deemed observed by e-mails and fax letters.

II. Offers

1. Our offers are subject to change. Any orders placed with us do not become binding with respect to type and scope until we have issued an order confirmation. Modifications of and amendments to any order shall not be binding unless in writing.
2. Any and all documents which are attached to our orders such as pictures and drawings, weight, colour and dimension data, samples and information provided in brochures are only approximately authoritative unless we have expressly designated them as binding. We reserve rights of title and copyright to any and all documents sent with offers or otherwise handed over to the Customer. Any such documents may not be passed on, reproduced or disclosed to third parties without our consent.
3. Support services (e.g., installation, training or advising) will be billed separately on a time and material basis.

III. Prices and Terms and Conditions of Payment

1. Unless otherwise indicated in our order confirmation, prices are shown ex works, excluding packaging and the VAT applicable on the day of the issue of the invoice. Changes in material prices and wages, which occur four months after conclusion of the contract entitle us to adjust prices accordingly. The deduction of cash discounts is subject to separate written agreement.
2. Unless otherwise indicated in our order confirmation, the purchase price is due and payable without deductions within 30 days. In the event of default of payment, statutory regulations apply.
3. If circumstances become discernible after the conclusion of the contract that our payment claim is in jeopardy due to the lack of the Customer's ability to perform his obligations (e.g., in the event of non-compliance with terms and conditions of payments), we may refuse to carry out our performance and may set a deadline for the Customer for delivery versus payment or provision of security. In the event of the fruitless lapse of the deadline, any and all unpaid claims shall become due and payable and we are entitled to cancel the contract and request payment of damage compensation. Setting of a deadline is not necessary if and when the Customer definitely refuses payment or his inability to perform his obligations is obvious.
4. Cheques and bills of exchange are accepted only on account of performance. Any related costs shall be borne by the Customer. The offsetting of counterclaims or the assertion of rights of retention is permissible only if and when the Customer's claims are undisputed or have been finally determined by a court of law.

IV. Moulds and Tools

We retain ownership of any and all moulds and tools manufactured on our behalf and which we use to manufacture products for the Customer even if and when the Customer has paid for them, in whole or in part. However, said moulds and tools will be used solely and exclusively for this Customer's orders, provided that he fulfils his payment and acceptance obligations. Our obligation to maintain the tools and moulds shall lapse two years after the last delivery of products produced using the mould or tool.

V. Delivery Period

1. The commencement of the delivery period stipulated in our order confirmation or otherwise agreed with the Customer is subject to the clarification of any and all technical questions and the proper performance of the Customer's obligations in good time (e.g., agreed advance payments, handover of required documents, adequate provision of materials in good time). If the prerequisites are not fulfilled in good time, the period shall be extended for the duration of the delay. The above provisions are without prejudice for the defence of non-performance of contract. Partial deliveries in a scope reasonable for the Customer and deviation in order quantities of +/-10% are permissible. The delivery period has been properly observed if the report or readiness for dispatch is in due time.
2. If and when we are prevented from the performance of our obligations by unforeseen, unusual circumstances which we cannot avert despite reasonable diligence on our part (e.g., operational disruption, strike, lock-out, official intervention, delays in the supply of essential raw and construction materials), the delivery period shall be extended (provided that the delivery or service does not become impossible to perform) by the duration of the hindrance, regardless of whether said circumstances occur in our plant or in our supplier's plant. If and when the delivery or service becomes impossible to perform, we will be released from our performance obligation. If and when the delivery period is extended by more than two months, the Customer is entitled to cancel the contract. The assertion of any and all damage compensation claims is excluded.
3. We are liable in accordance with statutory provisions if and when the default of performance is the consequence of a wilful or grossly negligent breach of contract for which we are accountable; any culpability on the part of our representatives or vicarious agents shall be attributed to us. If and when the default of performance is not the consequence of a wilful breach of contract for which we are accountable, our liability for damage compensation shall be limited to 0.5% of the value of that part of the performance which we have not carried out within a reasonable subsequent period which has been set for us for each and every full week of default, but to a maximum of 5% in the aggregate. In any and every case, our liability for damage compensation shall be limited to the foreseeable damage or loss which typically occurs.
4. If and when the Customer is in default of acceptance, or if he is culpably in breach of any other cooperation obligations, we are entitled to request compensation for any and all losses or damage, including additional expenses, which result for us as a consequence. The risk of accidental loss or accidental worsening of the merchandise shall transfer to the Customer at the moment in which the latter is in default of acceptance or default of the debtor.
5. If and when the dispatch or delivery is delayed at the Customer's request, we may, after submitting notification of readiness for shipping, charge a storage fee in the amount of 0.5% of the net invoice value for each and every month or part thereof, but not exceeding 5% in the aggregate. The above provisions are without prejudice for assertion of more extensive claims.

VI. Liability for Defects

1. We must be notified without delay in writing and in understandable form, including any information useful for ascertaining the defects, of any defects which are determined.
2. In the event of legitimate complaint of defects, we have the right, at our discretion, to perform subsequent improvement or substitute delivery within a reasonable period of no less than 14 days. If the subsequent performance fails, the Customer is entitled, at his discretion, to rescind the contract or request reduction of the price.

3. We are liable in accordance with statutory provisions if and when the Customer asserts damage compensation claims based on wilfulness or gross negligence, including wilfulness or gross negligence of our representatives or vicarious agents, or on the breach of major contractual obligations.

The above provisions are without prejudice for liability resulting from culpable injury to life, body or health; this provision also applies in the event of mandatory liability pursuant to the Product Liability Act.

VII. Liability Limitations

1. Any and all liability for damage compensation more extensive than that provided in Clause VI is excluded, regardless of the legal nature of the asserted claim. The above provision applies in particular to damage compensation claims based on culpa in contrahendo or on other breaches of obligation or to claims for compensation of material damage due to actions in tort pursuant to Section 823 BGB (German Civil Code). If and when we are liable for subsequent damage or loss due to defects (solely in cases of wilfulness, gross negligence and breach of major contractual obligations), the liability shall be limited to the foreseeable damage or loss which typically occurs.
2. The limitation period for claims due to defects is 12 months, commencing as of the transfer of risk. The above provision is without prejudice for the limitation period in the event of delivery recourse pursuant to Sections 478, 479 BGB. The reduction of the limitation period shall not apply if and when we are culpable of gross negligence or in the event of injury to body or health or the loss of life of the Customer or his vicarious agents which is attributable to us.
3. If and when our liability for damage compensation is excluded or limited, the exclusion or limitation also applies to the personal liability for damage compensation of our employees, representatives and vicarious agents.
4. Unless otherwise specified in these Terms and Conditions, the statutory provisions apply regarding the customer's rights in the case of quality defects and defects in title (including incorrect and short delivery as well as incorrect installation or inadequate assembly instructions). In all cases, the statutory right of recourse against the supplier remains unaffected when unprocessed goods are supplied to an end-consumer, even if the end-consumer has processed them further (§ 478 German Civil Code (BGB)). Claims arising from supplier recourse are excluded if the customer or another entrepreneur has processed the defective goods, e.g., by incorporation into another product.

VIII. Retention of title

1. The delivered goods shall remain our property until such time as the agreed price has been paid, including all of our receivables from the business relationship and future receivables, and any drafts and cheques, which have been cashed in. The retention of title secures the balance claim if there is a current account relationship between the customer and us.
2. If the client pays by cheque and we issue a refinance bill for this, then the retention of title shall expire only after it becomes impossible for claims to be made against us from this bill.
3. Within the scope of the proper conduct of business, the customer shall be entitled to resell the goods. The customer has already assigned his claim from the resale of the conditional merchandise to us, in particular, the right to payment from his customers. We hereby accept this assignment. The customer shall be obliged to inform his debtors of the assignment if we request it. We shall be informed of the claims and names of the customer's debtors.
4. The customer shall be entitled to collect the claims resulting from the resale. In the event of a delay in payment or if we become aware of circumstances that are, according to the best business estimation, suited to lower the creditworthiness of the customer we shall be entitled to revoke the collection right.
5. For us as the manufacturer, the machining and processing of the conditional merchandise shall be carried out as defined in Section 950 of the German Civil Code (BGB). If the conditional merchandise is processed or mixed with other items that do not belong to us, we shall acquire joint ownership in the new item in proportion of the invoiced value of the conditional merchandise to the invoiced value of the other goods used at the time of processing or mixing.
6. The use of goods belonging to us as collateral is not permitted. In the event that third parties seize the conditional merchandise, in particular in the event of an attachment, the customer shall inform the third party of our title retention and inform us immediately while sending us a copy of the attachment order.
7. In case of a breach of contract by the customer, we shall be entitled to withdraw from the contract and demand that the conditional merchandise be returned. This shall not affect any damage claims. In the event of a lack of performance by the customer, we shall be entitled to revoke reselling rights or the right to further processing.
8. If the realizable value of the provided collateral exceeds our claims by more than 20 %, then we agree, upon request by the customer and at our discretion, to transfer back or release the collateral.

IX. Intellectual Property Rights

1. If and when we are required to manufacture or produce merchandise in accordance with drawings, models or samples or by using parts supplied to us by the Customer, the Customer hereby warrants that such manufacture will not violate any third-party intellectual property rights. The Customer shall indemnify and hold us harmless from and against any and all third-party claims and compensate us for any loss or damage we may suffer. If and when we are prohibited from carrying out the production or delivery by a third party who refers to his intellectual property rights, we may suspend the work without previously reviewing the legal situation and request compensation for expenses and damage or loss from the Customer. Upon the Customer's request, we will return at his expense any drawing and models which have not resulted in an order. We are entitled to destroy such documents if and when the Customer does not request their return within three months after submission of the offer.
2. The Customer acknowledges the industrial property rights for the delivered merchandise and any drawings and documents we have handed over to which we are entitled; he will respect said rights and, in consultation with us, defend them against third parties.

X. Final Provisions

1. Place of performance for any and all obligations arising from the contractual relationship is the headquarters of our company.
2. If and when the Customer is a merchant, a legal entity under public law or a public-law special fund, any and all disputes arising from the contractual relationship shall be subject to the jurisdiction of the courts at the company's headquarters or of the courts at the site of the branch conducting the delivery. However, we are entitled at our discretion to bring action at the courts having jurisdiction at the Customer's headquarters. Proper law of the contract shall be solely German law, excluding application of the UN Convention on the International Sale of Goods (CISG).
3. Should one of the above terms and conditions be legally invalid or be declared legally invalid, the validity of the remaining terms and conditions shall not be affected. The statutory regulation shall apply in lieu of the term or condition, which is invalid or declared invalid.