

# General sales terms and delivery conditions

## Georg Koinzer GmbH & Co KG

### **1. General**

- 1.1. All our offers, deliveries and performances are based exclusively on these general sales terms and delivery conditions. We will not accept any buyer's terms and conditions contrary to, or deviating from, our sales and delivery terms unless expressly agreed by us in writing. Our sales and delivery terms shall apply also when we make a delivery to the buyer although being aware of the fact that some of the terms or conditions of the buyer are contrary to, or deviate from, our sales and delivery terms. The buyer must not assert rights neither from his terms of sale and delivery nor from his commercial letters.
- 1.2. Our general sales terms and delivery conditions are part of all our contracts of deliveries and services. It does not matter whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). In case of deviations from our general sales terms and delivery conditions in an individual contract the conditions in the individual contract have priority. An individual contract must be in written form or written acceptance from our side to deviating conditions.
- 1.3. Our sales and delivery terms shall only apply to companies (§14 BGB), legal persons under public law or special funds under public law in terms of §310 paragraph 1 BGB.
- 1.4. Our sales and delivery terms shall also apply to all future business transactions with the buyer, even if they are not separately agreed once again. Our conditions are accepted when placing the order or accepting the delivery.
- 1.5. Legally relevant declarations and notifications by the buyer with regard to the contract (e.g. notifications of defects, setting of deadlines, withdrawal or reduction) must be made in writing (e.g. e-mail or letter).
- 1.6. The German version of the general sales terms and delivery conditions is applicable in case of contradictory or ambiguous between the German and English version.

### **2. Proposal /conclusion of a contract/ contract documents**

- 2.1. Proposals, specifications for tenders and related declarations made by us before the placement of an order are made without commitment and can't be made accessible for third parties. Our offers are subject to change.
- 2.2. A contract shall only be concluded after a written order confirmation has been received by the buyer. Unwritten agreements or orders are only binding after a written confirmation. The same applies to agreements made by our agents and sales representatives.
- 2.3. We reserve the intellectual property rights for figures, illustrations, dimensioned sketches and other documents in connection with this contract which have been handed over to the customer or disclosed to him. They must not be made at the disposal of third parties and the buyer must not hand them on to third parties without our explicit consent. The buyer has to return the documents completely upon our request and to destroy all copies eventually made if they are not used anymore in the ordinary course of business or if the negotiations haven't come to a signing of a contract.
- 2.4. We are not obligated to review the buyers documents and data of their correctness. We are not liable for errors, faults or omissions.
- 2.5. Our specifications in offers and order confirmations (e.g. weights, measurements, load capacity, tolerances and technical data) as well as related figures and illustrations are just approximately applicable if the precise conformity is not a precondition for the application of the product.

### **3. Prices**

- 3.1. Unless stipulated otherwise in the confirmation of order our prices are in Euro "ex works"
- 3.2. The statutory VAT is not included in our prices. It will be included in the invoice as a separate item at its statutory amount on the date of invoicing.
- 3.3. If cost factors like energy, production and operating material, wages etc. are rising significantly in the time between the conclusion of the contract and the intended delivery date we are entitled to agree on new prices with the buyer. If it doesn't come to an agreement we are legitimated to withdraw from the contract.
- 3.4. Unless stipulated otherwise the Buyer shall bear the costs for packing and shipment. All taxes, customs, optional transport insurance and other fees have to be paid by the buyer.

### **4. Terms of payment**

- 4.1. Payment of our invoice shall only be conducted on the bank account mentioned on the bottom of our invoice.
- 4.2. If not stated otherwise the payment of our invoice amounts shall be effected within 10 days of the invoice date with 2% discount or net cash within 30 days. We are entitled to make a delivery in whole or in part only against advance payment stated in the order confirmation.
- 4.3. If the customer should fail to pay our invoices within the payment deadline, we shall charge default in-

terest at a rate according to §288 BGB over the base rate of the Deutsche Bundesbank per year.

- 4.4. The payment is due without the sending of reminders. If the buyer is in defaults he must pay reminder fees amounting to € 4. -- for every written reminder.
- 4.5. The withholding of payments or offsetting of potential counterclaims is not permissible other than in the case of recognised or legally determined counterclaims.
- 4.6. If it is foreseeable after conclusion of the contract that our claim to payment of the purchase price is jeopardized due to the buyer's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if necessary after setting a deadline, to withdraw from the contract (§ 321 BGB). In the case of contracts for which the manufacture of non-fungible items (custom-made products) is owed, we may declare our withdrawal immediately. The statutory provisions on the dispensability of setting a deadline shall remain unaffected in this respect.

## **5. Delivery time /delivery obligations / delivery**

- 5.1. Delivery times are only approximate times and are specified in the order confirmation. Fixed dates must be confirmed separately. The delivery time begins with the dispatch of the order confirmation and is met when the goods have left the site until the end of the delivery time.
- 5.2. Observance of the delivery time requires the receipt of all necessary documents especially specifications in time from the buyer and compliance with the payment conditions and other obligations of the buyer.
- 5.3. Exceeding the delivery times does not authorize the buyer to withdraw from the contract or to claim damages for non-performance.
- 5.4. We are not liable for supply and service disorders caused by force majeure e.g. natural disasters or war or by other unforeseen events we are not responsible for (e.g. breakdowns and adjustment work, transport delays, strike and lockouts, lack of raw or auxiliary material or manpower, official directives or the wrong or delayed delivery of material). If such events complicate or make the delivery impossible and the interference is not time limited we are legitimated to withdraw from the contract. Temporary interferences extend delivery time of the time of interference plus an appropriate initial time.
- 5.5. We are only obliged to deliver the goods after the receipt of a written order confirmation.
- 5.6. Partial deliveries are permitted.
- 5.7. If the buyer becomes unworthy of credit or defaults in payment or if he suffers a financial collapse we shall have the right to withdraw from the contract. This also applies to orders which have been confirmed by us in writing, but which, however, have not yet been delivered. Compensation of the buyer is excepted in such cases.

## **6. Dispatch**

- 6.1. Unless agreed otherwise delivery shall be affected "ex works".
- 6.2. If the dispatched goods are handed over to the buyer or to the carrier the risk shall pass to the buyer. If the dispatch is delayed due to circumstances for which the buyer is responsible, the risk passes to the buyer from the day when the goods are ready for dispatch. The notified readiness for shipment shall be evaluated equally with the completion.
- 6.3. Insurances are only contracted on demand of the buyer at his own expense in good time.
- 6.4. In case we are responsible for the transport/dispatch of the goods we can choose freely the transportation route, means of transportation, forwarding company and freight carrier.
- 6.5. If the buyer doesn't accept the delivery, without any breach of duty from our side, in an appropriate period of time which is announced in a prior written acceptance claim, we can completely or partial withdraw from the contract. We have the right for compensation for damages caused by this default.

## **7. Reservation of title**

- 7.1. All delivered goods remain our property up to the complete fulfilment of all commitments of the buyer towards us, now or in future, (including all balance claims of current account). The buyer is obliged to treat the purchased item with care as long as ownership has not yet been transferred to him. The provision of cheques is not considered as payment as long as the cheques have not been paid. The same shall apply to the handing over of rediscounting securities.
- 7.2. Until the secured claims have been paid in full, the goods subject to retention of title may neither be pledged to third parties nor assigned as security. The buyer must inform us immediately in writing in the event that an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. seizures).
- 7.3. We shall retain title to the goods. Processing or transformation shall always be performed for us as manufacturer, but without obligation for us. If our (co-) ownership shall lapse by reason of adjunction, it is already now agreed that the (co-)ownership of the buyer in the unitary physical object shall pass to us in the prorated value (value as per invoice). The purchaser shall hold our (common) property free of charge. Goods in which we have (co-) ownership shall be called conditional goods in the following.

- 7.4. The buyer is entitled to process and alienate the conditional goods in the ordinary course of business as long as he is not in default. Pledging or security transfers of ownership are not permissible. The buyer shall reserve his or her conditional title to the goods to which title is reserved vis-à-vis his or her customers. If the buyer resells the goods to a third party our title to the goods will lapse if the third party effects payment to the buyer or if the buyer has already effected payment to us. The buyer hereby assigns, for security purposes, all the claims resulting from or arising out of the sale or other legal courses (insurance, tort) of and regarding the retention merchandise. We entitle the buyer to collect the claims or receivables assigned to us in his own name and for his own account. Upon our request the purchaser shall disclose the assignment and furnish the necessary information and documents.
- 7.5. We undertake to transfer the title to the goods subject to retention of title to the buyer, insofar as the agreed purchase price for the goods has been paid and any requirement of securities for the agreed current account proviso does not exist anymore. Our requirement for securities shall be void as soon as the value of the goods subject to retention of title exceeds the secured claims by more than 25%. If the assigned claims exceed the value of our claims by more than 25%, the buyer shall be entitled to the excess. It is our decision which of the securities are to be released upon the buyer's request.
- 7.6. In the event of the seizure of the conditional goods by third parties, the purchaser shall indicate our title and inform us immediately. The customer shall bear all costs and damages.
- 7.7. In the case of conduct in breach of the agreement on the part of the buyer - in particular default in payment - we shall be entitled to take back the conditional goods or to demand the assignment of the buyer's rights of possession to third parties. The taking back as well as the levy of execution of the conditional goods by us shall not constitute a cancellation of the agreement, provided that the instalment law does not apply.

## **8. Warranty**

- 8.1. The buyer must inspect the supplied goods for defects, correctness and completeness without delay after their receipt.
- 8.2. If the buyer finds out that the inspected goods do not correspond with the agreed condition of the goods or that they have defects, he must promptly notify the defects (§ 377 HGB (German Commercial Code)). We must receive the notice of defects no later than 10 days after the arrival of the goods.
- 8.3. The goods produced by us are only made of first class materials and with the highest possible precision. Their durability totally depends on the circumstances for which the consumers are responsible, that means inspection and elimination. The goods are moving parts for machines. Their assembly, setup, load and treatment are very important for the durability. A notice of defects can only be acknowledged if it can be proven that the delivered goods are defective. For the delivered goods the standard dimension tolerances are kept.
- 8.4. If our goods are defective we can choose between change, reduction or compensation of equal goods. The buyer shall grant us the necessary time and opportunity for the subsequent performance to be rendered. In case we ask for, the buyer must hand over to us the item for which he has asserted a defect for inspection purposes. In the event that we make a subsequent delivery of a defect-free item, the buyer must return the defective item to us in accordance with the statutory provisions. However, the buyer is not entitled to a claim for return. The buyer is only entitled to change or reduce the goods if our replacement delivery failed. For consequential damages or for damages which result from the breach of our duty we are only liable in the case of gross negligence.
- 8.5. Unless we are contractually obliged to do so, subsequent performance shall not include the dismantling, removal or uninstallation of the defective item or the installation, fitting or installation of a defect-free item. This shall not affect the buyer's claims for compensation for "installation and removal costs".
- 8.6. The buyer shall have the right to remedy the defect himself and to demand reimbursement of the expenses objectively necessary for this if there is an urgent case (e.g. in the event of danger to operational safety or to prevent disproportional damage). The buyer must inform us immediately in the event of self-performance. In the event that we would be entitled to refuse subsequent performance in accordance with the statutory provisions, the buyer shall have no right to self-performance.
- 8.7. Any warranty claims are excluded if the buyer has detected or if he could have detected the defect at the proper inspection of the goods.
- 8.8. The buyer has to replace the expenses emerged from the claim if the buyer has notified a defect but no defect was determinable for which we are responsible.

## **9. Cancellation**

- 9.1. Even if the legal obligations are basically fulfilled there shall be no right for the buyer to cancel the contract because of a breach of duty which does not constitute a defect of the delivered goods, if we are not responsible for this breach of duty.
- 9.2. If the buyer cancel the contract unauthorized we are entitled to request replacement for the costs of executing the contract plus 15% of the order amount as loss of profits.

## **10. Place of delivery, jurisdiction, miscellaneous**

- 10.1. Place of delivery and place of jurisdiction is for both parties Bad Hersfeld / Hessen. However we are authorized to start legal proceedings at the domicile of the buyer instead.
- 10.2. These conditions will be construed in accordance with German law, except the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 10.3. The buyer take note of data record on our part from the contractual relationship according to GDPR (General Data Protection Regulation) for data processing and that we are entitled to pass data to third-parties (e.g. forwarding companies) if this is necessary for the fulfilment of the contract.
- 10.4. The inoperativeness of one or several clauses of said provisions does not affect the validity of the remaining provisions. An invalid provision is to be replaced by a valid provision that approximates the commercial purpose of the agreement and the presumed intent of the parties involved. A gap in the clauses should be filled with a valid provision according to the commercial purpose of the agreement that would have been agreed upon if the gap has been known.

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