

Generals Sales and Delivery Terms and Conditions of Kreyenhop & Kluge GmbH & Co. KG

- Kreyenhop & Kluge GmbH & Co. KG · P. O. Box 12 63 · 28872 Oyten, Germany · Version: September 2011 (09/2011, Rev.04) -

I. Scope

- Unless agreed otherwise below or else, all quotations and agreements are based on the terms and conditions of the Waren-Verein of Hamburger Börse e.V.
 - the terms on quality assessment and pricing of the Waren-Verein of Hamburger Börse e.V.
- Provided that the word "Hamburg" is analogously replaced by the word "Bremen" anywhere. Supplementary or deviating terms and conditions of the Customer shall only apply if we have expressly agreed them. Such agreement shall be in writing.
- Our terms and conditions only apply to persons who exercise their commercial or independent professional activity when concluding a legal transaction with us (entrepreneurs for the purpose of § 14 German Civil Code).

II. Conclusion of Contract, Condition of our Goods

- Our quotations are subject to confirmation and non-binding. A contract with us will only come into effect if and when the customer receives our written order acknowledgement, or upon our starting delivery or commencing with our services. In case of floating and unloading batches, the timely and undamaged arrival of goods, as well as self-supply with the right quantities and qualities shall remain reserved.
- The contract contents shall be governed by our quotation, our written order confirmation as well as these terms and conditions. Any subsequent modifications, amendments or collateral agreements must be in writing.
- Any quantities are "approximate" amounts. We are entitled to supply a difference of up to 10% more or less. Partial deliveries are allowed.
- The agreed condition of our goods shall only include such qualities and characteristics that are specified in our quotation or in our order confirmation.
- Any statements on the condition and shelf life of the goods which serve to grant the Customer additional rights irrespective of its legal claims in case of guarantee claims, shall only constitute a guarantee for the condition and shelf life for the purpose of § 443 German Civil Code if we have expressly called it a guarantee.

III. Delivery, Transfer of Risk

- Our deliveries are ex works (Incoterms 2010).
- The risk of accidental loss or accidental damage of the goods shall pass to the Customer as soon as the goods have left our warehouse. If the goods are ready for shipment and the dispatch is delayed for reasons beyond our control, the risk shall pass.

IV. Delivery Times, Delivery Obstructions, Rights of Withdrawal

- Delivery and service times shall only be binding if we have expressly confirmed them as binding. The confirmation must be in writing. Delivery times represent the dispatch ex works, in case of free deliveries the day of goods receipt at the Customer.
- We will only be in default with our delivery or service obligation upon expiry of an adequate period of grace which has been set to us.
- Any cases of force majeure (unforeseen circumstances and events beyond our control which could not have been avoided with the due diligence of a prudent businessperson, such as industrial conflicts, war, fire, transport obstructions, raw material shortage, official measures) shall interrupt the execution of our delivery obligation for the time and scope of their effect, even if we are already in delay of delivery.
- Provided that we have concluded a congruent coverage transaction with our pre-supplier in good time, the delivery dates stated by us are subject to timely and proper self-supply.
- In cases of no. IV. 3 and 4, we are entitled to withdraw from the contract, provided that we have immediately informed the Customer on the occurrence of force majeure in the cases of no. IV. 3, or on the delayed or improper delivery in the cases of no. IV. 4, and reimburse the Customer for any return services rendered. We expressly undertake to provide immediate information and reimbursement according to sentence 1 to the Customer.
- If delivery should be delayed for reasons within our control, we shall exclusively be liable according to the statutory provisions.
- Any unreserved acceptance of delayed deliveries or services shall be deemed as waiver by the Customer of its contractual or statutory claims, unless it protests against the delay within 14 working days after delivery. We undertake to point out this consequence to the Customer separately on the delivery note.
- If the purchased goods are to be delivered on Customer's call order, the Customer shall accept the goods at our request not later than 6 (six) months after conclusion of contract. If the Customer does not meet or fully meet the request for acceptance, we are entitled after expiry of five working days after expiry of the deadline under sentence 1 to either withdraw from the contract, or charge the goods at immediate maturity. Any further statutory rights, in particular on self-help sale, shall remain unaffected.

V. Prices and Payment

- Our prices are net prices free Customer's address, and do not include VAT. They do, however, include packaging (except for loan or exchange packaging), unless expressly agreed otherwise with the Customer. Any price agreements deviating from our price lists are to be made in writing.
- We reserve the right to modify our prices accordingly, if after conclusion of the contract our acquisition prices should rise for reasons beyond our control, and if we inform the Customer about the price increase in good time before delivery.
- Our invoices are due for payment without any deduction within 14 days after we have handed the goods over to the Customer or have delivered them to its place of destination and the Customer has received the invoice. Any discount, check or exchange costs are at the Customer's expense. Payment is considered received as soon as it has been credited to our account, or the cash payment has been received by us.
- If foreign exchange rates for the foreign currency forming the basis of the purchase contract are higher on the day of delivery than on the day of conclusion of contract, we are entitled to increase the purchase price correspondingly.
- If after conclusion of contract any taxes, duties, freights, fees or other expenses of any kind are increased or introduced without our participation, which would have an impact on the price of goods, the parties shall negotiate an according increase of the purchase price at our request. If no agreement can be reached within 30 days after notification of the request, we are entitled to withdraw from the contract.
- In case of delayed payment, the Customer is obligated to pay interest in the amount of 8 percentage points above the base interest rate of the European Central Bank. The assertion of any further damages caused by delay shall remain unaffected.
- Our claims are immediately due if the Purchaser has defaulted payment of any invoice, or if facts arise which indicate a material deterioration of the Customer's financial situation. In this case, we are entitled at our discretion to demand cash payments before delivery of the goods for any outstanding deliveries, or to withdraw from the contract.
- The Customer may only charge up against undisputed or legally established claims. This shall also apply for the assertion of rights of retention.
- Any assignment of claims against us requires our approval.

VI. Rights and Obligations of the Customer in Case of Defects

- Any defects detected upon delivery must immediately be protested against. Visible defects must immediately be protested against by fax or email (sending is sufficient), in case of perishable goods with a best before date of less than one week after delivery within two working days and for all other goods within 10 working days after delivery. The latter deadline also applies for a faulty barcode. Defects which are not visible even in case of proper examination of goods, must be indicated by fax or email (sending is sufficient) immediately upon their identification in the regular course of business. The Customer may not quote any defects that have not been protested against in time.
- The Customer may only assert claims for delivery of incorrect quantities if the incorrect quantity has immediately been protested against upon takeover and recorded in writing in the delivery note or any other freight document.
- In case of justified and timely notice of defects, the Customer shall be entitled to the rights in cases of defects according to the statutory provisions, however, provided that:

- If the goods are defective, the Customer's claims shall initially be restricted to a right of supplementary performance. This does not apply if the supplementary performance is unacceptable for the Customer. We are entitled to choose between rectification and additional delivery. If supplementary performance should fail twice or if we refuse such performance, the Customer may reduce the purchase price or withdraw from the contract.
 - The Customer is not entitled to withdraw from the contract if the defect is marginal.
 - For any claims for damages, section VII shall apply.
 - If only some of several sold goods or only individual parts of a sold item are defective, any right of withdrawal of the Customer shall be restricted to the defective goods or the defective part. This does not apply if the defective goods or the defective part may not be separated from the remaining goods or parts without damage or functional losses, or if this is unreasonable for the Customer. The reasons for unreasonableness are to be demonstrated by the Customer.
- Before further processing or resale of objected goods, we must be granted the opportunity to verify the objection.
 - In case of sale of floating or unloading batches, the contractual partner shall accept the tendered goods even if they have been objected, and effect payment in the agreed form.

VII. Limitation of Liability, Exclusion of Withdrawal

- According to the Product Liability Act, we assume liability without limitations for any intentional damages, fraudulent concealment of defects, for damages due to grossly negligent violation of a fundamental contractual obligation, as well as damages from any injury to life, body or health. To the same extent we will also be liable in case of guarantee claims.
- For any damage resulting from gross negligence not mentioned under section 1, we will assume liability which is limited to the replacement of the foreseeable damage typical for this kind of contract. Also in case of any breach of fundamental contractual obligations resulting from slight negligence, we will assume liability which is limited to the replacement of the foreseeable damage typical for this kind of contract.
- With the exception of the cases mentioned under 1 and 2, we will not assume any liability for damages resulting from slight negligence.
- The limitations and exclusions of liability set forth above shall also apply for our bodies, auxiliary persons and/or vicarious agents.
- In case of breaches of duty beyond our control, which do not represent any defect of goods, the Customer shall not be entitled to withdraw from the contract.

VIII. Retention of Title

- The goods will remain our exclusive property until settlement of all claims (including all receivables from current accounts), that we are or will be entitled to from any legal basis against the Customer.
- The processing or conversion of our goods by the Customer shall always be effected for us. If the goods are processed, converted, inseparably compounded or joined with any other items that are not our property, we will obtain joint ownership of the new item in the proportion of the value of our goods to the value to the processed item at the time of processing, conversion, amalgamation or joining. If the other item is to be regarded as main item, it is agreed with immediate effect that the Customer shall assign pro-rata joint ownership to us, which we accept. The Customer shall keep our (joint) property free of charge for us. The goods resulting from processing shall be subject to the same provisions as our conditionally delivered goods.
- The Customer is entitled to process and sell the goods subject to reservation of title in the proper course of business, provided that it does not default its payment obligations against us. Any pledge or transfer by way of security is inadmissible. The Customer shall assign to us and we will accept with immediate effect any claims resulting from the resale of goods (including all receivables from the current account), insurance claims as well as claims against third parties due to damage, destruction, theft or loss of the goods. If we are only entitled to joint ownership of the goods subject to reservation of title, the advance assignment shall be restricted to the portion of the claim which corresponds to the share of our joint ownership (based on the invoice value). In case of resale of the goods, the Customer shall reserve ownership of the goods subject to reservation of title against its purchasers until full settlement of the purchase price. The Customer is not entitled to resell the goods to any third party if the purchase price claim from the resale is subject to any prohibition of assignment.
- We revocably authorize the Customer to collect the claims assigned to us for its own account on its own behalf. This collection authority may be revoked if the Customer does not duly meet its payment obligations against us, or if our claims seem to be jeopardized by lack of performance of the Customer. Upon credit of the sales revenue at the Customer, our claims shall become due for immediate payment and are payable by immediate bank transfer. On demand, the Customer shall inform the debtors on the assigned claims. Any assignment of claims from the resale is inadmissible, unless it is an assignment by way of real factoring which is notified to us, and in which case the factoring revenue must at least correspond with the value of our secured claim. The Customer is obligated to disclose the assignment to the factor, and to point out our ownership. The factoring revenue is to be credited in the amount of our secured claim to one of our accounts. The Customer shall assign to us and we accept with immediate effect any payment claims against the factor obtained for the assignment, in the amount of the claim to be secured.
- In case of damage to our goods, the Customer shall in advance assign its claims against the insurance company where it has insured the goods against damages, as well as any claims against third parties, with immediate effect. We accept the assignment.
- The Customer is entitled to request us to release any claims to the extent that the value of our securities exceeds our claims to be secured by more than 10%. We shall select any claims to be released.

IX. Limitation Periods

- Any claims of the Customer resulting from defects of the goods shall prescribe in one year. Any claims of the Customer resulting from defects of the goods existing in a right in rem of third parties, which may result in a request for release of the goods, or in any other rights that may be registered in a property, shall prescribe in three years.
- Any other contractual claims of the Customer due to breaches of duty shall prescribe in one year. This shall not apply to Customer's rights to withdraw from the contract due to any breach of duty within our control.
- Claims of the Customer under any guarantee shall also prescribe in one year.
- Notwithstanding sections IX. 1-3, the statutory limitation periods shall apply for the following claims of the Customer:
 - claims for damages under a product liability, due to any loss from an injury to the life, the body or the health, or a fundamental breach of contract, as well as any other losses that are based on an intentional or grossly negligent breach of duty by us or our vicarious agents.
 - claims for reimbursement of expenses according to § 478 par. 2 German Civil Code, as well as
 - claims due to fraudulent concealment of a defect.
- Our claims against the Customer shall prescribe according to the statutory provision.

X. Applicable Law, Place of Performance, Legal Venue

- The contract shall be exclusively governed by German law.
- Place of performance, including for payments by the Customer, shall be our registered office, unless expressly agreed otherwise with the Customer. Any such agreement shall be made in writing.
- Sole legal venue for all disputes directly or indirectly arising from the contractual relationship shall be Bremen. However, we shall also be entitled to sue the Customer at its general legal venue. This also applies for cross-border deliveries.

Customer ID

Name

Street

Owner

ZIP, City, Country

Date, seal and signature