

General conditions of sale

01.01.2021

§1 Scope

(1) These terms and conditions apply exclusively and only to companies within the meaning of § 310 paragraph 1 BGB. Opposing or deviating terms of the buyer's sale conditions, we hereby expressly reject, they will only be accepted, if agreed to in writing.
(2) These conditions of sale also apply to all future transactions with the customer, in so far as it is related to similar legal transactions.

§2 Quotations

Offers are binding for the duration of 6 weeks.

§3 Official Orders

Orders shall only be stated as accepted, if the supplier has confirmed the order in writing, this also applies to projects mediated by representatives.

§4 Submitted documents

For all, in connection with the award of the contract, provided documents to the buyer, such as calculations, drawings etc., KPM reserves ownership and copyright. These documents may not be made accessible to third parties, unless our explicitly written consent is given. If we do not accept the offer of the purchaser within the time limit of § 2, these documents must be returned to us immediately.

§5 Prices

(1) Unless otherwise agreed in writing, our prices are ex works, excluding packaging and plus VAT at the applicable rate. Packaging costs are invoiced separately.

(2) If there are more than 6 months between the contract and the agreed and / or actual delivery date, the final price of the seller is the one which was agreed on at the time of delivery or provision. Does the final price exceed the agreed amount by more than 10%, the buyer has the right to withdraw from the contract.

(3) Sales prices can only be seen as fixed prices, if the seller confirms them in writing. Agreed Prices (offers) lose their validity after 3 months, unless a longer period of validity is agreed upon in writing.

(4) Benefits which are not explicitly mentioned in the offer, but are necessary for execution of the order or run on request of the customer, be invoiced additionally.

(5) The prices are quoted for normal working hours and job performance. For overtime, night, Sunday and holiday hours, as well as for working under difficult conditions, the consequent allocations shall be added to the effective wage.

§6 Payment terms

(1) The payment of the purchase price must be made solely on the account mentioned overleaf. Deduction of discount is only permitted with special written agreement.

(2) All invoices are, unless expressly agreed later, due immediately after invoicing in a lump sum, without any deduction. In terms of an agreed later due date, we are entitled to charge the purchase price immediately with a notice for the customer, which states a significant reason. An important reason exists in particular, if we become aware of circumstances which in full consideration, cast doubt on the creditworthiness of the customer.

(3) As long as the buyer is in arrears with a liability, the delivery obligation of the seller rests. In case of default of the customer, we are entitled to make further deliveries or services provided by advance payments or security depends, to claim damages for non-performance or withdraw from the contract.

For exposures due to multiple deliveries or services, the clearing of cash benefits remains reserved for one or the other debt. Also, the customer cannot offset with any counterclaims that have not been expressly recognized by us or which have not been legally established.

(4) Payments shall only be considered as made, when we can dispose of the amount owed without loss.

§7 Delivery time

(1) The beginning of the delivery period presupposes the clarification of all technical questions and the timely and proper fulfillment of the obligations of the customer. The exception of the unfulfilled contract remains reserved.

(2) If the buyer is in default of acceptance or culpably violates other cooperation obligations, we are entitled to demand compensation for damages incurred by us, including any additional expenses. Further claims remain reserved. Should the above requirements are met, the risk of accidental loss or accidental deterioration of the goods passes to the purchaser, at the time in which it is in default of acceptance or payment.

(3) We shall be liable in the event of delayed delivery for each full week of delay in the context of lump-sum compensation in the amount of 3% of the contract value, but not more than a maximum of 15% of the delivery value.

(4) Further legal claims and rights of the purchaser due to a delay in delivery remain intact.

§8 Transfer of risk during delivery

If the goods are shipped to the Purchaser at the his request, the risk of accidental loss or accidental deterioration of the goods are transferred to the purchaser with the dispatch to the customer, at the latest when leaving the factory / warehouse. This applies regardless of whether the shipment of the goods occurs from the place of performance or who bears the freight costs.

§9 Retention of title

(1) We reserve title of the delivered goods until the full payment and until all claims from the contract were fulfilled. This also applies to all future deliveries, even if we do not always refer to this. We are entitled to withdraw the purchase item, if the purchaser breaches the contract.

(2) The purchaser is obliged, as long as the ownership has not been transferred to him, to treat the goods with care. In particular, he is obliged at his own expense, to insure against theft, fire and water damage at the new value (Note: only permitted in selling high-quality goods). If maintenance and inspection work is carried out, the Purchaser shall execute them at his own expense. As long as ownership has not been transferred, the purchaser must inform

us immediately in writing, if the delivered goods are seized or exposed to interferences of third parties. If the third party is unable to reimburse us for the judicial and extrajudicial costs of an action, pursuant to § 771 ZPO, the buyer is liable for the loss incurred by us.

(3) The purchaser is entitled to resell the reserved goods in the ordinary course of business. The claims of the buyer arising from the resale of the reserved goods, the ordering party already disposes to us in the amount of the mutually agreed final invoice amount (including VAT). This subrogation shall apply regardless of whether the purchase item has been resold without or after processing. The purchaser shall remain entitled, even after the subrogation, to collect the receivable. Our authority to collect the claim itself remains unaffected. However, we will not collect the claim, as long as the customer meets its payment obligations from the proceeds collected, is not in arrears and in particular no petition is filed for the commencement of insolvency proceedings or suspended payments. [Note: This clause does not apply if no extended retention of title is intentional.]

(4) Any processing or transformation of the goods by the customer shall always occur in the name and on behalf of us. In this case, the expectant right of the purchaser continues to the goods at the transformed item. If the purchased item is processed with other items not belonging to us, we acquire joint ownership of the new item in proportion of the objective value of our goods to the other processed items at the time of processing. The same applies to the case of mixing. If the mixing is done in such a way that the purchaser's item is to be regarded as the main item, is deemed agreed that the customer transfers proportional joint ownership and holds the sole ownership or co-ownership for us. To secure our claims against the purchaser, the purchaser also accedes to dispose claims to us, which accrued by the connection of the conditional commodity with a plot against a third party; we accept this assignment directly.

(5) We undertake to release the securities we are entitled to by the purchaser's request, if their value exceeds the secured claims by more than 20%.

§10 Warranty and complaints

(1) Warranty rights of the customer presuppose that his inspection- and complaint obligations under §§ 377 HGB were properly fulfilled. Should complaints arise despite the greatest attention, so obvious defects must be reported immediately in accordance with § 377 HGB, the latest within 14 days after receiving the goods and hidden defects have to be reported directly after the recognition of those, otherwise the goods shall be deemed approved,

(2) Claims for defects expire 12 months after delivery of the goods supplied by us to our customer (Note: in the sale of used goods, the warranty period can be completely ruled out). The above provisions do not apply if the law according to § 438 para. 1 no. 2 BGB (buildings and objects for buildings), § 479 paragraph 1 BGB (recourse) and § 634a paragraph 1 BGB (construction defects) prescribes mandatory longer deadlines. Before returning any goods, our consent must be obtained.

(3) If, despite exercise due care, the delivered goods contain a defect that already existed at the time of transfer of risk, we will, presupposed they were timely claimed, under our option repair or replace the goods. We must always be given the opportunity to remedy within a reasonable time limit.

(4) If the remedy fails, the purchaser may - notwithstanding any claims for damages - withdraw from the contract or reduce the remuneration. Compensation for wasted efforts may not be claimed by the purchaser.

(5) Warranty claims do not exist with only minor deviation from the agreed quality, of only minor impairment of usefulness, of natural wear and deterioration and damage that, after the transfer of risk, arise from faulty or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable building area or due to special external influences which are not assumed under the contract. Improperly repairs or modifications made by the purchaser or a third party are excluded from any warranty claims for defects for these and the resulting consequences.

(6) Claims arising out of the necessary repair or replacement of goods, in particular transport, travel, labor and material costs, are excluded if the expenses increase, because the goods delivered by us were subsequently transported to a location other than the branch of the purchaser, unless the transfer corresponds to the intended use.

(7) Claims for recourse of the customer against us only exist insofar, as the purchaser has made no exceeding the mandatory statutory warranty claims agreements with its customers. For the right of recourse against the supplier also applies § 6 in accordance with this paragraph.

(8) Any further or other claims against us and our vicarious agents due to a defect than those regulated in this § 9 claims are excluded.

(9) In the case of fraudulent concealment of a defect or in the event of assumption of a guarantee for the quality of the goods at the time of transfer of risk within the meaning of § 444 BGB (declaration of the seller that the good is subject has a certain property in the time of risk transfer, and that the seller, regardless of fault will vouch for all consequences of their absence), the rights of the purchaser are exclusively in accordance with the statutory provisions.

§ 11 Reimbursement

(1) Claims for damages of any kind - for consulting errors, assembly errors, repair damages, maintenance errors, breach of contractual obligations, fault during the conclusion of the contract, tort - are excluded if intent or gross negligence on our part are not present.

In case of gross negligence or in cases where even without gross negligence, the liability may not be excluded or limited any further, in transactions with merchants, the liability shall always be limited in all cases to the foreseeable time the contract was concluded.

§12 Partial deliveries

The customer is required to accept reasonable partial deliveries.

§13 Default of acceptance

In default of acceptance by the buyer, the seller is entitled to immediate resale of the goods. Price differences and any additional costs shall be borne by the buyer.

§14 Lien of business entrepreneur

The plant operator has a lien on his claim of the contract for the goods of the buyer (manufactured or repaired by plant operator), which come in his possession, due to production or for the purpose of repairs.

No later than 3 months after the pick-up request, the goods must be collected, otherwise there is no obligation for further storage and hence not any liability for negligent damage or destruction. A month before the deadline the customer must receive a notice that the good might be sold. The contractor is entitled to resell the object of repair after this period to cover its costs at fair value. Any surplus proceeds have to be reimbursed to the customer.

§15 Location of fulfillment and jurisdiction

Place of performance for the delivery of the respective dispatch of the goods and for payment is Essen. Jurisdiction is Essen.

§16 German Law

German law applies for the transaction.

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