

# General Terms and Conditions (Last Updated: March 2017)

## 1. General Information

- 1.1. Our deliveries, services and quotations are solely based on these terms and conditions. They also apply to all future business dealings with the purchaser insofar as they are legal transactions of a related kind.
- 1.2. Terms and conditions of the purchaser or third parties do not apply even if we do not object to them in every individual case. Even if we are referring to a letter containing or pointing to the terms and conditions of the purchaser or a third party, this does not constitute our agreement with the application of those terms and conditions.

## 2. Quotations and Contract Conclusion

- 2.1. Our quotations are subject to change and non-binding unless they are expressly indicated as binding or contain a specific acceptance period.
- 2.2. When the purchaser orders the goods we consider this to be a binding contract proposal. Unless the order specifies something else, we are entitled to accept this contract proposal within 14 calendar days after we have received it.
- 2.3. We will accept the assignment either in writing (e.g., by confirming the order) or by delivery.
- 2.4. Our information about the object of delivery or service (e.g., weight, dimensions, present utilisation worth, load capacity, tolerances, specifications) and its illustrations (e.g., drawings and figures) have only approximate authority unless their usability for the contractually intended purpose requires exact conformance. This information constitutes no guaranteed composition characteristics but serves to describe or identify the delivery or service. Deviations that are customary and deviations that are performed because of statutory regulations or constitute technical improvements, as well as the replacement of components by equivalent parts are permitted insofar as they do not impact its usability for the contractually intended purpose.
- 2.5. We retain ownership or copyrights to all the quotations and cost estimates we have provided as well as to drawings, figures, calculations, brochures, catalogues, models, tools and other documents and aids we have made available to the purchaser. The purchaser is not permitted to make these objects available to third parties as such; inform them about their content; publish them; use or copy them themselves or through third parties; unless we give our express consent. Upon our request, the purchaser is to return these objects to us in full and destroy any copies they may have made if they are no longer needed for the proper course of business or if negotiations fail to result in the conclusion of a contract. Excluded from the above is the storing of electronically provided data for customary data backup.

## 3. Delivery

- 3.1. Delivery dates and periods are generally non-binding. Binding delivery dates and periods must be expressly specified in the contract and agreed in writing. A binding delivery date is deemed kept if the goods left our factory on time; or, in case of agreed pick-up by the purchaser, from the time when we announced that the goods are ready for shipping.
- 3.2. The purchaser can withdraw from the contractual relationship without mutual offsetting if the delivery time and an appropriate extension are not met.
- 3.3. If we or our suppliers are unable to keep the delivery time because of events of force majeure, including strikes, lockouts, unavoidable problems when purchasing materials, unforeseeable business interruptions and other events we are not responsible for, the delivery time is extended by an appropriate period. If the delay is longer than three months, either contractual party has the right to withdraw from the contract.
- 3.4. If the purchaser's delivery acceptance is delayed, we are allowed to set off storage costs after one month of readiness for shipping. After an appropriate period for acceptance has lapsed, we are entitled to use the delivery in other ways and to deliver equivalent goods to the purchaser with a new delivery period. We are allowed to factor in price increases that have occurred in the meantime.

## 4. Pricing; Shipping; Liability for Transport Damage

- 4.1. Our prices are ex works, without packaging and installation, and exclude VAT. Our prices apply to the service and delivery scope listed in the order confirmations.
- 4.2. Special purchaser requests (e.g., delivery to an address other than their own, express delivery, special packaging, assignment of a certain haulier) are taken into account, if possible. Any extra costs incurred by the above are borne by the purchaser.
- 4.3. The risk transfers to the purchaser, independent of the transport costs agreement, when the goods are handed over to the carrier or to the purchaser.

## 5. Payments

- 5.1. If no agreement has been made, our invoice amounts are payable within eight (8) days with a 2% early payment discount, or within 30 days without discount from the invoice date. Early payment discount does not apply to invoices for services.
- 5.2. Payments are deemed paid from the time when we can avail ourselves of the amount, and may be added to the oldest outstanding debt. In case of delayed payments, we are allowed to invoice interest on arrears at 8% above the base interest rate set by the European Central Bank, and other compensation. The purchaser is entitled to prove that the damage was lower.
- 5.3. The purchaser may only offset against other demands that are undisputed or are recognised in law.
- 5.4. Cheques or bills of exchange are accepted on account of performance under the usual reserve; discount and collection charges are borne by the purchaser.
- 5.5. In case payments cease to be made or if cheques and bills of exchange cannot be cashed in, our receivables—including deferrals—are payable immediately.
- 5.6. Our receivables are payable immediately if the opening of insolvency proceedings about the purchaser's assets is requested.

## 6. Right to Withdraw from the Contract

- 6.1. Reasonable doubts as to the purchaser's creditworthiness exempt us from the contractual relationship; damage offsetting notwithstanding. The purchaser may prevent this legal consequence by settling all receivables and covering the value of the goods still to be delivered.

## 7. Reservation of Title

- 7.1. The goods remain our property until all demands arising from our contractual relationship with the purchaser have been fully met. The purchaser is entitled to resell the goods under reservation of title (reserved goods) only in the proper course of business against cash, otherwise only by transferring the reservation of title; this does not entitle the purchaser to other dispositions, in particular not to offering the goods as a security or an attachment. We are entitled to revoke this right if the purchaser is in arrears with their payment obligations. Instalment buying on the part of the purchaser and financed by third parties is not considered a sale in the proper course of business against cash payment.
- 7.2. The purchaser herewith assigns to us their future sales price receivables from reselling reserved goods and undertakes to give us, if we so request, the names of third-party debtors and the sum of receivables. The purchaser is authorised to collect the assigned receivables. We are entitled to revoke this authorisation in case of late payments. The purchaser is to bear the costs arising to us for collecting the assigned sales price receivables. In case the sum total of all the securities granted to us by the purchaser exceeds the sum total of all the secured receivables from the contractual relationship by more than 20%, we free some of the security interests, if so requested by the purchaser.
- 7.3. In case the purchaser combines the delivered goods with land or chattels, they herewith assign to us all receivables and ancillary rights arising from this combination. The assigned sum is limited to the share of the relevant receivable corresponding to the purchase price of the goods which the purchaser bought from us, plus a surcharge of 10% on this purchase price.
- 7.4. We are to be informed immediately of any loss, damage, attachment or other interventions of third parties relating to the reserved goods, or of any attachment of assigned receivables. In the event that the reserved goods are seized, the purchaser is to immediately send us the attachment report and an affidavit about the fact that the seized objects are identical to those we delivered. In the event that the assigned receivables are seized, the purchaser is to immediately send us the attachment and transfer order. The purchaser bears all costs required for lifting any attachments on reserved goods and assigned receivables, and for procuring the purchased item again, unless they can be collected from third parties.
- 7.5. In case the purchaser's payments are late, they are obligated to release the reserved goods if we so request, if the extension period expires without success. When determining the repurchase price, any impairment of value that occurred between delivery and redemption is appropriately considered.

## 8. Complaints and Notifications of Defect

If the purchaser is a merchant according to the Commercial Code and if the purchase is a trade deal for both parties, the following regulations apply to notifications of defect:

- 8.1. We are to be immediately, but no later than after three (3) days, informed in writing about complaints due to visible defects or a visibly incomplete or wrong delivery. In order to comply with this time frame, the timely sending of this notification suffices.
- 8.2. We are to be immediately informed in writing if any other defects are detected.
- 8.3. We consider the goods as accepted if we are not informed on time about complaints or notifications of defect.

## 9. Warranty

- 9.1. We warrant damage or defects demonstrably caused by a factory fault. Our warranty period is 24 months from the time of delivery, unless the order expressly specifies other time periods.
- 9.2. Our liability for defects is mainly based on the agreement concluded about the composition of the goods. All product descriptions forming the object of an individual contract are considered an agreement about the composition of the goods; here, it makes no difference if we or the purchaser have provided the product description.

Insofar as no composition was agreed, the assessment of whether there is a defect or not is to be based on statutory regulations (Sect. 434 Para. 1 P. 2 and 3 German Civil Code [BGB]). However, we do not assume liability for public utterances of third parties.

- 9.3. In case the delivered object is defective, we may first choose whether we perform subsequent fulfilment by rectifying the defect (rework) or by delivering a faultless object (replacement delivery). Our right to refuse rework in keeping with statutory requirements remains unaffected.
- 9.4. We are entitled to make the owed subsequent fulfilment dependent on the purchaser's paying the due purchase price. The purchaser is, however, entitled to retain an appropriate portion of the purchase price.
- 9.5. The purchaser is to give us the time and opportunity required for this owed subsequent fulfilment; in particular, to hand over the criticised goods for testing purposes. In the event of a replacement delivery the purchaser is to return the defective object to us according to statutory provisions.
- 9.6. We bear the expenses, in particular, transport, road, labour and material costs (not: uninstallation and installation costs) required for testing and subsequent fulfilment if there is an actual defect. Otherwise, we are entitled to claim the costs (in particular, testing and transport costs) arising from an unjustified rectification of defects from the purchaser unless the lack of defectiveness was not recognisable to the purchaser.
- 9.7. In case rework or replacement delivery fail, the purchaser is entitled to demand a choice between reduced payment (reduction) or annulment of the contract (conversion).
- 9.8. Compensation claims of the purchaser, regardless of their legal basis, in particular from a positive infringement of receivables, from an infringement of duties during contractual negotiations, or from unlawful acts, are excluded. The above does not apply insofar as, e.g., there is mandatory liability according to the product liability act or in cases of intent, gross negligence or the lack of assured properties or the infringement of essential contractual duties. With the exception of intent or gross negligence, claims for damages for breaching essential contractual duties are, however, limited to contractually typical, foreseeable damage. In this context, a substantial contractual duty is a duty that needs to be fulfilled to

enable proper execution of the contract; the contractual partner regularly trusts and may trust the compliance with that duty.

The foregoing provisions do not bring about a change of the burden of proof to the disadvantage of the purchaser.

- 9.9. We reserve the right to reject a warranty claim on the part of the final consumer if the error is caused by an improperly performed connection or an improperly executed installation of the goods or if our operating / maintenance instructions were not followed with the due care.
- 9.10. We do not assume any warranty for damage caused by external chemical, electro-chemical or electrical influences and which are therefore not caused by the delivered object itself.
- 9.11. Our warranty obligation is voided if repairs or interventions are performed by individuals without our authorisation or if our devices have been equipped with integral or accessory parts not coordinated with our devices.
- 9.12. In case the purchaser delivers to resellers, they are obligated to inform them about our warranty provisions.

## 10. Place of Fulfilment; Place of Jurisdiction; Final Provision

- 10.1. Our registered office is the place of fulfilment for all contractual obligations.
- 10.2. Place of jurisdiction for all disputes arising from the contractual relationship is KIRSCH's headquarters if the purchaser is a merchant, a legal person under public law or a special fund under public law. Mandatory statutory provisions about exclusive places of jurisdiction remain unaffected from this clause.
- 10.3. Notice on online dispute resolution (ODR) according to Art. 14 of EU Regulation No. 524/2013:

In case of consumer-rights disputes arising from the online sales of goods or the online rendering of services, purchasers who are consumers according to Sect. 13 German Civil Code (BGB) may execute an online dispute resolution on the "Your Europe" ([http://europa.eu/youreurope/citizens/index\\_de.htm](http://europa.eu/youreurope/citizens/index_de.htm)) EU portal by involving a recognised arbitration body. They may avail themselves of the online dispute resolution platform at the following URL: <http://ec.europa.eu/consumers/odr>.

The online dispute resolution procedure is a non-mandatory pre-requisite for invoking the responsible ordinary courts of law but is an alternative for removing differences arising from a contractual relationship.

- 10.4. German law applies even if the client is a foreigner or has their permanent residence abroad. The provisions of the UN Convention on Contracts for the International Sale of Goods for cross-border contracts of sale do not apply.
- 10.5. The contract remains binding even if individual items become legally ineffective. This does not apply if abiding by the contract represents undue hardship for either of the parties.

Please note:

The purchaser is aware that we store data from the contractual relationship according to Sect. 28 of the Federal Data Protection Act for the purpose of processing data and that we reserve the right to transmit these data to third parties (e.g., insurance companies), insofar as is required for fulfilling this contract.

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