

Terms and Conditions
of
KTP Kunststoff Palettentechnik GmbH
Saarstrasse / In den Roehrenwerken , 66359 Bous, Germany

Section 1: General provisions - scope

1.1

These Terms and Conditions apply to all current and future business relationships with the buyer, hereafter also referred to as 'customer'.

1.2

In the sense of these Terms and Conditions, the buyer is a natural or legal entity or incorporated partnership with which business relationships are formed which involve the performance of commercial or independent professional activities.

1.3

Divergent, contradictory or supplementary Terms and Conditions shall not become an integral part of the contract, even when acknowledged, unless their validity is explicitly agreed to in writing.

Section 2: Conclusion of a contract

2.1

Our offers are subject to change. We reserve the right to make reasonable technical modifications as well as modifications in form, color and/or weight.

2.2

An order placed for goods by the buyer represents a binding declaration of the buyer's desire to purchase the goods ordered. We are entitled to accept the contract offer within two weeks of our receipt of the offer. Acceptance may be declared either in writing or through delivery of the goods to the buyer.

2.3

Conclusion of the contract is subject to correct and timely delivery of materials to us from our suppliers. This applies only where nondelivery is attributable to us, particularly as part of a congruent hedging transaction concluded with our supplier. The buyer will promptly be informed of the nonavailability of the service. The return consideration will be promptly refunded.

Section 3: Reservation of ownership

3.1

Where contracts with businesses are concerned, we retain ownership rights to the goods until all outstanding debts from the current business relationship have been satisfied.

3.2

The buyer is obligated to handle the goods with care. If maintenance and inspection work is required, the customer is to perform these regularly at his own expense.

3.3

The buyer is obligated to inform us immediately of any seizure of the goods by a third party, such as in the case of a judicial attachment, as well as of any damage or destruction of the goods. The buyer must inform us promptly of a change in possession of the goods as well as that of his own domicile.

3.4

Where the buyer's behavior contravenes the contract, in particular in cases of default of payment or breach of obligation according to Sections 2 and 3 of these Terms and Conditions, we are entitled to withdraw from the contract and to reclaim the goods.

3.5

The buyer is entitled to resell the goods in the regular course of business. The customer herewith assigns to us all accounts receivable from a third party which accrue through the resale to the extent of the invoice sum. We accept this assignment. Following assignment, the customer is authorized to recover the outstanding account. We reserve the right to collect the demand ourselves, as soon as the buyer is in default of payment and falls into arrears.

Section 4: Remuneration

4.1

The offered purchase price is binding; VAT shall be added at the legally applicable rate. Our prices are subject to additional conditions detailed in our price lists. If more than four months pass between conclusion of the contract and delivery, prices valid on the day of delivery apply, exclusive of the applicable turnover tax. The purchase prices for mail order purchases do not include applicable shipping costs. The buyer will be informed of the purchase price through delivery of an invoice. We are entitled, despite any terms and conditions of the buyer to the contrary, to credit payments from the buyer first to the buyer's older debts. The buyer will be informed of this type of offsetting of accounts. If costs and interest have already been incurred, we are then entitled to credit payment first to the costs, then to the interest, and only thereafter to the principal claim.

Payments are to be made directly to us. Our agents, outside sales force and employees are entitled to accept payments only when they are authorized by us in writing to do so. If the buyer does not make payment on schedule or ceases payment, or if conditions exist that may be considered equivalent to cessation of payment, then all outstanding claims owed to us are due immediately in full and without further notice. We may in this case choose to withdraw completely or in part from all current contracts with the buyer, according to our choice and without setting further deadlines. We are furthermore entitled, without withdrawal on our part from the sales contract, to demand surrender of goods already delivered and to claim damages due to nonfulfillment of obligations.

Checks and bills of exchange are accepted only at our discretion and are accepted only conditionally subject to full performance. All costs incurred hereby are charged to the buyer. If the buyer falls into arrears with the acceptance of a delivery or the payment of a sales contract concluded with us, we are entitled to defer fulfillment of the contract – notwithstanding its legal validity – until these conditions are remedied, unless payment is otherwise ensured in a manner we find satisfactory. The buyer is entitled to offset, withhold or deduct only when counterclaims have been legally adjudicated or are not disputed, even when claims of defect or counterclaims have been asserted.

4.2

The buyer is obligated to pay the purchase price within 14 days of receiving the goods. After expiry of this term, the customer is in default of payment. For the duration of any default in payment, the buyer shall pay interest at 8% above the base lending rate on the amount outstanding. We reserve the right to claim and assert higher claims for damages caused by default with respect to the buyer.

4.3

The customer has a right to offset counterclaims only if these have been finally adjudicated or accepted by us. The customer can only exercise a right of retention if his counterclaim is based on the same contractual relationship.

Section 5: Delivery and transfer of risk

5.1

Agreed delivery schedules or delivery deadlines must be in written form to be considered binding.

5.2

Delivery of our goods is in all cases ex works or ex warehouse. Shipping charges and packing costs are charged to the buyer.

5.3

The risk of accidental destruction and accidental deterioration of the goods is transferred to the buyer at handover; in cases of mail order purchases, this is when the goods are delivered to the freight forwarder, freight carrier, or the person or institution designated for carrying out the shipment.

5.4

The same applies if the buyer is in default in accepting delivery.

5.5

The goods purchased are transported at the buyer's risk in all cases – even if our own means of transport are used. If at the buyer's request the goods do not arrive for delivery, or the buyer defaults in taking delivery, the risk of destruction or deterioration in value is transferred to the buyer with the storage of the goods. The costs accrued due to storage will be invoiced to the buyer at 1% of the invoice amount per week.

5.6

The delivery deadline is considered to be met when, prior to expiration of the deadline, the item to be delivered has left our warehouse or the customer has been notified of its readiness for dispatch.

5.7

Delays in supply and performance due to force majeure and other events which not only considerably impede supply or make supply impossible, such as strike, lockout or official directives etc., shall be considered to be beyond our control, even if these affect our suppliers or their subcontractors and even for deadlines and dates which have bindingly been agreed upon. They entitle us to delay the supply and/or performance for the duration of the hindrance plus an appropriate start-up time, or to withdraw totally or in part from that part of the contract which is not yet fulfilled.

5.8

If the hindrance lasts longer than three months, the buyer is entitled, after setting an appropriate grace period, to withdraw from the portion of the contract that is not yet fulfilled. If partial performance is of no interest to the buyer, the buyer is entitled in this case to withdraw from the entire contract. Should the delivery time be prolonged or should we be freed of our obligations, the buyer cannot derive claims for damages from this. We may only invoke the above-cited conditions when the buyer is promptly informed.

5.9

In cases where we are responsible for failure to comply with mandatory binding deadlines and dates, or where we are in default, the customer shall be entitled to compensation for delayed performance to the extent of ½% (one-half a percent) for each complete week of the delayed performance, but limited in total to a maximum of 5% (five percent) of the invoice value of all affected deliveries and services. Where partial fulfillment of the contract holds no interest for the buyer, the buyer may claim damages for nonfulfillment of the entire obligation or withdraw from the entire contract.

5.10

Our goods are subject to variations in color, as well as to delivery surplus or shortage of up to 10% for customized products.

Section 6: Warranty

6.1

In cases of deficient goods, warranty shall be provided through rectification of the defect or by replacement, at our discretion.

6.2

If attempts to remedy the defect fail, the customer may, at his discretion, request reduction of payment (deduction) or cancellation of contract (rescission). No right to rescission exists for the buyer, however, for a minor breach of contract, particularly for minor defects.

6.3

The customer shall notify us in writing of any obvious defects within a period of two weeks after receipt of goods; otherwise, pursuit of the warranty claim is excluded. Sending notification within the time period shall suffice for retention of warranty rights. The buyer bears the full burden of proof for all qualifying conditions, particularly for the defect itself, for the time point of detection of the defect and for the correctness of the defect claim.

6.4

If the customer elects to withdraw from the contract because of a deficiency in title or a material defect after failure to remedy performance, he shall not be entitled to any compensation for damages due to the defect. If the customer elects compensation for damages after failure to remedy performance, the goods shall remain with the customer, if this can be reasonably expected of him. Indemnification is limited to the difference between the contract price and the value of the defective goods. This shall not apply where we have caused breach of contract with malice.

6.5

The warranty period extends for one year from handover of the goods.

6.6

As a rule, only the manufacturer's product description shall be considered as agreed with respect to the properties that the goods possess. Public statements, claims or advertising on the part of the manufacturer do not represent a contractual description of the properties of the goods.

6.7

Should the buyer receive defective instructions for assembly, we are obligated only to deliver a nondefective set of instructions for assembly, and only when the defect in the instructions for assembly prevents proper assembly.

6.8

The customer receives no guarantees from us in a legal sense. Manufacturer guarantees remain unaffected by this.

Section 7: Limitations of liability

7.1

In cases of minor negligent breach of our duties, our liability is limited to the average degree of direct damage that may be reasonably foreseeable for the type of delivery in question, and that is customary for such contracts for the type of goods involved. This also applies to minor negligent breach of duty on the part of our authorized representatives or agents. We are not liable for negligent breaches of insignificant contractual obligations.

7.2

The aforementioned limitations of liability do not apply to claims by the buyer on product liability grounds. Furthermore, the limitations of liability do not apply to cases where physical or health-related harm, or the buyer's death, are attributed to us.

7.3

Claims for damages on the part of the customer due to defects are time-barred after one year following handover of the goods. This does not apply where we are alleged to have acted with gross negligence.

Section 8: Final provisions

8.1

The laws of the Federal Republic of Germany apply. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded from application.

8.2

The exclusive court of jurisdiction for all disputes arising from this contract is our place of business. This also applies if the customer has no place of general jurisdiction in Germany or the domicile and/or usual place of residence is not known at the time legal proceedings are instituted.

8.3

Should individual provisions of the contract with the customer, including these Terms and Conditions, become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. The void and/or illegal and/or unenforceable provision or provisions shall be replaced by relative provisions coming as close as possible to the intended economic result.