

GENERAL SALES & DELIVERY CONDITIONS

K-FORM GMBH & CO.KG
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§1 General Information

- 1.1 The following conditions are valid for all our offers, sales, deliveries and services and they are part of the contract. The conditions are not valid if our contract partner is a private person and when he is not a professional or a commercial person. They are also valid for all future business, also when they are not expressly agreed again.
- 1.2 Herewith we formally contradict other different or additional General Conditions of Sales of the purchaser. They are also not valid when the purchaser takes it as basis of his order or other declarations.

§2 Offers and Orders

- 2.1 Our offers are made without engagement if they are not made in writing and signed as binding. A contract will be concluded not before the purchaser has received our order confirmation or the goods has been supplied.
- 2.2 Measurements, weights, images, drawings as well as other documents which belong to our offers are without engagement and remain our property. They are only for measurement. Only on expressly request by us it is possible that they can become reliable content of the contract.
- 2.3 Annual orders and make-and-hold-orders engage the purchaser to acceptance of the annual order / make-and-hold order of agreed total quantity. In case of make-and-hold-orders we are entitled to order the complete material for the order and to produce the complete order quantity immediately.
So far there are no fix dates for the annual and make-and-hold-orders, the customer has to order / take the complete quantity within 12 months after conclusion of the contract. If the customer will not observe the dates of collection of the goods, we are entitled to supply and charge the complete quantity when sending a shipping advice in writing four weeks before. Our rights with regard to the delay in collection remain unchanged. If the make-and-hold-order should be supplied not within the agreed time of 12 months because of special agreements, we reserve the right of price adjustment. It is not allowed to reduce or cancel make-and-hold-orders without our approval in writing. Contrary conditions of the purchaser are only obliged for us when we expressly agree to them.

§3 Doubtful Financial Standing

- 3.1 In case of knowledge of reasoned financial circumstances after conclusion of the contract which allow the doubt of a solvency, we are allowed to change the conditions of payment in cash in advance before the delivery of the goods will be done. We are allowed to give a time limit for cash in advance to the purchaser. Besides we are allowed to withdraw from the contract, if we do not receive the cash in advance within the agreed time. It is however for the purchaser possible to make a bank guarantee instead of cash in advance. If the delivery of the goods has already been taken place, the payable amount has to be paid without delay, net and without any further deduction, in spite of other agreed terms of payment.

- 3.2 The solvency of a customer has to be queried when there was made an application for bankruptcy proceedings or when he does not make payments punctually and within the agreed time to us or to a third party.

§4 Prices

- 4.1 Our prices are valid „ex our works“ if there are made no other agreements with the purchaser. The charges for packing are not included in our price and will be charged separately, if necessary.
- 4.2 All our prices are net. The value added tax is not included in our price and will be shown in a separate line on our invoice, on the day of invoice.
- 4.3 If there are more than 4 months between the day of conclusion the contract and the day of delivery and there is no reason from our part for that delay in delivery and if the price list changed in the meantime, we are allowed to charge the list price which is valid on the day of delivery instead of the agreed sales price. However we have to send the purchaser the modified order confirmation before supplying the goods. In this case the purchaser has the right to withdraw from the contract. However he has to clarify the withdrawal in writing at latest on the 7th working day after the receipt of the modified order confirmation. It is sufficient to send the withdrawal by fax or by E-mail.

§5 Time of Delivery

- 5.1 All dates of delivery quoted by us are without obligation. They are only nearly agreed so far they are not expressly mentioned as binding agreement. If it is a question of a delivery date without obligation it is still sufficient when the goods will be supplied within 7 days after the delivery time mentioned in our order confirmation.
- 5.2 If we are not in the position to supply the goods within the expressly agreed period or if we will get in delay by other reasons, the purchaser has to grant us a reasonable period to supply the goods. This period of grace starts on the agreed date of delivery. If the period of grace would be effectles, the purchaser has the right to withdraw from the contract..
- 5.3 If we are not able to do our work in total or partly because of an act of god or other exceptional and innocent circumstances, the time of delivery will be prolonged for the time of loss of working hours. The same regulation will become valid for a legal period or for a period stated by the purchaser. This is valid particularly for grace periods at delay.
- 5.4 According to paragraph 3 “prolonged delivery time” resp “prolonged time of service” the purchaser neither has the right to withdraw from the contract nor the right to claim for damages. If the failure of services will take longer than 4 weeks, the purchaser as well as we are entitled to withdraw from the contract, so far the contract is not yet completed. If the purchaser is entitled to withdraw from the contract without setting a period of grace - equal if it is according to contract or to law – this right remain untouched.
- 5.5 In case of delay in delivery there will be excluded any claims for damages if they are not done in firm intention or gross negligence.

§6 Shipment

- 6.1 The shipment of the goods will be done on the account of the purchaser. The risk will become part of the purchaser when loading the goods, also when it is agreed delivery „free house“ and / or if the transport will be done with our own vehicles. We are not engaged to take care of a transport insurance.

- 6.2 So far it is not expressly mentioned and agreed in writing we are entitled to make part deliveries in reasonable proposals. These part deliveries will be charged separately.

§7 Payment

- 7.1 Our invoices have to be paid „immediately upon receipt of our invoice, net cash, without deduction“.
- 7.2 The Purchaser will get into delay of payment if he does not pay our invoices within 30 days after date of invoice. This will also be the case when we do not send a reminder or an account of open invoices.
- 7.3 If the purchaser get into delay in payment, all obligations of payment with our company will become payable immediately, also such as bill of exchanges. In this case we are entitled to ask for interest from the day of when becoming in delay in payment. The interest will be charged according to the legal interest rate. The supporting document of a higher damage of the vendor remain reserved for the vendor.
- 7.4 Bill of exchanges only will be accepted if this was agreed in advance and in regard to fulfil the agreement. They only will be accepted in case when they are discountable , without granting any discount. Also payments procedures in cheque- / bill of exchanges will only be accepted with regard to fulfil the agreement. The claim for the price expires not before the bill of exchange is paid completely. The expenses for the bill of exchange and discounts will be charged separately and have to be paid immediately, net, without deduction.
- 7.5 The purchaser is only entitled for compensation when the counterclaims are legally detected, acknowledged by the vendor or when they are indisputable. This is also the case when rebukes of defects or counterclaims will be asserted. The purchaser is only authorized to apply the right of withholding when his counterclaim based on the same contract.

§8 Warranty / Liability

- 8.1 Upon receipt of the goods the purchaser has to check the goods immediately if the goods are complete, if there are damages in transport, if there is an apparent damage, if the quality and the characteristics are okay. Apparent damages have to be noticed immediately, however within one week after receipt of the goods. The notice has to be made in writing.
- 8.2 We are not committed for warranty if the customer has not given notice in writing of the apparent damage in due time. So far we have notice of an acceptable damage of the goods and if the purchaser has made its complaint in time and in writing, we are liable for subsequent improvement (under exclusion of the rights of the purchaser to withdraw from the contract or to decrease the price) unless we are entitled to refuse the subsequent improvement because of legal provision. The purchaser has to grant us a reasonable grace period for every single damage in order to fulfil the subsequent improvement.
- 8.3 For rectification of the goods the purchaser has either the choice for a subsequent repair of the goods or for a new delivery . We are entitled to refuse the way of rectification of the goods if the costs for that subsequent repair are disproportional. During the rectification it is forbidden for the purchaser to level down the price or to withdraw from the contract. The rectification ranks as failed after the second unsuccessful effort. If the rectification is failed or if the vendor has refused the rectification completely, the purchaser has the choice to reduce the price (Reduction) or to withdraw from the contract.
- 8.4 Claim for damages according to the following conditions are only able to assert for in case of that the rectification is failed or if we refused the rectification. The right of the purchaser to assert a further claim according to the following conditions remain untouched.

- 8.5 For intentional or outraged negligent breach of duties as well as damages of hurt of life, of the body or of the health we are held responsible, unrestricted according to the legal regulations. Apart from that we are only liable when the breach of the contract is noticeable in view of obtaining the intention of the contract and if that is of utmost importance and only limited up to the height of a typical predictable damage.
- 8.6 The limitation of liability according to paragraph 5 is adequate to other, in contract agreed claims for damages, particularly claims arisen of illegal acts. The exceptional case is the claim according to the law of product liability. Furthermore it is valid in favour of our employees, clerks, staff members, representatives and helps.
- 8.7 So far as we gave a guarantee of quality and / or duration with regard to the goods, we are reliable for these goods within the limits of this guarantee. For damages which based on defects of guaranteed quality or duration, however which are not direct at the goods, we are only reliable when the risk of such a damage is clearly evident with regard to the guarantee of quality and duration.
- 8.8 We are also reliable for damages which caused by simple negligence, so far this negligence concerns the damage of such contract obligations whose compliance it is to obtain the intention of the contract because of great significance (Kardinalpflichten). However we are only reliable for damages which are typical connected with the contract and which are predictable. Apart from that we are not liable for simple negligent breaches of not essential joint duties of the contract. The limitations of liability, mentioned in paragraph 7 will also become valid so far the liability of the legal representative, the officers directors and other helpers of the vendor are concerned.
- 8.9 A further liability is explicitly excluded without any regard to the right of the asserted claim. So far the liability of the vendor is excluded or limited, this will also become valid for the personal liability of his employees, clerks, staff members, representatives and workers.

§9 Reservation of Proprietary Rights

- 9.1 We reserve the right of propriety in goods (reservation of goods) until we have received the complete payments, which were agreed in the contract. The supplied goods will become proprietary of the purchaser not before he has paid all obligations arisen from the business connection including joint claims, claim for damages and the honouring of cheques and bill of exchanges. In case of the cheque and bill of exchange process the reservation of proprietary rights in all here mentioned forms expired not with the presentation of the cheque but with the acceptance of the bill of exchange.
- 9.2 The purchaser has to inform us immediately and in writing in case of access of a third person on his property, especially of forecloser actions as well as other restrictions of the property. The purchaser has to settle all the damages and cost with us, which arisen by a breach of a contractual obligation and by necessary measures for the protection of the access of a third person.
- 9.3 If the purchaser default in payments in spite of a reminder from us, we are able to ask for the return of the reserved goods without prior setting of a deadline. The accrued transport charges have to be paid by the purchaser. In the attachment of the matter of reservation by us there always will be a withdraw of the contract. After taking back the reserved goods we are authorized to realise it. The proceeds of the conversion will be counted up to the active debts.

§10 Place of Performance

The place of performance for all payments is Hille, for our shipment of goods the place of dispatch.

§11 Data Processing

The purchaser agree that we may process the data about the purchaser which we received in the context of this business in order to fulfil our own business obligations. We confirm that the data process will be with the data protection act in mind. That means in particular that we would save the data or submit them to a Credit organisation, so far that is necessary within the legal limits in order to fulfil the obligations of the contract or in order to safeguard the entitled interests. Besides there may not be a reason to assume that the protected interest of the purchaser overbalanced the action of the processing, particularly the data transfer of these dates.

§12 Serverability Clause

Changes or appendixes to the contract or to these General Sales and Delivery Conditions have to be made in writing in order to take effect. Should a regulation of these General Sales and Delivery Conditions be ineffective or infeasible, that will have no impact on the efficiency of these General Sales and Dellivery Conditions.

§13 Court of Jurisdiction and und Applicable Law

- 13.1 For the contract between the purchaser and us the exclusive right of the Federal Republic of Germany will be applied. This will also be the case when the place of residence or business domicile is abroad. The application of the uniform law of the international purchase of goods and chattles as well as the low of the conclusion of international contracts for chattels is excluded.
- 13.2 The purchaser is not entitled to abandon claims of this contract of sale without assent of the vendor .
- 13.3 When the purchaser act as merchant, legal person of the public law or a public law fund assets, the court of jurisdiction will be for both parties - also for legal actions of bill of exchange and cheque - Minden. However we are also entitled to sue the purchaser at his general court of jurisdiction.

Hille, 05.05.2010

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