



Terms and Conditions of Sale and Delivery of Magdalena KITZMANN GmbH

1. Formation of a contract, prices

- 1.1. Our deliveries and services will be provided exclusively based on the following terms and conditions. Terms and conditions of the purchaser are hereby rejected.
- 1.2. Our quotes are without obligation. Declarations made by us must be in written form.
- 1.3. Prices and supplements are ascertained in accordance with the calculation applicable at the time of delivery and the conditions for this.
- 1.4. Prices are for a consignment ex factory.

2. Payment conditions

- 2.1. Payment must be made 30 days net following the invoice date in such a way that we have the amount at our disposal by the due date. The purchaser may only offset amounts against undisputed claims or those that have been determined with the force of law; it shall only be entitled to rights of retention if these are based on the same contractual relationship.
- 2.2. If payment due dates are not met then interest shall be charged at 5% above the relevant base interest rate of the German Bundesbank.
- 2.3. To the extent that our claim for payment is at risk as a result of subsequent events which lead to a significant deterioration in the financial position, we shall be entitled to call the debt due, irrespective of the term of any bills of exchange accepted as payment.
- 2.4. If the purchaser is in default of payment then we shall be entitled to prohibit any further processing of the goods delivered, to take the goods back and if necessary to enter the purchaser's premises for the purposes of taking the goods back; this shall not apply if the default of payment is not based upon fault. Taking back of the goods does not represent a withdrawal from the contract.
- 2.5. In the cases under points 2.3. + 2.4. we may cancel the direct debit authorisation (A V 7) and demand advance payments for any consignments still outstanding.
- 2.6. The purchaser may avoid the legal consequences stated in points 2.3. - 2.5. by providing collateral for the amount of our payment claims which is at risk.
- 2.7. The statutory regulations on default of payment remain unaffected by this.

3. Collateral

We shall be entitled to collateral for our claims of the standard type and scope, including to the extent that this is conditional or limited in time.

4. Retention of title

- 4.1. We shall retain the title to the goods delivered until the customer has settled all claims, including auxiliary claims, from the business relationship and the bills of exchange that have been accepted have been honoured. Processing and manipulation of the new goods shall be performed for us as manufacturer without placing us under any obligation. In the event that the goods are processed or combined with other goods, we shall acquire co-ownership in the new goods at the ratio of the invoice value of the goods subject to the retention of title to that of the other materials. The purchaser may only sell the goods subject to the retention of title in the ordinary course of business and may not mortgage them or assign them as collateral, and it must notify us of any seizure by third parties without delay. Following a request from us the purchaser must insure the goods subject to retention of title against loss and damage at its own expense, and the purchase hereby assigns its claims from the insurance policies to us in advance.
- 4.2. The purchaser assigns its claims from resale of the goods subject to retention of title to us in advance as collateral to the extent of our share of the ownership in the goods sold. The purchaser shall be entitled to collect the claims provided that it meets its payment obligations to us. In the event that realisation of our claims appears to be at risk to us, the purchaser must at our request allow us to take the goods subject to the retention of title back, communicate the assignment of the claims to its own customers and provide us with all required information and documentation. We shall be entitled to disclose the assignment to its own purchasers. Taking back of the goods subject to retention of title does not represent a withdrawal from the contract. In the event that the value of the collateral exceeds our claims by more than 20%, then we shall at the purchaser's request release collateral at our *discretion*.

Extended retention of title

If the purchaser sells goods supplied by us - regardless of their condition, then it hereby assigns to us the claims to which it is entitled from the sale against its own customers together with all auxiliary rights until repayment in full of all of our claims from deliveries of the goods. If the value of the collateral provided to us exceeds our payment claims by more than 20% overall, then we shall be under an obligation to reassign the collateral as relevant following a request from the purchaser. In general we make reference to the statutory regulations.

We retain the title and copyright to our designs and other documentation in all cases. These may not be made accessible to third parties.

5. Jurisdiction

The place of jurisdiction is Tecklenburg provided that the partner to the contract is a trader who does not belong to the trade groups designated in Section 4 of the German Commercial Code (HGB) or is a legal entity under public law or special fund under public law. German law applies exclusively to all contracts entered into with us.

6. Delivery periods, delivery deadline

- 6.1. Delivery periods shall start with the date of our order confirmation, however, only once all details of the order have been clarified; the same applies to delivery deadlines.

- 6.2. If the purchaser does not meet its contractual obligations on time, including duties to cooperate or auxiliary obligations such as opening a letter of credit, providing domestic or foreign certifications, making an advanced payment or similar obligations, then we shall be entitled to reasonably defer our delivery periods and deadlines in accordance with our production needs without prejudice to our rights for default on the part of the purchaser.
- 6.3. The time that the goods are despatched from the factory is the crucial factor in determining adherence to the delivery periods and deadlines. If the goods cannot be shipped on time without fault on our part, then the delivery periods and deadlines shall be deemed to have been met following notification that they are ready for despatch.

7. Force majeure and other delivery obstacles

Force majeure events shall exempt the relevant contractual party from their contractual obligations for the duration of the obstacle and a reasonable subsequent warm-up period. The contract shall be extended to the extent that the contractual parties are unable to meet their relevant contractual obligations on account of force majeure events in accordance with sentence 1. If contract implementation becomes unreasonable for one of the parties then they may withdraw from the contract.

All circumstances which make contract fulfilment unreasonable or impossible for one of the contractual partners are considered to be force majeure events, including monetary and trade policy measures, strikes, lockouts, operational breakdowns (e.g. through fire or lack of machinery or power) as well as obstructions to traffic routes.

8. Despatch, packaging and transfer of risk

- 8.1. If loading or transportation of the goods is delayed on grounds for which the purchaser is responsible, then we shall be entitled at our reasonable discretion and at the purchaser's expense and risk to store the goods, to implement all measures considered appropriate to maintain the goods and to invoice the reported goods as delivered. The same applies if goods which are reported as being ready for despatch are not retrieved within four days. The statutory regulations on default of acceptance are unaffected by this.
- 8.2. We shall deliver the goods packaged where this is standard trade practice, with the costs borne by the purchaser. Packaging and auxiliary protection and transportation equipment will be taken back.
- 8.3. In the event of transportation damage the customer must without delay arrange for a report of the facts with the responsible bodies.
- 8.4. Risk shall be transferred to the purchaser upon handover of the goods to the carrier or freight forwarder, however, this shall occur at the latest once they leave the factory or warehouse.

9. Warranty

- 9.1. We shall take defective goods back following a justified notification of defects provided without delay, and shall be entitled to repair them. The purchaser shall only be entitled to statutory rights under warranty in the event that we do not meet these obligations. In the event that promised features are missing we shall only be liable for compensation to the extent that the promise was specifically provided for the purposes of protecting the purchaser from the damage which has occurred.
- 9.2. The purchaser must give us the opportunity of satisfying ourselves of the defect without delay, in particular by providing the disputed goods or samples of these upon request.
- 9.3. Subsequent performance and material and working hours based on documentary evidence are free of charge during the warranty period. Costs for travel times, overnight stays and accommodation allowances and of mileage are not covered by the warranty and will be charged based on receipt.
- 9.4. No notification of defects may be provided following completion of an agreed acceptance procedure at which these defects could have been ascertained.
- 9.5. In the case of goods which are sold as used material, e.g. second-hand goods, the purchaser shall not be entitled to any rights under warranty in relation to the faults stated or to those which it would normally be entitled to expect.

10. Liability

If a material defect results in damage or harm then we shall be liable in accordance with the statutory provisions provided that the damage or harm involved is personal injury, the damage comes under the Product Liability Act or is based on wilful intent or gross negligence. To the extent that the harm is based on a culpable breach of an essential contractual obligation or a "cardinal obligation" then we shall only be liable in all other respects for harm which is typical for the contract. Any further claims on the part of the purchaser under contract or tort are excluded. We are therefore specifically not liable for harm which has not occurred with the delivery item itself, or for lost profits or other financial loss on the part of the purchaser. The preceding regulations do not apply to used goods. We shall only be liable for material defects if there is an express acceptance of a guarantee or in the event of wilful intent or negligence. Section 478 of the German Civil Code (BGB) remains unaffected by this. In the event of a breach of any pre-contractual obligation or of an obstacle to performance already in place prior to formation of the contract (Section 311 II, 311a BGB) then our obligation to pay compensation shall be limited to the pre-contractual position as if the contract had not been entered into. To the extent that our liability is excluded or limited then this shall also apply for the personal liability of our employees, workers, colleagues, representatives and vicarious agents.

Lengerich, May 2014