



parts | performance | passion

General Terms and Sales Conditions of KSP GmbH

1. Validity

- 1.1 These Sales Conditions shall only apply to companies within the meaning of § 14, sub-section 1, German Civil Code, as well as legal entities or special funds under public law.
- 1.2 Our General Sales Conditions are valid exclusively. Any and all General Terms and Conditions of Business of the Purchaser deviating from ours are not accepted by us. They shall only be part of a contract if their validity for each individual contract is explicitly acknowledged by us in writing.

2. Proposals and Contracting

- 2.1 Our proposals are non-binding and subject to change without notice unless they are explicitly marked as a binding proposal.
- 2.2 Any contracts shall only be binding for us if we accept the purchase order by providing a written purchase order acknowledgement. This purchase order acknowledgement may also consist in delivering the goods to the customer together with an invoice. The customer is obliged to contradict to the purchase order acknowledgement immediately if there are any objections against its content. Otherwise, the contract is entered into according to the provisions in the purchase order acknowledgement.

3. Contractual object

- 3.1 Information in documents other than proposal and purchase order acknowledgement, such as illustrations, information on weight or dimensions, are non-binding and shall only become part of the contract if this has been explicitly referred to in the contract as binding.
- 3.2 We reserve the right to deliver 3% quantity overages or underages as far as this is not unreasonable for the customer. In the event that special manufacturing is conducted, the delivery of 10% quantity overages or underages is possible.
- 3.3 We assume no guarantee without explicit written agreement. This also applies to the procurement risk regarding indeterminate obligations.

4. Prices

- 4.1 Only the prices quoted in the purchase order acknowledgement are binding. To the extent that nothing else has been agreed upon, all prices are to be understood net „ex works“ excluding the statutory Value Added Tax at the time of invoicing, and other additional costs such as packaging, freight, insurance, shipping costs, customs duties, etc.
- 4.2 Should any unforeseeable cost increases arise after a period of two months after contract date, e.g. increases in labour or material costs, we shall be entitled to adjust the prices according to the changed preconditions without calculating any additional profit. Evidence of change of costs shall be furnished by us on request of the customer.

5. Delivery Time, Transfer of Risk, Delays

- 5.1 The risk of accidental loss and the accidental deterioration of the goods shall pass to the customer upon handover or, in case of shipment, upon delivery of the goods to the carrier, forwarding agent or other persons entitled to carry out the shipment. This also applies if, according to a special agreement, freight-free delivery of the goods has been agreed upon.
- 5.2 If the shipping method, transportation route or shipping agent is chosen by us, our liability in this respect shall be limited to that for gross negligence only, regarding our choice.
- 5.3 Delivery periods stated by us are only non-binding approximations. Binding delivery periods need to be agreed upon explicitly in writing. If delivery dates and periods are not explicitly marked „fix“ in the purchase order acknowledgement, the customer may, after expiration of the delivery period, we will come into default. Delivery periods begin with the date of the purchase order acknowledgement, but not before all documents, materials and information necessary for the proper execution of the contract have been provided to us by the customer, as well as any necessary authorisations and permissions have been delivered with the necessary contents and/or quality.
- 5.4 Correct and duly self-supply remain reserved. In the event of force majeure or other unforeseen obstacles which are beyond our control, e.g. interruptions, measures taken within the scope of labour disputes, in particular strikes or lock-outs, measures taken on the part of the authorities, energy supply difficulties and such obstacles which can be proven to have had a considerable influence on the completion or shipment of the contractual item, the delivery period shall be extended by the duration of obstruction and a reasonable start-up period. This shall apply also in the event if these circumstances occur with our sub-suppliers. Start and end date of such obstruction will be communicated by us to the customer in due time. Should the delivery/services become impossible or unreasonable due to the mentioned obstruction, we shall be released from the delivery obligation. In case of an extension of the delivery time or release of the delivery obligation, the customer is not enti-

ted to claim any damages. In the event of release from the delivery obligation, we will restore any possible advance performances of the customer.

- 5.5 The delivery period agreed upon shall be considered to be complied with if the goods to be supplied have been handed over to the forwarding agent by the expiration of said delivery period or if the customer has been advised that the goods are ready for shipment. This does not apply if acceptance or assembly has been agreed.
- 5.6 Partial deliveries shall be permissible, provided it is reasonable for the customer.
- 5.7 Deliveries are made based on the drawings provided by the customer. We do not assume liability for dimensions which are not stated in the drawings and were only derived from 3D files or samples provided to us.
- 5.8 If we are answerable for having exceeded the delivery date or non-compliance with the delivery period, we shall only be obliged to pay damages in the event of or gross negligence on our part. In the event of slight negligence, our liability is restricted to compensation payment of 0.25% for each full week of delay, but not more than 2.5% overall, of the price for that part of the delivery batch which was unable to be properly deployed due to the delay. Sentence 2 does not apply if the delay is due to the breach of an essential contractual obligation or where liability is legally mandatory, such as the violation of life, the body or health; an amendment of the burden of proof to the disadvantage of the customer shall not be associated with this.
- 5.9 The customer's statutory right to rescind the contract shall remain unaffected but requires that we are responsible for the delay. The purchaser shall be obliged to state at our request within a reasonable period whether he will withdraw from the contract after the expiration of the deadline for delivery due to our delay and/or to requests damages or reimbursements or insists on delivery.
- 5.10 If delivery is delayed due to a fault on the part of the Customer, the transfer of risk becomes effective with the date of notifying the customer about readiness to ship, and the customer will bear all costs for storage, insurance and further protective measures from that date. In case of storage at the Vendor's premises, the storage costs amount to 0.5% of the invoice per full week of elapsed time, but not more than 5% overall. However, we are entitled, after setting and expiration of an adequate grace period and after adequate advance notice, to otherwise dispose of the delivery item and to make delivery to the customer at a later, reasonably extended delivery period.

6. Delivery on Request

In the case of call orders, the entire quantities of call orders must be accepted within 6 months of purchase order acknowledgement, if no other terms and conditions have been agreed upon. A period of at least two weeks days must be given between the call and the delivery date. After expiry of a reasonable grace period for calls or acceptance, we may choose to deliver and invoice the goods, to withdraw from the contract or to claim damages.

7. Blanket orders

In case of call orders (blanket orders) the entire agreed delivery amount must be accepted within the agreed period. If not agreed upon otherwise, the prices according to our price list will apply. Assurances of special prices shall only refer to the respective order and shall have no binding effect for subsequent contracts.

8. Payment

- 8.1 Bills of exchange and cheques are only accepted in account of payment on the basis of an express agreement, but never in lieu of payment. Any costs arising by these methods must be borne by the customer.
- 8.2 If not stated otherwise in the purchase order agreement, the purchase prices are due for payment immediately and in full. The deduction of discounts shall require a special agreement in writing.
- 8.3 If not agreed otherwise, default occurs 8 days after issue date of the invoice. If the client comes into default, we are entitled to claim 8% interest per annum above the base rate without the need of a prior reminder. This does not exclude the assertion of additional claims for damages.
- 8.4 If, after accepting the order, we obtain knowledge of facts that give rise to justified doubts about the customer's ability to pay, we shall be entitled to demand full payment or the provision of according security prior to delivery and/or to rescind the contract after setting a deadline for performance to no avail. Besides delays in payment that have already occurred, negative information provided in accordance with the due care of a prudent businessman by a bank, a credit agency (Auskunftei), a company in a business relationship with the contracting party or equivalent source. If delivery has already occurred, regardless what conditions of payment have been agreed, the entire purchase price becomes due for payment immediately regardless any periods agreed upon, if necessary by giving back the acceptances.

9. Set-off or retention

The customer shall only be entitled to set-off if the counterclaims are undisputed or reduced to final, non-appealable judgement. Assertion of a right to retention by the customer is only permissible if it is based on the same contractual relationship. The customer shall have no right of retention because of partial performances according to § 320 para. 2 BGB.

10. Defects of quality and title

10.1 We will be liable for defects only under the following conditions:

- a) The defects are not based upon, or attributable to, misuse, incorrect installation or operation, negligent handling, use of inappropriate equipment or material by the customer or third parties, natural wear and tear, defective construction work, electrochemical or chemical or electrical impact– unless such actions or events are attributable to our fault
- b) The customer fulfilled its obligations with respect to the inspection and making of complaints about defects under §377 German Commercial Code. Complaints about defects must be made in writing within ten days of receipt of the good at the agreed upon place of delivery, or, if such defects could not be discovered in the course of a proper inspection, within ten days of discovery
- c) The customer is, under consideration of an appropriate retention payment according to point 10.6 -, not in arrears

10.2 To the extent that our goods exhibit a quality defect or defect of title (each, a "defect") due to reasons already existing at the time of risk transfer, we are entitled to rectification of defect, or replacement, at our discretion. The expenses necessary for this purpose, such as wage, material, transport, and travel costs, will be borne by us only if such expenses are not increased due to the transfer of such goods to another location than that of the customer unless such transfer is customary for goods of that nature. Replaced parts become our property and must be returned to us. Where we refuse to make up for the defect or where we fail to do so or where it is unacceptable the customer may, at his discretion and without prejudice to possible claims for damages or for reimbursement according to point 10 – withdraw from the contract or demand a reduction.

10.3 In coordination with us, the customer has to grant us the necessary time and opportunity for all reparation and replacements deemed necessary to us in all fair judgement. Otherwise, we shall be released from the consequences of loss, which occur due to the fact that the customer did not grant us the necessary time and opportunity to carry out the necessary removal of defects or replacements. Only in urgent cases where there is a risk to operational safety and to avert disproportionate further damage - whereby we must be informed immediately – the customer has the right to remove the defect by himself or through a third party and to demand the compensation of the costs incurred.

10.4 Defect claims of the client fall under the statute of limitations in 12 months at point of passing risk as far as no intent or gross negligence exists and insofar as we are not liable for death and injury to body and health. For substitutes or rectification, we shall be liable until expiration of the periods of limitation applicable to the original item of delivery.

10.5 Customer's claims to recourse against us pursuant to § 478 German Civil Code can only be pursued to the extent that the Customer has not made any agreements with us which go beyond the scope of the statutory defect claims. Point 10.2 is applicable accordingly. The customer is obliged to inform us immediately in case of claims (against him) due to defects of a newly produced delivery item. The buyer shall obligate its buyers accordingly provided that they are businessmen. We reserve the right to fulfil the claims from the purchaser to the customer by way of own-name transaction (Selbsteintritt). In this case, fulfilment of the claims of the purchaser shall be simultaneously deemed to be fulfilment of any eventual claims made by the customer.

10.6 In the event of complaints with respect to defects, the customer may only retain reasonable payments if the claims are indisputable or legally ascertained. If the complaints are unjustified, we shall be entitled to demand reimbursement of the incurred expenses from the customer.

11. Damages and reimbursements

11.1 We will be liable in accordance with statutory provisions insofar as the customer makes claims for damages or reimbursement (in the following: „damages“) that are based on deliberate intent or gross negligence on our part, including deliberate intent and gross negligence on the part of our employees, vicarious agents or representatives. We are liable for slight negligence only insofar as it results in the breach of fundamental contractual obligations which go to the root of the contract or if such breach of contract endangers the attainment of the contractual purpose. In case of a liability according to sentence 2, the damages are limited to the foreseeable damage typical of the contract. In other respects, in the case of minor negligence, damage or compensation claims by the customer, irregardless of their legal ground, are excluded.

- 11.2 The aforementioned exclusions from liability and liability restrictions shall not apply in cases of claims according to product liability law, death and injury to body and health
- 11.3 In the case of damage compensation claims due to material defects, the limitation of liability will additionally not apply where we maliciously concealed a defect or effectively assumed a guarantee for the features of the product. For the limitation of claims for indemnification on account of material damages the regulation under 10.4 applies accordingly.
- 11.4 Claims for reimbursement of expenses on the part of the customer shall in all cases be limited to the interest the customer has in the performance of the contract.
- 11.5 Any liability exemptions and limitations shall equally apply to personal claims against our employees, workers, personnel, representatives and vicarious agents.

12. Retention of title

- 12.1 We reserve the right of ownership on all goods delivered by us, until all our invoices have been paid in full by the customer. Cheque and exchange claims as well as claims from running accounts shall also belong to these claims. Where liability for us arises from bills of exchange in connection with payment, the retention of title will not expire before all demands in connection with the bill of exchange have been met.
- 12.2 In case of any behaviour of the customer which is contrary to the terms of this contract, in particular in case of default of payment, we shall be entitled to withdraw from the contract and demand return of the goods delivered. In this case the customer must immediately grant access to us or our representative to the delivered goods and give them back immediately. After taking back the goods, we shall further be entitled to sell them or otherwise utilize them; the realization proceeds of the goods the proceeds of the exploitation are to be set off against the obligations of the customer - less appropriate exploitation costs.
- 12.3 The customer is obliged to take good care of the goods delivered; in particular he must sufficiently insure these goods against damage. The customer assigns to us already now any claims he may have against the insurance company.
- 12.4 In the event of seizures or other action by third parties, the customer must notify us immediately in writing so that we can raise complaint in accordance with § 771 ZPO. If the third party is unable to reimburse us the judicial or out of court costs within this context, the customer shall be liable for these.
- 12.5 Customers are, with the proviso of a revocation permissible for cause, entitled to dispose of delivery items within the proper course of business. In the case of re-sale of the goods, the customer hereby assigns all claims from the re-sale, in particular payment claims, but also all other claims in connection with the sale to the amount of the total amount invoiced (including VAT). This will apply irregardless of whether the delivered item was resold in an unprocessed or processed form. The customer is authorized to make collections for ceded claims, but on our account. Our authority to collect the receivables ourselves remains unaffected therefrom; however, we are obliged to refrain from doing this provided that the customer does not run into default of payment and particularly when no application for the opening of insolvency proceedings has been made. If the obligation for not-collecting is not applicable, we may require that the customer makes known to us the assigned that the customer discloses to us the assigned receivables and the respective debtors, provide us with all the particulars required for collection and hands over to us the appurtenant documents, and notify its debtors about the assignment.
- 12.6 The processing and transformation of the delivery goods by the customer shall always be performed for us. We are considered a manufacturer as defined by §950 BGB without further obligations. If the goods are processed with other objects not belonging to us, we acquire the joint ownership of the new resulting product equating to the total invoice amount for the delivered goods in relation to the added products at the time of processing. Apart from this the same shall apply for the item resulting through processing as for the item delivered under reserve.
- 12.7 If the deliverable is blended with or mixed in with other items that do not belong to us, then we will acquire joint ownership of the new resulting product equating to the total invoice amount for the delivered goods in relation to the value of the other blended or mixed items, at the time of the mixing or blending. If mixing, blending or connecting takes place in such a way that our product is to be considered the main product, it is considered to be agreed that the customer shall transfer coownership to us on a pro rata basis and to hold these entitlements in his safe custody on our behalf at his own expense.
- 12.8 We engage to release securities we are entitled to to the customer upon demand to our discretion, insofar as the realizable value of the securities exceeds the secured accounts receivable by more than 20 %; the securities released.

13. Intellectual property rights of third parties

The customer is responsible that industrial property rights of third parties are not infringed due to its directions regarding forms, measures, colours, weights, etc. The customer shall indemnify us, including all costs and expenses occurring before and outside the courts and assist us upon our demand in any litigation against claims of third parties based on infringement of the aforesaid industrial property rights.

14. Place of Fulfillment, Court of Jurisdiction, Applicable Law

- 14.1 The place of fulfilment for delivery and payment shall in both instances be Weil der Stadt.
- 14.2 The place of jurisdiction for all disputes arising under businesspeople out of the contractual relationship is our commercial domicile. We may, to our discretion, also raise court action at the company seat of the customer or any other statutory place of jurisdiction.
- 14.3 The legal relations of the parties in connection with this Agreement are subject of the law of the Federal Republic of Germany to the exclusion of the agreement of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and Private International Law (PIL)
- 14.4 Should any term or clause of these General Conditions in whole or in part be found to be unenforceable or void, all other provisions shall remain in full force and effect and the unenforceable or void provision shall be replaced by a valid provision which comes closest to the original intention of the unenforceable or invalid provision. Only the German version of these Terms and Conditions is legally binding; any Translations are of a non-binding nature and for information purposes only.