

GENERAL TERMS AND CONDITIONS OF SALE

§ 1 Application

1. These general terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.
2. These general terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if we perform delivery despite our knowledge of differing or contrary terms. Acceptance of our deliveries is considered as acceptance of our general terms and conditions of sale.
3. These general terms and conditions of sale shall only apply vis á vis entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).

§ 2 Conclusion of contract

1. Our offers are non-binding and noncommittal. This also applies if we provided the Buyer with catalogues, technical documentation (e.g. drawing, plans, calculations, estimates, referrals to DIN standards), other product information or documentation – including in electronic form –, for which we reserve ourselves ownership and all intellectual property rights.
2. The order of goods by the Buyer is considered a binding contractual offer. Unless defined otherwise in the order documents, we are entitled to accept the offer within 10 days of receipt.
3. Acceptance of the Buyers order may be declared in writing (e.g. through order confirmation) or by delivery of the contractual goods.

§ 3 Prices

1. If no written price agreement has been made, the goods shall be invoiced at the price valid on the date of the order.
2. The agreed prices are exclusive of the respective statutory VAT upon delivery.
3. Prices are calculated on the weight and quantity determined by us if the recipient does not object immediately.
4. As far as prices are staggered according on the quantity delivered, the price invoiced will be calculated on the actual quantity delivered, irrespective of the originally stated staggered price.

§ 4 Application technology consulting

1. Application technology consulting will be offered to the best of our knowledge. All consulting on suitability and application our wares does not release the Buyer from checking and testing the wares himself for the intended purposes and procedures.
2. The statute of limitations for any claim arising out of faulty consulting is three years, beginning at the end of the year in which the claim accrued. If the claim is based on intentional acts, the statutory provisions apply.

§ 5 Delivery

1. Unless expressly agreed otherwise, delivery will be ex our works or distribution warehouse (EXW, Incoterms 2020).
2. In the event that collection of the goods is agreed, the risk of accidental loss or deterioration of the delivery is transferred to the Buyer on notification that the goods are available for collection.
Otherwise, the risk is transferred to the Buyer as soon as the goods are handed over by us to the carrier. We select the type and method of dispatch. Additional costs incurred due to differing requirements by the Buyer must be borne by the latter.
3. We reserve the right to make reasonable partial deliveries.
4. Significant, unforeseeable problems beyond our control, delivery delays or stoppages by our suppliers, interruptions in business operations due to raw material, energy or labour shortages, strikes, lock-outs, difficulties in obtaining transport, transport problems and cases of force majeure affecting us or our subsidiary suppliers, extend the agreed delivery time by the duration of the hindrance, wherever these are important to our delivery capability. We will notify the Buyer immediately of the beginning and end of such hindrances. If this results in a delivery delay of more than one month, both we and the Buyer are entitled to withdraw from the contract with regard to the delivery quantity affected by the problem, to the exclusion of all claims for compensation for damages.
5. In case of default in acceptance or other breach of duties to cooperate by the Buyer we are entitled to claim any resulting damage including but not limited to additional expenses. Further damages are reserved. In this case, the risk of loss or damage to the goods passes to the Buyer at the time of such default or breach of duty to cooperate.

§ 6 Payment

1. The invoice amount is to be paid within 30 days net. Timely payment shall only be deemed to have been made if the payment has been valued on the bank account specified by us and we can dispose of the money on the due date. A discount on new invoices is excluded if older invoices due have not yet been paid.
2. In the event of default in payment, interest on arrears shall be payable at a rate of 9% above the respective base interest rate. We reserve the right to assert further damage caused by default.
3. The Buyer shall only be entitled to set-off insofar as the counterclaims are undisputed or have been finally determined by a court of law. The Buyer shall only be entitled to assert rights of retention on the basis of counterclaims arising from the same contractual relationship.
4. Repeated non-payment of due invoices or other circumstances which indicate a significant deterioration in the financial circumstances of the Buyer after conclusion of the contract shall entitle the Buyer to immediately call in all our claims based on the same legal relationship. In the aforementioned cases, outstanding deliveries will only be carried out once all due invoices have been paid or sufficient securities have been provided by the buyer.

§ 7 Packaging

1. Reusable containers provided by us on loan remain our property. After arrival they are to be emptied as soon as possible and either returned with our delivery vehicles or returned to us free of charge in a usable condition.
2. If the reusable containers have not been returned to us four weeks after delivery, they are considered to be lost from the fifth week of their absence from our works, as far as the



Werk Wieblingen
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04769 Mügeln
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Fax: +49 34362 32543

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absence is not due to a predominant fault of ours. We reserve the right to claim further damages for delay.

3. Our reusable containers may under no circumstances be used to hold other products as storage containers, to store and return contaminated solvents or for other purposes contrary to the intended purpose. We will charge the cleaning fees incurred by us due to non-observance of this instruction at actual cost price.

4. All damage to and loss of our packaging materials during their absence from our works shall be borne by the customer, irrespective of whether he is at fault or not. This applies in particular to damage caused by soiling and to losses due to force majeure, confiscation or the like. We shall charge in each case the prices which we would have to apply if we had to purchase corresponding new containers.

§ 8 Warranty

1. The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and short delivery), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier's recourse pursuant to §§ 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the Buyer or another entrepreneur, e.g. by incorporation into another product.

2. As a matter of principle, we shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 BGB). Furthermore, the Buyer's claims for defects shall be subject to the condition that he has complied with his statutory duties of inspection and notification of defects (§§ 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. The Buyer must check - if necessary, by means of a trial processing - whether the delivered goods are suitable for the intended use. This applies in particular if thinners, hardeners, additional varnishes or other components are added which were not purchased from us. If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects must be notified to us in writing within 7 working days of delivery and defects not apparent on inspection within the same period of time from discovery. If the Buyer fails to carry out the proper inspection and/or give notice of defects, our liability for the defect not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.

3. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

4. We shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a part of the purchase price which is reasonable in relation to the defect.

5. The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods in question for inspection purposes. In the event of a replacement delivery, the Buyer shall, in accordance with the statutory provisions, return the defective goods to us. Subsequent performance shall neither include the removal of the defective item nor its reinstallation if we were not originally obliged to install it.

6. We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if



Werk Wieblingen
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applicable, removal and installation costs, in accordance with the statutory provisions if a defect is actually present.

Otherwise, we shall be entitled to demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the Buyer.

7. In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect itself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be informed immediately of such a selfremedy, if possible, in advance. The right of self-execution shall not apply if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

8. If the subsequent performance has failed or if a reasonable period to be set by the Buyer for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal.

9. Claims of the Buyer for damages or reimbursement of futile expenses shall only exist in the case of defects in accordance with § 9 and shall otherwise be excluded.

§ 9 Other liability

1. Unless otherwise provided for in these general terms and conditions of sale and Delivery, including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), only

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.

3. The limitations of liability resulting from paragraph 2 shall also apply to third parties as well as in the event of breaches of duty by persons (also in their favor) whose fault we are responsible for according to statutory provisions. They shall not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the German Product Liability Act.

4. The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the Buyer (in particular pursuant to §§ 650, 648 BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply

§ 10 Retention of Title

1. We retain title to the goods until receipt of all payments in full. In case of breach of contract by the purchaser including, without limitation, default in payment, we are entitled to take possession of the goods.

2. The purchaser shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.



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3. As long as the purchase price has not been completely paid, the purchaser shall immediately inform us in writing if the goods become subject to rights of third persons or other encumbrances.
4. The purchaser may resell goods subject to the above retention of title only in the course of his regular business. For this case, the purchaser hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to us. Notwithstanding our right to claim direct payment the purchaser shall be entitled to receive the payment on the assigned claims. To this end, we agree to not demand payment on the assigned claims to the extent the purchaser complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.
5. Insofar as the above securities exceed the secured claim by more than 10%, we are obligated, upon our election, to release such securities upon the purchaser's request

§ 11 Export Control

1. The Buyer confirms that it is neither directly nor indirectly in possession of a sanctioned entity and that no member of the management is affected by applicable sanctions and export controls.
2. To the extent that Buyer exports or transfers to a third party work, the contract goods or services delivered by Seller, Buyer warrants that
 - a) to comply with the (re-)export control regulations of the Federal Republic of Germany, the European Union, the United States of America and other relevant export control regulations as well as their respective relevant catch-all regulations, all laws applicable to the import and/or export with regard to customs duties, levies and other customs requirements (customs regulations), as well as all relevant import regulations of the respective countries, including any registration and reporting obligations;
 - b) and not to violate any embargo imposed by the Federal Republic of Germany, the European Union, the United States of America or United Nations, also with regard to restrictions on domestic business, prohibitions on circumvention.
 - c) to ensure that the regulations of all sanction lists of the Federal Republic of Germany, the European Union, the United States of America or United Nations concerning business transactions are complied with.
3. Delays resulting from licensing procedures or export control inspections shall invalidate delivery times and contractual performance. If a required permit is not granted for reasons beyond the Seller's control, the contract shall be deemed not to have been concluded. Claims for damages due to the aforementioned exceedance of deadlines or non-fulfillment of the contract are excluded.
4. The Buyer shall be obliged to notify the Seller without delay if any end-use or compliance declarations made to the Seller are no longer applicable.
5. The Buyer shall indemnify the Seller in full against any claims for damages resulting from a breach due to the Buyer's failure to comply with the aforementioned export control obligations, import regulations and/or customs regulations. In addition, the Buyer shall be obliged to compensate the Seller for all damages and expenses incurred in this context

§ 12 Statute of Limitations

1. Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. This shall be without prejudice to further special statutory provisions on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB).



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2. The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims for damages of the Buyer pursuant to § 9 para. 2 sentence 1 and sentence 2(a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

§ 13 Data Protection

We are entitled to process the data about the Buyer received with regard to the business relationship or in connection with it, regardless of whether they originate from the Buyer itself or from third parties, in accordance with the Basic Data Protection Regulation. In this regard, we refer to <https://kluthe.com/datenschutz>.

§ 14 Place of Jurisdiction

1. The law of the Federal Republic of Germany shall apply to these general terms and conditions of sale and the contractual relationship between us and the Buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

2. If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Heidelberg. The same shall apply if the purchaser is an entrepreneur within the meaning of § 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these general terms and conditions of sale or a prior individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

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