

Standard Terms and Conditions of Sale, Delivery and Payment

1. General

- Our offers and supplies of goods and services are subject exclusively to the following terms and conditions. The latter thus also apply to all future business transactions. These terms and conditions will be regarded as accepted at the latest when goods or services are accepted. Contradictory terms of purchase of our contract partner or a third party are hereby rejected. Such terms will not be recognised even if we fail to reject them again after they are sent to us.
- Contracts must be concluded in writing. All terms agreed between us and the Purchaser for the purpose of implementing this contract are recorded in writing in this contract. No assurances have been made by us to the Purchaser unless they are expressly contained or referred to in this contract. The characteristics of the contract item are defined exclusively in our offers, confirmations of order and associated documentation, without this constituting a guarantee as defined by § 443 German Civil Code (BGB).
- All legal transactions with the Purchaser are subject to the laws of the Federal Republic of Germany; the UN convention on the international sale of goods is hereby excluded.
- These terms and conditions only apply to entrepreneurs as defined by § 14 German Civil Code (BGB), public law legal entities and public law funds.

2. Offers and contracts

Our offers are without obligation and non-binding, unless otherwise stated in the acknowledgement of order.

3. Creditworthiness

- The acceptance of orders is conditional on the Purchaser's creditworthiness.
- If this appears doubtful after an order is confirmed we will be entitled, if this doubt is confirmed by information supplied by an investigation agency, to withdraw from the contract or to require payment in advance. There is no entitlement to see the information supplied.
- If the insurance cover for a purchaser initially provided by our credit insurer is cancelled after the acceptance of an order and/or the conclusion of a contract, we may refuse performance until the Purchaser has rendered the consideration due or provided security for it.

4. Prices

Unless otherwise agreed in writing, prices are ex works and subject to the addition of freight and VAT. We reserve the right to adjust our prices accordingly in the event of increases in costs after the conclusion of a contract, in particular ones resulting from new collective wage agreements or changes in the price of materials.

5. Delivery

- Delivery times are subject to agreement for each individual order. Delivery deadlines or periods must be agreed in writing and indicate approximate dispatch dates.
- The satisfaction of our supply obligations is conditional on the punctual and proper satisfaction of the Purchaser's obligations, in particular if he is under an obligation to supply details of the specifications of a contract item or to clarify all technical details. The right of recourse to the defence of non-performance of contract is reserved.
- We cannot be held responsible, even if periods or deadlines have been agreed, for delays in the supply of goods or services due to force majeure or to events, which, in spite of our exercising the degree of care required by the circumstances of the individual case, make it more difficult or impossible for us to supply – this includes, in particular, operational breakdowns and traffic hold-ups, strikes, lockouts, unforeseeable shortages of raw materials or supplies, directives issued by public authorities etc., including ones affecting our own suppliers. These will entitle us to postpone delivery by the duration of the obstacle plus an appropriate start-up period, which takes into account the parameters of our operations. If an obstacle persists for longer than 2 months or if it becomes impossible for us to supply, either party will be entitled to withdraw from the contract. Entitlement to claim damages is subject to Section 10 of these terms and conditions.
- If deliveries can be divided, we are entitled to make part deliveries and, subject to reasonable prior notice, to deliver early.
- If the Purchaser culpably fails to accept goods on time, we will be entitled to impose a contractual penalty equal to 1% of the relevant value of the delivered goods for each full week of the delay, subject to a maximum of 10% of delivery value. We reserve the right to enforce additional claims and rights.

6. Transport, passing of risk

- If no agreement has been reached with regard to the method of transport, we will make this decision in accordance with sound commercial principles but without any undertaking to choose the cheapest method.
- The risk will pass to the Purchaser when the goods are loaded, even if free delivery has been agreed and/or delivery is effected using our own vehicles. We are only liable for damage or loss during transport subject to Section 10 of these terms and conditions.
- If the Purchaser fails to accept goods on time, the risks of the accidental destruction and accidental deterioration of the goods will pass to the Purchaser.

7. Terms of payment

- Payment must be made without deduction within 30 days following the invoice date. Other terms must be agreed in writing.
- Bills of exchange and cheques will only be accepted on account of performance. Bills of exchange will only be accepted by prior agreement and, if they are discountable, without allowing any discount. Our claim to the purchase price will not cease to apply until any bills of exchange or cheques have been redeemed in full and/or the relevant amount is credited to us. Expenses for bills of exchange and discounting will be charged separately and are payable immediately without deduction.
- Should the Purchaser culpably fail to pay us on time or culpably cease to be creditworthy (Section 3

of these terms and conditions), we may require the immediate payment of the purchase price and the settlement of any other outstanding claims against him. This will apply accordingly if the Purchaser culpably allows a bill of exchange or cheque to be protested or, in a case where the supply of a bill of exchange has been agreed, fails to supply it on time. Our obligation to accept a bill of exchange will also cease here.

- If a payment deadline is not met, we will be entitled to charge interest on arrears at 9% above the base rate in accordance with § 247 German Civil Code (BGB). The right to claim compensation for additional losses resulting from the delay is reserved. If the Purchaser falls into arrears, all rebates, discounts and freight, volume and other allowances granted will cease to apply.
- Unless otherwise agreed in the contract, the purchase price for any part delivery made will become due for payment independently of the remaining deliveries.
- The Purchaser is only entitled to offset counterclaims if they are legally final and binding, undisputed or have been accepted by us as valid. He is only entitled to exercise a right to withhold if his counterclaim arises out of the same contractual relationship.
- All payments must be made to us only.

8. Reservation of title

- Goods supplied will remain our property (hereinafter "reserved goods") until all of our existing and future claims against the Purchaser have been settled in full, in particular including the full settlement of any current account balance against the latter. This applies even if payments made are stipulated to be in settlement of specific claims.
- The Purchaser is entitled to modify, process or sell on reserved goods in the normal course of business, as long as he is not in arrears. As a precaution, the Purchaser hereby assigns to us any claims relating to reserved goods and arising out of such sale on or on any other legal basis (insurance, tort) (including claims arising out of a current account operated between the Purchaser and its customer), up to the price (including VAT) agreed with us for the reserved goods concerned. This assignment is valid regardless of whether reserved goods are sold on without or following modification or processing. We hereby accept this assignment. The Purchaser is revocably authorised to collect such assigned claims. Should the Purchaser culpably fail to settle his payment obligations from the proceeds obtained, if he is in arrears with payment, has applied for insolvency proceedings to be commenced or stopped payments, we may require him to supply us with details of the claims assigned and the relevant creditors. The Purchaser must then supply all of the information required for collection, hand over the associated documentation, records etc. and inform debtors of the assignment. He will also then be under an obligation to mark reserved goods as our property for the information of third parties. We are entitled to inspect reserved goods on the Purchaser's premises and require the submission of all necessary documents/records etc. at any time. The Purchaser may not pledge reserved goods or assign them to third parties as security. He must inform us of any action by third parties which is prejudicial to our rights and support us in asserting our rights. If a third party is not in a position to reimburse to us the court and other costs incurred in the protection of our title, the Purchaser will be liable for the deficit.
- Any processing, modification or transformation of the purchased goods will in all cases be carried out on our behalf free of charge and without any obligation on our part. Such modified or processed goods will serve as security for us only up to the value of the reserved goods concerned. If reserved goods are processed or combined with other items which do not belong to us, we will acquire a share of title to the new item produced in proportion to the ratio of the objective value of the item supplied by us to that of the other items processed or combined at the time of the processing or combination. If processing is carried out in such a way that the new item must be regarded as the main item, it is hereby agreed that the Purchaser assigns to us the relevant share of title and will take care of the co-owned property thus created for us free of charge.
- If the value of the securities provided for us exceeds our claims by more than 20%, we must on request by the Purchaser release our choice of securities up to the relevant amount.
- The Purchaser bears the risks pertaining to items supplied. He must at his own expense take good care of reserved goods, keep them in good condition and insure them against loss, damage and destruction for the amount reasonably to be expected by a prudent merchant. The Purchaser hereby assigns to us his claims arising out of such insurance contracts up to the full value of the reserved goods and consents to payouts being made to us. If requested by us, the Purchaser will hand over the insurance policies to us for the enforcement of insurance claims.

9. Liability for defects

- Our agreed obligations with respect to the characteristics of contract items are exclusively defined by the contract terms agreed with the Purchaser and not by any advertising claims, leaflets/brochures, advice etc. No guarantee, e.g. as defined by § 443 German Civil Code (BGB), is implied.
- We supply advice to the best of our knowledge on the basis of our experience, but without any liability whatsoever. Statements or information supplied about the suitability or application/use of a contract item are not binding unless they expressly relate to agreed characteristics for the purpose of Subsection 9.1 of these terms and conditions. They do not relieve the Purchaser of his obligation to carry out his own inspections/tests. We are not liable for statements or advertising claims made by third parties.
- The Purchaser must inspect goods supplied conscientiously for obvious defects and submit a complaint to us in writing with respect to such defects within 5 working days of delivery. This includes defects constituted by the fact that the wrong item or too small a quantity of an item has been supplied. Defects which do not become apparent until later must be made subject to a written complaint to us within 5 working days following their discovery. If the obligation to inspect items and submit complaints is not satisfied, the defect concerned will be regarded as accepted. In the event of a complaint, the Purchaser must keep the defective goods accessible for inspection, as determined by us either on his own premises or his customer's premises or send them to us for examination.
- A negligible deviation in goods supplied from the agreed or usual characteristics (as defined by the relevant DIN standards) will not give rise to any claims by the Purchaser based on defect. In the

case of items cut to size and fixed dimension deliveries, this includes positive and negative deviations of up to 10% from the relevant order and the usual minor dimension tolerances.

- If goods supplied are defective, we may elect to remedy either by rectifying the defect or by supplying a perfect item. We will only bear the reasonable costs of remedy up to a maximum equal to the purchase price. Expenses incurred for the purpose of remedy due to the fact that goods supplied are transported to a place other than the Purchaser's place of business must be borne by the Purchaser.
- If we are unwilling or unable to rectify a defect or supply a replacement, if neither is achieved by the expiry of a reasonable deadline of at least 4 weeks set by the Purchaser or if repair or replacement is unsuccessful for any other reason or cannot be reasonably expected from us, the Purchaser will be entitled either to withdraw from the contract or to reduce the purchase price accordingly. Entitlement to damages is subject to Subsection 10.1 of these terms and conditions.
- Claims based on defects will expire by limitation one year after delivery. Claims to damages not excluded by Subsection 10.1 of these terms and conditions are subject to the statutory period of limitation.
- This is without prejudice to § 478 German Civil Code (BGB). If the Purchaser is compensated to the same value (in the form of service elements/additional items), the restrictions of rights in the case of defects imposed in Subsections 9.1 to 9.7 of these terms and conditions will also apply in the event of recourse pursuant to § 478 German Civil Code (BGB).

10. Damages, withdrawal, contractual penalties

- Claims for damages against us and our employees, representatives and vicarious agents are excluded, whatever their legal basis, particularly those pertaining to impossibility, delay, defective performance, breach of subsidiary contractual and other obligations and tort. This will not apply if the loss suffered is due to a deliberate or grossly negligent breach of obligation on our part or in the case of claims covered by a guarantee provided by us. In such a case, however, liability will be limited in amount to typical, foreseeable losses. Neither are we liable for loss of profit, expenses saved, third-party claims for damages or any other indirect losses and consequential losses, unless a feature guaranteed by us was specifically intended to protect the Purchaser against such losses. The above exclusions/restrictions of liability do not, however, apply to losses resulting from injury to life, limb or health or to claims under the German Product Liability Act; in such a case the statutory provisions will apply without restriction.
- If the Purchaser fails to pay or to accept a delivery on time we will, after the expiry of a reasonable extended deadline, be entitled to withdraw from the contract in whole or in part and/or to claim damages equal to 20% of the purchase price. We reserve the right to prove that we suffered a greater loss, in particular including the cost of taking goods back, but the Purchaser is also entitled to prove that no loss at all has been suffered or only a substantially lesser one.
- We will not accept any contractual penalties imposed by the Purchaser on any basis whatsoever.

11. Protected third-party rights, data processing

- If we are under obligation to supply on the basis of information, drawings, models, patterns or parts supplied by the Purchaser, the latter will be liable for ensuring that this does not breach any protected third-party rights.
- We are entitled to process data received from the Purchaser as a result of the business relationship subject to the requirements of the German Federal Data Protection Act, in particular including the supply of the data required for credit insurance purposes to the relevant credit insurance company.

12. Place of performance, legal venue

The legal venue and place of performance is the place where we are registered for business. The place of performance for deliveries is the point of dispatch.

13. Severance clause

Should any of these terms and conditions or a provision of any other agreements be or become invalid, this shall not affect the validity of the remaining terms, conditions or agreements.

Christian Kröger GmbH & Co. KG, D-32584 Löhne, Germany

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