

Sales and Delivery Terms and Conditions of business

1 Area of Application

1.1 The following general sales and delivery terms and conditions apply to all business transactions conducted by FK Industrievertretungen Kobler (FK) towards companies, legal entities or assets governed by public law in the meaning of § 310 para. 1 German Civil Code. 1.2 All offers, agreements, deliveries and services are based on the following provisions provided no other written agreements are made by FK in specific cases. Any contrary or deviating provisions made by the customer are therefore expressly revoked. Our provisions also apply when delivering to the customer unconditionally in the knowledge of contrary or deviating customer provisions.

1.3 This agreement also applies for all future contracts with the customer including those not expressly stated, provided FK does not confirm any deviations to the provisions.

2 Offer, conclusion of contract

2.1 Our offers are made, unless otherwise expressed to the contrary, non-binding and without obligation in relation to execution, price, delivery time and availability.

The customer order represents an offer for us to conclude a contract of sale. We then confirm receipt of the order within three working days. The customer is bound to the offer for 10 days. We accept the offer by delivery or by confirmation.

2.2 Agreement on features or declarations concerning the use of the article delivered including supplementary understandings, changes or additions are only valid through written confirmation.

3 Object of the contract

3.1 The scope, nature and quality of goods and services are determined by the mutually signed agreement or by the acceptance of our offer, otherwise these parameters are subject to our offer.

3.2 Product descriptions, diagrams and technical data are descriptive of our service but are not a guarantee. A guarantee requires an explicit written declaration.

3.3 We reserve the right to make any minimal changes to services provided they are reasonable and relate to insignificant changes for the customer. In particular, customers shall accept any customary changes in quality, quantity, weight or other deviations, even if they referred to diagrams or illustrations upon placing their order, unless otherwise expressly agreed as a binding condition.

4 Delivery and performance

4.1 Unless otherwise agreed all delivery times are non-binding and only start once all commercial and technical questions have been clarified between us and the customer.

4.2 Delivery and performance times extend to include those periods where the customer is in arrears of payment and to the extent where we are delayed in the delivery or performance by circumstances outside our responsibility. These include force majeure and delays attributed to our suppliers. Deadlines are considered extended where the customer does not cooperate in accordance with the contract, e.g. in the sharing of information, granting of access or delivering of services.

4.3 Should the contracting parties agree retrospectively other or additional services affecting agreed delivery times, then these delivery times are to be extended appropriately.

4.4 Customer reminders and time limits are required in written form to be effective. Any extensions as to time need to be appropriate. The setting of time limits is to comply with the legal requirements pursuant to § 323 para. 2 German Civil Code. The customer is obliged to declare at our request within reasonable time whether to withdraw from the contract or demand compensation in place of services or the services being fulfilled

4.5 Should we receive only partial delivery then we are equally entitled in respect of the customer to provide partial delivery of the available, and then subsequent delivery of the missing articles within an appropriate period of time. Should it become clear that we not be in a position to deliver the missing articles then we are entitled to withdraw from the contract supplying these articles.

4.6 Delivery times are in compliance when the goods leave our storage facility before the time stated. Partial deliveries are allowed provided they are reasonable for the customer.

5 Packing, dispatch, transfer of risk

5.1 The choice of method and means of delivery are at our discretion unless otherwise agreed.

5.2 Deliveries are to be professionally packed in accordance with usual practice.

5.3 Should dispatch be delayed by request of the customer or for reasons applicable to the customer then the goods are stored at the cost and risk of the customer. The risk transfers to the customer when the goods are transferred to a forwarding agent or postal service and not later than when the goods leave the storage facility. We are however obliged to ensure that insurance is provided at the cost of the customer covering the risk should this be requested.

6 Prices, remuneration, payment, payment, set-off

6.1 The prices quoted are 'net ex dispatch location' plus the applicable sales tax, dispatch and insurance costs. Prices are per item unless otherwise stated. Bulk prices are per type, value and colour unless otherwise stated. Prices for discontinued items only apply to those available in stock.

6.2 Advance payment is required in principle for new customers and customers located outside the EU. 6.3 Customers with an existing business relationship are supplied on invoice.

6.4 Invoices are due in full within 10 days of receipt. Special conditions require specific agreement especially regarding discounts for prompt payment.

Payments are considered complete, when they are at our disposal.

6.5 Should the buyer be in arrears then interest at 8% above the base rate is calculated until payment.

6.6 The buyer is only entitled to off-set and to retain payments when counter claims, which have been validated in law, are undisputed or accepted by us.

6.7 Should the customer arrears be longer than 30 calendar days, issues, notes or cheques that are protested, or files for insolvency proceedings over their assets, or similar proceedings governed by law, then we are entitled to claim as due all outstanding amounts against the customer immediately, retain all deliveries and services and to reserve all rights arising from title to property ownership.

7 Retention of ownership title

7.1 Our services remain in our ownership until full payment of all claims arising from the business relationship with the customer. Payments by cheque or bills of exchange only then fulfils our demands when the respective amount is finally settled and no counter claim against us needs to be taken into account.

7.2 The customer is obliged to treat the goods under retention of title with due care for the respective period.

7.3 Any sale of the goods by the customer under retention of title is only permitted within the framework of a proper business relationship. The customer is not entitled to assign the goods with retention of title or to transfer as security or otherwise to make arrangements that place our property at risk. Assignments or claims by third parties are to be notified by the customer in writing without undue delay and to provide all the necessary information to third parties concerning our ownership rights and to cooperate in taking measures for the protection of our goods under retention of title. The customer bears all the costs associated with the removal of access and replacement of the goods, provided the costs are not levied by third parties.

7.4 The customer assigns the claims arising from the resale of the goods together with all collateral rights to us already at this time as well as independently of whether the goods under retention of title are sold before or after finishing. Should an assignment not be permitted, then the customer is to irrevocably notify the third party debtor to make all payments only to us. The customer is irrevocably authorised to collect the assigned claims on our behalf. The amounts collected are to be immediately transferred to us. We may revoke our mandate to the customer to collect amounts due including any resale entitlement should the customer not be in compliance with their payment obligations towards us in the proper manner, fall into arrears, stop payments or when an application is made for insolvency proceedings on the assets of the customer. The resale of claims requires our prior approval. The authorisation for the collection of payments by the customer dissolves with the notification of assignment to a third party debtor. Should the authorisation to collect be revoked we are entitled to demand that the customer discloses the assigned receivables and the names of their debtors to us, provides all information necessary for the collection, delivers the corresponding documents and notifies us of the debtors of the completed assignment.

7.5 The retention of title is extended in accordance with the following provisions: Finishing or remodeling takes place, without any obligation for us. Should finishing, connecting or mingling of the goods under retention of title with goods, which are not in our ownership, take place, then we acquire co-ownership of the resulting products in proportion to the sales value (gross invoice value) of the other objects used at the time of the finishing process. Should the inclusion of mingling of the goods under retention of title be part of the property of the customer, then it is taken as agreed that the property of the customer is transferred in proportion to the value of the entire item in question. The customer safeguards our co-ownership property without charge to us.

7.6 Should the customer act contrary to the provisions of the contract especially in regard to arrears of payment or when insolvency proceedings are filed or an application made, then we are entitled but not obliged to accept return of the goods delivered. The acceptance of the returned goods does not constitute a termination of the contract unless expressly set out in writing. A flat rate of 20% is charged on the net delivery value plus sales tax on the returned goods. The customer reserves the right to prove there was less or more expense incurred.

We are committed to releasing the applicable securities provided its value exceeds that of the secured claim by more than 20%. The choice of securities released are at our discretion.

8 General obligations of the customer

8.1 The customer is obliged to allow inspection of our deliveries and services without undue delay after completion pursuant to the commercial regulations (§ 377 Commercial Code) by a qualified person and to notify us of any noticeable and noticed defects within 10 days, and any hidden defects immediately after their discovery in writing, describing the exact form of the defect in order to maintain their claim under the warranty.

8.2 The customer accepts that we rely on cooperation with the customer to ensure a successful and timely completion of the delivery and performance expected of us. The customer is therefore obliged to provide all of the necessary information required to ensure the professional implementation of services in a timely manner.

8.3 The customer is obliged to conduct a test on the functionality of our deliveries and services thoroughly in an actual application before starting production, as well as before the delivery of their products.

8.4 The customer is to take appropriate precautions in case our deliveries and services have not been performed in a proper manner.

9 Liability

9.1 Claims for compensation against us are excluded when we or our legal representatives or agents caused the damage through unintentional negligence. This exclusion from liability does not apply to either bodily harm or the acceptance of a contractual guarantee nor in violation of a material contractual obligation. Material contractual obligations are those which are to be fulfilled for proper performance of the agreement where the customer routinely relies on and trusts in its compliance and where its infringement endangers the achievement of the purpose of the contract.

The provision of a guarantee limits our liability to the extent of the guarantee and in the case of a simple negligent infringement of a material obligation to customary and foreseeable damage.

Claims covered by product liability law remain unaffected.

9.2 Claims for defects by the customer are limited as to time provided no premeditated liability exists and the article delivered is not in customary use in construction and its defects are caused by its defective features within a period of 12 months from the transfer of risk.

This time limitation applies for all claims arising in connection with any defects especially in respect of compensatory claims for consequential damage.

10 Warranty for material defects

10.1 Our services deliver the agreed features and are suited to the contractual requirements of customary use where an agreement is omitted. Excluding any explicit further agreement, our services expressly guarantee to be free of defects according to the current state of technology. It is the sole responsibility of the customer to guarantee the suitability and security of our services for an application provided by the customer. A minimal reduction in quality may be disregarded.

10.2 The goods delivered are only intended for the purposes stated by us or the respective manufacturer. The specifications cited in the respective offer of the respective manufacturer apply as the properties and conditions agreed in accordance with § 434 German Civil Code.

The guarantee is not applicable when our products are not stored, installed or used in a customary manner by the customer or third parties, normal wear and tear, improper servicing, damage arising from repairs or work by third parties.

10.3 Material defects are initially rectified. Subsequent rectification is at our discretion through the removal of the defect, delivery of goods or other services without defects, or by showing how the effect of the defect is prevented. A minimum of two attempts at subsequent rectification in respect of defects is acceptable. The customer is to accept as subsequent rectification a similarly new or equally suitable version of the product without the defects should this be reasonable.

10.4 The customer is to support us in our analysis of the defect and its removal by describing specifically the problems occurring, providing us with comprehensive information and granting us the required time and opportunity to remove the defect.

10.5 Should additional costs be incurred by us as a result of an alteration to our services or incorrect operation we are entitled to have these compensated. Should the expenditure be required to remove the defect increase especially in respect of transport, labour and material costs, then we are to bear these costs.

10.6 Should we refuse subsequent rectification, or these fail, or they are not reasonable, then the customer may terminate the contract or reduce the price.

11 EU import sales tax

11.1 Provided the customer maintains a place of business outside Germany then the regulations relating to the imposition of import sales tax in the European Union are applicable. In particular this includes informing us of the sales tax identification number and notifying us of any changes if applicable. The customer is obliged to provide us on request of any information required relating to their business status, the use and the transport of the goods delivered as well as reporting statistical information.

11.2 The customer is also obliged to compensate us for the effort and costs incurred relating to omissions or incomplete details concerning import sales tax.

12 Written form, applicable law and jurisdiction

12.1 All alterations and additions to the contract must be declared in writing in order to be effective, this also applies to any amendments to the agreement which has been subsequently declared in writing.

12.2 German law applies exclusively to these business terms and conditions and also for the legal relationship between us and the customer - also to any business conducted with parties abroad. The application of foreign law is also excluded as is the application of the UN Convention on Contracts for the International Sale of Goods (CISG).

12.3 The place of jurisdiction for all disputes in connection with this contract is Balingen.

13 Severability clause

Should a provision of this agreement be or become invalid or the agreement be incomplete then the legal effectiveness of the remaining provisions remain unaffected. The contracting parties are to replace the ineffective provision by one which comes closest in a legal sense to the purpose of the ineffective provision. The same applies to any gaps in the contractual provisions.