

I. Governing Terms

These terms shall apply to all business transactions with the customer, even if they are not stated in later agreements. They shall also apply if customers refer to their terms and conditions, in particular when ordering or awarding a contract, unless the customer's terms and conditions were expressly agreed in writing. The following terms of sale will apply even if we carry out the customer's order without reservation while being aware of conflicting or differing clauses in the customer's terms.

II. Conclusion of Contract

1. An order shall not be deemed accepted by us until we send the customer a written confirmation of the order. A contract shall not be concluded until a written confirmation of the order has been sent.
2. In any event, any agreements differing in particulars, as well as special warranties shall require written confirmation from us.
3. Any descriptions of goods in catalogues or brochures do not represent warranted qualities and shall not become part of the contract. Warranted contractual qualities are basically the properties described in our product descriptions, offers, specifications, and labels. Public statements or advertising cannot be regarded as a description of goods and/or services.
4. Samples handed over to us are not part of the contract.
5. We are able to accept a customer's order, qualifying as the offer to make a contract of purchase, within two weeks by sending a written confirmation or by delivering the ordered goods within the same time period.
6. Our offers are subject to change and non-binding, unless we have explicitly stated them as binding.
7. We reserve copyrights as well as further property rights for all pictures, drawings, calculations, and other documents. We require the customer to secure our explicit consent before making them accessible to third parties, no matter whether we have marked them as confidential or not.

III. Terms of Delivery

1. Provided we state delivery times, they shall be stated by us according to our best discretion; but they are on no account binding.
2. Partial deliveries shall be permitted within the delivery times stated by us, provided they do not result in disadvantages for the use of the goods and may be considered just and reasonable for the customer. We reserve the right to diverge from the agreed amount of goods by +/- 10 per cent.
3. If delivery is delayed, any liability for damages shall be limited to an amount equaling 30% of the foreseeable damage in case of ordinary negligence. Any further claims for damages shall only exist if the default was caused intentionally or by gross negligence.



4. If the underlying contract can be considered as a time bargain according to § 268 par. 2 no. 4 of the German Civil Code or § 376 of the German Commercial Code, we will be liable according to the regulations. The same applies in case the customer is entitled, due to a delay of delivery for which we are responsible, to claim his lack of interest in the continuation of the further fulfilment of the contract. In this case, our liability will be limited to the predictable, characteristically occurring damage if the delay of delivery is not caused by an intentional breach of contract for which we can be held responsible, while a fault on the part of our representatives or vicarious agents can be attributed to us. We also may be held responsible for a delay of delivery according to regulations if it occurred due to an intentional or grossly negligent breach of contract for which we are to blame, in that a fault on the part of our representatives or vicarious agents can be attributed to us. Our liability is limited to the predictable, characteristically occurring damage if the delay of delivery was not caused by an intentional breach of contract for which we are responsible.
5. War, civil conflict, export or trade restrictions on the basis of a change of political conditions, strikes, lockout, operational breakdowns, reduction of operations or similar events which make it impossible or unreasonable for us to execute the contract, shall be considered as force majeure and discharge us from the duty of timely delivery for the duration of their existence. The contracting parties shall be obliged to notify each other accordingly and adapt their obligations according to the changed circumstances in good faith.

IV. Scope of Delivery

1. The scope of delivery shall be determined by our written order confirmation.
2. During the period of delivery we shall reserve the right to make design modifications or alterations in form which may be attributed to a technical improvement or legal requirements, provided the contract item will not be considerably changed and the alterations are reasonable to the customer. In case of a subsequent purchase, a reference to the alterations made shall not be required, provided the foregoing conditions apply.

V. Cost of Cancellation

If the customer withdraws from an order without justification, we may claim 10% of the sale price for costs incurred as a result of processing the order and for lost profit, without the prejudice to assert a higher actual loss and subject to the customer furnishing proof of a lower loss.

VI. Packing and Shipping

Any packing shall become the property of the customer and shall be charged by us. Postage and packing expenses shall be invoiced separately. The type of dispatch shall be selected according to our best discretion.



VII. Acceptance and Passing of Risk

1. The customer shall be obliged to accept the contract item. In the absence of any different agreement (delivery by us), the delivery shall take place in Kierspe. The risk shall be passed at the latest at the time the commodity is dispatched to the customer, even in the case of partial deliveries, or where we have also undertaken other services, e.g. the transit and/or installation. At the express request of the customer, we shall insure the consignment at the customer's expense against theft, breakage, damage to goods in transit, fire and water damage and other insurable risks.
2. If the dispatch is delayed as a result of circumstances attributable to the customer, the risk shall pass to the customer from the day the consignment is ready for dispatch. However, on the request of the customer, we shall be obliged to effect the required insurance at the expense of the customer.
3. Without prejudice to the warranty rights, the customer shall take delivery of the supplied objects, even if they show minor defects. 4. In any event, the delivery and return of consignments shall be at the customer's risk. This shall also apply if we have assumed the transit charges or undertaken the transit. If the customer refuses to accept the goods, we may set the customer a reasonable time limit for taking delivery of or accepting the goods. If the customer has not taken delivery of or accepted the goods within the set time limit, we shall be entitled to withdraw from the contract or to claim damage for non-performance.
4. If the dispatch is delayed on the request of the customer, the costs incurred as a result of storage shall be charged to the customer starting one week after the customer has been notified that the consignment is ready for dispatch. However, in the case of storage at our company, at least ½ per cent of the invoice amount shall be charged for each month. After setting a reasonable time limit and upon its ineffectual expiry, we shall be entitled to dispose of the consignment in another way and to supply the customer with a reasonable extended time limit.

VIII. Prices and Changes in Price

1. Price quotations shall always apply on the basis of delivery Ex Works, excluding packing.
2. Any changes in price shall be permitted if there are more than four months between the conclusion of the contract and the agreed date of delivery. If wages, costs of materials or market-induced cost prices increase subsequently and up to the time the consignment is completed, we shall be entitled to reasonably increase the price in accordance with the increases in cost. The customer shall only be entitled to withdraw if the price increase considerably exceeds the increase in the general cost of living between the time the order was placed and the delivery.
3. If the customer is a merchant, a legal person under public law or a special fund under public law, changes in price shall be permitted according to the aforementioned regulation if there are more than six weeks between the conclusion of the contract and the agreed date of delivery.



IX. Warranty

1. The customer shall have to check the incoming goods immediately by means of an appropriate inspection as defined by §377 and §378 of the German Commercial Code. Should the goods show defects in material or defects due to workmanship, the customer shall have to lodge a complaint about visible defects - including damage to goods in transit – without undue delay. Provided the goods are delivered by us to the order address at the customer's request, the customer shall have to immediately notify the carrier and us of ascertainable damage in writing and shall have to ensure that a corresponding entry is also made on the delivery notes. Otherwise a warranty claim shall be excluded.
2. In the case of justified defects, we shall at first be entitled at our option to remove the defects (rectification of defect) or to deliver a substitute. The removal of defects will be considered as failed after the second attempt was carried out to no avail, unless according to the subject of the contract further attempts are just and reasonable for the customer. If the removal of defects fails, or we are not prepared, or not in a position, to remove the defects or deliver a substitute, or a replacement is delayed exceeding reasonable time limits for reasons we are accountable for, the customer shall be entitled to rescind the contract (rescission) or to claim a reduction of the purchase price (reduction). The customer shall afford us the time and opportunity required for the contingent removal of defects. If the customer refuses this, we shall be discharged from the warranty.
3. The customer's warranty claims will become time-barred after the course of one year after the completion of delivery with the customer unless we have committed fraudulent concealment; in this case, the legal regulations shall apply. Our duties based on Par. IX No. 4 and Par. IX No. 5 will remain unaltered in this case.
4. According to legal regulations, we are obliged to take back the goods or reduce the purchase price even without the time limit otherwise required if the buyer's customer as consumer of the sold new chattel (consumer goods) was entitled to claim that the goods be taken back or a reduction of the purchase price toward the buyer or a right of recourse resulting from the defect of these goods is levelled at the buyer. In addition, we are obliged to reimburse the buyer's expenditure, in particular transport and travel expenses and expenses for work and material, which have occurred to him toward the consumer in the course of his supplementary performance liabilities due to a defect of the goods at the point of the transfer of risk from us to the buyer. The claim is invalid if the buyer has not complied with his duty of examination and notice of non-conformity according to § 377 of the German Commercial Code.
5. Any obligation according to Par. IX No. 4 shall be excluded if the defect is based on advertising statements or other contractual agreements which are not issued by us, or if the buyer has issued a separate guarantee toward the consumer. The obligation shall also be excluded if the buyer himself, according to legal regulations, was not obliged to execute a warranty claim toward the consumer or has not made a written complaint against a claim asserted against him. This will also apply if the buyer has accepted warranties toward the consumer which will exceed those provided for in e legal regulations.



6. We shall be liable, not depending on the liability limitations stated below, according to the legal regulations for loss of life, personal injury and physical harm caused by intentional breach of duty on our part, that of our legal representatives, or our vicarious agents, as well as damages covered by the liability clauses of the product liability law. According to legal regulations, we shall be liable for damages which are not covered by the first sentence and which are attributable to intentional or grossly negligent breach of contract as well as fraudulent intent on our part, that of our legal representatives, or our vicarious agents. In this case, however, the liability is limited to the predictable, characteristically occurring damage provided that we, our legal representatives, or our vicarious agents have acted with intent. We shall be liable to the extent in which we have issued a warranty concerning the goods or parts thereof in respect to condition or storage life. For damages which will occur because of the lack of the guaranteed condition or storage life but will not occur immediately, we shall, however, be only liable if the risk of such a damage is obviously included in the guarantee of condition or storage life.
7. We shall also be liable for damage caused by our breach of contract attributable to ordinary negligence in respect to these contractual agreements, only the compliance of which will render the proper execution of the contract possible and the observation in which the buyer must be able to regularly trust. We shall, however, be only liable if the damage occurs by causes linked to and predictable by the contract.
8. Any further liability is excluded without regard to the legal nature of the asserted claim; this refers in particular to tortuous claims or claims concerning compensation for expenditure spent unsuccessfully in place of actual performance; this will not alter our liability according to Par. IX no. 2 and no. 5 of this contract. As far as our liability is excluded or limited, this will also apply for the personal liability of our employees, workers, representatives, or vicarious agents.
9. Warranty claims of the buyer are subject to a time limit of one year starting from the delivery of the goods. This does not apply in the event of loss of life, personal injury and physical harm caused by us, our legal representatives or our vicarious agents, or if we or our legal representatives have acted on premeditation or gross negligence, or if our vicarious agents have acted on premeditation.
10. We shall not assume any responsibility for damage caused by the following:
 - + Inappropriate or improper use
 - + Defective assembly or commissioning by the customer or third parties
 - + Natural wear and tear
 - + Incorrect or negligent handling
 - + Inappropriate means of operation and natural loss in value from normal use
 - + Claims based on manufacturer warranties shall also be excluded



X. Reservation of Title

1. We shall retain the title to the consignment until payment has been made.
2. In the case of the customer acting contrary to the terms of the agreement, in particular in the case of default in payment, we shall be entitled to take back the goods, after a reminder has been sent to the customer, and the customer shall be obliged to return the goods.
3. Asserting the reservation of title or the attachment of the supplied goods by us shall not be deemed withdrawal from contract, unless the provisions of the (German) law on consumer credit do not apply, or this is expressly stated by us in writing.

In addition, the following shall apply in the case of registered traders, a legal entity under public law or a special fund under public law:

4. The customer shall be entitled to resell the supplied objects in the ordinary course of business. However, the customer shall assign us henceforth any claims to the amount of the purchase price agreed between the customer and us (including VAT), which are accrued by the customer from reselling the subjects. This is irrespective of whether the supplied objects are resold without processing or after processing. The customer shall be authorized to collect these sums due after the accounts have been assigned. Our authority to collect the sums due ourselves remains unaffected by this. However, we shall undertake not to collect the sums due, as long as the customer duly meets the financial obligations and is not in default in payment. In the latter case, we shall be entitled to demand that the customer gives notice of the assigned claims and their debtors, provides any details required for the collection, hands over the appropriate documents and informs the debtors (third parties) of the assignment.
5. The processing or transformation of the goods by the customer shall always be carried out for us. If the delivered goods are worked into a new form with other objects not belonging to us, we shall acquire the co-ownership of the new object in proportion of the value of the delivered goods to the other worked objects at the time of manipulation.
6. If the delivered items are combined inseparably with other objects not belonging to us, we shall acquire the co-ownership of the new object in proportion of the value of the delivered goods to the other combined objects. The customer shall keep the joint property for us.
7. The customer must not pledge the contract items or assign them by way of security. In the case of attachment and seizure, or other instructions issued by third parties, the customer has to notify us immediately and place any information and documents required for safeguarding our rights at our disposal. Our ownership has to be pointed out to enforcement officials or third parties.
8. Upon request by the customer, we shall to undertake to release the collateral due to us provided the value of the claims to be secured, in so far as they are not yet settled, exceeds more than 20%.



XI. Claims for Damages

1. Claims for damages, in particular for indirect or consequential damage, against us and our vicarious agents, or persons employed by us in the performance of our obligation, shall be excluded regardless of the legal grounds (whether advice, positive violation of contractual duty or illegal act), unless intent or gross negligence, or a violation of cardinal duties, can be proven against us, or if there is obligatory liability from the undertaking as to quality.
2. If claims for damages exist against us, our agents, or persons employed by us in the performance of our obligation, these shall become statute-barred within one year from delivery.

XII. Terms of Payment

1. The purchase price and the payment for additional performances shall be due and payable on delivery of the consignment.
2. Handing over checks and bills of exchange shall not be deemed payment until after they have been cashed. The acceptance of bills shall always require previous written agreement from us. If bills of exchange are accepted, the banks discount charges and collection fees shall be charged. They shall have to be immediately paid in cash.
3. We shall calculate default interest at 3% p.a. above the respective rates for discount/basic interest rate of the European Central Bank. Interest shall have to be estimated at a higher or lower value, if we furnish proof of a charge with a higher rate of interest or if the customer furnishes proof of a lower charge.
4. If the customer is a registered trader, a legal entity under public law or a special fund under public law, neither the withholding of payments owing to any counterclaims of the customer, which are not recognized by us, nor the setting off of such claims shall be admissible.
5. Delivery to customers whose credit status are not sufficiently known, shall only be made against advance payment or cash on delivery. If the customer remains in default as regards the performance of payment obligations, or if the information on the customer is no longer satisfactory, we shall be entitled at any time to request securities for consignments already delivered, as well as for deliveries still to be carried out. A refusal to furnish securities will give us the right to withdraw from the contract.
6. In the case of a delivery of specially manufactured objects, the tooling costs or a proportion of the tooling costs shall be due for payment on presentation of the pattern references. The tools shall in any case remain in our possession.



XIII. Proprietary Rights

As far as allowed and not negotiated differently, we shall not accept liability in case that our goods and services might infringe commercial property rights of third parties. The buyer is obliged to notify us immediately if he is acquainted with or reprimanded due to such an infringement. If our goods and services were carried out according to the buyer's specifications, the buyer must release us from all claims of third parties concerning the infringement of proprietary rights. An advance of any possible legal costs which may be incurred as appropriate.

XIV. Place of Performance and Jurisdiction

1. Place of performance shall be Kierspe.
2. In the case of any disputes arising out of the contractual relationship, legal proceedings shall be instituted with the court that has jurisdiction of our registered office, if the supplier is a registered trader a legal entity under public law, or a special fund under public law. We shall also be entitled to file a lawsuit at the supplier's principal place of business.
3. This contract shall be exclusively governed by German law to the exclusion of laws for the International Sale of Goods, even if the customer is domiciled in a country other than Germany.

XV. Miscellaneous

1. Any transfers of rights or obligations by the customer under the contract concluded with us require our written agreement to make them valid.
2. If a provision is or becomes void, the validity of the other provisions shall remain unaffected.

