

General Sales and Delivery Conditions of

WILHELM KÄCHELE GMBH

Scope

The following conditions are applicable only to businesspersons, legal entities under public law or of public utilities.

I. Applicability

1. For all our deliveries and performances and for all contracts concluded with us as well the following sales and delivery conditions are exclusively decisive. Contradictory conditions or conditions of the buyer which differ from our sales and delivery conditions and which we do not accept expressly in writing are not valid for us, even if we do not contradict them expressly. Orders become binding only after we have confirmed them. Variations, additions and arrangements made verbally or on the telephone – especially by our employees and our agents – shall be made in writing for the purpose of evidence. All offers are subject to alterations, unless they are explicitly marked as firm.
2. These terms are valid with respect to on-going business and also future business, even if not expressly referred to, as long as the customer has been advised of these terms at the occasion of a previously agreed to contract.
3. Should particular terms be or become null and void, the remaining terms are unaffected.

II. Prices

1. In case of doubt prices are considered to be ex works, excluding freight, customs, import duties and packing, plus VAT, applied at the legally proscribed rate.
2. Should relevant prices vary considerably after submission of the offer or confirmation of the order prior to delivery and should we have no influence on these variations, it is understood that the prices will be adjusted.

III. Delivery obligation and acceptance duty

1. Delivery schedules commence with the day of our acknowledgement of order and only after receipt of all documents necessary for the execution of the order, down payment and the timely provision of materials if such were agreed to. The delivery deadline is considered fulfilled upon receipt of the delivery advice note, even when the actual delivery is delayed or has become impossible as long as we do not cause the delay.
2. If we do not keep a delivery deadline due to remiss action, but not due to gross negligence or intent, the customer is entitled to withdraw from the contract, excluding further demands of the customer after an appropriate extension.
A cancellation of the contract is excluded if the delay is due to acceptance delays by the customer. The customer retains the right to sue for higher damages.
3. Adequate part deliveries as well as reasonable variations of order quantities up to plus/minus 10 % shall be deemed acceptable.
4. We may demand a firm commitment to merchandise on call without any agreement on contract periods, manufacturing quantities and delivery schedules three months after acknowledgement of an order at the latest. Should the customer not comply to make such commitments within 3 weeks, we are entitled, after a further extension of 2 weeks, to withdraw from the contract after expiration of the latest deadline and/or demand compensation.
5. We may delay delivery because of an Act of God for the duration of the difficulties including an appropriate time for a return to normality, or in the case of non-completion of a delivery rescind the contract wholly or in part. As Acts of God qualify strikes, lockouts or unforeseeable and unavoidable situations, such as breakdowns, which, notwithstanding all reasonable efforts, render on-time delivery by us impossible; however, we must prove such delays. This also is the case when the aforementioned difficulties occur during a delay or when difficulties occur with a sub-contractor.

IV. Packing, Despatch, Risk Transfer and Acceptance Delays

1. If not specified differently, we are entitled to choose packing, mode of transport and transport route, excluding any liability.
2. The transport risk transfers to the customer upon goods leaving the works, even if delivery is free ex works. If the customer delays a delivery, the risk already transfers to the customer after the issue of the despatch advice note.
3. When requested in writing by the customer the goods will be insured at cost to the customer for the risk coverage requested by him.

V. Reserved Ownership

1. Deliveries remain our property until all our claims on the customer have been met (reserved ownership goods), even when the purchase price for specially marked claims has been paid. For account customers the reserved property rights to the delivered goods (reserved ownership goods) are in force as security for us until the balance has been paid in full. If payments are made by means of a bill of exchange, then reserved ownership is not transferred until the buyer as drawee has cleared the bill of exchange.
2. Further processing or treatment of supplied goods by the customer may only be carried out by excluding the ownership rights of the customer to § 950 BGB (Federal Common Law of Germany) as contracted by us. We become co-owner of the thus produced goods to the proportional value of the net manufacturing cost to the net post-manufacturing processed cost of the thus produced goods, which serve as reserved ownership goods to secure our property claims as per clause 1.
3. When further processing is carried out (in combination or addition) by the customer with other goods not owned by us, §§ 947, 948 BGB (Federal Common Law of Germany) are applicable, resulting in proportional co-ownership by us in the resulting goods, which are now considered reserved ownership goods.
4. The re-sale of reserved ownership goods by the customer is only permissible as part of normal commercial practise if the customer is not in default and on condition that he reaches an agreement with his customers regarding reserved ownership goods as defined in clauses 1 to 3. The customer is not entitled to take any other action with respect to reserved ownership goods, in particular pawning, mortgaging or using the goods as security.
5. The customer relinquishes herewith all claims, which may result from the re-sale of goods and all other justifiable claims, including associate rights on his customers with all subsidiary rights to us from now on and until all claims have been met. The customer is duty-bound to inform us immediately on demand and supply all necessary documentation to secure our rights against the customers of the customer.
6. When reserved property is re-sold by the customer after further processing action in combination or addition with other goods, not owned by us, as outlined in clause 2 or in clause 3 above, the customer cedes all purchase price claims according to clause 5 to the account value of the reserved ownership goods of us.
7. We must be notified without delay of any confiscation or seizure of reserved ownership goods by a third party. All associated costs due to such intervention are in any case to be born by the customer in as much as costs are not born by the third parties.

VI. Warranty for Material Defects

1. Relevant for the quality and finish of the goods are the reference samples, which we make available to the customer for examination and reference as requested. Any reference to technical standards is an aid to define product quality and is not to be interpreted as a definition of product integrity.
2. When we have advised the customer beyond his contractual obligation, we only warrant the functionality and suitability of the supplied goods after prior express assurance.
3. Defects are to be notified without delay in writing, hidden defects are to be noted immediately after discovery. In either case the warranty only extends to one year after risk transfer, unless agreed to differently, or if the statutory limit of § 438 paragraph 1 clause 2, § 479 paragraph 1 and § 634a paragraph 1 clause 2 of the German Common Law (BGB) prescribes longer warranty periods as mandatory.
4. We must re-supply if the warranty claims are found to be justified – in which case the reference samples released in writing by the customer determine the expected quality and finish. The customer is entitled to reduce the purchase price or rescind the contract if we do not fulfill our duty to re-supply within a reasonable period or replacements fail repeatedly. Further claims, in particular claims for loss or damages due to defective supplies or subsequent resulting damages are regulated by section VII. Replaced parts are to be returned to us at our request and cost.
5. Unauthorized re-working and improper handling of defective parts result in the loss of any right to claims for compensation due to defective parts. The customer is entitled, after prior consultation with us, to repair defective parts to avoid much larger damage or if we fail to make good the defects and to demand compensation for appropriate costs.
6. Normal wear and tear caused by contractual usage does not imply any rights to make warranty claims.

7. Rights to referred warranty provisions according to §§ 478, 479 of Federal Common Law (BGB) only allow the consumer to make claims within the scope of the legislation and only if they are found to be justified and do not regulate the understanding of good will provisions with us and assume that any party with referred warranty rights will duly observe their duty, in particular the duty to report defects.

VII. General Limitations of Liability

In all cases, which differ from the conditions outlined above, and to which we are obligated by reason of contractual or legal liability to pay compensation or reimbursement, our liability is limited only to cases in which we, our employees or sub-contractors are guilty of culpable intent, gross negligence or injury to life, limb and health. The statutory product warranty is unaffected independent of any blame as well as any liability with respect to the legal fulfillment in regard of any product integrity warranty; as is the liability for culpable negligence of major contractual duties and obligations, which are, however, limited to typical damages as may be predicted in such contract situations, except for cases outlined in clause 1 above. However, the above rule does not imply a reversal of the onus of proof, putting the customer at a disadvantage.

VIII. Payment

1. Payment is to be made in € (EURO) and is to go solely to us.
2. In the absence of a different arrangement the purchase price for supplies or other services is to be paid applying a discount of 2 % within 14 days, net within 30 days from the billing date. Any discount applied presupposes the due settlement of all undisputed outstanding previous accounts. Any payment made by cheque does not attract a discount.
3. Payments made on accounts in arrear attract an interest charge of 8 percentage points over and above the applicable base rate of the ECB, unless we prove higher damages. The customer may prove lower damages.
4. Payment by cheque or notes of exchange may be refused. If cheques or re-discountable bills of exchange are accepted as due payment, all associated bank charges are to be met by the customer.
5. The customer may offset an account or use his right of retention only if his claims are indisputable or established in law.
6. Sustained non-compliance with conditions of payment or circumstances, which raise serious doubts as to the credit worthiness of the customer, will result in claims for all payments becoming due immediately. In this case we are also entitled to demand pre-payment for all outstanding deliveries and even to cancel the contract if an appropriate deadline has not been kept.

IX. Forms (Tooling)

1. The price for tooling also contains the once-off costs for the making of patterns, but does not contain the costs for test and processing procedures, nor costs incurred by customer initiated alterations. Any further patterns required by us are at our own costs.
2. We have and retain ownership of all tooling made by us for the customer or by a contracted third party, as far as we charge the buyer only for parts of the production costs. The tooling is only to be used for contracts of the customer for as long as the customer discharges his payment and receivable obligations promptly. Our requirement to store the tooling is extinguished two years after the last delivery of parts produced with the said tooling and after the customer has been duly notified.
3. As per contract, forms and tooling become the property of the customer after full payment of their purchase price. The transfer of forms and tooling to the customer is replaced by the storage of the said forms and tooling with us in favour of the customer. Independent of the legal right of surrender the customer has, and the life of the forms and tooling we are entitled to exclusive possession until the end of the contract period. We must mark forms and tooling as 'outside property' and insure said property at the customer's request and expense.
4. The liability of us with respect to storage and care and maintenance of forms and tooling owned by the customer as per clause 3 above or forms and tooling loaned by the customer to us is restricted to like treatment of proprietary property. Costs incurred in maintenance and insurance are the responsibility of the customer. Our obligations cease when, after completion of the contract and a corresponding request by us, the customer fails to collect the forms and tooling within an appropriate period. We have the right to withhold forms and tooling as long as the customer has not complied with his contractual duties to the fullest extent.

X. Supply of Materials

1. When the customer supplies production materials, said materials are to be delivered at the customer's own cost and risk, on time and in good order and in quantities in excess of at least 5 %.

2. If the above provision is not complied with, the delivery deadline shall slip accordingly. The customer has to bear any additional costs, including extra costs incurred due to breaks in production, except in the case of an Act of God.

XI. Commercial Protection and Legal Limitation

1. For all deliveries based on drawings, models, patterns or parts supplied by the customer the customer guarantees that the commercial rights of third parties in the country for which the goods are being manufactured are not injured. The customer has to release us from any claims of a third party and pay compensation for any resulting damage. We are entitled to stop all work – without any further examination of the legal position – until the customer has clarified the legal position and the third party involved after an injunction covering the supply or production of the goods to protect the commercial rights of the third party has been issued. If the continuation of the contract should become untenable to us due to the delay, we may rescind the contract.
2. Any drawings and patterns that had been made available to us, but did not eventuate in a contract will be returned if requested; else we are entitled to destroy the same three month after the issue of the offer. The same obligation applies to the customer. The party entitled to dispose by destruction must inform the other party of the intention prior to doing so and in good time.
3. Drawings, models and designs made by us may not be made available to a third party without our approval in writing or may not be used otherwise. This also is the case if they are not protected by copyright.
4. For all other legal product limitations section VI also applies.

XII. Production and Legal Venues

1. The production venue for the delivery is the despatching place of the goods in each case; the venue for the payment is Weilheim/Teck.
2. The legal venue, including matters such as deeds, notes of exchange or cheques, is regional court Stuttgart or the domicile of the customer by our choice and for patent conflicts regional court Düsseldorf.
3. Only German law applies. The application of the United Nations convention of 11 April 1980 on contracts for the international sale of goods (BGB 1989 p. 586) as it applies to the Federal Republic of Germany (BGB 1990 p. 1477) is not valid.

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