

General terms and conditions for entrepreneurs

Version 2019

I. General

1. Any our present and future deliveries and services including consulting, proposals and any other additional services in our business transactions with entrepreneurs according to § 14 Abs. 1 BGB, legal entities of public law or public special funds, are exclusively made on the basis of the conditions set out below. We expressly disclaim any contradictory purchase terms put forward by the customer. Latest with the acceptance of the goods delivered by us or the approval of the pieces of work created by us, these conditions are considered accepted, which applies to partial shipment and partial services as well.
2. Contract conclusions and any other agreements, in particular prior or subsequent oral collateral agreements and assurances by our authorized representatives too, will become binding only after our explicit confirmation.
3. Errors in quotations, order confirmations or any other documentation, also miscalculation and typing errors are not binding to us and do neither oblige us in case of correction or legal challenge to compensate for damages. Samples, models, and drawings remain our sole property.
4. We indicate to our customers that for business purposes, we process and forward their personal information in our EDP system. For the purpose of processing, storing and passing on these data, our data privacy statement applies, which can be retrieved from <https://www.kek-dresden.com/datenschutz/>.
5. Decisive for the interpretation of trade terms in case of doubt are the Incoterms in their latest version.

II. Prices

1. Prices apply unpacked ex respective works and merely for the object defined in the order confirmation.
2. Any incidental costs, fees, public duties, taxes (esp. VAT on the day of delivery), and customs, freight costs, consular charges, acceptance costs, insurance fees concerning the deliveries and services directly and indirectly and increase/decrease prices, are to be paid by/are in favor of the customer.
3. We reserve the right to increase an agreed price for quantities not yet shipped, if due to an alteration in raw material and/or economic situation there are circumstances arising that substantially increase the price originally agreed upon with regard to the manufacture and/or purchase of the respective item. In this case the customer may revoke the order concerning them within two weeks after having been told about the price increase.
4. We are entitled to increase the agreed price also if there is a subsequent delivery date extension for the reason set forth in V or the material or the execution undergo changes due to incomplete, incorrect or undue delay in the instructions of the customer.

III. Terms of payment

1. Unless otherwise agreed or defined in our invoices, payment must be made within 30 days after invoice date without deduction. If a discount is explicitly agreed, the customer is prerequisite to have paid any due invoices until that date.
2. If delivery ex works or store or shipment cannot be made due to missing instructions or documents or is the delivery late for any other reasons beyond our control, payment of the full invoice is due 30 days upon notification of readiness for shipment.
3. Any our claims are immediately due if the terms of payment are not complied with or we get notice of circumstances according to our duly exercised discretion speaking of a reduced customer's credit worthiness. We are then entitled too to make any outstanding delivery only against payment in advance or to require securities. We are entitled too to prohibit reselling or processing the delivered items and to demand a return of the goods or the transfer of the indirect possession of the items on the customer's expenses and to revoke the direct debit authorization according to IV, No 7, both if no full payment in cash has been made yet.
4. In these aforementioned cases, the customer authorizes us as of now irrevocably already to enter their premise, to take possession of any items delivered by us and to utilize them by freehand sale for settling our outstanding claims less the arising costs to our best benefit.
5. In case of a default payment by the customer we are entitled without any further proof to claim interests in the amount of the respectively lower amount of 8 % above base interest rate or the maximum allowed legal interest rate for claims by the customer.
6. Due to the authorization granted to us by our affiliated companies, we are entitled to offset any claims the customer is entitled to for whatever legal reason, against us or any of our affiliated companies. This applies too if on the one side cash payment and on the other side providing services had been agreed. Where appropriate, these agreements relate to the account balance. If the claims are due at different times, our claims and the claims of our affiliated companies are due latest with the maturity date of our liabilities and are invoiced at value date. Securities rendered to us or any of our affiliated companies are held liable against any respective claims of all these corporations.
7. We are entitled at our option to first offset payments by the customer with interests and costs and then with the oldest due claim also if the customer defined the payment for settling a different claim. The customer may only offset against our claims with an undisputed or legally assessed claim or a claim in mutuality to our claim. The customer is only entitled for retention when based on the same contractual agreement.

IV. Retention of title

1. We reserve the title of ownership of the items delivered up to a complete settlement of payment. For goods not having been fully settled payment for by the customer prior to shipment, we retain the title of ownership up to the full settlement of any claims arising from the business contract with the customer.
2. Prior to full settlement of payment of the guaranteed claim, the items applicable to the retention of title must not be pledged to third parties nor assigned as a collateral security. The customer is obliged to immediately notify us in writing if third parties take hold of goods delivered under retention of title.
3. When conducting a breach of contract on the customer side, in particular when not settling the due purchase price, we are entitled to resign from the contact according to the legal regulations and to demand the items based on the retention of title and rescission. If the customer fails to settle the due amount, we may assert these rights if the customer has priorly failed to settle payment within a reasonable deadline or the setting of this reasonable deadline is dispensable according to the legal regulations.
4. The customer is entitled to have at their disposal the goods owned by us in the proper course of business as long as they perform their respective duties in timely manner resulting from the business relation with us.
5. With the customer's processing of the items delivered by us, we are considered the manufacturer and acquire ownership of the newly designed goods. If processed with any other material, we acquire immediate co-ownership of the new goods in the relation of the invoice value of the items delivered by us to any other material used.
6. As far as there is a connection between the items delivered by us and a customer's item in a way that the customer's item is regarded the main item, it is agreed that the customer grants us co-ownership in the relation of the invoice value of the items delivered by us to the invoice value of the main object. The customer keeps the thus designed sole property or joint property free of charge for us.
7. Any claims arising from the sale of goods we reserved the title of ownership for, the customer assigns to us at the time of contract conclusion already. If we acquired co-ownership in case of processing or bonding, the transfer of claims shall be made in the relation of the value of the goods delivered by us under retention of title to the value of the third party goods under reserve property. We accept the assignment. The obligation of the customer set forth in paragraph 2 also apply in view of the assigned claims.
8. The customer is entitled to collect the claims as well as ourselves. We commit ourselves to not collecting the claims as long as the customer meet their payment obligations, no application for the opening of insolvency proceedings is made, and no other deficiency in their performance capacity is there. In case of such breach of duty, the customer is obliged at our request to inform us of any required statements with regard to the stock of the goods owned by us and the assigned claims, to label the goods owned by us as such and to notify their buyers of the assignment.
9. If the applicable legal regulations of the country, the delivery object is located in does not approve of the agreement of retention of title or approves of it only in a restricted manner, we reserve other rights with regard to the delivered item. The customer is obliged to contribute to any required measures (e.g. registrations) for realizing the retention of title or any other rights in place of the retention of title and for protection of these rights.
10. If the value of the securities exceeds our claims by more than 20 %, we waive the securities to this extent. The choice of the releasable securities lies in our responsibility.

V. Terms of delivery

1. Delivery periods begin with the date of our order confirmation but not prior to a complete clarification of the order details, agreed documentation and/or receipt of prepayment and obtaining any required domestic or foreign legal certificate or any other permits or release declarations, which the customer has to supply signed proof of. If shipment of the goods was agreed on, delivery periods relate to the time of the transfer of the goods ex works or store to the forwarder, freight carrier or any other third parties in charge of transport.
2. If binding delivery periods cannot be adhered to for reasons not in our responsibility (non-availability of the service performance), we will notify the customer immediately with concurrently setting a new delivery date. If the performance remains being unavailable withing the newly set delivery period too, we are entitled to retreat from the contract wholly or partially, we will immediately reimburse the customer for any counter-performance already made. A self-delivery not in a timely manner by a supplier of us represents a case of non-availability of performance if we contracted a congruent hedging transaction. The legal rights of withdrawal and termination as well as the legal regulations about the contract execution in case of exclusion of the obligation to perform remain unaffected. The legal rights of withdrawal and termination for the customer according to IX remain unaffected as well.
3. Our occurrence in the default of delivery is defined by the legal regulations. In any case, a written reminder incl. setting an appropriate period of time for remedial action by the customer is required. If the customer culpably postpones the contractually agreed delivery period on short notice (4 weeks prior to shipment) and a new delivery time is agreed, 50% of the agreed remuneration are due and payable on the originally agreed delivery date and 50 % of the agreed remuneration are due and payable on the newly set delivery date. Moreover, the customer owes for compensating for the storing expenses one percent of the agreed remuneration per full calendar week the delivery date is postponed for. The customer may prove for any lower storing expenses.
4. Cases of force majeure entitle us to postpone the delivery by the duration period of the impediment and a reasonable start-up period or to retreat from the contract wholly or partially due to the not yet provided part. Force majeure resembles any circumstances that substantially hamper delivery or prevent it such as sovereign measures, strikes, lockouts, operational faults (e.g. fire, machine failure, lack of raw material or energy) as well as obstructions of the transport ways and that is indifferently if the circumstances meet us or any subcontractor. The customer may require our declaration if we retreat from the contract or will deliver withing a reasonable time. If we miss to declare, they may retreat. We are not obliged for a subsequent placement of order at any other plant or using any other measures apart from the one we originally set forth.



VI. Intellectual property

1. In connection with the delivery of goods or delivery of works, we may provide to the customer work plans, technical drawings, sketches, drafts or other documentation in electronic, paper or other form (hereafter referred to as „documents“). These documents as well as the information they are based on are our sole property and shall be used by the customer merely for internal planning purposes. Handing over these documents creates no rights whatsoever for neither the customer nor any third party.
2. These documents shall be treated as strictly confidential and must not be passed on to third parties or to be used for the benefit of the customer or any third party. Documents must not be altered by the customer or third parties. Documents as well as the information they are based on shall not be used for product development, improvement measures nor any comparable activities.
3. Documents are provided without any assurance, in particular with regard to contents, accuracy, applicability for any purpose or use, under exclusion of breach of intellectual property agreements or other rights of third parties. Any liabilities or responsibility from our side in connection with the documents is explicitly excluded. The use is exclusively at the customer's risk.
4. The customer is obliged to return to us or to obliterate the documents provided by us upon our first request.

VII. Acceptance, weights and tolerances

1. Goods with specific transportation regulations shall be accepted at our plant, upon departure from our plant they are considered as delivered according to contract no matter if an acceptance has been carried out or not. If goods are delivered to third parties right away, the delivery is considered as executed according to contract even if the acceptance at our plant had not been carried out.
2. If prices per kilogram had been agreed, the weight set forth in our delivery documents are binding for charging.

VIII. Shipment, transfer of risk, partial delivery and continuous delivery

1. If not agreed otherwise, delivery is made ex works or store, also being the place of performance for delivery and a possible supplementary performance. Upon the customer's request, goods are shipped to a different point of destination at their expenses. If not agreed otherwise, we are entitled to define ourselves the mode of shipment (in particular carrier, shipment route, packaging) within appropriate limits.
2. If not agreed otherwise, the risk of accidental loss or accidental degradation of the goods is passed over to the customer latest with the transfer to the customer. With sales shipment, the risk of accidental loss or accidental degradation of the goods or the risk of delay is passed over to the forwarder, freight carrier or any other entity defined for shipping the goods upon delivery to those mentioned entities already. If an acceptance is agreed, it is binding for the transfer of risk. In this case, the German Contract Law for Work and Labor applies respectively. If the customer delays in accepting the goods, the transfer shall still be deemed to have taken place.
3. Partial deliveries are permissible if the partial delivery is acceptable for the customer within the frame of the contractual intended purpose, the delivery of the remaining ordered parts is ensured and no remaining ordered goods is guaranteed, and no significant additional work and expenses or additional costs are incurred for the customer (unless we agree to taking over these costs).

IX. Warranty, notification of defects, compensation for defects

We exclusively warrant as follows that the goods comply with our specifications at the time of transfer of risk:

1. The customer is obliged to inspect the goods for obvious defects immediately at receipt of the goods. If a defect shows, the customer is obliged to notify us in written form straight away but no later than 48 h upon receipt of the goods. Defects of the goods not showing at a proper first inspection, the customer shall notify us of within 7 days after its detection latest. Does the customer neglect the proper inspection and/or notification of defects, our liability is excluded for us for the not notified defect or not notified defect in a timely manner.
2. For the punctuality of the notification of defects the date upon which we receive the notification is decisive in each case, not the date any associated representatives receive the notification. The customer is obliged in any case to describe nature and extent of the defects. Upon our request, the customer shall make available to us verifiable documentation about nature and occurrence of the defects and make available the claimed item.
3. In case of a defect of the delivered item, we reserve the right to either remediate or to make replacement delivery. We are entitled to make the owed replacement delivery dependent on the fact that the customer pays the due purchase price. The customer is entitled in this case to retain part of the purchase price in a reasonable relation to the defect. If we do not agree or are not able to remediate or replacement delivery or does the remedy or replacement delivery fail for any other reason, the customer is entitled to retreat from the contract or to require a respective reduction of the purchase price. Withdrawal from the contract shall be excluded with minor defects.
4. Claims for damage compensation or claims for reimbursement of wasted expenditure shall only be possible according to p.X.; further these claims are excluded.
5. If the customer receives deficient assembly instructions, we shall be merely obligated to supply defect-free assembly instructions and this also only if the defect in the assembly instruction conflicts a proper assembly.
6. Further claims of the customer owing to a defect shall be excluded. This affects in particular claims for compensating for not foreseeable damages. This furthermore applies to damages not affecting the goods themselves.
7. Defects of a part of the delivery shall not lead to claim the whole delivery, as far as a separation into defective and defect-free parts is possible with reasonable means. We shall be given the opportunity to check claims at the place the goods were delivered to. We are entitled to commission an expert and/or a subcontractor to check for the claim in concern. If the check confirms the defect to not be present, we are entitled for reimbursement for our expenses.
8. Liability for defects shall not affect defects owing to normal wear, external impact, alteration or processing of the item delivered or any other operational faults or improper handling unless the customer fully proves that the defects have not at all been caused by the above mentioned impacts wholly or partially. If the check confirms the defect to not be present, we are entitled for reimbursement for our expenses.
9. The customer is not entitled to refuse outstanding payment if we accept the warranty claim they put forward.
10. We shall not be liable for any customary deviations.

X. Disclaimer and limitation of liability

1. We hold liable for damages according to legal regulations unless not set forth otherwise in these terms and conditions including the below mentioned provisions.
2. We hold liable for compensation for damages regardless of whatever legal reason only in case of willful intent or gross negligence.
3. The disclaimer for willful intent and gross negligence shall not apply and we thus hold liable also in case of simple negligence for a) damage from the violation of life, the body or health b) for damages the breach of an essential contractual obligation (obligation whose discharge is initially made possible by the proper implementation of the agreement and in whose compliance the contractual partner trusts and may trust on a regular basis) in case of lit. b) our liability is limited to the replacement of the foreseeable, typically occurring damage.
4. This limitation on liability to willful intent or gross negligence shall not apply in case of defects, which we maliciously concealed or have warranted for the condition of the goods. The same applies to claims of the customer according to the product liability law.
5. In case of a breach of duty other than a defect, the customer may only retreat or terminate if the breach of duty is on our part. An unrestricted right of termination by the customer is excluded. Otherwise the statutory requirements and legal consequences shall apply.

XI. Statute of limitation

1. Claims by the customer for defective goods are subject to a period of limitation of one year from receipt of the goods or if agreed from acceptance of the goods.
2. For claims for compensation for defects put forward by the customer according to p. X, the legal statutes of limitation shall apply exclusively.
3. Any claim for compensation for defects owing to a breach of duty of supplementary performance according to §§ 437 Nr. 1, 439 BGB can only be made if within the 12 months of statute of limitation period according to paragraph 1 a) the customer has demanded supplementary performance and b) we breached our duty of supplementary performance.
4. The legal statutes of limitation for in rem claims to return of third parties shall apply, of fraudulent intent by ourselves as well as in case in customer recourse claims due to the statutes of Consumer Goods Purchase law.
5. The statute of limitation with regard to the product liability law shall remain unaffected.

XII. Place of Performance and Jurisdiction, Law applicable, partial ineffectiveness

1. Place of performance for our deliveries and performance is our plant in Lausnitz, Germany, if not agreed otherwise.
2. The Agreement shall be subject to the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention from 11 April 1980 for Contracts for the International Sale of Goods (CISG). Is the law chosen in favor of German law and the conditions governing, and the effects of recognition of the title of retention not permitted or is void, *lex rei sitae* rules.
3. The place of jurisdiction shall be our registered office. We are entitled though to sue the customer at their general place of jurisdiction.
4. Should one provision of these terms and conditions be completely or partly ineffective, this shall not affect the remaining terms.

