

GENERAL TERMS AND CONDITIONS OF SALE, KUPEK GMBH

I. Scope of application/quotations

All closed contracts and granted services – inclusive the future ones - are based on these general conditions of sale, as well as for quasi contractual relationships required by § 311section 2 and 3 BGB (German Civil Code). We will be pleased to send you free of charge these General Conditions of Sale. Conflicting or deviating terms and conditions of the customer shall not be binding for us, even if they had been submitted to us, unless we had explicitly and in written form agreed to their validity.

2. The customer shall accept our General Conditions of Sale as obligatory by receiving our commodities and services. In addition all agreements and collateral agreements have to be made in written form to become valid, as far as they deviate from our GCS.

3. The General Terms and Conditions for the use of "Kupek.de" also known as General Conditions of Sale for the Kupek Web Shop shall in addition be valid for contracts in the context of the electronic business relations. In this respect we especially refer to the conditions in the clauses right for revocations and compensation for lost value.

4. Our quotations are exclusively directed to commercial customers. The supply of consumers is excluded.

5. Our quotations are subject to confirmation. Agreements and confirmations, especially those which have been given oral by our staff, will not be legally binding without a written and signed confirmation of our company.

6. Documents, drawings, images, technical data, and reference to any standards or information in our brochures or quotations are no warranted characteristics, no matter if the customer receives it as part of an offer or in any other way.

7. Deviations of the subject of the contract from quotations, samples, prototypes and deliveries for testing purposes are permitted in accordance with DIN and ISO standards or other applicable standards or because of deviations caused by materials or production processes (e.g. grain wood), color variations of different lots, traces of usage at second-hand articles).

II. Prices

1. Our prices do not include freight and packaging, unless otherwise agreed. (FCA address of the Kupek location / Incoterms 2010). V.A.T. will be charged additionally.

2. If the goods are delivered packed, we will refund packaging if the customer will send it back to us within a reasonable time and carriage paid. The packaging has to be empty.

III. Payment and invoicing

1. Payment has to be made within 14 days after the receipt of the invoice, unless any special written agreements exist. Invoices lower than 100 Euros and invoices for tools and molds have to be paid immediately. All invoices must be paid net without subtracting any cash discounts. Payment has to be made early enough to guarantee that the total amount will be available for our disposal on the due date the latest.

2. The customer will be only entitled to rights set-off, if his counterclaims are legally undisputed, found absolutely or are acknowledged by us. Rights of retention of the customer shall exist only for counterclaims out of the same contractual relationship. Adverse rights of the customer due to defects remain unaffected.

3. If the customer fails to pay in time we are entitled to charge an interest based on the rate of interest paid on overdraft, but not less than 8% more than the current basis interest rate fixed by the European Central Bank per year. In addition we shall be entitled to charge for every payment reminder 5 € after the occurrence of default; the customer has the right to prove lower costs for a reminder. Kupek is entitled to claim any losses or damages exceeding the value of the damage caused by delay.

4. If we get knowledge about circumstances regarding the financial situation of the customer which could lead to a loss of receivables, we shall be entitled to set all open debt claims to the customer due immediately, irrespective of the original due date. If the customer gets into default of payment, then we will be legitimated to set a period of grace and if the customer fails to pay within this period we can claim back the delivered goods. We are also entitled to interdict the sale or subsequent treatment of the delivered goods. The claiming back of the goods does not mean a withdrawal from the contract. In case of payment default of the customer we reserve the right to process the order by cash on delivery or payment in advance.

5. We shall not accept payment by bill of exchange.

IV. Lead time

1. Although we exercise much care to ensure the lead times that we are stating, we cannot give any guarantees for the fulfillment of the scheduled delivery dates. Indemnity claims because of failures to comply with delivery dates are explicitly excluded. Damages due to Acts of God like blockade, strike, riot and civil commotion, war, fire and natural disasters entitle us to extend agreed lead times reasonable or to cancel the contract in parts or completely.

2. We shall be entitled to make partial deliveries in a reasonable extent for the customer, especially with regard to large orders.

3. The customer is entitled to cancel the contract if we get into a delay of delivery and if a period of grace, set by the customer has elapsed without dispatch of the goods.

Claims out of delay and non-performance will be treated in accordance with number VIII of the general conditions.

V. Reservation of title

We shall supply exclusively on the basis of the reservation of title as described below. This shall also refer to all future supplies, even if we do not explicitly quote a precedent.

1. Title of all delivered goods shall be vested to Kupek until the buyer has paid all claims out of the contract in full. Kupek shall be entitled to demand return of the delivered goods, if the customer is violating the contract.

2. It is the buyer's obligation to handle the goods with care, as long as the transfer of possession has not yet taken place. In particular he has the obligation to procure sufficient insurance at the original value against damages by theft, fire and water at his own cost. (reference: only permitted in case of sale of high quality goods). If maintenance and inspection work have to be carried out, the buyer will have to perform them in time and at his own cost. As long as the transfer of possession has not yet taken place, the buyer has to inform us immediately in written form when the delivered good is impounded or otherwise subjected to the intervention of any third party. As long as this third party is not in a position to refund us for the court and out-of-court costs of a complaint according to & 771 ZPO, the buyer shall be liable to us for the default.

3. The customer is entitled to resell the conditional goods in his usual course of business. For this the customer is assigning all claims out of the resale of the conditional goods up to the total amount of our invoice (including V.A.T.) to Kupek. This assignment shall be valid without considering whether the commodity was resold without or after processing. The customer shall remain entitled to collect the payment, even if he has assigned the claim to us. This will not affect Kupek's right to collect the claim by his own. But we declare not to collect the claim as long as the customer fulfills his payment obligations, is not in delay of payment and no bankruptcy filing has been made or payment has been suspended.

4. The processing, reworking or transformation of the goods by the customer shall always be on behalf and by order of us. In this case the expectant right of the buyer to the item purchased shall continue to exist in respect of the transformed item. As far as the purchased item will be processed with other objects which do not belong to us, we shall require shared property rights of the new item in the amount of the objective ratio of our item to the other processed items at the time it was processed. The same is valid for the case of any mixture. Insofar as the mixing occurs in such way that the item of the buyer is to be regarded as the main item, it shall be deemed that the buyer is transferring to us proportional co-ownership; the buyer holds in trust either our sole or co-ownership. In order to safeguard our claims against the buyer, he shall also assign to us any amounts owing by third parties resulting from the connection of the goods with any real estate; we hereby accept this assignment.

5. Upon request of the buyer we shall be obliged to release the securities to which we are entitled, if their value exceeds the claims to be secured by more than 20 %.

VI. Execution of delivery, transfer of risk

1. If not otherwise agreed, the commodity will be delivered on request of the customer to his desired delivery address (sales shipment according to § 447 BGB). The risk passes – including in relation to shipment from a warehouse and in cases of orders executed by third parties, when shipment is made from the warehouse of our sub-supplier - to the customer as from the handover of the goods to the carrier or hauler or any other person or institution charged with the execution of the shipment. The transfer of risk will take place regardless of the agreed delivery terms. On request of the customer we will arrange transport insurance at his cost.

2. If the shipment is delayed due to circumstances, which are in the customer's responsibility, the risk passes to the customer upon the day of notice about the readiness for dispatch.

3. We are entitled to make reasonable partial deliveries. Over- and under deliveries are permitted if they do not exceed 10 % of the ordered volume.

4. We are legitimated to produce the total quantity out of make-and-hold orders or to have it produced in one lot. Requests for modifications cannot be considered after the order has been placed, if not expressly agreed within the contract.

Except as otherwise agreed, dates and quantities of release orders can only be met within the bounds of our possibility of delivery and production.

5. The customer shall accept delivered goods even if they show insignificant defects without prejudice to his rights according to § VII.

VII. Liability for defects

Provided that customer fulfills the requirement to make a complaint in respect of a defect immediately on receipt of the goods according to § 377 HGB, we are liable for defects as follows:

1. In case of any defect of the object of purchase, it will be our choice whether we will remedy the deficiencies or deliver a new good without defects (supplementary performance), provided that the defect is not insubstantial. If one or both of this ways of supplementary performance is impossible or disproportional, then we will have the right to refuse it. We can although refuse the supplementary performance as long as the customer does not pay that part of the delivery which is free of or not influenced by the defect.

2. If the supplementary performance stated in point 1 is impossible or if it fails, then customer is entitled to curtail the agreed price of sale or to cancel the contract in accordance with the legal regulations. This right will be applicable particularly in case of culpable delay or refusal of the supplementary performance, and if the supplementary performance fails for the second time. Further requirements of the customer, independent of the legal foundation (particularly requirements out of the breach of contractual main or secondary obligations, reimbursement of expenses except those based on §439 II BGB, unlawful acts and other culpable acts) are excluded, if not otherwise stated (point 4.). This article applies particularly for requirements because of damages outside of the object of purchase, and for compensation of lost profit. Included are although requirements, which are not due to the defect of the object of purchase.

3. This regulations are even applicable if a deviant good or a smaller quantity has been delivered.

4. Our liability and the limitation of our liability is subsidiary ruled und point VIII.

5. Our warranty is excluded if the defect is a result of: improper or faulty usage, incorrect assembly by the customer or third parties, wear and tear; faulty or disregardful treatment, unsuitable tools and materials, insufficient construction work, unsuitable ground, replacement materials, chemical, electrochemical or electrical influences (if not traceable back to an action or omission of Kupek), inappropriate modification which were not approved by Kupek in advance or repair made by the customer or third parties, without enabling Kupek to fix the error or to have it fixed by a third party which is authorized by Kupek.

6. Claims of the customer for material defects will become time-barred one year after delivery/handover of the object of purchase. Exempted from this shall be claims from consumers, as well as damage claims based on violations of life, body or health and/or damage claims caused by us through intent or gross negligence. In this respect the legal periods of limitation shall apply. If the object is usually used for a building and if the object has caused the deficiency of the building, the limitation of the claim will become time-barred 5 years after the date of delivery.

All claims of abatement of the purchasing price and the right of withdrawal are excluded if the claim for performance is time-barred. In case of sentence 4, customer is entitled to refuse payment of the purchasing price, as he would be legitimated because of withdrawal or abatement. In case of the exclusion of withdrawal and a denial of payment, Kupek is entitled to withdraw from the contract.

7. Claims out of regress of manufacturers are not affected by this regulation.

VIII. General limitation of liability

1. Kupek is liable in cases of intention or gross negligence according to the legal requirements – even in case of actions of their legal representatives or auxiliary persons. In all other cases we are only liable by reasons of the product liability law, because of culpable injury of persons or infringement of major contractual obligations. Indemnity claims out of the infringement of major contractual obligations are in all cases limited to the foreseeable damages inherent to such contract.

Even in case of gross negligence our liability shall be limited to foreseeable damages inherent to such contract, if no of the in sentence one mentioned exceptional causes is shown.

2. The liability for damages by the delivery item at customer's goods and rights, e.g. damages at other objects, is completely excluded. This limitation of liability shall not be applied in case of deliberate intention, gross negligence culpable injury of persons.

3. The regulations VIII 1. and VIII. 2 extend to compensation for damages in addition to the goods and services and compensation instead of the goods and services, irrespective of legal basis, especially because of defects, breach of contractual duties (particularly or impossibility) or tort action. They apply accordingly for the title of compensation of useless expenditures.

4. This liability system shall also be valid for contractual obligations in terms of § 311 section 2 and 3 BGB.

5. As far as our products have to comply with safety provisions, we shall apply to those valid in Germany. If the buyer is delivering the commodity abroad, we shall not be liable for the non-compliance with the provisions in force in that country where it may be. In this case the buyer is responsible

6. A reversal of the burden of proof at customers disadvantage will not be a result of these regulations.

IX. Traceability

If the buyer is passing on to third party the commodity delivered by us, he shall have to ensure by appropriate measures the traceability of the commodity. In this respect he has to ensure that, in case of a necessary measure due to reasons of product liability (e.g. product recall, product warning), the delivered commodity can be found and that the final purchaser of it can be reached by those measures immediately. Provided that the buyer does not pass on to third parties the commodity delivered by us, but is using/consuming it in his own firm, he shall also have to ensure that in case of a necessary measure in terms of section 2, the commodity still in the warehouse or in use can be located.

X. Copyright

1. We reserve the property and copyrights over all quotations, estimations of cost, drafts, drawings and other documents. Those documents may not be disclosed to third parties without our prior agreement. Drawings and documents belonging to quotations have to be handed back by request.

2. If we have produced objects according to drawings, models, samples or other documents handed over by the customer, customer shall be liable in cases of the infringement of industrial properties. If third parties enjoy us from producing such objects because of the infringement of industrial properties, we shall be entitled to stop all further activities without obligation to verify the legal situation. If the customer is culpable of the infringement we are entitled to claim damages. Customer shall indemnify us from all claims of third parties related to the infringement.

XI. Samples, Molds, Tools

1. If customer has to provide any parts or materials as prerequisite for the fulfillment of the contract, customer will deliver this provisions on its own cost, in the agreed or a higher number because of possible scrap, gratuity, in time and free of any defects. If customer fails to meet these obligations, all costs which are caused by this fact will be at the risk of the customer.

2. The production of samples and the costs for molds and tools will be charged to the customer.

XII. Export regulations

1. We reserve the right to check regulations according to customs and exportation laws and if an official permit (e.g. an export license) will be necessary, we shall supply the commodity subject to it. Here we shall take all reasonable efforts in order to obtain this document. However, we can in no way guarantee that we will get it. The purchaser shall be obliged to support us in getting this permit and to make available necessary documents and information in an appropriate period of time.

2. We shall have the right to withdraw from the contract, if we could not get the official permits, which are necessary for executing the contract within appropriate time, but not later than 12 months after this contract was concluded, or the purchaser is unable to make available for us the necessary documents for a permit within an appropriate extension of time. If we have already rendered services at the point of time of withdrawal from the contract and on request of the purchaser, we shall keep the claim of proportional remuneration.

3. In the event that the necessary permit, as described above, may not be granted, a compensation for damages and expenses shall be excluded, unless the party, to which a claim for compensation is aimed, is responsible for the refusal of the permit. § XII. section 5 sentence 2 is valid in this case.

4. The purchaser shall be obliged to get an import license, which may be necessary.

5. Before exporting the goods which we delivered directly or indirectly, the purchaser shall be obliged to undertake all necessary control and audit arrangements (sanctions list, final use, embargo regulations and so on) in order to comply with national, international and especially US export control regulations and if necessary to obtain the permits from the relevant authority at his cost. The purchaser shall not be entitled to return the goods or to demand compensation in case an export permit is refused by the authorities. When there is knowledge about the final use in the area of "NBC weapons" or of Missile Technology the transfer of our goods is strictly forbidden.

6. The purchaser shall be obliged to keep secret all confidential information (among others export details), which became known to him on the occasion of the business relation, in particular not to pass them on to non-authorized persons or to make them available in another way, without previous written consent.

XIII. Data protection

All customer data recorded in the frame of registration or order will be stored by Kupek and processed for the purpose of order handling or customer service; the above described is to be regarded as notification according to §§ 13 and 14 EU-GDPR and §§ 32 and 33 BDSG new (German Data Protection Act).

You can learn more about how we handle your personal data in our privacy policy.

XIV. Place of fulfillment, applicable law, place of jurisdiction

Place of fulfillment for the deliveries and services including payment, unless another contractual arrangement is made, shall be the place of business stated in our quotations respectively declarations of acceptance.

Place of jurisdiction for all legal actions, regarding to national and international business transactions, shall be Coburg.

Kupek is also entitled to go to law at any other admissible place of jurisdiction.

The law of the Federal Republic of Germany shall apply exclusively, unless anything is agreed to the contrary.

Application of the United Nations Convention of 11/4/1980 on contracts for the international sale of goods is excluded.

XV. Severability clause

1. Should any provision of these terms and conditions and the other arrangements made be or become invalid, the validity of the remainder of the Contract shall not be affected. The Contracting Parties must replace the invalid term with one which most closely approximates it in terms of financial success.

2. In addition to figure 1 of this clause § 306 BGB shall apply to this contract.

Kupek GmbH, Bahnhofstrasse 13, 96277 Schneckelohe

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