



KINDSWATER

General Terms and Conditions of Sale of Kindswater AG, Giengener Str. 35, 89428 Syrgenstein

§ 1 General, scope of validity

(1) Our General Terms and Conditions of Sale (Terms) only apply towards entrepreneurs (§ 14 German Civil Code), public-law entities or public-law funds.

(2) Our terms shall apply exclusively; deviating, contradictory or supplementary terms and conditions of business of our customer (hereinafter referred to as: "Purchaser") shall only be acknowledged if we have expressly approved their validity in writing. This requirement of approval shall also apply if we unconditionally implement delivery to Purchaser despite knowledge of its general terms and conditions.

(3) Our terms shall also apply to all future conclusions of business with Purchaser, even if they are not separately agreed once again.

§ 2 Conclusion of contract

(1) Our quotations shall be subject to change without notice and non-committing, to the extent not expressly marked as being binding or containing a certain period for acceptance.

(2) Ordering of the goods by Purchaser shall be deemed a binding offer for a contract. To the extent that nothing to the contrary can be seen from the order, we shall be entitled to accept this offer of a contract within fourteen days of receipt by us.

(3) Acceptance can be declared either in a textual form pursuant to § 126b German Civil Code (e.g. by order confirmation) or by delivery of the goods to Purchaser.

§ 3 Electronic invoicing by e-mail

(1) Purchaser agrees to us sending invoices by electronic means by e-mail to the e-mail address notified by it. Purchaser waives postal sending of invoices and shall ensure that all electronic dispatches of invoice per e-mail can properly be sent to the e-mail address notified by it. In particular, it shall adapt technical devices such as filter programmes or firewalls accordingly. All and any automated electronic replies to us (e.g. absence notifications) cannot be taken into account and shall not contradict valid receipt of an invoice.

(2) Purchaser shall notify us of a change of the e-mail address to which the invoices are to be sent in a textual form pursuant to § 126 b German Civil Code without delay. Dispatches of invoices to the last e-mail address notified by Purchaser shall additionally be deemed served if Purchaser has not notified us of a change of its e-mail address.

(3) Purchaser can revoke its agreement with electronic dispatch of invoices by e-mail at any time. After receipt and processing of the written revocation, Purchaser shall receive invoices by post in future at the last postal address notified to us. We reserve the right to convert dispatch of invoices by e-mail into postal dispatch of the invoices to the last postal address notified independently for good and sufficient reason.

§ 4 Prices, payment terms

(1) To the extent that nothing to the contrary can be seen from the order confirmation, our prices valid at the time of the conclusion of the contract in question shall apply. The minimum order value shall be 200.00 € net. Below the minimum order value, we shall charge a lump-sum low-quantity surcharge to the amount of 7.00 €.

(2) To the extent not agreed to the contrary in the individual case, the price shall include packaging, transport and the costs of a transport insurance concluded by us for deliveries within Germany from a minimum order value to the amount of 400.00 € net and for deliveries abroad from a minimum order value to the amount of 1,000.00 € net. Below these minimum order values, the costs of packaging, transport and transport insurance shall be charged separately pro rata to the extent not agreed to the contrary. The additional costs for required express and urgent consignments shall be borne by Purchaser in any case.

(3) The prices shall not contain the statutory turnover tax. It shall be stated separately on the invoice at the amount valid on the date of invoicing and shall be charged additionally. In cases of export deliveries, the prices shall also not include all and any customs, fees and other public dues.



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(4) To the extent not agreed to the contrary, invoice amounts shall be due for payment within 30 days of the date of the invoice without any deductions. An invoice shall only be deemed paid if the equivalent value has been credited to one of our accounts to the complete amount of the invoice. If we receive payment within 14 calendar days of the date of the invoice, we shall grant 2% discount on the net amount of the invoice.

(5) If Purchaser falls into arrears of payment, we shall be entitled to charge interest to the amount of 8% above the basic rate of interest of the European Central Bank from such time; the right to claim further damages shall remain reserved.

(6) Even in the event of provisions by Purchaser to the contrary, we shall always be entitled to offset payments against Purchaser's older debts first. If costs and interest have already been incurred, we shall be entitled to offset the payment against the costs first, then the interest and finally against the main payment.

(7) Purchaser shall only have a right of offset on account of legally effective or undisputed counterclaims. A right of retention shall only accrue to Purchaser to the extent that it is based on counterclaims resulting from the same contractual relationship.

(8) We shall be entitled to implement outstanding deliveries only against advance payment or collateral if circumstances suited to a considerable reduction of Purchaser's creditworthiness or as a result of which payment of our open claims by Purchaser from the contractual relationship in question is jeopardised become known to us following conclusion of the contract.

§ 5 Transport, packaging

In the absence of a specific agreement, the choice of means of transport, transport route and the nature of packaging shall be a matter for us. Transport and all other packagings according to the German Packaging Regulations shall not be taken back, they shall become Purchaser's property, with the exception of exchangeable loading aids (e.g. grid boxes).

§ 6 Delivery, delivery period

(1) Delivery periods and delivery dates shall always only be approximate, to the extent that a fixed period or a fixed date has not been assured or agreed in writing. To the extent that dispatch has been agreed, delivery periods and delivery dates shall relate to the time of hand-over to the haulier, forwarder or other third parties commissioned with the transport.

(2) Notwithstanding our rights on account of arrears in acceptance, we can demand an extension of delivery periods or postponement of delivery dates from Purchaser by the period in which Purchaser fails to comply with its contractual obligations towards us.

(3) Deliveries before the expiry of the delivery period and part services shall be admissible.

(4) Vendor shall not be liable for impossibility of delivery or delays in delivery to the extent caused by force majeure or other incidents not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in material or energy procurement, transport delays, strikes, legal lock-outs, lack of workforce, energy or raw materials, difficulties in the procurement of necessary official approvals, official measures or a lack of, incorrect or unpunctual delivery by suppliers or manufacturers) for which we are not answerable. Insofar as such incidents make delivery considerably more difficult or impossible and the prevention is not only of a temporary duration, we shall be entitled to withdraw from the agreement. In the event of obstacles of a temporary nature, the delivery periods shall be extended or the delivery dates shall be postponed by the period of the prevention plus a suitable ramp-up period. Insofar as acceptance of the delivery cannot be reasonably expected of Client as a result of the delay, it can withdraw from the contract by means of a written declaration to be made without delay.

§ 7 Place of performance, passage of risk, acceptance

(1) Place of performance for all duties from the contractual relationship shall be our headquarters in Syrgenstein, to the extent not determined to the contrary.



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(2) The risk of chance destruction and chance deterioration of the goods shall pass to Purchaser upon hand-over at the latest. If the goods are dispatched to a place other than the place of performance at Purchaser's request (sale by dispatch), the risk of chance destruction and chance deterioration of the goods as well as the risk of delay shall pass as early as the delivery of the goods to the forwarder, haulier or other person or institution otherwise determined for performance of the dispatch.

(3) To the extent that acceptance has been agreed, it shall be decisive for the passage of risk. The statutory directives of the law of contracts for work and services shall apply according to the agreed acceptance. Acceptance shall take place without delay following the report of readiness for acceptance in Vendor's delivery works without undue delay.

(4) Arrears in acceptance on Purchaser's part shall be equated to hand-over or acceptance, as the case may be.

(5) If Purchaser falls into arrears in acceptance, fails to perform an action of cooperation or if our delivery is delayed for other reasons for which Purchaser is answerable, we shall be entitled to demand indemnification of the damage originating therefrom, including all and any additional expenditure (e.g. storage costs).

§ 8 Retention of title

(1) Until complete payment of all our current and future claims from the purchase agreement and an ongoing business relationship (secured claims), we reserve title to the sold goods.

(2) The conditional commodities may neither be pledged to third parties nor transferred by way of security before complete payment of the secured claims. Purchaser shall notify us in writing without delay if and insofar as third parties make interventions against goods belonging to us. All the judicial and extrajudicial costs to be expended in order to remedy pledges and to re-procure the goods shall be reimbursed by Purchaser.

(3) In the event of breach of contract by Purchaser, in particular failure to pay the due purchase price, we shall be entitled to withdraw from the contract according to the statutory directives and to demand return of the goods on the basis of the retention of title and the withdrawal. If Purchaser fails to pay the agreed purchase price, we may only claim said rights if we have firstly fruitlessly set a suitable period of time for payment by Purchaser or such setting of a period is dispensable according to the statutory directives.

(4) Purchaser is authorised to resell the conditional commodities in the normal course of business. Purchaser here and now assigns its claims from the resale of the conditional commodities to us as a security, this being to the total of the final invoice amount (including turnover tax) of our claims. The assignment shall apply regardless of whether the conditional commodities have been resold without or following processing or machining. Purchaser shall remain entitled to collect the claim even after the assignment. Our authorisation to collect the claim ourselves shall remain unaffected, although we shall not collect the claim as long as Purchaser complies with its payment duties from the income obtained, no arrears in or cessation of payments exists, no application for opening of insolvency proceedings has been made and no other defect in its ability to pay exists. But if this is the case, we can demand that Purchaser notifies us of the assigned claims and their debtors, gives us all the information necessary for collection, provides the pertinent documents and notifies the debtors (third parties) of the assignment.

(5) Processing or machining of the conditional commodities by Purchaser shall always be on our behalf and by our order. In such a case, Purchaser's entitlement to the conditional commodities shall continue in the processed or machined conditional commodities. To the extent that the conditional commodities are processed with other goods not belonging to us, we shall acquire co-ownership of the new object in the ratio of the final invoice amount (including turnover tax). The same shall apply in the event of blending or combining in the sense of §§ 947, 948 German Civil Code. Purchaser here and now assigns the claims originating from the resale of the blended or combined goods or products against third parties to us to the amount of all and any share of co-ownership accruing to us as a security. § 7 sub-section 4 shall apply accordingly with a view to the assigned claims.



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(6) Insofar as the blending or combining is done such that Purchaser's object is to be regarded as the main object, it shall be deemed agreed that Purchaser assigns co-ownership to us pro rata in the ratio of the invoice values of the blended or combined goods and keeps the sole or co-ownership originating in this way on our behalf on trust. To secure our claims against Purchaser, the latter also assigns claims to us accruing to it against a third party from a combination of the conditional commodities with a real property (e.g. as a result on installation on the basis of a contract for work and services).

(7) We accept each of the aforementioned assignments.

(8) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities at our choice by Purchaser's request.

§ 9 Purchaser's claims from defects

(1) The statutory directives shall apply to Purchaser's rights in defects of quality and title (including wrong and short delivery and improper assembly or defective assembly instructions), to the extent not determined to the contrary below.

(2) The foundation of our liability for defects shall above all be the agreement made concerning the properties of the goods. An agreement concerning the properties of the goods shall be deemed the product descriptions designated as such (also from the manufacturer) provided to Purchaser before its order or integrated into the agreement in the same way as the present Terms. Drawings, illustrations, dimensions and weights contained in catalogues, quotations, advertising letters etc., shall however only be approximately decisive. Amendments customary in the trade shall however be reserved. For special productions, deviations in quantities of up to 10% up or down compared with the goods ordered shall be permissible.

(3) To the extent that the property has not been agreed, an assessment shall be made according to the statutory regulation as to whether a defect exists or not (§ 434 sub-section 1 sentences 2 and 3 German Civil Code). We shall assume no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) Purchaser's claims from defects shall presuppose that it has complied with its statutory examination and notification duties (§ 377, 381 German Commercial Code). If a defect is seen at the examination or later, we shall be notified thereof in writing without delay. The notification shall be deemed without delay if it is made within seven working days, punctual dispatch of the notification being sufficient for fulfilment of the period. Independent of this duty to examination and notification, Purchaser shall notify obvious defects (including incorrect and short delivery) in writing within seven days of delivery, punctual dispatch of the notification also being sufficient for fulfilment of the period here. If Purchaser fails to make a proper examination and/or notification of defects, our liability for the defects not notified shall be ruled out.

(5) If the supplied object is defective, we can demand remedying of the defect (after-working) or delivery of a defect-free object (replacement delivery) as subsequent performance at our choice to start with.

(6) We shall be entitled to make the subsequent performance owed dependent on the fact that Purchaser pays the due purchase price. Purchaser shall however be entitled to retain a suitable part of the purchase price proportionate to the defect.

(7) Purchaser shall give us the time and opportunity necessary for the subsequent performance owed, in particular providing the goods giving rise to complaint for examination purposes. In the event of replacement delivery, Purchaser shall return the defective object to us according to statutory directives. Subsequent performance shall entail neither the dismantling of the defective object nor repeated installation if we were not originally obliged to installation.

(8) The expenditure necessary for the purpose of examination and subsequent performance, in particular transport, travel, working and material costs (not costs of dismantling and installation) shall be borne by us if a defect actually exists. But if a request for remedying of a defect by Purchaser proves to be unjustified, we can demand that Purchaser reimburses the costs incurred as a result.



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(9) In urgent cases, e.g. jeopardising of operational safety or to avert disproportionate damage, Purchaser shall have the right to remedy the defect itself and to demand reimbursement of the expenditure objectively necessary therefor from us. We shall be notified without delay, if possible in advance, of self-remedying. The right to self-remedying shall not exist if we were entitled to reject a corresponding subsequent performance according to the statutory directives.

(10) If subsequent fulfilment has failed or the period to be set by Purchaser for the subsequent fulfilment has expired fruitlessly or is dispensable according to the statutory directives, Purchaser can withdraw from the purchase contract or reduce the purchase price. However, no right to withdrawal shall exist in the event of an inconsiderable defect.

(11) Purchaser's claims to damages or reimbursement of vain expenditure shall only exist pursuant to § 9 and have been ruled out apart from this.

§ 10 Other liability

(1) To the extent that nothing to the contrary results from these terms, including the following provisions, we shall be liable according to the relevant statutory directives for a breach of contractual and extra-contractual duties.

(2) Regardless of the reason, we shall be liable for damages for malice aforethought and gross negligence. For simple negligence, we shall only be liable

a) for damages from injury to life, limb or health,

b) for damages from a breach of a cardinal contractual duty (duty, fulfilment of which makes proper performance of the contract possible and in compliance with which the contracting party regularly trusts and may trust); in such a case, however, our liability shall be limited to indemnification of the foreseeable damage typically occurring.

(3) The limitations of liability resulting from sub-section 2 shall not apply to the extent that we have deceitfully withheld a defect or have assumed a guarantee for the property of the goods. The same shall apply to Purchaser's claims according to the German Product Liability Act.

(4) Purchaser's free right of termination pursuant to §§ 651, 649, German Civil Code, is ruled out.

§ 11 Barring

As a deviation from § 438 sub-section 1 no. 3 German Civil Code, the general period for barring for claims from defects in title and quality shall be one year from delivery. To the extent that acceptance has been agreed, barring shall commence with acceptance. Apart from this, the statutory directives shall apply to barring without limitation. In any case, the periods of barring of the German Product Liability Act shall remain unaffected.

§ 12 Data protection

We shall be entitled to process data about Purchaser received with a view to the business relationship or in connection with the same, regardless of whether they come from Purchaser itself or from third parties, within the meaning of the German Data Protection Act. This reference replaces the notification according to the German Data Protection Act that personal data about Purchaser are stored and further processed.

§ 13 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall govern these terms and all legal relationships between us and Purchaser, ruling out international standardised law, in particular UN purchasing law. The preconditions and effects of the retention of title pursuant to § 7 shall be subject to the law at the location of the object in question, to the extent that the choice of law made in favour of German law is inadmissible or ineffective according to it.

(2) If Purchaser is a merchant within the meaning of the German Commercial Code, public-law entity or public-law fund, the exclusive - also international - place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship shall be Dillingen or Augsburg. However, we shall also be entitled to initiate proceedings at Purchaser's general place of jurisdiction.