

General Terms and Conditions of Sale and Delivery of Kurt Obermeier GmbH & Co. KG

I. General

The following General Terms and Conditions of Sale and Delivery apply in all contracts with enterprises, juristic persons under public law and public law special funds. They are contents of the purchase contract. Contradictory or deviating terms and conditions of purchasing or other restrictions of Buyer are not accepted unless Vendor has explicitly approved of them in writing in each individual case.

II. Offers, Orders

1. Offers of Vendor are non-committal in terms of price, quantity, delivery times and delivery possibilities.
2. Orders of Buyer become binding for Vendor by virtue of written or printed confirmation of Vendor (also invoice or delivery note).

III. Calculation

1. Those prices of Vendor in effect at the point in time of delivery will be charged.
2. If Vendor generally increases his prices in the time between contract conclusion and delivery, then Buyer is entitled to withdraw from the contract within two weeks after the price increase is announced, unless the price increase is due solely to increased freight haulage rates. The right of withdrawal shall not apply to long-term supply contracts (contracts for the performance of a continuing obligation).
3. If payment is agreed in a currency other than Euro (EUR) – foreign currency – then Vendor reserves the right to decrease or increase his purchase price claim in foreign currency at invoicing such that the invoiced amount is the equivalent Euro value as calculated from the foreign currency debt at the point in time of contract conclusion.
4. The weight determined for the calculation is measured at the dispatch point of Vendor's delivering works, unless Buyer demands that the consignment is weighed at his own cost at the official railway weighing station at the point of departure.
5. Buyer confirms to receive invoice in electronic form if possible. Digital invoices will be transmitted via email as PDF.

IV. Payment

1. Bills of exchange may only be presented with the consent of Vendor; these are accepted on account of payment. Maximum maturity for bills of exchange is ninety days after invoice date. Discounting and bill charges, taxes and similar charges as from thirty days after invoice date are borne by Buyer.
2. If justified doubts exist as to the ability to pay or creditworthiness of Buyer and if despite corresponding demand Buyer is not willing to make advance payment or furnish suitable collateral for his performance obligations, then Vendor shall be entitled to withdraw from the contract inasmuch as he has not yet performed.
3. Payments are not deemed as effected before the amount is finally available in an account of Vendor.
4. Vendor reserves the right to use payments to settle the oldest due invoice item plus the default interest and costs accumulated on that amount, and this in the sequential order: costs, interest, main receivable.
5. Buyer has no right of withholding. Buyer may only offset with claims that are uncontested or established with lawful finality.

V. Delivery

1. Vendor invariably endeavours to deliver as quickly as possible. Fixed delivery periods do not exist.
2. If in deviation from this a fixed delivery date is agreed, Buyer must set an appropriate subsequent period in the event of delivery delay.
3. Contract fulfilment is conditional on correct and prompt supply to Vendor.
4. Delivery day is the day on which the goods leave the works or a storage place and, if this day cannot be determined, the day on which the goods are made available to Buyer.
5. Special terms and conditions apply for the provision of packaging means of Vendor inclusive the provision of tank waggons and tank containers.

VI. Force majeure, Contract impediments

Force majeure of any kind, unforeseeable disruptions of operations, traffic or shipment, war, acts of terrorism, fire damage, flooding, unforeseeable scarcity of workers, energy, commodities or auxiliary supplies, strikes, lockouts, official decrees or other impediments for which the party obligated to perform is not answerable and which reduce, delay, prevent or render manufacture, shipment, acceptance or consumption unreasonable shall release from the obligation to deliver or accept for the duration and scope of the disruption. Both parties are entitled to withdraw if delivery and/or acceptance is delayed by more than eight weeks as a result of the disruption. Vendor is not obligated to cover his needs from third party sub-suppliers if the supply sources of Vendor cease to exist partially or wholly. In this case, Vendor is entitled to allocate the available goods quantities giving consideration to own needs.

VII. Shipment

1. Vendor reserves the right to choose shipment route and type. Extra costs incurred due to special shipment requests of Buyer are assumed by Buyer. Unless carriage-paid delivery is agreed, the same applies for freight haulage rate increases after contract conclusion, any possibly added costs for detours, storage costs etc.
2. The risk of destruction, loss or damage of the goods passes to Buyer with dispatch of the goods or when they are made ready for collection by Buyer.

VIII. Retention of title

1. The goods do not pass to the ownership of Buyer before Buyer has fulfilled all his liabilities from the business relationship with Vendor, inclusive ancillary claims, damage compensation claims and redemption of cheques and bills of exchange. The retention of title also remains standing if individual receivables of Vendor are included in an account current and the balance has been drawn and acknowledged.
2. If Buyer is in default with fulfilment of his obligations to Vendor, then Vendor is entitled to demand that Buyer surrenders the conditional goods without setting a subsequent period to perform and without withdrawing from the contract. Recovery of the conditional goods only constitutes withdrawal from the contract if Vendor explicitly so declares in writing. If Vendor withdraws from the contract, he can demand adequate remuneration for the time during which the goods were provided for use.
3. If the conditional goods are processed, Buyer shall act for Vendor but without acquiring any entitlements whatsoever against Vendor due to the processing. The retained title of Vendor extends also to products arising by virtue of the processing. If the conditional goods are processed together with goods in third party ownership or if the conditional goods are comingled or compounded with goods in third party ownership, then Vendor acquires co-ownership in the products so arising in the ratio of the invoice value of the conditional goods to the invoice value of the goods in third party ownership. If the compounding or comingling is with a main item of Buyer, then Buyer herewith assigns to Vendor his ownership rights in the new item.
4. Buyer is obligated to keep the conditional goods for Vendor with due care, to maintain and repair them at own cost and to insure them at own cost against loss and damage to the extent that can be demanded of a prudent businessman. Buyer herewith assigns to Vendor in advance his claims from the insurance contracts.
5. For as long as Buyer duly fulfils his obligations to Vendor, Buyer is entitled to dispose over the conditional goods in orderly business dealings; this does not apply if and inasmuch as an assignment prohibition has been agreed between Buyer and his customers regarding the purchase price claim. Buyer is not entitled to pledge, assign as collateral or other encumbrances. Buyer must make transfer of title in reselling dependent on full payment for the goods by his customers.
6. Buyer herewith assigns to Vendor in advance all claims arising from a resale of the conditional goods together with all ancillary and collateral rights and inclusive bills of exchange and cheques as collateral to secure all claims arising for Vendor against Buyer from the business relationship. If conditional goods are sold together with other items for an overall total price, then the assignment is restricted to the pro rata amount in the invoice of Vendor for the co-sold conditional goods. If goods are sold in which Vendor holds a co-ownership share pursuant to the foregoing section 3, then the assignment is restricted to that portion of

the claim equivalent to the co-ownership share of Vendor. If Buyer uses the conditional goods for remunerated refinement of items owned by a third party, then Buyer herewith assigns to Vendor in advance for the aforesaid collateral purpose his remuneration entitlement against the third party. For as long as Buyer duly fulfils his payment obligations in good time, Buyer is entitled to himself collect the claims from a resale or refinement. Buyer is not entitled to pledge or assign in any manner whatsoever.

7. If Vendor deems that the realisation of his claims is at risk, then Buyer must on demand notify the assignment to his customers and give Vendor all necessary information and documents. Buyer must immediately inform Vendor of interventions by third parties in the conditional goods and assigned claims.
8. If the value of collateral to which Vendor is entitled exceeds the secured receivables of Vendor against Buyer by more than 20%, then on demand by Buyer Vendor is obligated to release collateral to that extent. Vendor shall select the collateral to be released.

IX. Damage compensation

1. Buyer has no claims for damage compensation – also of a non-contractual nature – against Vendor, his employees and other vicarious agents in cases of breach of duty by Vendor, his employees and other vicarious agents in minor negligence, unless the breach concerns a duty of essential significance for achieving the contract purpose.
2. Vendor shall only be liable for direct damages and damages not foreseeable at contract conclusion if Vendor, his managerial employees or other vicarious agents are culpable of gross fault.
3. The aforesaid restrictions do not apply for damages due to injury to life, limb or health. Overriding statutory liability stipulations, e.g. liability under the assumption of a guarantee or product liability law, remain unaffected.
4. Claim for damages is limited to the value of the delivered goods.

X. Complaints of defects

1. Complaints of defects will only be considered if they are raised promptly in writing, but no later than within 10 days after the goods arrive, and are submitted with vouchers, samples, packing slips and statement of invoice number, invoice date and the lettering on the packagings.
2. Concealed defects must be complained in writing immediately following discovery of the defect. Buyer bears the burden of proof that the defect is a concealed defect.
3. Complained goods may only be sent back with the explicit agreement of Vendor.

XI. Rights of Buyer in case of defects

1. The claims of Buyer in cases of defects are limited to the right to subsequent fulfilment. If subsequent fulfilment by Vendor fails, then Buyer can reduce the purchase price or choose to withdraw from the contract. This does not prejudice damage compensation entitlements according to section IX. Buyer has no claims for expenditure necessary for subsequent fulfilment, especially transport, travel, labour and materials costs if these costs increase because the delivery item has been subsequently brought to a place other than the establishment of Buyer, unless this relocation conforms to the intended purpose of use of the delivery item in question.
2. If the warranty is a recourse of Buyer after recourse has been successfully made to Buyer according to the provisions of consumer goods purchasing, then the recourse entitlements founded on the provisions governing the purchase of consumer goods remain unaffected. Damage compensation claims are subject to section IX.
3. Buyer is obligated to inform Vendor of every case of recourse occurring in the delivery chain immediately upon gaining knowledge of it. Statutory recourse rights of Buyer against Vendor exist only inasmuch as Buyer has not concluded any agreements with his customers going above and beyond the statutory claims for defects.
4. The agreement of a guarantee must be set out in writing. A guarantee declaration is only effective if it describes the guarantee contents, duration and geographical scope of guarantee protection with adequate precision.

XII. Statutory limitation

Claims for defects are statute-barred one year after the statutory period of limitation began, unless the goods were put to their usual intended purpose of use in a construction work and caused the deficiency of said construction, in which case such claims are statute-barred two years after the statutory period of limitation began. Overriding statutory limitation and liability stipulations such as e.g. liability from the assumption of a guarantee, liability for wilful and grossly negligent acts, injury to life, limb or health, breach of essential contract duties, liability under product liability law and the provisions governing the purchase of consumer goods remain unaffected.

XIII. Characteristics of the goods, Technical consulting, Use and processing

1. As a matter of principle, only those characteristics described in the product descriptions, specifications and designations of Vendor apply. Public statements, claims or advertising do not constitute statements of characteristics of the purchase item.
2. Technical application consulting by Vendor verbally, in writing and by way of trials is given according to best knowledge, but is deemed only as non-committal advice, also with respect to any protected third party rights, and does not discharge Buyer from the necessity of conducting his own examination of the products delivered by Vendor for their suitability for the intended processes and purposes. The products are applied, used and processed outside the control possibilities of Vendor and this is therefore entirely within the sphere of responsibility of Buyer.

XIV. Brands

1. It is not permitted to offer or deliver substitute products of third parties instead of the products of Vendor while simultaneously referring to them or to bring product designations of Vendor, irrespective of whether they are protected or not, into conjunction with the word "substitute" in pricelists and similar business papers or to compare them against the designations of substitute products.
2. In the use of products of Vendor for fabrication purposes or further processing, it is moreover not permitted to use product designations of Vendor, especially his brands, on such goods or their packagings or in the pertaining printed matter and advertising materials without the prior written consent of Vendor, especially not as statement of contained components. The delivery of products under a brand may not be construed as permission to use this brand for the products manufactured therefrom.

XV. Applicable law, Interpretation of clauses etc.

1. German law applies. The uniform laws governing the purchase of movable items and the conclusion of contracts for the international purchase of goods – both dated 17 July 1973 – and the UN commercial law convention of 11.04.1980 do not apply.
2. Clauses usual in commerce shall be interpreted in accordance with the respectively valid Incoterms.
3. If it is agreed that Vendor shall bear customs and import duty levied by the destination country, then any increases of such charges coming into effect between issuing the order confirmation and delivery dispatch of the goods shall be borne by Buyer. Buyer also bears all other fees, taxes and costs involved with the purchase contract.

XVI. Place of fulfilment and jurisdiction; Severability

1. The respective dispatch point is place of fulfilment for the delivery and Bad Berleburg for the payment.
2. Bad Berleburg is place of jurisdiction for both parties. Vendor is moreover entitled to assert his claims at the general place of jurisdiction of Buyer.
3. If individual clauses of these General Terms and Conditions of Sale and Delivery should be wholly or partially invalid, this shall not impair the validity of the other clauses or the other parts of such clauses. The parties must replace an invalid regulation with a valid regulation coming closest to the economic purpose of the invalid regulation.