

General Terms and Conditions of Delivery and Payment of KASTENS & KNAUER GMBH & CO INTERNATIONAL KG

§ 1 General

All contract conclusions, deliveries and other services between us and our contractual partners are exclusively based on the following General Terms and Conditions of Delivery and Payment (ALZB). Our ALZB shall apply exclusively. The terms and conditions of our contractual partners shall not apply even without our objection. All agreements shall only apply if and insofar as they have been confirmed in writing. Logistics transactions are based on the German Freight Forwarders' Standard Terms and Conditions (ADSp) (latest version) insofar as they do not contradict our ALZB. In case of doubt, the ALZB shall apply.

§ 2 Conclusion of the contract and scope of delivery

Our written order confirmation shall be decisive for the scope of delivery. If we submit an offer with a time commitment, this offer shall be valid in the event of timely acceptance, unless a timely order confirmation is received. If the order confirmation is not objected to within 3 working days after transmission, it shall be deemed binding. If the delivery period is between the first and third working day, our order confirmation shall be deemed binding for the contract. Subsidiary agreements require our express written confirmation. In the case of exports requiring a licence, the delivery contract shall only become effective once the licence has been issued. The service recipient undertakes at that time to comply with the applicable export law.

§ 3 Prices

The prices from our order confirmation shall be deemed agreed. All prices are ex works or ex warehouse and therefore do not include transport or insurance costs, unless expressly agreed otherwise in writing when the offer and/or order is accepted. Likewise, the prices do not include the taxes and duties accruing in the country of receipt. These taxes and duties shall be borne by the customer.

§ 4 Terms of payment

Unless special terms of payment have been agreed, our invoices are due net within 30 days of the invoice date. Our invoices shall be sent by post or by e-mail as a PDF. The statutory provisions on electronic invoicing pursuant to § 14 paragraph 1 VAT Act (UStG) of 01.07.2011 shall apply to this. The contractual partner may only exercise a right of retention due to counterclaims that are based on the same contractual relationship. Offsetting against our request for payment is inadmissible unless the counterclaims submitted for offsetting are undisputed or have been legally established. In the event of default in payment, we shall be entitled to set-off against the assets handed over to us, such as metal credit balances or scrap from reworking transactions. We have the right to assign our claims against the customer to third parties.

If the contractual partner does not comply with the terms of payment, all our claims shall become due immediately without any deduction, unless the breach of the terms of payment is insignificant in the individual case. Insofar as discounts, bonuses, etc. are granted, these shall lapse if the contractual partner does not pay on time. The customer shall bear all fees, costs and expenses incurred in connection with any legally successful legal action against him outside Germany.

In the event of default, interest shall be charged in accordance with BGB § 288 at a rate of 5 % points above the applicable base rate. They are to be set higher if a charge with a higher interest rate is proven. If there are doubts about the solvency of our contractual partner, we can demand security for the purchase price. Default of payment, protest of a bill of exchange or events like these two justify such concerns. In this case we have the right to make all our claims due immediately.

§ 5 Delivery time

Binding and non-binding delivery periods and delivery dates shall only apply if they have been expressly agreed or assured in writing.

The delivery period shall commence on the date of our order confirmation but not before the customer has provided the documents, approvals, releases to be obtained and not before clarification of all details, insofar as there are still uncertainties about details of the order and we have pointed out these uncertainties in writing in the order confirmation or later.

Delivery periods and delivery dates always indicate the time of delivery ex warehouse or ex works.

In the event of force majeure and other unforeseeable, extraordinary and non-culpable circumstances, e.g., material procurement difficulties, operational disruptions, strikes, lockouts, lack of means of transport, official interventions, energy supply difficulties and similar unforeseeable obstacles which are beyond our control and which demonstrably affect the completion or delivery of the delivery item, the delivery period shall be extended by a reasonable time. This shall also apply if the circumstances occur at our suppliers. If the aforementioned circumstances make delivery and performance impossible or unreasonable, we shall be released from our obligation to perform.

The same applies if our upstream supplier does not fulfil his contractual delivery obligations through no fault of our own and it was not possible for us to procure a replacement elsewhere for reasons for which we are not responsible. In important cases, we shall inform the customer as soon as possible of the beginning and end of the aforementioned obstacles. In any case, we shall only be in default if, after the due date, we do not deliver within a reasonable period of grace following a written reminder from the customer for reasons for which we are responsible and the customer is not in default on his part with an obligation from the current business.

If the purchaser is entitled to compensation for damage caused by delay, this shall be limited to a maximum of 5% of the agreed purchase price in the event of slight negligence on our part. If the purchaser wishes to withdraw from the contract and/or claim damages in lieu of performance, he must set us a reasonable deadline for delivery after expiry of the aforementioned deadline. If the customer has a claim for damages instead of performance, the claim shall be limited to a maximum of 10% of the agreed purchase price in the event of slight negligence. If the purchaser is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in the exercise of his commercial or independent professional activity when concluding the contract, claims for damages in the event of slight negligence are excluded.

If delivery becomes impossible for us by chance during the delay, we shall be liable with the limitations of liability agreed above. We shall not be liable if the damage would also have occurred in the event of timely delivery.

If the customer does not accept the agreed delivery item, he shall be in default of acceptance. In this case we can make use of our legal rights. If we demand compensation for damages, this shall amount to 10% of the agreed price. The compensation shall be set higher or lower if we prove a higher damage or the customer proves a lower damage.

§ 6 Transfer of risk

The risk of accidental loss and accidental deterioration of the object of purchase or the contractually owed work shall pass to the customer when it is handed over to the forwarding agent or carrier, at the latest when it leaves the warehouse or factory. If we deliver free to destination with our own vehicles, the risk shall also pass to the customer when the object of the contract leaves the warehouse or factory. In this case, the customer shall only have claims against us arising from culpable breach of the transport obligation.

Unless the customer gives special instructions, we shall select the means of transport and protection. We shall only be liable for the proper selection of the means of transport and protection in the event of gross negligence or intent. We are entitled, but not obliged, to insure deliveries on behalf of and for the account of the customer.

§ 7 Retention of title

All delivered items shall remain our property until all claims arising for us in connection with the delivery, in particular claims from repairs, spare parts, accessories and operating material deliveries, freight, customs duties, taxes, adjustment and insurance costs have been met in full.

Out of all claims against the customer, the extended reservation of title and lien shall expressly apply to goods which the customer has left to us for proper safekeeping, even if claims arising from these original transactions have already been satisfied and no proven security rights of third parties exist in respect of them.

If the customer is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in the exercise of his commercial or independent professional activity when concluding the contract, the retention of title shall also apply to the claims we have against the customer from our ongoing business relations. At the request of the ordering party, we are obliged to waive the retention of title if the ordering party has satisfied all claims related to the specific delivery and there is adequate security for the remaining claims from the ongoing business relationship.

Treatment and processing of the goods subject to retention of title shall be conducted out for us as manufacturer within the meaning of § 950 BGB (German Civil Code) without obligating us. The processed goods shall be deemed to be goods subject to retention of title within the meaning of these terms and conditions.

If the goods subject to retention of title are processed or inseparably mixed with other goods not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value to the invoice value of the other goods used at the point of processing or mixing. The co-ownership shares thus created shall be deemed to be goods subject to retention of title within the meaning of these terms and conditions. If our goods are combined with other movable objects to form a uniform object and if the other object is to be regarded as the main object, it shall be deemed agreed that the customer transfers co-ownership to us on a pro rata basis insofar as the main object belongs to the customer.

The Purchaser may only sell the goods subject to retention of title in the ordinary course of business at his usual terms and conditions.

If the purchaser is a merchant, his claims from the resale are already assigned to us now. We accept the assignment to this extent. If the goods subject to retention of title are sold together with other goods not supplied by us, we shall be entitled to a fraction of the respective purchase price claim in proportion to the invoice value of the resale in accordance with the above conditions. In the event of resale of goods in which we have co-ownership shares in accordance with the above, the assignment of the claim shall apply in the amount of our co-ownership shares. The assigned claims shall be deemed to be security to the same extent as the goods subject to retention of title.

If the goods delivered under retention of title are seized or confiscated, the purchaser is obliged to inform us immediately. Any costs and damages incurred in this respect shall be borne by the customer. The purchaser grants us that in the event of non-delivery of the contractual obligation by him, we may assert our property rights ourselves and without recourse to judicial assistance and are in particular authorised to remove the delivery item.

§ 8 Return of goods

We shall only take back goods that are free of defects with our prior consent in individual cases. In such cases, we reserve the right to retain an amount of 15 % of the purchase price to be refunded or of the remuneration for the work for taking back the goods. This amount may be higher or lower if we prove a higher damage or the customer proves a lower damage.

Special articles or custom-made products are generally not taken back. Special articles are all articles which we have demonstrably and expressly procured on behalf of the customer. All articles which have been manufactured by us by sawing, cutting, milling, etc. on order request shall be deemed to be custom-made products.

§ 9 Weights, measures and deviations

Any deviation in the weight, number of items or specification of the delivered goods from our details on the delivery note and on the invoice must be proven by the customer without delay, provided that we have an identical acknowledgement of receipt signed by the customer. Depending on the type of goods, excess or short deliveries of up to 10 % of the agreed number of items or weights are permitted within the scope customary in trade and industry.

For the deviations described above, the EN tolerances and deviations customary in the trade, such as the specifications of the Wirtschaftsverband Großhandel und Metall WGM (German Wholesale and Metal Trade Association), apply.

§ 10 Warranty

Claims of the Purchaser due to material defects shall become statute-barred in accordance with the statutory provisions in principle two years after delivery of the subject matter of the contract. Notwithstanding this, a limitation period of one year shall apply if the Purchaser is a legal entity under public law, a special fund under public law or an entrepreneur who is acting in a commercial or self-employed capacity when concluding the contract.

In the event of defects in the contractual goods, subsequent performance, i.e. the rectification of the defect or the delivery of a defect-free item, shall take place at our discretion. If the supplementary performance fails, the customer has the right to reduce the purchase price or to withdraw from the contract. The same shall apply in the event of default in subsequent performance if the customer has set us a reasonable period of grace and this period has expired. Reductions in the purchase price due to the purchaser's own reworking are expressly excluded.

§ 11 Liability

Our liability shall be governed exclusively by the agreements made in the aforementioned sections. All claims not expressly granted therein, including claims for damages, irrespective of the legal basis and irrespective of the designation, are excluded, unless we can be accused of intent and gross negligence, unless the claims for damages are based on injury to life, limb or health due to a breach of duty for which we, our legal representative or our vicarious agents are responsible.

The personal liability of our legal representatives, vicarious agents and employees for damage caused by them through slight negligence is excluded.

§ 12 Place of performance, court of jurisdiction

The place of performance for all liabilities arising from a contractual relationship is DE-28865 Lilienthal. The law of the Federal Republic of Germany shall apply exclusively.

For all present and future claims arising from the business relationship with legal entities under public law, special funds under public law or merchants, including claims arising from bills of exchange and cheques, the exclusive court of jurisdiction shall be our registered office in DE-28865 Lilienthal.

The same place of jurisdiction shall apply if the customer does not have a general place of jurisdiction in Germany, leaves his place of residence or habitual abode outside Germany after conclusion of the contract or his place of residence or habitual abode is not known at the time the action is brought.

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