

# General Conditions of Sale and Delivery

## I. General Information

- The following General Terms and Conditions of Sale and Delivery of the firm of Peter Kohl, Nachf. Franz Kohl KG apply only to contracts between this company and other companies as per § 14 Civil Code, but not to consumers as per § 13 Civil Code.
- We sell and deliver exclusively on the basis of the following General Terms and Conditions of Sale and Delivery and our Conditions of Payment.
- Divergent, contradictory or supplementary general terms and conditions, even if they are known, cannot be part of the contract, unless their validity is expressly confirmed in writing. Other subsidiary agreements and modifications of these terms and conditions will only be valid with our written approval. Our Terms and Conditions of Sale and Delivery will also apply even if we execute delivery unreservedly in knowledge of contradictory – or divergent conditions issued by the buyer.
- Our Terms of Sale and Delivery will also apply to all future contracts with the buyer.
- With regard to the interpretation of individual contractual clauses, the INCOTERMS issued by the International Chamber of Commerce are to apply in the version valid at the time the contract was concluded.

## II. Offers and Orders

Our offers are invariably without obligation with respect to price, quantity, description, times for delivery etc. and will be determined only by our order confirmation.

## III. Conclusion of Contract

- The contract is concluded subject to the authorization required for contractual performance.
- Oral agreements will only apply in so far as they are confirmed in writing either in the order confirmation or in an annex to the contract.
- In ordering the goods the customer declares with binding force that he wishes to buy the merchandise. We are entitled to accept the contractual offer contained in the order within a period of 14 days after receipt. The acceptance may be declared in writing or upon delivering the goods to the customer.
- If we receive the customer's order by electronic means, we will confirm our receipt of the order immediately. This does not represent a binding acceptance of the order. Receipt of the order may be associated with a declaration of acceptance. If the customer is ordering by electronic means, his order will be stored-, and, upon request, it will be sent to him by e-mail together with the General Terms of Sale and Delivery.

## IV. Tolerances

Customary deviations in quantity which are within a tolerance of +/-10% of the ordered amount are permissible. The commercial requirements of inspection and complaint shall not be affected hereby.

## V. Delivery and Acceptance

- Delivery shall ensue on the basis of the terms specified in the final order confirmation.
- To comply with the agreed date of delivery, dispatch must ensue not later than on the last day stipulated. The deadline for delivery for CIF and –FOB sales will be deemed observed if delivery of the goods has ensued at the quayside or alongside ship on last day of the deadline.
- We are entitled to provide reasonable partial deliveries and services at any time.
- „Prompt delivery“ means shipment of the goods within two weeks from presentation of the required import and payment licences.
- The contract will be concluded subject to correct and punctual delivery from our own suppliers. We will be entitled to terminate the contract if our suppliers should fail to deliver. This will only apply, however, if we are not responsible –for the non-delivery, especially in the event of hedging with our suppliers. The customer will be informed –immediately about the non-availability of goods. Considerations, in so far as we have received them, will be reimbursed immediately.

## VI. Deadlines for Delivery

With force majeure and other impediments to delivery, such as war, strikes, insurrections-, shortages of raw materials, absence of official authorizations, etc., the delivery deadline shall extend commensurate with the length of disturbance. We will be entitled to terminate the contract should it emerge that an impediment to delivery can not be eliminated.

## VII. Complaint and Compensation

The buyer may only demand subsequent delivery of a non-defective item or rectification of defects if the goods were considerably defective at the time the risk passed to the buyer. Except for the cases covered by §§ 281 Art. 2 and 323 Art. 2 Civil Code, it is not necessary to fix a deadline if the vendor refuses both methods of rectifying defects as defined by § 439 Art. 3 Civil Code, or if the method of rectifying defects fails or is unreasonable. The rectification of defects is deemed to have failed if after the second unsuccessful attempt nothing else results from the nature of the object or the defect or the other circumstances. Should subsequent delivery or rectification of defects fail the buyer is entitled to demand that the sale is rescinded or the purchase price reduced. For hidden defects we will be

- receipt of goods at the buyer's premises or at a delivery point stipulated by the buyer. This shall not affect the commercial requirements of inspection and complaint.
- Objectionable goods are to be left in the original packaging so that verification can be carried out.
- With respect to complaints about quality, the ruling of the International Feather and Arbitration Board (International „Feather Bureau“) in Frankfurt am Main shall be accepted as final authority.
- Further claims of buyer other than those referred to in VI. and VII are excluded, unless the cause of defect is based on intent or gross negligence or the lack of guaranteed quality. Therefore we will not be liable for defects that have not originated on the merchandise itself. In particular, we will not be liable for lost profits and other financial loss of the buyer. The foregoing limitations on liability do not affect the buyer's claims with respect to liability of product. In addition the limitations on liability do not apply to the buyer's physical injury, damage to health and loss of life that is attributable to us. In so far as our liability is excluded or limited, this is also extends to the personal liability of our staff authorised representatives and vicarious agents. Compensation claims made by the buyer based on defects are subject of statutory period of limitation of one year from the date of delivery. This does not apply in case of fraud on our part.
- The buyer will not receive any guarantees from us as defined by law.

## VIII. Prices and Conditions of Payment

- Our prices, unless otherwise stated, are understood to be in EURO, net ex works and excluding charges for packaging and transport. VAT will be indicated separately on the invoice to the statutory amount at the date of invoice.
- Prices will be calculated on the basis of our cost price at the date on which the order is confirmed. If the processing of the order takes more than 4 months and if the basis costs of our calculation have increased above average, we will be entitled to adjust the prices stated in our order confirmation. In this instance, the buyer will be entitled to cancel the contract, if, since the contract was concluded, the price has been increased more than 5% p a. Should the buyer choose to cancel the contract under this condition, he must reimburse us for the costs incurred from the date the contract was concluded until the date it was cancelled.
- Our conditions of payment are stated in the order confirmation and on the invoice and are valid exclusively for this order.
- Payment is effected once we can dispose of the amount.
- Payment must be made to the registered office of our company in conformity with our terms of payment and our prices.

- Coverage of cheques and bills of exchange, cheques, bills of exchange, promissory notes and other means of payment are not accepted in lieu of performance, but on account of performance. They become operative as discharge of obligation only after said means of payment have been fully cashed and honoured. The debt remains not honoured in so far as it has not been covered by a third party.

## IX. Default in payment

- All liabilities arising from the business connection with the buyer may be declared payable in the event of default in payment.
- If after concluding the contract we should learn that the buyer has made a statutory declaration that he is without property, we will be entitled to cancel the contract and demand return of the merchandise if the buyer, in spite of request, is unwilling to pay cash on delivery or to stand surety.
- Interest on arrears charged at a rate of 8% above the base lending rate as per § 1 of the discount interest rate-transitory law of the European Central Bank is agreed. Further rights are reserved, especially the right to claim damages arising from payment in default.
- If the buyer should fail to comply with the terms of payment we will also be entitled to terminate the contract or to assert claims for damages upon expiry of a 14 day extended deadline for payment, which we may set if this is not preceded by a notice of refusal to effect payment.
- The buyer is only entitled to claim set-off if his counterclaims are legally valid, uncontested or expressly accepted by us. The set-off claim must be announced 1 month before. The buyer is entitled to retain payment only in so far as his counterclaim is based on the same contract.

## X. Delay in Accepting Goods

We will grant the buyer a subsequent 14-day extended deadline for delay in accepting the goods. Upon expiry of this deadline or in the event of the buyer breaching other obligations of cooperation we will be entitled to refuse performance of contract, and to require indemnification including any additional expenditure. The 14-day extended deadline is not relevant in the event of loss or deterioration of the goods. This risk passes to the buyer along with delay in accepting the goods.

## XI. Penalty Clause

We are entitled to demand 10% of the agreed purchase price as a contractual penalty in the event of the contract being cancelled, for reasons for which the buyer is responsible in particular in the event of him failing to provide security in accordance with IX (b). This does not affect the right to claim damages.

## XII. Retention of Ownership

We will retain ownership of the goods until all payments covering total deliveries have been received. With a current account, retained ownership shall apply as security for balances due to us. In the event of the buyer being in breach of contract and once we have declared our withdrawal from the contract, we will be entitled to take back the goods. The seizure of

- goods by us always means cancellation of the contract. After taking back the goods we will be entitled to utilize them to our account. The resulting profit will be credited against the buyer's debt, less any costs incurred.
- The buyer is obliged to handle the goods with care. In particular he is obliged to insure them sufficiently at his own expense against damage caused by fire, water and theft at replacement value.
- In instances of seizure and other interventions by third parties, the buyer must inform us immediately in writing. In so far as the third party is unable to reimburse us for any judicial or extrajudicial costs of a claim as per § 771 Code of Civil Procedure, the buyer will be liable to us for the loss.
- The buyer is entitled to resell the goods within the normal course of business; he will, however, assign to us as of now all claims for the final amount invoiced including VAT, which have accrued to him from the resale to his customer or a third party, regardless of whether the goods have been sold before or after being processed. The assignment of claims does not deprive the buyer of his right to enforce these claims. Nor is our entitlement to enforce the claim ourselves affected hereby. We will undertake, however, not to enforce the claim ourselves in so far as the buyer meets his financial obligations from the revenue collected, is not in default in payment and, in particular, has made no application to initiate insolvency proceedings or no suspension of payment is in force. In such an instance, we may require that the buyer informs us of the assigned claims and the name of the debtor, provides us with all the necessary details for recovery, hands over to us the related documents and to informs the debtor (third party) of the assignment.
- The processing or transformation of the goods by the buyer will always be carried out on our behalf. Should the goods be processed using other objects not belonging to us, we will acquire ownership of the new object in the ratio of the value of the goods to the other processed objects at the time of the processing. The same also applies to the object created by processing as to the goods supplied with reservation.
- If our goods are processed together with other objects not belonging to us and cannot be separated after processing, article e) will apply mutatis mutandis. Should the mixing occur in such a way that the object of the buyer is to be regarded as the main object, it will be deemed agreed that the buyer assigns to us co-ownership on a pro rata basis. The buyer will hold in safe keeping on our behalf the solely held or jointly held property thus created.
- We undertake to release the securities due to us at the request of the buyer in so far as the value of our securities exceeds the value of the debt secured by more than 20%. The choice of the securities we release is incumbent on us.

## XIII. Performance – Jurisdiction – Applicable Law

- Flörsheim am Main is the place of performance for all reciprocal claims and obligations.
- It is explicitly agreed that the courts responsible for our company's head office shall have jurisdiction for all disputes arising between ourselves and the buyer. It is agreed between ourselves and the buyer that exclusively German Law will apply. Application of the CISG (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded in totality.
- In the event that special arrangements deviate from one or more of the aforementioned provisions, the other provisions shall retain their validity. The other provisions of our Terms and Conditions of Sale and Delivery will likewise retain their validity if individual provisions, either wholly or in part, have not become terms of the contract or are ineffective.

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