

General Conditions of Fritz Kübler GmbH

Article I: General Provisions

1. We supply exclusively according to the following general conditions. Deviating and supplementary terms and conditions of the customer shall only apply if their validity for the individual transaction is expressly agreed.
2. Our quotations are without engagement.
3. Customers' orders will only be effective when they have been acknowledged in writing by ourselves. Orders are also effective, if we comply with and satisfy them through the remittance of the delivery note and/or the goods and the invoice.
4. All agreements require our written confirmation to be legally effective.
5. We reserve the right to make changes or modifications to the construction or form of our products.
6. We retain all copyright and intellectual property rights to the drawings and other documentation concerning our products. These must not be made available to the third parties without our express approval.
7. The customer has the non-exclusive right to use standard software and firmware, if it remains unchanged, is used within the agreed performance parameters, and on the agreed equipment. Without express agreement the customer may make one back-up copy of standard software.
8. Partial deliveries are allowed unless they are unreasonable to accept for the customer.
9. The term „claim for damages“ used in this general conditions also includes claims for indemnification for useless expenditure.

Article II: Prices, Terms of Payment, and Set-Off

1. Unless otherwise agreed between the customer and us, our prices are ex works. Additional costs for packaging, transport, etc. are not included in the prices.
2. Value added tax at the respective statutory rate shall be added to the prices.
3. Prices and/or discounts stated orally require our written confirmation.
4. Our invoices are payable within 30 days after receipt of invoice without deduction in euro.
5. Repair and spare parts invoices are to be paid net immediately.
6. In the event of late payment or deferral of payment, we shall be entitled to charge interest at a rate of 8% above the respective prime rate of the European Central Bank, subject to the assertion of further concretely verifiable damage caused by default.
7. The customer shall not be entitled to assert a right of retention against our due payment claims or to declare offsetting against counterclaims that are disputed by us and not legally established.
8. If the customer is in default with a payment for more than 14 days or if he has stopped his payments or if a significant deterioration of his financial situation has occurred after conclusion of the contract, our claims from all existing contracts shall become due for payment immediately. We are entitled to demand advance payment or securities for future deliveries and/or partial deliveries.

Article III: Retention of Title

1. The item of the supplies (retained goods) shall remain our property until all claims against the customer to which we are entitled under the business relationship have been satisfied. Insofar as the value of all security interests to which we are entitled exceeds the amount of all secured claims by more than 20%, we shall release a corresponding part of the security interests at the customer's request; in the case of release, we shall be entitled to choose between various security interests.
2. during the existence of the reservation of title, the customer is prohibited from pledging or transferring ownership by way of security and resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from its customer or makes the reservation that ownership is not transferred to its customer until the latter has fulfilled its payment obligations.
3. If the customer resells goods subject to retention of title, he hereby assigns to us by way of security his future claims against his customers arising from the resale together with all ancillary rights - including any balance claims - without the need for any further special declarations. If the reserved goods are sold together with other items without an individual price having been agreed for the reserved goods, the customer shall assign to us that part of the total price claim which corresponds to the price of the reserved goods invoiced by us.
4. the customer shall be permitted to process the reserved goods or to mix or combine them with other items. In any case, we shall be entitled to co-ownership of the new item in the amount of the share resulting from the ratio of the value of the combined or mixed reserved goods to the value of the other goods at the time of processing, combining or mixing. To this extent, the new item shall be deemed to be reserved goods.
5. The provision on the assignment of claims according to No. 3 shall also apply to the new item. However, the assignment shall only apply up to the amount corresponding to the value of the processed, combined or mixed reserved goods invoiced by us.
6. If the customer combines the goods subject to retention of title with real estate or movable property, he shall also assign to us by way of security his claim to which he is entitled as remuneration for the combination, including all ancillary rights, in the amount of the ratio of the value of the combined goods subject to retention of title to the other combined goods at the time of the combination.
7. Until revoked, the customer shall be authorized to collect assigned claims from the resale. In the event of good cause, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency of the customer, we shall be entitled to revoke the customer's authorization to collect. In addition, we may, after prior warning and subject to a reasonable first, disclose the assignment by way of security, realize the assigned claims and demand disclosure of the assignment by way of security by the customer to its customers.
8. In the event of seizures, attachments or other dispositions or interventions by third parties, the customer shall notify us immediately. If a justified interest is substantiated, the customer shall immediately provide us with the information required to assert its rights against its customers and hand over the necessary documents.
9. In the event of breaches of duty by the customer, in particular in the event of default in payment, we shall be entitled to withdraw from the contract in addition to taking back the goods after the expiry of a reasonable period of grace set for the customer; the statutory provisions on the dispensability of setting a period of grace shall remain unaffected. The customer shall be obliged to surrender the goods. The taking back or the assertion of the reservation of title or the seizure of the reserved goods by us shall not constitute a withdrawal from the contract unless we have expressly declared this.

Article IV: Time for Supplies; Delay

1. The observance of deadlines for deliveries requires the timely receipt of all documents to be provided by the customer, necessary approvals and releases, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the customer. If these prerequisites are not fulfilled in time, the deadlines shall be extended; accordingly, this shall not apply if we are responsible for the delay.
2. If the failure to meet the deadlines is due to
 - a) force majeure, e.g. mobilization, war, acts of terrorism, riots, or similar events (e.g. strike, lockout),

- b) virus and other attacks by third parties on our IT system, insofar as these occurred despite compliance with the care customary for protective measures,
- c) obstacles due to German, US or other applicable national, EU or international regulations of foreign trade law or due to other circumstances for which we are not responsible, or
- d) failure of our suppliers to deliver on time or in the proper manner

the deadlines shall be extended accordingly.

3. If we are in default, the customer may - if he can credibly prove that he has suffered a loss as a result - demand compensation for each full week of the delay of 0.5% each, but in no case more than a total of 5% of the price for that part of the deliveries which could not be used for the intended purpose due to the delay.
4. The customer's claims for damages due to delayed delivery as well as claims for damages in lieu of performance exceeding the limits set forth in No. 3 above shall be excluded in all cases of delayed delivery, even after expiry of any time limit set for us to effect delivery. This shall not apply in cases of intent, gross negligence or injury to life, body or health. The customer may only withdraw from the contract within the framework of the statutory provisions if we are responsible for the delay in delivery. A change in the burden of proof to the detriment of the customer is not associated with the above provisions.
5. The customer is obligated to declare within a reasonable period upon our request whether he will withdraw from the contract due to the delay in delivery or whether he will insist on delivery.
6. If dispatch or delivery is delayed at the request of the Customer by more than one month after notification of readiness for dispatch, the Customer may be charged storage costs amounting to 0.5% of the price of the items of the Supplies for each additional month or part thereof, but not exceeding a total of 5%. The contracting parties shall be free to prove higher or lower storage costs.

Article V: Passing of Risk

1. The dispatch takes place on calculation of the customer. Packaging is charged at cost price.
2. The risk shall pass to the customer, even in the case of carriage-paid delivery, when the goods have been brought for shipment or have been collected. Upon request and at the expense of the customer, we will insure the delivery against the usual transport risks.
3. If the shipment is delayed due to circumstances for which we are not responsible, the risk shall pass to the customer on the day the goods are ready for shipment.

Article VI: Receiving Supplies

1. The customer may not refuse acceptance of deliveries due to insignificant defects.
2. If the customer does not accept the ordered goods in due time, we shall be entitled either to grant him a reasonable grace period and to dispose of the goods otherwise after its expiry or to invoice him for the goods immediately and to store them at the expense and risk of the customer. This shall not affect our rights to withdraw from the contract or to claim damages for non-performance. If we claim damages for non-performance, we may claim 20% of the agreed remuneration as compensation without proof, unless the customer proves that only a significantly lower loss has been incurred. We reserve the right to claim higher actual damages.
3. The above provisions shall also apply if the customer does not accept partial deliveries within the periods agreed with him within the framework of a call order.

Article VII: Defects as to Quality

We are liable for material defects as follows:

1. All those parts or services which have a material defect shall, at our discretion, be repaired, replaced or provided again free of charge, provided that the cause of the defect already existed at the time of the transfer of risk.
2. Claims for subsequent performance shall become statute-barred 24 months after the statutory commencement of the limitation period; the same shall apply to withdrawal and reduction. This period does not apply:
 - a) In case of intent,
 - b) In case of fraudulent concealment of the defect, as well as
 - c) In case of non-compliance with a quality guarantee.

Claims for reimbursement of expenses of the customer pursuant to §445a BGB (recourse against the seller) shall also become statute-barred 24 months after the statutory commencement of the limitation period. The statutory provisions on suspension of expiry, suspension and recommencement of the periods shall remain unaffected.

3. Notifications of defects by the customer must be made in writing without delay.
4. In the event of claims for defects, payments by the customer may be retained to an extent that is in reasonable proportion to the material defects that have occurred. The customer shall not have a right of retention if its claims for defects are time-barred. If the notice of defect was unjustified, we shall be entitled to demand reimbursement of the expenses incurred by us from the customer.
5. We shall be given the opportunity to remedy the defect within a reasonable period. If the subsequent performance fails, the customer may - without prejudice to any claims for damages pursuant to No. 9 - withdraw from the contract or reduce the remuneration.
6. Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality, in the case of only insignificant impairment of usability, in the case of natural wear and tear or damage occurring after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable equipment or as a result of particular external influences not assumed under the contract, and in the case of non-reproducible software errors. If the customer or third parties carry out improper modifications, installation/removal or repair work, there shall also be no claims for defects for these and the resulting consequences.
7. Claims of the customer for expenses incurred for the purpose of supplementary performance shall be excluded to the extent that expenses are increased because the subject matter of the delivery has naturally been taken to a place other than the customer's place of business, unless such transfer is in accordance with its intended use. This shall apply mutatis mutandis to claims for reimbursement of expenses of the customer pursuant to §445a BGB (recourse of the seller), provided that the last contract in the supply chain is not a purchase of consumer goods. The customer's right of recourse against us pursuant to §445a of the German Civil Code (seller's right of recourse) shall only exist to the extent that the customer has not entered into any agreements with its customer that go beyond the statutory claims for defects.
8. The claim for reimbursement of expenses under §439 paragraph 3 of the German Civil Code is limited to 15% of the sales price (net) of the product concerned.
9. Claims for damages of the customer due to a material defect are excluded. This shall not apply in the event of fraudulent concealment of the defect, non-compliance with a quality guarantee, injury to life, limb or health and in the event of a willful or grossly negligent breach of duty on our part. A change in the burden of proof to the detriment of the customer is not associated with the above provisions. Further claims or claims of the customer other than those regulated in this Article VII due to a material defect are excluded.

Article VIII: Industrial Property Rights and Copyrights; Defects in Title

1. Unless otherwise agreed, we shall be obliged to make the delivery only in the country of the place of delivery without infringing any industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights"). If a third party asserts justified claims against the customer due to the infringement of property rights by deliveries made by us and used in accordance with the contract, we shall be liable to the customer within the period stipulated in Article VII No. 2 as follows:
 - a) We shall, at our discretion and at our expense, either obtain a right of use for the Supplies concerned, modify them so that the IPR is not infringed or replace them. If this is not possible for us under reasonable conditions, the customer shall be entitled to statutory rights of rescission or reduction.
 - b) Our obligation to pay damages shall be governed by Article XI.
 - c) The aforementioned obligations of us shall only exist insofar as the customer notifies us immediately in writing of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for us. If the customer discontinues the use of the delivery for reasons of mitigation of damages or other important reasons, he shall be obliged to point out to the third party that the discontinuation of use does not constitute an acknowledgement of an infringement.
2. Claims of the customer are excluded insofar as he is responsible for the infringement of property rights.
3. Claims of the customer are also excluded insofar as the infringement of property rights is caused by special specifications of the customer, by an application not foreseeable by us or by the fact that the delivery is modified by the customer or used together with products not supplied by us.
4. In case of infringements of property rights, the provisions of article VII No. 4, 5, 7, 8 shall apply mutatis mutandis to the claims of the customer regulated in No. 1a).
5. In the event of any other defect in title, the provisions of Article VII shall apply mutatis mutandis.
6. Further claims or claims other than those regulated in this Article VIII by the customer against us and our vicarious agents due to a defect of title are excluded.

Article IX: Conditional Performance

1. The fulfillment of the contract is subject to the proviso that there are no obstacles due to German, US-American or other applicable national, EU or international regulations of foreign trade law as well as no embargos or other sanctions.
2. The customer is obliged to provide all information and documents required for export, transfer or import.

Article X: Impossibility of Performance; Adaptation of Contract

1. Insofar as the delivery is impossible, the customer is entitled to claim damages, unless we are not responsible for the impossibility. However, the customer's claim for damages shall be limited to 10% of the value of that part of the delivery which cannot be used for its intended purpose due to the impossibility. This limitation shall not apply in cases of liability based on intent, gross negligence or injury to life, body or health; this does not imply a change in the burden of proof to the detriment of the customer. The right of the customer to withdraw from the contract remains unaffected.
2. If the results within the meaning of Article IV No. 2a) to c) significantly change the economic significance or the content of the delivery or have a significant effect on our business, the contract shall be adjusted appropriately in good faith. If this is not economically justifiable,

we shall be entitled to withdraw from the contract. The same shall apply if required export licenses are not granted or cannot be used. If we wish to make use of this right of withdrawal, we shall inform the customer thereof without undue delay after realizing the consequences of the event, even if an extension of the delivery period was initially agreed with the customer.

Article XI: Other Claims for Damages

1. Unless otherwise provided in these General Conditions, claims for damages by the customer, irrespective of the legal grounds, in particular for breach of duties arising from the contractual obligation and from tort, shall be excluded.
2. This does not apply insofar as liability is assumed as follows:
 - a) according to the product liability law,
 - b) in case of intent,
 - c) in the event of gross negligence on the part of owners, legal representatives or executive employees,
 - d) in case of fraudulent intent,
 - e) in case of non-compliance with an assumed guarantee,
 - f) for culpable injury to life, body or health, or
 - g) due to culpable violation of essential contractual obligations.The claim for damages for the violation of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless another of the aforementioned cases applies.
3. A change in the burden of proof to the detriment of the customer is not associated with the above provisions.

Article XII: Venue and Applicable law

1. Villingen-Schwenningen is agreed as the place of jurisdiction. We are also entitled to take legal action at the customer's place of business.
2. This contract, including its interpretation, shall be governed by German law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Article XIII: Final Clause

1. The customer may transfer its rights under this contract to third parties only with our prior written consent.
2. The place of performance for all deliveries, services (including subsequent performance) and payments shall be Villingen-Schwenningen.
3. The remaining parts of the contract shall remain binding even if individual provisions are legally invalid. This shall not apply if adherence to the contract would represent an unreasonable hardship for one party.

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