

Fritz Kübler GmbH – General Terms and Conditions of Delivery and Payment

§ 1 Validity

1. We supply exclusively according to the following conditions of delivery and payment.
2. The Buyer's terms of business will only apply if their validity has been expressly agreed to for the single transaction.

§ 2 Conclusion of the contract

1. Our quotations are without engagement.
2. Customer 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.
3. Agreements are only effective when in writing.
4. We reserve the right to make changes or modifications to the construction or form of our products.
5. We retain all copyright and intellectual property rights to the drawings and other documentation concerning our products. These must not be made available to third parties without our express approval.

§ 3 Prices

1. Inasmuch as no special agreements have been made between us and the customer, our prices are quoted ex-works. Additional costs for packaging, freight etc. are not included in the prices.
2. All prices are subject to Value Added Tax (VAT) at the respective statutory rate.
3. Any prices and/or discounts that have been quoted verbally, require our written confirmation.

§ 4 Payment conditions

1. Our invoices are payable in euro either within 10 days of receipt of invoice with 2% discount or within 30 days nett. No discount is permitted, if the customer is in arrears with the payment to us of other invoices.
2. Invoices covering repairs or replacement parts are payable immediately nett.
3. In the case of a delay or deferral in payment, and without affecting our right to claim for further damages, we have the right to charge interest at the rate of 8% above the respective base lending rate of the European Central Bank.
4. We will accept drafts and cheques only for the purpose of payment. If we indicate that we agree to the issue of a draft, then the customer is responsible for payment of the costs for discounting and collection. We accept no responsibility for the timely presentation of the draft or for lodging a protest. Payments by draft must be agreed in advance in writing.
5. When our demands for payment fall due, the customer is not authorized to lodge a claim for retention of goods, nor to set this off by counter-claims that are disputed by us and that have not been recognized by a judgment having the force of law.
6. If the customer is overdue with his payment by more than 14 days, or if his payments have ceased, or if following conclusion of the contract there is a marked deterioration in his financial means, then all our demands for payment from all existing contracts are due for payment immediately. For future

deliveries and/or part deliveries, we are entitled to ask either for payment in advance or for the provision of appropriate securities.

§ 5 Delivery Time

1. The delivery times indicated by us can in isolated cases be slightly exceeded. Our delivery obligation is suspended, for as long as the customer is behind with a debt or obligation and/or has to provide documentation, approvals or releases.
2. Force majeure and business disruptions, in particular war, strikes and lock-out at our company or at one of our suppliers, shortage of raw materials, directives and orders of public agencies or the lack of regulatory or other necessary approval for effecting the delivery, relieve us of the duty to perform for the duration of the disruption and within the compass of its effect, insofar as the disruption has not been brought about through gross negligence on our part. The same applies, if the circumstances mentioned arise at one of our suppliers.
3. If the delivery time that we agreed to is exceeded by more than 2 months, then the customer has the right to give us a commensurate extension of time of at least 4 weeks. If we have still not made delivery at the end of this extension period, then the customer can withdraw from the agreement by giving us notice in writing. Compensation claims for damages caused by delay and compensation claims for non-fulfilment are limited to those damages foreseeable for us at the time the agreement was made. The amount of the damages is limited to 0.5 % for each whole week of the delay after the extended period of time has elapsed, but with a maximum of 5 % of the value of that part of the total delivery that cannot be used either on time or as stipulated in the agreement. This limitation does not apply, if the delay or non-fulfilment was caused by us with intent or through gross negligence. Any further claims on the part of the customer in all cases of delayed delivery, even after an extended period of time set by ourselves, are excluded.

§ 6 Shipping and Passing of Risk

1. The risk passes to the customer not later than with the despatch of the delivery consignment. This is also the case if partial deliveries are made or if we take responsibility for the carriage of the goods or if a delivery has been agreed carriage-paid (franco) or free carrier (FCA). This also applies to any possible return of the goods that we may agree to.
2. If shipment is delayed as a result of circumstances that are beyond our control, then the risk passes to the Buyer from the day that the goods are ready to be shipped.
3. The costs of the shipment are to be borne by the Buyer. Packing will be invoiced at cost.

§ 7 Delay in acceptance of goods on the part of the Buyer

1. If the Buyer does not take delivery of the goods ordered on the due date, then we are entitled either to give him a reasonable extension, after which time we will either otherwise dispose of them or we will immediately invoice him for the goods and store them at his cost and risk. This does not affect our rights to withdraw from the agreement or to demand compensation for non-fulfilment. If we demand compensation for non-fulfilment, then we can request without proof 20 % of the agreed consideration as indemnity, insofar as the Buyer cannot prove that considerably less damages have arisen. We reserve the right to claim higher actual damages.

2. The aforesaid provisions also apply, if the Buyer, within the framework of a call-off purchase agreement, does not take delivery of partial shipments at the times agreed with him.

§ 8 Retention of Title

1. We retain the title to all goods supplied by ourselves until full settlement of all our demands from the supply agreement, including all secondary demands, as well as of all other demands on the Buyer from other agreements, which are outstanding at the time of the conclusion of the agreement and until the redemption and encashment of all drafts and cheques that have been given as payment.

If we in the draft-cheque procedure issue a draft against payment of the purchase price in cash, cheque or transfer, then we retain title to the goods until the Buyer honours the draft as the acceptor and thus ends our acceptance liability.

2. This applies also in the case of the processing of our goods, which is carried out for us as manufacturer (§ 950 BGB – German Civil Code). If the goods are combined, mixed or amalgamated with other goods that do not belong to the Buyer, then we acquire joint ownership in the proportion of the invoice value of our goods to these goods at the point in time of the combination, mixing or amalgamation.

3. The Buyer may only dispose of our reserved goods in proper business dealings and by passing on our reservation of title, and this only inasmuch as he is not in payment arrears. He is not authorized to otherwise make available our reserved goods (for example, transferring them by way of security or pawning them etc.). Price or wage claims of the Buyer from the disposal of our reserved goods are already assigned to us now in full until all our claims have been met. On request the Buyer must provide us with an itemized list of all the receivables assigned to us so far. Until all of our claims have been settled he is obliged to transmit onto us all payments that have occurred in respect of the receivables assigned to us by sending us a copy of the payment document. The Buyer must immediately assign to us any cheques and drafts that he receives in payment of such claims. The Buyer is to hold onto these securities in safekeeping as trustee until they are handed over to us.

4. If payment is in arrears, or there is a threat that payment may be suspended, or in the case of unsatisfactory information concerning the ability to pay or the financial status of the Buyer, or if there have been enforcements of judgments or protests of bills against him, then we have the right to take back the reserved goods. The Buyer is under an obligation to release these. The assertion of our retention of title or the seizure of the goods by us does not constitute a withdrawal from the agreement unless the Consumer Protection Law applies. All costs concerning the taking back and exploitation are to be borne by the Buyer.

5. The Buyer must immediately inform us of any attachment or other restriction placed on the articles for sale by any third party. The Buyer has to inform us immediately of any access by third parties to the reserved goods or to the assigned receivables, indicating the necessary documents for the intervention. The costs of the intervention will be borne by the Buyer.

§ 9 Liability for defects in the delivery

1. We are liable as follows for defects in the goods:

a) Within 24 months after transfer of risk as per § 6 and at our choice, the devices will either be repaired, replaced or taken back at invoice value, if they turn out not to be usable or seriously impaired in their use, as long as this is a result of a circumstance that existed prior to the transfer of risk, in particular defective construction, defective parts or poor workmanship. If the Buyer makes unjust claims against our customer service, then he is to bear any resulting costs. Replaced parts become our property. If any defects are repaired by third parties without our prior approval, we will not then bear the costs. If it is not possible to repair or replace the parts, if they have irrevocably failed, or if having regard to our possibility to deliver there is an unreasonable delay, then the Buyer may demand a reduction in the payment. If we cannot come to an agreement concerning the reduction in price, then the Buyer can also demand a change in the agreement.

b) It is a condition for the warranty claim, that the Buyer gives us notice of defects without delay and in writing after delivery of the goods, otherwise the goods are treated as approved. This does not however affect the liability for defects that are not obvious. However, as soon as these defects do become apparent, the Buyer must immediately advise us of this, otherwise the warranty will not apply.

2. We accept no responsibility for damage caused by normal wear and tear, incorrect or careless handling, inappropriate storage or transport, unsuitable or improper start-up or incorrect instructions on operation, or negligent, improper or unsuitable advice and/or repairs on the part of the Buyer or third parties. Furthermore we accept no responsibility for any damage arising from electrotechnical or other external effects on the device as well as the use of add-on, replacement or accessory parts, which have not been agreed for use with our devices.

3. We are not obliged to repair or replace the goods for as long as the Buyer is in arrears with payment to an amount regard to the purchase price that exceeds the reduced value of the goods taking into consideration the defect.

4. Information concerning the possible application of our products and other details are given to the best of our knowledge, however without obligation and excluding all liability, except if we violate our duty with intent or through gross negligence. Such information does not relieve the Buyer of a duty to check the suitability of our products for the purposes envisaged by the Buyer.

§ 10 Liability

1. If the item delivered cannot be used by the Buyer as provided in the agreement due to the fault of the Supplier as a result of failure to carry out or the incorrect execution of suggestions and advice, whether this was before or after the conclusion of the agreement, or due to the violation of other contractual additional obligations, in particular instructions for the operation and maintenance of the delivered item, then the provisions in paragraphs §9 and §10.2 apply, to the exclusion of all further claims by the Buyer.

2. For any damages that have occurred other than to the item delivered – on whatever legal grounds, then the Supplier is liable only

a) where he acted with intent,

b) as a result of gross negligence on the part of the owner(s) or organs or executives,

- c) in the case of culpable injury to life, body, health,
- d) for defects, that he maliciously concealed or whose absence he guaranteed,
- e) for defects in the item delivered, insofar as for these damages the liability for personal injuries or damage to privately used property is obligatory according to the Product Liability Law.

Where there is a culpable violation of essential contractual duties, the Supplier is also liable for gross negligence of non-executives and for slight negligence; in the latter case this shall be restricted to reasonable foreseeable damages within a typical contract. Any further claims are excluded.

§ 11 Final clauses

1. The Buyer may transfer his rights under this agreement to third parties only with our prior agreement in writing.
2. The place of performance for all deliveries, services and payments is Villingen-Schwenningen.
3. It is agreed that Villingen-Schwenningen is the place of jurisdiction. We are also entitled to claim at the place of business of the Buyer.
4. German law applies exclusively, inasmuch as mandatory statutory regulations do not conflict with this. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
5. If any clause within these General Terms and Conditions of Payment and Delivery is or becomes ineffective, then the validity and enforceability of the remaining clauses will nevertheless remain unaffected.
6. This English translation of our company's General Terms and Conditions of Delivery and Payment is provided solely for information purposes. Only the original German version of this agreement is legally binding.

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