



GENERAL TERMS AND
CONDITIONS OF BUSINESS OF
KRAIBURG TPE GMBH & CO. KG

§1. GENERAL

1. These General Terms and Conditions of Business (GTC) apply to all our business relationships with our business partners (hereinafter: „Buyer“). The GTC only apply if the Buyer is an entrepreneur (Section 14 BGB – German Civil Code), a legal entity under public law or a special fund under public law.
2. The GTC apply in particular to the sale and/or delivery of movable goods, irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, these GTC shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.
3. These GTC apply exclusively; we shall not recognize any terms and conditions of the Buyer that conflict with or deviate from or supplement these GTC unless we have expressly consented to the validity of these in writing. This requirement of consent shall apply even if the Buyer makes reference to its general terms and conditions in its documents and we do not expressly object to them.
4. Any individual agreements made in a particular case (including ancillary agreements, addenda and amendments) shall take precedence over these GTC. A written contract and/or our written confirmation shall be authoritative for the content of such agreements.
5. Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTC includes written and text form (e.g. letter, e-mail, fax).
6. Even when such clarification is not provided, the statutory provisions therefore still apply unless they are directly amended or expressly excluded in these GTC.

§2. CONCLUSION OF CONTRACT

1. Our offers are non-binding. This applies even if we have provided the Buyer with technical documentation (e.g. drawings, data sheets, specifications), other product descriptions or documents – including in electronic form – to which we reserve ownership and copyright.

2. The order of goods by the Buyer is deemed to be a binding offer. Unless otherwise stated in the order, we are entitled to accept this offer within 14 days of receiving it.
3. The contract is only concluded upon acceptance of the Buyer's order. Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.
4. Industry-standard deviations from the ordered delivery quantity of the Buyer remain reserved.
5. A free right of termination (e.g. pursuant to Sections 650, 648 BGB) is excluded.

§3. TERMS OF DELIVERY

1. The delivery period shall be agreed individually and/or stated by us upon acceptance of the order.
2. If we are unable to meet binding delivery deadlines for reasons outside of our control (non-availability of the service, e.g. due to lack of self-supply by our suppliers, disruption of the supply chain due to force majeure), we shall inform the Buyer immediately and set a new delivery deadline that is reasonable under the circumstances. If it is not possible to deliver the service within the new delivery period either, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid. This shall not affect our statutory rights (e.g. exclusion of the obligation to perform).
3. Our default in delivery shall be determined in accordance with the statutory provisions. A reminder by the Buyer is, however, required in every case.
4. The terms of delivery shall be stated clearly in our order confirmation. If the terms of delivery are not specified in the order confirmation or if acceptance takes place by delivery without prior order confirmation, delivery shall be ex works (Incoterms 2020). At the request and expense of the Buyer, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless expressly otherwise agreed, we shall be entitled to determine the shipment type (in particular transport company, shipping route, packaging) ourselves.
5. The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer no later than upon handover. The shipment of the goods shall be at the risk (loss, deterioration, delay) of the Buyer, i.e. the risk shall transfer as soon as the goods are delivered to the person designated to carry out the shipment. If the shipment is delayed for reasons beyond our control, the risk shall transfer at the time of notification of readiness for shipment. The statutory transfer of risk due to default of acceptance remains unaffected.

§4. PRICES AND TERMS OF PAYMENT

1. Unless otherwise agreed in individual cases, the current prices valid at the time of conclusion of the contract shall apply. Our prices are always ex works, plus statutory sales tax.
2. In the case of sale by delivery to a place other than the place of performance (§3(4)), the Buyer shall bear the transport costs ex works and the costs of any transport insurance requested by the Buyer. We charge packaging costs at cost price. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
3. The purchase price is due and payable within 14 days from the date of invoice and delivery of the goods. Upon expiry of the payment deadline, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate, subject to the reservation of further rights.
4. The Buyer shall only be entitled to rights of set-off or retention insofar as the respective counterclaim has been legally established or recognized by us. In the event of defects in the delivery, the Buyer's opposing rights, in particular to retain an appropriate part of the purchase price in relation to the defect, shall remain unaffected.
5. If our claim for payment is jeopardized by the Buyer's lack of ability to pay (e.g. application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (Section 321 BGB). Furthermore, we reserve the right to shorten the term of payment with immediate effect or to deliver only against advance payment. In the case of customized products, we may declare withdrawal immediately. The statutory regulations on the waiving of setting of a deadline remain unaffected.

§5. RETENTION OF TITLE

1. Until full payment of all our present and future claims, we shall retain title to the delivered goods (reserved goods).
2. The reserved goods may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties take hold of (e.g. seize) the reserved goods.

3. In the event of breaches of duty, in particular in the event of non-payment of the purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods. The demand for return does not simultaneously imply a declaration of withdrawal; we are instead entitled to demand only the return of the goods and to reserve the right of withdrawal. In the event of non-payment of the purchase price, we shall only assert these rights after the expiry of a reasonable payment period without result or where the setting of such a deadline is legally dispensable.
4. The Buyer may process and/or sell the reserved goods in the ordinary course of business as long as it is not in default of payment. In this case, the following provisions shall additionally apply.
 - a) The retention of title shall extend to the products resulting from processing, mixing or combining goods, in cases where we are deemed to be the manufacturer. If third party property rights exist, we shall acquire co-ownership in proportion to the values of the processed, mixed or combined goods. Otherwise, the same shall apply for the product as for reserved goods.
 - b) The Buyer hereby assigns to us by way of security the claims arising from the resale in full or in the amount of our co-ownership share. We hereby accept the assignment. The obligations of the Buyer stated in clause 2 shall also apply in respect of the assigned claims.
 - c) The Buyer remains authorized to collect the claims in addition to us as long as we do not revoke this authorization. We will not assert our right to collect these claims ourselves and will not revoke the authorization to collect as long as the Buyer duly fulfills its contractual obligations – in particular its payment obligations. If it is in breach of contract, it must support us in asserting the claims.
 - d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

§6. BUYER'S CLAIMS FOR DEFECTS

1. We shall be liable for the freedom of the goods from material defects and defects of title (including incorrect delivery and short delivery) in accordance with the statutory provisions, unless otherwise stipulated below.

2. The basis of our liability for defects is primarily the agreement reached on the quality and the presumed use of the goods (including accessories and instructions). In this sense, all product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly stated by us (in particular in catalogs or on our website) at the time of conclusion of the contract shall be deemed to be an agreement on quality. Information on shelf life shall only apply in the case of storage in accordance with DIN 7716.
3. Insofar as the quality has not been agreed, an assessment of whether or not a defect exists shall be made in accordance with the statutory regulation on the basis of the objective requirements (Section 434(3) BGB). For public statements within the meaning of Section 434(3) (2)(b) BGB which do not originate from us and which at the time of conclusion of the contract we have not adopted as our own in the sense of §6(2) (e.g. by reference in the contractual documents or publication on our website) are irrelevant for the objective requirements.
4. The Buyer's claims for defects presuppose that it has complied with its statutory obligations to inspect and give notice of defects. In the case of goods that are intended for installation or other further processing, an inspection must in any case take place immediately before processing. If the Buyer fails to duly inspect the goods and/or notify us of defects, our liability for the defect not notified, not notified in time, or not notified properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for installation or other further processing, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs („Removal and Installation Costs“).
5. The Buyer shall give us the time and opportunity necessary to inspect the defect complaint raised, and in particular hand over the goods for this purpose.
6. If the goods are defective, we may choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). If the type of subsequent performance chosen by us is unreasonable for the Buyer in the individual case, the Buyer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
7. If the subsequent performance has failed or if a deadline to be set by the Buyer for subsequent performance has expired without result or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. The right of withdrawal shall not apply in the case of an insignificant defect.

8. Claims of the Buyer for reimbursement of expenses pursuant to Section 445a(1) BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 BGB). Claims of the Buyer for damages or reimbursement of futile expenses exist only in accordance with the following §7 and §8; otherwise they are excluded.

§7. OTHER LIABILITY

1. We shall only be liable for damages – irrespective of the legal grounds – in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. diligence in one’s own affairs), only
 - a) for damages resulting from injury to life, body or health;
 - b) for damages arising from the breach of an essential contractual obligation (obligation, the fulfillment of which is a prerequisite for the proper performance of the contract and upon the observance of which the contractual partner regularly relies and is entitled to rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

The above limitations of liability shall also apply to third parties as well as in the case of breaches of duty by persons (including in their favor) where we are responsible according to statutory provisions. The above limitations of liability shall not apply if we have fraudulently concealed a defect or assumed a guarantee. The same shall apply to claims of the Buyer under the Product Liability Act.

2. A breach of duty which does not constitute a defect shall only entitle the Buyer to withdraw from or terminate the contract if we are responsible for the breach of duty. Otherwise, the statutory requirements and legal consequences shall apply.

§8. STATUTE OF LIMITATION

1. Notwithstanding Section 438(1)(3) BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.

2. In the case of a building or items that have been used for a building in accordance with their customary use, the statutory limitation period shall apply (Section 438(1)(2) BGB). Other special statutory provisions on the statute of limitations (in particular Section 438(1) No.1, (3), Sections 444, 445b, BGB) shall also remain unaffected.
3. The above limitation periods of commercial law also apply to contractual and non-contractual claims for damages of the Buyer based on a defect in the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the Buyer pursuant to §7(1)(1) and §7(1)(2)(a) as well as under the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

§9. CHOICE OF LAW AND PLACE OF JURISDICTION

1. German law shall apply to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
2. If the Buyer is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction shall be our registered office in Waldkraiburg. The same applies if the Buyer is an entrepreneur within the meaning of Section 14 BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.
3. Unless otherwise stated in the order, our registered office shall be the place of performance.

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