

General Terms and Conditions of Sale - KROMER GmbH

§1 Scope:

The Terms and Conditions of Sale herein apply only to companies, legal entities under public law and special estates under public law. Our products and services shall be provided only based on the following conditions. Only our Terms and Conditions of Sale shall apply. Deviating or supplementary conditions of the contract partner that are not favorable to us shall not be part of the agreement, even if they are not rejected separately.

§2 Quotation and Conclusion of the Contract:

- Our quotations are without engagement and not binding in any way unless we have expressly indicated them as such in writing. Declarations of acceptance and purchase orders from the ordering party shall not become binding until we issue a written order confirmation insofar as such must be qualified as a quotation in accordance with § 145 of the German Civil Code (BGB). We shall seek to accept purchase orders from the ordering party within 5 working days from receipt of the purchase order.
- The documents belonging to our quotation as stipulated in 2.1, such as figures, drawings, etc. and the resulting dimensional and weight specifications, shall serve only as approximations unless we have expressly indicated in writing that they are binding. The same shall apply to usage specifications. We reserve the right to standard tolerances within reasonable bounds for the ordering party.
- We reserve the property rights and copyrights to all of the documents handed over to the ordering party in conjunction with order placement, such as cost calculations, drawings, etc. These documents must not be made accessible to third parties unless we specifically grant written approval for such purposes. If we have not accepted the offer of the ordering party within the deadline listed under Paragraph 2.1, these documents must be returned to us immediately.

§3 Prices and Conditions of Payment:

- If not expressly agreed otherwise in writing, our prices shall apply ex works excluding packaging and with value-added tax in the respective amount stipulated by law. The costs of packaging shall be invoiced separately.
- The purchase price is due net 10 days after delivery. Interest shall be calculated at a rate of 9% above the base interest rate of the European Central Bank. Default goes into effect in accordance with § 286 of the German Civil Code (BGB). We reserve the right to assert higher damages for late payment.

§4 Offsetting and Right to Refuse Payment:

The ordering party shall have the right to offset only if its counterclaims have been deemed legally valid or are undisputed. The ordering party shall be authorized to exercise a right to withhold payment only insofar as its counterclaim is based on the same contractual relationship.

§5 Delivery Time:

- Delivery times are always non-binding and approximate. When in doubt, the delivery deadline shall start upon dispatch of the order confirmation by us.
- Compliance with delivery deadlines is contingent upon timely receipt of all documents, necessary approvals and releases to be provided by the ordering party, particularly plans, and compliance with agreed conditions of payment and other obligations by the ordering party. If these requirements are not met in a timely manner, the deadlines shall be extended appropriately unless we are at fault for the delay.
- In the event that we are at fault for a delay in delivery, the ordering party may – if the ordering party is able to demonstrate that damages have been incurred as a result – demand compensation for each full week of delay amounting to 0.1% each to a total of up to 5% of the net price for the portion of deliveries unable to be used for their intended purpose due to the delay.
- Both claims for compensation for damages on the part of the ordering party due to delay in performance as well as claims for compensation for damages in place of performance that go beyond the limits listed in Paragraph 6.3, shall be excluded in all cases of delayed delivery or performance after expiry of any deadline that may have been set by us. This shall not apply in the event of mandatory liability in cases of willful intent, gross negligence or due to loss of life, bodily injury or damage to health. The ordering party may withdraw from the contract within the framework of legal provisions only if we are responsible for the delay in delivery.
- The ordering party shall be required to declare, upon request by us within an appropriate deadline, whether the ordering party wishes to withdraw from the contract due to the delay in delivery or insists on delivery.
- We shall be entitled to make partial deliveries as well as minimal deliveries or over deliveries of approximately 10%.

§6 Transfer of Risk:

- Delivery is made "ex works" in accordance with Incoterms 2010 unless agreed otherwise with the ordering party. The risk of accidental loss or accidental deterioration of the goods delivered by us shall therefore be transferred, insofar as we have not expressly assumed responsibility for shipping or installation of the article of sale in writing, to the ordering party upon handover to or pickup by the transport person. This shall also apply in the case of partial deliveries.
- If shipment, delivery, start-up, performance of set-up or installation, transition to independent operation or trial operation is delayed for reasons for which the ordering party is at fault or the ordering party delays acceptance for other reasons, risk shall be transferred to the ordering party at the time of the delay in acceptance.

§7 Force majeure:

Force majeure, labor disputes, strikes, unrest, government actions, failure to provide deliveries on the part of our suppliers, and other unforeseeable, unpreventable and serious events shall release us from liability for the duration of the disruption and to the extent of their effect. This shall also apply if these events occur at a time at which we are behind schedule unless the delay has been caused through willful intent or gross negligence on our part. We shall be required to provide the necessary information immediately within reasonable bounds and to adjust our obligations to the altered conditions in good faith.

§8 Reservation of Proprietary Rights:

- We retain ownership of the delivered goods until payment in full of all claims arising from the delivery contract. This shall also apply to all future deliveries, even if we do not always expressly refer to this fact. We shall be entitled to repossess the goods if the ordering party violates the terms of this contract.
- Until ownership passes to the ordering party, the ordering party shall be required to treat the goods with care. Specifically, the ordering party shall be required to insure the goods against damage due to theft, fire or water at their original value at its own expense. If ownership has not yet transferred, the ordering party must notify us immediately if the delivered goods are subjected to seizure or other claims by third parties. If the third party is not capable of compensating us for the judicial and extra-judicial expenses of action in accordance with Section 771 of the German Code of Civil Procedure (ZPO), the ordering party shall be liable for the resulting loss.
- The ordering party shall be entitled to resell the conditional goods in the course of normal business. Any claims against the ordering party made by the purchaser from resale of the delivered goods shall be assigned to us from this point in the amount of the final invoice total (including value added tax). This assignment of claims shall apply regardless of whether the goods have been resold before or after processing. The ordering party shall remain authorized to collect the claim even after assignment of the claims. Our right to collect the claim ourselves shall be unaffected. However, we will not collect the claim as long as the ordering party meets its payment obligations from the collected revenue, is not behind in payment, and, specifically, has not applied to open insolvency proceedings or ceased payment.
- Any work, processing or alteration of the goods by the ordering party shall always take place on our behalf or by order of us. In this case, the expectancy right of the ordering party to the goods persists in the altered article. If the goods are processed together with other articles not belonging to us, we shall become co-owners of the new article in proportion to the objective value of our goods in relation to the other processed articles at the time of processing. The same shall apply in the case of any mixture. If the mixture takes place in such a way that the article of the ordering party is to be considered a principal object, it shall be agreed that we receive only proportional coownership and the ordering party shall store for us the solely owned or co-owned goods resulting from such mixture. To secure our claims against the ordering party, the ordering party shall also assign to us any claims from third parties that arise for the ordering party as a result of the incorporation of the conditional goods into a real estate property; we hereby accept this assignment.
- We shall undertake to release the securities due to us at the request of the ordering party insofar as the value of the securities exceeds the claims to be secured by more than 20%.

§9 Warranty:

- Warranty claims of the ordering party require that the ordering party has met its obligations with respect to inspection and notification in accordance with § 377 of the German Commercial Code (HGB). This process involves having the ordering party examine the delivery for potential defects immediately, but one week after receipt at the latest, and notifying us if such defects have been found.
- Claims for defects expire 12 months after handover of the goods delivered by us.
- The quality of the goods shall be based solely on the agreed technical delivery provisions. If we must deliver in accordance with drawings, specifications, patterns, etc. of the ordering party, the ordering party assumes the risk of suitability for the intended use. The contractual condition of goods is defined at the point that risk is transferred in accordance with § 7.
- If acceptance of the goods or an initial sample inspection has been agreed, any complaints of defects which the ordering party could have noticed during a careful acceptance or initial sample inspection are excluded.
- We shall not be responsible for material defects which result from unsuitable or improper use, faulty installation or commissioning by the ordering party or a third party, normal wear and tear, incorrect sizing (if we did not handle development of the parts), faulty or negligent handling, nor for the consequences of changes or repair work carried out by the ordering party or a third party improperly or without our consent. The same shall apply to defects that do not significantly reduce the value or suitability.
- We must be given the opportunity to ascertain the reported defect. The rejected goods are to be returned to us on request in sufficient number for reporting; we shall assume the transportation costs if the claim of defect is proven correct. If necessary, the ordering party shall actively participate in the investigation, provide special testing facilities and options free of charge if necessary. The parties to the contract shall share the results with each other. The ordering party shall lose its claims to compensation for defects if it fails to meet these obligations or makes changes to the reported goods without our consent. In the event of a justified report of a defect within applicable deadlines, we shall have the option of correcting the reported goods or supplying a defect-free replacement. If we do not meet these obligations or do not meet them within an appropriate time frame, the ordering party may specify in writing a final deadline within which we must meet our obligations. If this deadline lapses without success, the ordering party can demand a reduction in the purchase price, withdraw from the contract or carry out the necessary subsequent improvement itself or have such improvement carried out by a third party at our expense and risk. There shall be no reimbursement of costs if the expenses increase because the goods have been brought to a different location after delivery by us, unless this means that the goods are being used as intended. With regard to the assessment and cost distribution of the ordering party's expenses as the result of material defects, separate agreements shall be made with us, which must be based on the actual costs incurred by the ordering party and the appropriateness of the expenses and which allow us to carry out an examination of the reimbursements claimed by the ordering party.
- The ordering party itself must carry out a sufficient validation in the original unit. Material defects shall be excluded if they could have been detected during proper validation.
- If the ordering party demands complaint processing using an 8D report or different means, the expiry of a processing deadline set by the ordering party shall not constitute implied acknowledgement of the complaint under any circumstances.
- We do not assume any costs for actions in the field if these are not carried out based on mandatory legal requirements (e.g. service actions).

§10 Other Claims, Liability:

- Our liability is limited for compensation for damages, regardless of the legal basis, particularly resulting from inability, delay, defective or incorrect delivery, breach of contract, violation of duties during contract negotiations or action of tort.
- We assume no liability in the event of ordinary negligence by our agencies, legal representatives, employees or other auxiliary persons if this is not the result of a violation of duties essential to performance of the contract. Considered essential to the contract are the obligations for prompt delivery, delivery of the delivery item, delivery being free of defects that impair its suitability for use more than just a negligible amount, and duties of consultation, protection and care which enable use of the delivery item in accordance with the contract on the part of the ordering party or which serve the purpose of protecting the life and limb of personnel of the ordering party or protecting its property against considerable damage.
- Our liability shall be limited to damages we have foreseen as a potential result of breach of contract upon conclusion of the contract or should have foreseen through the application of due diligence. Indirect damages and consequential damages resulting from defects in the delivery item shall furthermore be eligible for compensation only insofar as such damages are to be typically expected through proper use of the delivery item.
- In each case, our liability shall be limited to the amount of the respective coverage level of our product liability insurance, even if resulting from a violation of duties considered essential to the contract.

§ 11 Confidentiality:

Each party to the contract shall use all documents (such as patterns, drawings, models, data, etc.) and knowledge acquired from the business relationship only for the jointly pursued purposes and to maintain their confidentiality with respect to third parties with the same care as exercised with regard to its own documents and knowledge if they are designated as confidential or there is an obvious interest in maintaining their confidentiality. This obligation shall not apply to documents and knowledge which are generally known or which were already known on receipt without the partner being obligated to maintain confidentiality.

§ 12 Tools:

- Tools manufactured by us or by order of us shall remain our property if not agreed otherwise. This shall apply even if we charge the ordering party in full or in part for the tools.
- If an express agreement is made that the tools are to be the property of the ordering party, the ordering party hereby acknowledges that substantial development expertise is embodied in the patterns and means of production (tools, moulds, templates, etc.) commissioned by the ordering party and that we have a special interest in maintaining the confidentiality of such expertise. For this reason, it shall be agreed that the ordering party shall have no claim to publication of the patterns or means of production, regardless of the legal basis for such, at any time, even if the ordering party has assumed the full costs for the tools and/or the delivery relationship has been terminated. In the event of insolvency or inability to deliver on our part, the ordering party shall be authorized to demand the means of production for payment of the remaining tool costs if applicable.

§ 13 Project Cancellation:

In the event that a project is cancelled, and we are not at fault for such cancellation, and no series delivery materializes for this reason, the ordering party must bear all of the project costs resulting from development and production of the product up to the time of notification regarding project cancellation.

§ 14 Miscellaneous:

- The law of the Federal Republic of Germany shall apply, excluding the international law and the United Nations Convention on Contracts or the International Sale of Goods (CISG).
- The place of performance shall be our company headquarters.
- If the ordering party is a merchant, legal entity of public law or of special fund under public law, the courts of the jurisdiction of our head office shall have sole jurisdiction for any disputes arising from this contractual relationship. We are also entitled to start legal proceedings at the headquarters of the ordering party.
- All agreements made between the parties for the purpose of performance of this contract must be set forth in this contract in writing.
- If a provision within these conditions and the affected other agreements are or become invalid, the validity of the remaining conditions shall not be affected. The contract partners shall undertake to replace the invalid provision with a rule that most closely approximates its commercial impact. The same applies accordingly to any gaps in the contract.