

General Terms and Conditions of Business of GKG Goldmann Kunststoffe GmbH & Co. KG

We conclude contracts exclusively in accordance with the Terms and Conditions below, which apply for all future business relations, even if they are not expressly stipulated again. Deviations from these Terms and Conditions shall only be valid if confirmed by us in writing. Terms and conditions of business of the customer which we do not recognize in writing shall not be binding for us, even if we do not expressly object to them.

The customer shall be notified of these Terms and Conditions in writing. They shall be considered approved unless the customer objects in writing. Specific reference shall be made to this consequence in the notice. The customer must send the objection to us within one month after notification of the changes.

"Written form" in terms of these Terms and Conditions shall be observed through e-mails and fax letters.

I. Offers, Scope of Delivery

1. Our offers shall be non-binding. Agreements made verbally and by telephone shall require our written confirmation for validity.
2. Samples only reflect the approximate properties of the goods. The documents included in our offers, such as prospectuses, images and drawings, as well as weight and measurement data, shall be only approximately decisive, unless we expressly designate them as binding. Our order confirmation alone shall be decisive for the quality of the delivery item.
3. The scope of the delivery shall be defined based on our written order confirmation. If such a confirmation does not exist, our offer shall be decisive. Collateral agreements and modifications shall require our written confirmation.

II. Prices and Terms and Conditions of Payment

1. Prices are ex works, including packaging. Changes in the cost of materials and wages occurring four months after conclusion of the contract shall entitle us to modify prices accordingly.

2. In the event of deliveries abroad, all duties, fees, taxes, costs for technical inspection, etc. accruing outside of the Federal Republic of Germany shall be borne by the customer. This shall also apply for the costs of legalization of certificates of origin, if necessary, consular fees, etc.
3. Payment with checks and notes shall be made on account of performance. For the acceptance of bills of exchange which must be paid abroad or at out-of-town places, we shall assume no liability for timely presentation and protesting. Discount charges shall be assessed from the due date of the invoice amount. If the customer negligently fails to meet its payment obligations, e.g. if the customer fails to redeem checks and bills of exchange or discontinues payments, we shall be entitled to request payment of the entire residual balance, even if we have accepted checks and bills of exchange. We shall also have the right to request advance payments.
4. Set-off against counter-claims or the assertion of rights of retention shall only be permissible provided the customer's claims are undisputed or established by non-appealable judgment.
5. If it becomes recognizable after conclusion of the contract that our claim for payment is jeopardized for lack of ability to pay, we may refuse to render our performance and set a deadline for payment concurrently with delivery or the furnishing of a security. After expiration of the deadline without result, we shall be entitled to rescind the contract and request damage compensation. Such a deadline shall not be necessary if the customer seriously and finally refuses payment or if special circumstances exist which justify our immediate rescission after weighing the interests of both parties.

III. Delivery Period

1. The periods mentioned in our order confirmations or otherwise agreed upon with the customer shall be decisive. Observance of those periods shall be contingent on timely receipt of all documents to be supplied by the customer and observance of the stipulated terms and conditions of payment and other obligations. If those requirements are not met in a timely manner, the delivery period shall be extended by the duration of the delay.
2. The delivery period shall be considered observed if the delivery is ready or picked up within that period. If shipment is delayed for reasons for which the customer is responsible, the period shall be considered observed if notice of completion or readiness for shipment is given within the stipulated period.
3. Partial deliveries shall be permissible, to the extent reasonable for the customer.

4. If we are hindered in performing our obligations due to the occurrence of unforeseeable and extraordinary circumstances which we could not avert despite exercising the due care reasonable under the circumstances of the case, whether such circumstances arise in our plant or in that of our suppliers, e.g. disruptions to operations, official interference, delays in the supply of essential raw and construction materials, energy supply difficulties e.g., the delivery period shall be extended by the duration of the hindrance unless delivery or performance is rendered impossible. If delivery or performance is rendered impossible by the circumstances indicated above, we shall be released from our delivery obligation.
5. If the aforementioned circumstances arise for the customer, the same legal consequences shall apply for the customer's acceptance obligation. We may only invoke the circumstances mentioned herein if we notify the customer thereof without delay.
6. If shipment or delivery is delayed at the customer's request, we may assess storage charges in the amount of one half percent of the net invoice amount for each month begun, beginning one month after notice of completion or readiness for shipment is given. The storage charges shall be limited to five percent of the net invoice amount, unless we demonstrate higher costs.

IV. Shipment and Passage of Risk

1. Risk shall pass to the customer upon shipment. If shipment is delayed for reasons within the control of the customer or the vicarious agents thereof, risk shall pass to the customer on the date the shipment is ready.
2. We will only obtain transport insurance coverage at the written request of the customer and after receiving advance payment.

V. Packaging

1. Insofar as our deliveries are made in returnable containers, the latter shall be shipped back empty in flawless condition by the customer within 30 days of arrival, at the latest, for the customer's account and at the customer's risk, or returned to our vehicle, with confirmation of receipt.
2. If the customer fails to comply with the obligation mentioned in No. 1 above in a timely manner, we shall be entitled to request reasonable compensation for the time in excess of 30 days and, after setting a period and expiration thereof without result, to request the return of the replacement price including the aforementioned compensation.

3. The markings affixed to the returnable containers may not be removed. Returnable packaging may not be exchanged or filled with other goods. The customer shall be liable for reductions in value, exchange and loss. Use as storage containers or provision to third parties shall not be permissible without prior written agreement.
4. In the event of deliveries in tank cars, the customer must ensure the fastest possible emptying and shipment back to us or to the address indicated. In the event the cars are parked in the customer's plant for an extended period of time, and the customer is responsible for the delay, the customer shall bear the rent accruing in this regard.

VI. Reservation of Ownership

1. The delivered goods shall remain our property until the stipulated price is paid in full, including all claims arising from the business connection and future claims, and until the redemption of checks and notes.
2. If the customer pays by check and we issue the customer a bill of exchange eligible for refinancing with central banks, the reservation of ownership shall expire only when claims can no longer be asserted against us based on such bills of exchange.
3. The customer may resell the reserved goods as part of ordinary business operations. The customer hereby assigns its claims from the resale of the reserved goods, particularly payment claims against the customers thereof, to us. We hereby accept such assignment. The customer shall be obligated to notify the debtors thereof of the assignment at our request. We shall be notified of the debts and names of the customer's debtors.
4. The customer shall be entitled to collect debts from the resale. In the event of default in payment or in the event circumstances become known to us which, based on the judgment of a prudent businessman, reduce the creditworthiness of the customer, we shall be entitled to revoke the right of collection.
5. The transfer as security of goods owned by us shall be impermissible. In the event of the assertion of third-party claims to the reserved goods, e.g. through attachment, the customer shall make reference to our ownership of the goods and notify us without delay, sending a copy of attachment record.
6. We shall be entitled to rescind the contract and request the surrender of our delivered goods in the event of breach of contract by the customer.
7. If the value of the securities furnished exceeds our claims by more than 20%, we shall be obligated, at the customer's request, to return or release securities in this regard, at our option.

VII. Rights of the Customer in the Event of Defects

1. We hereby assign our claims against suppliers of essential third-party products to the customer. The customer may only make us liable for defects in essential third-party products if prior judicial assertion of claims against third-party suppliers was unsuccessful.
2. If the purchase is a commercial transaction for the customer, the latter must notify us of defects in writing without delay, though no later than one week after receiving the goods. Notice of defects which could not be discovered within that period despite careful inspection shall be given to us in writing without delay after their discovery.
3. In the event of justified notice of defects, we shall have the right to rectify the defects or render a replacement performance, at our option, within a reasonable period of at least 14 days. If the subsequent performance fails, the customer may reduce the price or rescind the contract, provided the non-conformity with the contract is more than slight. In addition, the customer may be entitled to request compensation for damages or expenses. If the customer rescinds the contract, it must surrender the delivery item to us.
4. Claims of the customer for the expenses necessary for the purpose of rendering the subsequent performance, e.g. shipping costs, tolls and the costs of labor and materials, shall be excluded insofar as expenses are increased because the delivery item is subsequently moved by the customer or a third party to a place other than the place of delivery, unless the move is consistent with proper use of the delivery item or was agreed upon with us upon conclusion of the contract.
5. We shall only be liable for damages resulting from defects in the delivery item if we or our vicarious agents acted in grossly negligent fashion or breached a material contractual duty. No duty shall exist to compensate unforeseeable "excess damages." The above limitation shall expressly not apply if liability for damages due to injury to life, limb or health is established through negligent breach of duty by us or our vicarious agents.
6. Insofar as we assume a warranty for a certain type of quality of the delivery item, the limitations on liability in No. 5 above shall not apply. Claims in accordance with the Product Liability Act shall also remain unaffected.
7. We shall not be liable for the suitability of the goods for the purposes intended by the customer unless that purpose becomes a component of the contract. If we provide advice regarding use, we shall be liable for gross negligence.
8. Claims of the customer for subsequent performance and replacement delivery shall lapse 12 months after delivery. This shall not apply if the law, in §§ 438(1) No. 2 of the Civil Code, 479(1) and 634 a(1) No. 2 of the Civil Code, prescribes longer periods, e.g. for structures and construction materials, recourse claims and defects in construction.

VIII. Limitation of Liability, Damage Compensation

1. All other damage compensation claims, regardless of the legal basis thereof, e.g. based on negligence upon conclusion of the agreement or breach of contractual or legal ancillary duties, may only be asserted by the customer if attributable to an intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents.
2. The above limitation shall not apply for foreseeable damages based on the breach of material contractual duties. We shall not be liable for foreseeable excess risks.
3. The above limitation shall not apply if liability for damages from injury to life, limb or health is established through negligent breach of duty by us or our vicarious agents.

IX. Place of Performance, Place of Jurisdiction and Applicable Law

1. The place of performance for all obligations arising from the contractual relation shall be Bielefeld.
2. The place of jurisdiction for all disputes arising from this contractual relation shall be Bielefeld, provided the customer is a businessman, a legal person under public law or a fund under public law. However, we reserve the right to appeal to the court with jurisdiction at the customer's registered office.
3. German law shall apply exclusively. The application of the United Nations Convention on the International Sale of Goods of 11 April 1980 (the UN Convention) is hereby excluded.

X. Data Protection

We shall be entitled to transmit, modify and delete the customer's personal data. The customer is hereby given notice thereof pursuant to § 26 of the Federal Data Protection Act.