

# GENERAL TERMS & CONDITIONS OF SALES AND DELIVERY

MKW Kunststofftechnik GmbH // 4675 Weibern, Jutogasse 3, AUSTRIA



## 1. GENERAL INFORMATION

- a) All the services that we provide take place exclusively in line with these Terms & Conditions. Divergent agreements require our written consent and contradictory statements on the part of the Contractual Partner, irrespective of whether in writing or verbal, shall be seen as legally invalid when no statement has been made on our part.
- b) The Contractual Partner recognises these Terms & Conditions through the allocation of an order, our order confirmation, via another agreement, whenever the goods or services are accepted unreservedly, or in the case of a longer business relationship, through the unreserved acceptance of the invoice.

## 2. DELIVERY

- a) Unless otherwise agreed, our deliveries take place freight forward at the expense and risk of the Customer from our plants in Weibern or Haag/Hausruck.
- b) In the case of express deliveries or postal forwarding, the outsourced transport costs, as well as freight and storage costs, or similar expenses will be invoiced. We will provide transport insurance cover for the delivery and collection of the goods.
- c) We shall be entitled to make partial deliveries and will invoice these separately upon delivery.

## 3. PAYMENT

- a) The invoiced amounts and other expenses shall be due for payment without deductions within 30 days of the invoice date.
- b) In the case of payment within 8 days of the invoice date, a rebate of 2% will be granted.
- c) All ancillary costs related to payment shall be borne by the Purchaser.
- d) Should the due dates for payment not be adhered to punctually, regardless of whether they have been agreed or determined by an invoice, then all our other receivables, irrespective of title shall be due for immediate payment.
- e) From the due date, the Purchaser shall be obliged to pay default interest to an amount of 5% above the respective prime rate.
- f) In cases of payment default, we shall be entitled to withhold further deliveries, the provision of an advance service and outstanding deliveries and services until the payment of the sum of the arrears.
- g) In cases of default upon acceptance and payment, without a further reminder we shall be entitled to commission a third party with the collection of the outstanding balance. All reminder and collection expenses, including those incurred by us, extrajudicial legal costs and expenses from creditor protection associations shall be at the expense of the Purchaser/Contractual Partner, as shall the costs of a legal declaration of a claim in an insolvency procedure.
- h) Invoicing will take place in accordance with Austrian sales tax legislation and correspond with the e-invoicing directives.

## 4. RETENTION OF TITLE

- a) The goods delivered shall remain the property of the Seller until the payment of all receivables, irrespective of what legal reason, or the redemption of bills of exchange or cheques given to the Seller as payment, even if the purchase price for specially designated receivables is paid. In the case of current account, the retention of title shall be regarded as hedging for the balance claim of the Seller.
- b) Should the Purchaser process, combine or mix the goods of the Seller with other goods that it does not own, the Seller shall be entitled to partial ownership of the new item in accordance with the ratio of the value of the goods under retained ownership to that of the other goods at the time of processing, combination or mixing. Insofar as the Purchaser obtains the sole right of ownership to the new item, in accordance with the ratio of the value of the processed, combined or mixed goods under retained ownership to the value of the new item, it shall allocate the Seller joint ownership of the new item and shall keep this in custody for the Seller free of charge.
- c) The Purchaser shall treat carefully and maintain the goods under retained ownership. The Purchaser may not lease, lend or gift the property of the Seller, or give it to a third party for repair within the warranty period.
- d) The pledging or assigning as security of the goods or machinery delivered by the Seller is not permitted until the final payment of the purchase price. The Purchaser shall inform the Seller immediately in the case of distraint, confiscation or other order by a third party.
- e) Should the Purchaser default on payment, or fail to fulfil the obligations emanating from the retention of title, the Seller shall be allowed to reclaim the object of sale from the Purchaser.

## 5. PRICES

- a) Unless otherwise agreed in writing, prices are non-binding. Valid is the price on the day on which the goods are forwarded, or when readiness to delivery is indicated.
- b) We feel an obligation regarding prices that have been agreed bindingly. However, if between the date of the order allocation and the commencement of the production of the goods, or the provision of other services, this agreed price should alter owing to changes in material factors affecting our price calculation such as personnel, material, freight or credit costs, we undertake to inform our Contractual Partner of these circumstances and will then recalculate the price. In such a case, the Contractual Partner shall have the right to withdraw from the contract without any consequences of default. However, should we not receive a written withdrawal declaration within the reasonable period that we establish, then the new prices will be seen as agreed.
- c) In the case of payment arrears, the cessation of payment on the part of the Contractual Partner, or the opening of insolvency proceedings, we shall be expressly entitled to withdraw granted or promised bonuses of whatever nature.

## 6. PACKAGING

- a) The stated prices are to be understood as being exclusive of packaging.
- b) If packaging takes place in line with standard commercial practice, in order to prevent damage to the goods en route to the established point of destination under normal transport conditions, the costs shall be at the expense of the Purchaser and will only be rescinded upon agreement.

## 7. CONTRACTUAL WITHDRAWAL

- a) Cancellation of an order by the Contractual Partner is only possible with our written consent. Should the contract be cancelled, we shall nonetheless be entitled to further claims against the Purchaser/Contractual Partner and especially in the case of contracts regarding special products and finished goods that have yet to be forwarded, to issue an invoice.
- b) We shall be entitled to withdraw from a contract, when circumstances become known to us that would appear to endanger our receivables.

## 8. CLEANING

We deliver coated or painted goods in a clean condition. Following delivery and outside our premises, the cleaning of goods coated or painted by us no longer represents a contractual object and therefore we undertake no performance in this connection.

## 9. WARRANTY/EXCLUSION

- a) Unless special agreements have been reached in writing, the legal warranty period shall apply in accordance with the Austrian Civil Code.
- b) Upon receipt, the Purchaser is obliged to immediately examine the goods delivered by the Seller for defects.
- c) Warranty claims will be forfeited unless defects and complaints are made known to the Seller immediately, together with information regarding possible causes, or at the latest, in written form 4 days after receipt. Notice of defects made verbally or by telephone, or notice of defects and complaints not received immediately will be disregarded. Notice must be given immediately upon the discovery of any hidden defects. Following the completion of an agreed acceptance, notice of defects that were determinable upon acceptance is excluded.
- d) Should the item supplied be defect, the scope of delivery not correspond with the order confirmation, guaranteed characteristics be missing, or the object delivered become defective within the warranty period, then subject to the exclusion of further warranty claims, the Purchaser shall have the right to choose between a repair or a replacement delivery.
- e) Notice of defects and complaints are to be made to the address of the Seller with the most precise possible description of the defect and the Purchaser shall hand over the rejected goods or services to the extent that this is possible. The Seller shall be entitled to repair defects, or to replace defective goods, or parts thereof. The return of rejected goods to the Seller shall be completed free of charge and at the risk of the Purchaser.
- f) The Purchaser shall not be entitled to warranty claims in the case of,
  - defects resulting from incorrect handling
  - alteration of the delivery object through the addition of components of foreign origin
  - the failure of the Purchaser or its clients to observe statutory regulations, or instructions defined by the Seller with regard to installation, modification or handling
  - the production of the delivery object on the basis of stipulations of the Purchase and the tracing of the defect to such specifications or drawings
  - faulty assembly or commissioning by the Purchaser or a third party
  - natural wear and tear
  - transport damage
  - incorrect storage
  - operating conditions resulting in functional damage
  - chemical, electrochemical or electrical influences
  - the failure to complete necessary servicing, or poor maintenance
  - incorrect handling or excessive use
  - the failure to observe statutory regulations or operating and installation instructions issued by the Seller
- g) Subsequent costs (assembly, disassembly, transport, ...)
- h) The content of the warranty limitations shall be applied in full to possible clients and these be subject to an obligation to assign them further to other buyers.
- i) Material, asset and subsequent damage are excluded, as is damage resulting from incorrect handling or installation.

## 10. COMPENSATION EXCLUSION

For whatever legal reason, the offsetting of claims of the Purchaser/Contractual Partner against the receivable derived from our invoiced amount is excluded, as is the plea of a lack of maturity owing to warranty, etc. unless we have given a written commitment to defect repair.

## 11. COMPETENT COURT, PLACE OF PERFORMANCE AND GOVERNING LAW

- a) The competent court for all disputes arising indirectly or directly from the contract shall be the court with competence for the company seat of the Seller.
- b) However, we retain the right to call upon another court with responsibility for us, or the Purchaser/Contractual Partner.
- c) The company seat of the Seller shall be seen as the place of performance even if as agreed, the handover occurs at another location.
- d) It shall be taken as agreed that irrespective of the legal status of the Purchaser/Contractual Partner Austria law shall apply exclusively.

## 12. SUPPLEMENTARY AGREEMENTS, CONTRACTUAL AMENDMENTS AND ADDITIONS

Supplementary agreements, contractual amendments or additions must be made in written form and this requirement is met through a registered letter and letter of response (or telefax).

## 13. INVALIDITY OF INDIVIDUAL PROVISIONS OF THESE GENERAL TERMS OF SALE AND DELIVERY

Should individual provisions of these General terms of Sale and Delivery be found to be invalid, nonetheless all other provisions shall remain legally binding to their full extent.