

General terms of sale and delivery of Küttner GmbH

(Status: March 2009)

In case of a disput or doubt of the contents of this general terms and conditions the German version shall prevail. The English version is only a guideline.

1. Scope

- 1.1. Our terms of sale shall apply exclusively; we shall not acknowledge any opposing terms of the customer or which deviate from our terms of sale unless we had expressly approved their validity in writing. Our terms of sale shall also apply if we carry out the delivery without reservations in the knowledge of opposing terms of the customer or which deviate from our terms of sale.
- 1.2. All agreements which are reached between us and the customer for the purpose of executing this contract are recorded in writing in this contract. There are no oral collateral agreements.
- 1.3. Our terms of sale shall only apply towards entrepreneurs within the meaning of § 310 Par. 1 BGB [German Civil Code] and shall also apply to all future business with the customer.

2. Prices – terms of payment

- 2.1. Insofar as not otherwise derived from the order confirmation our prices shall apply „ex works“. The applicable rate of value added tax is not included in our prices, it shall be shown separately in the invoice in the applicable amount on the date of invoicing.
- 2.2. The deduction of cash discount requires a special written agreement.
- 2.3. Insofar as not otherwise derived from the order confirmation the purchase price is due any payable net (without deduction) within 30 days from invoice. The statutory provisions shall apply in case of default of payment.
- 2.4. The customer shall only be entitled to rights to offset if his counter-claims have been determined final and binding, are undisputed or have been recognised by us. He is authorized to exercise a right of retention to the extent that his counter-claim is based on the same contractual relationship.

3. Delivery / transport risk

- 3.1. The delivery is agreed “ex works”, i.e. with all deliveries (also carriage paid) the transport risk shall pass to the buyer at the time at which we hand over the goods to the respective transport company such as for example Bundesbahn railway, freight forwarder or carrier.

- 3.2. The delivery date and delivery deadlines are non-binding. Delivery deadlines shall begin after receipt of all documents which are necessary for executing the order, an if applicable agreed down payment and all obligations for which the customer was previously responsible.
- 3.3. Partial deliveries are permitted insofar as reasonable. Each partial delivery represents hereby an independent business. The purchase price is to be paid on the agreed payment dates even in cases in which a complaint is made, subject to a subsequent regulation of a possible ensuing difference.
- 3.4. Events of force majeure as well as official measures entitle us to postpone the delivery by the duration of the impediment plus a reasonable start-up time or to cancel the contract in full or in part owing to the not yet satisfied part. Deemed equivalent to force majeure are strike, lock-out or unforeseeable, unavoidable circumstances, e.g. interferences to operation or transport delays or interruptions without a fault, shortage of raw materials or energy without a fault, which render the timely delivery impossible despite a reasonable effort. The customer is hereby entitled to request us to declare within 2 weeks whether we intend to cancel the contract or we will deliver within a reasonable final deadline. If we make no declaration then the customer is entitled to cancel the part of the contract which was not yet satisfied. We undertake to inform the customer immediately insofar as a case of force majeure occurs.

4. Reservation of title

- 4.1. We reserve the property to the goods until receipt of all payments from the supply contract. In case of conduct of the customer which is in breach of the contract, in particular with default of payment we are entitled to take the goods back. The taking back of the purchased object by us represents a cancellation of the contract. We are entitled to sell the purchased object after we have taken it back. The sales proceeds are to be offset against the customer's liabilities – minus reasonable sales costs.
- 4.2. The customer undertakes to treat the purchased object carefully until the full payment, he in particular undertakes to sufficiently insure this in line with the new value at his own costs.
- 4.3. In case of attachments or other interventions of third parties the customer must inform us immediately in writing and in detail so that we can file an action according to § 771 ZPO [German Code of Civil Procedure]. The customer undertakes to refer to our property immediately in case of interventions by third parties to the reserved goods. Costs and

- damages which are incurred within the framework thereof shall be borne by the customer.
- 4.4. The processing or conversion of the goods by the customer is always undertaken on our behalf. If the purchased object is processed or inseparably mixed with other objects which do not belong to us then we shall acquire the co-ownership to the new object in the ratio of the value of the purchased object (invoice end amount incl. VAT). Incidentally, the same shall apply to the object which is produced through processing as to the purchased object which is delivered under reservation.
 - 4.5. We undertake to release the collateral to which we are entitled upon request of the customer to the extent that the realisable value of our collateral exceeds the claims which are to be secured by more than 10 %; we are responsible for selecting the collateral items which are to be released.
- 5. Liability for defects**
- 5.1. Claims for defects of the customer presume that he has properly satisfied his responsibilities for inspection and report of a complaint owed according to § 377 HGB [German Commercial Code]. Complaints of defects are to be asserted immediately in writing. In case of hidden defects the complaint is to be declared immediately after it has been determined. In both cases all claims for defects shall become statute-barred – insofar as not otherwise agreed – 12 months after passing of the risk.
 - 5.2. Without a special written agreement the production shall be carried out using materials which are customary for the industry and according to the agreed or in the absence of an agreement according to the known, production processes. The tolerances which are customary for the industry apply. If the quantity detail is limited by us with the word “approx.” then a 10 % deviation (+/-) does not represent a defect.
 - 5.3. Independent re-working, improper handling or processing will lead to the loss of all claims for defects.
 - 5.4. Insofar as the purchased object features a defect we are at our choice entitled to subsequent performance in the form of the remedy of a defect or to delivery of a new faultless object. If the subsequent performance fails then the customer is entitled at his choice to request cancellation or reduction.
 - 5.5. We shall be liable according to the statutory provisions insofar as the customer asserts claims for damages which are due to wilful intent or gross negligence including wilful intent or gross negligence of our representatives or vicarious agents. Insofar as we are not responsible for any wilful breach of contract the liability for damages is limited to the foreseeable, typically incurring damages.
- 5.6. The liability owing to culpable injury to life, the body or the health remains unaffected; this shall also apply to the mandatory liability according to the Product Liability Act.
 - 5.7. Insofar as not regulated otherwise above the liability is excluded.
 - 5.8. The statute-of-limitations in the event of a delivery recourse according to §§ 478, 479 BGB remains unaffected. It is 5 years beginning from delivery of the faulty object.
- 6. Business and trade secrets**
- The customer shall ensure that he himself and his employees shall treat business and trade secrets or other matters and information from and about Küttner, which Küttner declares to be confidential, accordingly confidential and these will not be forwarded to third parties – insofar as not required to achieve the object of contract.
- 7. Claims default insurance**
- Küttner is only obligated to satisfy and carry out the orders with permanent supply contracts such as for example release orders or framework supply contracts if the claims default insurance concluded for this order by Küttner has issued a cover note. If the cover note is refused for the customer then Küttner is entitled to cancel the contract. In this case the customer is not entitled to any claim for satisfaction.
- 8. Place of jurisdiction and place of performance**
- 8.1. Insofar as the customer is a merchant our registered seat is the place of jurisdiction. We are however entitled to also file action against the customer at his place of residence / or registered seat as place of jurisdiction.
 - 8.2. The law of the Federal Republic of Germany shall apply; the applicability of the UN Convention on the International Sale of Goods is excluded.
 - 8.3. Insofar as not otherwise derived from the order confirmation our registered seat is the place of performance.