

# GENERAL TERMS AND CONDITIONS

## FOR DELIVERIES AND SERVICES

### KSL STAUBTECHNIK GMBH



#### 1. Scope of application, generalities

1.1 Unless otherwise contractually agreed in each single case, these General Terms and Conditions shall apply exclusively in the relationship with entrepreneurs, public-law legal entities or special funds within the scope of Section 310 (1) of the German Civil Code (BGB).

1.2 Our General Terms and Conditions of Business shall apply exclusively; we shall not recognise any terms and conditions that conflict with or deviate from our Terms and Conditions of Business, in particular the Purchaser's terms and conditions of purchase, unless we have expressly agreed to their validity in writing. Our terms and conditions of business shall also apply if we carry out delivery to the customer without reservation, knowing that the customer's terms and conditions conflict with or deviate from our terms and conditions of business.

#### 2. Offers, orders and contract conclusion

2.1 Our offers are non-binding and subject to change.

2.2 By ordering a delivery or service, the customer bindingly declares that we are to provide the ordered delivery or service.

2.3 We are entitled to accept the contractual offer contained in the order within 2 weeks of receipt.

2.4 Our declarations of acceptance shall be made in writing to be legally effective; sending them by fax or e-mail will be sufficient in this respect.

2.5 The conclusion of the contract is subject to the proviso that our suppliers deliver to us at the terms and conditions which are customary in the industry, as well as correctly and on time.

This shall only apply in the event that we are not responsible for non-delivery, in particular upon conclusion of a congruent hedging transaction with our suppliers. The customer shall be informed immediately of the non-availability of a delivery/service; their consideration shall be refunded to them immediately.

2.6 Illustrations, performance descriptions, dimensions, weights or other output and consumption data in our offers, order confirmations, business confirmation letters, drawings, pictures and other publications are for general information only; they are only binding if this has been expressly declared or agreed by us in writing; nevertheless, all the above do not constitute a guarantee or assurance of specific properties as long as this has not been expressly agreed in writing or declared or confirmed by us in writing. The same applies to analyses: These only indicate average values and are therefore regularly non-binding for delivery.

2.7 Our technical application advice and information as well as recommendations merely reflect the current state of our knowledge and experience. For this reason, this advice as well as our information and recommendations are non-binding; it is the responsibility of the customer to check our information and recommendations for their own specific application in each case.

#### 3. Prices, price changes

3.1 All prices quoted and agreed are Euro prices; they are exclusive of VAT. This will be charged separately at the applicable rate in accordance with the applicable tax regulations.

3.2 In the absence of a special agreement, all prices shall apply "ex works". The prices include the usual packaging, but are exclusive of freight, insurance and other ancillary costs (storage costs, third-party inspection, etc.). Costs for special packaging requested by the Purchaser shall be borne additionally by the Purchaser in the amount of the usual charges for this, against separate invoicing.

3.3 In the case of deliveries abroad, the customer shall bear all taxes, customs duties and other levies payable abroad in addition or reimburse us for these where applicable.

3.4 The agreed prices shall only apply to the respective concluded order.

#### 4. Delivery times, damage caused by delay

4.1 The delivery dates stated or agreed by us are in principle only approximate and non-binding. Agreements deviating from this regarding a binding delivery date shall be made expressly in writing upon conclusion of the contract.

4.2 Even non-binding delivery dates are always subject to the timely clarification of all details of the order, in particular also the clarification of all technical questions as well as the punctual receipt of any agreed advance payments and/or payments on account as well as the punctual provision of any agreed security for payment.

4.3 We shall also not be bound by a binding delivery date if, despite the conclusion of a congruent covering transaction, we have not been supplied by our supplier, have not been supplied correctly or have not been supplied on time; reference is made to the provision in clause 2.5 in addition.

4.4 If delivery is delayed for reasons for which the Purchaser is responsible, delivery shall be deemed to have taken place upon notification of readiness for dispatch.

4.5 We are entitled to make partial deliveries and render partial services at any time. The Purchaser cannot derive any rights with regard to the remaining partial deliveries or partial services from the delay of partial deliveries or partial services.

4.6 Delays in delivery and performance due to force majeure and due to events which make delivery/performance significantly more difficult or impossible for us without us being responsible for this - this includes in particular strikes, lockouts, export and import bans as well as other comparable official orders, disruptions in the supply of raw materials, materials and energy for which we are not responsible, fire, unforeseeable transport problems, operational, production and traffic disruptions for which we are not responsible, as well as accidents for which we are not responsible, even if such performance disruptions affect us because they do not occur directly with us but with our suppliers, their sub-suppliers or our subcontractors - shall not be attributable to us even in the case of bindingly agreed deadlines and dates. They entitle us to postpone the delivery or service for the duration of the hindrance plus a reasonable start-up period or to withdraw from the contract in whole or in part because of the part not yet fulfilled. We shall notify the customer immediately of any delays in delivery.

4.6.1 An outbreak and the continuation and consequences of COVID-19 or a comparable pandemic situation, as well as the continuation of conflicts, such as Ukraine war or comparable ones and their consequences, shall be deemed to be a case of force majeure, provided that the performance of the contract is disrupted thereby.

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- 4.7 If the impediment lasts longer than 2 months, the Purchaser shall be entitled, after setting a reasonable grace period, to withdraw from the contract with regard to the part not yet fulfilled. If the delivery/performance time is extended as a result of the events mentioned in clause 4.6 or if we withdraw from the contract as a result, the customer cannot derive any claims for damages from this. However, we may only invoke the aforementioned circumstances if we have notified the customer without delay.
- 4.8 The provisions of Clauses 4.6 and 4.7 above shall apply mutatis mutandis if the Purchaser is in default with their payment obligations, if they fail to comply promptly with their obligations to cooperate in clarifying business or technical issues or if the Purchaser has delayed performance of the contract in any other respect.
- 4.9 We shall be liable for damages caused by delay on the part of the customer as follows:
- 4.9.1 In the event of death or physical injury or damage to health attributable to us, we shall be liable without limitation.
- 4.9.2 This shall also apply if we or our vicarious agents are guilty of intent or gross negligence with regard to the delay.
- 4.9.3 In the event of slight negligence, liability is excluded if the default relates to immaterial contractual obligations.
- 4.9.4 In all other respects, the Purchaser's claim to compensation for delay shall be limited to 0.5% for each completed week of delay, up to a maximum of 5% of the invoice value of the deliveries and services affected by the delay.
- 4.9.5 In addition, the explanations of the limitation of liability pursuant to clause 8 of these General Terms and Conditions shall apply.
- 4.10 If the customer is in default of acceptance, we are entitled to store the goods in a third-party warehouse or on our premises and to charge the customer for the storage costs. If we store the goods on our premises, the storage costs shall be agreed at 0.5% of the invoice value for each month or part thereof in relation to the goods affected by the default in acceptance, up to a maximum of 5%. The customer shall be entitled to prove, if necessary, that we have incurred no costs or lower costs than the aforementioned flat rate. Conversely, we may, if necessary, assert further costs and claims for damages against the ordering party upon corresponding proof.

#### 5. Dispatch, packaging and transfer of risk

- 5.1 Unless otherwise agreed in writing in individual cases, we owe our deliveries "ex works".
- 5.2 In the case of deliveries or services, the risk shall be transferred to the customer as soon as the goods leave our works or warehouse or are placed at the disposal of the customer or a person appointed by them (including an appointed carrier) in the delivery plant or warehouse; this shall also apply if, in a particular case, we bear the freight costs. If dispatch or collection of the goods is delayed or made impossible as a result of conduct or circumstances attributable to the Purchaser, the risk shall pass to the Purchaser upon notification that the goods are ready for dispatch.
- 5.3 Goods notified by us as ready for dispatch in accordance with the contract shall be called off immediately. If the purchaser is in default of acceptance, we shall be entitled to dispatch them at our discretion at the cost and risk of the purchaser or to store them at our discretion and to invoice them immediately. In any case, a new collection date shall be agreed with us by the customer without delay.

- 5.4 We shall only provide special packaging protection, transport and transport aids as well as transport insurance at the express written request of the customer; the costs incurred shall be borne by the customer.
- 5.5 We do not assume any guarantee with regard to the duration of transport; in particular, our information is given without exception to the best of our knowledge but is non-binding.
- 5.6 In the absence of any special instructions, we shall dispatch the goods by suitable means of transport at our own discretion, without thereby assuming any obligation for the cheapest method of dispatch. We shall not be liable to pay compensation for damage in transit unless we or our vicarious agents are guilty of intent or gross negligence.
- 5.7 In the event of transport damage, the customer shall have the damage determined when the goods are unloaded or received, in such a way that claims for damages can be asserted against the transport company based on this ascertainment.
- 5.8 In addition, the General German Forwarders' Conditions (ADSp) in the version valid upon contract conclusion shall also apply to the relationship between us and the Customer.

#### 6. Terms of payment

- 6.1 Unless otherwise agreed, our invoices are due for payment within 30 days of the invoice date. We grant a 2% discount for payment within 10 days of the invoice date (receipt of payment by us).
- 6.2 Payment deadlines shall be deemed to have been met if we can dispose of the amount within the deadline.
- 6.3 Advance payments and payments on account shall not bear interest.
- 6.4 If the customer ceases payments, is over-indebted or if an application is made to open insolvency proceedings, we shall be entitled to declare our entire claim immediately due and payable. The same shall apply in the event of any other material deterioration of the financial circumstances of the customer, which shall be deemed to have occurred, inter alia, if a cheque issued by the latter is not honoured or is charged back.

In the aforementioned cases, we are furthermore entitled to demand outstanding deliveries or services only against advance payment or sufficient security and to postpone the continuation of current orders until then.

- 6.5 Offsetting with counterclaims is excluded unless these counterclaims are recognised by us or have been legally established. The customer may only exercise a right of retention if their counterclaim is based on the same contractual relationship and the claim on which the right is based has been legally established or recognised by us.
- 6.6 Our sales agents and business representatives are not authorised to accept payments on our behalf without a special written power of attorney.

#### 7. Liability for defects (warranty)

- 7.1 The information regarding our products always refers to approximate average values. Deviations within the limits possible in individual cases, such as are unavoidable despite all care taken in the manufacture of the goods and determination of the values, are expressly reserved and shall not be deemed to be defects. The same applies to samples which we have supplied to the customer.

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7.2 Claims for defects on the part of the Purchaser imply that the Purchaser has duly fulfilled their obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB).

7.3 We shall be given the opportunity to establish the defect complained of. At our request, the purchaser is obliged - insofar as this is technically possible and reasonable - to send the rejected goods to us at our expense. In the event of an unjustified notice of defect, these costs shall be reimbursed to us.

7.4 In the event of justified notices of defect, we shall first be entitled, at our discretion, to rectify the defect or to make a replacement delivery. If the defect is not remedied as a result, we shall be entitled to these rights a second time.

The expenses necessary for the purpose of subsequent performance (repair or replacement delivery), in particular transport, travel, labour and material costs, shall be borne by us; however, this shall not apply to such additional costs that arise due to the fact that the delivery or service is no longer located at the agreed place of delivery.

The transport costs to be borne by us in the event of subsequent performance shall be limited in principle to the most favourable means of transport in each case; the additional costs of another means of transport requested/requested by the customer, e.g. the additional costs of air freight compared to sea freight, shall be borne accordingly by the customer or, if applicable, reimbursed to us.

7.5 If the supplementary performance (rectification or replacement delivery) fails, the customer may in principle demand a reduction of remuneration (abatement) or rescission of the contract (withdrawal) at their discretion. If there is only a minor breach of contract, in particular in the case of minor defects, the customer shall not, however, be entitled to withdraw from the contract.

7.6 If the goods delivered by us are only partially defective, the customer may only withdraw from the contract in full if a defect-free partial delivery is of no interest to them; otherwise they will remain obliged to accept the defect-free part of the goods.

7.7 If the Purchaser claims damages within the scope of the warranty, the provisions of the limitation of liability in the following Clause 8 shall apply in this respect.

7.8 The above warranty provisions shall apply accordingly to the repaired or replacement goods.

7.9 The Purchaser's claims for defects shall become statute-barred after 12 months, calculated from the time of the passing of risk (cf. the provisions under clause 5.2 of these General Terms and Conditions). Notwithstanding the foregoing, the Purchaser's claims for defects in respect of a building or items for buildings shall become statute-barred after 5 years pursuant to Section 438 para. 1 No. 2 BGB or for building work pursuant to Section 634 a para. 1 No. 2 BGB; the warranty provision of Section 479 BGB shall also remain unaffected.

7.10 The purchaser does not receive any guarantees from us in the legal sense. This does not affect express manufacturer's warranties from us or third parties.

7.11 We provide application advice to the best of our knowledge based on our research and experience. However, all data and information concerning tangible suitability and application or use of our products by the purchaser/user are non-binding and do not release the purchaser/user from carrying out their own tests and trials.

## 8. Limitations of liability

8.1 If, on the basis of the statutory provisions in accordance with these General Terms and Conditions for Deliveries and Services, we have to pay for damage to the customer which was not caused intentionally or by gross negligence, we shall only be liable in accordance with the following provisions:

8.2 Irrespective of our fault, any liability in the event of fraudulent concealment of a defect, from the assumption of a guarantee or a procurement risk as well as under the Product Liability Act shall remain unaffected.

8.3 Liability due to a delay in delivery is primarily regulated in section 4.9 including the associated subsections of these General Terms and Conditions.

8.4 The above provisions on limitation of liability shall also apply mutatis mutandis if the Purchaser claims compensation for futile expenses (Section 284 of the German Civil Code) instead of damages in lieu of performance.

8.5 Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our legal representatives, employees, sales agents and vicarious agents.

## 9. Retention of title

9.1 Until the fulfilment of all claims - in the case of entrepreneurs including all balance claims from current account - to which we are entitled against the customer for any legal reason now or in the future, we shall be granted the following securities, which we shall release on request at our discretion, insofar as the realisable value exceeds the claims by more than 10%.

9.2 The delivery item remains our property (reserved goods).

9.3 If goods subject to retention of title are processed by the customer to form a new movable item, the processing shall be carried out for us without us being obliged as a result; the new item shall become our property. In the event of processing, mixing or blending with goods not belonging to us, we shall acquire co-ownership of the new item in proportion to the invoice values of our reserved goods to the total value. The customer shall keep our property/co-property for us free of charge.

9.4 The customer may only sell the goods subject to retention of title in the ordinary course of business, under their normal terms and conditions of business and as long as the customer is not in default, provided that they have agreed a retention of title with their customer and that the claims from the resale are also actually transferred to us in accordance with clauses 9.5 to 9.8.

9.5 The purchaser hereby assigns to us, by way of security, their claims with all ancillary rights - including any balance claims - in the amount of the final invoice (including VAT) of our claim, which accrue to them from the resale or any other legal reason against their customers or third parties. We accept this assignment. The claim assigned to us in advance by the purchaser also relates to the recognised balance and, in the event of insolvency of the purchaser, to the then existing "causal" balance.

9.6 If the goods subject to retention of title have been processed, mixed or blended and we have acquired co-ownership in the amount of our invoice value, we shall be entitled to the purchaser's claim against their customer proportionately to the value of our rights to the goods.

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- 9.7 If goods subject to retention of title are installed by the Purchaser in a property/building, the Purchaser hereby assigns the resulting claim for remuneration or from the resale of the property/building in the amount of the invoice values of the goods subject to retention of title with all ancillary rights, including a claim for the granting of a security mortgage with priority over the rest. We accept the assignment.
- 9.8 If the Purchaser has sold the claim within the scope of genuine factoring, our claim shall become due immediately and the Purchaser shall assign the claim to us against the factor taking the place thereof and shall immediately forward their proceeds to us. We accept this assignment.
- 9.9 The purchaser's authority to sell or process goods subject to retention of title in the ordinary course of business shall end in the event of the purchaser's default in payment or with our revocation as a result of a sustained deterioration in the purchaser's financial position, at the latest, however, with their cessation of payments or with an application for insolvency over their assets.  
The customer is then obliged to hand over to us on request an exact list of the claims to which he is entitled with the names and addresses of the buyers, the amount of the individual claims, the invoice date, etc. and to provide us with all information necessary for the assertion of the assigned claims as well as to allow the verification of these claims.
- 9.10 A pledge or transfer of ownership by way of security of the reserved goods or the assigned claims is not permitted.
- 9.11 The customer is obliged to keep the goods subject to retention of title in perfect condition. They shall provide us with information about the reserved goods at any time, in particular also with regard to their location. In the event of the assertion of legitimate interests, we shall be authorised to inspect the reserved goods.
- 9.12 In the event of access by third parties to the reserved goods, in particular in the event of seizure, as well as in the event of any other - possibly only imminent, but expected - impairment of our rights, the purchaser is obliged to point out our ownership/co-ownership and to notify us immediately. If we have to file an action against the third party pursuant to § 771 ZPO and if the third party is not in a position to reimburse us for the costs of this action or the corresponding lawsuit, the customer shall be liable to us for the loss incurred.
- 9.13 The purchaser is obliged to sufficiently insure the goods subject to retention of title at their own expense against any damage to the usual extent, and to provide us with evidence of this upon request. They hereby assign to us their claims for compensation to which they are entitled from damages of the aforementioned kind against insurance companies or other parties liable to pay compensation, in the amount of the invoice value of our goods. We accept this assignment.  
If the customer does not fulfil their obligations in accordance with the above paragraph, we shall be entitled to take out the aforementioned insurances to the extent deemed necessary by us at the customer's expense within the scope of what is customary, with the proviso that we shall be directly entitled to the rights arising from the insurance contracts.
- 9.14 In the event of a breach by the Purchaser of the obligations under this Clause 9, we shall be entitled, after having granted an appropriate grace period, to demand immediate payment of the entire remaining debt for the Retained Goods or to demand security; no grace period shall be required if there is a serious breach by the Purchaser of the provisions in this Clause 9 or if granting a grace period would jeopardise our rights or economic interests.

If the customer does not pay the entire remaining debt within 7 days after a corresponding request by us, or if they do not provide the requested securities within this period, their right to use the reserved goods shall expire. We shall then be entitled to demand immediate surrender at the expense of the customer to the exclusion of any rights of retention.

- 9.15 Notwithstanding the payment obligations of the customer, we are entitled to realise the reserved goods repossessed by us in the best possible way by private sale or to take them over at the respective market price. In the absence of any other express agreement with the Purchaser, the market price for the Retained Goods shall be estimated by a sworn expert appointed by the Chamber of Industry and Commerce (or alternatively, abroad, by a comparable institution) responsible for the respective delivery plant/warehouse in which the Retained Goods are located, with binding effect for the Purchaser and us. The proceeds from the realisation or the market price shall be set off against the payment obligation of the customer after deduction of the costs incurred by us including those of the aforementioned expert.

#### 10. Copyright

- 10.1 Our deliveries and services do not include the transfer of copyrights.
- 10.2 We reserve all property rights and copyrights to illustrations, drawings, drafts, cost estimates, cost quotations and other documents. This also applies to such written documents that are designated as "confidential". Such documents may only be reproduced or made accessible to third parties with our express written consent.

#### 11. Data processing and storage

The personal data of the customer obtained within the scope of the conclusion of the contract or the business relationship shall be stored and processed by us in accordance with the relevant provisions of data protection law.

#### 12. Applicable law, place of jurisdiction and place of performance

- 12.1 These Terms and Conditions and the entire legal relationship between us and the Purchaser shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (so-called UN Sales Convention).
- 12.2 If the Purchaser is a merchant, a legal entity under public law or a special fund under public law, the uniform place of performance shall be Lauingen/Donau. Dillingen/Donau is agreed as the place of jurisdiction. However, we shall also be entitled to sue the customer at any court having jurisdiction by law.
- 12.3 If a provision in these General Terms and Conditions or a provision within the scope of other agreements between the Purchaser and us is or becomes invalid, this shall not affect the validity of all other provisions and agreements.