

General Terms and Conditions of Business and Delivery

May 2024

Scope of application

The following General Terms and Conditions apply to all business relationships between Gerlinde Kusstatscher GmbH (hereinafter referred to as "Seller") and its clients. The version valid at the time of conclusion of the contract shall apply. Deviating, conflicting or supplementary General Terms and Conditions shall not become part of the contract, even if known, unless their validity is expressly agreed to in writing by the seller.

Scope of services and conclusion of contract

All offers made by the seller are non-binding and subject to change. This shall also apply if the seller has provided the client with technical documentation such as drawings, plans, calculations, other product descriptions or documents to which the seller reserves ownership rights and copyrights. A contract is only concluded when the seller issues an order confirmation or makes a delivery after receiving an order from the client. The seller reserves the right to refuse an order, for example after checking the client's creditworthiness. Special instructions from the client, such as delivery dates, discounts or similar, are only binding after express confirmation by the seller in the order confirmation. The seller shall prepare data sheets and other sales documents, lists and drawings as well as weight and dimensional data with due care, but reserves the right to correct errors at a later date.

The seller reserves the right to partial fulfillment or non-fulfillment of the contract in the event of incorrect or improper self-delivery by suppliers. In this case, the seller undertakes to inform the client immediately.

Prices and terms of payment

The prices and terms of payment stated in the seller's order confirmation shall apply. The seller shall add the applicable statutory value added tax to all prices and ancillary costs stated. If the seller's costs increase up to the time of delivery, the prices may be recalculated on a pro rata basis. The prices quoted are net ex works. The seller is entitled to demand advance payment in the event of justified doubts about the client's creditworthiness or for other justified reasons.

The client is obliged to pay the invoice amount within 14 days of the invoice date without deduction. Payments are to be made free of charge to the seller's paying agent in the agreed currency (EURO, unless otherwise specified). Deviating terms of payment require written agreement with the seller. If the client is in default of payment, the seller shall be entitled to charge interest on arrears in the amount of the usual bank interest for overdraft facilities for the duration of the default. In addition, the client undertakes to reimburse all amounts paid and expenses incurred in the collection of the claim, such as reminder and collection fees or other costs for necessary legal action.

The client shall only be entitled to set-off if his counterclaims have been legally established or are undisputed and recognized by the seller. The retention of payments due to counterclaims is excluded.

All claims shall become due immediately if the client is in default of payment or if the seller becomes aware of circumstances that are likely to reduce the client's creditworthiness. In this case, the seller is entitled to make outstanding deliveries only against advance payment or to withdraw from the contract after setting a reasonable grace period.

Delivery and transfer of risk

Unless otherwise agreed in writing with the seller, delivery periods and dates are only given to the client as an indication and are not binding. Exceeding a delivery deadline, for whatever reason, does not constitute a claim for compensation and cannot release the client from his obligation. The seller is exempt from any liability in the event of force majeure, strikes, lockouts and similar circumstances. In such cases, the seller has the right to terminate the contract without the buyer being entitled to compensation.

The seller is entitled to make partial or advance deliveries and to offset payments.

The risk of damage to or loss of the goods shall pass to the client when the goods are handed over to the carrier or another person or company commissioned with transportation.

The Seller reserves the right to make changes to the design and equipment of the delivery item for technical reasons or to fulfill legal or official requirements within the scope of delivery.

Retention of title

Notwithstanding delivery and the passing of risk, title to the goods, including full legal and beneficial ownership, shall remain with the seller until full payment of all outstanding amounts due under the business relationship. Full payment shall include, without limitation, the amount of any interest or other sums payable under the terms of this and any other contract between the client and the seller.

The goods subject to retention of title may only be sold by the client in the ordinary course of business. The client assigns all claims arising from the sale of the reserved goods to the seller as soon as they arise to secure the seller's claims.

The seller reserves the right to reclaim all goods delivered by him and still in stock at any time, even in the event of insolvency proceedings.

It is agreed that all possible counterclaims, regardless of whether goods or services are delivered, are to be offset against the seller's claims with discharging effect. This applies in particular in the event of insolvency proceedings.

Warranties

The seller's warranty obligation to the client only applies to defects that occur when the respective operating conditions are observed and the item is used normally. In particular, the warranty does not apply to defects that are due to circumstances for which the client or third parties are responsible. The seller shall not assume any warranty for wear and tear or minor defects on the surface. The seller shall only be liable under warranty if the installation has been carried out by a specialist. Light equipment and wearing parts as well as used products are not covered by the warranty. Likewise, the seller shall not assume any warranty for the acceptance of repair orders or the reworking or redesign of old or third-party goods.

The client is obliged to inspect the delivered goods for defects within a reasonable period of time and to notify the seller in writing of any obvious defects within one week of receipt of the goods; otherwise the assertion of warranty claims is excluded. Hidden defects must be reported in writing within one week of discovery. The client shall bear the full burden of proof for the existence of all claim requirements, in particular for the defect itself, for the time of discovery of the defect and for the timeliness of the notice of defect. In the event of defects that fall under the seller's warranty obligation, the seller shall be entitled to offer, at its discretion, to remedy the defect or to deliver a replacement. The seller must be given the necessary time to inspect and rectify the defects or to supply replacement parts or equipment. The client shall bear the costs and risk of transportation of the goods there and back. The removal and installation costs incurred in connection with the improvement or replacement shall be borne by the client. A rectification of defects or other warranty remedy shall not lead to an extension of the warranty period. The seller shall only reimburse the costs for the rectification of a defect carried out by the customer or a third party if the seller has given its written consent. The warranty period is two years from delivery of the goods. If the client is in arrears with payments, the seller has no warranty obligations even within this period.

Liability

Outside the scope of application of the product liability act, the seller's liability is limited to intent or gross negligence. Liability for slight negligence, compensation for consequential damages and financial losses, unrealized savings, loss of profit, lost data, loss of interest and damages from third-party claims against the client are excluded.

Cancellation

The client may only withdraw from the contract under special conditions and with the written consent of the seller. The seller reserves the right to demand compensation in proportion to the canceled order amount. If a client-specific bespoke product was manufactured for the client or a commercial product was ordered exclusively for the client, termination of the contract is excluded and the client is obliged to pay the respective order amount. The right to assert claims for actual damages in a higher amount remains reserved.

Without prejudice to other statutory rights of withdrawal, the seller shall be entitled to withdraw from the contract in particular if circumstances arise after the conclusion of the contract which make the fulfillment of the contract uneconomical or even impossible under the agreed conditions, or if the delivery cannot be carried out or is further delayed for reasons for which the client is responsible, even after the expiry of a reasonable grace period set by the seller. The seller reserves the right to claim further damages.

Place of jurisdiction and place of performance

The place of jurisdiction for all claims arising from the underlying contractual relationship is Munich. This also applies to claims that are pursued in dunning proceedings. The seller also reserves the right to take legal action at the place of performance of the delivery obligation or at the client's general place of jurisdiction. In all other respects, German law shall apply - also for exports.

Data protection

The protection and security of the client's data is important to the seller. The seller processes client data only in accordance with data protection law, on a legal basis and for appropriate purposes, in particular to fulfill contracts and other legal obligations.