

§ 1 Scope of application

- (1) Our terms and conditions of Sale and Delivery apply only to businessmen and companies, legal persons under public law and special public funds governed by public law within the meaning of section 310 (1) BGB (German Civil Code).
- (2) Only our terms and conditions of Sale and Delivery apply. Conditions of the customer which conflict with or differ from our conditions will not be recognised. VOB regulations (Regulations governing allocation and contracts in relation to building services) shall not become a component of the contract. The invalidity of individual provisions does not affect the validity of the remaining provisions.
- (3) Our terms and conditions of sale also apply to all future delivery agreements with the customer.

§ 2 Offer and acceptance

- (1) Our offers are without engagement expect if expressly designated otherwise or if otherwise expressly agreed upon.
- (2) Orders received by us are binding offers. The customer is bound by his order for 2 weeks. Our binding offers can only be accepted by the customer within 2 weeks.

§ 3 Price and payment

- (1) Our prices are EXW INCOTERMS 2010 (ex works) Prices are determined according to our general price list applicable on the day of delivery. The costs of packaging and dispatch are borne by the customer. Value-added tax is additional to the prices. Insofar as value-added tax, freight and customs duties are included in the price, increases and decreases may be passed on to the customer. Should cost increases for raw materials, supplies or wages arise, we are entitled to pass these on to the customer, except where we are responsible for such cost increases.
- (2) Our invoices are payable in and without any deduction. The customer is required to pay all prices agreed in EURO, any revaluations or devaluations of the EURO vis-à-vis other currencies notwithstanding. Cheques are only considered as payment after the cheque has been cashed. If the agreed time allowed for payment is exceeded, we are entitled to demand interest of 9 percentage points above the relevant base interest rate (section 247 BGB (German Civil Code)) from the relevant due date, so even in cases where the customer is not in performance delay. The assertion of additional damages due to delay in performance shall remain unaffected.
- (3) The customer is not entitled to assert any rights to refuse performance or rights of setoff on the basis of counterclaims. This does not apply to undisputed or legally established counterclaims.

§ 4 Delivery

- (1) Place of delivery and performance is our place of business. If a shipment of goods has been agreed upon, risk passes to the customer at the time of delivery to the carrier; in the event of delay in accepting the delivery of goods, at the time of readiness to deliver. In the event of delay in accepting the delivery of goods, the customer is required to bear the costs of storing and maintaining the delivery item. During delay in accepting the delivery of goods we are only responsible for intent or gross negligence, § 6 of these terms and conditions notwithstanding.
- (2) Delivery times or times of performance that we have indicated are always approximated, except if it otherwise expressly agreed in writing upon. If a shipment of goods has been agreed upon, delivery time or time of performance shall refer to the point in time when the goods are handed over to the carrier, to the forwarding agent or to the third party otherwise commissioned to carry out the transport.
- (3) Part deliveries are permitted, if such delivery is usable for the customer as per the intended purpose of the contract, if the delivery of the remaining items is secured and if such delivery is not connected with any additional expenses for the customer. The delivery obligation is deemed to have been fulfilled in an orderly fashion if the delivery is within the industry and trade quality and volume tolerance limits. Compliance with our obligation to deliver presupposes the fulfilment of the customer's contractual duties in a timely and orderly fashion. Our obligation to deliver is subject to the reservation that our own delivery is received on time. In case of impossibility of performance or in case of a delay in delivery due to acts of God or similar events, in particular such as mobilisation, war, plant interruption or industrial conflict, we shall not be held liable. This does not apply if we are responsible for the impossibility of performance or in case of a delay in delivery within the meaning of § 6 of these terms and conditions.

- (4) The onset of the default of delivery shall be subject to the statutory provisions. In any case a notice of default by the customer is required.

§ 5 Reservation of ownership

- (1) We reserve ownership of the delivery item until complete payment of the purchase price including all incidental expenses has been received. The reservation of ownership also extends to the recognised balance due, insofar as we post receivables from the customer to current account (current account reservation). The reservation of ownership also extends to any existing and future receivables which may arise from business relations with the customer.
- (2) We may rescind the contract if the customer is in delay of payment. In the event of attachment or other intervention by third parties, the customer is required to notify us without delay. The costs of third-party opposition proceedings are borne by the customer.
- (3) The customer is entitled to sell the goods onwards in the proper course of business. He hereby and herewith assigns to us all claims (including value-added tax) against third parties which may accrue to him from the resale, regardless of whether the delivery items were resold with or without further processing. The assignment also includes the balance of receivables from the customer's purchasers at the end of an accounting period, insofar as the customer registers the receivables within a current account relationship with his purchaser. The customer is empowered to collect the receivables thus assigned to us.
- (4) Any processing or remodelling of the delivery item is undertaken on our behalf. If the delivery item is processed together with other items not belonging to us, we acquire joint ownership in the new corporeal thing in proportion of the value of the delivery item to the other processed items at the time of processing. In addition, the same applies to the thing which came into existence through processing as to items subject to reservation of ownership. Should we not acquire ownership pursuant to these regulations the customer hereby already transfers to us his future ownership / joint-ownership in the new corporeal thing as a security.
- (5) If the delivery item is inseparably joined or commingled with other items, we acquire joint ownership in the new corporeal thing in proportion of the value of the delivery item to the other joined or commingled items at the time of joining or commingling. In the event that the customer's corporeal thing is considered to be the principal thing, it is deemed to be agreed that the customer transfers joint ownership to us.
- (6) If the value of the collateral exceeds 150% of outstanding receivables, the customer is entitled to release.

§ 6 Legal liability

- (1) In case of property and financial damages which are negligently caused we and our vicarious agents shall only be liable in the event of any breach of main contractual obligations, whereby our liability is limited to the typical contractual damage foreseeable upon conclusion of the contract; main contractual obligations are those the fulfillment of which is forming the nature of the contract and on which the customer can rely.
- (2) As for the rest we are liable pursuant to the statutory provisions. The same applies to compulsory liability under the German Product Liability Act.
- (3) Sub-sections 1 and 2 apply to liability in tort analogously.
- (4) As far as we render technical information or counselling services, and such information or services are not part of our contractual duties, such information or services are rendered free of charge and shall be exempt from any liability.

§ 7 Warranty

- (1) The customer can only assert claims based on a defect in the goods delivered by us if he notifies us of the defect in writing without delay. In the case of a hidden defect, the customer is required to notify us of the defect in writing without delay following discovery. In addition, the inspection and complaint duties pursuant to sections 377 HGB (German Commercial Code) apply. If we supply a drawing of the goods in advance of delivery, the following applies: with respect to a defect in the goods which was already foreseeable in the drawing, the customer can only assert claims if he notifies us of the foreseeable defect in the drawing in writing without delay. In the case of a foreseeable hidden defect, the customer is required to notify us of the defect in writing without delay following discovery. In addition, the inspection and complaint duties pursuant to sections 377 HGB (German Commercial Code) apply analogously.

- (2) The delivery is free of defects if it is within the industry and trade quality and measurement tolerance limits. The customer shall on his own authority inspect whether the delivered goods are suitable for the intended purpose.
- (3) In the event of a defect, we are in the first instance entitled to correct the defect or to make substitute delivery. If the rectification or substitute delivery fails, the customer has the right or rescission of the contract, to the extent that this is provided for by law. The supplementary performance neither includes the removal of the defective good nor the new installation, as far as we were initially not obliged to install the goods. Apart from that claims for compensation for damages remain unaffected by this provision. The special legal requirements in case of a final delivery of the goods to a consumer (supplier regress, §§ 478, 479 BGB) shall remain unaffected in any case.
- (4) A quality or durability guarantee only arises when such guarantee has been expressly agreed in writing. The description of our goods does not establish any such guarantee; this applies in particular also to information on our website.
- (5) The limitation period for claims for defects is twelve months from the passage of risk. This limitation does not apply insofar as section 438 (2) no. 2 and section 634a (1) BGB prescribe longer periods. It also does not apply in cases of at least negligently caused injury to life, body or health and in cases of intentional or grossly negligent breach of obligation.
- (6) The warranty shall expire if the customer alters the delivered goods or has them altered by a third party without our consent and if the correction of the defect is rendered impossible or unreasonably difficult hereby. In either case the customer shall bear the additional costs for the correction of the defect resulting from such alteration.
- (7) If, in individual cases, a delivery of used goods is agreed with the customer, such delivery shall not be subject to any warranty for material defects.

§ 8 Customer's inability to pay

If considerable doubts as to the creditworthiness of the customer exist, we are – following a request for simultaneous performance – entitled to rescind the contract or to require collateral in the amount of the receivables still outstanding. Considerable doubts as to the creditworthiness of the customer exist in particular when the latter is in arrears of prior payment commitments by more than 4 weeks.

§ 9 Choice of law, place of jurisdiction

This agreement shall be governed by German law. UN law relating to sale is not applicable. Place of jurisdiction is our principal place of business; we are however entitled to bring action against the customer at his place of residence or place of business.

Use of your postal address for advertising purposes

We use the address which we have received on the basis of a contractual or quasi contractual obligation to provide our contractual partners via regular mail with information about our company and our products. You can object such use for the future without giving any reason. The objection shall either be directed to export@konex-international.com or via regular mail to **K O N E X INTERNATIONAL**, P.O. Box 1123, D-79766 Klettgau-Erzingen.