

# General Terms and Conditions of HEINRICH KIPP WERK GmbH & Co. KG

Status: 24.04.2023

## 1. General - Applicability

- (1) All of our supplies and services are provided exclusively on the basis of the following General Terms and Conditions. If not expressly agreed in writing, differing terms of business do not apply and are expressly objected to. The following Terms and Conditions shall also apply if we are aware of differing and/or conflicting terms of business of the Purchaser and fulfil a contract without reservations.
- (2) All agreements made between us and the Purchaser concerning the performance of this contract are stipulated herein.
- (3) Our General Terms and Conditions only apply to companies within the definition of § 310 ¶ 1 BGB (German Civil Code). We do not enter into contracts with consumers.

## 2. Offers - Quotation documents - Catalogues

- (1) If the Purchaser's order qualifies as an offer pursuant to § 145 BGB (German Civil Code), we may accept the offer within one business day of receiving such order via our online shop at (<https://www.kippwerk.de/>) or we may accept the offer within two (2) weeks of receiving such order via other means.
- (2) We reserve all proprietary rights including our copyrights to illustrations, drawings, calculations and other documents. If and to the extent of which such materials are not provided in our publicly available offerings, in particular our online shop and catalogue, they may not be disclosed to third parties. The Purchaser may not make such materials available to third parties without our formal written approval.
- (3) We reserve the right to implement technical modifications to our products that increase or maintain their value at any time and without prior notice.

## 3. Prices - Terms of Payment - Default

- (1) Unless expressly stipulated otherwise in the order confirmation, our prices shall apply for a sale of goods ex-factory.
- (2) The packaging will be invoiced separately.
- (3) Due to production-oriented considerations, for orders of special models that are not part of our regular product range, there may be deviations to the ordered quantity. Unless expressly agreed otherwise in the contract, excess or reduced quantities of up to 10% shall constitute as a complete fulfilment of our delivery obligations. In this case, the actual quantity delivered will be invoiced.
- (4) Value added tax is not included in our prices offered; The value added tax (if any) will be listed separately in the invoice at the current rate applicable at the date of the invoice.
- (5) For payments on receipt of invoice, Purchaser is entitled to deduct a 2% trade discount if payment is transferred to our bank account specified in the invoice within 10 days of the invoice date.
- (6) Unless otherwise stated in the order confirmation, the net purchase price (without deduction) is due for payment within 30 days of the invoice date. We reserve the right to effect a default by issuing a payment reminder to Purchaser within a reasonable time frame after the due date. The statutory consequences concerning default of payment shall apply.
- (7) For small orders we charge a minimum quantity surcharge (€ 15 for value of goods under € 25 and € 8 for value of goods under € 50).

## 4. Set-Off, Assignment and Right of Retention

- (1) The Parties shall only be entitled to set-off rights if the counterclaims of the other Party have been legally established as final and absolute, are undisputed or have been acknowledged by the Parties.
- (2) The assignment of a claim of the Purchaser to a third party is only effective with our consent; § 354a HGB (German Commercial Code) remains untouched.
- (3) Our Rights of Retention does not extend to the personal data of the Purchaser.
- (4) The Purchaser is authorized to exercise his Right of Retention insofar as the counterclaim is based on the same contractual relationship or has been legally established as final and absolute or is undisputed by us.

## 5. Delivery time

- (1) The delivery time communicated by us begins on clarification of all technical issues with Purchaser.
- (2) Our compliance with our stipulated delivery obligation presupposes the timely and proper fulfilment of the Purchaser's obligations toward us. The defense of lack of performance of the contract remains reserved.
- (3) We shall be liable in accordance with the statutory provisions if and to the extent the underlying purchase contract qualifies as a transaction for delivery by a fixed date within the context of § 286

para. 2 No. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code). We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the Purchaser is entitled to claim that their interest in the further fulfilment of the contract has ceased to exist.

- (4) We shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to an amount ordinarily expected for such a damage.
- (5) We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation; the liability for such damages shall be limited to an amount ordinarily expected for such a damage.
- (6) Furthermore, in the event of a delay in delivery, we shall be liable for liquidated damages/ a lump-sum compensation for delay for each completed week of delay amounting to 3% of the value of the delayed order, with a limit of 15% in total.
- (7) If we are in default and the Purchaser sets us a reasonable grace period, the Purchaser shall be entitled to withdraw from the contract if we are not able to deliver ordered goods within such period. If a reasonable grace period has expired fruitlessly, the Purchaser shall declare within a period of two weeks after expiry of the grace period whether he withdraws from the contract or continues to insist on fulfilment.
- (8) If we can prove that we have not been supplied on time by our suppliers, despite taking reasonable care in the selection and monitoring of our suppliers and despite concluding the contracts on reasonable terms, the delivery period shall be extended by the period of the delay caused by the supplier's failure to deliver the goods to us on time. In cases of impossibility of performance of a delivery by the supplier, we shall be entitled to withdraw from the contract.
- (9) If the Purchaser is in default of acceptance of ordered goods or culpably violates any other duties of cooperation, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the Purchaser at the time when the Purchaser is in default of acceptance.

## **6. Transfer of risk**

- (1) Unless otherwise stated in the order confirmation, delivery "ex works" (EXW Incoterms 2020) Heubergstraße 2, 72172 Sulz am Neckar, Germany, is agreed. The risk shall pass to the Purchaser when the delivery item has been made available to the person or company specified to carry out the shipment.
- (2) Partial deliveries are permissible insofar as they are reasonably acceptable to the Purchaser.

## **7. Claims for defects - Limitation period**

- (1) The Purchaser's claims for defects shall be subject to the condition that the Purchaser has duly complied with its obligations to examine the goods and to give notice of defects in accordance with § 377 HGB (German Commercial Code).
- (2) If the purchased item has a defect, we shall be entitled, at our discretion, to remedy the defect or, alternatively, to deliver a defect-free item.
- (3) If case our supplementary performance fails, in particular, if such performance is delayed beyond a reasonable time limit for reasons for which we are responsible, the Purchaser shall be entitled, at the Purchaser's discretion, to withdraw from the contract or to demand a corresponding reduction in the purchase price. If a reasonable period of grace has expired without effect, the Purchaser is obliged to declare within a period of two weeks after the failure of the supplementary performance whether he withdraws from the contract or continues to insist on fulfilment.
- (4) We shall be liable in accordance with the statutory provisions if our conduct the claim is based on, is willful or grossly negligent, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as our actions are not qualified as an intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- (5) We shall be liable in accordance with the statutory provisions if we culpably breach a essential contractual obligation; however, even in this case, liability for damages shall be limited to the foreseeable, typically occurring damage. An essential contractual obligation shall be deemed to exist, if the infringement of the obligation relates to an obligation, the fulfilment of which, the Purchaser has relied on and was entitled to rely on.
- (6) Liability for culpable injury to life, body or health remains unaffected. Damages that classify within the scope of a guarantee granted by us, remain unaffected as well, if and to the extent not otherwise stipulated in the respective guarantee provisions; this also applies to mandatory liability for claims under the Product Liability Act and the GDPR.
- (7) Unless otherwise stipulated above, any liability is excluded.
- (8) The limitation period for claims arising from defects is 12 months, beginning with the transfer of risk. This limitation period does not apply for claims arising from defects caused by items that are

normally used for construction and have caused the defect.

- (9) Claims of the Purchaser based on a defect expire after twelve (12) months. The limitation period shall commence with the passing of the risk. This limitation period does not apply for claims arising from defects caused by items that are normally used for construction and have caused the defect. In the event of intentional or grossly negligent infringements of obligations, fraudulent concealment of a defect, claims in rem for surrender by third parties within the scope of § 438 ¶ 1 No. 1 BGB (German Civil Code), personal injury, infringements of the GDPR, claims under the Product Liability Act and the assumption of a quality guarantee, the statutory provisions on the limitation period shall apply; in the event of an assumption of a warranty, however, this shall only apply insofar as nothing to the contrary arises from the respective guarantee agreement. The claims in the event of supplier regress according to §§ 445a, 445b BGB remain unaffected.

## 8. Liability

- (1) Any further liability for damages than provided for in the previous section (**Claims for Defects - Limitation Period**) is excluded - regardless of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, from other violations of obligations or from tortious liability claims for compensation for property damage in accordance with § 823 BGB.
- (2) The limitation according to clause 1. shall also apply insofar the Purchaser demands compensation of futile expenses instead of a claim for damages.
- (3) Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

## 9. Retention of title

- (1) We retain title in the purchased goods until receipt of all payments arising from the business relationship with the Purchaser. In the event of any breach of contract by the Purchaser, in particular in the event of default in payment, we shall be entitled to exercise our statutory rights and repossess the respective purchased goods. After repossession of the purchased goods, we shall be entitled to commercialize them; the proceeds of the commercialization shall be credited against the Purchaser's liabilities - less reasonable costs.
- (2) In the event of a levy of execution or any other intervention by a third party, the Purchaser must notify us immediately in writing so that we can take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is unable to reimburse us for the judicial and extrajudicial costs of such an action, the Purchaser shall be liable for the loss incurred.
- (3) The Purchaser shall be entitled to resell the purchased goods in the ordinary course of business; however, the Purchaser hereby assigns to us all claims he accrues against his customer or third parties through the sale of purchased goods up to the amount of our final invoice (including sales tax), irrespective of whether the purchased goods have been sold after processing them or not. The Purchaser remains authorized to collect his claims even after the assignment. Our authority to collect the claim ourselves remains unaffected. However, we undertake not to collect the claim as long as the Purchaser meets the payment obligations toward us from the proceeds collected, is not in default of payment and, in particular, has not filed for insolvency proceedings or suspended its payments. If this is the case, however, we may demand that the Purchaser informs us of the assigned claims and their debtors, provides all information required for collection and surrenders the relevant documents and informs the debtors (third parties) of the assignment.
- (4) The processing or transformation of the purchased goods by the Purchaser shall always be carried out on our behalf. If the purchased goods are processed with other goods not owned by us, we shall acquire co-ownership of the new item in proportion to the value of the purchased goods (final invoice amount, including sales tax) in relation to the value of the other processed goods at the time of processing. Furthermore, the same shall apply to the thing created by processing as to the purchased goods delivered under the retention of title.
- (5) If the purchased goods are inseparably intermixed with other goods not owned by us in such a way that they become essential parts of a uniform thing, we shall acquire co-ownership of the newly created things in the ratio of the value of the purchased goods (final invoice amount, including sales tax) to the value of other intermixed items at the time of intermixture. If the intermixture takes place in such a way that the Purchaser's item is to be regarded as the main item, it shall be deemed to be agreed that the Purchaser shall transfer co-ownership to us on a pro rata basis. The Purchaser shall safeguard such sole ownership or co-ownership thus created in custody for us.
- (6) We undertake to release the securities to which we are entitled at the request of the Purchaser to the extent that the value of our securities exceeds the claims to be secured by more than 20 %; the choice of the securities to be released rests with us.

## 10. Return of Goods

Goods that have been sold and delivered as stipulated may not be returned. Exceptions can be made only in special cases and only after a prior mutual agreement between the Parties.

**11. Miscellaneous**

- (1) If the Purchaser is a merchant, the court of jurisdiction shall be Rottweil, Germany. However, we shall also be entitled to sue the Purchaser in a court at the Purchaser's place of residence.
- (2) Unless otherwise stated in the order confirmation, the place of performance shall be Sulz am Neckar, Germany.
- (3) This contract is governed exclusively by the laws of Germany without giving effect to the conflicts of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply.
- (4) If any of the provisions of these General Terms and Conditions shall become or be held invalid or unenforceable, all other provisions hereof shall remain in full force and effect.
- (5) We are entitled to store and to process personal data to the extent necessary for the execution of the contract. Further details about processing of personal data for the execution of the contract and for other purposes can be found in our Privacy Policy.

**12. No-Russia-Clause according to Art. 12g VO 833-2014**

The goods to be delivered according to this present contract/ order are subject to the European Embargo against Russia, EU Regulation 833/2014.  
You as Buyer/ Consignee of the goods warrant therefore particularly not to sell, ship, forward, or transfer the goods or parts thereof to Russia.