

General Terms of Delivery for Products and Services of TKM GmbH

1. Scope of application

1.1. These conditions of sale, delivery and payment form an integral part of contracts concluded with the Purchaser for supplies and services to be provided. They also apply to all future deliveries, services or offers to the Purchaser, even if they are not separately agreed again.

1.2. The Purchaser's terms and conditions shall not apply. Acknowledgement of them requires prior express written acceptance. This also applies if TKM makes delivery in the knowledge of conflicting or differing terms and conditions of the Purchaser. Subsidiary agreements are effective only if confirmed in writing.

2. Offers, conclusion of contract, industrial property rights

2.1. Quotations which TKM reproduces in catalogs or on the Internet are a non-binding invitation to order. If TKM prepares individual quotations for specific buyers, their binding effect is determined by the content of the quotation.

2.2. If an order is placed as an "application" by the customer, the contract is concluded either by written order confirmation or by delivery. Contracts concluded shall oblige the Purchaser to accept and pay for the delivery made in accordance with the agreement.

2.3. Verbal agreements shall be confirmed in writing. If the contract with the Purchaser has been concluded in writing, amendments and additions to the contract shall be confirmed in writing.

2.4. TKM reserves all property rights and copyrights as well as patent and other industrial property rights and rights of use and exploitation in drawings and other documents produced by TKM or its vicarious agents which TKM hands over to the Buyer or makes available in other form, including electronically. Passing on to third parties requires the express written consent of TKM. After a contract has been concluded the Buyer may use and exploit these and the goods produced on the basis of them for the contractual purposes.

3. Object of sale

3.1. The Purchaser must check on his own responsibility and at his own expense whether TKM's goods are suitable for the purpose he requires and compatible with the product and whether they comply with the legal regulations in the country of destination he intends to use them for.

3.2. If, at the request of the Purchaser, brand names and proper names and terms, signs and shapes protected by copyright and competition law are used or affected in the manufacture, printing and labelling of goods by TKM, the Purchaser guarantees that he is entitled to use them. The customer indemnifies TKM in this respect against all possible claims by third parties.

4. Delivery, dates

4.1. Delivery dates and periods are binding if contractually agreed. They refer – unless otherwise agreed to the time of dispatch to the purchaser or notification of readiness for dispatch.

4.2. Compliance with delivery dates and deadlines shall be conditional upon the Purchaser having fulfilled all obligations incumbent upon it, such as, for example, the provision of materials, releases, the handing over of invoices or other documents and, if agreed, the payment of a deposit.

4.3. If changes to the execution agreed with the Purchaser after the delivery dates or deadlines have been set lead to increased expenditure in terms of time, these shall be extended accordingly.

4.4. TKM is entitled to make partial deliveries if this is reasonable for the customer.

4.5. The Buyer is obliged to take delivery of the goods offered to him as agreed. If dispatch is delayed at his request, TKM is entitled, beginning one month after notification that the goods are ready for dispatch, to charge TKM for the costs incurred by storage, but at least 1% of the net invoice amount for each month. The right to exercise or assert further rights and claims in accordance with statutory provisions is reserved.

5. Prices, terms of delivery and payment

5.1. The agreed prices are decisive. TKM delivers "named place" EX WORKS (Incoterms in the version applicable at the time of contract conclusion) plus statutory value-added tax. The cost of insurance, packaging, shipping and any import or export duty shall be borne by the Purchaser unless otherwise agreed.

5.2. Payments are due within 14 days after invoicing without any deductions.

5.3. Only undisputed, acknowledged or legally established claims shall entitle the Purchaser to set-off or retention.

5.4. If the customer defaults on payment, the statutory provisions apply. In particular TKM is entitled to demand interest on arrears at the statutory rate and to claim further damages, including the costs of reminders sent after default and higher interest charges.

6. Retention of title

6.1. The goods remain the property of TKM until all claims to which TKM is entitled against the Buyer under the contractual relationship have been satisfied. Prior to this, pledging or transfer by way of security is prohibited and resale is permitted only to resellers in the ordinary course of business on condition that the reseller receives payment from his customers. In the event of access by third parties to the goods, the Purchaser will draw attention to TKM's ownership and notify TKM immediately so that TKM can enforce its ownership rights. The Buyer is obliged to hand over to TKM all documents necessary to protect its rights and to reimburse TKM for costs incurred by any necessary intervention.

6.2. In the event of default in payment TKM may demand that the Buyer surrender the goods immediately. The customer is obliged to do so if TKM has withdrawn from the contract because of the delay in payment. To surrender the goods the Buyer must grant TKM or TKM's authorized representatives access to the premises where the goods are stored.

7. Transfer of risk

7.1. The risk of accidental loss and accidental deterioration passes to the Buyer when the goods are handed over by TKM to the carrier, but at the latest when they leave the factory or warehouse on acceptance at the TKM plant or warehouse. Shipment is made at TKM's discretion. At the Buyer's request TKM will also insure the goods at his expense against theft, breakage, transport, fire and water damage and other insurable risks.

7.2. If dispatch, delivery or the start or performance of installation or assembly is delayed at the request of the Buyer or for reasons for which he is responsible, the risk passes to the Buyer for the period of the delay.

8. Installation and assembly

8.1. Unless otherwise agreed in writing, the following provisions shall apply to any kind of installation and assembly. The Purchaser shall undertake and provide in good time and at its own expense: Auxiliary crews such as manual workers and, if necessary, also bricklayers, carpenters, locksmiths, crane operators, other skilled workers with the tools required by them in the required number, all earthwork, bedding, construction, caulking, scaffolding, plastering, painting and other ancillary work outside the trade, including the building materials required for this, the supplies and materials required for assembly and commissioning, such as scaffolding timbers, wedges, underlays, cement, plaster and sealants, lubricants, fuels, etc.. Furthermore, scaffolding, lifting equipment and other devices, operating power and water including the necessary connections up to the point of use, heating and general lighting, at the assembly site for the storage of machine parts, apparatus, materials, tools, etc. sufficiently large, suitable, dry and lockable rooms and for the assembly personnel adequate working and recreation rooms including sanitary facilities appropriate to the circumstances; apart from that, the Purchaser shall take the measures for the protection of the Contractor's property and the assembly personnel on the construction site which he would take for the protection of his own property, protective clothing and protective devices which are necessary due to special circumstances of the assembly site and which are not customary in the trade for the Contractor.

8.2. Prior to the start of the installation work, the Purchaser shall provide, without being requested to do so, the necessary information on the location of concealed electricity, gas, water lines or similar installations as well as the required structural data: Prior to the start of erection or assembly, the delivery parts required for the commencement of the work must be on site and all masonry, carpentry and other preparatory work must have progressed to such an extent prior to the start of erection that erection or assembly can be started immediately upon arrival of the erectors or assembly personnel and carried out without interruption. In particular, the access roads and the installation or assembly site must be leveled and cleared at floor level, the foundation masonry must be set and dry, the foundation walls must be leveled and backfilled, in the case of interior installation, the wall and ceiling plastering must be completely finished, and in particular doors and windows must be inserted.

8.3. If erection, assembly or commissioning is delayed by circumstances, especially at the building site, for which TKM is not responsible (creditor default), the Buyer must bear reasonable costs for waiting time and further necessary travel by the erectors or assembly personnel. The orderer must certify the working time of the erectors or erection personnel on a weekly basis to the best of his knowledge. The Buyer is also obliged to hand over to the erectors or erection personnel a written certificate of completion of erection or installation without delay. TKM is not liable for the work of its erectors or erection personnel and other vicarious agents, insofar as the work is not connected with the delivery and erection or assembly or insofar as the same is arranged by the Buyer.

8.4. If TKM has undertaken installation or assembly for an individual invoice, the following provisions apply in addition to the above. The Buyer remunerates TKM at the rates agreed when the order was placed for working time and surcharges for overtime, night work, work on Sundays and public holidays, for work under difficult circumstances and for planning and supervision. Furthermore, the following costs shall be remunerated separately: Travel expenses, costs for the transport of hand tools and personal luggage as well as allowances for working hours and for rest days and holidays.

9. Notices of defects, claims for defects

9.1. Notification of defects shall be made by the Purchaser in writing without delay, but no later than 10 days after receipt of the goods. Other defects which cannot be discovered within this period even after careful inspection must be notified in writing without delay, at the latest within 10 days of discovery. The Purchaser must give TKM the opportunity to ascertain the defective condition. TKM has the right, in the event of non-compliance, to reject claims for defects by the Purchaser on the grounds of omitted or delayed notification of defects.

9.2. If there is a defect, the Purchaser is entitled to demand, at his discretion, subsequent performance by repair or replacement. He must grant TKM a reasonable period for this, unless this is dispensable in an individual case because of an exceptional reason provided for by law. If he refuses this, TKM is released from liability for defects. The expenses incurred for the purpose of subsequent performance are borne by TKM insofar as TKM is legally obliged to do so. In the case of replacement delivery these are the labour and material costs incurred by TKM.

9.3. In the event of failure of subsequent performance, the Purchaser shall be entitled to declare rescission or to demand a reduction of the purchase price if the statutory requirements for this are met. If the breach of duty is insignificant, the Purchaser shall only be entitled to a reduction of the purchase price.

9.4. The rights of the Purchaser due to a defect shall be excluded if the Purchaser is aware of the defect at the time of conclusion of the contract. If a defect remained unknown to him as a result of gross negligence, the Buyer may assert rights in respect of this defect only if TKM have breached a duty of disclosure and have fraudulently concealed the defect.

9.5. Liability for defects does not apply to natural wear and tear, nor to damage arising after the transfer of risk as a result of faulty or negligent handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable building ground and such chemical, electrochemical or electrical influences as are not assumed under the contract.

9.6. Further claims by the Purchaser against TKM and its vicarious agents are excluded, in particular a claim for compensation for damage not to the delivery item itself. This does not apply where, e.g. in the case of personal injury or damage to privately used property, liability is mandatory under the Product Liability Act or in cases of intent, gross negligence or lack of warranted characteristics.

10. Liability

10.1. TKM is liable for damage not to the goods supplied themselves - on whatever legal grounds - only in cases of intent, gross negligence, culpable injury to life, limb or health, defects which TKM has fraudulently concealed or whose absence TKM has guaranteed and insofar as TKM is liable under the Product Liability Act for personal injury or damage to privately used items. TKM is liable for culpable breach of essential contractual obligations in cases of gross negligence and slight negligence, but in the latter case limited to reasonably foreseeable damage typical of the contract. Any further claims are excluded. The statutory rules on the burden of proof shall apply.

11. Industrial property rights of third parties

11.1. If TKM manufactures and supplies the goods in accordance with drawings, models, samples or other documents supplied by the Buyer, the Buyer is responsible for ensuring that industrial property rights or copyrights of third parties are not infringed. He must indemnify TKM in the event of a claim for damages in such cases or indemnify TKM immediately against all claims by third parties in connection with the infringement if a claim is made against TKM for infringement of third-party rights as a result of his infringement. He will support TKM to a reasonable extent in defending claims made against TKM in such cases.

11.2. The Buyer will inform TKM without delay of any infringement of industrial property rights or copyrights asserted against him in connection with the goods supplied by TKM.

12. Force majeure, right of withdrawal

12.1. If TKM is not only insignificantly prevented from fulfilling its delivery obligations as a result of events of force majeure or other circumstances beyond TKM's control, or if fulfillment of its obligations becomes unreasonable for TKM for such reasons, TKM is entitled to extend the delivery period or withdraw from the contract. This includes in particular cases of strikes, lockouts, shortages of raw materials, auxiliary materials, energy supply difficulties and measures taken by public authorities. This applies irrespective of whether the events, circumstances or reasons occur at TKM or one of its upstream suppliers.

12.2. The Purchaser has no claims for damages on account of such withdrawal. The right of withdrawal exists even if the Purchaser was initially notified of an extension of the delivery period. In the event of an extension of the delivery periods, the Purchaser may for its part withdraw from the contract after setting a reasonable deadline.

13. Other contractual conditions

13.1. This agreement is governed exclusively by German law, to the exclusion of UNICITRAL sales law.

13.2. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is, at TKM's option, the head office or the branch office of TKM.

13.3. There are no verbal collateral agreements. Amendments or additions to this agreement must be in writing to be effective. This also applies to any waiver of this written requirement.

13.4. The Buyer is not entitled to transfer rights under the contract to third parties without TKM's consent.

13.5. If individual provisions of this contract are invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the rest of the contract remains unaffected. The same shall apply if a loophole is found in this contract. The invalid or unenforceable provision or the gap shall be replaced by a valid and enforceable provision whose effects come closest to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete.

13.6. In the event of disputes arising from this contract, the partners undertake to conduct a mediation procedure with the aim of reaching an amicable settlement with the help of a jointly commissioned mediator before taking legal action. The mediation procedure shall be initiated by written notification of one of the partners. The partner shall thereby propose a mediator. The proposal is not binding for the other partner. If the partners cannot agree on a joint mediator within one month after receipt of the notification, the mediation procedure shall be deemed to have failed.

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