

General Terms and Conditions of Sale for KNF Neuberger GmbH

I. General, scope

1. Our Terms and Conditions of Sale shall be a constituent part of all offers and contracts for our products and services, including both current and future business relationships.
2. We shall not recognise any of the Purchaser's conditions that contradict, or deviate from, our Terms and Conditions of Sale unless we have approved their validity expressly and in writing. Our Terms and Conditions of Sale shall apply even if we had knowledge of conditions on the part of the Purchaser that contradict, or deviated from, our Terms and Conditions of Sale and execute the order without expressly rejecting such conditions of Purchaser.

II. Offer, offer documentation

1. Unless expressly specified as binding, our offers shall always be nonbinding and subject to confirmation. Binding offers must be accepted by the Purchaser within a reasonable period of time. Oral or written offers shall be deemed to have been accepted when written order confirmation is given, or the ordered goods are delivered within a reasonable period of time.
2. Documentation relating to the order such as illustrations, drawings, weights and dimensions, descriptions of performance and other features, as well as other information on our products and services, shall be deemed to be approximate only, unless they are expressly specified in writing in the offer as being contractually binding properties of our products and services. The information on contractual properties supplied in our offer, and in particular in our product description, shall not constitute any guarantee declaration in the sense specified under Art. 443 German Civil Code [BGB]. We shall retain the right to make changes with respect to the continual further development and improvement of our products.
3. We shall retain rights of ownership and copyright to estimates, drawings and other documentation, and the Purchaser may not make these available to third parties. This shall apply in particular to written documents described as confidential; the Purchaser must obtain our express consent in writing before passing these on to third parties.

III. Prices, conditions of payment

1. Our prices shall be quoted 'ex works', exclusive of packaging, unless otherwise specified in the order confirmation; packaging will be charged separately.
2. Statutory value added tax will not be included in our prices; the statutory level of tax will be stated separately on the invoice on the day of delivery or invoicing.
3. No discount, rebates or deductions of any kind shall be made without a special agreement in writing.
4. The purchase price will be due within 30 days after the date of the invoice, unless otherwise specified in the order confirmation. The Purchaser shall be deemed to be in arrears of payment if the payment deadline is not met. In the event of arrears of payment or suspension of payments, all outstanding claims, even those which are not due, will become payable without any deduction. This shall also apply if a respite of payment has been granted in prior cases. We shall be entitled to require the payment of interest on arrears of 8% above the appropriate basic interest rate for the entire claim, from the due date.
5. The Purchaser shall not be entitled to offset claims unless its counterclaims have been legally established, are uncontested or have been recognised by us.

IV. Delivery time

1. In principle, the time periods and deadlines shall not be binding unless we have expressly confirmed them as binding in the order confirmation. The delivery time indicated by us will not commence until all technical questions have been entirely resolved.
2. If, after we have already fallen into arrears, the Purchaser sets us a reasonable supplementary period, including the threat of refusal of acceptance, it shall be entitled to withdraw from the contract if this supplementary period expires without performance; the Purchaser shall be entitled to compensation claims for non-performance in the amount of the foreseeable damage only if the arrears are attributable to premeditation or gross negligence. Otherwise, compensation liability shall be limited to 50% of the damage incurred.
3. Our compliance with our delivery commitment shall be dependent upon the Purchaser properly fulfilling its duties, and doing so on time.
4. Should the Purchaser be in default of acceptance or infringe other collaboration duties, we shall be entitled to claim the damages we have suffered, including any additional expenditure. In this event, the risk of possible destruction or possible deterioration of the purchased object shall transfer to the Purchaser at the time the latter is deemed to be in default of acceptance.
5. If non-compliance is attributable to force majeure, industrial action or other events outside our sphere of influence, the delivery time will be extended accordingly. We shall notify the Purchaser as soon as possible of the dates when such circumstances begin and end.

V. Transfer of risk, packaging costs

1. Products will be supplied 'ex works', unless otherwise specified in the order confirmation.
2. Risk shall be transferred to the Purchaser at the time the supply parts are dispatched, at the latest, even in cases where partial deliveries are to follow, or where we have undertaken to include other services, e.g. dispatch costs or delivery.
If delivery is refused for reasons for which the Purchaser is accountable, risk shall transfer to the Purchaser from the day when the delivery is ready for dispatch.
3. Transportation packaging and all other packaging carried out in accordance with the packaging regulation will not be taken back. The only items that will be taken back are pallets. The Purchaser shall be obliged to dispose of packaging at its own expense.

VI. Defects and statutory warranty

1. The Purchaser's statutory warranty rights shall be dependent upon the Purchaser having properly complied with its duties of inspection and complaint in accordance with Art. 377 German Commercial Code [HGB]. Guarantee claims will be excluded unless obvious defects are notified in writing within a period of two weeks after receipt of the goods.
2. Complaints may not be made for deviations within the normal commercial tolerances for dimensions, volume, weight, quality, colour, etc. In addition, public statements, recommendations or advertisements with regard to our products shall not constitute contractual specifications on properties; only our product description as agreed shall be authoritative. Specification of DIN standards shall constitute a more detailed designation of goods, but shall not represent any guarantee assurance.
3. We shall be obliged to repair or replace (subsequent performance) as we choose, free of charge, within the statutory warranty period, all parts that prove unusable or whose use is substantially impaired as the result of a circumstance occurring before the transfer of risk – in particular, as the result of defective construction, poor construction materials or faulty execution. If such faults are detected, we must be notified in writing immediately. Replaced parts shall become our property.
4. No guarantee will be accepted for unsuitable or inappropriate use, faulty assembly or operation by the Purchaser or by third parties, natural attrition due to ageing and/or wear and tear (e.g. diaphragms, valves, sealing washers, elastomers, bearings, DC motors, etc.), faulty or negligent handling on the part of the Purchaser, in particular due to failure to carry out the requisite regular maintenance or use of inappropriate operating agents or replacement materials, inadequate construction precautions, or chemical, electrochemical or electrical action, unless attributable to fault on our part.
5. With respect to the direct costs incurred as a result of non-performance, we shall bear the costs of a replacement part including dispatch and reasonable dismantling and assembly costs, as long as the complaint proves justified. In addition, in such a case, we shall bear the cost of any attendance on the part of our fitters and assistants that may be necessary, save to the extent that such cost is increased because the good(s) have been moved from the place of performance to a different location.
In all cases, the amount of the costs that we take on, in addition to the cost of the replacement part, will be limited by the cost of the replacement part.
6. If subsequent performance is unsuccessful, the Purchaser may, in principle, choose between a reduction in payment (abatement) or withdrawing from the contract (withdrawal). In the case of minor breaches of contract, in particular where the defects are only minor, the Purchaser's right shall be limited to a reduction in the contract price.
7. Should the Purchaser choose to withdraw from the contract in the event of a defect following unsuccessful subsequent performance, it shall have no other claim to compensation with respect to the defect, with the exception of claims based on the clauses below.

8. For claims not related to the supplied item itself, we shall be liable – for any legal reason whatever – only in the case of premeditation, gross negligence on the part of our corporate bodies or senior management, in the event of culpable injury to life, body or health, or in the event of defects we have fraudulently concealed or whose absence we have guaranteed. For claims relating to defects to the supplied item, we shall be liable only to the extent that the Product Liability Law [Produkthaftungsgesetz] specifies liability for injury to persons or damage to property of privately used items.

In the event of culpable breach of major contractual duties, we shall also be liable for gross negligence on the part of staff who are not senior managers, and also for minor negligence, although this will be restricted to damages typical for this kind of contract and ones that could reasonably have been foreseen. Further claims shall be excluded.

9. Should the Purchaser or a third party carry out repairs in an inappropriate manner, we shall not be liable for the consequences.

The same shall apply to alterations made to the supplied item without our prior approval.

10. All claims on the part of the Purchaser shall lapse after 12 months from the date of the transfer of risk, irrespective of the legal reason for the claim. The statutory time periods shall apply in the case of deliberate or fraudulent conduct or claims under the Product Liability Law [Produkthaftungsgesetz].

11. Guarantee claims may be transferred only if we have given prior approval in writing.

VII. Overall liability

1. Any more extensive liability for compensation than that specified in section VI.8 shall be excluded, irrespective of the legal nature of the claim being made.
2. The regulation under section 1 shall not apply to claims under Articles 1 and 4 of the Product Liability Law [Produkthaftungsgesetz] or in cases of legal disability or impossibility.
3. To the extent that our liability is excluded or restricted, this shall also apply to the personal liability of our staff, employees, workers, representatives and auxiliaries.

VIII. Security for retention of title

1. We shall retain ownership rights with respect to the purchased item until all payments related to the delivery contract have been received. Where the Purchaser acts in breach of the contract – in particular, where it is in arrears of payment – we shall be entitled to take back the purchased item. Taking back the purchased item shall not constitute our withdrawal from the contract unless we have expressly declared so in writing. Where we seize the purchased item, this shall represent a withdrawal from the contract in all cases. We shall be entitled to dispose of the purchased item after taking it back, and the revenue from such disposal, less reasonable disposal costs, will be set against the Purchaser's obligations.
2. The Purchaser shall be required to handle the purchased item with care; in particular, it shall be required to insure the item against fire, water damage and theft, at a level sufficient to meet the item's re-statement value, at its own expense.
3. The Purchaser must immediately notify us in writing of seizures or any other interference by third parties so that we can lodge a lawsuit under Art. 771 Code of Civil Procedure [ZPO]. Should the third party not be in a position to reimburse us for the legal and out-of-court costs of a lawsuit, as stipulated in Art. 771 ZPO, the Purchaser shall be liable for the losses incurred by us.
4. The Purchaser shall be entitled to on-sell the purchased item as a part of ordinary business dealings; however, it shall already now assign to us all its claims against its client or third party arising out of the further sale, up to the amount of the final invoice amount (including value added tax). This shall apply irrespective of whether the purchased item was on-sold with or without processing. The Purchaser shall be entitled to call in this claim even after assignment of claim. Such entitlement shall not affect our right to call in the claim ourselves. However, we undertake not to call in the claim as long as the Purchaser meets its payment obligations arising out of the received revenues, does not fall into arrears of payment, and, in particular, as long as no application is made for initiation of insolvency proceedings and there has been no cessation of payments. Should this be the case, however, we shall have the right to require that the Purchaser disclose to us the assigned claims and the respective debtors, provide all the information required to collect on the claims, hand over the related documents and notify debtors (third parties) of the assignment.
5. Processing or reconstruction of the purchased item by the Purchaser shall always be carried out for us. Should the purchased item be processed with other items that do not belong to us, we shall acquire co-ownership of the new item, with relative ownership shares being determined by the value of the purchased item and that of the other processed items at the time of processing. Otherwise, the same provisions will apply to the item created through processing as apply to the purchased item supplied subject to retention provisions.
6. Should the purchased item be mixed inseparably with other items that do not belong to us, we shall acquire co-ownership of the new item, with relative ownership shares being determined by the value of the purchased item and that of the other mixed items at the time of mixing. If the nature of the mixing is such that the Purchaser's item may be regarded as the main item, it shall be agreed that the Purchaser transfer proportional co-ownership to us. The Purchaser shall take care of this sole ownership or co-ownership for us.
7. Should the purchased item be adjoined to a plot of land, the Purchaser shall also transfer any claim against it for the purposes of securing our claim that may arise with respect to a third party.
8. To the extent that the realisable value of securities due to us exceed claims being secured by more than 20%, we undertake to release such securities at the request of the Purchaser. It will be our prerogative to select the securities to be released.

IX. Disposal of waste electrical equipment

1. With respect to goods marked with the struck-through garbage can, the buyer shall be responsible for the proper disposal of the goods delivered, once no longer in use, at his own cost and in accordance with statutory provisions.
2. The buyer shall exempt us from the obligations under section 10 (2) of Electrical and Electronic Equipment Act (manufacturers' take-back obligation) and any claims by a third party in connection thereto. The buyer shall oblige by way of contract any third party who operates commercial activities and to whom he transfers the goods delivered to dispose of such goods properly, once no longer in use, at such third party's own cost and in accordance with statutory provisions; in the event that such third party transfers such goods to yet another party, such third party shall also oblige such party accordingly.
3. If the buyer fails to oblige by way of contract a third party to whom he transfers the goods delivered to assume the duty of disposal and of obliging any additional party, the buyer shall take back such goods, once no longer in use, and dispose of them properly at his own expense and in accordance with statutory provisions.
4. Our claim to the customer's assumption of the duty to oblige other parties/exemption shall expire no sooner than two (2) years following the final use of the equipment. The two-year period regarding the suspension of expiration shall commence no sooner than at such time as written notice is received from the buyer that use of the equipment has been terminated.

X. Intellectual property rights of third parties

Should the intellectual property rights of third parties be infringed in the manufacture of the purchased item according to the Purchaser's specifications, the Purchaser shall release us from all claims in this respect.

XI. Place of jurisdiction, place of performance

1. These Terms and Conditions shall be subject to German law. The United Nations Convention on the International Sale of Goods (CISG) shall not apply. This shall also apply in cases where the Purchaser is a foreigner, or where the Purchaser's registered office is located outside Germany.
2. If the Purchaser is a merchant entered in the commercial register [Vollkaufmann], the place of jurisdiction shall be our registered office. However, we shall also be entitled to sue the Purchaser at the court where it is resident.
3. The place of performance shall be our registered office, unless the order confirmation specifies otherwise.
4. Should any single provision be invalid, this shall not affect the validity of the remaining provisions.