

Standard terms and conditions of KBO GmbH, Am Schölsbach 19, 46244 Bottrop-Kirchhellen

I Definitions

1. "Company" means KBO-GmbH, Am Schölsbach 19, D-46244 Bottrop-Kirchhellen.
2. „Buyer“ means a person, firm or company with whom the contract is made.
3. "Contract" means the contract for the sale goods and/or the provision of services between the Company and the Buyer. This will be as set out in the Quotation Terms of Business or other documentation, any Acknowledgement of Order and these terms and conditions or in the event of telephone orders on a Buyers account, the terms noted on the Company's invoice and these terms and conditions.
4. "Goods" means the goods or services or any part thereof to be sold or provided by the Company and any replaced goods or spare parts.

II Contract

1. The order of precedence of terms governing the contract shall be first any Special Conditions, then these conditions.
2. These conditions can only be modified by a written variation signed by a Director or the Secretary of the Company and no other action constitutes acceptance of any other conditions.
3. Notwithstanding para (2) these are the only conditions on which the Company will deal with the Buyer to the entire exclusion of any other express or implied conditions. All other terms and conditions contained in any document or otherwise brought to the Company's notice are hereby excluded..
4. The Contract embodies the entire understanding of the parties and supersedes any prior promises, representations, undertaking or implications.

III. Price

1. The price is exclusive of Value Added Tax, export, import and excise duties, and any other taxes or duties. Any such taxes or duties shall be payable by the Buyer. The Price is ex-works unless otherwise quoted and if no price is quoted it is the Company's current price list at date of acceptance.
2. The Company may vary the price if costs increase outside of the reasonable control of the Company, including by reason of any law, order, directive, regulation or byelaw taking effect after the date of the Contract.
3. The Buyer will be charged for any tests, certification, documentation or witnessing of test not included in the Contract.
4. Goods are sent packed in accordance with the Company's practice. Unless otherwise indicated, the price exclusive of the costs of packing, packing cases and packing materials.

IV. Payment

1. Payment is contractually due from Buyer on the date of invoice. Unless otherwise stated payment must be made not later than 30 days from invoice date in the form and currency specified. The Company will invoice for each consignment. Failure to pay any instalment of a schedule of payments renders the whole sum due immediately. Receipts will only be given on request.
2. Time of payment is of the essence. If any payment is overdue, interest will be charged from the date of invoice both before and after any court judgement at a rate of 5% above the respective discount rate of the Deutsche Bundesbank.
3. If the Buyer fails to make timely payment of any sums due or is in default of any other terms of this or any other contract with the Company, the Company is entitled to withhold deliveries and/or cease work under Contract. If such failure to make payment or other default continues for more than one month, the Company may without prejudice to any other contractual rights:
 - terminate this contract and dispose of any Goods appropriated to the Contract and or
 - appropriate any payments by Buyer to such invoices rendered to the buyer as the Company thinks fit, notwithstanding any purported appropriation by the Buyer.
4. The Buyer shall make payment without any discount, deduction, off-set or counterclaim whatsoever.
5. The Company may invoice on or any time after delivery or if the Buyer wrongfully fails to take delivery or otherwise suspends or delays delivery the Company is entitled to invoice from the date the Goods were tendered or delivery or would but for the suspension or delay have been tendered for delivery.
6. Wird die gekaufte Ware vom Besteller unverarbeitet weiterverkauft, so tritt der Besteller schon jetzt die ihm aus solchen Veräußerungen zustehenden Forderungen mit allen Nebenrechten an den Lieferant bis zur Höhe von dessen Forderungen ab. Der Lieferant nimmt diese Abtretung schon jetzt hiermit an.
7. Übersteigen die Sicherheiten die Forderungen des Lieferanten um mehr als 15 %, so ist dieser verpflichtet, den übersteigenden Teil der ihm zustehenden Sicherheiten dem Besteller auf dessen Aufforderung hin freizugeben.
8. Der Besteller hat dem Lieferant sofort schriftlich Bescheid zu geben, wenn in Vorbehaltsware oder in im Miteigentum des Lieferanten stehende Ware sowie durch Voraus-abtretungen der Lieferant übertragene Forderungen vollstreckt wird. Der Besteller hat dem Vollstreckungs-organ und dem Vollstreckungsgläubiger unverzüglich mitzuteilen, dass die Ware noch im Vorbehalts- oder im Miteigentum des Lieferanten steht bzw. dass die Forderung an diesen abgetreten ist.

V. Risk

1. Risk in the Goods shall pass when they are tendered for delivery or when they leave the Company's premises whichever is the sooner.

VI Title to Goods

1. The Company retains title to the goods until the Buyer has made full payment in cash or cleared funds of all sums due under the Contract, in accordance with the following terms:

- After delivery the Buyer is only entitled to possession of the Goods in a fiduciary capacity as a bailee
- Unless inconsistent with the Goods purpose the Buyer shall keep the Goods separate to enable them to be identified as Company property;
- the Buyer shall insure the Goods against all risks for their replacement value;
- the Buyer has a licence to sell or use the Goods which may be immediately terminated by written notice at any time. The licence shall automatically terminate on the appointment of a receiver, administrator or liquidator of any of the Buyer's assets;
- the Buyer's proceeds of any sale of the Goods and the benefit of any such contract of sale shall be held in trust for the Company absolutely;
- The Company may repossess the Goods after termination of licence and the Buyer grants to the Company an irrevocable licence to enter any Premises of the Buyer for this purpose.

VII Representations

The Company shall not be liable for any misrepresentations made to the Buyer arising from:

- printing or clerical errors the existence of which should be apparent to the Buyer.
- information from third parties which the Buyer is aware the Company relies on
- oral representations made by the servants of the Company other than its Directors and Secretary.
- any advice or recommendations given to Buyer regarding storage, use or application of the goods which is not confirmed by the Company in writing.

VIII. Specifications and Performance

1. The Company will only meet specifications and performance criteria which are specifically incorporated into the Contract. Other particulars relating to physical or chemical properties given are to be regarded as a general guide only and do not constitute any guarantee, warranty or condition.
2. Prior to the Buyer rejecting any Goods the Company entitled to a reasonable time and opportunity to rectify its performance, including the right to supply substitute Goods. If the Buyer is then entitled to and rejects any Goods, the Buyer is released from the Contract in respect of the rejections and having credited the Buyer for the rejections the Company is not further liable to the Buyer.
3. The Buyer accepts responsibility for the specification and material of the Goods being suitable for the intended use.

IX Acceptance

1. Goods comprising machinery are supplied on the condition that the Buyer accepts or rejects the Goods after completion of any inspection requirements prior to the Goods leaving the Company's premises. Other Goods are supplied on the condition that the Buyer accepts or rejects the Goods within 48 hours of delivery. The Buyer's right of rejection is strictly limited to such part of the Goods which fail the inspection requirements. If the Buyer fails to utilize inspection prior to the Goods leaving Company premises, the Goods are deemed accepted by the Buyer and at his risk.
2. Prior to the Buyer rejecting any Goods the Company is entitled to a reasonable time and opportunity to rectify its performance. If the Buyer is then still entitled to and rejects any Goods, the Buyer is released from the Contract in respect of the rejections and having credited the Buyer for the rejections the Company is not further liable to the Buyer.
3. Following acceptance, the Buyer shall promptly receive the Goods when they are delivered or tendered for delivery in accordance with the Contract. If the Buyer fails to receive the Goods the Buyer shall be liable for all cost, charges and expenses incurred (including but not limited to storage, handling and interest).

X Delivery

1. Delivery shall be made by Buyer collecting the Goods at the Company's premises after Buyer is notified they are ready for collection. If Company agrees to delivery, it may use any method convenient to the Company and the Buyer will be charged accordingly.
2. Export terms will be in accordance with Incoterms 1990.
3. Delivery times given by the Company in its quotation or otherwise are business estimates only and the Company is not liable to the Buyer for any failure to comply with such delivery times.
4. Delivery times exclude any time taken in carrying out any experimental work in connection with the Goods and only start to run from receipt of information or equipment to be supplied by the Buyer (if any) or receipt of the Buyer's written acceptance if a sample is submitted for approval.
5. The Buyer shall accept delivery of any shipment or consignment of the Goods which is within 10% (ten per cent) of the Contract quantity. Payment for the Goods so delivered shall be increased or decreased on a pro rata basis.
6. If Company agrees to deliver the Goods, any shortage or visible damage to the Goods (including packing) must be noted on the Carrier's bill of lading or delivery note (which includes any Airway bill or Ocean Bill of Lading) at the time of delivery or within such time as to enable the Company to comply with the carrier's conditions of carriage and details of any shortage or damage must be sent immediately to the Company by telephone and confirmed in writing by despatched by first class pre-paid post.
If the bill of lading or delivery note is signed by or on behalf of the Buyer without exception such signature shall constitute conclusive proof that the Goods were received in good order and the quantity was correct. In the case of non-delivery of a whole shipment or consignment, a written claim must be made within 21 days of the date of the advice note or the invoice whichever is the later.

XI Delay in Performance

If the Buyer is responsible for any delay in performance caused to the Company the Buyer shall pay any increased costs which arise including, but not limited to the Company's cost of handling, storage, administration or interest.

The Buyer also accepts that any delay in performance may cause production of the Goods to be delayed by a longer period than the actual delay due to loss of production slots and other intervening factors.

XII Warranty

1. The Company warrants that Goods manufactured by the Company are free from defects in workmanship and materials and comply in all material respects with the contractual specification for 12 months following dispatch, their shelf life or such period given by the Company in writing whichever is shorter. If Buyer proves any of the Goods do not conform to this warranty the Company will at his option:

- replace or repair non-conforming Goods;
- take back the non-conforming Goods and refund the appropriate part of the purchase price; or
- make a price adjustment that is fair to both parties in relation to the non-conforming Goods.

For Goods not of its own manufacture the Company will pass on to the Buyer to the extent it is able the benefit of any warranties or indemnities given by its suppliers.

This Warranty is conditional upon:

- the Buyer giving written notice to the Company of the alleged non-conformity in the Goods within 14 days of the time when the Buyers discovers or ought to have discovered the defect and
- the Buyer giving the Company reasonable access to inspect the Goods and, if requested by the Company, returning the alleged non-conforming Goods to the Company's premises, carriage paid, for inspection and
- the Goods having been properly maintained, stored, handled and installed in accordance with good industrial practices and the Company's recommended procedure and
- No identification, serial or batch number having been altered, defaced or removed, and no unauthorized work having been carried out by others.
- the Buyer having paid the Goods in full.

This Warranty is given in lieu of all warranties, conditions, representations or other terms implied by statute or common law which are excluded to the fullest extent permissible by law and the liability of the Company in no event exceeds the purchase price of the nonconforming Goods and performance of any of the above options (as limited by these provisos) constitutes an entire discharge of the Company's liability for any non-conformity;

XIII Liability for Accidents and Damage

1. It is understood the Company is not an insurer, that if the Buyer requires insurance he shall obtain and pay for it and that the price of the Goods is based on their value and the scope and extent of the Company's liability given in these terms and conditions.
2. The Buyers' remedies in these terms and conditions are exclusive and the Company does not accept responsibility for any loss or damage to the Buyer exceeding the value of the Goods, however arising, nor in any event, for any indirect or consequential losses including, but not limited to loss of profits, loss of contracts or damage claimed by third parties.
3. Nothing in this clause affect the Company's liability for death or personal injury caused by the negligence of the Company or its employees.

XIV Design

If the Goods are manufactured to the design or specification of the buyer the Buyer indemnifies the Company against all losses, costs, charges, expenses and damage as a result of any claim or allegation that the goods infringe any patents, copyright, registered design or other intellectual property rights or that the Goods do not comply with any legislation, regulations or requirements in force from time to time.

XV Force Majeur

The Company is not liable for any loss or damage caused by delay in performance or non-performance of any of its obligations which is beyond the Company's reasonable control including but not limited to an Act of God: war; shipwreck, civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind; import or export regulations or prohibitions; strike, lock-out or trade dispute (whether involving its own employees or those of other); difficulties in obtaining workmen or materials including (but not limited to) oil, gas, coal, electricity or any other fuel or raw material; breakdown of machinery, fire or accident; non-availability or delay of vessels or transport. Should any such event occur the Company at its own option may cancel or suspend or initially suspend then cancel the Contract without incurring any liability whatsoever.

XVI Settlement of Disputes

If any question, dispute or difference arises between the parties in connection with the Contract either party may give to the other notice in writing requesting it be referred to the arbitration or mediation of a person appointed by the court.

XVII Termination

The Company may terminate the Contract without further liability on its behalf by written notice if:

1. the Buyer becomes insolvent, goes into liquidation, enters into a composition with its creditors or has a receiver appointed over the whole or any part of its undertaking is in breach of Contract or the Company considers any of the above may occur;
2. any other contract between the parties is terminated for whatever reason; or
3. the Company discovers a technical problem relating to Buyer's specification, design and/or materials during production which renders performance of the Contract, in the Company's opinion, unacceptable.

XVIII General

1. The Buyer shall not without the Company's written consent assign, transfer or sub-contract the whole or part of the benefit or burden of this Contract.
2. No waiver of any Contract term by the Company is deemed a further or continuing waiver.
3. No right or licence is granted to the Buyer under any patent, copyright, registered design or other protection except the right to use or re-sell the Goods.
4. Notices served by fax / e-mail must be confirmed by first class post addressed to the relevant party's office as appears in the Contract and are deemed served the next working day after dispatch.
5. If any provision or part of a provision of these terms is held to be void, illegal or invalid that shall not affect the legality and validity of the remaining part or of other provisions.
6. The headings used are for ease of reference only and shall not affect the construction of the terms.

XIX Law

1. The construction, validity and performance of this Contract shall be governed in all respect by German law. The place of performance for all liabilities arising from the business relationship or from the individual contract is the registered office of the supplier.

Material Safety Data Sheets are available on request.