

K.D. Feddersen GmbH & Co. KG

General Terms and Conditions of Sale

1. Scope

- 1.1. The following General GTC ("GTC") shall apply to all deliveries and services of K.D. Feddersen GmbH & Co. KG.
- 1.2. Our GTC apply exclusively. Deviating, conflicting, or supplementing terms and conditions of the Client shall only become binding if and to the extent that we have accepted their application in writing. An explicit objection to the Client's terms and conditions shall not be necessary. Any terms and conditions of the Client contrary to or deviating from these GTC shall not be applicable even if we have rendered the contractual services without reservation.
- 1.3. These GTC shall only apply towards entrepreneurs within the meaning of Sec. 14 German Civil Code (Bürgerliches Gesetzbuch – BGB) as well as legal entities and special funds under public law. They shall be incorporated in every contract concluded between us and our respective customer ("Client"), unless and to the extent expressly agreed otherwise in the individual case. These GTC shall also and in particular apply to any future business relations with the Client, even if reference to these GTC is not expressly made.
- 1.4. All agreements made between us and the Client for the purposes of concluding and executing the purchase agreements are set out in writing in the relevant order confirmations and in these GTC.
- 1.5. The commercial terms being agreed to within the order confirmation and used in these GTC shall be construed in accordance with the INCOTERMS in force at the time of conclusion date of the agreement.

2. Formation of Contract

- 2.1. In principle, our offers are non-binding and subject to change. Unless explicitly stated otherwise in the offer itself or apparent from the circumstances, they shall be merely deemed as an invitation to the Client to submit an offer, which requires our acceptance. Client's orders are considered a binding offer and can be accepted by us anytime during a period of 14 days through order confirmation or through the delivery of the ordered goods.
- 2.2. In case an export license from the German Federal Office for Economic Affairs and Export Control (BAFA) or any other domestic or foreign governmental body or authority is required for the export of our goods, the validity of the contract shall be subject to the condition precedent (Sec. 158 para. 1 BGB) of the granting of such license by the respective competent authority. Furthermore, the validity of the contract is subject to the condition precedent that a matching with the relevant anti-terrorism and sanctions lists, which is routinely carried out, is negative, i.e. does not result in a match. Further details on export control are set forth in Clause 12 below.

3. Purchase Price

- 3.1. Unless expressly agreed otherwise in the individual case, our prices are for delivery CPT (Carriage Paid To). Unless otherwise stated in the order confirmation, all quoted prices are net prices (excluding packing) to which value-added tax (VAT) at the applicable statutory rate will be added; packaging will be charged separately. The dispatch weight of the goods determined at the time of loading shall be decisive for the calculation of the purchase price.
- 3.2. In the event of any cost reductions or increases of more than 5 % between the conclusion of the contract and the delivery of the goods, which are resulting from a change or enactment of public charges on imported goods, the change in currency parities or the change in the prices of raw materials and which are neither attributable to us nor foreseeable at the time of conclusion of the contract, we shall be entitled to adjust our prices accordingly. We shall provide the Client with evidence of the cost increases. If these prices have increased compared to the prices stated in the order or the order confirmation, the Client shall be entitled to withdraw from the delivery or partial delivery affected by price increases; however, the right of withdrawal shall not apply to price increases that are only caused by an increase of VAT.
- 3.3. Freight increases, flood and drought surcharges, ice surcharges, express freight and other special freight charges (e.g. extraordinary fuel surcharges and tolls) shall be borne by the Client.

4. Conditions of Payment

- 4.1. The payment conditions set forth in the order confirmation or invoice shall apply. Fixed prices must be expressly agreed upon as such in writing. If a fixed price has been agreed in writing, this agreement shall not apply to repeat orders and in the event of subsequent changes to delivery quantities and deadlines by the Client, unless the agreement extends to this expressly and in writing.

- 4.2. Unless otherwise agreed in writing, payment must be effected without any deduction, in particular without deduction of cash discount (Skonto).
- 4.3. The Client shall be in default if payment is not made at the time specified in the contract or, if a payment date is not specified - if payment is not effected upon our reminder, however, irrespective of a reminder no later than thirty (30) days following receipt of our invoice. If the invoice's time of receipt cannot be determined, Client shall be in default no later than thirty (30) days following the due date and receipt of the goods. In case of Client's default, we are entitled to interest at the statutory rate. We reserve the right to claim further damages. If the Client is in default of payment of a claim, all other claims against the Client may be made due. With respect to merchants, our claim to the commercial due date interest rate (Sec. 353 HGB) shall remain unaffected.
- 4.4. The Client shall bear all fees, costs and expenses incurred by us in connection with any legally successful legal action taken against him by the seller outside Germany.
- 4.5. A right to offset or a right of retention on the part of the Client shall be excluded, unless the counterclaim is either undisputed or has been finally adjudicated. In the event of defects, the Client's counter rights shall remain unaffected, in particular pursuant to Clause 7 of these GTC. Furthermore, Client is entitled to exercise a right of retention only to the extent his counterclaim is resulting from the same contractual relationship.
- 4.6. Bills of exchange and cheques are only accepted on account of performance (erfüllungshalber). If we accept bills of exchange, discount- and bank service charges shall be borne by the Client and must be immediately paid in cash. The handing over of bills of exchange or cheques shall not be deemed as cash payment. Therefore, discounts are excluded in this case.
- 4.7. If it becomes apparent after conclusion of the contract that the Client will not be able to meet his payment obligations when due, we shall be entitled to demand cash in advance or cash on delivery for our deliveries. In such cases, we shall also be entitled to revoke any payment periods granted. As far as bills of exchange with later due dates are concerned, we shall be entitled to demand cash payment against return of the bills of exchange.
- 4.8. If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardized by the Client's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - also to withdraw from the contract in accordance with Sec. 321 BGB. In the case of customized products pursuant to Clause 8, we may declare the withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.
- 4.9. If the Client is in default of payment, we shall be entitled, at our own discretion, and without prejudice to any other rights to which we may be entitled, to suspend any future deliveries to the Client until the overdue payments have been settled in full and to withdraw from any further delivery orders under the statutory conditions.
- 4.10. The risk of a possible devaluation of the currency agreed in the contract shall be borne by the Client.
- 4.11. We may assign our claims against the Client to a third party.

5. Delivery and Acceptance

- 5.1. Unless expressly agreed otherwise in writing, our deliveries will be effected CPT (Carriage Paid To).
- 5.2. The start of the delivery time specified by us shall be subject to prior clarification of all technical issues. The stated delivery times are only approximate times, unless they have been confirmed in writing and expressly agreed as fixed dates. Agreed delivery dates refer to the date of dispatch of the goods.
- 5.3. As long as the Client is in arrears with an obligation resulting from the ongoing business relationship, our delivery obligation shall be suspended.
- 5.4. Information supplied with regard to the percentage content and mixing proportions of our products are only to be regarded as approximate average values. We shall not be liable for any variations in such content which are within the tolerances applicable to the particular goods or are unavoidable despite every care in manufacture and in determination of values.
- 5.5. The Client is aware of the fact that quantity tolerances are unavoidable in the production of the goods for technical reasons. The word „circa“ in front of the quantity stated in the order confirmation therefore entitles us to deliver up to 10% more or less in any case.
- 5.6. With respect to customized products pursuant to Clause 8 as well as for silo goods, we shall be entitled to over- or under-deliver by a further 10%, i.e. a total of 20%, in addition to the 10% mentioned in Clause 5.5 above. The final prices due may vary accordingly.

- 5.7. We shall be entitled to partial deliveries, if and to the extent these are reasonable for the Client.
- 5.8. If Client sets us a reasonable grace period after we have already defaulted, Client shall be entitled to withdraw from the contract after the fruitless expiry of this grace period. Damages claims, if any, are subject to Clause 12 of these GTC.
- 5.9. If Client defaults on acceptance or culpably breaches other contractual duties of cooperation, we shall be entitled to demand compensation for the resulting damage, including any additional expenses.
- 5.10. If transport of the goods is permanently or temporarily impossible for reasons beyond our control, notwithstanding, the purchase price is nevertheless due; in this case we may store the goods at the risk and for the account of the Client.
- 5.11. If delivery is prevented or substantially impeded by force majeure, natural catastrophes, operational disruptions, shortages of energy or raw materials, strike, lockouts, traffic congestion, administrative orders, or other events beyond our control, the agreed delivery periods shall be extended accordingly for the duration of the impediment plus a reasonable ramp-up period. The delivery periods shall also be extended if we are not supplied completely or in time by our supplier despite of having entered into a covering back-to-back contract (kongruentes Deckungsgeschäft) through no fault of our own and if it is impossible or unreasonable for us to obtain the goods elsewhere. If the hindrance lasts longer than two months, both we and the Client are entitled to withdraw from the contract with regard to the unfilled part. If the delivery time is extended or if we are released from our delivery obligation, the Client cannot derive any claims for damages therefrom.
- 6. Packaging**
Deliveries in returnable or reusable packaging (especially reusable pallets) packaging are subject to our special conditions, which we will send on request. Non-returnable packaging material may only be reused in business transactions after our company logo and name and the description of the goods have been made recognizable.
- 7. Warranty for Defects**
- 7.1. Defects shall be remedied at our discretion by taking back the defective goods and delivering a replacement or by rectifying the defect free of charge. In the event of rectification of defects, we shall be obliged to bear all expenses necessary for the purpose of rectification of defects, in particular transport, travel, labour and material costs, insofar as these are not increased by the fact that the purchased item has been taken to a place other than the place of destination. If we fail to meet these obligations even within a reasonable grace period set in writing, the Client may, at its option, withdraw from the contract or demand a reduction of the purchase price (Minderung). Clause 12 shall apply to any claims for damages on the part of the Client. Claims for defects on the part of the Client shall be subject to the Client having complied with his obligations to inspect the goods and to give notice of defects. The Client must check - if necessary by means of a trial processing - immediately after receipt of the goods, but in any case, before their further processing, further transport or further sale, whether the delivered goods are in perfect condition and suitable for the agreed purpose. Any defects with regard to type, quality and quantity which are identifiable during the inspection must be reported to us immediately, at the latest within eight (8) days after receipt of the goods, hidden defects immediately after their discovery in writing, by fax or e-mail. In doing so, the defects must be described in such a way that we are able to verify them, and the order data, invoice, manufacturing and shipping numbers must be provided with an exact description of the item and the delivery lot. In addition, we may demand that the Client return to us a sample of the defective delivery in sufficient quantity, insofar as this is necessary for the processing and verification of the notice of defects. If the Client fails to notify us of the defect, the goods shall be deemed to have been accepted. A prerequisite for the recognition of a complaint is the proper storage of the goods by the Client after their delivery.
- 7.2. We shall be entitled to make the subsequent performance owed contingent on the Client paying the purchase price due. However, the Client shall be entitled to retain a reasonable part of the purchase price in relation to the defect.
- 7.3. The notice of defects shall only cover the goods that are demonstrably subject to complaint, without affecting Client's obligation to take delivery of the contractual quantities still to be delivered.
- 7.4. Rejected goods may only be returned to the address specified by us and only if we have not collected the goods at the Client's premises within a reasonable period of time despite being requested to do so twice.
- 7.5. Also, with respect to defects, Client shall only be entitled to claim for damages or reimbursement of frustrated expenses in accordance with Clause 12 and otherwise any such claims shall be excluded.
- 7.6. Claims due to defects or deviations in quantity shall become statute-barred one year after delivery. This shall however not apply to any damage claims of the Client resulting from wilful intent or by gross negligence on our part as well as claims due to injury to life, body or health or claims under the Product Liability Act (Produkthaftungsgesetz).
- 8. Special Orders**
Information about the possibilities for processing and using the products we sell, technical advice, and other information, also in terms of patent law, are given without obligation and do not release the purchaser from carrying out his own investigations and tests. Claims for damages against us cannot be asserted in this respect. Any claims for damages against us in this respect are excluded.
- 9. Information and Advice**
Information about the possibilities for processing and using the products we sell, technical advice, and other information, also in terms of patent law, are given without obligation and do not release the purchaser from carrying out his own investigations and tests. Claims for damages against us cannot be asserted in this respect. Any claims for damages against us in this respect are excluded.
- 10. Retention of Title**
- 10.1. Delivered goods remain our property until all claims arising from the business relationship with the Client have been paid in full (retention of title). The Client shall treat the goods subject to retention of title owned by us with care and shall store these goods separately from his goods and goods of third parties. Upon request, the Client shall give us all information necessary to enable us to locate the goods subject to retention of title owned by us in his possession.
- 10.2. Client shall be entitled to resell the goods subject to retention of title in the ordinary course of business; however, pledging, transfer of ownership by way of security or other encumbrance shall not be permitted. Client hereby assigns to us its claims against its customers arising from the resale of the goods subject to retention of title as well as any claims Client may have against its customers or third parties for any other legal reason (in particular claims in tort and claims for insurance benefits), including all current account balance claims, irrespective of whether the purchased goods have been resold without or after processing; we hereby accept this (advance) assignment. Notwithstanding the assignment, Client shall be entitled to receive payment on the assigned until such authorization is revoked by us. We shall be entitled to revoke this authorization if the Client defaults on his payment obligations arising from the business relationship with us or if we become aware of any circumstances which are reasonably likely to significantly reduce the Client's creditworthiness (e.g. filing an application for the opening of insolvency proceedings, suspension of payments, etc.). If the requirements for exercising the right of revocation are met, the Client shall, at our request, immediately notify us of the assigned claims and the respective debtors, provide us with all information necessary for the collection, furnish any relevant documents and inform the debtors of the assignment. Our right to notify the debtors of the assignment ourselves remains unaffected if the above conditions for revocation of authorization are met.
- 10.3. Any processing or treatment of goods subject to retention of title shall be carried out by the Client on our behalf, without any obligations arising for us. In this case, the Client's expectant right (Anwartschaftsrecht) shall extend to the processed, adapted and/or modified goods. If the goods subject to retention of title are processed with other objects which are not owned by us, we shall acquire co-ownership of the processed good in proportion of the value of the goods subject to retention of title to the processed good at the time of processing. The same shall apply in the event that the goods subject to retention of title are mixed or combined with other goods not owned by us. If the Client acquires sole ownership of the newly created good due to the fact that the other goods owned by him are to be regarded as the main item of the processed good, the Client shall grant us co-ownership of the new item in the ratio of the value of the processed or combined or mixed goods that are subject to retention of title. The Client shall keep new object in custody for us free of charge. If the goods subject to retention of title are resold together with other goods - irrespective of whether processing or mixing has taken place - the advance assignment shall only apply to the amount of the value of the goods subject to retention of title which are resold together with the other goods.
- 10.4. If we are entitled to sell the goods subject to retention of title, this can also be done by private contract.
- 10.5. We undertake to release the securities to which we are entitled in accordance with the above provisions at our discretion at the Client's request insofar as the value exceeds the claims to be secured by more than 10%; in that regard, we shall have the choice as to which securities we release.

- 10.6. The Client must immediately inform us of any enforcement measures or seizures brought out by third parties with respect to the goods subject to retention of title or the receivables assigned to us by the Client, stating the documents necessary for intervention. The Client shall reimburse us for the costs of a successful intervention if the third party is unable to reimburse us for the costs incurred.
- 10.7. If a reservation of title in accordance with the above conditions cannot be validly agreed in the jurisdiction to which the goods are delivered, the Client is obliged to provide us with equivalent security to secure our claims and to make all necessary declarations to this end.
- 10.8. If and to the extent that, notwithstanding Clause 13.2, German law does not apply and a simple retention of title or the assignment in advance within the scope of an extended retention of title should be inadmissible or impracticable under the applicable law, the Client will provide us with an equivalent security, e.g. a security interest, to secure our claims. The subject matter and the scope of this security right shall be subject to agreement between the parties. Client shall provide us with suitable evidence of such a security interest validly created in our favour.

11. Trademarks

Insofar as the goods delivered by us are labelled with a manufacturer's label (e.g. with a trademark), the use of these labels and designations in connection with the further processed product is only permitted with the written consent of the manufacturer, which must be obtained by the Client.

12. Export Control

- 12.1. If our deliveries require prior export or import authorization of any government and/or state authority, or if the delivery is otherwise restricted or prohibited due to national or international laws, we shall be entitled to suspend performance of our delivery or other contractual obligations until such authorization has been granted or such restriction or prohibition has been cancelled. If the delivery depends on the granting of export or import authorization and such authorization is not granted, we shall be entitled to withdraw from the contract at any time. We shall not be liable for any delays in delivery, which result for the reasons specified in this Clause 13.1 and shall not be liable in the event that a delivery cannot be performed at all due to export regulations unless we have acted intentionally or with gross negligence. The same shall apply in the case of any justified withdrawal from the contract according to this Clause 12.1.
- 12.2. By accepting the offer, or at the latest by accepting the delivery, the Client guarantees that he shall not conduct any business with the goods delivered by us, which breaches applicable statutory export regulations, and shall especially execute any further deliveries, transfers or exports of the delivered goods solely in compliance with the applicable statutory export control regulations. The Client undertakes to also impose the above regulations on its customers.
- 12.3. The Client shall be obliged to ensure that no persons, entities or bodies are involved in the execution of the contract or are thereby supported, which are listed on the anti-terror and sanctions lists of the European Community and the United Nations applicable at the time (in particular Regulation (EC) No 881/2002; Regulation (EC) No 2580/2001; Regulation (EC) No 753/2011). This shall also apply with respect to any persons, entities or bodies that are listed on the anti-terror and sanctions lists of other governments (in particular the US Denied Persons List, US Entity List, US Specially Designated Nationals List, US Debarred List), provided that these do not unilaterally exceed UN or EU sanctions. The Client further guarantees that neither he nor any of his shareholders or representatives are listed on such a list, and that he is not under the control of or a partner of any person or corporate body found on such lists. If the Client or any of his shareholders, representatives, or a person or corporate body that the Client is a partner of, is added to an anti-terror or sanctions list during the term of the con-

tract, the Client shall be obliged to notify us thereof without undue delay. In case of reasonable suspicion that the Client is one of the persons, organizations or facilities listed in the anti-terror or sanction lists or provides such persons, organizations or facilities with assets or is controlled by one of them directly or indirectly we reserve the right to rescind the contract or to retain delivery until full clearance of the suspicion taking into account the reasonable interests of the Client. The Client is obliged to provide us on demand with any information we may reasonably consider necessary to clear up the suspicions or respectively the underlying facts.

- 12.4. K.D. Feddersen GmbH & Co. KG and the Client agree that is an essential prerequisite for the execution of this contract that all applicable export control regulations are strictly complied with. Therefore, a breach of export control regulations in connection with the delivery of our products always constitutes a severe violation of our interests. This shall also apply in the case of any violations committed by third parties. In this case, we shall be entitled to extraordinarily terminate or withdraw from the contract. The Client shall be obliged to indemnify us against any claims for damages of third parties resulting from such breach of applicable export control regulations and compensate us for any expenses or damages incurred, whether material or immaterial, in particular for any fines or penalties resulting from a violation of any of the obligations set forth in Clauses 12.1 to 12.3 above.

13. Liability

- 13.1. In the event of wilful intent or gross negligence, we shall be liable to the Client – for any legal reason whatsoever – without limitation in accordance with the statutory provisions.
- 13.2. In case of simple negligence (einfache Fahrlässigkeit) we shall only be liable for
- damages resulting from injury to life, body or health, and
 - damages resulting from breach of fundamental contractual obligations (i.e. contractual obligations which enable the fulfilment of the orderly performance of the contract in the first place, and in the compliance of which the contracting party can and will regularly rely on); in which case our liability shall be limited to the foreseeable, typically occurring damage. Apart from the foregoing any further liability on our part is excluded. The limitations of liability as per this Clause 13.1 shall also apply to any of our representatives, employees and vicarious agents for which we are liable. They shall, however, not apply if and to the extent we have fraudulently concealed a defect or assumed a guarantee for the condition of the delivered goods as well as for any claims of the Client under the Product Liability Act (Produkthaftungsgesetz).
- 13.3. Damage claims of the Client, irrespective of their legal grounds, shall become time-barred twelve (12) months after the Client obtained knowledge of the circumstances giving rise to the claim, or would have obtained such knowledge absent gross negligence, but in any case, not later than three (3) years after the breach of duty. This shall not apply if the relevant claim is based on wilful intent on our part or to claims resulting from injury to life, body or health. With regard to liability for defects, Clause 7.6 shall apply.

14. Final Provisions

- 14.1. The place of performance is the location of our registered office unless otherwise stated in the order confirmation. Place of jurisdiction for all disputes between the parties shall be Hamburg. However, we shall be entitled to file suit also at the Client's general place of jurisdiction or at the place of jurisdiction which is competent for his place of business. This also applies to claims arising from bills of exchange and cheques.
- 14.2. The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).