

K.D. Feddersen CEE GmbH

General Terms and Conditions of Sale

1. General - Scope of Application

- 1.1. Our terms and conditions of sale apply exclusively. We do not acknowledge or accept any of Buyer's conditions contradicting, supplementing or differing from our terms and conditions of sale unless we would have expressly agreed to them in writing. Our terms and conditions of sale apply even if we perform delivery to Buyer without reservation despite knowing of Buyer's conditions contradicting, supplementing or differing from our terms and conditions of sale. Our terms and conditions of sale also apply to all future transactions with Buyer even without further notification.
- 1.2. All the covenants that have been made between us and Buyer with regard to concluding and performing the purchase agreements are written down in the order confirmations and in these terms and conditions of sale in the version applicable at the conclusion date of the agreement.
- 1.3. Our terms and conditions of sale are only effective as to entrepreneurs in terms of sections 1–3 of the Austrian Commercial Code (Unternehmensgesetzbuch – UGB), legal persons under public law and special funds under public law. They have no effect as to consumers pursuant to section 1 paragraph 1 of the Austrian Consumer Protection Act (Konsumentenschutzgesetz – KSchG).
- 1.4. The current version of the INCOTERMS as amended at the conclusion date of the agreement applies to the trade terms cited in the order confirmation and in these terms and conditions of sale.

2. Conclusion

- 2.1. Our offers are subject to change without notice and nonbinding.
- 2.2. Buyer's orders constitute a binding offer to enter into an agreement. We are entitled to accept buyer's order anytime during a period of 14 days by issuing an order confirmation or by delivering the goods ordered.

3. Purchase Price

- 3.1. Unless otherwise expressly agreed for the individual case, our prices are for delivery CPT. Unless otherwise noted in the order confirmation, they are net (excluding packing) and exclusive of VAT; separate packing charges apply. The purchase price is based on the dispatch weight as determined by us during loading.
- 3.2. We reserve the right to adjust our price in correspondence to cost increases of more than 5 % between contract execution and the delivery of the goods due to the increase or introduction of import duties, changes in currency parities, or changes in the price of starting materials, provided we are not responsible for the cost increases and they have not been foreseeable at the time the contract was concluded. We will prove cost increases to Buyer. For products with registered trademark rights owned by domestic producers, the prices in effect as of delivery are decisive rather than the contract prices.
- 3.3. Buyer is entitled to rescind the delivery or partial delivery, if the cost increase pursuant to 3.2. led to a purchase price increase compared to the prices stated in the order confirmation. However, Buyer is not entitled to rescind if the price increases are caused solely by VAT increases.
- 3.4. Buyer pays freight increases, flood and drought surcharges, ice surcharges, express charges and other special freight charges of any kind without exception.

4. Terms of Payment

- 4.1. Payment is subject to the terms stated in the order confirmation. Fixed prices must be expressly agreed upon as such in writing. Agreed upon fixed prices do not apply to reorders or subsequent modifications of the supply quantity and/ or delivery time unless the agreement is expressly extended thereto in writing.
- 4.2. Unless otherwise expressly agreed for the individual case, Buyer is obliged to pay the agreed purchase price in full. In particular, Buyer is not entitled to claim discounts or other deductions except pursuant to a separate written agreement.
- 4.3. Buyer defaults if Buyer fails to pay at the time specified in the order confirmation or, if no payment date has been specified, after being warned by us, at the latest after 30 days from our claim's due date and receipt of our invoice. If the invoice's time of receipt cannot be determined with certainty, Buyer defaults not later than 30 days from the due date and receipt of the goods. In case of Buyer's default we are entitled to demand interest at the legal rate (section 456 of the Austrian Commercial Code). We reserve the right to claim compensation for further damage exceeding the amount of interest accrued due to Buyer's default.

- 4.4. Buyer has a right to effect offsets solely to the extent his counterclaims are legally final and absolute, uncontested, or acknowledged by us. Furthermore, Buyer is authorized to exercise a right of retention only to the extent his counterclaim is based on the same contractual relationship.
- 4.5. Notes and checks will only ever be accepted on account of payment. To the extent we accept notes, discounts and bank fees are debited to Buyer and are immediately due and payable in cash. The surrender of notes or checks is not deemed to be payment in cash; therefore, discounts are excluded in any case.
- 4.6. If it becomes apparent after the conclusion of the contract that, due to a deterioration of Buyer's financial situation, Buyer will not be able to meet its payment obligations on time, we shall be authorized to retain our deliveries until the payment has been made (payment on advance or on delivery in cash) or a sufficient payment guarantee has been provided. In this case, we are also entitled to cancel any payment periods previously granted. We are entitled to demand cash payment in exchange for returning any notes with later due dates whose terms may still be running.
- 4.7. Buyer assumes the risk of devaluation of the contractual currency.

5. Delivery and Acceptance

- 5.1. Unless otherwise expressly agreed in writing, our deliveries are CPT.
- 5.2. The delivery time we specify does not begin until all technical issues are resolved. The specified delivery times are merely approximate except when they have been confirmed as fixed in writing and expressly. The specified delivery dates refer to the dates of shipment of the goods. Our delivery obligation is suspended for as long as Buyer is in arrears of an obligation from the continuous business relationship.
- 5.3. 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.
- 5.4. Buyer is cognizant 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 thus always entitles us to deliver up to 5% more or fewer goods.
- 5.5. For special orders pursuant to section 8, we are entitled to another 10 % overdelivery or underdelivery in addition to the 5 % specified in section 5.4, for a total of 15 %. For silo goods, we are entitled to another 15 % overdelivery or underdelivery in addition to the 5 % specified in section 5.4, for a total of 20 %. The final prices due may vary accordingly.
- 5.6. We are entitled to effect partial deliveries to the extent that these are reasonable to Buyer.
- 5.7. If Buyer sets a grace period following our default, Buyer is entitled to rescind the agreement upon the expiry of that period if the default is not remedied. Damages claims, if any, are subject to section 12 of these terms and conditions of sale.
- 5.8. If Buyer defaults on acceptance or culpably breaches other duties of cooperation in executing the purchase agreement, we are entitled to demand compensation for the resulting damages including any additional expenses and to release ourselves from our obligation to deliver by storing the goods at Buyer's risk and for Buyer's account.
- 5.9. If the transport of the goods to Buyer is permanently or temporarily impossible in whole or in part for reasons beyond our control, the purchase price for the goods is due nevertheless; in this case we are entitled to place the goods in storage at Buyer's risk and for Buyer's account.
- 5.10. If delivery is prevented or substantially impeded by force majeure, natural catastrophes, operational disruptions, shortages of energy or raw materials, strike, lockouts, traffic congestion, orders of higher authority, or other events beyond our control, the agreed delivery periods are extended for the duration of the impediment plus a reasonable warmup period. The delivery periods are extended as well if our suppliers do not supply us, do not supply us on time, or supply us incompletely without our fault, and it is impossible or unreasonable for us to procure the goods elsewhere. If the impediment lasts longer than two months, both sides are entitled to rescind this agreement with respect to the unfulfilled part hereof. If the delivery period is extended or if the obligation to supply drops pursuant to this paragraph, Buyer may not demand damages therefor.

6. Packing

Deliveries in loan packaging are subject to our special terms and conditions, which we are happy to send on request. Commercial reuse of disposable containers and packaging materials is prohibited except if the company logo and name and the product designation have been rendered unrecognizable.

7. Defects

- 7.1. Defects are remedied free of charge by the return and replacement of the defective article (replacement) or by subsequent improvement (remediation) at our option. In the event of remediation, we assume all necessary expenses for purposes thereof, including in particular costs for shipping, tolls, labor and materials, to the extent they are not increased because the subject of purchase was moved to a location other than the place of destination. If we fail to discharge these duties within a reasonable grace period set in writing, Buyer may demand a reduction of the purchase price (abatement) or, if the defect qualifies as a major defect, rescind the contract (rescission). The Buyer's damages claims are subject to section 12.
- 7.2. The burden of proof regarding the fact that the article was defective upon delivery lies with Buyer.
- 7.3. Buyer's warranty rights are subject to the performance of its statutory obligations of inspection and objection. Buyer undertakes to inspect the goods – by means of sample processing if necessary – immediately upon receiving them, but in any case before they are further processed, transported, or resold, in order to determine whether the goods delivered are in good condition and fit to be used for their agreed purpose. Written notice of any defects in the character, quality and/or quantity of the goods which become apparent upon inspection must be furnished in writing, by facsimile communication or email promptly, but not later than within 8 days from receipt of the goods, or for hidden defects promptly upon their discovery. The defects must be described so that we are able to verify; the order date, invoice number, production number and shipping number must be provided. The goods are deemed accepted and Buyer's warranty and damages claims as well as claims on the grounds of error are precluded if Buyer fails to give notice or does not furnish the notice in due time as provided herein. The recognition of objections of any kind is subject to Buyer's proper storage of the goods subsequent to their delivery.
- 7.4. An objection covers only the article identifiably objected to; it does not affect Buyer's acceptance obligation with respect to contractual batches yet to be delivered.
- 7.5. Goods to which an objection has been made may be returned only to the address we have specified and only if we have not picked them up from Buyer within a reasonable time despite two separate requests.
- 7.6. Any warranty claims are time-barred in 1 year, except Buyer claims for damages (i) caused intentionally or by gross negligence or (ii) arising out of death, injury to body or health.

8. Special Orders

Special orders for goods custom-made to Buyer's specifications are subject to the provisions of the Austrian civil law, in particular sections 1165 et seqq. of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB), unless otherwise provided in these terms and conditions of sale.

9. Information and Advice

Information about the possibilities for processing and using the products we sell, technical advice, and other information, including legal information related to patents, is not binding and does not relieve the Buyer from undertaking his own investigations and tests. We assume no liability for damages in this regard.

10. Reservation of Title

- 10.1. We reserve title to the delivered goods until full payment of the purchase price. The Buyer stores the goods owned by us on our behalf and separately from his goods and goods of third Parties. Upon request the Buyer shall give us all information necessary to enable us to locate the goods owned by us in his possession.
- 10.2. Buyer is entitled to resell the reserved goods in the ordinary course of business; however, Buyer is prohibited from pledging the reserved goods or assigning them by way of security. Regardless of whether the subject of purchase is resold without or subsequent to processing, Buyer hereby assigns to us all its claims in the amount of the invoice amount which accrue against a third party as a result of the resale of reserved goods. Upon the resale of reserved goods, Buyer shall clearly indicate the assignment of claims in its accounting records and in its invoices. We hereby accept this ex ante assignment. Notwithstanding the assignment, Buyer reserves the right to collect receivables until our rescission. We are entitled to rescind

if Buyer defaults on its payment obligations, or if we become aware of circumstances likely to substantially diminish Buyer's creditworthiness (bankruptcy petition, suspension of payment, etc.). If the conditions for the exercise of the rescission right are satisfied, Seller undertakes at our request to immediately disclose the claims assigned and the debtors, give all the information necessary for collecting the receivables, hand over the associated documents to us, and notify the debtors of the assignment. We are also entitled to serve notice of assignment upon debtors and to collect receivables if the conditions for our rescission are satisfied.

- 10.3. Buyer undertakes to process the reserved goods for us, without us incurring any obligations therefrom. Buyer's expectant right continues in the remodeled object. If reserved goods are processed with other items not belonging to us, we acquire co-ownership of the new property in proportion to the value of the reserved goods relative to the other processed items at the time of processing. The same applies to cases where reserved goods are commingled or combined with other items not belonging to us. If Buyer acquires sole ownership of the new property because the items belonging to the Buyer can be considered the principal property, the contract parties agree that Buyer will grant us co-ownership of the new property in proportion to the value of the reserved goods processed, commingled and/or combined. Buyer undertakes to keep in custody the new property for us at no charge. If reserved goods are resold together with other goods, regardless of whether without or subsequent to processing or commingling, the ex ante assignment provided hereinabove is effective only in the amount of the value of the reserved goods resold together with the other goods.
- 10.4. As long as we are entitled to sell reserved goods, we may do so freely on the open market.
- 10.5. We undertake to release the securities to which we are entitled under the provisions hereinabove at Buyer's request at our option to the extent that the realizable value of the securities exceeds the secured claims not only temporarily by more than 10 %, or its face value exceeds the secured claims not only temporarily by more than 50%, our right to choose the securities to be re-leased is reserved.
- 10.6. Buyer undertakes to notify us immediately of any measures by third parties to carry out compulsory execution against the reserved goods or the assigned claims, and to specify the documents that are necessary for intervention. Buyer undertakes to reimburse us the costs of successful intervention insofar as the third party is unable to reimburse us our costs.
- 10.7. Insofar as the applicable statutory provisions of the state in which the goods are delivered in order to effectively protect our title of the goods require the performance of special preconditions, e.g. a registration of our rights or any security right, Buyer is obliged to investigate the legal situation, to inform us accordingly and – in coordination with us – to issue the performance of the preconditions, e.g. such registration for our benefit.
- 10.8. Insofar as the retention of title or the assignment in the context of the extended reservation of title according to sections
- 10.1. and 10.2. above is ineligible or not executable according to the applicable statutory provisions of the state in which the goods are delivered, Buyer will provide us with an equivalent valid security right, e.g. a security interest. The object and the scope of such a security right are subject to the covenant of the parties. Buyer will provide evidence that such a security right has been validly issued for our benefit.

11. Trademark Rights

Many of the goods we deliver are furnished with the manufacturer's label. If such goods are processed, the use of the manufacturer's label in association with the resulting product without the manufacturer's written consent is prohibited. That applies to all stages of processing. The manufacturer's consent is subject to the fulfillment of all formal requirements under trademark law, but moreover it is subject to the manufacturer's approval of the processing method used. Buyer must procure the manufacturer's consent itself and for its own account.

12. Liability

- 12.1. Our liability for damages resulting from intentional conduct or gross negligence, failure to deliver a guaranteed quality of an item, initial inability to perform, or subsequent impossibility through our fault, or in case of the culpable breach of material contractual duties, is determined according to the applicable laws; the same applies where Buyer is entitled to demand damages in lieu of performance. Our vicarious liability for our agents and servants is determined exclusively by the applicable laws (sections 1313a and 1315 of the Austrian Civil Code). We otherwise exclude liability subject to section 12.4 hereinbelow. A „material“ contractual duty within the meaning of these terms and conditions of sale exists whenever we culpably violate a contractual obligation whose performance is necessary to execute the contract properly and whose proper performance the Buyer relies on and may rely on because it constitutes a formative part of the agreement.
- 12.2. We assume liability for losses not due to intentional conduct or gross negligence only to the extent they are foreseeable and typical of the contract. Our liability for lost profit, wasted expenses and other indirect losses and consequential damages in such cases is excluded.
- 12.3. Unless a shorter period is provided by law for the individual case, claims pursuant to 12.1 – if not based on intentional conduct – become time-barred twelve months from the end of the year in which Buyer obtained or without gross negligence could have obtained knowledge about the loss and about the person who owes compensation for it. Without regard to knowledge or negligent ignorance, in any case the claims become time-barred after a period of five years after they arise. The liability for defects is subject to section 7.6 herein.
- 12.4. The limitations and exclusions of liability in subsections 12.1 to 12.3 hereinabove do not apply to personal injury (life, body, health) or liability under the Product Liability Act (Produkthaftungsgesetz). Those cases are subject to the applicable laws.
- 12.5. To the extent our liability is excluded or limited, this also applies to personal liability on the part of our salaried employees, workers, staff members, agents, and servants.

13. Other

- 13.1. The place of performance is the location of our registered office unless otherwise stated in the order confirmation. For all disputes arising from or in relation to the contractual relationship with Buyer, the court having factual and local competence at the place of our registered office in Austria shall have exclusive jurisdiction. This also applies to claims arising from checks and notes.
- 13.2. Our contractual relationship with Buyer shall be governed by the laws of Austria excluding the rules of conflict of laws. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
- 13.3. Should one or more of the provisions hereinabove be or become ineffective in law, it will not affect the effectiveness of the remaining provisions. The ineffective provision will be re-interpreted so as to effectuate its intended purpose to the extent permitted by law. The same applies to any loophole herein.
- 13.4. In case of discrepancies between the German and the English version of these Standard Terms and Conditions of Sale, the German version shall prevail.