

General Terms and Conditions MKB Metall- und Kunststofftechnik Barchfeld GmbH

1. Application of Terms and Conditions

(1) Deliveries, services and offers provided by the Supplier are governed by these General Terms and Conditions only. They therefore also apply to all future commercial relationships, even if they are not specifically agreed again. These terms and conditions are deemed accepted on receipt of the goods or service at the latest.

(2) Our customers' terms of purchase apply only insofar as they do not contradict our General Terms and Conditions. We are entitled to assign any claims arising under our commercial relationship.

2. Offer and Contract Conclusion

(1) The Supplier's offers are subject to confirmation and not binding. Acceptance declarations and all orders must be confirmed by the Supplier in writing by telex or fax to be legally effective. The same applies to additions, amendments or ancillary agreements. (2) The Supplier's sales staff is not authorized to make oral ancillary agreements or to provide oral assurances, which go beyond the content of the written contract.

(3) Any documentation in relation to the offer, such as images, drawings, weight data and measurements are approximate only, unless specifically described as binding. The Supplier reserves the right of ownership and copyright in any cost estimates, drawings and other documents. These may not be made accessible to third parties. (4) When using the supplied goods, third party industrial property rights must be observed.

3. Price

(1) Unless stated otherwise, the Supplier considers the prices contained in its quotations as binding for a period of 30 days from their respective date. Decisive are the prices stated in the Supplier's order confirmation plus relevant statutory value added tax. Additional deliveries and services will be charged separately.

(2) Unless agreed otherwise, prices are ex works or ex supplier's warehouse including normal packaging.

4. Delivery and Service Time

(1) Delivery dates or times, which may be agreed as binding or non-binding, must be recorded in writing.

(2) The delivery time commences on dispatch of the order confirmation, but not before submission of any documents, permits, approvals, which must be procured by the Customer, and not before receipt of the agreed payment.

(3) The delivery time shall be deemed complied with, if the delivery item has left the works prior to its expiry or if the readiness for dispatch has been notified.

(4) The Supplier is not liable for delivery and service delays due to force majeure and due to events, which make delivery significantly more difficult or impossible for the Supplier – this includes, but is not limited to strike, lock-out, official orders etc., even if they incur at suppliers of the Supplier or their sub-suppliers – even if delivery times and dates were agreed as binding. These events shall allow the Supplier to delay the delivery or service for the duration of the interruption plus a reasonable period of adjustment or to fully or partially withdraw from the contract in respect of that part that has not been performed yet.

(5) In case of the aforementioned circumstances, the Supplier shall neither be liable, if they should occur during an already existing delay.

(6) If the interruption should last longer than 3 months, the Customer shall be entitled, after setting a reasonable grace period, to withdraw from the contract in respect of that part of the performance that was not yet performed. If the delivery time should be extended or if the Supplier should be released from its obligations, the Customer shall not be entitled to any claims for damages arising from same. In important cases, the Supplier will notify the Customer as soon as possible about the beginning and the end of such interruptions.

(7) The Supplier is at any time entitled to make partial deliveries or to perform partial services.

(8) Compliance with the delivery time is subject to the performance of the Customer's contractual obligations. As long as the Customer is in arrears in respect of its liabilities, the Supplier's duty to deliver may be suspended.

(9) If the agreed delivery time is culpably exceeded, there shall only be a delivery delay after a reasonable grace period was granted.

5. Passing of Risk

(1) The risk passes to the Customer on handover of the delivery to the person, who performs the transport, or once it has left the Supplier's warehouse for the purpose of dispatch. If the dispatch should become impossible or delayed without the Supplier's fault, the risk passes to the Customer with notification of the readiness for dispatch.

(2) Delivered objects, even if they have insignificant defects, must be accepted by the customer without prejudice to possible liability claims due to defects in the delivery.

(3) The aforementioned provisions in this section also apply to partial deliveries.

6. Warranty

(1) Any information about suitability, workmanship and use of our products, technical advice and other information is to the best of our knowledge, but does not release the Customer from performing its own tests and trials.

(2) The Supplier warrants that its products are free from manufacturing and material faults. The warranty period is 6 months.

(3) The Customer must immediately on delivery check the delivered goods for defects in respect of condition and intended use. Otherwise, the goods shall be deemed accepted. Complaints will only be considered, if they are submitted in writing together with evidence within one week of receipt of the goods – in case of hidden defects immediately after detection –, but not later than 6 months after receipt of the goods.

(4) If products are modified or parts exchanged or if consumables are used, which do not comply with the original specifications, any warranty expires, unless the Customer can refute a substantiated claim that it was one of these incidents that caused the defect.

(5) If the Customer notifies the Supplier that its products do not comply with the warranty, the Supplier has the option to demand

- repairs at the Supplier's premises to be performed by the Supplier.
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If the Customer demands that warranty works are to be performed at a place determined by the Customer, the Supplier may comply with this demand. In this case, parts, which are covered by the warranty will not be charged, while work time and travel costs must be paid to the Supplier at the standard rates.

(6) To perform repairs, which appear necessary in the Supplier's reasonable discretion, the Customer must allow the Supplier the requisite time and opportunity after notification. Otherwise the Supplier shall be released from its warranty for defects.

(7) If repairs should fail after a reasonable period of time, the Customer has the option to demand either a reduction of the payment, delivery of a faultless replacement part or rescission of that part of the contract that does not comply with the warranty.

Where the performance of the contract cannot be reasonably expected because of the warranty case – insofar as it is not affected by the warranty – the Customer may demand the rescission of the whole contract.

(8) The Supplier is not liable for damages arising from the following reasons:
Unsuitable or improper use, faulty assembly or commissioning by the Customer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable operating materials, replacement materials, chemical, electrochemical or electrical influences, unless they are due to the Supplier's fault.

Any liability is waived for subsequent consequences caused by modifications or maintenance work improperly performed by the Customer or third parties without prior approval of the Supplier.

(9) Only the direct Customer shall be entitled to make warranty claims against the Supplier. These may not be assigned.

(10) The foregoing sections contain the final warranty for the products to the exclusion of any other warranty entitlements. This does not apply to claims arising under quality assurances, which are intended to protect the Customer against the risk of consequential damages.

(11) Any other claims of the Customer, including without limitation claims for the compensation of damages, which did not occur on the delivered object itself, are excluded.

This disclaimer does not apply in case of intent, gross negligence on behalf of owners or officers and in case of culpable infringement of material contractual obligations. In case of culpable infringement of material contractual obligations, the Supplier shall – except in cases of intent and gross negligence on behalf of owners and officers – only be liable for damages, which are reasonable foreseeable in respect of contracts of this type.

(12) As far as permitted by law, the Supplier's obligation to pay damages for whatever legal reason shall be limited to the billed amount for the delivery, which was directly involved in the event causing the damage.

This does not apply in cases, where a mandatory unlimited liability is prescribed by law in case of intent or gross negligence.

7. Retention of Title

(1) Delivery of the goods expressly takes place under retention of title. The ownership of the goods, which are subject to the reservation of title, does not pass to the Customer until full payment of all receivables under the commercial relationship, including any receivables arising after conclusion of the contract. The Customer is under the obligation to notify the Supplier in a timely manner about third party interferences and to immediately notify the Supplier of any other impairment. (2) The acquisition of ownership on part of the Customer where the goods, which are subject to the reservation of title, are processed to form a new item, shall be excluded. Any processing takes place in the name of the Supplier and serves to secure the Supplier's entitlement to payment. As to the value of its entitlement, the processed goods shall take the place of the goods, which are subject to the reservation of title.

If, in case of processing, mixing or combining with third party goods the ownership title of such third parties remains intact, the Supplier shall acquire a co-ownership in the proportion of the invoice amounts of these processed goods.

(3) The Customer is allowed to process and resell the goods, which are subject to the reservation of title, only in the ordinary course of business. In case of resale, the Customer already now assigns for safety reasons any and all future demands, to which it will be entitled, or the Supplier's co-ownership share to the Supplier, irrespective of whether the goods, which are subject to the reservation of title, are processed or not or whether they are sold to one or more purchasers.

(4) If the sale includes other goods, which do not belong to the Supplier, the assignment of the purchase price entitlement shall only be to the amount of the entitlement. We will only make use of the granted authority to collect the entitlement, if the Customer does not make its payments or if bills of exchange or cheques are not honoured. In this case, the Customer must keep the incoming amounts separate on behalf of the Supplier and hand them over to the Supplier. The Supplier has the obligation to notify the Supplier of the debtors of the assigned demands as well as of the amounts of the owed monies and to handover to the Supplier all documents necessary to collect the debts and in particular to notify the debtors of the assignment. At the same time, any Customer's rights to further sell or process or to collect the proceeds shall expire. The supplier is then authorized to bring the goods, that are subject to the retention of title, back under its control.

If the value of the granted securities exceeds the demands by overall more than 20%, the Supplier is under the obligation to release the aforementioned securities on demand by the Customer and by option of the Supplier. The parties agree that a legal lien is acquired in the material, which is provided by the Customer to the Supplier for processing and which thus is in its direct or indirect possession. This lien applies to all claims of the Supplier against the Customer. The lien does also extend to future or conditional claims and expires as soon as the material leaves the direct or indirect possession of the Supplier with the consent of the Supplier. Statutory provisions apply to the enforcement of the lien, provided that the value of the lien was determined in a binding manner by an expert, that was determined by the Supplier.

8. Payment

(1) If we exercise our right under Item 1, (2) to assign claims arising from our commercial relationship, payments in accordance with the following sections may only be made with debt releasing effect to the Factor, to whom we have assigned the claims.

(2) Unless as agreed otherwise, the Supplier's invoices must be paid within 30 days after the invoice date without any deductions or within 14 days with early payment discount of 2%. The Supplier shall have the right, despite of any Customer's conditions to the contrary, to apply payments against older debts first and to notify the Customer about the type of crediting, that was applied. If costs and interest have already been incurred, the Supplier shall be entitled to set off the payment first against the costs, then the interest and last against the main demand.

(3) A payment shall only be deemed made once the Supplier has the amount at its disposal. In case of cheques, payment shall not be deemed made until the cheque has been cashed.

(4) Payment by bills of exchange must be approved by the Supplier. The Supplier's costs and expenses as well as the risk of timely presentation and protestation are fully incumbent upon the Customer.

(5) If the Customer should be at default, the Supplier shall be entitled to charge from the respective time interest at the rate charged by business banks for open current account loans plus value added tax. They can be set lower, if the Customer can prove a lower burden.

(6) If the Supplier should become aware of circumstances, which put the Customer's credit position in doubt, in particular, if a cheque is not honoured, if more than one liability (invoice) from the commercial relationship should be in default or if the Customer stops payments or if the Supplier should become aware of any other circumstances, which put the Customer's credit position in doubt, the Supplier shall be entitled to demand payment of the whole remaining debt, even if it has accepted cheques. In this case, the Supplier shall also be entitled to demand advance payments or the provision of the securities.

(7) The Customer shall only be entitled to offsetting, retention or reduction, even if defects are claimed or counterclaims are made, if such counterclaims are legally binding and undisputed. The Customer shall, however, be entitled to retention in respect of counterclaims arising under the same contractual relationship.

9. Design Changes

(1) The Supplier reserves the right to carry out design changes at any time. It is, however, not under an obligation to also perform such changes to products, that were already delivered.

10. Applicable Law, Jurisdiction, Severance

(1) These terms of business and the whole legal relationship between Supplier and Buyer are subject to the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

(2) If the Buyer is a merchant ("Kaufmann") for the purposes of the German Commercial Code ("Handelsgesetzbuch"), a legal entity under public law or a special fund under public law, exclusive venue for all disputes arising directly or indirectly under the contractual relationship shall be, at our option, the place of our registered offices or Hanover, Germany.

(3) If a provision in these terms of business or a provision of other agreements should be or become invalid, this shall not affect the effectiveness of any other provisions or agreements.

Valid as of March 2010