



Terms and conditions of sale and delivery

KÖVER GMBH & CO.KG

1. Validity

These terms and conditions of sale and delivery shall only apply towards entrepreneurs. Entrepreneurs within the meaning of these conditions are natural persons and legal entities or partnerships having legal capacity to contract, with whom a business relationship is entered into and which act in exercising their commercial or independent professional activity.

Our deliveries, services, offers and offer acceptances are made, also in the export business, exclusively based on these terms and conditions of sales and delivery. These shall also apply for all future business relations. These conditions are deemed as accepted no later than with the acceptance of the goods or service. Our previous terms and conditions of sale and delivery shall insofar cease to apply.

Counter confirmations of the customer by referring to his terms and conditions of business of purchase are hereby opposed.

2. Contractual offer, conclusion and change

Conclusion, changes or supplements to the contract and possible collateral agreements must be made in writing. The same shall apply for changes or supplements to these terms and conditions of sale and delivery and the change to this written form requirement.

Our offers are without obligation and non-binding. Our presentation of goods, in particular in the Internet, does not represent an offer. Drawings, diagrams, measurements, weights or other performance data are only binding if this is expressly agreed in writing.

When he orders the requested goods the customer declares his binding contractual offer. We are entitled to accept the contractual offer in the customer's offer in writing within 14 days from submission.

We shall immediately confirm the receipt of the customer's order. The confirmation of receipt only represents an acceptance of the contractual offer if we expressly declare this. The acceptance of an order by telephone does not represent a binding acceptance on our part.

3. Prices

Insofar as not otherwise stated, we are bound to the prices stated in our offers for 30 days from their date. Decisive are otherwise the prices stated in our order confirmation plus the respective applicable rate of value added tax. If the purchase price is not stated by us, the purchase price shall be the price listed in our actual price lists plus the respective applicable rate of value added tax, as valid at the time when the goods are delivered.

Insofar as not otherwise stated in the offer or in the price lists or insofar as not otherwise agreed in writing between the customer and our company in writing, our prices apply ex works Buxtehude (clause "ex works", Incoterms 2000), however not packed.

We reserve the right after timely notification of the customer and before execution of the delivery of the goods, to raise the price of the goods to the extent as necessary owing to the general price development, which is beyond our control, (e.g. exchange rate fluctuations, currency regulations, changes to customs duties, substantial increase in material or production costs) or owing to price changes of suppliers.

Insofar as there are more than five months between conclusion of the contract and agreed and/or actual delivery date, our prices applicable at the time of delivery or provision shall apply; if the last stated prices exceed the initially agreed prices by more than 10 per cent the customer is entitled to cancel the contract. The regulation in Par. 3 shall have precedence if the goods price has to be increased owing to a price development which is beyond our control.

Additional deliveries and services on our part are charged separately. Insofar as we declare in writing that we are willing to send the goods to other locations (cf. Subclause 8.), the customer must bear the costs for transport, packaging and insurance.

4. Terms of payment

Pro rata costs for the production of tools are invoiced to the customer separately. They are due and payable immediately including value added tax and without deduction of cash discount. Incidentally invoice amounts including value added tax are to be paid within 30 days after invoice date. In case of payment within 14 days we grant 2% cash discount.

If the customer is in default of payment we are entitled to demand interest from the time concerned in the amount of 8 percentage points above the base lending rate as flat rate damages. The interest is then to be estimated lower if the customer proves a lower burden; we are permitted to prove higher damages.

Payments are to be made by bank transfer. We expressly reserve the right to refuse cheques. Bills of exchange are not accepted. If it is agreed in writing that the customer has to open a documentary letter of credit through a bank, the letter of credit will be opened in line with the general directives and customs for documentary letters of credits, Revision 1196, ICC-Publication No. 500.

We are entitled to initially set payments off against its older debts despite other provisions of the customer and shall inform the customer about the type of settlement. If costs and interest have already been incurred we shall be entitled to initially set the payment off against the costs, then the interest and finally the main payment.

If we become aware of circumstances which raise doubts about the creditworthiness of the customer, he in particular suspends his payments then we shall be entitled to deem the whole residual debt due and payable. In this case we are also entitled to make deliveries against cash on delivery or demand advance payments or provisions of security.

The customer is only entitled to set-off, retention or reduction even if complaints of defects or counter claims are asserted, if the counter claims have been declared final and absolute or are undisputed. However, the customer is entitled to retention even owing to counter claims from the same contractual relationship.

5. Reservation of title

We reserve the right to the title of the delivered object until satisfaction of all claims (including all balance claims from current account), to which we are entitled for all legal grounds against the customer now or in future. We undertake to release the securities to which we are entitled insofar upon request of the customer, if their value exceeds the claims to be secured, insofar as these have not yet been settled, by more than 20 %.

The processing or conversion of the delivered object (hereinafter also "Reserved Goods") by the customer is always undertaken on our behalf, however without obligation for us. If the delivered object is processed with other objects not belonging to us, we shall acquire the co-ownership of the new object as a ratio of the value of the delivered object to the other processed objects at the time of processing. Incidentally, the same applies for the object produced by processing as for the Reserved Goods. If the delivered object is inseparably combined or mixed with other objects not belonging to us, we shall acquire the ownership of the new object as a ratio of the value of the delivered object to the other combined or mixed objects at the time of combination or mixing. If the combination or mixing is carried out to the extent that the object of the customer is to be seen as main object it is deemed as agreed that the customer assigns us pro rata co-ownership. The customer shall keep the sole ownership or the co-ownership in safekeeping for us free of charge.

The customer is entitled to process, convert, combine, mix and sell the Reserved Goods in proper business transactions. Attachments or assignments for security by the customer are not permitted. The claims incurred from the resale or any other legal grounds (e.g. insurance, illicit act) regarding the Reserved Goods (including all balance claims from current account) to which the customer is entitled against his buyers or against third parties, are hereby now already assigned to us by the customer in full as a precautionary measure. This shall apply independent of whether the delivered object is resold without or after processing. We accept the assignment. Our authorization to personally collect the claim, remains unaffected hereby; however we undertake not to collect the claims as long as the customer properly satisfies his payment obligations and is not in default of payment. In this case we can demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In such a case we are further authorized to inform the debtor of the claim assignment in the name of the customer.

In case of accesses of third parties to the Reserved Goods, in particular attachments, the customer shall refer to our ownership and inform us immediately so that we can assert our property rights. In addition, the customer shall inform us of possible damages or the destruction of the goods, a change of possession of the goods as well as his own change of address immediately.

In case of behaviour on the part of the customer which is contrary to the contract, in particular in case of default of payment, we are entitled to take the delivered object back; the customer is obliged to hand this over. If we take back the delivered object this shall always be deemed a cancellation of the contract. The attachment of the delivered object is also always deemed a cancellation of the contract. In addition we are entitled to cancel the contract and demand that the goods be handed over in case of a breach of a duty for notification or reporting of the customer in connection with the reservation of title (see Par. 4) if it is no longer deemed reasonable for us to continue the contract.

6. Rights of the buyer owing to defects

The customer must inspect the delivered goods immediately after hand-over to him personally at the Buxtehude plant or in the event of consignment after hand-over to the assigned person for transport (cf. Subclause 8) at the Buxtehude plant for deviations in quality and quantities. Recognisable defects are to be reported to us in writing within a period of one week from actual hand-over to the customer personally or the assigned person for transport; otherwise the assertion of claims for defects is excluded. The latter shall also apply if hidden defects are not reported to us within a period of one week from discovered in writing. The customer shall bear the full burden of proof for all claim pre-requisites, in particular for the defect itself, for the time of determination of the defect and the timely nature of the complaint of the defect.

We shall initially assume warranty for defects of the goods at our choice through subsequent improvement or substitute delivery. If the subsequent performance fails after a reasonable period of time, the customer can principally at his choice demand reduction of the payment or cancellation of the contract and compensation. In case of only slight defects the customer is not entitled to a right of cancellation. If the customer chooses compensation the liability restrictions according to Subclause 7 shall apply.

The warranty period is one year from delivery of the goods. This deadline shall not apply if we are responsible for gross negligence, in the event of injuries to body and health which can be attributed to us and with the loss of the customer's life. A liability according to the Product Liability Act remains unaffected thereby.

We give no guarantee towards the customer in the legal sense.

Only the direct customer shall be entitled to claims against us owing to defects, these claims are not transferable.

7. Liability restrictions

Claims for damages against us are excluded independent of the type of breach of duty, including illicit act, insofar as there is no wilful intent or gross negligence. In case of breach of essential contractual duties we are liable for all negligence, however only up to the amount of the foreseeable direct average damages which are typical as per contract unless a condition property which we guaranteed particularly is intended to protect the customer against such damages.

Insofar as our liability is excluded or restricted, this shall also apply for our employees, workers, representatives and vicarious agents.

The above liability restrictions and exclusions shall not apply for claims against us incurred owing to malicious conduct, as well as with a liability for guaranteed condition properties, for claims according to the Product Liability Act and damages from the injury to life, body or health. Possible errors made by mistake in our sales prospectuses, price lists, offer documents or other documentation can be corrected by us without it being possible to hold us responsible for damages from these errors.

8. Delivery, consignment, passing of risk

The delivery is carried out to the extent that we make the goods available to the customer at the Buxtehude plant at the agreed time or within the agreed deadline or, in the absence of agreement about the time, at the time customary for delivery of the goods (delivery) without loading onto the means of transport for pick-up. The customer shall be informed in a reasonable manner at which location and at which time the goods will be made available to him. The customer bears the risk of accidental deterioration and the accidental loss of the goods in particular if these have been delivered to him. The delivery is made incidentally based on „ex works“ Buxtehude (Incoterms 2000), however not packed.

Should we not deliver the goods to our business premises owing to a special written agreement with the customer, but send the goods, then the risk of accidental deterioration and accidental loss of the goods shall pass to the customer when they are handed over to the transport company (carrier, freight forwarder, rail or other persons) at the Buxtehude plant. Route and means of despatch are left to our choice in the absence of missing written agreements in this respect. If we work as carrier, the General German Carrier Conditions of 2002 shall apply. We shall provide pallets after written agreement. These are to be returned immediately after use and may not be used otherwise. Pallets, which are not returned to us within two months after hand-over of goods in a usable condition and free our plant, shall be charged to the customer at the customary conditions.

9. Periods for delivery and acceptance

Delivery dates and/or deadlines must be made in writing.

Delays in delivery and service owing to force majeure and owing to events, which make it considerably more difficult or impossible for us to deliver for a not just temporary period of time – in particular strike, official orders etc., even if they occur at our suppliers -, shall not be deemed our responsibility even in case of binding agreed deadlines and dates. They entitle us to postpone the delivery or service by the duration of the impediment plus a reasonable start up time or to cancel the contract either in part or in full owing to the not yet satisfied part. If the impediment lasts longer than three months, the customer is entitled after setting a reasonable final deadline to cancel the contract with regard to the not yet satisfied part. The customer cannot not derive any claims for damages if the delivery time is extended or if we are released from our obligation. We can only refer to the stated circumstances if we inform the customer immediately. Any deadlines set and declarations of cancellation by the customer towards us must be made in writing.

If a time delay is only limited to a delivered part, a possible right of cancellation of the customer is also limited to the part concerned.

We are entitled to part deliveries and part services at all times unless the part delivery or part service is not of interest for the customer as objectively proven.

If the customer is in default of acceptance we are entitled to demand reimbursement of the damages suffered by us; with occurrence of the delay in acceptance the risk of accidental deterioration and accidental loss shall pass to the customer. In this case we can store the goods at the risk and costs of the customer.

10. Choice of law, place of jurisdiction, place of performance and general provisions

The law of the Federal Republic of Germany shall apply exclusively for these terms and conditions of sale and delivery and the whole legal relations between the customer and us. The provisions of the UN law on purchases shall not apply.

If the customer is a merchant, legal entity under public law or special assets under public law, the exclusive place of jurisdiction for all disputes ensuing directly or indirectly from the contractual relationship is our registered seat. The same applies if the customer has no general place of jurisdiction in Germany or place of residence or usual place of residence are not known when the action is filed. Moreover, we are entitled to also take action at the court of jurisdiction for the customer or at any other court, which can have jurisdiction according to national or international law.

Place of performance for all deliveries is Buxtehude.

We reserve the property rights and copyrights to catalogues, diagrams, drawings, sketches and other documents. They may not be made accessible to other without our permission and are to be returned to us immediately upon request.

The assignment of claims, to which the customer is entitled against us from the business relationship, is excluded.

The customer agrees that his data are used for purposes of market research or customer information according to § 28 Par. 3 No. 3 of the Federal Data Protection Act; he is entitled to oppose this use when placing the order or subsequently by written declaration on the order or towards **Köver GmbH & Co. KG, Estetalstraße 45- 47, 21614 Buxtehude**.

Should individual provisions of the contract with the customer including these terms and conditions of sale and delivery be or become invalid either in part or in whole, this shall have no effect on the validity of other provisions. The regulation which is invalid either in whole or in part is to be replaced by a regulation, the commercial success of which shall as far as possible satisfy that of the invalid provision.

Köver GmbH & Co. KG Metall- und Kunststoffverarbeitung

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