

## **General Terms and Conditions of Sale and Delivery of Klein GmbH**

### **§ 1 Scope of application**

- (1) These terms and conditions of sale apply exclusively towards entrepreneurs, public-law entities or public-law funds in the sense of § 310 sub-section 1 German Civil Code. Contradictory terms of Customer or ones deviating from our terms and conditions of sale shall only be acknowledged if we expressly approve validity in writing.
- (2) These terms and conditions of sale shall also apply to all future business with our customers with whom we are in a permanent business relationship.

### **§ 2 Conclusion of contract**

- (1) Our quotations shall be subject to change without notice and shall lose their validity following one month.
- (2) The contract shall be concluded by ordering by Customer (quotation) and actual performance or transmission of a written order confirmation (acceptance) by Klein GmbH.
- (3) This shall apply accordingly to orders placed with our representatives.

### **§ 3 Documents provided**

We reserve ownership and copyrights to all documents provided to Customer in connection with the placement of the order, such as descriptions, plans, diagrams and software. These documents may only be made accessible to third parties if we have expressly granted our consent in writing.

### **§ 4 Prices**

- (1) To the extent not agreed to the contrary, our prices shall apply ex works exclusive of packaging and value added tax to the amount valid at the time.
- (2) Klein GmbH reserves the right to increase the prices if costs rise after conclusion of the contract, in particular due to wage agreements or increases in material prices.
- (3) The costs of packaging shall be invoiced separately and charged at cost price.
- (4) Following carriage-paid return and defect-free condition, ⅓ of the amount charged for boxes shall be credited again.
- (5) Collico containers belonging to the railways shall be emptied and returned without delay. Rental charges by the railways shall also be charged pro rata for the period of all and any arrears.

### **§ 5 Payment and settlement**

- (1) To the extent not agreed to the contrary, the purchase price shall be due for payment without any deduction within 30 days of delivery. Klein GmbH grants 2% discount on invoice amounts settled within 10 days of delivery. In cases of advance payment and cash on delivery, 3% discount is granted.
- (2) For new customers, deliveries abroad or if Customer is in arrears, Klein GmbH reserves the right to demand advance payment.
- (3) Customer shall fall into arrears after 30 days, after which Klein GmbH shall be entitled to claim 8 percentage points above the base rate of interest at the time as default interest. Klein GmbH expressly reserves the right to charge higher default interest.
- (4) The right to offset shall only accrue to Customer for legally effective or undisputed counterclaims. A right of retention may only be claimed by Customer to the extent that the counterclaim is based on the same contractual relationship.

### **§ 6 Delivery and service**

- (1) Delivery and service periods shall be deemed guidelines and shall not be binding. The start of the delivery period stated by us shall presuppose punctual and proper performance of Customer's duties. The right to the objection of unperformed contract shall remain reserved.
- (2) The passage of risk pursuant to § 7 shall be decisive for compliance with the delivery and service periods.
- (3) Part services and deliveries shall be admissible.
- (4) In cases in which Klein GmbH is prevented from procurement, manufacture or delivery of the goods or rendering of the service as a result of industrial disputes, force majeure or other good and sufficient reasons, the delivery and service periods shall be extended. A good and sufficient reason shall also be the clarification of technical questions necessary for performance of the order.
- (5) If Customer falls into arrears with acceptance of the services or culpably breaches other cooperation duties, Klein GmbH shall be entitled to demand reimbursement of the damage incurred, including all and any additional expenditure. Further-reaching claims shall remain reserved. During arrears in acceptance, the statutory regulation of § 300 German Civil Code shall apply.
- (6) If Klein GmbH falls into arrears for reasons for which it is answerable, Customer shall have the right to demand a lump-sum compensation for arrears to the amount of 2% of the order value for each completed week.

### **§ 7 Passage of risk**

The risk of chance destruction or chance deterioration of the goods shall pass to Customer at the moment at which the consignment is provided for dispatch or has been collected for dispatch.

### **§ 8 Retention of title**

- (1) Klein GmbH reserves title to the delivered object until complete payment of all claims from the delivery contract. This shall also apply to future deliveries, even if Klein GmbH does not always make express reference to this.
- (2) As long as ownership has not passed to Customer, it shall be obliged to treat the object of purpose carefully. In cases of high-value goods, it shall be obliged to insure them adequately at its own expense against theft, fire and water damage at the new value.
- (3) Insofar as the object of purchase is processed with other objects not owned by Klein GmbH, Klein GmbH shall acquire co-ownership of the new object in the ratio of the objective value of our object of purchase to the other processed objects at the time of processing. The same shall apply to a case of blending.

- (4) Customer shall be entitled to resale of the conditional commodities in normal business dealings as long as it is not in arrears in payment towards Klein GmbH. Customer hereby assigns its claims from the resale of the conditional commodities to Klein GmbH to the amount of the final invoice amount agreed with us including valued added tax. We revocably authorise Customer to collect the claim assigned to us. Upon request by us, Customer shall disclose the assignment and provide us with the necessary information and documents.
- (5) In the event of third-party interventions, Customer shall make reference to ownership by Klein GmbH and shall inform Klein GmbH without delay.
- (6) Klein GmbH engages to release the collateral accruing to it by request of Customer to the extent that its value exceeds the claims to be secured by more than 20%.

#### **§ 9 Warranty and notification of defects**

- (1) Claiming warranty rights by Customer shall presuppose that it has properly complied with its examination and notification duties owed according to § 377 German Commercial Code.
- (2) Claims from defects shall not exist in cases of only inconsiderable deviation from the agreed property, only inconsiderable impairment of the usefulness, natural use or wear and tear and damage originating after the passage of risk as a result of defective or negligent treatment, excessive strain, unsuitable operating equipment, defective construction work, unsuitable construction ground or as a result of specific external influences not presupposed according to the contract. If maintenance work or changes are carried out improperly by Customer or third parties, there shall likewise be no claims from defects for them and the consequences resulting therefrom.
- (3) Claims from defects shall be barred 24 months after provision of the goods delivered by us to our customer. The aforementioned provision shall not apply to the extent that law provides for longer periods pursuant to § 438 sub-section 1 no. 2 German Civil Code (buildings and objects for buildings) and § 634 a sub-section 1 German Civil Code (construction defects). Approval shall be obtained from Klein GmbH before the goods are returned.
- (4) If the delivered goods manifest a defect which existed at the time of passage of risk, despite all the care taken, we shall rework the goods or supply replacement goods, at our choice, subject to a punctual and proper notification of defects.
- (5) Any notification of defects, reminder or setting of a period shall require written form in order to take effect. A period for reworking must amount to no less than two weeks.
- (6) In the event of a justified notification of defect, Customer shall support Klein GmbH by specific description of the defect, by granting the time and opportunity for examination and remedying of the defect on site and, if necessary, by enabling remedying of the defect in our works.
- (7) In the event of reworking, new delivery or cancellation, Klein GmbH shall bear the transport, travel, work and material costs as well as its own examination costs. Customer's claims on account of the aforementioned expenditure necessary for the purpose of subsequent performance have been ruled out to the extent that it has been increased because the goods supplied by us have subsequently been taken to a place other than Customer's branch establishment, unless this transportation corresponds to the intended use.
- (8) Customer shall bear the additional expenditure caused by a breach of the obligation from sub-section 5 or by the fact that the remedying of the defect is made more difficult by amendment of the delivery or service.
- (9) Klein GmbH shall be entitled to demand a suitable remuneration for the examination of the object if it is subsequently seen that no defect exists.

#### **§ 10 Damages**

- (1) Regardless of the legal reason, Klein GmbH shall only be liable to damages in cases of assurance of properties, malice aforethought, gross negligence or breaching of essential duties securing achievement of the purpose of the contract. Assurances of properties shall require written form.
- (2) Liability from the Product Liability Act and for personal damage shall remain unaffected.

#### **§ 11 Product liability**

Our products have been set up for administration by experts. If the products are forwarded to third parties, Customer shall ensure the product back-ups necessary in each case, above all the product information. In the event of damage to the product, Customer shall be liable for this duty and the duty from § 9 sub-section 1.

#### **§ 12 Final provisions**

- (1) The present contract and the entire legal relationships of the parties shall be governed by the law of the Federal Republic of Germany, ruling out UN purchase law (CISG).
- (2) Place of performance and exclusive place of jurisdiction for all disputes from the present contract shall be our headquarters in Wittlich, to the extent that nothing to the contrary results from the order confirmation.
- (3) All agreements made between the parties for the purpose of performance of the present contract have been recorded in writing in the present contract. Amendments and supplements shall require written form in order to take effect.
- (4) If individual provisions of the present contract are or become ineffective or if a loophole is found in contents of the contract, the remaining provisions shall remain unaffected. The ineffective regulation shall be replaced by the one coming closest to the commercial purpose of the ineffective regulation or filling the loophole, as the case may be.

#### **Customer information:**

Online Dispute Resolution under Article 14 (1) of the ODR Regulation: The European commission provides a platform for online dispute resolution (OS), which can be accessed here: [ec.europa/customers/odr](http://ec.europa/customers/odr). We are ready to participate in a customer dispute under the VSBG in the event of a legal dispute: [www.verbraucher-schlichter.de/fall-zur-schlichtung-einreichen](http://www.verbraucher-schlichter.de/fall-zur-schlichtung-einreichen).