

General Terms and Conditions of Sale of Hermann KREBS GmbH

Clause 1 General, scope of application

- (1) Our Terms and Conditions of Sale shall apply exclusively; we shall not accept any conditions stipulated by the customer which contradict or deviate from our Terms and Conditions of Sale unless we have expressly given our written consent to their application. Our Terms and Conditions of Sale shall apply even in cases where we execute the delivery without making reservations despite being aware of contradicting or deviating conditions stipulated by the customer.
- (2) Our Terms and Conditions of Sale shall apply only in business dealings with respect to entrepreneurs within the meaning of Section 14 BGB (German Civil Code). **There shall therefore not be a right of withdrawal pursuant to Section 312b BGB.**

Clause 2 Offer, offer documents

- (1) If the order qualifies as an offer pursuant to Section 145 BGB, we can accept the same, in the absence of an explicitly agreed period of commitment, within a period of 2 weeks.
- (2) We reserve property rights and copyrights to illustrations, drawings, calculations and other supporting documents. The same shall apply to written supporting documents which are marked “confidential”. Prior to their onward transmission to third parties, the customer must obtain our express written consent.

Clause 3 Prices, terms of payment

- (1) Unless stated otherwise in the order confirmation, our prices are to be understood “ex works”, exclusive of packing; the same shall be charged separately.
- (2) The statutory value-added tax is not included in our prices; its statutory amount will be shown separately in the invoice on the date of invoicing.
- (3) The deduction of a discount requires a specific written agreement.
- (4) Unless stated otherwise in the order confirmation, the purchase price (net of any deduction) shall become due and payable within 30 days of the invoice date. The statutory rules concerning the consequences of a delay in payment shall apply.
- (5) The customer shall be entitled to offsetting rights only when its counterclaims are either recognized by declaratory judgment, uncontested or accepted by us. Furthermore, the customer is entitled to exercising a right of retention to the extent that its counterclaim is based on the same contractual relationship.

Clause 4 Period of delivery

- (1) The delivery deadlines indicated by us are, as a matter of principle, to be understood as a non-binding forecast for the targeted period of delivery, unless a fixed deadline is explicitly confirmed for an individual case. The clarification of all technical issues is a condition precedent for the commencement of the period of delivery stated by us, even if a deadline has been explicitly confirmed.
- (2) In addition, a precondition for the fulfilment of our delivery obligations is the timely and proper fulfilment of the customer's obligation. The right to plead that the contract has not been fulfilled shall remain reserved.
- (3) If the customer is in default of acceptance or if it culpably infringes other duties to cooperate, we shall have the right to demand compensation for the damage thereby caused to us, including additional expenses, if any. The right to further-reaching claims is reserved.
- (4) If the preconditions set out in paragraph (3) are fulfilled, the risk of an accidental loss or an accidental deterioration of the purchase item shall pass to the customer as from the point in time when the default of acceptance or debtor's delay occurred.
- (5) We shall be liable pursuant to the statutory provisions if the underlying purchase contract is a contract where time is of the essence pursuant to Section 286 (2), subparagraph 4 BGB or of Section 376 HGB (German Commercial Code). We shall also be liable pursuant to the statutory provisions if as a consequence of a delay in delivery that is attributable to us the customer has the right to assert that its interest in the continued fulfilment of the contract has lapsed.
- (6) Furthermore, we shall be liable pursuant to the statutory provisions if the delay in delivery is caused by an intentional or grossly negligent violation of contract which is attributable to us; a default by our representatives or vicarious agents is attributable to us. If the delay in delivery is not caused by an intentional violation of contract which is attributable to us, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- (7) We shall also be liable pursuant to the statutory provisions if the delay in delivery that is attributable to us is caused by the culpable violation of a material contractual obligation; in such case, the liability for damages shall, however, be limited to the foreseeable, typically occurring damage. According to court rulings, an obligation is to be considered a material contractual obligation if its fulfilment is a precondition for the proper performance of the contract and the counterparty may generally rely on its fulfilment.
- (8) Besides, in the event of a delay in delivery, we shall pay a lump-sum compensation of 0.5% of the delivery value for each completed week of delay, up to of a maximum of 5% of the delivery value.
- (9) Further legal claims and rights of the customer shall remain reserved.

Clause 5 Passage of risk, packing charges

- (1) Unless stated otherwise in the order confirmation, delivery is agreed to be "ex works".
- (2) Transport packing and all other packing material pursuant to the Packing Ordinance shall not be taken back, with the exclusion of pallets. The customer shall be obliged to make arrangements for the disposal of the packing material at its own expense.
- (3) If the customer so desires, we shall have the delivery covered by a transport insurance. The costs arising in this connection shall be borne by the customer.

§ 6 Excess deliveries, short deliveries, partial deliveries

- (1) Partial deliveries shall be admissible to a reasonable extent. They shall be invoiced separately.
- (2) Production-induced excess deliveries or short deliveries shall be admissible within a tolerance margin of 10% of the total order quantity. The total price shall be adjusted accordingly.

Clause 7 Liability for defects

- (1) The customer may raise claims based on defect only if it has properly met its obligations of examination and complaint pursuant to Section 377 HGB.
- (2) To the extent that the purchase item has a defect, the customer shall, upon its option, be entitled either to a subsequent performance in the form of a removal of the defect, or to the delivery of a new item that is free from defects. For this purpose, the customer shall allow an adequate period of at least 2 weeks, depending on the individual case, from receipt of the notice of defect. In the event of the removal of the defect, we shall be obliged to bear all the costs which are required for the purpose of removing the defect, in particular transport costs, travelling expenses, labour and material costs provided that the said costs are not increased by the fact that the purchase item was carried to a place other than the place of performance.
- (3) If the subsequent performance fails, the customer shall be entitled to demand, upon its option, either a withdrawal or a reduction of the purchase price.
- (4) We shall be liable pursuant to the statutory provisions if the customer asserts claims for damages which are based on intention or gross negligence, including intention or gross negligence on the part of our representatives or vicarious agents. Unless we are charged with a deliberate violation of the contract, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- (5) We shall be liable pursuant to the statutory provisions if we commit a culpable violation of a material contractual obligation; in such case, the liability for damages shall, however, be limited to the foreseeable, typically occurring damage. According to court rulings, an obligation is to be considered a material contractual obligation if its fulfilment is a precondition for the proper performance of the contract and the counterparty may generally rely on its fulfilment.
- (6) If the customer is entitled to a claim for damages instead of the performance, our liability is, also within the framework of paragraph (3), limited to the compensation for the foreseeable, typically occurring damage.
- (7) The liability for a culpable injury to life, body or health shall remain unaffected; this shall also apply to the mandatory liability pursuant to the Product Liability Act.
- (8) Unless a deviating provision has been set forth above, the liability is excluded.
- (9) The period of limitation for claims based on defect shall be 12 months, counted from the passing of the risk.
- (10) The period of limitation for delivery recourse pursuant to Sections 478 and 479 BGB shall remain unaffected; the period is five years, counted from the date of handing-in the defective item.

Clause 8 Total liability

- (1) A further-reaching liability for damages other than the liability provided in Clause 6 is excluded, irrespective of the legal nature of the claim which is asserted. This applies in particular to claims for damages on account of culpa in contrahendo, on account of other violations of duties or on account of claims in tort for compensation of material damage pursuant to Section 823 BGB.
- (2) To the extent that our liability for damages is excluded or restricted, the same shall also apply to the personal liability for damages of our staff members, employees, collaborators, representatives and vicarious agents.

Clause 9 Retention of title

- (1) We shall retain title to the purchase item until all payments under the delivery contract have been received. If the customer's conduct is in violation of the contract, in particular in the event of a default in payment, we shall have the right to take back the purchase item. Our taking back the purchase item does not constitute a withdrawal from the contract unless this was expressly stated by us in writing. An attachment of the purchase item by us shall always constitute a withdrawal from the contract. After having taken back the purchase item, we shall be entitled to realize it. The realization proceeds – less adequate costs incurred for such realization – shall be set off against the customer's liabilities.
- (2) The customer shall be obliged to handle the purchase item with care; in particular, the customer shall be obliged to take out, at its own expense, an adequate replacement value insurance against damage or loss by fire, water, and theft. If maintenance and inspection work is required, the customer shall carry out such work at its own expense and in good time.
- (3) The customer shall inform us immediately in writing of any attachment or other interference by third parties in order to enable us to bring an action pursuant to Section 771 ZPO (Code of Civil Procedure). If the third party is not in the position to refund to us the court and out-of-court costs of an action pursuant to Section 771 ZPO, the customer shall be liable for the loss that is caused to us.
- (4) The customer shall be entitled to re-sell the purchase item in the ordinary course of business; the customer does, however, already at this point in time assign to us all claims – in the amount of the final invoice amount (including value-added tax) of our claim – which arise for the customer from the re-sale against its purchasers or against third parties, irrespective of whether the purchase item was re-sold without or after being processed. The customer shall remain entitled to collect this claim also after the assignment. Our right to collect the claim ourselves shall remain unaffected thereby. We do, however, undertake not to collect the claim as long the customer meets its payment obligations from the proceeds obtained, as long as it does not get into default in payment, and in particular as long as no application is made for the opening of bankruptcy proceedings or composition proceedings or insolvency proceedings or in the event of a cessation of payments. If this is, however, the case, we are entitled to demand that the customer makes known to us the assigned claims and their debtors, that it makes available to us all data which are required for collection, hands over to us the relevant supporting documents and informs the debtors (third parties) of the assignment.
- (5) The processing or transformation of the purchase item by the customer shall always be done for us. If the purchase item is processed together with other items which do not belong to us, we shall acquire the co-ownership of the new item on a pro-rata basis corresponding to the value of the purchase item (final invoice amount, including value-added tax) as compared to the other processed items at the time of processing.

Besides, the item created by processing is subject to the same conditions as the purchase item which is delivered under a retention of title.

- (6) If the purchase item is inseparably mixed with other items which do not belong to us, we shall acquire the co-ownership of the new item on a pro-rata basis corresponding to the value of the purchase item (final invoice amount, including value-added tax) as compared to the other mixed items at the time of mixing. If the mixing is done in such a way that the customer's item is to be regarded as the principal item, it shall be deemed agreed that the customer assigns co-ownership to us on a pro-rata basis. The customer shall hold for us in safe custody the sole ownership or co-ownership thus created.
- (7) The customer shall assign to us, as a security for our claims against it, also the claims which arise against a third party due to the fact that the purchase item is linked to a piece of land.
- (8) We undertake to release, at the customer's request, the securities to which we are entitled, to the extent to which the realizable value of our securities exceeds by more than 10% the claims that are to be secured; the selection of the securities that are to be released is at our discretion.

Clause 10 Place of jurisdiction, place of performance

- (1) If the customer is a merchant, our place of business shall be the place of jurisdiction. We shall, however, have the right to bring an action against the customer also at its general place of jurisdiction.
- (2) The law of the Federal Republic of Germany shall apply; the application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
- (3) Unless stated otherwise in the order confirmation, our place of business is the place of performance.

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