

General Terms and Conditions of KRAIBURG Relastec GmbH & Co. KG

A. General

1. These General Terms and Conditions shall apply to all our business relationships – also in the future – with contractors in the sense of § 310 German Civil Code (hereinafter: "buyer"). Differing General Terms and Conditions of the buyer shall not be effective without our express written consent.
2. Individual arrangements made in a particular case (inclusive collateral agreements, amendments and modifications) shall take priority over these General Terms and Conditions. The contents of such arrangements shall be subject to a written contract or to our confirmation in writing.
3. The statutory provisions shall be effective additionally, unless they are directly modified or expressly excluded by these General Terms and Conditions, even if this is not explicitly agreed.

B. Conclusion of an Agreement

1. Our offers are subject to confirmation. An agreement is not reached until acceptance of the buyer's order. This shall also apply if we placed technical documentations (e.g. drawings, data sheets, specifications), other product descriptions or documents – also in electronic form – at the buyer's disposal with a reservation of proprietary rights and copyrights.
2. Deviations of our acceptance (e.g. by confirmation of the order) from the buyer's order, which are customary in this branch of business, are reserved and shall have no influence on the conclusion of the agreement.

C. Terms of Delivery

1. Delivery is subject to change
In case we are not able to keep binding delivery dates due to reasons we are not responsible for (impossibility of performance, e.g. because our raw material suppliers failed to deliver us), we shall inform the buyer without delay and determine a new delivery period which appears reasonable according to the circumstances. If the performance continues to be impossible, also within the newly determined delivery period, we shall be entitled to cancel the agreement completely or partly; we shall immediately reimburse any already provided counter-performance. Our statutory rights (e.g. exclusion of the obligation to perform) and the rights of the buyer under these General Terms and Conditions shall remain unaffected.
2. The accrual of our delay in delivery is regulated under the statutory provisions. In any case, however, a reminder of the buyer is necessary.
3. Delivery shall be effected at our option ex works or branch (place of performance) by the mode of delivery which is most convenient for us. The buyer shall bear all additional charges for a mode of delivery chosen by him. We charge packing at cost price.
4. Delivery of the goods shall be effected at buyer's risk (destruction, deterioration, delay). In case the delivery is delayed due to reasons we are not responsible for, the risk shall pass upon notification that the goods are ready for delivery. The statutory passing of the risk due to delay in acceptance shall remain unaffected.
5. Delayed Pick-up - In the absence of any other written agreement, the customer is obliged to pick-up their ordered items within 10 working of the confirmed loading date shown in the order confirmation. If this period is exceeded, this represents a breach of contract that entitles us, for storing the goods from the 10th working day of the collection delay, to charge a local storage fee of EUR 5 per pallet, per day in addition to the material costs in the order. From the 14th working day after the confirmed collection date, we reserve the right to sell the goods elsewhere. However, the sale does not release the customer from the order obligation entered into with us. In this case, we will inform the customer of a new collection date within a reasonably extended period of time.

D. Prices and Terms of Payment

1. The purchase price is due and payable within 14 days from the date of issue of the invoice. Upon the expiration of the time for payment, the buyer is in delay of payment. During the period of delay – subject to more far-reaching rights -, interest for late payment at the respectively applicable statutory default interest rate has to be paid on the purchase price.
2. The buyer shall only be entitled to execute offsets or retentions in so far as the respective counterclaim has legal effect or is acknowledged by us.
3. In case our pecuniary claim is endangered due to the inefficiency of the buyer (e.g. application for insolvency proceedings or by the Customers poor financial circumstances, in case of a bankruptcy filing against the Customer, in case the Customer does not provide payments or services as agreed, or in time, the Customer declares to refuse to provide its payments or services, or the Customer is in delay with previous payments or services), we shall be entitled, according to the statutory provisions, to withhold performance and – if necessary, after having fixed a time-limit - to cancel the agreement (§ 321 German Civil Code). In case of special manufactures we shall be entitled to give notice of cancellation immediately. The statutory regulations concerning the dispensability of the fixing of a time-limit shall remain unaffected. Furthermore we reserve the right to reduce the terms of payment with immediate effect or as the case may be to make deliveries only against cash in advance.

If Buyer fails to meet the terms of payment or any other obligation arising from this or other legal transactions, we may without prejudice to our other rights immediately call in debts arisen from this or any other legal transactions. This applies also to deferred claims. Further, when it exceeds the internal credit limit (total outstanding in-

voices and open orders/deliveries) or reaching the dunning level 3. carried a shipment stop.

4. The contractual supplier (manufacturer) has the right to review the agreed prices at its discretion with immediate effect (Section 315 of the German Civil Code [BGB]) if a significant price increase for raw materials and/or energy by more than 5% net occurs after conclusion of the contract.

E. Reservation of Title

1. We reserve title to the goods until all our present and future claims have been paid in full.
2. In case of breaches of duty, especially when the purchase price is not paid, we shall be entitled, under the statutory provisions, to cancel the agreement or / and to claim return of the goods on request. The claim for returning of the goods does not automatically mean cancellation of the agreement; we shall rather be entitled to claim return of the goods and to reserve the right of cancellation. In case the purchase price is not paid, we shall assert these rights not before the unsuccessful expiry or the statutory dispensability of a reasonable final respite.
3. The buyer shall be entitled to work up and / or sell the goods in the ordinary course of business. In this case the following clauses shall apply in addition.
 - 3.1 The reservation of title shall also apply to the products which are created by way of working up, mixing or combination and we shall be considered to be the manufacturer. In case proprietary rights of third parties continue to exist, we shall obtain co-ownership in proportion to the value of the goods. Besides, the products are considered to be conditional goods.
 - 3.2 Already now, the buyer assigns to us completely or to the amount of our co-ownership all the claims arising from a resale as a security. We accept this assignment. The obligations of the buyer, specified in item 2., shall also apply in consideration of the assigned claims. Besides us, the buyer shall remain entitled to collect the claims.
 - 3.3 In case the value of the securities exceeds our claims by more than 10 %, we shall release securities at our option upon request of the buyer.

F. Buyer's claims for defects

1. We shall be liable for the freedom of the goods from material defects and defects of title (including incorrect delivery and short delivery) in accordance with the statutory provisions, unless otherwise stipulated below.
2. The basis of our liability for defects is primarily the agreement reached on the quality and the presumed use of the goods (including accessories and instructions). In this sense, all product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly stated by us (in particular in catalogues or on our website) at the time of conclusion of the contract shall be deemed to be an agreement on quality. Information on shelf life shall only apply in the case of storage in accordance with DIN 7716
3. Insofar as the quality has not been agreed, an assessment of whether or not a defect exists shall be made in accordance with the statutory regulation on the basis of the objective requirements (Section 434(3) BGB). For public statements within the meaning of Section 434(3)(2)(b) BGB which do not originate from us and which at the time of conclusion of the contract we have not adopted as our own in the sense of §6(2) (e.g. by reference in the contractual documents or publication on our website) are irrelevant for the objective requirements.
4. The Buyer's claims for defects presuppose that it has complied with its statutory obligations to inspect and give notice of defects. In the case of goods that are intended for installation or other further processing, an inspection must in any case take place immediately before processing. If the Buyer fails to duly inspect the goods and/or notify us of defects, our liability for the defect not notified, not notified in time, or not notified properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for installation or other further processing, this shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs ("Removal and Installation Costs").
5. The Buyer shall give us the time and opportunity necessary to inspect the defect complaint raised, and in particular hand over the goods for this purpose.
6. If the goods are defective, we may choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). If the type of subsequent performance chosen by us is unreasonable for the Buyer in the individual case, the Buyer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
7. If the subsequent performance has failed or if a deadline to be set by the Buyer for subsequent performance has expired without result or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. The right of withdrawal shall not apply in the case of an insignificant defect.
8. Claims of the Buyer for reimbursement of expenses pursuant to Section 445a(1) BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 BGB). Claims of the Buyer for

damages or reimbursement of futile expenses exist only in accordance with the following §7 and §8; otherwise they are excluded.

G. Other Liability

1. We shall only be liable for damages – irrespective of the legal grounds – in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. diligence in one's own affairs), only
 - a) for damages resulting from injury to life, body or health,
 - b) for damages arising from the breach of an essential contractual obligation (obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and upon the observance of which the contractual partner regularly relies and is entitled to rely), in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

The above limitations of liability shall also apply to third parties as well as in the case of breaches of duty by persons (including in their favor) where we are responsible according to statutory provisions. The above limitations of liability shall not apply if we have fraudulently concealed a defect or assumed a guarantee. The same shall apply to claims of the Buyer under the Product Liability Act.

2. A breach of duty which does not constitute a defect shall only entitle the Buyer to withdraw from or terminate the contract if we are responsible for the breach of duty. Otherwise, the statutory requirements and legal consequences shall apply.

H. Limitation of Actions

1. Deviating from § 438 para. 1 No. 3 German Civil Code, the general statutory period of limitation for claims arising from defects of quality or legal imperfection in title shall be one year from the day of delivery.
2. For buildings and building material the statutory period of limitation shall be two years from the day of delivery. The special limitation rules for the statutory suppliers' recourse shall remain unaffected and shall apply for the benefit of the buyer, even if the basis for the performance to the consumer is not a purchase contract, but a contract for services with a five-year period of limitation.
3. The statutory provisions for real claims for restitution of property of third parties, the suppliers' recourse and for the case of fraud shall remain unaffected in any case.
4. In so far as we owe contractual damages to the buyer due to or as a result of a defect, the uncurtailed statutory periods of limitation of the Law on Sales (§ 438 German Civil Code) shall apply. These periods of limitation shall also apply for competing extra-contractual claims for damages, unless the application of the ordinary statutory limitation (§§ 195, 199 German Civil Code) results in a shorter period of limitation in the individual case. The periods of limitation under the Product Liability Act shall remain unaffected.

I. Choice-of-law Clause and Legal Venue

1. The laws of the Federal Republic of Germany shall apply with exclusion of all international and supranational (contractual) legal systems, especially of the Law on Sales of the UN. Prerequisites and effects of the reservation of title shall be subject to the law of the respective location of the subject-matter.
For frontier-crossing contracts the international rules for the interpretation of the contractual formulations in accordance with ordinary trade usage (Incoterms) shall apply as amended.
2. As far as businessmen are concerned, the legal venue – also internationally – shall exclusively be the district court Magdeburg. However, we shall also be entitled to take action at the general legal venue of the buyer.

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