

Terms and conditions of sale and delivery
of KSO-Textil GmbH, 02785 Olbersdorf (hereinafter referred to as „Seller KSO“) – Version: 01.07.2019
This English translation is provided for information purposes only. Only the German version of the T&C is legally binding.

§1 Scope of application

1. The terms of sale and delivery apply exclusively between businessmen.
2. The following terms of sale and delivery apply exclusively to all deliveries and services of the seller KSO. The seller KSO does not accept the general terms and conditions of the buyer unless the seller KSO has expressly agreed to their validity in writing. This also applies if the seller KSO performs the services without reservation in knowledge of opposing or deviating terms of business from the present terms of sale and delivery.

§ 2 Place of performance, prices, delivery, acceptance and provision of sectional warp beams (TKB)

1. Place of performance

Place of performance for all services from the delivery contract is the registered office of the seller KSO.

2. Prices

Prices are quoted ex warehouse, ex works or free recipient. The prices do not include value added tax. Confirmed prices apply only upon acceptance of the confirmed quantities. The seller is entitled to correct the prices in the event of price and cost increases, changes in freight rates, customs duties, taxes, levies, etc. occurring after conclusion of the contract. All details such as dimensions, weights, quality, quality assurance, illustrations, colour details, product samples, descriptions etc. in offers, sample books, price lists, brochures and other general printed matter have been determined to the best of our ability, but are only approximate and subject to confirmation.

3. Delivery

The seller reserves the right to select carefully the shipping route or the means of transport. Partial deliveries are permissible. Delivery to the shipping address or place of use requires a faultless, reasonable access. The unloading of the goods is in the responsibility of the customer and at his expense. Compliance with the delivery period presupposes the fulfilment of the customer's contractual obligations. The delivery time shall be deemed observed upon notification of readiness for dispatch if delivery is delayed for reasons for which the customer is responsible. In this case, the risk shall pass to the customer on the day of receipt of the notification of readiness for dispatch. He shall reimburse the costs incurred as a result of the delay. If unforeseen obstacles, which the seller KSO cannot avert despite reasonable care, no matter whether they occur at the seller or at a supplier, extend the delivery time in a reasonable way. This also applies in the event of strikes and lockouts. If delivery or performance becomes impossible due to circumstances of the aforementioned type or due to strikes and lockouts, the seller shall be released from his obligations. If the seller is in default with a partial delivery or partial performance, the customer is only entitled to withdraw from the contract if the partial fulfilment of the contract is not usable for him. The goods will be packaged by the seller KSO in the manner customary in the industry.

4. Acceptance

If, due to the fault of the buyer, the acceptance of a contractually agreed delivery does not take place on time, the seller shall be entitled, at his discretion, after expiry of a grace period of 12 calendar days to be set, either to invoice the goods with immediate maturity (invoice of arrears) or to withdraw from the contract or to claim damages.

5. Sectional Warp Beams (TKB) / Transmitters

As material carriers, sectional warp beams (TKB) and the associated special pallets (transmitters) are a necessary part of product deliveries and order fulfilment. Basically, they are the property of the seller and as such must be treated with care and returned immediately after fulfilling their intended purpose. Recognizable damages are to be reported immediately to the seller KSO in a suitable way. Damage to TKB and transmitters caused by improper use must be properly repaired by the customer or invoiced to him by the seller KSO. The interim use of the TKB and transmitters of the seller KSO for other and own purposes of the customer is not permitted. The free provision of TKB and transmitters is limited to 100 calendar days from the date of delivery. Any additional provision claimed by the customer shall be subject to a charge. The provision costs amount to 1.0 percent of the new price per month and will be invoiced accordingly. The immediate duty of return for TKB and transmitters is not replaced by the invoicing and does not reduce any claims for damages of the seller KSO. Claims for damages will also be raised and charged to the customer by the seller KSO in the event of loss of the provided TKB and transmitters in the amount of the replacement value.

§ 3 Contents of the contract

1. The goods are delivered on specific dates (working day or a specific calendar week). All contracts are concluded only for specific quantities, articles, qualities and fixed prices. Both parties are bound to this. Commission transactions are not carried out.
2. Block orders are permissible and must be limited in time when the contract is concluded. The acceptance period may not exceed 6 months.

§ 4 Interruption of delivery

1. In the event of force majeure, industrial disputes for which none of the contracting parties is responsible and other disruptions to operations through no fault of its own which have lasted or are expected to last longer than one week, the delivery or acceptance period shall be extended without further ado by the duration of the hindrance, but by no more than 5 weeks. The extension shall only take effect if the other party is immediately notified of the reason for the hindrance as soon as it is clear that the delivery or acceptance deadline cannot be met.
2. If delivery or acceptance has not taken place within the extended delivery or acceptance period in the cases specified in clause 1, the other contracting party may withdraw from the contract after expiry of a grace period of 12 calendar days to be set.
3. Claims for damages shall be excluded in the cases of clause 1 if the respective contracting party has fulfilled its obligation in accordance with clause 1.

§ 5 Additional delivery period

1. After expiry of the delivery period, a subsequent delivery period of 12 calendar days shall commence without notice. After expiry of this period, the buyer may withdraw from the contract by written declaration. If the buyer wants to claim damages instead of performance, he must set the seller KSO a 4-week period in writing after expiry of the agreed delivery period.
2. Before expiry of the subsequent delivery period, claims of the buyer due to delayed delivery shall be excluded, as far as § 6, clauses 2 and 3, do not apply.

§ 6 Warranty and compensation

1. Obvious defects must be reported to the seller in writing and specified immediately, at the latest within 3 calendar days after receipt of the goods and before further use or processing.
2. Defects, which cannot be discovered within this period even after careful inspection, must be reported in writing immediately after discovery. The further processing of the material shall be stopped and KSO shall be granted the possibility of replacement delivery within the framework of an optimal settlement of damages after consultation with the seller.

Claims for damages for consequential damage caused by defective material shall only be accepted up to a maximum of 100 metres of the goods produced by the customer. In this respect, a claim for damages due to breach of essential contractual obligations is limited to the foreseeable damage typical for the contract.

3. The possibility of claiming quality defects for sold goods ends 180 calendar days after the delivery date. Thereafter, any warranties and damages are excluded.
4. Goods sold as of inferior quality are not subject to warranty.
5. For any defects of the goods, the seller KSO, at its own discretion, provides warranty by rectification or replacement delivery. If the supplementary performance fails, the customer may, at his discretion, demand a reduction of the remuneration (reduction) or rescission of the contract (withdrawal).
6. A replacement delivery shall be guaranteed in the same way as the delivery item.
7. No warranty shall be assumed for damage caused by unsuitable or improper use, faulty processing, natural wear and tear, excessive strain. Furthermore, no warranty shall be assumed for damage caused to the delivery item by the action of third parties.

§ 7 Withdrawal and cancellation

A return of custom-made products or goods procured on special order of the customer without a corresponding legal obligation is excluded. If the seller KSO agrees to cancel the contract before delivery without legal obligation, an appropriate compensation for expenses is to be paid.

§ 8 Payment

1. Terms of payment

- a) Payment shall be made within 10 calendar days of the invoice date without any deduction, unless otherwise agreed and stated in the invoice. Discount shall be granted as agreed and shown on the invoice, provided the previous invoices have been paid. The calculation basis for discounts is the value of the goods (invoice amount incl. VAT, but after deduction of discounts and third-party services).
- b) Until cheques and bills of exchange accepted have been honoured or payments from assignments of claims have been made, the seller's claim and its due date shall remain unaffected. Discount, protest and collection charges for bills of exchange shall be borne by the customer.
- c) Offsetting with counterclaims is excluded unless offsetting with a claim recognized by the seller KSO or legally established.

2. Late payment and creditworthiness

- a) Interest of at least 2 % above the respective Bundesbank discount rate will be charged for default periods. The assertion of further damages remains unaffected by this.
- b) If the customer is in arrears with payment or if circumstances become known which call the creditworthiness of the customer into question (e. g. non-redemption of bills of exchange or cheques), all claims, including those for which the seller KSO has accepted bills of exchange on account of payment, become due immediately. The seller KSO is then entitled to execute outstanding services only against advance payment or first securities and to realize securities provided due to outstanding payments. Furthermore, the seller is entitled to take possession of goods delivered under retention of title without automatically exercising the right to withdraw from the contract. Further rights in the event of default in payment to which the seller KSO is entitled under the law shall remain unaffected.

§ 9 Retention of title

1. The goods delivered by the seller KSO exclusively under retention of title (reserved goods) remain the property of the seller KSO until payment of all claims, for whatever legal reason, including future or conditional claims and until payment of bills of exchange and cheques and the irrevocability of direct debits. In the case of a current account, the reserved property shall also be deemed security for the seller's balance claim.
2. Payments - including payments by cheque - made against a bill of exchange drawn up by the seller and accepted by the buyer shall not be deemed payment until the bill of exchange has been honoured by the drawee and the seller has thus been released from liability for the bill, so that the agreed retention of title with all special forms stipulated in these terms and conditions (without prejudice to further agreements) shall remain in force at least until the bill of exchange has been honoured in favour of the seller.
3. Resellers may resell reserved goods of the seller KSO in the ordinary course of business under retention of title. Processing, assembly or other exploitation shall be deemed equivalent to sale.
 - a) All claims arising from the resale of the reserved goods including ancillary rights and securities, irrespective of whether the sale takes place before or after processing or after combining or mixing the goods with other goods not belonging to us, are hereby assigned by the customer to the seller KSO to settle all outstanding claims. The seller KSO accepts the assignment. If the reserved goods are sold after processing, combining or mixing with other goods not belonging to the seller KSO, the assignment of the claim shall apply in the amount of the value of the reserved goods.
 - b) The seller KSO is entitled and the customers are obliged upon request to inform the customer's buyers of the assignment.
 - c) The customer undertakes not to agree any prohibition of assignment with third parties. Already existing assignment prohibitions are to be indicated to the seller KSO immediately.
4. The customer is authorized until revocation to collect the assigned claims for the seller KSO. In the event of default or financial collapse on the part of the customer, the collection authorisation shall lapse in any case. Amounts collected are to be transferred immediately to the seller KSO in the amount of the outstanding claims.
5. Pledging and transfer by way of security of the reserved goods of the seller KSO are inadmissible. Measures of third parties, which endanger the rights of the seller KSO, are to be communicated to the seller KSO immediately in writing. In case of seizure, the customer must immediately send the seller KSO a copy of the seizure protocol. The customer must immediately inform the seller KSO in writing of any impairment of the rights of the seller KSO by third parties. Intervention costs shall be borne by the customer.
6. The customer is obliged to inform his buyers of the retention of title of the seller KSO and to impose this on them.

§ 10 Place of jurisdiction

Exclusive place of jurisdiction for all disputes arising from delivery contracts is the registered office of the seller KSO, unless otherwise stated in the order confirmation.

§ 11 Miscellaneous

1. For contractual relations with the seller KSO the law of the Federal Republic of Germany applies.
2. The above terms and conditions and the contract shall remain legally binding in their remaining parts even if individual clauses are legally invalid.