

General terms of business of Hch. Kettelhack GmbH & Co. KG

for commercial transactions

§ 1 Place of delivery, consignment, and acceptance

1. The place of delivery for all purchases under the delivery agreement is the place of the commercial establishment of the seller.
2. The carriage of the goods starts at the local factory. The buyer is responsible for all transportation costs. The buyer can designate any carrier. The consignments are shipped without insurance. A dispatch notification can be coordinated.
3. In the case of goods that are stored at a warehouse outside the premises of the company, the buyer is responsible for any additional carriage charges.
4. The buyer is responsible for the cost of special packing of the consignment.
5. To arrange, to combine, or to put in reasonable lots, the buyer must give the seller prompt notice near the delivery date. Unsorted goods will only be shipped when the buyer gives his consent.
6. Due to technical conditions during production there may be a difference between the volume ordered and the volume actually produced. The ordering party agrees to accept such difference up to max. +/- 10 %, however, only the actual quantity delivered will be charged.
7. If the buyer fails to accept the consignment in due time, he is allowed a grace period of 12 days.

After this period, the seller is given the following option: claim arrears, cancel the contract, or demand compensation for damages.

§ 2 Terms of the contract

1. The acceptance of the goods is specified at a specific workday or calendar week and it is considered substantive. All sales are conclusive as stated in the invoice: quantities, articles, qualities, and list price. Both parties are bound. The contract is strictly between the buyer and seller and no third parties are involved.
2. Block orders are permitted but limited and must be put on a contract. The maximum period to accept the consignment is 12 months.

§ 3 Delivery disruptions

1. Natural disasters, labour disputes and other uncontrollable operational disturbances, which take longer than one week or more, will extend the delivery period by the same amount of time not to exceed five weeks. The extension of the delivery period is permitted only when the party that is affected notifies the other party immediately of the disrupting event and both determine the existing terms cannot be carried out.
2. If the delivery and/or acceptance did not take place in time, then the other contracting party can withdraw from the contract. He must notify in writing, however, at least two week before invoking his right to withdraw from the contract.
3. If a contracting party fails to notify the other party and the disruption exceeds 5 weeks, the other party can immediately withdraw from the contract.
4. Compensation for losses by one contracting party is unlikely if the other party fulfilled his obligations in accordance with paragraphs 1-3.

§ 4 Subsequent delivery period

1. At expiration of the time for delivery and there was no explanation given for non-performance, an automatic second delivery period is established for 12 days. When this second period passes, the cancellation of the contract under exclusion from claims for damages also applies for the subsequent delivery period. The cancellation of the contract after paragraph 1 sentence 2 does not occur, if the buyer explains to the seller that he insists on fulfilling the contract. The seller becomes however free from the delivery obligation, if the buyer does not express himself on request of the seller within the subsequent delivery period whether he intends on fulfilling the contract.
2. Special contracts are not fulfilled. If the parties agree in individual expressed cases that the commodity for a certain action is intended, however, a firm date of delivery without respite can be agreed upon. When the delivery date is missed, the buyer can seek in-kind relief but the cost will not exceed the cost of the original order. Further legal recourse is not allowed. The buyer can ask for discount or withdraw from the contract for deficiency in the delivery.
3. If the buyer wants to terminate the contract for non-performance, then he must give the seller a 4-week notice. The period begins from the day the buyer sends the certified letter. This regulation applies in the case of paragraph 1 sentence 2, if this 4-week notice reaches the seller within the subsequent delivery period.
4. For dispatch-ready and NOS (never-out-of-stock) - the subsequent delivery period amounts to 5 working days. In the case of non-performance, the buyer is to be informed immediately. In all other cases, the rules in paragraphs 1 and 3 applies.
5. Before the expiration of the subsequent delivery period, requirements against the buyer cannot be made because of the permitted extension.

§ 5 Notice of defects

1. Notice of defects is to be mailed at the latest within 12 days after receipt of the consignment from the salesman.
2. After the cutting or use of defective goods will relieve the seller of any liabilities.
3. Complaints for negligible deviations in product quality such as the width, colour, finish or pattern will not be accepted. This applies also to commercial deviations, unless the seller provided the buyer the specifications.
4. With eligible notice of defects, the seller has the right to fix or supply the correct product within 12 days after receiving the defective commodity back. In this case the seller carries the freight charges. If the seller does not fix the defects, the buyer has only the right to reduce the purchase price or cancel the contract.
5. Reference paragraph 4, the buyer can ask for price reduction or cancel the contract within 12 days after discovering the defects.
6. The buyer who discovers hidden defects should promptly make a complaint to the seller. The buyer can ask for a discount or cancel the contract when the complaint is made in a timely manner.

§ 6 Claims for damages

Claims for damages are limited and in all other respects excluded in cases of rough handling.

§ 7 Payment

Payment calculations:

1. Within 10 days after date of invoice and goods despatched, a 4% express payment discount is granted;
2. From 11 to 30 days from date of invoice and goods despatched, a 2.25% discount payment is granted;
3. From 31 to 60 Days from date of invoice and goods despatched – net amount is due. Starting on the 61st day, the buyer will have defaulted in accordance with § 286 II No. 1 BGB.
3. Should the seller accept other forms of payment (e.g., check or bank transfer) other than cash after the 61st day, then interest of 1% will be calculated and applied to the principal amount from the date of the invoice.
4. The payment schedule can be adjusted if the buyer commits himself for a minimum of 12 months:

Calculation period	To settle with 4 % discount, pay by	To settle with 2,25 % discount, pay by	To settle net amount due, pay by
1st – 10th 1st month	15th same month	5th of 2nd month	5th of 3rd month
11th – 20th 1st month	25th same month	15th of 2nd month	15th of 3rd month
21st – max 1st month	5th next month	25th of 2nd month	25th of 3rd month

The table applies to paragraphs 1 – 3.

5. Any changes to the payment plan will be announced 3 months out.
6. In no case are interests paid to the buyer.
7. Payments are first applied to the oldest due debit amounts plus the accrued interests on it.
8. Date of invoice dispatched is determined from the postal date-stamp. For bank transfer payment, the paid date is determined as the day before credit to the account is made.

§ 8 Payment after maturity

1. Interest payment at maturity is calculated at 8% over the respective basis interest rate of the German Federal Bank.
2. The seller will withhold no additional obligations from the buyer who is paying the full invoice amount to include interests in the current contract. However, liabilities continue as outlined under the sales terms.
3. When the buyer is late paying the invoice amount or anticipates insolvency, the seller can demand payment upfront during the 12 days grace period. This includes payment for deliveries yet to be made. The seller can also cancel the contract or demand compensation for damages.

§ 9 Method of payment

1. Disputed amounts and determined valid claims against the seller can be deducted from the full invoice amount. This also applies in the case when the seller is undergoing collection proceedings (e.g. bankruptcy). Other deductions e.g., postage expense are not allowed.
2. Payment amounts can be less when deductions or refunds are included. However, adjustments that exceed more than three months are excluded.

§ 10 Retention of title

1. The seller retains the title to the goods against any secondary claims, claims for damages, check proceeds and adjustments, until full payment is made. This also applies when the buyer has an established and a current open account with the seller.
2. The seller retains ownership or title even if the buyer relocates the goods to a different location, mixes or combines it with other goods. Buyer does not have the right to the goods in accordance with §§ 947 FF BGB when goods are used in a new product or business when the seller has a lien.

In such cases, the buyer co-owns a part of the new product in proportion to the amount paid in the invoice with the seller.

3. In case a transaction is processed by a central adjuster for the buyer under provisions to take over of the doubtful debts, the rights to the goods are transferred to the central adjuster who will take over the payment and whom the buyer will have to settle directly with.
4. The buyer is entitled to the resale or to the subsequent treatment only with the consideration of the following conditions:

The buyer is entitled to part of the proceeds from resale or further processing based on considerations to authorized subsequent terms and conditions.

5. The buyer may sell or process goods the seller has a lien to only in the normal operations of its business and continuation of the business.

6a. The buyer surrenders hereby the demand with all secondary rights from resale to the lien held goods, including any demands of the proceeds, to the seller.

6b. If the commodity was used with other goods, mixed or processed and the seller has a lien, he is proportionately entitled of the amount in the new goods or products.

6c. In case the buyer sells off his accounts receivables to a factor, the buyer surrenders his demand and the seller legally has a claim to the proceeds proportionate to the amount owed him by the previous buyer. The buyer is obligated to disclose to the factor any payments that are overdue more than 10 days, or that he has debt problems.

The seller agrees to the sell off the accounts receivables.

7. In collection proceedings, the buyer can keep his accounts receivables, as long as he makes payments on his liabilities. The buyer surrenders his account receivables when he defaults or whose financial status deteriorates, the seller who has lien interests is thereby authorized by the buyer to acquire his accounts receivables.
8. For surrendering to the seller its accounts receivables, the buyer must provide the all necessary account information and permit inspection of its accounting books. The seller has the right to receive all information about the customers i.e., names and addresses, account size, and payment records.
9. Surrendering, disposing, or transacting the goods without rights or title to the goods is forbidden.

As a creditor, the seller can declare and seize the goods.

10. The seller can take the goods back and cancel the contract if this is expressed to the buyer. The return of goods and cancelling of the contract will satisfy the seller and pursue no other recourse.

11. The buyer stores the consignment on lien in a safe storage free of charge. He will carry necessary insurance to protect the goods from fires, theft, water damage, etc. The buyer can make claim for damages entitled to him against insurance companies or by alternate compensatory means equivalent to the invoice amount. The seller expects the above.

12. All demands, rights and title to the goods remain with the seller and is free from all liabilities, to include the interests on behalf of the buyer. The buyer, in the case of paragraph 1 can factor his accounts receivables. However, he must inform the seller of any contingent liabilities placed on it.

§ 11 Applicable right

It applies the right of the Federal Republic of Germany. The convention of the United Nations over contracts over the international goods purchase of 11.04.1980 is excluded.

§ 12 Area of jurisdiction

Area of jurisdiction (includes cheque exchange complaints) for all performances from current business activities between the contracting parties is the company headquarters of the shop assistant.

§ 13 Data security

The personal data of the customer received in the course of business transactions are processed under treatment of the legal regulations.