

Standard Terms and Conditions of Delivery and Payment of KOBER Steinwiesen GmbH & Co.KG

- hereinafter called KOBER -

I. Definition, scope

1. The following standard terms and conditions shall not apply vis a vis consumers.
2. The following standard terms and conditions shall apply exclusively; any conflicting or deviating terms and conditions of the orderer shall not be recognised by KOBER unless it has expressly agreed to their validity in writing. The following terms and conditions shall apply even if KOBER makes the delivery to the orderer without reservation, in full awareness of conflicting or deviating terms and conditions of the orderer.
3. Any agreements or ancillary agreements deviating from these terms and conditions shall not be valid unless they are confirmed in writing by KOBER.
4. These terms and conditions shall also apply to future contracts within the framework of ongoing business relationships.

II. Offers - offer documents, confirmation of orders

1. If the order is to be qualified as a bid within the framework of § 145 German Civil Code (BGB), KOBER shall be entitled to accept it within 4 weeks.
2. KOBER shall retain all property rights and copyrights for images, drawings, calculations and other documents. This shall also apply to written documents which are designated as "confidential". Any disclosure to third parties shall require the express written consent of KOBER.
3. A delivery contract shall only be deemed to have been entered on a written confirmation of the order and no later than upon delivery. If KOBER can prove through the submission of a transmission report that it forwarded a declaration by fax or data transmission, it shall be assumed that the orderer received said declaration.

III. Callable orders

1. If callable orders have been placed, the period for taking delivery shall be 12 months from the day of confirmation of the order unless any deviating written agreement has been entered into.
2. At the end of the term, the residual stocks may be delivered.
3. In the event of callable orders without any agreement on terms, manufacturing lot sizes and/or delivery dates, KOBER shall be entitled to request a binding scheme no later than three months after confirmation of the order.

IV. Prices - terms of payment

1. All prices quoted by KOBER shall be deemed to be ex-KOBER delivery works plus value added tax applicable at the time of billing, without packaging, freight and transport insurance; the latter shall be billed separately.
2. Price alterations shall be admissible if more than four months lie between the conclusion of the contract and the delivery date agreed upon. If salaries and wages, material costs or market unit prices increase thereafter up to completion of the delivery, KOBER shall be entitled to increase the price in a reasonable manner in line with cost increases. The orderer shall only be entitled to rescind the contract, if the price increase exceeds the increase in general costs of living between the order and the delivery dates in a considerable manner. If the orderer is a merchant, a public law entity or a special federal fund, price changes shall be admissible under the aforementioned provisions if more than six weeks lie between the conclusion of the contract and the delivery date agreed upon.
3. Unless otherwise agreed upon
 - a) the proportional costs for tools and moulds as well as cash expenses and services shall be due for payment at the time of delivery of the service net without deduction. In the case of tools and moulds whose proportional value amounts to 2,500 EUR or more, an advance payment of 50% must be made upon confirmation of the order;
 - b) costs shall become due upon delivery and no later than on receipt of the invoice. Our general term of payment for first orders is "payment in advance"; for follow-up orders it is "30 days net" unless there is another term mentioned in our order confirmation. No discount can be granted for invoice amounts up to EUR 100 in connection with deliveries outside Germany and in respect of bills for filler blocks. The granting of a discount shall presuppose that all bills due at an earlier date have been paid.
4. The day of receipt of payment shall be deemed for all means of payments to be the day on which KOBER or third parties, who have a claim against KOBER, may dispose of the amount. Payment by bill shall not be deemed to be a cash payment. Acceptance also of so-called refinancing bills shall be subject to special agreement. Cheques and rediscountable bills shall only be accepted on account of performance; all costs incurred shall be at the expense of the orderer.
5. In the event of default of payment by the orderer, KOBER shall be entitled to retain all deliveries or services.

V. Retention of title

1. KOBER shall retain title to the delivery items until receipt of all payments under the business relationship with the orderer.
2. The assertion of the retention of title and the pledging of the delivery items by KOBER shall not be deemed to be a rescission of the contract unless expressly declared in writing by KOBER.
3. The orderer shall be entitled to continue to sell the delivery items in the ordinary course of business; however, it shall already now assign all accounts receivable to KOBER in the amount of the purchase price (including value added tax) agreed between KOBER and the orderer which arise for the orderer as a result of reselling, regardless of whether the delivery items are sold on with or without processing. The orderer shall be entitled to collect these accounts receivable after their assignment. The right of KOBER to collect the accounts receivable itself shall not be affected; KOBER undertakes, however, not to collect the accounts receivable as long as the orderer properly meets its payment obligations and is not in default of payment. If the orderer is, however, in default of payment, KOBER may require the orderer to disclose its assigned accounts receivable and their debtors, to make all information available which is necessary for collection, to submit the corresponding documents and to inform the debtors (third parties) about the assignment.
4. The processing or transformation of the goods by the orderer shall always be for KOBER. If the delivery items are processed together with other items which do not belong to KOBER, KOBER shall acquire co-ownership of the new item in the proportion of the value of the delivery items to the other processed items at the time of processing.
5. If the delivery items are mixed in an inseparable manner with other items which do not belong to KOBER, KOBER shall acquire co-ownership of the new items in the proportion of the value of the delivery items to the other mixed items. The orderer shall hold the co-owned items in safe custody for KOBER.
6. The orderer may neither pledge nor transfer the delivery items by way of security. In the event of attachment or seizure or other disposals by third parties, the orderer shall inform KOBER without delay and provide it with all information and documents which are necessary for it to secure its rights. Enforcement officers and/or third parties must be informed of the property rights of KOBER.
7. KOBER undertakes to release the collateral to which it is entitled when requested by the orderer insofar as the realisable value of the collateral exceeds by more than 20% the accounts receivable to be secured. KOBER shall select the collateral to be released.

VI. Deliveries, delivery period, delivery quantities, Default in delivery

1. Compliance with agreed dates of delivery and performance shall presuppose that all technical issues have been clarified and payments or other obligations of the orderer have been made and/or fulfilled in due time. If this is not the case, the period of time shall be extended in a reasonable manner. Delivery periods shall be interrupted by any changes in design and alterations of items requested by the customer. They shall resume as soon as the changes are released by the customer.
2. KOBER shall deliver the contractual goods to the orderer in accordance with its delivery possibilities.
3. Partial deliveries shall be admissible provided that they do not result in any disadvantages in terms of use.
4. The delivery period shall be extended in the event of force majeure, strike, inability to perform without attributable negligence as well as unfavourable weather conditions for the period of hindrance.
5. A 10 percent increase or decrease in quantities shall be admissible. The minimum purchasing quantity shall be one full packaging unit.

6. If KOBER defaults in delivery, the orderer shall have a claim to payment of flat-rate damages. The latter shall be laid down at 0.5% of the purchase price for each full week of default without, however, exceeding 5%.
7. If KOBER defaults in respect of a partial delivery, these flat-rate damages shall be calculated on the basis of the purchase price for parts not yet accepted.
8. The assertion of any more extensive damage caused by delay in performance shall be excluded, unless such default is caused by KOBER intentionally or by gross negligence or if the damage caused by default is the consequence of an essential contractual violation or if a default causes injury to life, body or health.

VII. Shipment - passing of risk

1. Unless otherwise laid down in the confirmation of order, delivery "ex works" shall be deemed to have been agreed. Shipment shall be at the risk and for the account of the orderer. This shall also apply to return shipments.
2. Packing material shall be selected with reasonably exercised discretion and invoiced at cost price. Container and wagon rents shall be borne by the recipient.
3. If KOBER is obliged under the German Packaging Ordinance to take back the packaging used for transport and/or sale, the orderer shall bear the costs for the transport back and the reasonable costs of utilisation or, if this is possible and considered as purposeful by KOBER, the reasonable costs which arise on top for the reuse of the packaging. The orderer undertakes and confirms upon the placement of its order vis a vis KOBER to direct any packaging, which is not sent back, to utilisations stipulated under the German Packaging Ordinance.

VIII. Proprietary rights

1. The orderer undertakes to inform KOBER immediately of proprietary rights asserted by third parties concerning the supplied products and to let KOBER assume legal defence at its expense. KOBER shall be entitled to carry out the necessary alterations following proprietary right assertions of third parties at its own expense, even for goods already supplied and paid.
2. If KOBER is prohibited from producing or delivering by a third party invoking a proprietary right belonging to it, KOBER shall be entitled - provided that it is not responsible for the infringement of such proprietary right - to suspend its work pending the clarification of the legal situation by the orderer or the third party. If KOBER cannot be reasonably expected to continue work in respect of the order because of the delay, KOBER shall be entitled to rescission.
3. The orderer shall be liable to KOBER for services of third parties being free of proprietary rights of third parties and shall indemnify KOBER against all corresponding claims of third parties.

IX. Warranty / damages / liability

1. If a product is specified, it shall be deemed to be without material defects, if recognised tolerances due to manufacturing are complied with. All items shall only be available in one grading. Items which are only out of shape to a minor extent or have minor ruggedness or flaws shall, therefore, be deemed to be free of material defects.
2. KOBER must immediately be notified and given notice of obvious defects. In the event of a defect for which KOBER is responsible, KOBER shall, at its option, proceed to either subsequent improvement or replacement delivery. In the event of subsequent improvement, KOBER shall be obliged to bear all expenses incurred in respect of the remedying of the defect and, more particularly, transport costs, shipping costs, labour and material costs, insofar as these costs are not increased by the fact that the subject matter of the purchase is transported to a place different from the place of performance.
3. If subsequent performance fails, the orderer shall be entitled to demand damages in accordance with the provisions hereinafter as well as a reduction of the corresponding compensation for this order and rescind the contract. If the orderer granted KOBER an appropriate period for subsequent performance, it may demand damages instead of performance and/or reimbursement of expenses in accordance with the provisions hereinafter. Insofar as the subject matter of purchase or the work performed lack a warranted or guaranteed property, KOBER shall be liable under the statutory provisions.
4. If KOBER is not responsible for specific defects, warranty claims shall be excluded unless a warranted property is lacking.
5. Any claims under § 437 BGB (German Civil Code) shall become statute-barred 12 months after the passing of risk, unless the items involved were used in accordance with their usual uses for a structure or work and have caused the latter's defectiveness.
6. KOBER shall be liable under the statutory provisions if the orderer asserts claims for injury to life, body or health or damage based on intent or gross negligence, including intent and gross negligence of representatives of KOBER or persons employed by KOBER for the performance of its services. If KOBER has acted in a grossly negligent manner, damage claims shall be restricted to foreseeable, typically arising damage.
7. KOBER shall be liable under the statutory provisions if KOBER culpably violates an essential contractual obligation; in this case the obligation to pay damages shall be restricted to foreseeable, typically arising damage.
8. Moreover, KOBER shall also be liable under the provisions of the German Product Liability Act.
9. As for the rest, damage claims for any reason whatsoever shall be excluded, apart from default damage regulated in a different clause. KOBER shall, more particularly, not be liable for damage not caused to the delivery item itself.

X. Construction, tools

1. The troublefree suitability of the construction and the material of the parts to be manufactured by KOBER shall be determined by the tests and trials of the orderer. All proposals, construction drawings and other documents made available to the orderer by KOBER, shall remain the property of KOBER and may not be disclosed to third parties without KOBER's written consent. KOBER shall have the sole right to use these construction drawings and any tools and/or equipment manufactured on their basis. The orderer shall be liable for the legality of the use of drawings, sketches, models etc. sent to KOBER.
2. Models, moulds, dies, extrusion tools, installations and other operating equipment shall be invoiced separately. Proportional costs shall be due immediately upon invoicing net without deduction. They shall also include the non-recurring sampling costs but not the costs for test and processing equipment nor the costs for any changes requested by the orderer. Maintenance costs shall be borne by KOBER up to the agreed amount of application.
3. Any operating equipment shall remain the property of KOBER even if a portion of the cost was invoiced.
4. If within a period of 3 years after the last use of a tool, orders are no longer placed for it, KOBER shall be entitled to destroy the corresponding operating equipment.

XI. Counterclaims, transferability

1. The orderer shall only have offsetting rights if its counterclaims have been established in a final and conclusive manner and are uncontested or recognised by KOBER. Moreover, the orderer shall be entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.
2. The orderer shall not assign any rights under agreements entered into with KOBER, unless it has obtained the consent of KOBER.

XII. Place of performance, place of jurisdiction, applicable law, miscellaneous

1. Unless expressly otherwise agreed, the registered office of KOBER shall be the place of performance.
2. If the orderer is a merchant, a public law entity or a special federal fund, the place of jurisdiction shall be the competent court at the place of business of KOBER. KOBER shall, however, be entitled to sue the orderer also before any other admissible court.
3. The present terms and conditions shall be exclusively governed by German law.
4. Should a provision of these terms and conditions or part of such a provision be or become invalid, the remaining provisions and/or the remaining part of the provision shall remain valid.
5. The contractual language shall be German. The German language shall take priority over any other language that may be used.

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