

General Terms of Delivery

of the company KIBO Kunststoffe GmbH



1. Subject of the contract and scope of performance

1.1
The business relations and scope of performance between us and the customer shall be based solely on our written confirmation of order and the following General Terms of Delivery. These terms of business shall also continue to apply to future contracts insofar as no other arrangement has been agreed.

1.2
Any alterations or additions to the business relations, including these General Terms of Delivery, must be explicitly agreed in writing. This shall also apply to any alteration or addition waiving the requirement of written form.

1.3
Any other General Terms of Business, especially those of the customer, shall not be a subject of the contract even if we do not explicitly express an objection to them.

2. Formation of the contract/refusal of performance by the customer

2.1
All offers and quotations shall be subject to change.

2.2
A contract between us and the customer shall only come into effect with our written confirmation of order, with the content expressed therein and subject to these General Terms of Delivery. Any public utterances, especially details given in advertising, shall not be deemed to be quality descriptions and shall not constitute any quality agreement on our part or any promise of suitability for use under the terms of Section 434 of the German Civil Code (BGB). Unless they are explicitly declared in the confirmation of order, no warranties are provided by us, especially not under the terms of Section 443 of the German Civil Code (BGB). Any supplementary agreements which are not contained in the confirmation of order shall not be deemed to be part of the contract.

2.3
If the customer refuses to fulfil a contract which has become effective under the above provisions, we shall be entitled at our own discretion to enforce fulfilment of the contract or to revoke the contract in accordance with the statutory provisions and to enforce compensation claims for the specific damage or loss we have incurred. Instead of enforcing the specific damage or loss, we reserve the right to charge lump sum compensation of 10% of the contractual sum unless the customer proves that we have incurred no damage or loss, or that the damage or loss incurred is lower than the lump sum charged.

3. Delivery/liability arising from violation of obligations

3.1
We shall be entitled to render partial performance and partial deliveries insofar as the customer can be reasonably expected to accept them.

3.2
The delivery periods and deadlines specified in the confirmation of order shall be deemed to be non-binding times (approximate times).

Circumstances which are beyond our control such as force majeure, import or export restrictions, war, strike, delays in the delivery of major raw materials and comparable circumstances, shall extend the delivery period by a time commensurate with the duration of the hindering circumstances.

Insofar as it can be foreseen that a delay in delivery due to force majeure will last for longer than 2 months, both parties shall be entitled to revoke the contract.

In important cases, we will inform the customer of the start and end of such delays in delivery as soon as possible.

3.3
Any violation of obligations on our part, especially delays in delivery, shall only be deemed to apply when the delivery periods and deadlines specified in the confirmation of order and described in Article 3.2 paragraph 1 have been exceeded by at least two weeks and we are responsible for the delay. In such cases, if the customer sets us an appropriate extension period which must be at least a further two weeks, and declares that it will refuse to accept the performance after the expiry of this period, then the customer shall be entitled to revoke the contract if we fail to render the performance within this extension period.

However, the customer shall only be entitled to any claims for compensation, especially for damage resulting from delay or default and for a violation of secondary contractual obligations, and to a right to withdraw from the contract, if the violation of obligations by us was deliberate or resulted from gross negligence. The same shall apply if any vicarious agents or sub-contractors are involved. This limitation of liability shall not apply insofar as the violation of obligation leads to any loss of life, bodily injury or damage to the health of any third party.

In cases of force majeure, any claims for compensation against us for violations of obligations are excluded. This shall also apply if the force majeure occurred at a time when the violation of obligation had already happened, but the damage only arose after the occurrence of the force majeure. This shall not affect any claims for compensation for loss of life, bodily injury or damage to health insofar as we must accept liability in spite of force majeure.

3.4
If there is any question of liability on our part in spite of the above provisions, our liability for all damage shall be limited to the contractual sum except for cases of loss of life, bodily injury or damage to health. We shall not be obliged to pay compensation for any indirect or consequential damage (especially loss of profit, loss of sales etc. by the customer or third parties).

3.5
Reconsignment and/or sale of our products by the customer as intermediary vendor to recipients in the NAFTA area (U.S., Canada, and Mexico) is only permitted with our express prior written agreement. In case claims in connection with unauthorized reconsignment of commodities ordered from us are made against us by third parties judicially and/or extrajudicially in the NAFTA area or by recipients from the NAFTA area, the customer will exempt us on first demand with regard to any claims made by these recipients – irrespective of legal basis – and indemnify us for all damages resulting from claims made against us as far as the delivery into the neighboring area has not been authorized by us with the confirmation of the order at the latest. Without express written authorization of the delivery into the NAFTA area, there exist against us neither guarantee nor product liability nor any other claims for damages for the goods reconsigned by the customer into the NAFTA area.

4. Payment/set-off and right of retention

4.1
Insofar as no other arrangement is specified in the confirmation of order, the prices given therein shall be deemed to be subject to the applicable statutory value-added tax. The statutory provisions at the time of the invoice shall be definitive for the amount of the value-added tax. For any deliveries abroad, the relevant statutory provisions for liability to value-added tax shall apply.

4.2
If more than 4 months elapse between the confirmation of order and the delivery/performance, and if price increases occur in this period, especially as a result of wage increases, increases in the cost of raw materials, general price increases due to inflation or comparable circumstances, we shall be entitled to charge a correspondingly higher price.

4.3
Insofar as no other arrangement is agreed, our respective invoices shall be payable in full within 10 days from the invoice date. The deduction of discounts shall not be permissible.

4.4
In the event of any delay with due payments we shall be entitled - without prejudice to the enforcement of any specific loss or damage - to charge interest at 8% above the base interest rate unless the customer proves in such cases that no damage or loss has occurred, or that it was lower than this amount.

4.5
We shall only accept payment by bill of exchange after an explicit prior agreement. In other respects, the acceptance of bills of exchange or cheques shall only be deemed to be conditional payment under the terms of Section 364 (2) of the German Civil Code (BGB); it shall be free of any charges for us and without the deduction of any discount. We shall not be liable for timely presentation for payment, protest etc.

4.6
Insofar as the customer does not stipulate specific redemption provisions, payments shall always be deemed to redeem the oldest payable debt of the customer.

4.7
The enforcement of any rights of retention or a declaration of set-off with counterclaims of the customer against our invoices shall not be permissible unless the counterclaims are undisputed or have been awarded by an unappealable ruling.

4.8
We shall assume the creditworthiness of our customer at the time of the confirmation of order unless we have any contrary information. If the customer falls into default with a due payment, all outstanding invoices - without prejudice to the payability date - shall become due for immediate payment under the above provisions. For further deliveries, we shall be entitled to demand prepayment. The same shall apply if the customer's asset situation deteriorates significantly after the confirmation of order, or if it becomes apparent after the confirmation of order that the customer's asset situation at the time of the confirmation of order was significantly worse than was assumed at the time.

In other respects, we shall be entitled to demand prepayment, if this is necessary in view of the volume of the contract and has been agreed accordingly at the time of conclusion of the contract.

5. Reservation of ownership

5.1
All goods supplied by us shall remain our property until all accounts receivable from the business relationship have been paid in full, including any auxiliary claims, claims for compensation and claims which will become effective in the future. This shall especially apply until any payment by cheque or bill of exchange has been encashed, and also if any or all of our accounts receivable have been included in an open account (current account) and the balance has been struck and accepted.

5.2
Any processing and treatment of the reserved goods shall be on our behalf as the producer in the sense of Section 950 of the German Civil Code (BGB), but without any liability on our part. The processed and treated goods shall be deemed to be reserved goods under the terms of the above paragraph.

5.3
If the customer processes, joins and mingles the reserved goods with other goods, we shall be entitled to co-ownership of the new product in proportion to the invoice value of the reserved goods in relation to the invoice value of the other goods. If our ownership should lapse as a result of the joining, mingling or processing by the customer, the customer assigns to us in advance its entitlement to the property and entitlement rights in the new stock or goods for the invoice value of the reserved goods, or for processed

goods, in proportion to the invoice value of the reserved goods in relation to the invoice value of the other goods, and the customer shall hold them on our behalf free of charge. Our co-ownership rights shall be deemed to be reserved goods in the sense of the above provisions.

5.4

The customer shall only be entitled to resell the reserved goods in its normal business transactions at its normal terms and conditions and as long as it is not in default with its performance to us under this contract; subject to the proviso that the customer agrees a reservation of ownership with its customer and that the accounts receivable from the resale shall be transferred to us in accordance with these General Terms of Delivery. The customer shall not be entitled to dispose of the reserved goods in any other way. Any use of the reserved goods in fulfilment of service contracts or contracts for work, labour and materials shall be deemed to be a resale.

5.5

The customer's accounts receivable for the resale of the reserved goods are assigned to us in advance. They shall serve as security for our claims to the same extent as the reserved goods in the sense of Section 5.1.

5.6

If the reserved goods are resold by the customer together with other goods, the accounts receivable for the resale shall be assigned to us in proportion to the invoice value of the reserved goods in relation to the invoice value of the other goods. When goods in which we have obtained co-ownership shares under Section 5.3 of these General Terms of Delivery are resold, a proportion of the accounts receivable corresponding to our co-ownership share shall be assigned to us.

5.7

The customer shall be entitled to collect accounts receivable from the resale unless we revoke this collection entitlement. A revocation of the collection entitlement shall especially be permissible and reasonable for the customer if any circumstances arise after the conclusion of the contract which cause a significant deterioration in the customer's financial situation, or if we learn of such a deterioration of the customer's financial situation which existed before the conclusion of the contract, and if this deterioration of the customer's financial situation jeopardises the payments to which we are entitled. A deterioration of the customer's financial situation shall especially be deemed to apply if any third party enforcement proceedings are initiated against the customer which are not remedied by the customer without delay within 2 weeks after the initiation of the enforcement proceedings and/or if an application for insolvency is filed for the customer's assets.

In such cases, we shall be entitled to demand that the customer immediately notifies its purchasers of the assignment to us and surrenders to us the information and documents necessary for collection. This shall be without prejudice to our right, after a prior warning to the customer, to inform its contract partner of the assignment.

The customer shall notify us without delay of any seizure or other impairment by third parties.

5.8

In no case shall the customer be entitled to assign the account receivable; this shall also apply to factoring transactions, which the customer shall not be entitled to carry out even on the basis of the direct debit authorisation form.

5.9

If the value of the existing security exceeds the total value of the secured accounts receivable by more than 20%, we shall be obliged to release reasonable securities of our choice to this extent if the customer so demands.

5.10

In the event of any violation of major contractual obligations by the customer, especially delayed payment, we shall after a prior warning be entitled to take back the goods. The customer shall be obliged to surrender them. Any repossession of the goods and any seizure of the goods by us - insofar as Section 503 of the German Civil Code (BGB) is not applicable - shall only constitute a revocation of the contract if we explicitly declare this in writing to the customer.

6. Changes in performance / quantities and other variations / warranty

6.1

Any slight and/or commercially normal variations in the quality, colours, volume, quantities and dimensions shall not give any cause for complaints against us. Slight deviations in volumes and/or quantities shall be deemed to be deviations by up to 10% above or below the quantity ordered.

6.2

Unless any other arrangement has been agreed, the description of our goods shall not be deemed to be a quality description or statement of suitability for use under the meaning of Section 434 of the German Civil Code (BGB), and no warranty under the meaning of Section 443 of the German Civil Code shall be given.

If any specific composition in material, design or similar is agreed, we shall only be liable for proper production in accordance with the agreements made.

6.3

Any complaints for excess or short delivery, deviations from dimensions or obvious identifiable defects must be notified without delay, at the latest within 8 days after the receipt of the goods supplied by us; the date on which we receive the complaint shall be the definitive date. For any complaints concerning other defects than those stated above, the complaint must reach us within 8 days after the defect has been detected. Any complaints against us must be notified in writing.

6.4

If only part of the goods supplied are defective, this shall not entitle the customer to object to our delivery as a whole unless the partial delivery is of no interest to the customer in this case.

6.5

In the event of defects, the customer shall only be entitled to demand a reduction of the price or to revoke the contract if two attempted remedies offered by us (either correction of the defect or replacement delivery, at our discretion) have failed.

The same shall apply to the enforcement of claims for compensation for culpable violations of our obligations, subject to the proviso that we shall only be liable for such violations within the framework of Section 3.3 and Section 7.

6.6

Goods which have been notified as defective must not be touched.

6.7

Insofar as the customer is a business undertaking, our warranty period shall be one year from the transfer of risk.

7. Liability

Our liability - on whatever legal grounds - shall be limited to deliberate or grossly negligent violations of our obligations. The same shall apply in the event of any damage or loss caused by our vicarious agents or sub-contractors.

If there is nevertheless any question of a liability on our part under the above provisions, the compensation claim against us shall be limited to the contractual volume, or at the most, the damage which was foreseeable at the time of conclusion of the contract. Any further loss or damage (especially consequential loss arising from the defect such as loss of revenue or loss of profit) and any loss or damage occurring after our goods have been mingled with other products, are excluded. The above limitation of liability shall not apply to any loss of life, bodily injury or damage to the health of any third party.

8. Property rights and copyright

8.1

When we carry out an order according to the instructions of the customer, we shall not be obliged to check any property rights of third parties (especially patents, utility models, copyright etc.). In this case, the customer shall guarantee that no property rights of third parties are violated, and shall indemnify us against any claims of third parties arising from the violation of such rights.

8.2

All copyright claims and rights, especially the right to duplicate or reproduce our designs, sketches, illustrations, drawings and written information, shall remain with us. Any reprinting, reproduction and/or duplication shall only be permissible with our explicit written approval.

9. Shipping/transfer of risk

Insofar as no other arrangement has been agreed, the goods shall be sent out at the expense and risk of the customer. The manner of dispatch (especially the selection of the carrier) shall remain at our discretion. The risk of loss, ruin and/or damage of the goods shall pass to the customer when the goods are transferred to the carrier, unless any other arrangement has been agreed.

10. Place of performance and place of jurisdiction

The place of performance and place of jurisdiction for all claims and legal disputes which may arise from this contractual relationship, including any bill enforcement proceedings and proceedings based on documentary evidence, shall be solely our registered place of business insofar as the customer is a business enterprise under the meaning of the German Commercial Code (HGB). However, we also reserve the right to institute legal proceedings against the customer at any other permissible place of jurisdiction.

11. Applicable law

This contractual relationship shall be subject exclusively to the laws of the Federal Republic of Germany. The provisions of the uniform UN right of sale and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

The standard commercial provisions shall be interpreted according to the respective Incoterms which are applicable at the time of the confirmation of order.

12. Severance clause

If any individual provisions of these General Terms of Delivery should be or become invalid, this shall not affect the validity of the other provisions. The invalid provisions shall then be replaced by the statutory provisions.

13. Valid text version for translations

In any translations into any other language, the German text version shall be the legally binding version in the event of any inaccuracies in the language or translation.

February 2011

KIBO Kunststoffe GmbH
Heinrich-Schickhardt-Straße 1
72221 Haiterbach (Germany)

Manager: Martin Hartl
Court of registration: Stuttgart HRB 732155