

# KESSEL AG Standard Conditions of Sale (SCS) – International

## 1. Scope of application, form

- (1) The present Standard Conditions of Sale (SCS) apply to all our business relations with our customers ("Purchaser"). The SCS apply only provided the Purchaser is an entrepreneur (§ 14 of the German Civil Code (BGB)), a public-law legal entity or public-law special assets.
- (2) The SCS apply particularly to contracts for the sale and/or delivery of movable objects ("Products") as well as the sale of goods, software and technology ("Goods"), irrespective of whether we manufacture the Products/Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless anything different has been agreed, the version of the SCS which was applicable at the time of the Purchaser's order or at least as last communicated to him in text form will apply as a framework agreement, if the customer has not lodged an objection to them within two months. The SCS also in the case of similar future contracts and without our having to refer to them again in each individual case. As a matter of principle, we do not render any planning services for the customer.
- (3) Only our SCS apply. The customer's terms and conditions of business do not apply, even if we do not issue any separate objection to their validity. Differing or contradictory terms and conditions apply only if they have been accepted by us in writing.
- (4) Individual agreements made with the Purchaser in a particular case (including side-agreements, additions and amendments) will in any event have precedence over these SCS. Subject to proof to the contrary, the content of such agreements will be governed by a written contract or our written confirmation. The parties agree that these SCS conditions fully reflect the agreements of the contracting parties and that no further agreements exist beyond these SCS.
- (5) Legally material declarations and notices by the Purchaser with regard to the contract (e.g. setting of a deadline, request for return, report of defects, rescission or a price reduction) must be submitted in writing, i.e. in written or text form (e.g. letter, e-mail, fax). This will not affect legal requirements regarding form and additional evidence, particularly in the event of doubts on the legitimacy of the party making the declaration.
- (6) Reference to the application of provisions of the law are only intended for purposes of clarification. Thus, even without such clarification, the provisions of the law will apply unless they are directly amended or expressly excluded in these SCS. § 312i paragraph 1 No. 1-3 BGB do not apply.

## 2. Conclusion of a contract

- (1) Our quotations are subject to change and not binding. This will also be the case should we have provided the Purchaser with catalogues, technical documentation (e.g. drawing, plans, calculations, estimates, reference to DIN norms), other product descriptions or documents – also in electronic form – to which we reserve rights of title and copyright.
- (2) The Purchaser's order for Products is considered a binding offer to conclude a contract. Unless the order provides for anything different, we are entitled to accept this offer to conclude a contract within four weeks of having received the offer.
- (3) The offer may be accepted either in writing (e.g. by way of an order confirmation) or through delivery of the Products to the Purchaser.

## 3. Reservation regarding matters related to the German Foreign Trade Law

The contract is subject to the reservation that its fulfilment is not subject to any hindrances due to the domestic or international provisions of the Foreign Trade Law or contrary to any embargos and/or other sanctions. Our Goods may be subject to restrictions under the Foreign Trade Law. These are to be understood to include legal prohibitions and/or obligations to obtain permits. Should a Product be purchased that is subject to the requirement that approval is obtained, it will be clarified with the Purchase in each individual case how the goods are to be shipped and whether a contract may be concluded at all. A restriction in terms of the Foreign Trade Law may be related inter alia to the final destination and intended use of the Products. Should Products supplied by us be forwarded to a third party at home or in a foreign country, the Purchaser is required to comply with the applicable provisions of domestic and international foreign trade law. If necessary, the Purchaser is required, immediately on being requested to do so, to provide us with all information and documents required by the responsible authority for approval in accordance with the Foreign Trade Law concerning the ultimate recipient, final destination and intended use of the Products we supply as well as any restrictions in terms of foreign trade law in this regard. Any amendments and errors reserved.

## 4. Delivery period and delivery delays

- (1) The delivery period will be agreed individually or stated by us on accepting the order. Should this not be the case, the delivery period is approximately four weeks after transfer to the freight forwarder / carrier. With regard to the particularities during the Covid-19 pandemic, please see section 6.
- (2) Should we be unable to meet binding delivery dates for reasons for which we are not responsible (service not available), we will inform the Purchaser of this fact immediately and simultaneously give notification the probable new delivery period. Should the service also not be available within the new delivery period, we are entitled to rescind all or part of the contract; should the Provider have already paid for the service, we will reimburse this immediately. Non-delivery of the service within the meaning of the above is particularly the case in which our supplier does not deliver to us on time, should we have concluded a parallel covering order, should neither we or our supplier be at fault or should we not be required to procure the Products in the particular case. We assume no procurement guarantee.
- (3) We will be in arrears with the delivery should we be responsible for the delay in service, whereby our degree of blame in accordance with § 9 of these SCS is limited to deliberate intent and gross negligence. As a matter of principle, a reminder by the Purchaser is required unless the reminder is rendered unnecessary by an agreement for a delivery period in accordance with paragraph 1. Should we fall into arrears with the delivery, the Purchaser may demand a lump-sum amount as compensation for its damages due to the delay. The lump-sum compensation amount of 0.5% of the net price (delivery value) for every complete week of arrears, subject however to a maximum of 5% of the delivery value of the Goods delivered later. We reserve the right to prove that the Purchaser has not incurred any damage or has incurred considerably lower damages than the above lump-sum amount.
- (4) The Purchaser's rights in accordance with § 8 of these SCS and our legal rights, particularly in the event of an exclusion of the obligation to perform (e.g. due to impossibility or that performance and/or subsequent fulfilment are unreasonable) are not affected.

## 5. Force majeure

- (1) In the event of force majeure, we will not be in default in respect of the obligations affected by force majeure and the obligation to perform or fulfil these obligations punctually will be suspended automatically for the period of the force majeure.

- (2) Force majeure relates to events or circumstances of all any type that
- are beyond the reasonable control of the party claiming force majeure;
  - were not effective or reasonably foreseeable when the contract was concluded;
  - do not constitute acts, events or conditions the risks or consequences of which were expressly assumed by the affected party, and
  - despite the exercise of due care and diligence by the affected party claiming force majeure (or by third parties under the control of the affected party, including subcontractors), cannot be rendered harmless, remedied, averted, offset, negotiated or otherwise overcome.
- (3) If we are prevented from fulfilling a contractual obligation by force majeure, we will inform the Purchaser about the event or the circumstances constituting force majeure, naming the obligations we are prevented from fulfilling. Once this notification has been provided, we will be released from the requirement to fulfil these obligations as long as the case of force majeure prevents us from doing so.
- (4) In the event of a force majeure event, we will not be liable for any resulting loss or damage incurred by the Purchaser. In particular, we will not be liable for any loss or damage incurred by the Purchaser due to delays in deliveries or non-deliveries.

## 6. Delivery, transfer of risk, delay in acceptance

- (1) The delivery will be made solely in the packing units stated. The delivery is carried out from the warehouse, which is also the place of fulfilment for the delivery and of any subsequent fulfilment. At the request and expense of the Purchaser, the Goods may be delivered to a different destination (sales shipment). Unless anything different has been agreed, we are entitled to determine ourselves the method of shipment (particularly freight forwarder, routing, packaging). Surcharges for freight sent as an urgent or express shipment will be paid by the Purchaser. The Purchaser is required to report transport damage to the freight forwarder/service provider as soon as the shipment is received and to note any damage in writing in the shipment documents.
- (2) The risk of accidental destruction and accidental deterioration will pass to the Purchaser at the latest upon delivery. In the case of sales shipments however the risk of accidental destruction and accidental deterioration of the Products as well as the risk of delay will pass already on delivery of the Products to the freight forwarder, transporter or any other person or institution appointed to carry out the delivery. Only insofar as formal acceptance have been expressly agreed within the meaning of § 433 paragraph 2 BGB will this determine the transfer of risk. Should the Purchaser be in arrears in accepting the Goods, it is irrelevant whether the Goods are handed over or subject to formal acceptance.
- (3) Should the Purchaser be in arrears in accepting the Goods, fail to fulfil an obligation to cooperate or should our delivery be delayed for other reasons for which the Purchaser is responsible, we are entitled to demand compensation for damage incurred thereby, including additional expenses (e.g. storage costs). For this purpose, we charge a lump-sum amount of 1.0% of the net value of the Goods for each complete month as compensation, subject however to a maximum of 5% of the net value of the Goods, beginning on the delivery date or, in the absence of the delivery date, with the notification that the Goods are ready to be delivered. This does not affect proof of higher damage and our legal rights (particularly compensation for additional expenses, adequate compensation, termination); the lump-sum amount is however to be deducted from additional financial claims. The Purchaser is entitled to prove that we have not incurred any damage or considerably lower damages than the above lump-sum amount.

## 7. Prices and payment conditions

- (1) Unless anything different is agreed in the particular case, our current ex warehouse price list at the time the contract is concluded plus the VAT stipulated by law will apply.
- (2) In the case of a sales shipment (§ 5 paragraph 1), the Purchaser will pay the costs of transport from the warehouse as well as any transport insurance requested by the Purchaser.
- (3) We charge 10.00 € minimum quality surcharge on deliveries of less than 150.00 € net goods value.
- (4) A third-party delivery surcharge of 8% of the net goods value will be charged on orders that are not delivered to the Purchaser's warehouse.
- (5) The purchase price is due and payable immediately.
- (6) In justified cases, we are entitled to make the respective delivery, at our discretion, only in return for full advance payment of the respective purchase price or adequate collateral. We will state the reasons for requiring advance payment or for a request for collateral. Advance payment or collateral will be due immediately upon receipt of the statement by the customer. A justified case will exist in particular if
- the customer is in arrears with a due payment at an amount that is more than negligible and has not paid it or has not paid in full even upon express request,
  - the customer has been in default with a due payment twice in twelve months,
  - enforcement measures have been initiated against the customer in respect of monetary claims (§§ 803 - 882a ZPO (Code of Civil Procedure)),
  - there is a concern, based on overall circumstances to be assessed, that the customer is likely to operate in a manner that breaches the contract,
  - a previous contractual relationship with the customer has been effectively terminated. If the customer does not make an advance payment, provides it late or not in full, we are entitled to terminate the contractual relationship for cause and to dissolve the business relationship. The same applies to the provision of collateral.
- If we elect provision of collateral, it must be a bank guarantee. The guarantor must be a credit institution or credit insurer licensed in the European Community (Fitch credit rating index or equivalent, at least A). The declaration of surety must be in writing, for an unlimited period and must waive the defence of failure to pursue remedies. The right of deposit must be excluded. Furthermore, the guarantor must state that the place of jurisdiction is our registered office and that the guarantee claim will not be time-barred before the secured principal claim. We will return the collateral when the grounds for the collateral ceases to apply.
- (7) The Purchaser will be in arrears 30 days after the payment deadline has expired. The interest rate on arrears stipulated by law will be charged on the purchase price whilst payment is in arrears. We reserve the right to claim additional damages on account of payment arrears. In relations with entrepreneurs, our right to claim the commercial interest rate after the due date (§ 353 of the Commercial Code (HGB)) is not affected.
- (8) The Purchaser is only entitled to offset claims and to withhold payment provided its claim has been established in law or is undisputed. In the event of defects in a delivery, the Purchaser's counter-claims, particularly in accordance with section 8 paragraph 6 sentence 2 of these SCS, are unaffected.
- (9) Should it become clear after the contract has been concluded (e.g. though an application for the initiation of insolvency proceedings), that our claim to the purchase price is endangered due to lack of ability on the part of the Purchaser to perform, we will be entitled to refuse performance in accordance with the provisions of the law and to rescind the contract (§ 321 BGB). In the case of contracts for the manufacture of products which are not inter-changeable

(individual constructions), we may declare rescission immediately; this will not affect the provisions of the law relating to the necessity of setting a grace period.

#### 8. Reservation of title

(1) We reserve title to the respective goods sold until our claims under the purchase contract (secured claims) are paid for in full.

(2) Goods subject to reservation of title may neither be mortgaged to third parties nor have title transferred by way of collateral until the secured claims are paid for in full. The Purchaser is required to notify us immediately in writing should insolvency proceedings be applied for or should third parties seize goods belonging to us (e.g. attachments).

(3) In the event of behaviour by the Purchaser in breach of contract, particularly non-payment of the purchase price once due, we are entitled, in accordance with the provisions of the law to rescind the contract and/or to demand the return of the Goods on account of reservation of title.

(4) The Purchaser is authorised until further notice in accordance with (c) below to continue to sell and/or to process reserved goods as part of its regular business activity. In this case, the following provisions will apply additionally.

(a) The reservation of title includes the full value of the products resulting from processing, mixing or combining our goods, whereby we are deemed to be the manufacturer. Should, in the event of processing, mixing or combining with goods belonging to third parties, these third parties retain their rights of ownership, we will acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Otherwise, the same will apply to the resulting product as applies to Goods delivered subject to reservation of title.

(b) The Purchaser cedes to us with immediate effect the receivables due from third parties created as a result of the re-sale of the Goods or the Products, at the level of our ownership or any co-ownership we might have in accordance with the previous paragraph, as security. We accept the cession. The Purchaser's obligations referred to in paragraph 2 also apply with respect to the ceded receivables.

(c) In addition to us, the Purchaser is entitled to collect the receivables. We undertake not to collect the receivables as long as the Purchaser fulfils its payment obligations to us, as long as there is no deficiency in its ability to perform and we do not enforce the reservation of title by exercising a right in accordance with paragraph 3. Should this be the case, however, we may demand that the Purchaser inform us of the receivables ceded and their debtors as well as all information required to collect the receivables, hands over the relevant documents and notifies the debtors (third parties) of the cession. Moreover, in this case we are entitled to rescind the Purchaser's authority to continue to dispose of and to process the Goods subject to reservation of title after setting of deadline. We are also entitled to rescind it in the event of an application for insolvency and the opening of insolvency proceedings.

(d) Should the realisable value of the collateral exceed our claims by more than 10%, we will, at the Purchaser's request, release collateral of our choice.

#### 9. Return of goods

In the case of certain articles in our standard program it is possible, after our individual examination and explicit agreement, to return fault-free goods for a service fee. The customer must send us his return request in advance in writing or in text form. A return of goods without our prior approval is not possible.

#### 10. Purchaser's warranty claims

(1) Unless anything different is agreed below, the Purchaser's rights in the event of quality and legal defects will be governed by the provisions of the law. In any event, the special provisions of the law relating to the final delivery of unprocessed Goods to a consumer are not affected, even should this consumer have further processed the goods (supplier's recourse in accordance with §§ 478 BGB). Claims derived from supplier's recourse are excluded should the defective goods have been further processed by the Purchaser or some other entrepreneur, e.g. as a result of installation in another product.

(2) Liability for defects is based above all on the agreement made on the nature of the Goods. All product descriptions which are the object of the individual contract will be considered an agreement on the nature of the goods.

(3) Should the nature of the goods not have been agreed, the provision, whether a defect is present or not (§ 434 paragraph 1 page 2 and 3 BGB) will be judged by the provision of the law. We assume no liability for statements made by third parties (e.g. advertising claims).

(4) Warranty claims by the Purchaser are conditional on it having fulfilled its legal obligations to examine the Goods and to report defects (§§ 377, 381 HGB). This also includes a visual check for transport damage and an immediate report to the freight forwarder/service provider in accordance with section 5 paragraph 1 of these SCS. Should a defect be identified at the time of the delivery, the examination or at some time subsequently, this must be notified to us immediately in writing. In any event, obvious defects must be reported in writing within five days of the delivery and defects not identified at the time of the examination must be reported in writing within the same period of time from when the defect is discovered. Should the Purchaser fail to carry out an examination correctly and/or fail to report defects correctly, our liability for the defect not reported or not reported on time or properly is excluded in accordance with the provisions of the law.

(5) The warranty will not apply if the customer modifies the supplied item or has it modified by a third party without our approval and rectification of the defect is thereby rendered impossible or unreasonably difficult. In any case, the customer must bear the additional costs of the rectification of defects incurred on account of the modification.

(6) Should the object delivered be defective, we may initially choose whether we provide subsequent fulfilment by eliminating the defect (rectification) or by the delivery of a defect-free object (replacement shipment). Our right to refuse subsequent fulfilment in accordance with the conditions provided for in law is not affected.

(7) We are entitled to make the required subsequent fulfilment dependent on whether the Purchaser has paid the purchase price due. The Purchaser is however entitled to withhold a reasonable part of the purchase price proportionate to the defect. Reasonable is generally double the costs required in order to remedy the defect.

(8) The Purchaser is required to grant us the time and opportunity required in order to carry out the subsequent fulfilment due, in particular to hand over the Goods complained of for purposes of examination. In the case of a replacement shipment, the Purchaser is required to return the defective object as required by law. Subsequent fulfilment does not include either dismantling or re-assembling the defective object should we originally not have been required to carry out assembly.

(9) We will reimburse the expenses required for examination and subsequent fulfilment, particularly the costs of transport, travel, labour and materials as well as, if applicable, those of dismantling and reassembly, in accordance with the requirements of the law, provided a defect is actually present. Otherwise, we may demand from the Purchaser the reimbursement of the costs of the unjustified request that the defect be eliminated (particularly the costs of

examination and transportation), unless the fact that the object was not defective was not evident to the Purchaser.

(10) Should subsequent fulfilment fail or should a time-limit for subsequent fulfilment to be set by the Purchaser expire without the desired result or be unnecessary in accordance with the provisions of the law, the Purchaser may rescind the contract or reduce the purchase price. Should the defect be only minor however, there is no right to rescind the contract.

(11) Claims by the Purchaser for compensation or the reimbursement of costs incurred in vain with regard to defects are only admissible in accordance with § 11 and are otherwise excluded.

#### 11. Other liability

(1) Unless these SCS including the following conditions provide for anything different, we are liable for the infringement of contractual and out-of-court obligations in accordance with the provisions of the law.

(2) We are liable for compensation – irrespective of the legal reason – in accordance with the law of negligence in cases of deliberate intent and gross negligence. In the event of minor negligence, we are liable, subject to a lesser degree of liability in accordance with the provisions of the law (e.g. duty of care in one's own affairs), only

(a) for damage due to injury to life, limb or health,

(b) for damage due to a not inconsiderable infringement of a significant contractual obligation, the fulfilment of which makes the proper implementation of the contract possible at all and on whose compliance the contractual partner normally relies and may rely; in this case, our liability is however limited to compensation for the foreseeable damage typically incurred.

(3) The limitations of liability referred to paragraph 2 also apply to infringements of obligations in favour of persons for whose negligence we are responsible according to the law. They do not apply should we have fraudulently concealed a defect or assumed a guarantee of the nature of the goods and to claims by the Purchaser in accordance with the German Law on Product Liability.

(4) The Purchaser may only rescind or terminate the contract on account of an infringement of an obligation that does not constitute a defect should we be responsible for the infringement of the liability. Free right to terminate on the part of the Purchaser is excluded. Otherwise, the conditions and legal consequences provided for in law will apply.

#### 12. Time-limitation

(1) The Purchaser's claims will become time-expired two years after the final invoice date.

(2) Building materials and building modules that have been used in the construction of a building in accordance with their normal intended use and which have caused the building to have defects are governed by the provisions of the law.

#### 13. Data processing / data protection

(1) We record, process and use personal data (e.g. name, delivery address, invoice address, telephone number, tax number etc.), that have become known as part of contractual relations and which are required in order to process orders. We also process third parties' data (final customers/final consumers) transmitted to us by the Purchaser for the purpose of processing as part of the order. For its part, the Purchaser is responsible for processing the data in accordance with data protection within the meaning of the General Data Protection Regulation (GDPR for short) and the German Federal Data Protection Law (BDSG for short) within the meaning of these laws.

(2) We transmit data obtained as part of the business relationship with the Purchaser to external third parties

- for the purpose of preparing quotations,
- for order processing and invoicing purposes
- as part of fulfilling data processing tasks with service partners.

We oblige external third parties to ensure the confidentiality and security of the data. The volume of data transmitted is established contractually. Provided this is required in order to safeguard legitimate interests, we also transmit data to end customers/end users directly or through a contractual partner within the meaning of article 28 GDPR. In doing this, we ensure that the interests of the Purchaser and of end customers/end users worthy of protection are not impinged. Equally, the Purchaser is required to ensure when processing that the interests of end customers/end users worthy of protection are not impinged and that the provisions of the GDPR and BDSG are complied with. In this regard, the Purchaser will ensure in particular that there is a legal basis in accordance with GDPR und BDSG for processing end customers'/end users' personal data. The Purchaser may ensure this by concluding contracts or by having secured end customer' consent to our further processing of personal data. The Purchaser will for its part also fulfil existing information obligations to its end customers/end users in accordance with GDPR. The Purchaser will inform the end customers /end users in a way that can be proven that their personal data has been forwarded to us in order to carry out the order and for processing purposes.

(3) We reserve the right to obtain information from commercial information agents or credit insurers with regard to the Purchaser's credit rating for purposes of checking his creditworthiness and to report data to him – limited to cases of processing not according to contract, e.g. application for a dunning letter, with regard to an undisputed claim, enforcement order, sequestration measures. Data will only be transmitted provided that this is necessary in order to safeguard our legitimate interests. Balance sheet data will be handled confidentially and used solely for the purpose of credit checking.

The Purchaser expressly gives his consent to the data processing described above. With regard to the processing of contractual partners' and final customers' personal data provided to us by the Purchaser for the purpose of carrying out the order, the Purchaser will irrefutably ensure with documentary evidence that the legal basis required for this purpose in accordance with the GDPR and the BDSG exists in our favour.

#### 14. Choice of law and place of jurisdiction

(1) These SCS and the contractual relationship between ourselves and the Purchaser are subject to the law of the Federal Republic of Germany to the exclusion of international uniformity law, particularly UN purchasing law.

(2) Should the Purchaser be an entrepreneur within the meaning of the Commercial Code, a public-law legal entity or public-law special assets, the sole – also international – place of jurisdiction for the Purchaser for all disputes arising directly or indirectly from the contractual relationship is our registered office (Lenting) Ingolstadt. The same will apply should the Purchaser be an entrepreneur within the meaning of § 14 BGB. We are however in any event entitled to lodge a claim at the place of performance of the delivery obligation in accordance with these SCS or with an individual agreement having precedence or at the Purchaser's general place of jurisdiction. This will not affect overriding provisions of the law, particularly with respect to exclusive responsibilities.

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