

General Conditions of Sale of KLEIBERIT SE & Co. KG

§ 1 General – Scope

- For the business relationship, i.e. all future contracts, deliveries and other services, between KLEIBERIT SE & Co. KG in business dealings with entrepreneurs (§ 14 of the German Civil Code (BGB)), legal persons under public law, or special funds under public law within the meaning of § 310 (1) BGB as a client (hereinafter referred to as the „Purchaser“) the following General Conditions of Sale apply in the version valid at the time of the order. We shall not accept conditions of the Purchaser which conflict with or deviate from these General Conditions of Sale, unless we have expressly agreed their validity in writing. Our General Conditions of Sale shall apply even if we carry out the delivery to the Purchaser without reservation in the knowledge of conflicting or deviating conditions of the Purchaser.
- Individual agreements with the Purchaser reached in individual cases (including ancillary agreements, supplements and amendments) have priority over these General Conditions of Sale. A written contract or our written confirmation is, subject to evidence to the contrary, required to validate the content of such agreements. References to the validity of statutory provisions are only for purposes of clarification. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these General Conditions of Sale.

§ 2 Offer – Conclusion of Contract – Offer Documents

- Our offers constitute binding offers upon the conclusion of a purchase contract, unless expressly stated otherwise. The Purchaser can accept the offer by telephone, in writing, by fax, or by email within 2 weeks. Obviously recognizable errors in the offer or the written order confirmation entitle us, without prejudice to other rights, to withdraw from the contract.
- The conclusion of contract is subject to timely delivery from our suppliers in accordance with the contract. This applies in the event that we are not responsible for non-delivery. If the delivery is nevertheless impossible for us to complete, the Purchaser is to be informed about the unavailability of the service. The Purchaser's payment shall be refunded immediately.
- We retain ownership of and copyright over all documents or data provided by us. This also applies to such written documents which are designated as „confidential“. Before publishing or passing these on to third parties, the Purchaser requires our express written consent.

§ 3 Prices – Terms of Delivery and Payment

- Unless otherwise stated in the order confirmation, our „FCA INCOTERMS® 2020“ prices apply, including packaging, 76356 Weingarten, Max-Becker-Str. 4. If the freight and customs duties are increased after the conclusion of the purchase in the case of „carriage paid“ or „duty paid“ sales, these additional costs shall be borne by the Purchaser.
- Our prices are net prices in EURO and do not include VAT in the current amount on the day of invoicing. This will be shown separately on the invoice.
- Unless otherwise stated in the order confirmation, the purchase price is due net (without deduction) within 30 days from the invoice date. Payments are to be made in Euro without any deduction and free of charge and to the bank account specified by us on the invoice. Unconditional credit in the bank account is decisive for the timeliness of payment. Upon expiry of the above payment period, the Purchaser shall be in default.
- Partial invoices may be issued on our part for partial deliveries. These must not proportionally exceed the value of the service rendered and owed under the contract. There is a separate payment period for each partial invoice. If the partial services have not been provided in accordance with the contract, the Purchaser may refuse payment of an appropriate part of the partial payment.
- Set-off rights are only available to the Purchaser if its counter-claims have been legally established, are undisputed, or are acknowledged by us. Furthermore, the Purchaser is only authorized to exercise a right of retention insofar as its counter-claim is based on the same contractual relationship.

§ 4 Obligations to Cooperate, Delivery Time, Transfer of Risk

- Compliance with our obligation to deliver presupposes the timely and proper fulfillment of the Purchaser's obligation to cooperate, in particular the fulfillment of the relevant requirements for obtaining export permits or for the transport of dangerous goods. The right to object based on a non-fulfilled contract remains reserved. If the Purchaser is in default of acceptance, or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for any damage incurred in this respect, including any additional expenses. Further claims remain reserved.
- We are entitled to fulfil contractual obligations after the scheduled delivery date if the Purchaser is informed of the missed deadline and if it is notified of a period for supplementary performance, unless the supplementary performance is deemed unreasonable by the Purchaser or if the Purchaser refuses the supplementary performance within a reasonable deadline. In the event of supplementary performance, we shall reimburse the additional expenses of the Purchaser that are demonstrably necessary as a result of the missed deadline, insofar as we are liable for such damages according to the provisions of these General Conditions of Sale.
- In the case of sales orders which provide for the delivery of defined quantities during an agreed period of time, it is stipulated that the service requests are distributed evenly over the agreed completion time. For this, the parties must agree on fixed delivery dates. If the total quantity is not called up before the contractually stipulated deadline, our obligation to deliver expires. We reserve the right to charge the goods that have not been requested in breach of contract on the last day of the acceptance period, and to demand payment.
- When selling by sample, these only guarantee a professional test, whereby a guarantee for any suitability for use is not assumed. The weights indicated on the labels or, in the case of tanker deliveries, the weights determined during weighing are decisive for the calculation.
- The risk of loss or deterioration of the ordered goods shall pass to the Purchaser upon dispatch of the goods, at the latest upon leaving the factory/warehouse. If the shipment is postponed at the request of the Purchaser or if a delay in shipment occurs for which the Purchaser is responsible, the risk shall pass to the Purchaser on the day of actual dispatch. If the Purchaser is in default of acceptance, or if it violates other rights of participation, the risk of accidental loss or deterioration of the purchased item shall pass to the Purchaser at the time at which the Purchaser enters into default. In particular, after the expiry of a reasonable period of which the Purchaser has been notified, we are entitled to withdraw from the contract or otherwise dispose of the object of the contract, and to supply the Purchaser in accordance with the contract within a reasonably extended period.

§ 5 Packaging Return Transport Insurance

- The packaging is included in the sale price.
- The return of packaging material is governed by the provisions of the German Packaging Ordinance (Verpackungsverordnung).
- In the case of transport damage and external impairments to the packaging, in particular also in the case of any kind of deformation of the packaging, the Purchaser must have these confirmed in writing by the transport company and note this on the bill of lading. No changes are to be made to the packaging until confirmation, and we must be informed immediately. A breach of this duty may result in the loss of the warranty.

§ 6 Warranty

- The statutory provisions apply to the rights of the Purchaser in the case of material and legal defects (including incorrect delivery and short delivery), unless otherwise stated below. In all cases, the statutory special provisions on final delivery of the goods to a consumer (supplier recourse in accordance with §§ 478 BGB) remain unaffected. In particular, in the case of a supply chain, the final purchaser of the goods remains at liberty, in accordance with § 439 (1) BGB, to exercise its right to demand from the Purchaser the elimination of the defect or the delivery of a defect-free product.
- The claims of the Purchaser for defects presuppose that it has complied with its statutory inspection and complaint obligations (§§ 377, 381 of the German Commercial Code (HGB)). If there is a defect upon delivery, examination, or at any later time, we must be notified immediately in writing before the goods are submitted for regular processing. Upon each notice of a defect, a sample of the rejected goods is to be sent to us. In any case, obvious defects must be reported in writing within 14 working days from the date of delivery, and, upon inspection, unrecognizable defects within the same period from discovery. If the Purchaser fails to properly inspect and/or report a defect, our liability for the defect for which notification is not, or is not promptly or properly provided, is excluded in accordance with the statutory provisions. Resale and processing are prohibited following a complaint until we issue a release.
- If the delivered goods are defective, we can first of all choose whether to provide supplementary performance by rectifying the defect (rectification) or by delivering a defect-free product (replacement). Our right to refuse supplementary performance under statutory conditions remains unaffected. We are entitled to make the owed supplementary performance dependent on the Purchaser paying the due purchase price. However, the Purchaser is entitled to retain part of the purchase price as is reasonable in relation to the defect.
- The Purchaser must give us the time and opportunity required for the owed supplementary performance. In the case of a replacement delivery, the Purchaser must return the defective item as per the statutory provisions.
- The expenses necessary for the purpose of the examinations and subsequent performance, in particular transport, travel, labor and material costs, as well as the necessary expenses for the removal of the faulty goods and the installation or attachment of the rectified or replaced defect-free goods, insofar as, according to its nature and its intended use, the product is incorporated into another item or attached to another item, we shall comply with the statutory provisions if a defect actually exists. Otherwise, we may charge the Purchaser the costs incurred as a result of the unjustified demand for the remedy of defects (especially laboratory costs and administrative expenses) in the form of a lump sum of €150.00, unless the lack of a defect was not recognizable to the Purchaser. The Purchaser is permitted to prove that less damage or no damage has occurred. In any case, we are still allowed to prove higher damage. The above statements also apply to a supplier recourse as per § 445a BGB.

- Claims of the Purchaser for damages or compensation for futile expenses exist even in the case of defects only in accordance with § 7, and are otherwise excluded.

§ 7 Other Liability

- Unless otherwise stated in these conditions of sale, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- We are liable for damages, regardless of the legal reason, in the context of full liability in cases of intent and gross negligence. In the case of ordinary negligence, we are only liable, subject to a less strict standard of liability, according to legal regulations (e.g. for due diligence in our own affairs) (i) for damages resulting from injury to life, body or health, (ii) for damages arising from the not insignificant breach of a material contractual obligation (an obligation, the fulfillment of which enables the proper execution of the contract in the first place and on compliance with which the contractual partner regularly trusts and can trust); however, in this case, our liability is limited to compensation for foreseeable, typically occurring damage.
- The liability limitations resulting from paragraph (2) shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for according to the statutory provisions. They do not apply insofar as we fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the Purchaser under the German Product Liability Act (Produkthaftungsgesetz).
- Due to a breach of duty that does not consist of a defect, the Purchaser can only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination on the part of the Purchaser (in particular in accordance with §§ 648, 650 BGB) is excluded. Apart from that, the legal requirements and legal consequences apply.
- Cases of force majeure and unforeseeable or extraordinary events that cannot be averted given the due diligence of a prudent business person entitle us to postpone the delivery for the duration of the hindrance and a reasonable start-up period after the end of the hindrance. Mobilization, war, riots, strikes, lockouts, natural events, restriction and shortage of raw materials and supplies, as well as unforeseeable disruptions of operations or delivery disruptions at our suppliers are considered as such events.

§ 8 Statute of Limitations

- Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material and legal defects is one year from dispatch. Insofar as acceptance has been agreed, the period of limitation begins with the acceptance.
- However, if the goods are a structure or a thing that has been used in accordance with its customary use for a structure, and this has caused its defectiveness (building material), the limitation period, in accordance with the statutory provisions, is five years from the date of delivery (§ 438 (1) No. 2 BGB). Further special statutory provisions for the limitation period also remain unaffected (in particular §§ 438 (1) No. 1, 3), (445a, 445b, 479 BGB).
- The above limitation periods under the law governing the sale of goods or services shall also apply to contractual and non-contractual claims for damages from the Purchaser, which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead, in individual cases, to a shorter limitation period. Claims for damages from the Purchaser according to § 8 (2) No. 1 and No. 2, as well as in accordance with German Product Liability Law (Produkthaftungsgesetz), however, become statute-barred only after the statutory limitation periods.

§ 9 Retention of Title

- Until full payment, the delivered goods remain our property. In the case of goods which the Purchaser receives from us within the framework of an ongoing business relationship, we reserve the title to all delivered goods until all claims against the Purchaser arising from the business relationship, including future claims, also from simultaneously or subsequently concluded contracts, are settled. This also applies if individual or all our claims have been included in a current account and the balance has been drawn and acknowledged.
- The Purchaser is entitled to resell the reserved goods in the ordinary course of business. The Purchaser hereby assigns to us all claims in the amount of the final invoice amount (including VAT) which it accrues from the resale to buyers or to third parties, irrespective of whether the purchased item was resold without or after processing.
- The Purchaser is authorized to collect this claim even after assignment. Our authority to collect the claim ourselves remains unaffected; however, we undertake not to collect the claims as long as the Purchaser duly fulfils its payment and other obligations, and, in particular, is not in default of payment, or has not filed an application for settlement or insolvency proceedings and there is not a cessation of payments. We may demand that the Purchaser discloses the assigned claims and their debtors, makes all requests required for collection, hands over the associated documents, and notifies the debtors of an assignment.
- In the event of breach of contract by the Purchaser, in particular in the event of default in payment, we are entitled to take back the purchased item. Our taking back of the purchased item is not a withdrawal from the contract, unless we have expressly stated this in writing. The seizure of the purchased item by us is always a withdrawal from the contract. After the return of the purchased item, we are entitled to make use of it, whereby the proceeds of sale shall be credited against the liabilities of the Purchaser, less reasonable utilization costs.
- The Purchaser is obliged to handle the purchased item with care; in particular, it is obliged to insure it at its own expense against damage caused by fire, water and theft at the new value of the item.
- In the case of seizures or other interventions by third parties, the Purchaser must notify us immediately in writing so that we can file an action pursuant to § 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is unable to reimburse us for the court and out-of-court costs of a claim in accordance with § 771 ZPO, the Purchaser is liable for the loss incurred by us.
- The processing or transformation of the purchased item by the Purchaser is always carried out for us as the manufacturer. If the purchased item is processed with other items not belonging to us, we acquire the co-ownership of the new item in the proportion of the value of the purchased item (final invoice amount, including VAT) to the other processed items at the time of processing. What is more, the same applies to the item resulting from processing as to the purchased item delivered under reservation of title.
- If the purchased item is inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item in the proportion of the value of the purchased item (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing takes place in such a way that the Purchaser's item is to be regarded as the main item, it shall be deemed agreed that the Purchaser shall transfer proportionate co-ownership to us. The Purchaser shall safeguard the sole ownership or co-ownership resulting in this way for us.
- To secure our claims against it, the Purchaser also assigns to us the claims, which accrue against a third party through the connection of the purchased item with a piece of land.
- We undertake to release the collateral to which we are entitled at the request of the Purchaser, to the extent that the realizable value of our collateral exceeds the claims to be secured by more than 10%; the selection of the collateral to be released is our responsibility. The assignment shall expire as soon as all liabilities of the Purchaser have been settled.

§ 10 Application-Specific Information

- Our application-specific advice, instructions for use, etc. are based on practical and scientific experience. However, they are not binding and do not relieve the Purchaser from the obligation to satisfy itself of the suitability of the goods for the intended purposes and processes, by carrying out trial gluing and trial bonding.
- Even in the case of application-specific support provided by us to the Purchaser, the Purchaser carries the risk of the success of its work. Any claims of the Purchaser against us in accordance with § 6 are not excluded as a result of this.

§ 11 Final Provisions

- If the Purchaser is an entrepreneur, a legal entity under public law, or a public law special fund, Karlsruhe shall be the place of jurisdiction; however, we are entitled to file an action against the Purchaser at its place of residence.
- For all rights and obligations resulting from the business concluded with the Purchaser, Weingarten/Baden is agreed as the place of performance for both parties.
- As far as trade terms according to the International Commercial Terms (INCOTERMS) are agreed, the 2020 INCOTERMS® shall apply.
- The law of the Federal Republic of Germany applies, to the exclusion of the UN Convention on the International Sale of Goods (CISG).
- Both parties can terminate the contract for just cause without observing a period of notice. Such just cause exists if the continuation of the contractual relationship is unreasonable, taking into account all the circumstances of the individual case and balancing the interests of both parties; this is especially to be assumed in the case of late payment, opening of insolvency proceedings, and the expiry of a deadline without success.
- Insofar as one or more of the above terms and conditions is or becomes invalid or has loopholes, this shall not affect the validity of the remaining provisions. In this case, the contracting parties undertake to negotiate with the aim of advocating instead of these terms a legally effective arrangement which comes closest to the intended economic purpose or which the parties would have wanted according to the sense and purpose of the provision had they considered this point.

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