

General Terms and Conditions of Sale

Kelheim Fibres GmbH, Regensburger Str. 109 D-93309 Kelheim

Section 1 General – Scope of application

1. These General Terms and Conditions of Sale ("these Terms") are applicable to the business relations with our customer ("Customer"). These Terms apply only if the Customer is a company in the sense §§ 310 (1), 14 of the German Civil Code.
2. These Terms apply in particular to contracts for the sale and/or delivery of movable items ("Goods"). These Terms, as amended, apply at the time of the order also to future contracts for the sale and/or delivery of movable items between us and the Customer, even if we do not refer to the inclusion and application of these Terms in the individual case.
3. These Terms apply exclusively. General terms and conditions of the Customer which differ from, conflict with or supplement these Terms will apply only if and to the extent that we have expressly consented to their application. This requirement of consent applies in any event, for example even if we, being aware of the Customer's general terms and conditions, execute delivery to it without reservation.

Section 2 Conclusion of contract

1. Our offers are subject to change and non-binding. This also applies if we provide the Customer with catalogues, technical documentation (e.g. calculations), other product descriptions or documents, including in electronic form, to which we reserve ownership rights and copyrights.
2. By ordering a product, the Customer makes a binding agreement to purchase the Goods ordered. We have the right to accept the contractual offer included in the order within three weeks of receipt. Orders may be accepted either by our written confirmation or by delivery of the Goods to the Customer.
3. We reserve the right to make insignificant technical changes and customary changes in form, colour and/or weight within the scope of what is reasonable, taking into consideration the interests of the Customer. The BISFA terms of the International Bureau for the Standardisation of Man-Made Fibres apply.
4. If, after conclusion of the contract, we become aware of circumstances which raise doubts about the Customer's creditworthiness, we have the right to ask for cash before delivery or for provision of security.

Section 3 Retention of title

1. Until full payment of all our present and future claims under the purchase contract and a running business relation, including such resulting from current account ("secured claims"), we retain ownership of the sold goods ("goods subject to retention of title").
2. The Customer must treat the goods subject to retention of title with due care.
3. The Customer is obliged to notify us immediately of any access of third parties to the goods subject to retention of title, such as attachment, and of any damage to or destruction of the goods subject to retention of title. The Customer shall inform us immediately of any change in possession of the goods subject to retention of title and any change in its place of business.
4. If the Customer breaches the contract, particularly in the event of non-payment of the purchase price when due or violation of one of the obligations under paragraphs 2 and 3 of this section 3, we have the right to cancel the contract in accordance with the statutory provisions and/or require return of the goods subject to retention of title. Such return request will not include the cancellation of the contract at the same time; rather, we shall be entitled to demand only the return of the goods subject to retention of title and to reserve the right to cancel the contract. In case of a breach of contract, we may claim such rights only if we have first unsuccessfully set the Customer a reasonable period to remedy the breach of contract or for payment or if setting such period is not necessary according to the statutory provisions regarding contract cancellation.
5. The Customer is entitled to resell, process, mix or combine the goods subject to retention of title within the ordinary course of business. In such case, the following terms shall apply in addition.
 - (a) The Customer hereby assigns to us for security the claims resulting from the resale of the goods subject to retention of title to third parties. We accept this assignment. The Customer's obligations specified in paragraph 3 of Section 3 apply also in view of the assigned claims.
 - (b) After assignment, the Customer will continue to be entitled to collect the claim, next to us. We agree not to collect these claims ourselves as long as the Customer properly meets its financial obligations, does not default on payment, no petition for opening of insolvency proceedings is filed and there is no other deficiency of its capacity. If such is the case,

however, we may demand that the Customer disclose all assigned claims as well as the name and address of the third parties and provide all other information required for collecting the claims, including associated documents, and notify the third parties of the assignment.

- (c) Any processing or transformation of the goods subject to retention of title will be made in the name and for the account of Kelheim Fibres GmbH as the manufacturer. If the goods subject to retention of title are processed with other items not owned by us, we will acquire joint ownership of the new product in the ratio of the value of the goods subject to retention of title (purchase price plus VAT) plus the value of the processing to the value of the newly created item.
 - (d) If the goods subject to retention of title are inseparably mixed with or combined into one uniform product with items not owned by us, we will acquire joint ownership of the new product in the ratio of the value of the goods subject to retention of title (purchase price plus VAT) to the value of the other mixed/combined items at the time of such mixing/combination. If the goods subject to retention of title are mixed/combined with other items in such a manner that one of the other items must be considered the main item, the Customer will assign to us, to the extent that the main item is owned by it, co-ownership in the ratio of the value of the goods subject to retention of title (purchase price plus VAT) to the value of the main item.
6. If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the request of the Customer.
 7. The Customer is obligated to insure the goods subject to retention of title with the diligence of a prudent businessman and, if so requested, to provide proof of the conclusion of such insurance. The Customer hereby assigns its claims under such insurance to us. We accept this assignment.
 8. If our retention of title ceases to be valid in the event of deliveries to foreign countries or for other reasons, the Customer must immediately provide to us collateral over the delivered goods or another form of security for our claims which is effective pursuant to the law of the country concerned and which is as close as possible to retention of title under German law.

Section 4 Prices

1. Unless agreed otherwise in the particular case, our prices apply ex works excluding packaging.
2. Our prices do not include statutory value added tax. If VAT is applicable, it will be shown separately on the invoice.
3. Any bank or similar charges incurred in the process of payment, costs for shipping and packaging, taxes, customs duties, charges, public duties and other incidental expenses shall be borne by the Customer, even if they were not known on conclusion of the contract.
4. We will charge the prices or values in Euro valid on the date of dispatch or performance of the contract, unless agreed otherwise.
5. If we increase the prices in the period between conclusion of the contract and making available / delivery of the Goods, the Customer shall be entitled to withdraw from the contract within a period of one week after announcement of the price increase. The right of withdrawal shall not apply to long-term supply contracts.

Section 5 Payment

1. The purchase price, the prices for additional services and any advance costs pursuant to paragraph 3 of Section 4 are due for payment upon delivery of the Goods and receipt of the invoice by the Customer.
2. On expiry of 10 days after handover of the Goods and receipt of the invoice, the Customer will be deemed to be in default even if no demand for payment has been made.
3. During payment default, the purchase price shall bear interest of 8percentage points above the base interest rate pursuant to § 247 German Civil Code. We reserve the right to provide evidence of and claim greater default damage. Our claim to the commercial default interest (§ 353 German Commercial Code) remains unaffected.
4. Payment instructions, cheques and bills of exchange will only be accepted subject to special agreement and as conditional payment, with all collection and discount charges to the Customer's account.
5. If the Customer has defaulted on payment of an invoice, all outstanding liabilities become due for payment with immediate effect, and we are entitled to demand advance payment for the deliveries still outstanding or cash payment before delivery of the Goods without allowing the agreed period for payment. This also applies in the event of payment by an uncovered cheque, discontinuation of payments, bankruptcy of the Customer or the Customer's request for settlement.

6. The Customer will bear all charges, costs and expenses that incurred by us or a third party to which we assigned a claim, out and in connection with a successful collection procedure against the Customer which took place outside of the Federal Republic of Germany.

Section 6 Offsetting, rights of retention and assignment of claims

1. The Customer shall be entitled to rights to setoff, rights to refuse performance and retention rights only to the extent that its rights and claims have become legally final or are undisputed.
2. Prior to payment of invoiced amounts due, including interest on defaulted payment, we are not obligated to perform any further delivery under any current contract.
3. We are entitled to assign all claims against the Customer and assigned to us by the Customer (cf. Section 3) to a third party.

Section 7 Delivery and default on delivery

1. Delivery will be made ex warehouse, which shall also be our place of performance. At the request and expenses of the Customer, the Goods will be delivered to another place of destination. Unless agreed otherwise, we will be entitled to determine ourselves the type of shipment (in particular, carrier, shipment channel, packaging).
2. The agreement of delivery dates and periods, which may be agreed on a binding or non-binding basis, must be made in writing. A delivery period or delivery deadline will be deemed met if the Goods have left our works or warehouse by expiry of the deadline. In those cases where the Goods cannot be shipped or are not to be shipped, notification of the readiness for shipment before expiry of the deadline will be sufficient.
3. Before any agreed delivery period can commence, all technical matters must have been clarified with the Customer and all obligations of the Customer duly and punctually met.
4. We have the right to make partial delivery if
 - (a) the partial delivery is usable for the Customer within the scope of the contractual purpose of use,
 - (b) the delivery of the remaining Goods ordered is secured, and
 - (c) no considerable additional expenditure and/or no considerable additional costs are thereby to be incurred by the Customer.
5. In case of delivery in Germany, 4 (four) weeks after the end of any non-binding delivery date or a non-binding delivery period, the Customer may request us in writing to deliver within a reasonable period of time. If delivery is made abroad, the preceding sentence shall apply with the proviso that the period can be set only 8 (eight) weeks after expiry of the non-binding delivery date or a non-binding delivery period.
6. If this extension of the delivery time ends without delivery, the Customer is entitled to cancel the sales contract by making a written declaration in accordance with the applicable law and to claim damages instead of performance. These rights only apply to partial deliveries that have already been made if the Customer provides evidence that they are no longer usable as a result of the failure to deliver the balance of the order.
7. If we are in default of delivery or performance or if we are unable to make delivery or performance, no matter on what ground, our liability for damages shall be limited in accordance with § 10 of these Terms.
8. In the case of force majeure or other unforeseeable and extraordinary circumstances for which we are not responsible - such as difficulties in material sourcing, plant interruptions, strikes, lockouts, lack of means of transportation, problems with energy supplies etc.- the delivery period will be lengthened to a reasonable extent if we are unable to comply with our obligations in due time. An unforeseeable event shall also be deemed to exist if we are not supplied punctually by our suppliers, if we have entered into a contract of identical coverage. If such delay in delivery lasts for more than 1 month, the Customer has the right to cancel the contract. The aforesaid circumstances may only be invoked by us if the Customer is notified without delay.

Section 8 Transfer of risk and default of acceptance

1. The risk of accidental loss or accidental deterioration of the Goods shall pass to the Customer upon handover or in the event of a sale to destination, delivery to the forwarder, carrier or any person instructed with shipment.
2. Handover of the Goods will also be deemed to have been made if the Customer is in default of acceptance.

3. If the Customer is in default of acceptance or is in breach of any other contribution obligations, we will have the right to demand compensation for the damage incurred by us, including any additional expenses.

Section 9 Warranty rights

1. If the delivered item is defective, we may elect first whether to make subsequent performance by removal of the defect (rectification of defects) or delivery of a defect-free item (replacement delivery).
2. Deviations from the specified properties of the Goods supplied, such as base hue or colour shade, are not regarded as defects unless they result in a major impairment of the usefulness of the products made of these materials. Public statements, puffs or advertisement of the manufacturer or of third parties do not represent a contractual statement of quality of the Goods.
3. The Customer must notify us in writing of any obvious defects within 7 days of receipt of the Goods and hidden defects within a period of 7 days after detection of the defect; otherwise any warranty rights will be excluded. The dispatch of such a notification in due time is sufficient for observance of the time limit. The full burden of proof for all aspects of the claim, particularly for the defect itself, for the time when the defect was found and for the timeliness of the letter of complaint, lies with the Customer.
4. If the Customer wishes to process or resell the Goods despite visible defects, it must notify us immediately in writing by specifying the defects. Unless agreed otherwise, the Goods will be deemed defect-free if processed or resold.
5. The Customer is not granted any extended warranties by us in the legal sense. This does not affect any warranties given by third party manufacturers.
6. We guarantee that the Goods delivered do not infringe any German patents. We do not assume any additional liability in respect of patent law.
7. Claims of the Customer for damages and/or compensation for futile expenses shall apply only in accordance with § 10 of these Terms and shall otherwise be excluded. If, following failed subsequent performance, the Customer chooses damages, the Goods remain with the Customer if this can be reasonably expected of it.

Section 10 Liability limitations

1. Our liability for damages, no matter on what legal basis, especially based on impossibility, default, defective or wrong delivery, breach of contract, breach of obligations in contract negotiations and tort, shall be limited pursuant to this § 10 to the extent that such liability depends on fault.
2. We shall be liable to the Customer without limitation for damage caused with intent or gross negligence. In addition, we will also be liable in case of simple negligence, but only
 - (a) without limitation for damage resulting from the violation of the life, body and/or health of another,
 - (b) for damage based on a breach of a material contractual obligation or on the breach of an obligation the fulfilment of which has facilitated the proper implementation of the contract in the first place and on the fulfilment of which the Customer can regularly rely. In such case, however, our liability shall be limited to compensation of the foreseeable damage typically occurring.

The statutory liability based on the mandatory provisions of product liability shall not be limited by this clause.

3. Furthermore, our liability shall be excluded if specific product instructions or recommendations, in particular recommendations or instructions regarding processing or use are disregarded by the Customer, unless the Customer proves that the damage would also have occurred if the product instructions and recommendations had been observed.

Section 11 Statute of limitations

1. In deviation from § 438 (1) No. 3 German Civil Code, the general limitation period for claims based on defects as to quality or defects of title shall be one (1) year from delivery. This shall not apply if we have acted with intent.
2. However, claims of the Customer to damages and/or compensation for futile expenses in the sense of Section 10 hereof shall become statute-barred exclusively according to the statutory provisions.

Section 12 Final clauses

1. The laws of the Federal Republic of Germany shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

2. If the Customer is a merchant within the meaning of the Commercial Code, our registered office in Kelheim is the exclusive – also international – place of jurisdiction for all disputes arising from this contractual relationship. This also applies if the Customer does not have a general place of jurisdiction in Germany or if the residence or habitual abode is unknown at the time of commencement of legal proceedings.
3. We shall be free to deviate from paragraph 2 of this section 12 and choose another place of jurisdiction provided that this is legally permissible.
4. Any legally relevant declarations and notices which have to be made to us by the Customer after conclusion of the contract (e.g. setting of deadlines, notices of defect, declarations of withdrawal or reduction of purchase price) must be made in written form to be valid.
5. If any terms of the contract concluded with the Customer, including these Terms are or become invalid or void, in whole or in part, the validity of the other terms will not be affected thereby. Any partly or wholly invalid or void terms shall be replaced by terms which come as close as possible to the commercial success intended under the invalid term.
6. In addition, unless specified otherwise in these Terms, the BISFA Regulations of the International Bureau for the Standardisation of Man-Made Fibres govern performance of the sales contract and each subsequent examination. Customary terms such as FOB and CIF – provided that they are agreed upon – shall be interpreted in accordance with the version of the INCOTERMS of the international Chamber of Commerce applicable when the contract is made.
7. The brand names under which the Goods are supplied must not be used for the products manufactured from these branded articles without our prior written approval.
8. In the case of doubt or lack of clarity as a result of translation, the original German version of the current General Terms and Conditions of sale will apply for the purpose of settlement of any dispute.