

Kielhorn

Im- und Export UG & Co. KG



General sales and shipment conditions of KIELHORN UG & Co. KG for legal relations with businesses

I. General information

1. These terms & conditions (T&Cs) are only valid for transactions with companies in the sense of the German Civil Code.
2. All deliveries and services, including advice, suggestions and other additional services are exclusively effected on the basis of the following T&Cs. We expressly object to opposing or deviating business conditions from these T&Cs, particularly sales conditions of the buyer, and do not recognise these unless they are agreed upon with us in writing.
3. By issuing a contract or accepting a service the buyer recognises the validity of our T&Cs for the corresponding and all future trades.
4. Agreements of any kind are required in writing for clarification and as proof.
5. The incoterms are valid in the respectively valid version for the creation of conventional terms.

II. Contract conclusion

All our offers are subject to change unless they are expressly described as binding; in this case, the contract is created upon the buyer placing the order unless we immediately inform of the rejection of the contract conclusion.

III. Shipment

1. Shipment occurs ex factory, by external warehouse or by third parties authorised by us unless a different agreement has been made (EXW). Shipment type and route are chosen by us without responsibility for the cheapest transportation.

2. In the case of shipments of over 100 kg/l of our goods the shipment occurs – deviating from Article 1 – Carriage Paid To (CPT).

3. In terms of transportation, all applicable legal regulations of transportation law or other applicable conditions and regulations apply.

IV. Supply

1. The shipment dates given only represent the approximate shipment period unless agreed otherwise. The day of shipment is the day on which the goods leave the factory or a warehouse; if the goods are not shipped then notification of our readiness for shipment is sufficient.

2. Partial deliveries reasonable to the buyer are acceptable. The planned call dates may not be exceeded by more than a month by the buyer.

3. Division standard excess or short deliveries are acceptable.

4. In the case of special designs we are entitled to exceed or fall short of the shipment amounts agreed upon in the contract by up to 10%, if this is reasonable for the buyer. Ordered special designs must be accepted by the buyer; withdrawal from the contract is therefore ruled out.

5. If the buyer should default upon acceptance of the goods we are entitled to either ship them at the cost of the buyer or to store them if no other option is available, potentially even outdoors. In this case we are not liable for accidental destruction, loss or damage to the goods.

6. All shipment commitments are with the proviso of self shipment; in the case of non-shipment we are freed from our shipment obligation.

7. We do not have to substitute for shipment interruptions due to acts of God and due to events out of our control – including legal strikes and lock-outs by us or our assistants, suppliers or sub-suppliers, legal stipulations, etc. – even in the case of bindingly agreed periods and deadlines. In this case we are freed from our shipment obligation for the duration of the interruption and its effects. We are entitled, with regard to the contract, to completely or partially withdraw the incomplete part, however, in the case of a delay only if the service provision is unreasonable. In terms of the unfulfilled part under previous period of grace, the buyer is entitled to withdraw from the contract if the shipment and shipment interruption lasts for longer than two months and the shipment of the goods is no longer of interest to them. The buyer does not have any further entitlements, especially damage entitlements.

8. If the shipment takes place in hire containers, then these are to be returned without remains and carriage free within 90 days of receipt. Loss and damages to hire packaging are borne by the buyer if this is to be replaced by them. Hire packages are not to be used for other purposes or for receipt of other products. They are only intended for the transportation of the shipped goods. Markings are not to be removed.

9. Disposable packaging is not accepted by us, instead we recommend a third party to the buyer who has the packaging recycled according to packaging regulations.

V. Prices, payment

1. Our prices are ex factory without sales tax unless otherwise agreed upon in writing.

2. The weights, units and amounts given by us for calculation are standard if the buyer does not immediately object, up to a maximum of 14 days after receipt.
3. All costs occurring in connection with the contract in the country of the buyer including fees and taxes, even if they were unknown upon completion of the contract, are borne by the buyer.
4. Special designs are calculated with surcharges to our list prices (special design surcharge).
5. All payments are, unless otherwise agreed, are to be made to our bank accounts without any deduction within 30 days net or 14 days with 3% discount from the invoice date. A discount to new invoices is not permissible if older, due invoices are still unpaid.
6. Payments are only considered paid after credit entry of the respective amount to our account, even if due to exchanges or cheques. Exchanges and cheques do not entitle to discounts. Bank, discount, and collection charges are to be borne by the buyer.
7. Timeliness of payment is dependent on the time of payment receipt by us.
8. If the buyer defaults then all entitlements from the business connections with the buyer become immediately due. The same applies if an exchange protests or a cheque bounces or if the buyer's inability to pay is impending. For outstanding shipments we can decide to demand deposits or securities.
9. The buyer is only entitled to compensation and assertion of the right of retention as far as the counter claim is legally established or recognized by us.

VI. Conditional sale

1. Goods shipped by us remain our property until the buyer has settled all requirements from the opposing business connection with us including a corresponding payment in full.
2. The buyer is entitled to the processing, connection or mixing of our goods as part of their proper business.
 - a) If our property disappears by processing then it is agreed that the buyer gives us co-ownership that corresponds to the invoice value of the new product and transfers this share to us now. The transfer required to receive co-ownership is replaced by the agreement that the buyer is holding the object for us like a hirer, or, if the buyer does not own the object, by the already agreed upon assignment of the claim for return against the owner to us.
 - b) If our goods are connected or mixed with the main item of a third party for remuneration it is agreed upon that the buyer transfers their payment entitlements towards the third party up to the amount of the invoice value of the delivered goods to us as security.
3. The buyer is obligated to keep the goods under conditional sale to a decent standard.
4. Requirements including additional and security rights to the sale of goods to which we have proprietary rights are to be transferred to us for security by the buyer now as part of our share of the sold goods. The buyer is entitled to collect the ceded requirements.
5. The rights of the buyer from paragraphs 2-4 are only valid if they keep to their obligations to the business relationship. The customer is not entitled to other provisions to objects in our reserved

ownership or co-ownership or the requirements ceded to us. The authorisations automatically expire as soon as the buyer makes the payments.

6. The buyer is not entitled to pledge or to transfer by way of security the conditional goods or the release or forfeiting of covenant. The buyer must immediately inform us of any infringement of rights to objects wholly or partially owned by us by third parties. If the implementation of our claims is at risk then the buyer must, upon our request, inform us of the transfer of its recipients and give us all the required information and documents about the status of the goods we own and about the ceded requirements.

7. If our conditional sale loses its validity abroad then the buyer is obligated to immediately provide us with a security for our requirements that is valid according to the corresponding law and is as close as possible to conditional sale according to German law.

8. If the value of our requirements exceeds the existing securities by more than 20% then we will approve securities of our choice upon request of the buyer. The realisable value (security value) is standard for the appraisal of the security.

9. The buyer is obligated to keep the goods to which we have proprietary rights with the care of a proper salesman, to maintain them at their own cost, as well as to insure them against loss or damage at their own cost and, if requested, to produce proof of this insurance. The buyer transfers their rights to this insurance to us now as a precaution.

VII. Defect claims

1. The shipped goods are to be checked immediately upon receipt. Incorrect quantities and/or other obvious defects are to be reported precisely in writing with the exact reason for defect within 8 calendar days after receipt of the goods. Defects discovered later are also to be reported in writing within 8 calendar days from the time of discovery. The buyer/user is expressly advised that the inspection and reporting obligation outlined above also includes the corresponding colour shade of the shipped goods, including all individual shipments regardless of whether it is a case of one order or several orders.

2. Defect claims are ruled out if they are not reported in due time.

3. The statute of limitations for defect claims is 1 year.

4. The defect claim is to free rectification or replacement of the affected goods by our choice (replacement shipment). If the supplementary performance outlined above fails, is omitted or is delayed for reasons to be given by us, then the buyer is entitled to withdraw from the contract or to reduce the price of the goods. Demands to damages are ruled out.

5. If we have sourced the defective goods from a sub-supplier then we transfer our defect claims to the buyer now; we are only subsidiarily liable. The buyer is then obligated to make a legal claim against the sub-supplier.

6. None of the information on our products included in our publications represent an indication of the quality of the goods. The quality, suitability, qualification and function as well as the intended use of our goods are exclusively determined by the underlying product descriptions of the corresponding sales contracts. Division standard deviations are permissible in every case unless otherwise agreed upon in writing.

Due to the large amount of substrates and object conditions, the buyer/user is not absolved of their obligation to check our materials are suitable for their intended use under the respective object conditions and to correspondingly process them according to the respective state-of-the-art technology.

7. Special colour shades are individually prepared and fundamentally cannot be returned. We only recognise colour shade complaints of special colour shades if a test coat is carried out before coating and this is sent to us to rectify the defect.

VIII. Other liabilities

1. Liability for other contractual and non-contractual damages in the case of minor negligence is ruled out; unless the damages concern infringement of important objects of legal protection such as life and health or the infringement of cardinal obligations of the contract or insurable damages, the insurance of which is reasonable to us.

2. Liability for collateral damage is ruled out.

3. Our liability for all legal reasons, be they contractual or non-contractual, are limited to double the sales price.

4. The liability exclusions and limitations are not valid in the cases of intent, warranties and in cases of urgent liability according to the German Civil Code and product liability law.

5. We are not liable for legal or financial losses suffered by the buyer due to foreign patents or foreign regulations of commercial legal protection upon reselling or using our goods.

6. In the case of goods and materials that are only distributed by us we are only subsidiarily liable. We cede all claims that we have against the corresponding manufacturer and/or pre-supplier to the buyer.

IX. Technical application support

Verbal and written technical application recommendations are non-binding do not form a legal contractual relationship nor any extra obligation in addition to the sales contract. They do not absolve the buyer from testing the goods shipped by us themselves for their suitability for the intended use.

X. Liability of the buyer

1. Application, use and processing of the goods take place outside of our monitoring capabilities and are therefore the sole responsibility of the buyer.

2. The buyer is obligated to absolve us from all third party entitlements if they infringe upon their patents by using or selling our goods.

XI. Data protection

We collect and process your data for creating the contact, for maintaining our continuous customer relationship and in order to send information about our current offers and prices to you. We use credit agencies to carry out credit checks on you but also internally use legally recognised statistical processes (scoring). We reserve the right to notify credit agencies according to Section 28a of the BDSG.

XII. Place of fulfillment, legal venue, applicable law

1. The place of fulfillment and legal venue is the headquarters of the seller. The international accountability of the German courts is agreed upon. We are, however, entitled to ensure our demands are valid in the general legal venue of the customer. This also applies to disputes in certification, exchange or check processes.

2. German law is applicable to this contract. 3. Should individual conditions of the contract or these T&Cs be ineffective or become ineffective then the affectivity of the remaining conditions is unchanged.

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