



General Standard Terms and Conditions

A. Kirchner & Tochter GmbH, Dieselstr. 17, 47228 Duisburg

1. General:

The following general terms and conditions are applicable to all our supplies and services, including installation and repair work.

2. Quotations/Prices:

2.1. Our prices are understood to be net, ex works, excluding packing.

2.2. Prices are subject to change without notice where the time of delivery is more than 5 months.

2.3. A purchase order shall be binding on the purchaser. Acceptance will follow in the form of a written confirmation of the order after we have checked the order for technical feasibility. Our written confirmation of order is authoritative for the contents of the contract. The purchaser's general terms and conditions shall apply only inasmuch as they are expressly acknowledged by us in writing. Similarly, subsidiary agreements and supplementary provisions shall only be legally effective when such have been confirmed by us in writing.

2.4. Insofar as we are obliged, in conformity with the Packaging Ordinance, to take back the packing used for transport, the purchaser shall bear the cost of return of same.

3. Payment:

3.1. In general invoices are due for payment within 30 days of submission of the invoice. This also applies when delivery on call had been agreed and the object of purchase is ready for on-call delivery and we have notified the purchaser in writing that the object is ready for delivery - if need be, together with the invoice. Aberrant from this invoices have to be paid in advance.

3.2. In the event of default in payment, the purchaser shall at least pay 8% interest above the prevailing base interest rate. We reserve the right to produce evidence of loss of interest in excess of this.

3.3. In the case of part payments that cover only part of the debt owed, we reserve the right to offset part payments against other claims against the purchaser.

4. Time of Performance:

4.1. The time of performance stated by us shall be legally binding only if it had been assured by us explicitly and in writing. In the case of agreed delivery on call, delivery shall be deemed to have been made in good time if by the stated delivery date the devices are ready for dispatch in our works and the purchaser had been so advised thereof.

4.2. Default of delivery shall not arise in case of force majeure and does not entitle the purchaser to claim compensation for loss occasioned by delay.

5. Warranty:

5.1. The period of warranty is one year. The goods shall be inspected without delay at their place of destination. If the goods are damaged, the purchaser shall immediately clarify with the forwarding agent whether or not they were damaged in transit (hauling claim). Only after this has been clarified we shall decide whether a further damage survey is required by way of a possible warranty obligation. The delivery of merchandise other than that stipulated, incorrect quantities and recognizable defects shall be notified to us in writing by the purchaser immediately, at the latest within one week after arrival of the goods. Later notices of defects shall be excluded, unless they relate to defects that could not have been discovered within the one-week period even by careful examination and the complaint is lodged in writing immediately after discovery of the defect within the period prescribed by law. Given reasonable and timely notice of defect, we are obligated, at our discretion, to remedy the defect or to carry out replacement or subsequent deliveries. Should two attempts to rework or a replacement or subsequent delivery fail, the purchaser can, at his option, demand reduction of payment or cancellation of the contract. Subsequent fulfilment can be refused if this were only possible with disproportionately high costs. In the case of subsequent fulfilment, the purchaser shall return the defective object to us. Should the purchaser fail to give us the opportunity - although he would have been in a position to do so - to convince ourselves immediately of the defect that he has notified, or if he does not immediately make available in particular at our request the goods to which objection was made for the purpose of examination, all claims based on the possible defect shall be dropped. Any and all further claims under the warranty are excluded, with the exception of claims for damages owing to the absence of warranted properties. Claims for damages owing to injury to life, to person or to health that are founded on a defect caused by negligent violation of duties by the seller or by deliberate or negligent violation of duties by his legal representative or his vicarious agents shall become statute-barred in accordance with the legal provisions. The same applies to other claims for damages due to a defect, insofar as these are founded on grossly negligent violation of duties by the seller or the deliberate or grossly negligent violation of duties by his legal representative or his vicarious agents.

5.2. Flow measuring glasses are excluded from all warranties.

5.3. Likewise, the purchaser has the right to self-remedy defects only when subsequent fulfilment is not possible or has failed. This requires that a period of 14 days be fixed for subsequent fulfilment and that this term shall have expired without prior notice having been given. The same applies to the purchaser's right to withdraw from the contract and his right to claim reduction of the purchase price.

5.4. Withdrawal from the contract is excluded when the purchaser is solely or chiefly responsible for the defect. Likewise, withdrawal from the contract is only possible owing to substantial defects. If the purchaser wishes to return defective devices under warranty claims, freight not prepaid, we are entitled to stipulate the dispatch type sequence.

5.5. The purchaser's claims for damages arising from positive violation of contractual duty, from "culpa in contrahendo" and any tortious acts connected with such events are excluded, unless they are founded on a) intent, b) gross negligence of our statutory representatives or executive officers, c) culpable violation of contractual obligations. With the exception of claims arising out of tortious acts, such claims shall become statute-barred within a period of one year as from the time the object was handed over to the purchaser. In the case of impossibility, default and any possible tortious acts connected with these events, the claim is limited - to the exclusion of cases of intent and gross negligence - to repair of the damage foreseeable at the time the contract was concluded. For the warranty of properties we shall be liable only if the warranty was made explicitly and in writing and was intended to protect the purchaser specifically against the case of loss or damage that has occurred.

5.6. Where the object of purchase is sent outside Germany, the purchaser is responsible for observing any and all applicable industrial property rights and identifying marking requirements. He alone shall be liable for the consequences of any infringement of such rights and requirements and shall indemnify us against all third-party claims.

6. Performance/Transfer of Risk:

6.1. Use and risk are transferred to the purchaser at the latest upon dispatch of the ex works consignment. This also applies when delivery is effected within the scope of assembly/installation work carried out by the purchaser and when transport is carried out, organized or superintended by us.

6.2. In the case of delayed dispatch of the consignment from our works that is attributable to circumstances within the control of the purchaser, the risk shall pass to the purchaser on the day on which we notified the purchaser that the devices are/the system is ready for dispatch.

7. Reservation of ownership:

7.1. All movables supplied by us shall remain our property until all outstanding debts have been paid in full.

7.2. In the case of default of payment, we are entitled to demand the return of the objects subject to our reservation of ownership. This also applies to insolvency and contract breaking conduct of the purchaser.

7.3. The purchaser is entitled only with our written consent to sell the goods that are subject to reservation of ownership. The purchaser is not entitled to pledge or to assign the goods subject to reservation of ownership, or to assign them by way of security.

8. Non-Assignment Clause:

The purchaser may only with our consent assign his rights arising out of the contract he has concluded with us.

9. Damage Compensation:

Any right the purchaser may have to compensation in damages presupposes that he has set us in writing a 14-day time limit for performance and/or subsequent fulfilment and that this term has expired without result. In the case of defective performance, our violation of duty may not be inconsiderable. If the purchaser can demand damages, we are entitled to reclaim that which we have already performed.

10. Place of Performance/Jurisdiction/Final Clause

10.1. The place of performance for services rendered by us is Duisburg.

10.2. If the purchaser is a registered merchant, it is understood and agreed that the sole place of performance shall be Duisburg.

10.3. The law of the Federal Republic of Germany shall apply, to the exclusion of the provisions of the United Nations Convention concerning contracts on the international sale of goods.

10.4. Should individual parts of these General Standard Terms and Conditions be inoperative, such parts shall not affect any of the other provisions therein.