General Terms and Conditions
Kosche Holzwerkstoffe GmbH & Co. KG

(as of 08/2019)

§ 1 – General

(1) All business relationships between us – Kosche Holzwerkstoffe GmbH & Co. KG – and our customers are based exclusively on these conditions in the version valid at the time of the conclusion of the contract. Differing purchasing conditions of the customer are not recognized and do not become part of the contract, even through unconditional confirmation and execution of the order.

(2) The entirety of agreements between us and the customer is set forth in the contract concluded with them (§ 2) as well as in these terms and conditions in writing.

(3) These conditions apply only to entrepreneurs within the meaning of §§ 310 para. 1, 14 BGB.

§ 2 – Conclusion and Subject of the Contract

(1) Our offers are non-binding. Only the customer's order constitutes a binding offer within the meaning of § 145 BGB, which we may accept within 4 weeks. The contract is concluded by our written confirmation of the order ("order confirmation"). The order confirmation alone shall be decisive for the subject matter of the contract. If it is missing and the contract is exceptionally concluded by execution of the order, then the content of the order applies to the subject matter of the contract; this does not apply to the customer's contractual conditions as per § 1 paragraph 1 sentence 2.

(2) Individually agreed arrangements with the customer (including side agreements, supplements, and changes) always take precedence over these conditions. For the content of such arrangements, absent proof to the contrary, a written contract or our written confirmation is authoritative.

(3) Dimensions, weights and performance data contained in our offer documents or order confirmation as well as illustrations and drawings are approximate values according to our best knowledge and are only binding for execution if expressly confirmed by us in writing.

(4) We reserve all ownership, copyright, and usage rights to samples, cost estimates, drawings and similar information, tangible and intangible – also in electronic form; these may not be made accessible to third parties and must be returned immediately upon request. We undertake to make information and documents expressly designated as confidential by the customer available to third parties only with the customer's consent.

§ 3 – Prices and Payment

(1) Unless otherwise agreed, our prices are "ex works" including loading at the works, but excluding insurance, packaging, shipping and unloading. Prices are exclusive of VAT at the statutory rate applicable on the invoice date.

(2) Should, after contract conclusion, due to circumstances for which we are not responsible (e.g. additional customer requirements or changes in regulations), further quantities or services prove necessary, the contract including prices shall be modified by mutual agreement.

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(3) For contracts with an agreed delivery time of more than six weeks, either contracting party may request adjustment of the agreed price to the extent that, following contract conclusion, unavoidable cost reductions or increases occur, in particular due to collective wage agreements or changes in material prices. The price modification shall be restricted to the extent necessary to balance the incurred cost reduction or increase. Such a price adjustment right applies if, due to delays attributable to the other party, the actual delivery period exceeds six weeks.

(4) Unless otherwise agreed in writing, the due date of our invoices and the consequences of default are governed by statutory provisions. We may claim proven damages beyond this; the customer may prove lower damage. Independently thereof, we charge a processing fee of €3.00 for every reminder after the due date.

(5) If the customer is unsuccessfully enforced against, ceases payments, a bill or cheque submitted by them is protested, or insolvency proceedings are filed over their assets, all our invoice claims become immediately due.

(6) The customer is entitled to cash discount deduction only if expressly stated in the order confirmation.

(7) The right to set off counterclaims is granted to the customer only if such claims are undisputed, acknowledged by us, or legally established. The customer is not entitled to any rights of retention unless we have already received payment for defective performance to the value corresponding to our performance.

(8) Acceptance of bills and cheques is only for performance; costs of discounting and collection are borne by the customer.

§ 4 – Delivery, Acceptance, and Inspection Periods

(1) Regarding deadlines for our deliveries, § 2 paragraph 1 applies accordingly. Our compliance is contingent upon timely receipt of information and documents to be provided by the customer and fulfillment of all other customer obligations, especially advance payments. Otherwise, delivery periods will be extended accordingly.

(2) Adherence to delivery deadlines is subject to correct and timely self-delivery. Any foreseeable delays will be communicated to the customer as soon as possible.

(3) A delivery deadline is deemed met when the goods are made available to the customer. If shipment is agreed, the deadline is met when the entire consignment is shipped. Where acceptance is required, the acceptance date or, alternatively, the fruitless expiry of a period set for the customer to accept is decisive.

(4) If delivery, shipping, or acceptance of the goods is delayed due to reasons attributable to the customer, they must compensate us for any damages and additional expenses resulting from the delay.

(5) If shipping or delivering the goods is postponed at customer's request, we are entitled, after one month from notice of readiness for delivery, to claim a flat rate storage fee of 0.5% – up to a maximum of 5% – of the relevant invoice value per commenced month.

(6) For orders on call, delivery or acceptance must occur within six months. If acceptance does not occur within an adequate grace period set by us, we are entitled to withdraw from the contract and claim liquidated damages in lieu of performance amounting to 30% of the net order sum.

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(7) If the customer withdraws from the contract or refuses fulfillment without justification, we are entitled to claim liquidated damages in lieu of performance amounting to 30% of the net order sum.

(8) In the cases specified in paragraphs 5, 6, and 7, we retain the right to prove and claim greater damage, and the customer may prove lower damage.

§ 5 – Transfer of Risk

(1) The risk of accidental loss or deterioration of the goods passes to the customer when the goods have left our premises, even in case of partial deliveries or if we undertake other services, e.g. freight or installation. Where acceptance is required, the acceptance date or, alternatively, the fruitless expiry of a period set for the customer to accept is decisive.

(2) If shipment or delivery or acceptance is delayed or does not occur for reasons beyond our control, risk passes to the customer as of the date of notification of shipping or acceptance readiness.

(3) Packaging and shipping are carried out – at the customer's expense – with customary diligence; at their request, the consignment will be insured by us to the extent desired, also at their expense.

§ 6 – Defects, Warranty, Liability

(1) The customer's rights due to defects of the goods expire one year from delivery. Claims for damages according to paragraph 3 below, for defects in buildings, or for goods delivered and used in their usual way for a building and causing its defect, expire within the statutory periods.

(2) Claims concerning defects of the goods are subject to the following provisions:

(a) The customer's rights for defects are conditional upon meeting their inspection and complaint obligations as per § 377 HGB. Obvious defects must be reported immediately, but within two weeks of delivery at the latest. Missing this deadline excludes defect claims for apparent defects. Defects that cannot be detected even with careful inspection within this period must be reported immediately upon discovery.

(b) Fulfillment of defect claims by us also requires the customer to have met their obligations at least to the value of the defect.

(c) If the goods are defective, we will, at our discretion, remedy the defect or deliver a new defect-free item. The necessary expenses for remedy, especially transport, travel, labor, and material costs, as well as installation and removal costs, are borne by us, but limited to 150% of the purchase price. If the goods are transported to a place other than the place of performance, the customer shall bear any additional costs incurred.

(d) For remedy, the customer must give us the necessary time and opportunity; otherwise, we are released from liability for consequences arising therefrom. Only in urgent cases of endangering operational safety or to avert disproportionately great damage, which must be notified to us immediately, does the customer have the right to remedy the defect themselves or through third parties and demand compensation for the required expenses from us. In case of improper remedy by the customer or third parties, our liability for resulting consequences is void. We are also not liable if the customer makes changes to the item delivered without our express prior consent.

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(e) After unsuccessful expiry of a deadline set by the customer for remedy (correction or replacement), the customer is entitled to withdraw from the contract or demand a reduction in the purchase price.

(f) If remedy fails, the customer may also claim damages instead of performance or reimbursement of futile expenses. In this case, we are only liable for intent and gross negligence, including intent and gross negligence on the part of our representatives or agents, as well as for culpable breach of an essential contractual obligation (an obligation whose fulfillment is essential for proper contract execution and on whose observance the contracting party regularly relies on and may rely). In case of no intentional or grossly negligent breach of contract, our liability for damages is limited to the foreseeable, typically occurring damage.

(3) Otherwise, we are liable according to statutory provisions for culpable injury to life, body, or health if intent, gross negligence, or fraud can be attributed to us. Mandatory liability under the Product Liability Act for personal injury and property damage remains unaffected. In case of culpable breach of an essential contractual obligation, we are liable according to statutory provisions, but limited to contract-typical, reasonably foreseeable damage. Further claims are excluded.

(4) Beyond this, further claims for damages are excluded, regardless of the legal nature of the asserted claim, unless intent or gross negligence on the part of us, our legal representatives, or management staff can be attributed. This applies in particular to claims for damages due to fault at contract conclusion, due to other breaches of duty, or tortious claims for compensation for property damage under § 823 BGB, as well as with respect to the personal liability of our employees, workers, staff, representatives, and agents.

§ 7 – Security Rights

(1) We retain title to the delivered goods until all claims arising from the business relationship between us and the customer have been settled in full. In case of breach of duty by the customer, in particular default of payment, we are entitled, after setting a reasonable period for payment, to withdraw from the contract by taking back the goods. Once the goods have been repossessed, we are entitled to realize them; the proceeds, minus reasonable costs of realization, will be credited against the customer's liabilities. Our further legal claims remain unaffected.

(2) If the goods are processed by the customer, the processing is carried out for us. We are then deemed to be the manufacturer within the meaning of § 950 BGB and acquire co-ownership of the intermediate or final product in proportion to the value of the goods (incl. VAT) to the other processed items at the time of processing. If the goods are mixed with other goods not belonging to us, we acquire co-ownership in the ratio of the value of the goods (incl. VAT) to the value of the other processed items at the time of mixing. If the mixture is made so that the customer's item is to be regarded as the main item, the customer now assigns us co-ownership of the new item resulting from the mixing to the relevant proportion. If the goods are combined as an essential component with a third party's property, the customer already assigns to us now the remuneration claim arising against the third party to the extent of their debt to us.

(3) The customer may dispose of the goods only in the ordinary course of business; other dispositions, especially pledges or transfers by way of security, are not permitted. The customer hereby assigns to us all claims arising from resale or further processing against their purchaser and, in the case of damage or loss of the goods delivered by us, any claims against insurance companies or other third parties to the extent of their debt to us. If the goods are co-owned by us

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and other third parties, the customer assigns the claims from resale to us in the proportion of our co-ownership share.

(4) The customer is entitled to collect the claims assigned to us. We undertake not to collect the receivable as long as the customer fulfills their payment obligations, is not in default, and no application for the opening of insolvency or settlement proceedings is filed or payment cessation occurs. However, if such is the case, the customer is obliged to notify us immediately and to provide the assigned claims, the debtors, and all necessary information for collection, to hand over the relevant documents, and to inform the debtor about the assignment.

(5) If the value of the claims and/or goods assigned to us and owned by us before or after processing exceeds our own claims against the customer by more than 10%, we will, upon the customer's request, release claims or goods at our discretion until the excess is no more than 10%.

(6) The customer is obliged to notify us immediately of third-party access to the goods delivered under retention of title and to the rights assigned to us. If the third party is unable to reimburse us for judicial and extra-judicial costs of an objection lawsuit (§ 771 ZPO), the customer shall be liable for such costs.

(7) The customer must store the goods carefully and sufficiently insure them at their expense against theft and fire.

(8) Upon full payment of our claims from the business relationship, title to the goods delivered under retention of title transfers to the customer and assigned claims are reassigned to them.

§ 8 – Final Provisions

(1) If the purchaser is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law, or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered seat in 53804 Much. The same applies if the buyer is an entrepreneur within the meaning of § 14 BGB. However, in all cases, we are also entitled to file a suit at the place of performance of the delivery obligation according to these terms or according to an overriding individual agreement or at the buyer's general place of jurisdiction. Overriding statutory provisions, especially for exclusive jurisdiction, remain unaffected.

(2) The contractual relationship and all disputes arising therefrom – including in the case of international transactions – are subject to the law of the Federal Republic of Germany.

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