

KUNO ENGELS

Vertriebs-
GmbH

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Terms of Sale and Delivery 7/2018

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1. Conclusion of contract

The following Terms of Sale and Delivery apply to enterprises, legal entities under public law and public law special trusts. They apply exclusively to all deliveries and services based on all contracts at present and in the future.

a) Upon acceptance of an order, our Terms of Sale and Delivery 7/2018 replace any of the Purchaser's purchasing conditions, even if the acceptance of order supposedly counts as recognition of these conditions according to such purchasing conditions. The Purchaser recognises our confirmation of order by acceptance without contradiction that it waives any legal objection derived from its purchasing conditions; we accept this waiver. Our Terms also apply to all business transactions in the future, even if they are not specifically agreed once more.

b) Our Terms are again accepted at the latest upon receipt of the delivery or service by the Purchaser. We hereby contradict the Purchaser's notice to its purchasing conditions. Deviations from our Terms are not effective unless such are confirmed by us in writing.

2. Offers

Our offers are free of obligation and non-binding. Declarations of acceptance and orders require our written confirmation to be legally effective; the same applies to supplements, changes and auxiliary agreements. Drawings, illustrations, dimensions and other performance data are not binding unless these are specifically agreed in writing.

3. Prices

Our prices are ex-works in Leichlingen. They do not include packaging, but do include value-added tax. Costs of packaging, freight, insurance and customs are not included. If a major change occurs in material prices, wages, salaries, freight, public taxes or other determining factors between the conclusion of contract and the delivery date, we reserve the right to make a reasonable price increase. Our prices are always stated in Euro.

a) The metal price surcharges calculated by us are always up-to-date, detailed separately and cannot be discounted.

4. Made-to-measure and customised manufactures

In the case of made-to-measure and customised manufactures, the Purchaser cannot withdraw from the contract, unless we are culpable of infringing a contractual obligation. The Purchaser must refund the development costs of made-to-measure and customised manufactures to us, if a delivery order is not issued to us with which these costs can be amortised.

5. Delivery contracts on call-up

Unless agreed otherwise, call-up orders must be taken in within six months from the first delivery. Unless something different has been agreed, binding quantities must be notified at least two months before the delivery date by call-up. If the binding quantities are exceeded, this must be notified within this deadline.

a) Additional costs caused by a late call-up or subsequent changes to the call-up with regard to time or quantities made by the Purchaser are borne by the Purchaser. Our calculation is decisive in this context. If the Purchaser fails to make the call-up on time, despite receiving a warning and a period of grace, we are entitled to demand recompense for services already provided and foregone profit of up to 20% of the agreed price. The pursuit of higher damages is reserved. However, the Purchaser is entitled to demonstrate to us that we have not incurred any damages at all or significantly lower damages. Withdrawal from contract for reasons for which we are culpable is only admissible for the call-up quantities still outstanding.

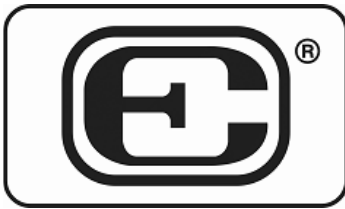
6. Delivery deadlines

Delivery deadlines start to run as soon as the technical execution and all contractual details have been clarified. Delivery deadlines and dates refer to the point in time of dispatch from our works. Deadlines are also considered to have been met if the goods cannot be sent off or arrive on time for reasons that are not our fault. Details of delivery times are always approximate dates. The agreement of delivery dates and deadlines, binding or non-binding, requires the written form. We only have an obligation to meet agreed delivery dates and deadlines under the prerequisite of an undisturbed course of production.

a) The consequences of an Act of God (e.g. forces of nature, accidents etc.), official decrees and other unforeseeable circumstances (e.g. strike, lock-out, machinery breakdown etc.) and delays in the delivery of important operating or input materials release us from the duty of delivering on-time. They extend the delivery deadlines by the duration of the hindrance plus a reasonable start-up time. This also applies even if these events occur at our suppliers or at their sub-suppliers.

b) If delivery is impossible because of the stated circumstances, our duty of delivery and the Purchaser's counter-performance lapses, to the exclusion of any recompense. If we are culpable of failing to meet dates and deadlines that have been bindingly agreed or if we are in default, the Purchaser has a claim to flat-rate default damages of 0.5% for each completed week of default, although at maximum 5% of the invoice value of the deliveries and services affected by the default. Claims to damages above and beyond these are excluded.

c) If a fixed, commercial transaction has been agreed, this limitation of liability does not apply if the Purchaser has lost interest in the fulfilment of contract due to default of delivery for which we are culpable, the default of delivery is based on a malicious or grossly negligent violation of contract of which we are culpable, whereby such a violation on the part of our representatives or vicarious agents is attributable to us, or the default of delivery for which we are culpable is due to a violation of a cardinal duty of contract. If we are not maliciously culpable of the default of delivery or if the default of delivery concerns a cardinal duty of contract, our liability to recompense damages is limited to the damage typically foreseeable. The Purchaser is not entitled to withdraw from the contract unless we are culpable of missing the delivery date and it has set us a reasonable period of grace without success. Part deliveries and part services are admissible.



7. Shipment and transfer of risk

The Purchaser bears the costs of shipment. We select the packaging and the mode and route of the shipment at our own discretion. We charge transport packaging at cost price. We will take this packaging back if the Purchaser returns it to our works in Leichlingen at its own expense.

- a) Risk is transferred to the Purchaser – even if the delivery is carriage-paid – as soon as the goods leave our works. If shipment is delayed for reasons which the Purchaser is culpable, risk is transferred on the date of readiness to ship. If the Purchaser is in default of acceptance, the risk of accidental deterioration or accidental destruction of the goods is transferred to the Purchaser upon occurrence of the default of acceptance.
- b) Transport damage must be reported to the carrier directly, if possible, although at the latest within 6 days. Without your notice to the contrary, we shall arrange for suitable transport insurance.

8. Claims due to material defects

The quality of the goods is determined solely by the technical delivery provisions agreed. Illustrations, drawings, dimensions, weights and colours contained in catalogues, price lists and other printed matter are approximations normal in the trade. We can correct obvious spelling and computing mistakes. The quantities of our deliveries can differ by up to 5% upwards or downwards. In case of orders for customised manufactures, details on quality (execution, dimensions etc.) require written confirmation to be effective.

- a) In principle, the Purchaser alone is responsible for checking whether the devices and elements it orders are suitable and approved for the intended purpose of use. This particularly applies if we must deliver in accordance with drawings, specifications, samples or other requirements made by the Purchaser. We are not liable for material defects if these are due to incorrect or unsatisfactory statements about the operating circumstances, to improper handling or installation of the equipment, to excessive loading or to natural wear & tear or are caused by the fact that the Purchaser or people commissioned on its behalf make changes or repairs to our equipment without our written approval.
- b) The Purchaser is obliged to inspect the goods supplied by us after their delivery for conformity to contract, in particular the conformity of their dimensions and materials. Any false deliveries, errors or defects must be reported to us in writing without delay, although at the latest within a deadline of 8 work days calculated from the arrival of the goods at their destination. The complaint must exactly detail the defect. Our receipt of the complaint is the decisive date in complying with the deadline.
- c) The Purchaser also has this obligation if the goods are delivered on its behalf to a third-party. If the Purchaser claims concealed or hidden defects, it is responsible for demonstrating that the defectiveness of the goods was not obvious. If a complaint made on-time and in the correct form is justified, we are obliged to perform rework or make a substitute delivery free-of-charge at our discretion. If rework or a substitute delivery fails, if such requires a disproportionate amount of effort or if such is not executed within a reasonable period of grace set by the Purchaser, the Purchaser can then withdraw from the contract or demand a corresponding reduction in the purchase price at its discretion, to the exclusion of further claims due to material defects. In the case of customised manufactures, withdrawal from the contract is excluded.
- d) Claims due to material defects expire by limitation of time in 12 months. This does not apply if the law overrides this deadline by prescribing a longer period. Further-going claims on the part of the Purchaser, regardless of whatever their legal reason, are excluded. This particularly applies to a recompense of damages that was not incurred on the delivered goods themselves, recompense for foregone profit and recompense for asset losses, unless such are based on malice aforethought, gross negligence or the culpable violation of cardinal contractual duties. In case of a non-malicious infringement of contract or an infringement of cardinal duties of contract due to simple negligence, we are only liable for the damages reasonably foreseeable and typical for the type of contract.
- e) The limitation of liability furthermore does not apply to cases under product liability laws in which liability is prescribed for errors in the supplied goods that cause personal injuries or material damage on privately used objects or properties. It also does not apply in case of fatalities, physical injuries or harm to health. Nor does it apply to the lack of assured characteristics, if and insofar as the assurance was precisely intended to protect the Purchaser from damages not incurred on the supplied goods themselves.

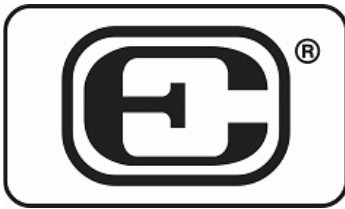
9. Return of goods

In principle, buyers do not have any claim to return goods that have been properly delivered by us. In exceptional cases, a return is only possible after a prior agreement with the equipment undamaged and in its original packaging. Whatever the case, we are entitled to charge a processing fee of 15-25% of the invoice sum for a return.

10. Payment and security

Our invoice sums are due purely net, free of postage and expenses, within 30 days from the invoice date. If payment is made within 8 days from the invoice date, we grant 3% discount, if payment is made within 14 days from the invoice date, we grant 2% discount. The date of receipt is regarded as the date on which we can dispose over the invoice sum or it is credited to one of our accounts. The risk of the mode of payment is borne by the Purchaser. If the due date is overshot, default interest is charged at 9% per annum above the basis rate of interest in accordance with § 247 BGB.

- a) The pursuit of further-going claims to damages remains unaffected. The acceptance of own or outside cheques remains reserved in all cases. Cheques are only ever accepted to facilitate payment. If cheques are accepted, the Purchaser shall bear all costs in every case. We reserve the right to retract credit granted (even within the payment deadlines) and to refuse cheques without needing to state reasons, particularly if insolvency proceedings are opened against the Purchaser's assets, an accepted or outside cheque becomes the subject of protest or is rejected by our bank, an instalment payment due on any transaction is not settled despite a reminder, or if the Purchaser's assets situation deteriorates, especially if payment difficulties become known.
- b) If the granting of credit is retracted, we are entitled to demand the cash payment of all outstanding claims, even before their due dates, and to pursue our rights under the reservation of title. Finally, we can make the fulfilment of our obligation under concluded contracts dependent on an advance payment or on the provision of security and, after a reasonable period of grace, withdraw from the contract and demand recompense for damages.
- c) The Purchaser does not accrue any rights of offsetting or retention unless its counter-claims have been established by a court of law, are undisputed or have been recognised by us. Moreover, it may not exercise a right of retention unless its counter-claim is based on the same contractual relationship. For the rest, the Purchaser is not entitled to exercise a right of retention due to material defects, to solely make payments on account, to withhold security sums or to make payments dependent on our provision of security.



11. Reservation of title

We reserve the ownership to all goods delivered by us until all claims have been fulfilled that accrue to us against the Purchaser, regardless of whatever their legal reason. The same applies if payment is made for particularly designated claims. Our reservation of title also extends to a new manufacture created by processing. If our goods are processed, bonded or mixed together with other goods, we acquire co-ownership to the new item in the ratio of the invoice value of our goods to the invoice value of the other goods used.

a) If our ownership expires due to processing, bonding or mixing, the buyer even now assigns to us the rights of ownership or co-ownership to the new item accruing to it in the scope of the invoice value of our goods and shall safeguard it for us at no charge. If the Purchaser resells the goods supplied by us, regardless of whatever their state, it even now assigns the claims against its buyer to us, and indeed until complete redemption of all our claims against the Purchaser. If the Purchaser resells goods supplied by us together with other goods, the assignment of the claim from the resale only applies in the amount of our invoice value and the sold goods supplied by us. In case of the resale of goods to which we have rights of co-ownership, the assignment of the claim applies in the amount of these co-ownership shares. In this case, the non-assigned part of the claim is initially redeemed by third-party payments made to the Purchaser.

b) At our request, the Purchaser is obliged to notify its buyers of the assignment made to us, to issue us with the information required to pursue our rights and to handover the required documents. The foregoing paragraphs apply accordingly if the Purchaser uses the goods delivered by us to fulfil a work contract or a work delivery contract. The Purchaser is entitled to collect claims from a sale of the goods delivered by us until our revocation, which can be announced at any time. The Purchaser is not allowed to pledge or assign as security the goods supplied by us, nor to assign or pledge its claims from a sale of the goods delivered by us. The Purchaser must inform us immediately of any seizure or other impairment caused by third parties. If the value of existing securities exceeds the secured claim by more than 20%, then at the Purchaser's request, we are obliged to release the securities of our choice.

12. Reservation of fulfilment

The fulfilment of contract stands under the prerequisite that no obstacles are presented by German, American or other applicable EU or international regulations of foreign trade law. The same applies to embargos and other sanctions.

a) The Purchaser is obliged to provide all the information and documents necessary for exports, transfers and imports.

13. Safety provisions

When handling devices and elements delivered by us, the prevailing EU directives must be observed. It is also essential that the installation and erection notices in the operating instructions A-1999, B-2010 as well as the information on P. 20 concerning safety action are heeded.

14. Applicable law and place of jurisdiction

German law shall prevail exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The place of jurisdiction in case of disputes with purchasers who are full merchants, legal entities under public law or public law special trusts is our headquarters. However, we reserve the right to take action at the headquarters or the residence of the Purchaser.

15. Concluding provision

If the contract or our Terms of Sale and Delivery 7/2018 contain loopholes, these loopholes shall be closed by legally effective regulations, which the contractual partners would have agreed in accordance with the financial objectives of the contract and the purpose of these Terms of Sale and Delivery 7/2018, if they had recognised the loopholes.

a) You can also find our current Terms of Sale and Delivery at www.kunoengels.de/Informationen/AGB.

16. Data protection, General Data Protection Regulation

Upon enforcement of the European General Data Protection Regulation (EU-GDPR), we store your data, if required for business purposes, on our data processing systems. You can request information on the recording and processing of personal data from us or you can find them on the internet at the link www.kunoengels.de/Informationen/Datenschutz.