

General Business Conditions of Kurita Europe GmbH

§ 1 General – Jurisdiction

- 1) Our general business conditions (GBC) apply exclusively; adverse or divergent conditions of the customer are only binding, if we accept them in writing. Our GBC apply even if we affect unconditional delivery in the knowledge of adverse or divergent conditions of the customer.
- 2) All agreements regarding the execution of this contract, which are entered between us and the customer, have been stipulated in the contract including these GBC. Our employees are not entitled to enter into deviating oral agreements.
- 3) Our GBC apply only to entrepreneurs in terms of § 14 German Civil Code (BGB), legal entities of the public law and separate funds under public law.
- 4) Our GBC also apply for all future business with the customer.

§ 2 Conclusion of the Contract

- 1) Our offers are not binding. Technical alterations as well as alterations in form, colour and/or weight remain reserved within reason.
- 2) If the order is an offer according to § 145 German Civil Code, we can accept this offer within two weeks of receipt.
- 3) Unless otherwise determined in these GBC or in our order confirmation, the INCOTERMS in the version valid at the time of execution of contract apply.
- 4) Delivery is subject to correct and timely delivery to us by our suppliers (*Selbstbelieferungsvorbehalt*). We will immediately inform the customer regarding the non-availability of the service and immediately reimburse the customer with the relevant consideration.
- 5) We retain ownership and copyright for images, drawings, calculations and other documentation. This applies also to such written documentation, which is deemed to be "confidential". The customer will require our express written consent prior to passing these on to a third party.

§ 3 Delivery - Delivery period

- 1) Extent and content of the owed delivery are according to our order confirmation.
- 2) Compliance with our delivery obligations implies the timely and correct fulfilment of possible obligations by the customer. The Defence of unperformed contract (§320 German Civil Code) and the Defence of uncertainty (§ 321 BGB) are reserved.
- 3) All events of force majeure, which we, according to § 276 German Civil Code, as obligor are not responsible for and which prevent us from providing deliveries or services, discharge us from the fulfilment of contractual obligations for the duration of these events. We are obligated to immediately notify the customer in writing, if such an event occurs and reimburse the customer with considerations already advanced; at the same time we are held to inform the customer, how long such an event could last. If the event stretches over a period of more than three months, we are entitled to withdraw from the contract.
- 4) Deliveries are ex-works, unless otherwise agreed in writing. The risk of accidental loss or accidental deterioration of the delivery passes to the customer ex-works. This applies also, if we make or have delivery made to the customer's place of business at the customer's request. If the customer is covered by a transport insurance, he is obligated to assign to us all claims for compensation by now, if they relate to the risk of accidental loss assumed by the customer. We hereby accept the assignment.
- 5) Unloading and storage of goods occurs in any case at the risk of the customer. Our obligation is limited to the provision of the goods and the operation of possible available vehicle-mounted equipment. If our employees or third parties, commissioned with the transport, cause damage to the goods or other damages by actions beyond those, they act at the sole risk of the customer and not as our vicarious agents.
- 6) In case of simple negligence our liability for default in delivery for compensation in addition to performance (delay damage) will be limited to 5% and for compensation in lieu of performance to 30% of the value of the service. Further claims by the customer are excluded - even after expiration of a term given to us for service. Liability due to culpable injury to life, body or health remains unaffected.

§ 4 Packaging

- 1) If our deliveries are carried out in Leihgebinden (returnable packaging), these will have to be returned empty and in sound condition to us at the customer's expense and risk no later than four weeks after arrival at the customer. Any affixed markings may not be removed. Returnable packaging may not be switched or packed with other goods. In case of delivery through tank car the customer is obliged to ensure immediate evacuation and freight-free return to us. The customer is liable according to the legal regulations for any culpable delay in the immobilisation time.
- 2) If the customer does not comply with the obligation of return within the agreed term as in sub-paragraph 1, we are entitled to charge an appropriate fee for the time after the elapse of four weeks and, after unsuccessful setting of a deadline for the return, claim the replacement costs with consideration of the aforementioned fee.

§ 5 Measurements and weights

As to measurements and weights the values quantified by us apply. The customer may, at its own expense, demand weighing by the official railroad scale at the departure station or in the case of transport by truck, weighing on an officially calibrated truck scale.

§ 6 Default of acceptance

- 1) If the customer is in default of acceptance or culpably violates other obligations of participation, we are entitled to claim any damages incurred to us, including any possible additional costs. Further claims remain excepted.
- 2) As soon as the customer is in default of acceptance, the risk of accidental perishing or accidental deterioration of the delivery is transferred to the customer; however, we are obligated to properly store the goods at the customer's expense.

§ 7 Prices - Payment conditions

- 1) Unless otherwise agreed, the respective prices apply ex-factory. New taxes and/or other charges as well as subsequent increases of existing taxes and/or other charges, as well as changes of import- and customs regulations after conclusion of contract will always be charged to the customer.
- 2) Legally prescribed VAT is not included in our prices; VAT will be declared separately on the invoice at the applicable legal rate.
- 3) The customer is obligated to make payments according to the requirements set out in the order confirmation. Unless otherwise agreed, our invoices are due net on delivery. Any deduction of discounts requires a special agreement.
- 4) The customer is only entitled to set-off rights (*Aufrechnungsrechte*) and retention rights (*Zurückbehaltungsrechte*), if the counter claim is established by a non-appealable court decision, uncontested and recognised by us. This restriction does not apply to the customer's warranty claims for defects resulting from the same contractual relationship. Besides, the customer shall generally only be entitled to exercise the right of retention, if his counter claim relates to the same contractual relationship.
- 5) If the payment period has expired, we are entitled to charge interest and, as the case may be - default interest at the legally prescribed rate (nine percentage points above the relevant prescribed base interest rate p.a.). Further claims remain unaffected. All granted discounts, cash discounts or other benefits become invalid.

§ 8 Rescission

- 1) The customer may only rescind from the contract according to the statutory provisions, if we are responsible for the violation of our duties; however, legal requirements prevail in case of defects (§ 9).
- 2) In case of violation of duties the customer must notify us within an appropriate timeframe upon our request, if he wishes to rescind from the contract due to violation of our duties or if he insists on delivery.

§ 9 Liability for defects

- 1) Claims for defects are excluded in the event of an only immaterial divergence from the stipulated qualities or in relation to only immaterial impairment of utility.
- 2) The customer is obligated to examine the delivered goods immediately according to § 377 German Commercial Code (HGB) and to immediately lodge a defect notice in writing. If a defect that could not be detected in the course of the examination becomes apparent later, notice of the defect shall be given immediately after detection, within two working days at the latest. The entire burden of proof for all claim assumptions, especially for the defect itself, for the time of the defect and for the punctual defect notice rests entirely with the customer.
- 3) In the event of a defect we reserve the choice as to the manner of supplementary performance.
- 4) The limitation period for claims of defect is 12 months after delivery. If the sales object is a matter, which has been used in a building in accordance with its usual purpose and has caused a defect on this building, the limitation period will be 5 years. As far as we are liable according to § 11 subparagraphs 1 and 3, the statutory limitation period shall apply.
- 5) The statutory limitation period in the event of a delivery recourse in accordance with §§ 478, 479 BGB shall remain unaffected.

§ 10 Intellectual property rights

Any claims for damages on the part of the customer for the infringement of industrial property rights or copyrights are subject to the restrictions of § 11. In the event that the goods from other manufacturers delivered by us infringe a third-party intellectual property right or copyright we may choose at our own expense to assert our warranty claims against the manufacturer and supplier for the customer's account or assign them to the customer. Warranty claims with regard to such defects exist - subject to the other requirements and in accordance with these GBC - only if the enforcement in court of the aforementioned claims against the manufacturer and supplier were unsuccessful or, for example, is pointless due to insolvency. The limitations period for the respective warranty claims of the customer against us is barred for the duration of the litigation.

§ 11 Liability

- 1) We are liable pursuant to the statutory provisions if the customer claims damages due to intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If we are not accused of intentional or gross negligent violation of contract, the liability is limited to the foreseeable, typical damage.
- 2) We are liable pursuant to the statutory provisions if we culpably violate an essential contractual duty. Essential contractual duties are such duties which need to be fulfilled in order to achieve the purpose of the contract and compliance with which the customer relies on and may generally rely on. In this case the liability is limited to the foreseeable, typical damage.
- 3) Liability due to culpable injury to life, body or health remains unaffected; this also applies to the mandatory liability according to the Product Liability Act.
- 4) Unless there is a provision pointing to the contrary, a further liability for compensation is excluded, regardless of the legal nature of the asserted claim. This applies especially for claims due to other violations of duties or due to claims in tort of compensation for damage to property according to § 823 BGB. With respect to liability for default of in delivery § 3, subparagraph (6) applies additionally.
- 5) The limitations according to subparagraphs 1 to 4 also apply, if the customer claims compensation of futile expenses rather than damages in lieu of performance.
- 6) If the liability is limited in accordance with the above regulations, this also applies for the personal liability of our personnel, employees, representatives and vicarious agents.

§ 12 Trademarks

As far as delivered products are labeled with a brand name, if the customer refills, processes, or co-mingles such products with other substances or the like, the trademarks may then only be used in connection with the products the customer refilled or manufactured if we give our consent in writing.

§ 13 Retention of title

- 1) We reserve the right of retention of title to all deliveries until payments, which were incurred based on the business relationship at the time of the relevant conclusion of a contract, have been received. If a current account has been agreed to between the customer and us, the retention of title also refers to the respective acknowledged balance. The same applies, if a balance is not acknowledged, but a causal balance drawn, possibly due to the customer being insolvent or under liquidation.
- 2) In case of a breach of contract by the customer, especially of default of payment, we are entitled to rescind the contract in accordance with the statutory provisions and to retrieve the goods. The customer permits by now, at presentation of these regulations, for us to enter his place of business during usual business hours and retrieve the reserved goods.
- 3) The customer is entitled to on-sell the reserved goods to third parties within the normal course of this business. If this is the case, the customer is obligated to assign by now all claims due to him based on the on-selling to its buyers. The assignment is limited to the amount of the claim, which has been agreed upon in form of an invoiced amount between the customer and us. We accept the assignment. The customer is entitled to collect the claim if he is not in default of payment. If this occurs, we are entitled to revoke the collection authorisation; the customer is then obligated to submit to us all relevant information to enable us to collect the claim from the buyer. We are entitled to revoke the on-selling - and collection authority, if the customer does not meet its payment obligations or has made application for insolvency.
- 4) If the customer processes the delivered, reserved goods, it is done on our behalf. If the customer also processes reserved goods of other suppliers, the goods acquired under reserve belonging to us proportionately extend to the amount of the relevant due and unpaid claim (invoiced amount plus VAT), as agreed between the customer and ourselves.
- 5) If the reserved goods delivered by us have been indiscriminately mixed or mingled with other goods/items, we are entitled to a part of the new project up to the relevant due and unpaid claim (invoiced amount plus VAT) as agreed between the customer and ourselves. The customer will grant us co-ownership. The customer shall store the co-owned good for us.
- 6) The customer shall give prompt notice in writing of any seizure or other interferences by third parties. If such third party is unable to reimburse us for the court fees and other costs necessary to defend against such interference, the customer shall be liable for the expenses we incur.

7) If the realisable value of the security owed to us exceeds the nominal value of our claims by more than 10%, we are obligated to release the relevant securities at the customer's request; we have the choice regarding which securities are to be released.

§ 14 Hardship

If for any reason our costs for the product or service (including but not limited to costs of energy, transportation, or raw material) increase or if the circumstances that existed at the date of the signing of the contract with the customer change, so that we cannot reasonably be required to fulfill one or more of our contractual obligations towards the customer, then we are entitled, by written notice to customer, propose the new terms of the contract to remove such hardship. In the event the parties are not able to agree on new conditions within 10 days after customer has been notified on a request for renegotiation of the contract, then we are entitled to terminate the contract with immediate effect.

§ 15 Sanctions

The regulations nos. (EC) 2580/2001 and (EC) 881/2002 (so called anti-terrorism-regulation) and diverse country-related embargo-regulations of the European Union (inter alia Regulation (EU) No. 267/2012 on restrictive measures against Iran) prohibit especially to make available directly or indirectly any funds or economic resources (each kind of financial assets) to natural persons or legal entities, organizations or facilities, who are listed in the annexes to the regulations (so called EU sanction list).

2. In case of reasonable suspicion that the customer is one of the persons, organizations or facilities listed in the sanction lists or provides such persons, organizations or facilities with assets or is controlled by one of them directly or indirectly we reserve the right to rescind the contract or to retain delivery until full clearance of the suspicion taking into account the reasonable interests of the customer. The customer is obliged to provide us on demand with any information we consider necessary to clear up the suspicions or respectively the underlying facts.

§ 16 Jurisdiction - Miscellaneous

- 1) Exclusive jurisdiction for all disputes arising from or in connection with this agreement including possible claims in tort is the seat of our place of business; we are, however, entitled to also sue the customer at his place of business. Sentence 1 applies only to merchants, legal entities of the public law or special connections under public law.
- 2) For all contracts German law is deemed as agreed; the regulations of the UN Law on the international sale of goods are excluded.
- 3) Place of fulfilment for all obligations arising from the agreement, including the customer's payment obligations, is our place of business.

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