

GENERAL TERMS OF SALE AND DELIVERY

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I. General provisions

1. The present General Terms of Sale and Delivery shall be integral part of each offer or business deal between us and the purchaser. Any terms and conditions of the purchaser that are in conflict with the provisions herein shall not be applicable unless expressly confirmed by us.
2. The place of performance is Eugendorf, Austria (post code 5301), and the competent court in the city of Salzburg, Austria (post code 5020) having subject matter jurisdiction for Eugendorf shall be the exclusive venue for both parties for all present and future claims arising out of the business relation, including legal action in procedures deciding claims arising out of a bill of exchange and summary procedures where the claimant relies entirely on documentary evidence. Any agreement shall be governed by the laws of Austria to the exclusion of the UN Convention on Contracts for the International Sale of Goods [CISG], 11 April 1980, Federal Law Gazette No. 1988/96).
3. The customer may not assign to third parties any claims arising out of agreements made with us, without obtaining our prior written consent.
4. Should these General Terms of Sale and Delivery or other agreements made with the customer, or parts thereof, be found to be invalid, the validity of the agreement and of the remaining provisions of these General Terms of Sale and Delivery shall not be impaired thereby.

II. Conclusion of the agreement and content

1. The customer shall be bound by an offer made by him (order) until it has been accepted or declined by us. Such offer (order) shall not expire before the elapsing of no less than 2 weeks additional time for its acceptance, which shall be granted by the customer by registered letter.
2. An agreement shall only be brought about upon our confirming the order in writing.
3. The customer shall expressly acknowledge that the content of the agreement shall only comply with the content of our written confirmation.
4. Any oral agreements and later amendments to the agreement shall not take effect, unless confirmed by us in writing. The same shall apply for any warranted characteristics for the object of the purchases.
5. We reserve the right to make, during the delivery period, alterations to the construction and design of the object of the purchase as far as the object sold and its appearance are not materially changed.
6. Any specifications on performance, weight, speed etc shall be deemed approximations and shall therefore not be binding. The customer may not derive any rights from the fact that the supplier uses particular marks or numbers to refer to those objects.

III. Prices

1. All prices are quoted net Ex Works (pursuant to the Incoterms 2000, EXW Eugendorf), exclusive of packaging, freight and any insurance that may be required. No trade discounts may be deducted. Value Added Tax (VAT) is not included and shall be charged in addition. The prices agreed are subject to price increases by the supplier, the increase of freight and custom duties, change in the official rates of exchange for foreign currencies and other import charges or taxes.
2. If prices for goods for which we have list prices increase during the period between the conclusion of an agreement and delivery of the goods, we shall be entitled to increase the price originally agreed upon when making the agreement by the amount by which our list prices have increased between making the agreement and delivery. For other goods, special design items in particular, the price quoted in the order confirmation shall be valid, with the proviso that we shall be entitled to invoice the increase in our costs between making the agreement and delivery in addition to the price agreed.
3. Foreign customers shall have to obtain the export certificate required for the exemption from VAT themselves and send it to us. If the export certificate is not provided, the foreign customer shall pay Value Added Tax just like a domestic customer.

IV. Terms of payment

1. Our invoices are due for payment immediately upon receipt thereof. In the event of a delay in payment, 10 % default interest and compound interest on the respective amount outstanding shall be payable. Furthermore, we reserve the right to retain the performance of our contractual obligation for such time until the purchaser meets his obligation to pay, or until payment is promised in an appropriate form.
2. Payment orders, cheques, bills of exchange and any other means of payment shall only be accepted on account of payment against charge of all collection and discount charges. Passing on and prolongation shall not be deemed performance. We shall assume no liability for timely presentation, protest, advice and reversal.
3. If payment in instalments is agreed and the customer defaults in payment of an instalment, or a part thereof, for a period of longer than 8 days the payment target shall be deemed to have been missed.
4. Any pleading of set-off or retention by the customer by way of defence shall be excluded, unless the customer's counter claims have been recognised by declaratory judgment.
5. If there is more than one customer, they shall be liable jointly and severally.
6. Payments effecting a valid discharge shall be made to us or to an agent who has been expressly authorised by us to collect receivables.
7. The crediting of payments is made by offsetting them first of all against any costs incurred, including any costs for credits, then interest, the customer's debts from current account balances, any repair cost, etc. and finally the purchase price.
8. The purchaser shall not be entitled to set off any payment of instalments against any claims he may assert against the supplier or exercise any right of retention.

V. Right of retention

Without prejudice to extensive legal regulations or other agreements, we shall, until all our claims against the customer that have arisen out of the present business relationship have been satisfied, have the right to retain the objects of the purchase to the customer or objects already handed over and of which we still have legal ownership or possession, or objects that have been transferred to us.

VI. Retention of title

1. Without prejudice to the customer's duty to pay upon acceptance, all objects of the purchase shall remain the property of the vendor until all liabilities arising out of the contract of sale have been paid by the purchaser in full. The reservation of ownership shall remain for all until full payment of all claims resulting from repairs, delivery of spare parts, accessories and operating supplies, costs of litigation and levy of attachment, storage and insurance costs.
2. The retention of title may be appropriately entered in the registration certificate or marked on the vehicle itself. We shall keep the registration certificate for such time as we retain ownership of the vehicle.
3. If third parties should want to seize the vehicle, the customer shall forthwith notify the vendor thereof by registered letter. The reservation of ownership shall remain to a third party or sell the object of the purchase to a third party, or to encumber it. The purchaser shall advise us forthwith of any change of residence or location as well as of any seizure of the object of the purchase. In the event that claims against third parties result from acts by the purchaser that are in breach of this agreement, such as disposal of our property, such claims shall hereby be assigned to us in advance.
4. During the period of retention of title, the purchaser shall insure the object of the purchase against all risks to the amount of the reinstatement value and restrict transferability of the insurance policy in our favour.
5. The purchaser shall be obliged to keep the object of the purchase in good order and condition and have any necessary repair work carried out at our repair shop for such time as we retain ownership of it.
6. Should the purchaser sell the object of the purchase with our prior consent, he hereby declares any future claims against third parties resulting from such sale assigned to us. The purchaser shall advise both us and the third party debtor of the assignment.
7. Should the customer fail to meet his contractual obligations, we shall be entitled to enforce our rights arising out of the retention of ownership ourselves and without the aid of the courts. In particular, the customer authorises us to seize the object delivered at his expense and acknowledges that such seizure shall not represent a withdrawal from the contract, but merely a taking into custody the object of the purchase, unless we expressly make a declaration in contrast thereto. The customer shall not be entitled to claim damages or trespass to chattels against us or our agents and shall expressly waive any such claims.
8. The customer agrees that in the event that the object of the purchase is taken back, the present value shall be appraised by a court certified motoring expert, who shall be appointed by us. The

customer further agrees that the value appraised by the expert shall be set off against our claims against the customer minus any costs that may have arisen, such as commissions, appraisal fees, repair work, etc. The customer shall expressly waive any right to further use the delivered object that was taken back and waive any further claims.

VII. Delivery

1. All delivery periods quoted are non-binding. Should we exceed delivery times by more than three months, the customer may rescind the contract subject to the provisions of the Austrian Civil Code (ABGB). Any further claims shall be excluded.
2. The running of the delivery period shall commence upon coming into force of the agreement and upon agreement on the model type, provided that the payment terms agreed are complied with. Should the customer request any alteration in the design or equipment of the object of the purchase, the delivery period agreed shall be no longer valid.
3. We shall not be liable in any cases of force majeure including interruption of operations, strike, lock-out, total or partial close-down of our plants, irrespective of the reason thereof, the occurrence of such events at the plants of our suppliers, war, civil commotions and any measures taken by authorities.
4. If, after conclusion of the agreement but before delivery, we become aware that the financial situation of the customer is such that our claim is no longer sufficiently secured by the standards of a prudent businessman, we may request payment in advance, the provision of securities or rescind the agreement.

VIII. Transfer of risk

- The risk of complete or partial perishing, deterioration, loss, damaging, attachment or seizure shall be transferred to the customer (pursuant to Incoterms 2000, EXW Eugendorf), in particular:
- a) upon handing over of the object of the purchase to an authorised third party nominated by him,
 - b) upon despatch of the delivery object, if delivery ex works applies, irrespective of who carries out shipment, so that the customer always bears the risk of transportation, as a matter of principle,
 - c) upon sending of the notification of completion to the customer or his agent.

IX. Acceptance

1. Within 8 days after the customer has been notified of the completion of the object of the purchase, he may inspect it at the place agreed. The right to inspect the object of the purchase shall be deemed waived, if the inspection is not carried out within the time specified, or if the shipping order is given. The object of the purchase shall be deemed duly delivered and accepted when it is handed over to the customer or his agent.
2. Should the customer be in default of meeting his obligation to pay or to provide a security as agreed for longer than 14 days after notification of completion, acceptance of the object of the purchase or giving the shipping order, we may rescind the contract and claim damages for non-performance. In the latter case we shall be entitled to claim 12.5 % of the purchase price in damages without any proof of loss. Furthermore, the customer shall be obliged to pay compensation to our agent for commissions lost; we shall be entitled to claim such commission on our own behalf.

X. Warranty and liability

1. The warranty shall commence upon handing over of the object of the purchase or its despatch; in the case of default in taking delivery it shall commence on the day the notification of completion is sent to the customer or his agent (c.f. Art VIII – Transfer of risk or Art IX – Taking delivery).
2. Warranty claims may be made, provided that the customer complies with his obligation to forthwith lodge a written complaint in respect of a defect of goods pursuant to Art 377 Austrian Commercial Code (UGB).
3. It shall be at our discretion whether returned objects are repaired or replaced in the case of a verifiable defect of design, material or workmanship. However, we shall grant no warranty if the object has become defective or unfit for use due to normal wear and tear. Parts replaced by us become our property. The customer shall bear the cost of dismounting and re-mounting, transportation/despatch, towing or any customs duties. Any cost arising in addition to the remedy (travel expenses to and from the repair shop, downtimes, loss of earnings etc.) shall not be incurred by us.
4. The defect under legal warranty shall be remedied at Kässbohrer Transport Technik GmbH or at a partner repair shop specified by us. The cost for work at other repair shops shall not be incurred by us, unless we have given our written approval. The defect may not be remedied before such written approval has been given. Should this not be the case, we shall not incur the cost of remedy of the defect.
5. Any claims of cancellation of the sale and reduction of the purchase price shall be excluded, as long as defective parts can be repaired or replaced. Any damage claims, even such for positive breach of an obligation or lost profits, indirect damage or loss (lost turnover, decreased company value/reputation, lost orders), costs of procurement of replacement etc. shall be excluded in any case, unless we are liable for intent.
6. Only a limited warranty shall be provided for wear and spare parts, the scope of which shall not exceed that granted to Kässbohrer by its suppliers of wear and spare parts. Wear parts only have a life expectancy that corresponds with the technical standards applicable to each item. A warranty can only be granted for spare parts, wear parts and repair workshop services for a maximum of 12 months.
7. Warranty claims against us shall forfeit in any case, if
 - a) the object of the purchase has been altered by third parties or through mounting of parts other than ours, through which it cannot be ruled out that the alteration has caused the defect/damage.
 - b) our operation instructions have not been adhered to or if the object of the purchase has been handled improperly in any other way.
 - c) it is established that the maximum axle load, the payload or the carrying capacity has been exceeded
8. As far as warranty claims can be lodged against us on the merits, we shall only warrant for parts of the delivery that are not manufactured by us, as far as we can still lodge warranty claims against the supplier of the respective parts and only by way of assignment of our claims against the supplier.
9. We do not grant warranty for the delivery of used vehicles or parts.
10. If the customer requests despatch ex our works, for which the customer always bears the risk, as a matter of principle, we shall assume no liability for the compliance with shipping instructions given by us.
11. We shall not assume any liability for deterioration, loss or damaging of the customer's belongings due to fire, water, burglary, theft, looting or reasons that are beyond the sphere of our responsibility.

XI. Product liability

1. The object of the purchase only offers safety to such degree that can be reasonably expected on the basis of licensing requirements, operation instructions, supplier's instructions on the handling of the object of the purchase (operation instructions) – in particular with regard to the required inspections – and other instructions.
2. Claims exceeding the liability for damages as provided in the Austrian Product Liability Act (Produkthaftungsgesetz), BGBl (Federal Law Gazette) 99/1988 as amended shall be excluded.
3. The customer shall indemnify and hold us harmless against third parties, in particular if the claim is a result of improper use, alteration without authority or insufficient maintenance of the object of the purchase.