



# General Terms and Conditions for Sale and Delivery Kunststoff- und Elektrotechnik GmbH / Page 1

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## 1. General

**1.1** No contract may be deemed to have been concluded with us, except on the basis of these Terms and Conditions of Sale and Delivery (General Terms) to the exclusion of any other terms or conditions. This applies also in cases where deliveries are performed without any separate provision on our part.

**1.2** These General Terms also apply to future transactions with the Customer, even where no specific reference is made by us to the applicability of our General Terms.

## 2. Proposals, Cancellations

**2.1** Our offers are not binding, if they are named "approximate offers" because of missing details.

**2.2** If we approve cancellations as a gesture of goodwill, all costs arising thereof (for samples, moulds, tools etc.) and any additional costs shall be covered by the Customer. The same rule applies in cases where we approve changes to an order requested by the Customer.

## 3. Prices, Price Adaptation

**3.1** Unless otherwise stated in our offers, order-confirmation letters or invoices, our prices are ex works (FCA-Incoterms 2000) plus packaging. The prices are exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to us.

**3.2** Our prices are non-binding. They are based on the wages, material and fixed costs at the time of confirmation of order. Should these costs increase within six weeks between conclusion of contract and delivery, we shall be entitled to increase the prices accordingly, unless we are in default of delivering on time or we are liable for cost increase for other reasons.

**3.3** If the parties agreed on dependency of prices on weight of parts, definitive price results of the weight of accepted samples.

**3.4** If the Customer orders production of forms, these forms and modifications are to be paid separately, unless modifications result of warranty cover.

## 4. Payment

**4.1** As far as different is not agreed upon our invoices become due 50 % with confirmation of order and further 50 % 30 days after presentation of contractual pattern, in other cases after delivery or other achievement. In case of payment within 14 days, counted starting from the invoice date, we give subject to 4.4 a discount of 2 %.

**4.2** The Customer is not authorised to withhold payment or to set off counterclaims unless a right to do so has been determined with legal force or is undisputed or recognized as obvious by all parties.

**4.3** In cases where we have raised an objection of uncertainty (circumstances which place the creditworthiness of the Customer in doubt excepting in cases where such circumstances were recognizable on conclusion of contract, German Civil Code Art. 321) or if the Customer is in default of payment for a total amount of EUR 200,00 we are entitled to revoke any agreed-upon payment-schemes and to make all claims immediately payable.  
We are entitled to announce the cancellation

of contract, if the Customer has made false statement concerning his financial standing unless the Customer immediately makes advance payment.

**4.4** Payment discounts are granted exclusively subject to adherence to our terms of payment. We are entitled to offset payment discounts against claims arising from future orders.

## 5. Delivery, Transfer of Risk, Storage Costs

**5.1** Partial deliveries are admissible, provided they do not constitute an unreasonable inconvenience to the Customer. Technical and recipe modifications are also admissible, provided they do not constitute price increases or a deterioration in quality.

**5.2** Deliveries occur free carrier (FCA) Mönchweiler (Incoterms 2000). Settling place is Mönchweiler. If the dispatch or the hand-over to the carrier is delayed at the wish of the Customer, or if the Customer delays in acceptance, then the risk passes over to the Customer at the time of notification of dispatch readiness.

**5.3** In case of delay in the acceptance of ordered goods, we are entitled to invoice the Customer warehousing costs of 0,5 % of the purchase price for each started month, but of no more than 5 % overall, without prejudice to the right of either party to provide evidence of higher or lower warehousing costs.

**5.4** We only take back undamaged reusable package at the settling place Mönchweiler (s. 5.2).

## 6. Delivery Period, Delays

**6.1** Only agreed-upon delivery periods are binding.

**6.2** An agreed-upon delivery period begins with the receipt of our order confirmation, but not before the provision by the Customer of any necessary documents, approvals, releases, disposals, which have to be obtained or before the arrival of an agreed advanced or demanded payment. The delivery period has been complied with, if before its expiration the goods are ready for dispatch and this has been notified, or the contractual goods have been handed over to the carrier.

**6.3** The delivery periods shall be reasonably extended in the event of disruptions for which we cannot be held accountable, such as: strikes, lockouts or delivery delays outside of our area of responsibility. In such cases, the Customer shall be entitled to withdraw from the contract, after granting a reasonable grace period. Any claims for damages are excluded. Should a disruption for which we are not responsible last for longer than eight weeks, we shall be released from our obligation to perform, without any obligation to compensate the Customer.

**6.4** In the case of delay on our part, provided the Customer is able to provide evidence of damage, we shall be deemed liable for 0,5 % of the net price for each completed week of the delay, but no more than a total of 5 % of the net price for the affected part of delivery. The liability restriction shall not apply in cases of mandatory liability due to premeditation, gross negligence or danger to life or limb.

**6.5** At our request, the Customer is obliged to declare within a reasonable period

whether he intends to withdraw from the contract or whether he insists upon delivery.

## 7. Warranty

**7.1** No warranty cover shall be afforded for insignificant defects. We reserve the right to make variations of dimension, quantity, weight, quality, colour and other performance specifications in accordance with commercial custom, provided that they do not substantially impinge upon the contractually agreed upon quality or utility of the goods, or that they do not undermine a contractual guarantee given to the Customer. Particularly, a waste of 2 % of the delivered quantity does not justify a Customer complaint. Excess and short deliveries up to 5 % are permitted.

This also applies to partial deliveries.

**7.2** The Customer will examine the shipments immediately after receipt or hand-over to the carrier and has to provide written notice of any evident damage right away, but within fourteen days at the latest. Non-evident damage shall be reported in writing without delay upon discovery, but within seven days of discovery at the latest. The same applies to direct deliveries to third parties nominated by the Customer. The Customer has to ensure that complaints by third parties are made in good time.

**7.3** In the event of significant defects occurring within the warranty period (s. 7.4) and if the Customer has provided notice of these defects within the time as set forth in 7.2, we are entitled and obliged to make three attempts at repair or replacement within a reasonable period, provided the root cause of the defect already existed at the time of risk transfer. Should the third attempted remedy fail, the Customer may either withdraw from the contract or reduce the payment accordingly, without prejudice to any claims for damages as outlined under 8.

**7.4** Claims to damages shall lapse in one year. This shall not apply where longer periods are prescribed by the German Civil Code Art. 479 par. 1 (regress claims) or in cases of injury to life and limb, premeditated or grossly negligent breach of duty on our part, or of malicious failure to disclose a defect. This shall not affect statutory regulations relating to suspension of the period of limitations and recommencement of warranty periods.

**7.5** Claims on the part of the Customer for expenses incurred in remedying a defect, in particular transport, travelling, labour and material costs shall be excluded in the event that the expenses incurred increase due to transfer of the delivered object to a location other than the Customer's place of business.

**7.6** Regress claims on the part of the Customer exist in accordance with Art. 478 of the German Civil Code only to the extent that the Customer and his customer have entered into no agreements above and beyond this statutory claim for defects. For the scope of the Customer's regress claim, point 7.5 shall otherwise apply accordingly.

**7.7** For claims to damages based on material defects 8. shall apply. The Customer shall not be entitled to assert any claims above and beyond those regulated by 7. in conjunction with 8.

**7.8** Should the Customer make an unsubstantiated warranty claim, we reserve the

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right to charge the Customer for any costs thereby incurred.

### 8. Claims for Damages

**8.1** Claims for damages and expenditure on the part of the Customer (compensation for damages) whatever their legal grounds, in particular due to the infringement of obligations arising from the contractual relationship or on the basis of tort are excluded.

**8.2** The exclusion of liability in accordance with 8.1 shall not apply in cases where our liability is mandatory, e.g. in accordance with product liability legislation, in case of premeditated action, gross negligence, injury to life and limb or the infringement of pertinent contractual obligations. Contractual obligations are deemed pertinent, if compliance thereof makes the execution of the contract possible in the first place and if compliance can normally be expected by the Customer. In the case of infringement of such pertinent contractual obligations, however, our liability shall be limited to contractually-typical, foreseeable damages, except in cases where premeditation or gross negligence, injury to life and limb may be said to exist. A change in the burden of proof to the detriment of the Customer is in no way implied by these provisions.

**8.3** Claims for damages due to material defects (s. 7.) shall lapse in accordance with 7.4.

### 9. Reservation of Title

**9.1** The supplied goods shall remain our property until all our claims arising from the business relationship with the Customer have been met in full. The Customer is entitled to sell or process/integrate the goods (reserved goods) in the regular course of business.

Only in the case of a deterioration in the financial circumstances of the Customer, we shall be entitled to prohibit the sale/processing, integration or mixture of reserved goods.

**9.2** Resale by the Customer is permitted, provided that the Customer (reseller) imposes the provision on the subsequent purchaser that title passes to the Customer's purchaser only after his payment obligations relating to the reserved goods have been met in full (simple reservation of title).

By now the Customer cedes to us all amounts due from resale of the reserved goods up to the amount of our claim.

**9.3** The Customer is entitled to collect assigned claims. This entitlement shall lapse in the event of a default of payment or in case of a material deterioration in the financial circumstances of the Customer. In such cases, we are entitled to inform the customers of the assignment and to collect outstanding claims ourselves.

The Customer is required to provide the necessary information for the assertion of assigned claims, and shall permit the review of this information. He shall, in particular, provide us on request with a precise list of claims owing to him with the names and addresses of customers, the amount of the individual claims, date of invoice etc. and shall afford us entry to his premises to review this information.

**9.4** If the reserved goods are joined, mixed or processed by the Customer to create a

new movable item, this is done without any obligation arising for us. By joining, mixing or processing the reserved goods, the Customer shall not acquire title to the new item in accordance with Artt. 947 ff. of the German Civil Code. If reserved goods are joined, mixed or processed with items not belonging to us, we shall acquire co-title to the new item at a ratio proportionate to the invoice value represented by our reserved goods.

**9.5** The Customer shall inform us without delay in the event of a discontinuation of payments, a material deterioration in his financial circumstances or the attachment of property. The names and addresses of attachment creditors shall be made known to us. The Customer shall bear all necessary costs, which are spent for abolition of measures of distraint by mortgagees and for a replacement of the goods.

**9.6** In the event of discontinuation of payments by the Customer, or a material deterioration of his financial circumstances, in particular when application is filed for the initiation of insolvency proceedings over his assets, we are entitled to demand surrender of the reserved goods. A demand for surrender constitutes a withdrawal from the contract. Under such circumstances, the granting of a period for performance may be dispensed with.

**9.7** The Customer shall hold the reserved goods in safekeeping on our behalf at no charge. He shall provide adequate insurance cover for the goods against customary risks such as fire, theft water and transport damage. He hereby assigns any claims to damages due to him as a result of damage from third parties to us to the full extent of the invoiced value of the goods.

### 10. Legal Venue, Applicable Law

**10.1** The legal venue for all direct or indirect disputes arising from the contractual relationship shall be Mönchweiler.

**10.2** The contractual relationship is subject to substantive and procedural German Laws. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

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