

Terms and Conditions of business, supply, and payment KÖSTER BAUCHEMIE AG, Aurich

I. General

The following terms and conditions of supply and payment apply to the entire business relationship with our customers. The purchaser accepts them as binding on them in respect of the current contract and also for all future transactions. Any alternative agreement requires our written confirmation. The purchaser asserts no purchase terms of their own. They also do not become part of the contractual terms and conditions by consequence of our non-communication or supply.

For purchases made in our online shop, please refer to the KÖSTER online shop terms and conditions.

II. Quotation and supply

1. Our quotations are non-binding.
2. If we are prevented by a hindrance from fulfilling the contract on time by procurement, manufacturing or supply failures – on our part or on the part of our suppliers – e.g. due to an energy shortage, traffic disruption, strike action or lockout, the supply period is extended accordingly. The purchaser can only withdraw from the contract if, on expiry of the extended term, they set us a final deadline in writing. Withdrawal can only be made if we have not fulfilled within the final deadline and withdrawal is notified in written form.
3. If our fulfillment of the contract is made partially or completely impossible for the reasons stated in paragraph 2, we are released from our supply obligation.
4. We will inform the purchaser immediately of the hindrance under paragraph 2 and the impossibility under paragraph 3.
5. Compensation claims by the purchaser arising from delay or non-fulfillment are excluded, to the extent that malicious intent or gross negligence on our part is not proven.
6. If the purchaser is in default of payment in respect of an earlier supply, we are entitled to withhold supplies without obligation to compensate for any loss caused.
7. We are entitled to make part supply.

III. Prices

1. Invoices are raised at prices applicable at the date of the supply, if no special agreement has been made in this regard. If, in the case of a forward order or a make-and-hold order, only a part of the agreed quantity is accepted during the agreed period, we are entitled, at our discretion, either to invoice the supplied amount at the price applicable to that lot-size or to supply the quantity not called upon and raise an invoice.
2. If, in exceptional circumstances, we agree to a return of goods, we will invoice 20% of the net goods value to cover our costs. Generally, we do not accept the return of non-standard supplies.

IV. Payment

1. Our invoices fall due for payment immediately after receipt of the invoice. However, we reserve the right, in individual cases, to agree to other payment terms at the time the contract is entered into. Default arises immediately after receipt of the invoice. In this regard, the invoice is deemed to be received three days after the date of the invoice, unless the recipient proves a later date of receipt.
2. In the case of default of payment on the part of the purchaser, we are entitled to charge default interest after the occurrence of default in accordance with generally agreed terms of business. A charge of EUR 15.00 per payment reminder is raised after the occurrence of default.
3. We reserve the right to decide on the acceptance of cheques and bills of exchange on a case-by-case basis. They are only accepted on account of payment. The credit is made under the normal reservations. For bills of exchange, we charge the normal bank discount and collection charges. We do not undertake any guarantee for the correct timing of encashment or remonstration.
4. In circumstances where a bill of exchange or cheque is not cashed on time or circumstances arise regarding the purchaser, which, in our view, no longer warrant the granting of credit, we can determine the whole amount due to us as falling due immediately – even if bills of exchange or cheques have been provided in respect of it.
5. Only persons with our written power of collection are entitled to receive payments with the issue of one of our receipt forms.
6. The purchaser can only assert a right of retention, if it relates to the same contractual relationship. The purchaser is only entitled to an offset if we have recognized the opposing amount due or it has been legally recognized.
7. If the purchaser gets into default with an invoice, and the value of this invoice reaches a significant amount for the business relationship, all receivables of this business relationship fall due immediately independent of any acceptance of bills of exchange. We are furthermore entitled to demand prepayment before any future delivery.
8. If the default is not dispelled within an acceptable final deadline, we are entitled to withdraw from the contract or to demand compensation due to non-fulfillment. This applies in particular to agreed but not delivered follow-up business. In circumstances where information arises regarding the purchaser, which in our view, no longer warrant the granting of credit, we are entitled, apart from before made agreements, to demand prepayment or payment on delivery of the material. The purchaser is entitled to provide security for bills receivable.

V. Retention of title

1. The goods remain our property until the payment of all, including future, amounts due to us arising as a result of our business relationship with the purchaser. This also includes conditional amounts receivable.
2. In the case of a processing or a combining of the goods subject to reservation of title with other items not belonging to us, we are entitled to a co-ownership share in the new item in the amount of the sales price invoiced to the purchaser including value added tax or other sales taxes. The purchaser holds the item in custody for us free of charge.
3. The purchaser may sell the goods subject to retention of title as part of orderly business activities, but only under terms of immediate payment or reservation of title; they are not entitled to provide other entitlements, in particular, the granting of security or a pledge.
4. The purchaser assigns to us the amount from his receivable with all ancillary rights from the onward sale of the goods subject to retention of title that corresponds with our invoice price inclusive of value added tax or other sales taxes.
5. Where the receivables of the purchaser from the onward sale are received into a current account, the purchaser also assigns herewith his receivable from their customer from the current account. The assignment is made at the amount that we invoiced to them for the goods resold subject to retention of title inclusive of value added tax or other sales taxes.

6. Subject to revocation, the purchaser is entitled to collect the receivables assigned to us. The assignment or pledging of these receivables is only permitted with our written agreement. Where circumstances arise in relation to the purchaser, which in our view, no longer warrant the granting of credit, at our request, the purchaser is to inform the debtors in writing of the assignment, to provide us with all information and make available and send us documentation. For this purpose, the purchaser is to grant us access, where necessary, to their documents in this respect.
7. In the case of the existence of the circumstances stated in para. 6, sentence 3, the purchaser must grant us access to the goods subject to the reservation of title still in their possession, to send us an accurate list of the goods, to separate the goods and release them to us.
8. If the value of this security exceeds the amount of our receivables by more than 20%, we will release the security to that extent, at the request of the purchaser and our discretion.
9. The purchaser is to inform us immediately in writing of the access of third parties to the goods subject to retention of title or the receivables assigned to us and to support us in intervention in every way.
10. The purchaser bears all of the costs for the fulfillment of the aforementioned cooperation obligations in the pursuit of all rights from the retention of title as well as all costs incurred in the preservation and storage of the goods.

VI. Packaging and dispatch

1. Packaging follows normal commercial practices relevant to the goods. Special packaging and replacement packaging is charged at cost price. Supply is made by forward freight from the factory.

VII. Transfer of risk

1. Risk is transferred to the purchaser as soon as the goods leave our factory or warehouse. All supplies, including any returns, travel at the risk of the purchaser.
2. Our supplies are not insured against damage whilst in transport.

VIII. Responsibility for defects and compensation

1. The goods are supplied in the quality and finish as is normal for us at the time of the supply.
2. Our supplies are to be checked for correctness on receipt. Under or incorrect supplies as well as any defects can only be objected to within 14 days following receipt. Delayed notification of defects does not bring about any entitlement against us. This also applies in respect of non-evident defects, if the purchaser is a merchant.
3. Advice from our employees does not release the purchaser from their own examination of the product with regard to its suitability for its intended purpose and from the observation of the processing requirements of the manufacturer. In addition, technical application advice from our employees, processing instructions, consumption quantities etc., are only general guidelines and do not give rise to a contractual legal relationship or an additional obligation from the purchase contract. No liability arises from such activities. Consumption quantities in our technical leaflets are average values based on experience. Over or under consumption on specific objects do not initiate any rights or claims.
4. The guarantee obligation lapses if changes to the goods supplied have been carried out by the other party or if the purchaser does not immediately comply with our request for the return of the goods subject to complaint. It also lapses if the complete settlement of our invoices does not take place within the contractual or agreed period of credit.
5. If the goods supplied by us are faulty and we are notified within the time limit, we will replace the faulty goods without charge. In the absence of a replacement supply, the purchaser can withdraw from the contract. In the case of a complaint on the grounds of quality, a sample is to be submitted for examination, as appropriate.
6. Our guarantee obligation ends with the term as per law of the country to which the product is sold, at maximum five years. Longer guarantee periods are only binding if they have been confirmed by us in writing. In the case of any such extended guarantee, only the entitlement to the replacement of defective materials exists and not the refunding of costs of consequential damage, labor and handling or other compensation claims. To the extent that we grant the recognition of a defect – after the expiry of the guarantee under sentence 1 – we have the discretion of making an additional supply of the same, defect free materials at no cost or refunding the purchase price paid at the time, excluding ancillary costs such as freight.
7. Our liability is unlimited in cases of damages arising from injury to life, body or health and in all cases of damages caused intentionally or by gross negligence. Similarly our liability is unlimited for damages due to fraudulent concealment of a defect, for defects after having been given a guarantee, for damages covered under the German Product Liability Act (Produkthaftungsgesetz) and in all other cases established by law.
8. Claim for defects do not exist upon negligible difference to the agreed condition, upon negligible nuisance of usability, upon natural abrasion or damages which were caused after the transfer of risk due to faulty or negligent handling, inappropriate stocking or transport or which arise from particular outer influences which are not preconditioned by the contract. If the purchaser or a third party carry out any inappropriate modifications no claims arise hence nor for any subsequent consequences.
9. Contribution claims of the purchaser against the supplier do only exist insofar as the purchaser has not made any agreements with their customer that exceed legal defect claims.
10. All other claims, including compensation claims, by the purchaser against us on the grounds of the supply of defective goods are excluded. Nonetheless, should, on any grounds, a recovery of damages come into consideration, the purchase price of the consumed quantity applies as the maximum amount of the claim.

IX. Other compensation claims

All other claims for compensation by the purchaser against us – irrespective of legal grounds – are excluded, to the extent that malicious intent or gross negligence on our part is not proven.

X. Validity

Should any of these individual clauses – irrespective of the cause – not be operable, the validity of the remaining clauses is not affected as a result.

XI. Place of jurisdiction

The place of jurisdiction for all disputes arising in connection with the contractual relationship – including withdrawal – is Aurich, Germany.

XII. Liability

Liability for faulty products pursuant to the German Product Liability laws (Produkthaftungsgesetz) shall remain unaffected.