

General Terms & Conditions of Delivery & Service

Knauf Ceiling Solutions GmbH & Co. KG (revised 01/2014)

(1.) General – Scope of Application

(1.1.) All our quotations, offers, confirmations of order, and/or all deliveries made and/or services rendered shall be exclusively subject to our terms and conditions set out below. Contradicting or varying customer's terms of business are expressly rejected. Our terms and conditions shall apply even if we make deliveries or render services without reservation despite having knowledge of the customer's contradicting or varying terms of business.

(1.2.) These general terms and conditions only apply to customers who are businesses as defined in section 14 Civil Code [*Bürgerliches Gesetzbuch - BGB*], corporations under public law or special funds under public law.

(1.3.) These general terms and conditions shall also apply to all subsequent dealings with our existing customers.

(2.) Quotations/Offers

(2.1.) Our quotations and offers shall be non-binding at all times.

(2.2.) All weights and measures quoted are approximate, as are illustrations or similar descriptions of goods and services set out in brochures, price lists, websites or other media, and are therefore non-binding unless otherwise expressly agreed.

(3.) Prices

(3.1.) Prices quoted are subject to confirmation at all times, and are ex works free on rail or lorry, unless it is expressly agreed that freight costs shall be borne by us. Packaging is free. Any special packaging required by the customer shall be at the customer's expense. The customer shall pay in advance transshipment charges, freight costs and customs duties without claiming a discount.

(3.2.) The prices quoted for our goods are net prices and do not include value added tax [*Mehrwertsteuer*]. Value added tax at the rate applicable in Germany on the date of invoice shall be set out separately on the invoice and added to our quoted prices.

(3.3.) The agreed prices shall apply for a period of 3 months as from the date on which agreement is reached with the customer. If longer delivery periods are agreed, or if delivery cannot be made within 3 months of the date of the agreement for a reason for which the customer is responsible, and if the costs of materials, energy, labour or other costs have altered in the meantime, our sales prices as in force on the date of delivery shall apply.

(4.) Terms of Payment, Payment Default, Counterclaims

(4.1.) Payment is due immediately on issue of the invoice or, if applicable, within the agreed payment period after issue of the invoice. Our sales consultants, field staff and/or representatives may only accept payment if they hold written authorisation to accept payment.

(4.2.) The invoice for goods supplied is issued on delivery of the goods. If the customer does not receive the invoice with the delivery, the customer is obliged to request an invoice from us within 8 days of delivery, failing which the customer cannot deduct any discount or make any other reductions in payment.

(4.3.) Bills of exchange and cheques shall only be accepted as payment if this has been expressly agreed. Discounting and collection charges and all other charges shall be at the customer's expense.

(4.4.) If creditworthiness is positive, payment may be made by SEPA direct debiting. Pre-notification can provide notice of several debit advices. The time limit for the sending of the pre-notification will be reduced from 14 days to one day. This will take place by setting out the corresponding details in the invoice, respectively by sending the data (together with the invoice details) electronically.

(4.5.) If the customer fails to make payment within 14 days of date of invoice or by the end of the agreed payment period, then it shall be in default even if no reminder has been sent. In such cases default interest shall be charged at a rate of 8% above the base rate as determined in accordance with section 247 BGB. All costs incurred by us in making requests for payment shall be charged separately.

(4.6.) The customer may only offset against or exercise rights of retention in respect of claims which are undisputed or have been recognised by a non-appealable judgment of a court of law. Retention of payment is not permitted if the right of retention is based on another contract.

(4.7.) The customer's claims against us may only be assigned or pledged to third parties with our prior consent.

(5.) Terms of Delivery, Delivery Periods, Consequences of Default

(5.1.) Excess or short deliveries of up to 5% in the case of standard sheeting and up to 10% in the case of customised sheeting may be included in our invoices.

(5.2.) We are entitled to make part performance to a tolerable extent; each part performance shall be deemed a separate transaction.

(5.3.) We make every effort to meet the deadlines for deliveries and services wherever possible. However, agreed deadlines shall only be approximate.

(5.4.) Delivery periods shall commence on the date of our confirmation of order. If dispatch is not possible for reasons for which we are not responsible, delivery deadlines shall be deemed met on notification of readiness for dispatch. If the customer collects the goods itself, the delivery periods and deadlines shall refer to the date on which we gave notification of readiness for dispatch.

(5.5.) Compliance with deadlines for deliveries and services shall be contingent upon the customer's performance of contractual obligations.

(5.6.) If it is proved that non-observance of deadlines for deliveries and services is due to mobilisation, war, revolt, strikes, lock-outs or the occurrence of unforeseen obstacles, the deadline shall be extended for a reasonable period.

(5.7.) If we are in default with deliveries or services due to circumstances for which we are responsible, the customer shall be entitled to demand liquidated damages for default amounting to 1% of the net value of the relevant delivery or service for each completed week of default up to a maximum of 10% of the net value of the relevant delivery or service.

(5.8.) If, once we are in default, the customer sets us a reasonable deadline, then it shall be entitled to rescind the contract should such deadline expire to no avail. The customer shall only be entitled to claim damages in lieu of performance up to the amount of the foreseeable damage if our default is intentional or grossly negligent.

(6.) Dispatch, Passing of Risk

(6.1.) Dispatch shall be at the customer's expense and risk. Goods in respect of which notification of readiness for dispatch has been issued must be called up by the customer without delay on the agreed date. Otherwise risk shall immediately pass to the customer, and we shall be entitled to store the goods at our discretion and at the customer's expense.

(6.2.) In all other respects, risk – including the risk of seizure – shall pass to the customer as soon as the goods have left our factory or warehouse or have been handed over to a carrier, including our own transporters or a carrier or haulage contractor, irrespective of who is to bear the freight costs. This shall also apply if part deliveries are made, or if we also provide other services, e.g. dispatch costs or actual delivery.

(7.) Delayed Acceptance of Delivery, Delivery on Demand

(7.1.) If the customer fails to take a delivery, it must still make the payments due in respect of such delivery in the same way as if delivery had been effected. The same applies if goods are ordered for delivery on demand and the customer fails to call up the delivery or agreed part delivery within the contractually agreed period.

(7.2.) The customer is obliged to reimburse us for any losses caused by the customer's delay, including any extra expenses.

(7.3.) If, in spite of a written request from us to do so, the customer fails to perform its obligation to accept delivery or to call up a delivery within a reasonable period set by us, then we shall be entitled to refuse performance of the contract and to demand damages in lieu of performance. Our obligation to deliver shall lapse in respect of the unaccepted delivery. The same shall apply to the (part) deliveries not yet called up, and to any part deliveries intended to be called up at a later date.

(8.) Customer's Claims Based on Defects, Compensation Claims

(8.1.) The customer's claims based on defects shall be contingent upon the customer duly performing its duties of making inspections and filing complaints, as laid down in section 377 Commercial Code [*Handelsgesetzbuch - HGB*].

(8.2.) Deviations as set out in clause (2.2.) above shall not constitute defects. In all other respects, our product specifications shall determine agreed characteristics as defined in section 434 (1) clause 3 Civil Code [*Bürgerliches Gesetzbuch - BGB*]. Any other comments, recommendations or advertising statements made in public shall not constitute any contractual characteristics.

Claims based on defects shall only be considered if a defect occurs although the goods have been laid/assembled and cared for/maintained in accordance with our instructions as well as subjected only to normal use, and if the defect is not due to normal wear and tear of the goods or individual parts thereof. Immaterial deviations of the goods in respect of colour, coating, surface structure, texture and/or measurements/angular accuracy shall not be grounds for claims based on defects.

(8.3.) If there is any defect in the goods or services for which we are responsible, we shall be entitled to remedy such defect or make substitute delivery at our discretion. We will bear the necessary costs in respect of such defect, in particular transportation, travel, labour and material costs, insofar as such costs are not increased due to the goods or services having been transferred to a location other than the place of performance.

(8.4.) The customer must grant us the opportunity and the time reasonably required to remedy the defect. If it refuses to do so, we shall be released from any liability for defects.

(8.5.) If we are unwilling or unable to remedy the defect or make substitute delivery, or if remedying the defect or making substitute delivery is delayed beyond reasonable deadlines for reasons for which we are responsible, or if remedying the defect or making substitute delivery fails in any other way, then the customer may rescind the contract or reduce the payment at its discretion.

(8.6.) Unless otherwise stated below, any further claims of the customer - for any legal cause - are excluded. Thus we shall not be liable for damage not caused to the goods delivered, in particular we shall not be liable for the customer's lost profits or other pecuniary losses.

(8.7.) Clause (8.6.) shall not apply if damage is due to intention or gross negligence. Moreover, it shall not apply if we are obliged to pay damages due to the lack of a warranted characteristic. It shall also not apply if claims are made against us due to the infliction of a personal injury to the customer for which we are responsible.

If we are liable in damages due to the breach of a fundamental duty or major contractual obligation, our liability to pay such compensation shall be limited to the foreseeable damage typical for the contract at issue.

(8.8.) The limitation period for claims based on defects and damages claims:

(8.8.1) Claims based on defects will generally become statute barred after 12 months. If the goods supplied, in accordance with their customary use, have been used for a building construction, and if said goods are the cause of such construction's defectiveness, the limitation period shall be five years, unless the goods supplied have been used for a building construction under a contract in which Part B of the contracting rules for the award of public works contracts [*Verdingungsordnung für Bauleistungen - VOB/B*] has been incorporated in its entirety. In this case, the shorter limitation periods laid down in said VOB/B shall apply. The limitation periods shall commence on delivery of the goods.

(8.8.2) If we fail to disclose a defect with intent to deceive, the statutory limitation periods shall apply instead of those set out in (8.8.1) above.

(8.8.3) Generally, the limitation periods shall also apply to claims for damages and in particular to compensation for consequential damage. However, if we acted with deliberate intent or if claims in tort, under the Product Liability Statute [*Produkthaftungsgesetz*], or claims for personal injury of the customer are made, the statutory limitation periods shall apply.

(9.) Customer's Recourse Pursuant to section 478 Civil Code [BGB]

We shall grant the customer a right of recourse pursuant to section 478 Civil Code [*Bürgerliches Gesetzbuch - BGB*] in accordance with the following:

(9.1.) Recourse pursuant to section 478 Civil Code shall be contingent upon the customer duly performing its duties to make inspections and complaints as laid down in section 377 Commercial Code [*Handelsgesetzbuch - HGB*].

(9.2.) If, under the regulations on sale of consumer goods laid down in sections 474 ff. Civil Code, new goods manufactured by us are returned to the customer by its own customer because they are defective, or if the customer had to accept its own customer reducing the price for such goods, then we shall likewise refund all or part of the purchase price to the customer on the basis of the purchase price invoiced, provided such goods were already defective at the time when the risk passed to the customer.

(9.3.) The customer's claim to reimbursement of expenses shall be limited to reimbursement on a cost price basis of those expenses which the customer was allowed to consider necessary vis-à-vis its own customer in view of the circumstances.

(9.4.) Any further claims are excluded.

(10.) Impossibility, Contractual Adjustments

(10.1.) If it is impossible from the start for us to make delivery or render services, our liability shall be governed by the statutory regulations.

(10.2.) If it becomes impossible for us to make delivery or render services, the general legal principles shall apply as follows: If such impossibility is due to our fault, the customer shall be entitled to damages. However, the customer's claim for damages shall be limited to foreseeable damage typical for the type of contract at issue. The customer's right to rescind the contract shall remain unaffected.

(10.3.) If unforeseen events as defined in clause (5.6.) substantially alter the economic significance or the content of the goods delivered or services rendered, or have a major effect on our business, the contract shall be adjusted reasonably in accordance with principles of good faith. If such adjustment cannot be expected for economic reasons, we shall be entitled to rescind the contract. If we wish to exercise this right of rescission, we shall notify the customer accordingly without delay on gaining knowledge of the extent of such event. This right of rescission shall apply even if an extension of the delivery period had been agreed previously with the customer.

(11.) Other Liability

(11.1.) Further liability for damages beyond that for which provision is made under clauses (5.7.), (5.8.), (8.6.), (8.7.), (8.8.), (10.1.) and (10.2.) above is excluded, irrespective of the legal nature of the claim.

(11.2.) The provisions of clause (11.1.) shall not apply to claims pursuant to sections 1 and 4 Product Liability Act [*Produkthaftungsgesetz*].

(11.3.) Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our executives, employees, workers, representatives and others assisting us in performing our obligations.

(12.) Reservation of Title

(12.1.) We reserve title to the goods we have supplied until such time as the customer has paid all accounts receivable – including future accounts receivable – under the business relationship existing between us. In the case of several accounts receivable, our reservation of title shall be deemed security for the total balance due, irrespective of whether individual supplies of goods have already been paid in full.

(12.2.) The customer is entitled to sell the goods purchased in the ordinary course of business or, as the case may be, assemble these together with goods of third parties. The customer hereby assigns to us in advance in the amount of the outstanding purchase price all and any accounts receivable (on whatever legal ground, in particular including accounts receivable from a contract for works and services) ensuing to the customer from a resale of goods or, as the case may be, from an assembly of the goods that are subject to our reservation of title. We accept such assignment. The customer shall remain entitled to collect such accounts receivable as long as it performs its obligations to us.

In addition, the customer hereby assigns to us all and any claims to compensation against insurance companies or other third parties that are based on damage to the goods that are subject to reservation of title. We accept this assignment.

(12.3.) Any processing, assembly or other utilisation of the goods subject to our reservation of title or their combination with other goods shall be performed exclusively on our behalf. If goods supplied by us that are subject to our reservation of title are combined, processed or mixed with goods owned by third parties, we shall be entitled to co-ownership of the new object or mixture, at a ratio of the value of the goods subject to our reservation of title plus the value of such processing, to the value of the finished product at the time of such combination, processing or mixing.

(12.4.) If the customer is in breach of contract, in particular in case of default of payment, we shall be entitled to reclaim the goods and to charge the customer a fixed sum of 15% of the value of the order to cover the costs incurred by us in reclaiming such goods. The customer may prove that such costs are substantially lower, or are not incurred at all. We reserve the right to assert claims for greater costs, loss or damage.

(12.5.) Goods subject to our reservation of title may not be pledged or assigned by way of security by the customer until such time as all the customer's liabilities towards us have been discharged. Moreover, the customer must notify us in writing immediately in case of any seizure of goods subject to our reservation of title, any petition for the institution of insolvency proceedings, or any other event of legal significance which impair or may impair our rights relating to goods subject to our reservation of title under any jurisdiction. If payments are suspended, the goods must be separated and made available to us without any specific request to this effect.

(13.) Place of Performance, Venue, Governing Law

(13.1.) Place of performance for both parties shall be Grafenau/Elsenthal.

(13.2.) Provided the customer is a businessman (Kaufmann), a legal entity of public law or a special fund under public law, Munich shall be the exclusive venue for all and any legal disputes involving the creation or validity of the contract or arising from the contractual relationship, including bill of exchange and cheque claims. However, we reserve the right to sue the customer at a court having jurisdiction over the customer's principal place of business.

(13.3.) The contract shall be governed by the laws of the Federal Republic of Germany. The Convention on Contracts for the International Sale of Goods [CISG] shall not apply.