

KAYSER FILTERTECH GmbH Terms and Conditions of Sale and Delivery (VLB)

1. Scope of application

(1.1) These Terms and Conditions of Sale and Delivery shall apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 Paragraph 1 BGB (German Civil Code). Any terms and conditions of the purchaser which conflict with or deviate from our Terms and Conditions of Sale shall only be recognised by us if we expressly agree to their validity in writing. These Terms and Conditions of Sale and Delivery shall also apply to all future business transactions with the purchaser insofar as these are legal transactions of a related nature. These Terms and Conditions of Sale and Delivery shall also apply if the order confirmations of the seller's foreign subsidiaries stipulate that national law is applicable.

(1.2) In the case of framework agreements, the terms and conditions of Kayser Filtertech GmbH (hereinafter referred to as "seller") as amended shall apply to all future deliveries of goods under this contract as well as to associated legal transactions.

2. Offers and orders

Offers of the seller are subject to change without notice. All delivery contracts and other agreements are only valid after written confirmation by the seller. If an order is to be regarded as an offer in accordance with § 145 BGB, we can accept it within two weeks.

3. Subject matter of the contract

(3.1) The subject matter of the contract shall be determined exclusively by the seller's written order confirmation. Information provided by the purchaser shall only apply if expressly referred to in the written order confirmation. In all other respects, our goods shall be delivered in customary quality and execution, taking into account production-related customary tolerances for dimensions, weight and quality conditions. Samples are not suitable for the binding determination of the quality of the goods and shall not become part of the contract. The same shall apply to unconfirmed statements made by the seller prior to the conclusion of the contract, and to statements made by the seller about the goods to be delivered before the conclusion of the contract.

(3.2) The purchaser can only demand changes to the construction and design of the delivery item if they are reasonable. An amicable agreement shall be reached on their impact, in particular their additional and reduced costs.

(3.3) Unless otherwise agreed, excess or short deliveries by the seller of up to 10% of the ordered quantity are permitted.

(3.4) Partial deliveries and services by the seller are permissible unless they are financially unacceptable to the purchaser.

(3.5) The quality specifications made in the order confirmation or in the contract do not include the assumption of a guarantee.

(3.6) The service life of the delivered goods depends on the respective operating conditions. A commitment to service life can only be given if the process and plant conditions remain unchanged.

(3.7) The seller accepts no responsibility for any consequences resulting from incomplete or incorrect technical information provided by the purchaser.

4. Price and payment conditions

(4.1) Unless otherwise agreed, prices are quoted in euro and apply to deliveries within Germany "ex works" or "ex warehouse" excluding packaging. This may also be the plant or warehouse of a third party. With regard to prices for international deliveries, the clause EXW excluding packaging (according to Incoterms 2010), published by the International Chamber of Commerce in Paris, shall apply. This shall be included in the contractual relationship and shall apply unless otherwise stipulated in these Terms and Conditions of Sale and Delivery or in the contract.

(4.2) The purchase prices do not include the statutory value added tax, which is shown separately.

(4.3) Unless a fixed price agreement has been made, we reserve the right to make reasonable price changes due to changes in wage, material and distribution costs for deliveries made 2 months or more after conclusion of the contract. If the increase amounts to more than 5% of the agreed price, the purchaser has the right to terminate the contract.

(4.4) Taxes, public charges, customs duties and other special costs which are not charged to the seller in accordance with the order confirmation shall be borne by the purchaser.

(4.5) The deduction of discount requires a special written agreement.

(4.6) Payments shall be made in accordance with the terms agreed and stated on the invoice.

(4.7) Payments are to be made free of postage and charges to the seller's paying agent. Discount charges or interest shall be charged to the purchaser.

(4.8) In the case of payments of any kind, the day on which the seller can dispose of the amount shall be deemed the day of performance.

(4.9) Unless otherwise stated in the order confirmation, the purchase price shall be payable without deduction within 21 days of receipt of the invoice. If the purchaser does not make payment within 21 days of receipt of invoice, he shall be in default of payment, unless performance is not rendered as a result of a circumstance for which he is not responsible. During the period of default, interest shall be charged on the invoice amount at 8% above the respective base interest rate. This does not exclude the assertion of further damages.

(4.10) The purchaser shall only be entitled to offset if the purchaser's counterclaims have been legally established or are undisputed. The purchaser is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

5. Delivery time

(5.1) The commencement of the delivery period shall be the effective date of the conclusion of the contract, provided that the purchaser has supplied the seller all information and documents required for the technical evaluation of use and has fulfilled all other requirements of the purchase contract. If the aforementioned conditions are not fulfilled when the order is received, the delivery period shall not begin until the day these conditions are fulfilled.

(5.2) In the absence of a different agreement, details of the time of delivery and performance are only approximate; in the case of only approximate delivery and performance periods, the purchaser may bring about the due date of the deliveries and services at the earliest one month after expiry of the aforementioned period, which may be extended. In the event of an approximate delivery period, the purchaser must accept the goods within the period of two weeks after the seller's notification of handover or readiness for dispatch.

(5.3) Orders for which no specific delivery period has been agreed shall be delivered and invoiced no later than 6 months after the order date. Call orders shall be delivered and invoiced no later than 3 months after the call date agreed in the order confirmation.

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(5.4) The delivery period shall be extended in the case of events such as force majeure, strike, lockout and the occurrence of other unforeseen events which are beyond the control of the seller and which demonstrably have a considerable influence on the completion and delivery of the object of purchase. This shall also apply if these circumstances occur at a sub-supplier. If the hindrance lasts longer than 4 months, both contracting parties may withdraw from the contract if they duly terminate it within 14 days of the expiry of said 4 months. In the event of withdrawal from the contract, compensation in lieu of performance for non-performance and compensation for delay in performance shall be excluded. An obstacle for which the seller is responsible does not entitle the seller to withdraw from the contract.

(5.5) If the seller is in default of delivery, he shall be entitled under all circumstances to a reasonable period of grace to be set by the purchaser. This period shall be at least 4 weeks; in the case of goods ready for dispatch, at least one week. The subsequent delivery period shall commence on the date of receipt of the relevant notification from the purchaser. The subsequent delivery period shall be deemed to have been observed if the seller ships the goods within the subsequent delivery period.

(5.6) To the exclusion of further claims, the seller shall be liable for damages caused by default which are attributable to gross negligence or wilful intent on the part of the seller, the seller's representative or vicarious agent. The seller shall also be liable if the delay in delivery for which the seller is responsible is due to the culpable breach of a main contractual obligation. The seller is only liable for the foreseeable, typically occurring damage, unless there is wilful intent on the part of the seller.

(5.7) The seller's liability in the event of default shall be limited to 1% of the delivery value per completed week, but no more than a total of 10% of the delivery value.

(5.8) If the purchaser is in default of acceptance or violates other duties to cooperate, the seller shall be entitled to demand compensation for any damages incurred, including any additional expenses. We reserve the right to assert further claims. If the conditions of the previous paragraph are met, the risk of accidental loss and accidental deterioration of the object of sale shall pass to the purchaser at the time at which he is in default of acceptance or payment.

6. Delivery

(6.1) Unless otherwise agreed in writing, the place of performance for all deliveries shall be the seller's works. The risk shall pass to the first carrier when the delivery item is handed over, even if the seller has taken over the transport.

(6.2) Unless otherwise agreed, packaging shall be carried out in a manner customary in the trade. The costs for packaging are always charged separately.

With regard to packaging, the purchaser shall assume the seller's obligations under the Packaging Ordinance. The taking-back of any aids is excluded in principle.

(6.3) If transport is at the expense of the seller, the goods shall be transported as normal freight. In the case of express and express consignments specially prescribed by the purchaser, the additional freight costs shall be invoiced.

(6.4) If the purchaser so wishes, the seller shall take out transport insurance to cover the delivery; the costs incurred in this respect shall be borne by the purchaser.

7. Reservation of ownership

(7.1) The seller shall retain ownership of the delivered goods until full payment of all claims arising from the business relationship between the seller and the purchaser. The inclusion of individual claims in the current account as well as the balancing and recognition thereof shall not affect the reservation of ownership. In the event of breach of contract by the purchaser, in particular default in payment, the seller shall be entitled to take back the delivery item and the purchaser shall be obliged to surrender it after the seller has withdrawn from the contract.

(7.2) The purchaser is obliged to adequately insure the reserved goods against all usual risks, in particular fire, burglary and water hazards, and to treat and store them with care.

(7.3) The purchaser must inform the seller immediately in writing about the payment execution measures of third parties for the reserved goods and for the claims assigned in advance, handing over the documents necessary for an intervention. Insofar as the third party is not in a position to reimburse the seller for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO, the purchaser shall be liable for the costs and damages incurred by the seller.

(7.4) The purchaser is entitled to resell the delivery item during the ordinary course of business. The purchaser is not permitted to make other dispositions, in particular pledging or transfer by way of security.

(7.5) The purchaser hereby assigns to the seller any claims arising from the resale or any other legal ground, e.g. insurance, tort, in respect of the reserved goods up to the amount of the purchase price claims (including value added tax); the seller accepts this assignment. Notwithstanding the assignment and the right of collection of the seller, the purchaser is entitled to collect as long as he fulfils his obligations towards the seller and does not fall into financial collapse. If this is the case, however, the purchaser must inform the seller of the assigned claims and their debtors and provide the information required for collection, hand over the relevant documents to the seller and inform the debtors of the assignment.

(7.6) If the delivery item is resold with other goods that do not belong to the seller, the purchaser's claim against the purchaser shall be deemed assigned in the amount of the delivery price agreed between the seller and the purchaser (including value added tax). If the reserved goods are processed by the purchaser, the seller shall be deemed to be the processor within the meaning of § 950 BGB (German Civil Code). If the reserved goods are combined with other items, the seller shall acquire pro rata co-ownership of the new item created thereby. If the purchaser acquires sole ownership of a new item, it shall be deemed agreed that the purchaser shall grant him pro rata co-ownership of the new item.

(7.7) The seller undertakes to release the securities to which he is entitled at the purchaser's request to the extent that the realisable value exceeds the claims to be secured by more than 20%; the choice of the securities to be released shall be incumbent on the seller.

8. Warranty and notice of defects

(8.1) The purchaser must inspect the received goods for quantity and quality immediately after receipt. Obvious defects must be reported within 5 (five) working days in writing.

(8.2) Claims for hidden defects which cannot be found after immediate inspection may only be asserted against the seller if the defects are reported to the seller within 12 (twelve) months after receipt of the goods, unless otherwise agreed in writing. This clause shall not apply if the hidden defect is based on a circumstance which has been caused by the seller or the seller's vicarious agents as a result

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of wilful intent or gross negligence, if the life, body or health of another party has been damaged as a result of the breach of duty or longer periods are provided for in accordance with § 479 BGB (German Civil Code).

(8.3) If, despite all due care taken, the delivered goods exhibit a defect which already existed at the time of transfer of risk, the seller shall, subject to timely notification of the defect, repair or replace the goods at the seller's discretion. The seller shall always be given the opportunity to remedy the defect within a reasonable period of time. Recourse claims remain unaffected by the above regulation without restriction.

(8.4) In the event of failure, refusal or unreasonableness of subsequent performance, the purchaser may, at the purchaser's discretion, either reverse the contract or reduce the agreed remuneration.

(8.5) Warranty claims shall not exist in the event of insignificant deviations from the agreed quality, in the event of only insignificant impairment of usability, in the event of natural wear and tear, as well as in the event of damage arising after the transfer of risk as a result of faulty or negligent handling, excessive strain, operating conditions not agreed, unsuitable equipment, defective construction work, unsuitable foundation or due to special influences not assumed under the contract. If improper repair work or modifications are carried out by the purchaser or third parties, no claims for defects shall exist for these or the resulting consequences.

(8.6) Claims of the purchaser due to the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded insofar as the expenses increase because the goods delivered by the seller were subsequently brought to a location other than the purchaser's branch office, unless the transfer is in line with the intended use.

(8.7) The assertion of further damages, in particular for consequential damages, is precluded. This shall not apply if the damage is based on a circumstance caused by a deliberate or grossly negligent breach of duty on the part of the seller or its vicarious agents, or if the life, body or health of another party has been culpably damaged by the breach of duty.

(8.8) Defects in part of the delivered goods shall not entitle the purchaser to complain about the entire delivery unless the partial shipment is of no interest to the purchaser.

(8.9) There shall be no warranty claims if the tolerances customary in trade or industry are adhered to.

(8.10) No warranty shall be assumed for damages arising from the following reasons:

- a) Incorrect or negligent handling or storage;
- b) Unsuitable or improper use;
- c) Faulty assembly by the purchaser or third parties despite proper and comprehensible assembly instructions;
- d) Chemical, electronic or electrical influences, unless they are attributable to a fault of the supplier.

(8.11) The purchaser's right of recourse against the seller shall only exist to the extent that the purchaser has not entered into any agreements with its customer that go beyond the legally mandatory claims based on defects. No. 8.6 shall also apply mutatis mutandis to the scope of the purchaser's right of recourse against the seller.

9. Liability for defects

(9.1) The seller shall be liable in accordance with the statutory provisions, but the claim for damages shall be limited as follows:

- a) In the case of simple negligence, liability shall only be assumed for injury to life, limb or health.
- b) In the event of intent on the part of simple vicarious agents, gross negligence on the part of legal representatives, employees or vicarious agents, liability shall be limited only to foreseeable, typically occurring damage. The liability is additionally limited to the amount of the sum insured under the company liability insurance, which the seller will inform the purchaser of at any time upon request.
- c) In the event of a breach of a cardinal obligation, the seller's liability for simple negligence shall be limited as set out under b). A cardinal obligation is understood to be an obligation, the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contractual partner may regularly rely.

(9.2) The mandatory provisions of the Product Liability Act shall remain unaffected. In the event of any other breach of duty, in particular culpa in contrahendo or tort, the seller shall assume no further liability than that regulated above. The seller's legal representatives, officers and employees shall be liable no more than the seller itself.

(9.3) In the case of a generic purchase, the seller shall not assume the procurement risk and therefore does not assume liability without fault.

10. Property rights

The purchaser is exclusively liable for the legality of the use of drawings, sketches, models etc. sent to us and hereby indemnifies us from claims of third parties arising from the infringement of all property rights in the internal relationship. We are not obliged to review the aforementioned documents with regard to existing industrial property rights of third parties.

11. Documents provided

We reserve ownership rights and copyrights to all documents handed over to the purchaser in connection with the placing of the order, such as calculations, drawings, etc. These documents may not be made accessible to third parties unless we give the purchaser our express written consent to do so. If we do not accept the purchaser's offer within the period of No. 2, these documents must be returned to us immediately.

12. Applicable law and place of jurisdiction

(12.1) The law of the Federal Republic of Germany shall apply exclusively. The validity of the uniform UN Convention on the International Sale of Goods (CISG) is excluded.

(12.2) The place of performance and exclusive place of jurisdiction is Einbeck.

(12.3) The language of the court proceedings shall be German.

(12.4) In the event of differences in content between the German-language and English-language versions of our Terms and Conditions of Sale and Delivery, the German-language version shall apply.

(12.5) All agreements made between the parties for the purpose of executing this contract are laid down in writing in this contract.

(12.6) Should individual provisions of this contract be or become ineffective or contain a gap, the remaining provisions shall remain unaffected. The parties undertake to replace the invalid provision with a legally permissible provision that comes closest to the economic purpose of the invalid provision or fills this gap.

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