

Conditions of Sale of Klaus Böcker GmbH

§ 1 General – Scope

1. Our Conditions of Sale apply exclusively; Conditions of the Purchaser which are inconsistent with our Conditions of Sale or which deviate from our Conditions of Sale shall be void and of no effect, unless we have specifically agreed to their validity in writing. Our Conditions of Sale shall also apply, if we, with knowledge of the Purchaser's conditions which are inconsistent with or deviate from our Conditions of Sale unreservedly carry out delivery to the Purchaser.
2. All Agreements reached between us and the Purchaser for the purpose of the implementation of this Agreement are laid down in writing in this Agreement. Modifications or additions to this Agreement must be made in writing in order to be valid.
3. Our Conditions of Sale shall only apply to commercial undertakings as defined in article 14 of the German Civil Code (Bürgerliches Gesetzbuch; hereinafter referred to as: BGB), legal persons under public law or special funds under public law.
4. Our Conditions of Sale apply to all current and future business relationships with the Purchaser.

§ 2 Validity of the Conditions of Business (Geschäftsbedingungen) of the Waren-Verein (WVB)

1. The Conditions of Business (Geschäftsbedingungen) of the Waren-Verein der Hamburger Börse e. V. (hereinafter referred to as: WVB) apply exclusively in the version applicable at the time the contract was concluded, to the extent that they are not changed or supplemented by the following overriding provisions.
2. The Terms and Conditions of the Waren-Verein (WVB) can be obtained from the following address: Waren-Verein der Hamburger Börse e. V., Große Bäckerstraße 4, D-20095 Hamburg, or can be accessed via the Internet under <http://www.warenverein.de>.

§ 3 Conclusion of the Contract

1. Our Offers are subject to change and are not binding.
2. If the Order qualifies as an Offer in accordance with article 145 BGB, we can accept this in writing within two weeks of its receipt by us.
3. Correct and timely self-supply remains reserved.

§ 4 Prices – Terms of Payment

1. INCOTERMS shall apply in the version applicable at the time the contract was concluded. Unless otherwise stated in the confirmation of the order, our prices apply 'cfr' (cost and freight) at port of arrival, inclusive of normal packaging.
2. Unless otherwise stated in the confirmation of the order, the Purchaser shall pay the net purchase price (without deductions) within 10 days of receipt of the invoice. Upon the expiration of this time limit, the Customer shall be considered to be in default of payment. The statutory provisions concerning the consequences of late payment shall apply.
3. The Purchaser shall only be entitled to exercise set-off rights, if his counterclaims have been confirmed by a non-appealable court decision, are uncontested or recognised by us. Moreover, he shall be entitled to exercise a right of retention, insofar as his counterclaim is based on the same contractual relationship. Article 13 WVB remains unaffected.

§ 5 Delivery – Delay in Delivery

1. If a binding delivery date is agreed upon, we shall effect the delivery or, alternatively, performance by the end of the month specified in the contract in accordance with contractual parity by means of release or delivery.
2. In the case of an agreement of delivery upon a fixed date, we are entitled, according to the contractual parity, to carry out the delivery or performance by exemption or delivery up to three days before or after the specific date.
3. All occurrences of force majeure, the circumstances for which we are not responsible, release us from the duty to perform our contractual obligations for the duration of these occurrences. We shall notify the Purchaser without delay of the unavailability of the performance and shall without delay re-imburse the Purchaser's corresponding counter-performance. In the event that the occurrence lasts longer than three months, we are entitled to withdraw from the contract.
4. In the case of delayed performance (delay in delivery), we shall be liable in accordance with statutory regulations, if the delayed delivery is due to an intentional or grossly negligent breach of contract for which we are responsible. Culpability on the part of our representatives or vicarious agents shall be attributable to us. Provided that the delay in delivery is not due to an intentional breach of contract for which we are responsible and if no exceptional cases provided for in para 5, 2nd sentence, of this section exist, our liability for damages shall be limited to foreseeable damage, which is typical of the type of contract concerned.
5. In other respects, in the event of delayed delivery we shall be liable for every complete week of delay, within the limits of a lump-sum of compensation for the delay, amounting to 0.5% of the value of the goods to be delivered, but however, not exceeding more than 5% of the value of the goods to be delivered in total. Liability due to culpable infringements to life, the body or health remains unaffected.

§ 6 Rescission

In line with the WVB and statutory regulations, the Purchaser can only withdraw from the contract, if we are responsible for the breach of duty. If the properties of the goods delivered do not fulfil the requirements of the contractual agreement article 19 WVB and/or the respective statutory regulations shall apply.

§ 7 Liability for Defects

1. Our liability in case of defects requires that the Purchaser has duly met his responsibilities in accordance with article 20 WVB.
2. If at the point in time of the transfer of risk the properties of our goods are contrary to the contract, the Purchaser is entitled to rights under article 19 WVB.

§ 8 Joint and Several Liability

1. So far as nothing hereafter rules something to the contrary, our liability (regardless of the legal nature of the asserted claim) is excluded. This applies, in particular, to claims for compensation arising from fault at conclusion of the contract, due to other breaches of duty or due to tortious claims for compensation for damage to property according to article 823 BGB. The liability for defects, however, is exclusively governed by section VII.
2. We are liable in accordance with the statutory regulations, in as much as the Purchaser lodges a claim for damages which is based on intentional or gross negligence, including the intentional or gross negligence of our representatives or vicarious agents. In as much as we are not accused of an intentional breach of duty, liability is limited to foreseeable damage, which is typical of the type of contract concerned.
3. We are liable in accordance with the statutory regulations, in so far as we culpably breach an essential contractual duty; in this case, the liability for damages is limited to foreseeable damage, which is typical of the type of contract concerned.
4. Liability due to culpable infringements to life, the body or health remains unaffected; this also applies to the compulsory liability in accordance with the German Product Liability Law (Produkthaftungsgesetz).
5. The limitation according to paras 1 to 3 applies also where the Purchaser demands compensation for wasted expenditure.
6. In so far as our liability for damages is excluded or restricted, this also applies in terms of the personal liability for damage, to our salaried personnel, employees, co-workers, representatives and vicarious agents.

§ 9 Retention of Title

1. We reserve the right to retain title to the purchase item, until receipt in full of all payments arising from the business relationship with the Purchaser.
2. If the Purchaser breaches the contract, in particular, in the case of delays in payment, we are entitled to retake the purchased items without having previously withdrawn from the contract. Upon the existence of these requirements, the Purchaser allows us to enter his business premises during normal working hours and to retake possession of the items subject to the retention of title clause. After having retaken the goods, we are entitled to sell them, whereby the proceeds from realisation shall be offset against the amount owed by the Purchaser – less reasonable handling costs.
3. The Purchaser is entitled to resell the purchase item in the regular course of business; however, he hereby assigns to us all debts owed to him by his customers or third parties from the resale, up to the amount of the final invoice sum of our claim (including VAT), irrespective of whether the purchased item has been resold in its original condition or after further processing. The Purchaser remains authorised to collect this debt even after it has been ceded. This shall not affect our right to collect the debt ourselves. However, we undertake not to collect the debt provided that the Purchaser complies with his payment obligations from the revenues collected, is not late with his payments, and in particular, has not filed for bankruptcy protection or discontinued payments. If however, any of the aforementioned situations occur, we may demand that the Purchaser notifies us of the assigned debts and debtors, supplies all information necessary for us to collect the debts, hand over the associated documentation and notifies the debtors (third parties) of the assignment.
4. The processing or alteration of the purchase item by the Purchaser is always carried out on our behalf. If the purchase item is processed with other items which do not belong to us we shall acquire co-ownership over the new item in the ratio of the value of the purchase item (final invoice sum, including VAT) to the other mixed items at the time of processing. The item produced as a result of the processing shall be subject to the same provisions as the goods supplied under retention of title.
5. If the purchase item is inseparably mixed with other items which do not belong to us we shall acquire co-ownership over the new item in the ratio of the value of the purchase item (final invoice sum, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the item belonging to the Purchaser is to be regarded as the main item, the Purchaser shall be deemed to have assigned co-ownership to us on a pro rata basis. The Purchaser holds any sole-ownership or co-ownership thus arising in custody for us.
6. If the retention of title or the assignment is not effective under the law applicable in the territory in which the goods are located, it is agreed that the equivalent safeguard to the retention of title or the assignment in this territory shall apply. If the cooperation of the Purchaser is required to constitute this, the Purchaser shall be obliged at our request, to undertake at his own expense all measures, which are necessary for the establishment and maintenance of such rights.
7. We undertake to release the securities which we are entitled to at the request of the Purchaser, in so far as the realisable value of our securities exceeds the claims to be secured by more than 10%; we shall be free to choose which securities shall be released.

§ 10 Place of Jurisdiction – Place of Performance

1. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement, including any tortious claims, is at our discretion, the Schiedsgericht (Court of Arbitration) of the Waren-Verein of the Hamburger Börse e.V. (article 30 WVB) or the court of general jurisdiction in Hamburg. In case the Purchaser intends to bring a judicial action against us, at the Purchaser's request, we shall exercise our right to choose the court prior to the beginning of court proceedings within a reasonable period of time, which must be a minimum of 3 business days. If we fail to declare our decision within the set time period, the right to choose passes to the Purchaser. He shall make his choice without delay and notify us in writing.
2. The place of performance for all claims of the parties arising out of this contract is Hamburg.
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