

INFORMATION

General Terms and Conditions of Sale

I. Application

These delivery terms shall apply to all business transactions

1. with persons who, when concluding the contract, act in performance of their business activity or self-employed occupation (entrepreneurs)
2. with legal entities of public law or a special fund under public law.

II. **These General Terms and Conditions of Sale have been designed for contracts which are not subject to the special provisions of Consumer Goods Purchase (Art. 474 et seq. of the German Civil Code (BGB)).**

The customer shall be obliged to inform us if it cannot be excluded that the products supplied by us are supplied to consumers within the meaning of Art. 13 of the German Civil Code (BGB).

We shall then be entitled to withdraw from the contract.

III. Conclusion of the contract

1. Our terms and conditions stated below shall apply exclusively to all agreements with us and quotations from us – also to future ones. No other terms and conditions shall become contents of the contract, even if we do not expressly object to them.

We shall have the right to withdraw from the contract if the customer objects to the application of our delivery terms.

2. Contracts shall only come into being by means of our order acknowledgement given in writing or transmitted by electronic means. Until then our quotations shall be without engagement. We can send the order acknowledgement up to the expiry of 30 calendar days after the receipt of the customer's order. For the scope of the supply or performance only that order acknowledgement shall be decisive.

IV. Prices

1. Our prices shall apply net ex works. Value-added tax shall be charged separately at the level respectively applicable on the day of invoicing. The prices shall apply only to the respective order and shall not be binding for follow-up orders.
2. Packaging, loading, freight and insurance costs as well as assembly/erection costs and the cost of commissioning/putting into operation shall be additionally invoiced.
The customer shall be separately charged for fees and the cost of obtaining and certifying certificates of origin, consular invoices, approvals and suchlike.
Packaging and freight costs shall be charged at cost price. Returnable pallets and empty packages shall remain our property and are to be returned cleaned and in perfect condition. The handing-back of equivalent pallets or pallets of the same kind shall be permitted. If return does not take place within one month of delivery, we shall charge at cost.
Any other packaging shall be disposed of by the customer
3. The prices agreed upon for an order shall be valid for four months after the conclusion of the contract. If longer periods of time have been agreed upon for the provision of supply or performance, we shall be entitled, in the event of the increasing of material or wage costs, on the basis of our original pricing, to make a percentage mark-up for the cost increase that has occurred.

V. Supply and performance

1. Time limits for supplies and performance and dates for supply and performance shall be binding only if they have been confirmed in writing as being so. Otherwise they are to be considered approximate and without obligation. Delivery times shall begin as of the date of the order acknowledgement. Delivery times and/or times for performance shall be deemed to have been met if we advise readiness of dispatch within the time limits agreed upon.
Appropriate part deliveries and commercially available or reasonable deviations from the quantities ordered shall be permitted.
2. The delivery time shall be extended by the time during which we ourselves are not supplied or not supplied in time.
Delivery time shall be extended appropriately if the party placing the order does not adhere to terms of payment agreed upon or does not meet any other contractual obligations.
The above shall not apply if we are responsible for the delay.

3. If the delivery or service is delayed due to the occurrence of events that are unavoidable for us and unforeseeable at the time of conclusion of the contract (e.g. operational disruptions, official interventions, shortage of raw materials, delivery interruptions or shutdowns due to pandemic, energy supply difficulties, industrial action), which could not be averted by us despite reasonable care according to the circumstances of the case, the delivery or service period shall be extended appropriately by a maximum of two months.

If the delivery or service becomes impossible for the above reasons, we shall be released from the delivery or service obligation. In this case we shall inform the contractual partner of the impossibility and refund any consideration already received.
4. We shall – also in the case of a performance period defined by the calendar (Art. 286 II Nos. 1 and 2 of the German Civil Code (BGB) – only be in default if we are set a period of time for performance of two weeks, unless we have previously refused performance seriously and finally.

In the event of our culpable default the customer can demand a contractual penalty in the amount of ½ % of the value of that part of the overall supply which cannot be used due to the delay, for each full week of the delay, but in total no more than 5 % of this value.

The right to claim further damages shall be reserved. However, we accept liability for damage/loss caused by delay and damage/loss due to non-performance only up to the amount of twice the order value, unless we or our vicarious agents have acted with intent or gross negligence. Any possible contractual penalty to be paid is to be offset against the customer's claim for damages.
5. Because of the delay in delivery the customer can only withdraw from the contract if we are responsible for the delay and a reasonable addition period of time allowed has elapsed without success.
6. If the customer is in default with payments of any kind whatsoever or if its financial circumstances deteriorate or if the doubts about its viability are justified, we shall be entitled to refuse all further performance and to demand cash in advance. Such deterioration in financial circumstances is to be assumed among other things, if bills of exchange or cheques are protested or the limit set by a credit insurer is exceeded and/or would be exceeded by the intended delivery. The same shall apply if the customer has made incorrect statements about its credit standing. Statutory rights going beyond this (in particular of rescission) shall be reserved.
7. Deliveries shall be made ex FCA works Incoterms 2020. The risk of accidental loss and accidental deterioration shall pass to the customer upon loading onto vehicles of the carrier or the customer. If the shipment is delayed for reasons for which we are not responsible, the transfer of risk shall take place upon notification of readiness for shipment.

Clauses such as "delivery free" or similar regulate the transport costs, but do not change the above rule on the transfer of risk.

8. In the case of call-off orders we can, after the expiry of six months after the order acknowledgement, set a fourteen-day extension and then invoice the goods or performance not purchased and charge reasonable storage charges and/or charges for taking supplies up to acceptance, unless otherwise agreed.
9. If shipment or dispatch of the goods is delayed at the request of the party placing the order by more than one month after advice of readiness for dispatch, we can invoice the goods and for every part month charge storage fees in the amount of 0.5 % of the price of the delayed delivery, but in total not more than 5 % of the delayed delivery. The parties to the contract shall reserve the right to provide evidence of higher or lower storage charges.

VI. Payments

1. If no deviating agreements have been made, the price of the supplies or other services shall be payable 30 days after the date of the invoice. Basic chemicals, anodes and bath accessories shall be payable immediately after the date of the invoice.
Unconditional crediting to the bank account shall be decisive for establishing the timeliness of payment.
2. Bills of exchange and cheques shall be accepted by way of payment; bills of exchange only after agreement. Costs and charges shall be at the customer's expense.
3. If the time allowed for payment is exceeded, the customer shall have to pay the default interest in the amount of 8 percentage points above the respective base interest rate. The making of claims for further damage/loss shall be reserved. The above stated shall not apply if the customer produces evidence of the fact that he is not responsible for the delay.
If the customer defaults on a payment, all of the accounts receivable shall become due immediately unless the customer produces evidence of the fact that he was not responsible for the default.
4. The customer can only offset against our accounts receivable with accounts receivable in their own right which are undisputed or have been subject to the final decision of a court of law. The customer shall have a right of retention only with regard to the accounts receivable under the same contractual relationship which are undisputed or have been subject the final decision of a court of law. In the last case he can withhold payment of the remuneration in the event of defects of parts of the shipment or performance only in the amount corresponding to the value of the defective shipment or performance.

VII. Retention of title

1. We retain title to all goods and services supplied by us until all claims - including future claims - against the customer arising from the business relationship have been settled. In the event of inclusion in a current account, the retention of title shall apply to the respective balance. We are entitled to take back the goods if the customer is in default of payment. The goods shall be credited with the actual proceeds after deduction of the realisation and redemption costs.

The customer is obliged to insure our property against fire, water and theft. The claims against the insurance are assigned to us. If the customer does not prove to us upon request that sufficient insurance has been taken out, we shall be entitled to insure the delivery item against theft, breakage, fire, water and other damage at the customer's expense.

2. In the event of seizures, confiscations or other disposals or interventions by third parties, the party placing the order must inform us without undue delay.
3. The customer may further process the goods in the ordinary course of business or, with the agreement of an extended or widened retention of title, resell them. The customer shall not be entitled to make any other disposals.

The customer's authority to process and to sell shall extinguish if he does not meet his payment obligations in relation to us, breaches in any other gross way the contracts concluded with him or runs into financial difficulties. Deemed to be financial difficulties shall be the suspension of payments, over-indebtedness, application for the opening of insolvency proceedings and every other serious change in the customer's financial situation that can lead to the endangering of our collateral.

4. Processing of goods subject to retention of title shall be carried out for us. In the case of joint processing for several suppliers we shall be entitled to co-ownership in accordance with Articles 947 et seq. of the German Civil Code (BGB).

If the customer combines or mixes our items with an item owned by him in such a way that the customer's item is to be seen as the main item, the customer shall now already transfer to us a percentage of co-ownership in the ratio between the value of our item and the value of the main item. Our share of co-ownership shall remain in the possession of the customer who shall hold the item in safekeeping for us.

5. The customer shall already now assign to us a first-ranking part amount of the accounts receivable and the secondary rights arising from resale corresponding to our share of ownership. The customer shall not be entitled to agree upon a prohibition of assignment.

In the case of partial payment by a debtor of the customer to the customer, the account receivable assigned to us shall be deemed to have been redeemed last.

The customer shall be entitled to collect the accounts receivable assigned in the ordinary course of business. This authorisation shall expire in the cases designated in VII.3. The customer shall then be obliged to cooperate with the collection of the accounts receivable.

6. We undertake at the customer's request to release the collateral to which we are entitled according to the above conditions at our option to the extent that its realisable value exceeds the total account receivable to be secured by more than 20 %.

VIII. Warranty

1. We warrant that the items supplied by us are free of material defects or deficiencies in title which have a considerable detrimental effect on the use of the item for the intended purpose.

The yardstick for the compliance of the products supplied with the contract shall be the respective contractual description of the products and their intended purpose in the contract which we have concluded with our customer, our product descriptions and our processing notes and notes for use. Minor changes to the goods with regard to design, shape and structuring as well as to the values shown in the description as well as minor changes to our performance are to be accepted by the customer, insofar as they are tolerable or they are commercially acceptable quantities, quality or design.

We supply assembly/erection instructions only in the case of appropriate written agreement.

2. Data which we publish in text or drawing form, e.g. in catalogues, descriptions, illustrations and drawings, as well as indications of dimensions, weights and performances characterise merely the condition of our products and do not represent any warranty of characteristics or guarantees.

We cannot exclude that our product descriptions and catalogues contain errors (printing errors).

We shall endeavour to correct such errors as soon as they come to our notice. For this purpose we list all corrections made after the publication of a catalogue or a product description stating the article and the page which corrections refer to on the Internet under www.kiesow.org. This database on the Internet shall be part of our catalogue and/or of the product description.

3. Our members of staff, sales representatives or other sales intermediaries shall not be empowered to declare guarantees and warranties.
The presentation of samples or specimens does not in itself alone establish any guarantee or warranty.

4. The right is reserved to make alterations of technical data and designs serving the purpose of technical progress.

5. The following shall apply to pre-treatment products and electroplating products:

If baths are newly prepared or regenerated, proof of the perfect quality and working method of the chemicals supplied shall be deemed to have been furnished if the baths have been demonstrated by one of our employees and handed over to the buyer without any complaints.

In all other respects, the preparation of baths is the responsibility of the customer. The suitability of the products supplied by us for the specific purposes of the customer must be tested by the customer through his own examination and trials; we do not assume any warranty for this.

6. Warranty claims do not exist if the defects have occurred as a result of non-observance of our processing instructions or product descriptions, as a result of faulty or negligent handling, as a result of defective or improper storage, improper use or unsuitable application, faulty mixing or assembly, after excessive stress or as a result of the use of unsuitable operating materials after the transfer of risk or as a result of impairments caused by special external influences after the transfer of risk which were not contractually provided for.

Warranty claims are excluded if the purchaser himself or a third party has carried out repair work without this being absolutely necessary.

7. If the contractual partner refers to a public statement, in particular in advertising, in order to justify a defect complained of by him, it is incumbent on him to prove that the public statement was the cause of his decision to purchase.

8. The contractual partner is obliged to accept the delivery/service even if the goods only have minor defects.

9. Obvious defects must be notified in writing within one week at the latest, calculated from the day of delivery. Hidden defects must be notified in writing by the contractual partner no later than one week after their discovery.

The contractual partner is obliged to provide us with a detailed written description of the defects he has notified. If the notice of defect is not given or if the notice of defect is late, the contractual partner shall lose its claims for any existing defects in the purchased goods.

Any processing of a notice of defects by us, in particular also the examination of the goods after return by the

contractual partner, shall in no case constitute a waiver of compliance with the obligations to give notice of defects by the contractual partner.

10. In case of a defect we shall initially be entitled *at our option* to eliminate the defect or to supply an item free of defects (subsequent performance, Art. 439 of the German Civil Code (BGB)). In the case of subsequent performance we shall be obliged to bear all of the expenses necessary for the purpose of subsequent performance, in particular transport, infrastructure charges, labour and material costs, insofar as they are not increased as a result of the fact that the goods were transferred to a place other than the original delivery point.

Products complained about by our customer are to be returned to us only upon our demand and, to the extent necessary, in good packaging and with a packing slip enclosed indicating the order number.

11. We can refuse subsequent performance if it is only possible with disproportionately high costs. That is the case in particular if
 - the expenses associated with the elimination of the defect will probably exceed 100 % of the current market value of the item purchased;
 - in the case of subsequent delivery the cost of replacement procurement by us exceeds the amount of 150 % of the current market value of the item purchased.

The other statutory rights of the customer (price reduction, withdrawal, damages, compensation for futile expenses) shall remain unaffected.

12. Unless mandatorily provided for otherwise by the law, the customer shall be obliged to first of all set a reasonable period of time for subsequent performance, before he can make claims on the basis of other guarantee rights.

We are as a general rule to be granted a period of time of at least 2 weeks for subsequent performance; that shall not apply if in individual cases a different period of time is agreed contractually or a short time limit is mandatorily required, e.g. in urgent cases in which disproportionately great damage/loss threatens or dangers for operating safety arise.

If subsequent performance does not take place within this period of time, the customer shall be entitled to claim the statutory rights and in particular to rescind the contract, to declare a reduction of the purchase price or – on the conditions of Item X. – to demand damages.

The setting of a period of time shall not be required if we have refused subsequent performance finally and wholeheartedly or subsequent performance is impossible.

13. Rescission of the contract shall be excluded if the item purchased only shows insignificant defects. Insignificant defects shall be deemed to exist in particular in the case of minor deviations from the contractually agreed upon condition and state and in the case of only insignificant detrimental effects on the usability of the goods as required according to the contract.
14. Damages in lieu of the performance can only be demanded by the other party to the contract if delivery of the defective item means a considerable violation of duty.
15. Damages for any possible collateral damage/loss occurring independently of subsequent performance (e.g. loss of production, loss of profit, claims for delayed delivery to the customer's clients etc., Art. 280 of the German Civil Code (BGB)), can only be claimed if an appropriate period of time for subsequent performance provided in writing has expired fruitlessly. Otherwise, Item X shall apply to claims for damages.
16. The warranty period shall be 12 months from delivery or the agreed acceptance of the item purchased. For work carried out as subsequent performance or spare parts supplied, there shall be a warranty only up to the expiry of the warranty period for the original delivery.
17. If the period of time for subsequent performance has expired fruitlessly, we shall have the right to request the customer, setting a period of time of one month, to declare its further rights of warranty in relation to us. If the customer does not make such a declaration within that period of time, rights of warranty shall be excluded; that shall apply only if we have expressly drawn attention to this legal consequence in the request with the setting of the time limit.
18. The other party to the contract can only take recourse against us for product defects for which recourse is taken against it by its customers to the extent that it has not made any agreements with its customers going beyond the domestic statutory regulations, especially warranty liability. For the scope of our warranty liability in relation to the other party to the contract, in these cases the above rules shall apply accordingly. As far as the product delivered by us was dispatched contrary to Item II. via a delivery chain to a consumer, the appropriate mandatory statutory regulations shall apply. We shall not be liable in accordance with Articles 478 and 479 of the German Civil Code (BGB) if our customer has delivered abroad and in doing so has excluded the application of the UN Convention on Contracts for the International Sale of Goods (CISG).

IX. Defects of title

1. We shall be liable to the statutory extent for freedom of products supplied from defects of title.

We shall warrant that products supplied by us do not infringe any industrial property rights or copyright of third parties only with regard to the country in which we have our head office (in Germany), unless something to the contrary has been agreed. We shall not be liable insofar as the infringement of such industrial property rights is based on instructions which were given by the company placing the order, or insofar as for the infringement of such rights unauthorized modifications of the product or a use of the product deviating from the contractual use by the customer is the cause.

2. The other party to the contract shall inform us without undue delay, as soon as third parties make a claim for the infringement of industrial property rights.

If this information without undue delay is omitted, the claims under warranty shall be excluded.

3. Item VIII. 14 shall apply accordingly to the warranty period.

4. If within the warranty period justified claims of third parties are made, we can at our option and at our expense bring about a right of use for the deliveries concerned or we can modify the deliveries with reference to the contractual intended purpose in such a way that industrial property rights are not infringed, or deliver comparable products which do not infringe the industrial property rights.

5. A claim under the warranty by the other party to the contract shall be excluded if the other party to the contract itself conducts the negotiations with the third party or concludes agreements with the latter without our consent.

X.. Damages

1. We shall be liable for damages, on whatever legal grounds, only

- if we, our statutory representatives or our vicarious agents have acted with intent or with gross negligence;
- if we or the above mentioned have acted with simple negligence, on the conditions of paragraph 2;

- if we have given guarantees, for the fulfilment of those guarantees to the extent agreed upon; guarantees (see VIII 2) shall require to be given in writing and must be expressly designated as such;
 - in the case of harm to life and limb and impairment of health
 - in the cases of other mandatory statutory liability (e.g. German Product Liability Act (Produkthaftungsgesetz), German Environmental Liability Act (Umwelthaftpflichtgesetz) and similar.)
2. In cases of simple negligence we shall be liable – apart from in the cases in paragraph 1 – for damages, no matter on what legal grounds, only in the case of the violation of essential contractual obligations. Essential contractual obligations are obligations the meeting of which makes the due performance of the contract possible at all and on the meeting of which the other party to the contract may regularly rely. In the case of simple negligent violation of essential contractual obligations our liability for damages shall be limited, as to the amount, to compensation for typical, foreseeable damage/loss. The customer shall be obliged to draw our attention in writing before the conclusion of the contract to any special risks, atypical damage/loss possibilities and unusual damage/loss amounts. Liability for consequential damages, such as lack of economic success, loss of profit, interruption of production and for damages of third parties, is excluded.
3. If the subject matter of the sales contract is an item defined only according to the generic group, our liability shall in this case be defined also exclusively in accordance with the rules above. Liability for damages irrespective of fault shall be excluded.
4. The above provisions relating to liability shall apply also to the customer's statutory claims for compensation for futile expenses as well as for personal liability of the white-collar workers, employees, members of staff, representatives and vicarious agents.
- XI. Limitation period, general statute of limitations
1. The statutory period of limitations for contractual claims shall apply equally to all of the customer's non-contractual claims against us concurring with contractual claims. To the extent that the claim has not been subject to the statute of limitations beforehand, for the bringing of actions for damages a **limitation period of six months** shall apply, beginning with the refusal of the payment of damages by us; the limitation period shall not apply in the cases of X. No. 1.

2. Irrespective of other statutory provisions, the interruption of the statute of limitations shall also end when the interrupting negotiations are not continued, as regards the matter, over a period of four weeks. A new beginning of the limitation period of the customer's claims shall in any case require express written confirmation by us.

XII. Other rights and obligations

In the case of a violation of the protection and care obligations within the meaning of Art. 241, paragraph 2, of the German Civil Code (BGB) which is not directly related to the supply of the goods, our customer shall only be entitled to claim for damages and to exercise his right of rescission if we were previously warned about the violation of the obligation with an appropriate time limit being set.

A warning shall not be required if we or our representatives or vicarious agents act with intent or gross negligence or in the case of harm to life and limb or impairment of health.

XIII. Industrial property rights

1. For all documents, items and suchlike made available to us for the purpose of supply or performance the customer shall guarantee that no industrial property rights of third parties are infringed. We shall draw the customer's attention to third-party rights of which we are aware. The customer must indemnify us from and against third-party claims and from any damage/loss incurred by us. If the performance, production or delivery is prohibited for us by a third-party invoking an industrial property right belonging to it, we shall – without any checking of the legal situation – be entitled to cease work and to demand compensation for our expenditure.

Any documents, items and suchlike which have not led to an order, shall on request be returned against reimbursement of costs. Otherwise we shall be entitled to destroy them three months after the submission of the quotation.

2. We reserve rights of ownership and copyright to all samples, models, cost estimates, costing and similar tangible and intangible information – also in electronic form. Such information must not be made available to third parties. If the other party to the contract receives such information in connection with the initiation of the contract, it shall be obliged to send it back to us free of charge if the contract does not come into being.

The other party to the contract shall be obliged to make all information which is expressly designated by us as being confidential available to third parties only with our express consent.

XIV. Datenschutz

1. The data required for processing business transactions is stored at a central location.
2. We regularly check the customer's creditworthiness when concluding contracts and in certain cases where there is a justified interest. For this purpose, we work together with Kreditreform, from which we receive the data required for this purpose. For this purpose, we transmit the company or name of our customers and their contact details to Kreditreform. Further information on data processing at Kreditreform can be found at <https://www.Kreditreform.de/Herford/Datenschutz>.

XV. German Consumer Arbitration Act

Note according to Articles 36 and 37 of the German Consumer Arbitration Act:

KIESOW OBERFLÄCHENCHEMIE GmbH & Co. KG is neither obliged nor willing to participate in dispute resolution proceedings before a consumer mediation board.

Hence KIESOW OBERFLÄCHENCHEMIE GmbH & Co. KG does not participate in dispute resolution proceedings before a consumer mediation board.

XVI. Final provisions

1. German law shall apply to all orders placed by us.
Application of the UN Convention on Contracts for the International Sale of Goods shall be excluded.
2. All – contractual and non-contractual – disputes from or in connection with contracts for which the application of these general terms and conditions of sale is intended, shall be finally decided in accordance with the rules of arbitration of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)), ousting the jurisdiction of the courts. The arbitral tribunal shall consist of three arbitrators and in the case of disputes with an amount in dispute of less than € 20,000.00 of one arbitrator.
The venue for the arbitral procedure shall be Detmold and the language shall be German.
However, we shall be entitled to also bring an action before the state courts, where for that purpose the place of our head office shall be agreed upon as the place of jurisdiction. Besides that we shall be entitled to sue our customer also at its place of general jurisdiction.

3. The place of performance and payment for all obligations from the legal relations with the customer shall be the place of delivery. Agreements on the bearing of costs shall not contain any change in the above mentioned place of performance.
4. Should individual provisions of these supply conditions be or become ineffective, that shall not affect the effectiveness of the other terms and conditions.
5. The data required for the processing of the business transactions shall be stored at a central point by us.