

KGM Kugelfabrik GmbH & Co. KG

Terms of Sale and Supply

All of our deliveries and other services provided to commercial operators, corporate entities and special public bodies are rendered exclusively on the terms set out below. These terms shall also apply even if we carry out the delivery while aware of contradictory or differing terms operated by the customer. Any such contradictory or differing terms shall be binding on us only if we have expressly agreed to their applicability in writing.

I. Conclusion of the contract / Written form

1. The supply contract, plus any and all amendments, side accords and sundry agreements, become effective only upon our written confirmation. The contract is deemed to have come into force on the confirmed terms unless the customer raises objection to these terms in writing immediately after receiving the order confirmation.
2. We reserve the right to make such variations to the agreed service as are reasonable in their scope and nature.

II. Prices, price increases and handling surcharges

1. In the absence of any agreement to the contrary, the prices and discounts, plus statutory sales tax, applicable on the day of the delivery or of provision of the service shall apply. No discounts are given on any order items with a gross order value of under 100 Euros.
2. In the event that any of our suppliers increase their prices after the contract has been concluded, we shall be entitled to pass on such increases to the customer through a pro rata price rise.
3. We may levy a handling surcharge for order volumes that fail to reach our minimum order size and/or value as laid down in our then applicable price list. This applies also to non-standard packaging and special requests.

III. Delivery deadlines / Delays / Call orders / Partial deliveries

1. Delivery deadlines are calculated from order confirmation and at the earliest in any case from final agreement on all issues to be clarified with the customer prior to the start of manufacture.
2. Force majeure, strikes or any other unforeseeable disruptions in our own operations or in those of our suppliers, or any delivery delays on the part of our suppliers, shall entitle us to extend the delivery deadline by the duration of the problem. We shall inform the customer as soon as possible if any such circumstances arise and when they end.
3. If we are in default and the customer incurs losses as a result, the customer may demand compensation for the delay. For every full week of the delay this shall in total be 0.5%, at the most, however, 5% of the value of that part of the total delivery that as a consequence of the delay cannot be used on time or in accordance with the contract. Any other claims due to delay shall be based solely on section VIII, points 2 and 3.
4. If it has been agreed with the customer that a firmly agreed delivery volume is to be supplied within a set period (the 'transaction period') and the customer has the right to specify the delivery date on each occasion, the deliveries must be called off not later than six weeks before the desired delivery date. After expiry of the transaction period, we shall be entitled to deliver any amounts not yet called off and to invoice for these.
5. Partial deliveries shall be permissible as long as these are not unreasonable for the customer.

IV. Packaging / Carriage / Transfer of risk

1. All deliveries are EXW (Incoterms in its then current version). The choice of packaging materials and type of packaging remains left to us.
2. Pallets, containers and all other forms of repeat-use packaging remain our property and must be returned by the customer without delay or charge and in a clean condition to our delivery point. All forms of single-use packaging are charged at cost and not taken back.
3. All express freight surcharges and postage costs for small consignments are paid by the customer.

V. Payments

1. In the absence of any agreement to the contrary, all payments must be made with no deductions into one of our accounts within 30 days of the invoice date. We grant a 2% discount on payments made within 14 days of invoice date, as long as the customer is not in arrears with the payment of any other invoices. However, for customers with whom we do not have an ongoing business relationship we supply on the basis of payment before delivery.
2. As of the due payment date we charge late payment interest at the level of 8% above the prevailing base rate.
3. Customers may not withhold or offset payment on the basis of any amounts they have in turn invoiced to us, save only if such invoices are undisputed or have been legally ruled valid.
4. If after conclusion of the contract facts become known to us that relate to the customer's financial position and that make our claim to the purchase price appear seriously at risk, we shall be entitled to refuse delivery until the purchase price is paid or security for it is provided.

VI. Retention of title

1. We shall retain title to all goods supplied by us until settlement of all invoices arising from the business relationship with the customer (retained-title goods). Where invoicing is ongoing the retained title also counts as security for the claim to the balance.
2. If through being combined with something else the retained-title goods become part of a new object that belongs to the customer, then it is deemed agreed that the customer shall transfer to us joint title to the new object and store it on our behalf free of charge. Our share of ownership shall be based on the ratio of the value of the retained-title goods to the value of the new object.
3. Even now the customer assigns to us all financial claims against its own customers arising from any sell-on of the retained-title goods. If the retained-title goods are sold on with other goods that do not belong to us, the customer shall assign to us such part of the financial claim arising from the sell-on as corresponds to the pro rata value of the retained-title goods. If retained-title goods are sold on that belong to us only in part, then the part of the financial claim arising from the sell-on assigned to us is calculated based on our share of ownership.
4. The customer remains entitled to collect debts arising from any such sell-on. This right may be revoked. If we so request, the customer must inform its own customers of the assignment and give us all information and documents that we need to enforce our rights.
5. We undertake that we shall release the securities to which we are entitled by such extent as their value exceeds the debts to be secured by more than 20%.
6. If the retained-title goods become subject to any form of distraint or our rights are in other way compromised by any third party, the customer must inform us without delay.
7. Insofar as any mandatory laws of the country concerned do not provide for any retention of title as defined in this section VI, points 1-6, but recognise other rights for securing claims arising from suppliers' invoices, we reserve such rights. If for such rights to accrue or be upheld, the customer's cooperation is required, the customer shall have a duty to provide this.

VII. Breaches of obligations

1. Our warranty in respect of faults or deficiencies is governed by the following provisions:

a) Any faults must be notified to us as soon as they are noticed. Whenever a complaint is made about any goods we have supplied, said items must be kept available to us. We shall reimburse the cost of returning goods only if we have requested this.

b) Where justified complaints are made within the due time we shall take remedial action: We shall at our discretion either take back the defective goods and supply defect-free replacements or remedy the defect. If at the time of receipt of the complaint the purchase price is already due for payment, then we shall be obliged to take such remedial action only once the customer has paid such part of the purchase price as corresponds to the value of the goods in a defective condition. We shall bear any assembly and disassembly costs only insofar as they arise in Germany and are proportionate to the value of the goods being supplied.

c) The customer must give us reasonable time and opportunity to carry out the remedial action. Only where there is danger in delay, and especially in order to stave off disproportionately large losses, shall the customer have the right to undertake the remedial action itself or to have this done by a third party and demand from us reimbursement of the necessary costs. In such an event we must be informed immediately.

d) If the remedial action fails, the customer may as it chooses either reduce the purchase price or withdraw from the contract. Save as provided by the ruling at point 2 below, the customer shall have no right to any more far-reaching claims – no matter on what legal basis.

e) Where a fault lessens the value or suitability of the goods only to an insignificant degree, the customer may neither demand remedial action nor reduce the purchase price.

f) If the deficiency is based on a discrepancy relating to advertising statements about the characteristics of the goods, the customer must prove that the advertising was the cause of its decision to make the purchase.

2. The following applies to compensation:

We shall be liable to pay compensation solely in the situations set out below:

(1) A breach of duty by our legal representatives / agents caused by wilful intent or gross negligence;

(2) A breach of any product quality guarantee;

(3) A culpable breach of any material contractual obligations, limited in terms of the amount however in the case of minor negligence or gross negligence by non-senior staff to reasonably foreseeable losses for this type of contract.

(4) Culpable injury to life, body or health;

(5) Liability pursuant to the Product Liability Act for personal injury or for physical damage to items of personal use.

3. The customer may demand reimbursement of monies paid out in vain only in the event of a wilful or grossly negligent breach of duty on our part.

4. All claims in relation to faults and deficiencies expire 12 months after delivery of the item to be supplied, save only if a longer mandatory expiry period is stipulated in legislation.

5. Article 350 of the German Civil Code (BGB) applies in respect of statutory rights of cancellation.

VIII. Guarantee / Procurement risk

Any acceptance by us of guarantees or of the procurement risk has to be explicit and to be valid must be in writing. Specifications in our catalogues, printed literature and advertising and in other general details do not represent any guarantee or assumption of the procurement risk. Information does not represent any guarantee or assumption of the procurement risk.

IX. Software use

If software is being provided with the item supplied, the customer is granted a non-exclusive, non-transferable right to use the software, including its documentation, in combination with that item. Use of the software in combination with more than one such item is not permitted. The customer is not allowed to issue any sub-licences. The customer may reproduce, revise, translate or alter the software from the object code only to the minimum extent allowed by law (Article 69a ff. of the German Copyright Act, UrhG). The customer undertakes not to remove any originator details – especially copyright notices – nor to alter the same without our express prior written consent. We reserve all other rights to the software and documentation, including to any and all copies.

X. Confidentiality

The customer and we shall keep confidential all information received from the respective other party. This shall continue to apply even after the end of the supply contract. This obligation shall not apply to information that was already legitimately known to the recipient party at the time of its receipt without any breach of the duty of non-disclosure or that subsequently becomes known to it legitimately and without any breach of the duty of non-disclosure or that – without any breach by either party of the duty of non-disclosure – is or becomes generally known.

Each party shall retain title and all rights to any and all documents and data carrying media that it makes available. Any copying and passing on of such documents or data carriers is permitted only with the consent of the party supplying them.

XI. Other

1. The place of execution for all deliveries and payments shall be Fulda.

2. If the customer is a sole trader, corporate entity or special public body, jurisdiction shall lie with the courts of Fulda. If the customer is not a sole trader, jurisdiction shall lie with the courts of Fulda if either the customer has relocated its registered or usual place of residence abroad since concluding the contract or at the time of the claim being raised the customer's registered or usual place of residence is unknown. We may however also file claims in the city in which the customer's business is based.

3. The contractual relationship shall be subject to the laws of the Federal Republic of Germany.

KGM Kugelfabrik GmbH & Co. KG, Fulda

Last amended: April 2010