

Terms and Conditions for Delivery and Payment – Klaro GmbH

I. GENERAL POINTS

- All deliveries and services are carried out exclusively subject to our conditions for delivery and payment set out below. This shall also apply to any amendments to the contract. These conditions also apply to all subsequent contracts, even if no direct reference is made to these conditions, unless the purchaser is not a merchant within the meaning of the German Commercial Code ("Handelsgesetzbuch" - HGB). Our representatives are not authorised to agree conditions that differ from the present conditions for delivery and payment.
- Confirmations from the customer that include references to its general terms and conditions for business are hereby dismissed; they may only count as part of the contract if we specifically acknowledge them, in writing. This requirement for our acknowledgement shall apply in all cases, including for example if we have knowledge of the customer's general terms and conditions for business and make an unconditional delivery to that customer.
- The contract between us and the customer only becomes legally binding once the job (offer, order, etc) has been confirmed by us in writing, or that delivery of the goods to the customer has been announced.

II. OFFERS AND PRICES

- Our offers are subject to confirmation.
- Our "ex works" prices include the cost of loading. "Free site" prices do not include off-loading for which can therefore be driven on made-up roads. For smaller quantities, the cost of transport is calculated on the basis of the corresponding all-in freight costs. The applicable all-in freight costs are posted up and may be sent to the customer in writing on request.
- If the customer is a merchant within the meaning of the HGB or invoices on the goods received from us, the offered or agreed prices are net prices, to which must be added VAT at the rate valid at the time. For final customers, who are not merchants within the meaning of the HGB, the agreed or offered price is the final price.
- Jobs for which a firm price has not been agreed will be charged according to our price list valid on the day of delivery. If the customer is a consumer (according to Article 13 of the German Civil Code ("Bürgerliches Gesetzbuch" - BGB), he/she may withdraw from the contract if the price on the day of delivery is substantially greater than the price at the time of concluding the contract in comparison to any increase in the overall cost of living.
- If wages, the cost of materials or the cost of carriage change no less than four months after the date of concluding the contract, we would be entitled to increase our prices correspondingly, as long as we were not in a period of delayed delivery at the time the increased costs came into effect.
- Samples are ordinary samples of our products and remain our property.
- Palettes are charged according to the conditions and prices currently valid. If palettes are returned immediately free of charge or are collected, the customer is credited with an amount corresponding to the return price of Klaro GmbH applicable at the time. The conditions and prices for issuing and returning palettes are posted up and may be sent to the customer in writing on request.

III. DATES AND DEADLINES

- Delivery deadlines are only binding if this has been specifically agreed.
- Special orders must be collected immediately after manufacture.

IV. DELIVERY AND DESPATCH

- All despatches are at the customer's own risk. This does not apply if the customer is a consumer (Article 13 of the BGB), in which case the risk is transferred at the latest when the goods are handed over to the customer (Article 446 of the BGB).
- If collection of the goods is delayed for reasons for which we are not responsible, the customer would be charged for storage.
- The receiving party must have the vehicles unloaded immediately, at its own expense. Waiting and unloading times of more than a total of one hour and the transport of the goods on the site are not included in the transport costs and would be invoiced.
- If the purchaser wishes, the goods may be delivered on a lorry fitted with a crane. The cost of this would be invoiced separately.

V. WARRANTY

- The corresponding DIN prescriptions apply to the production and checking of the building materials.
- Complaints concerning defects may only be made validly in writing. If the customer is a merchant and the contract falls within the scope of his/her commercial activity, obvious defects of any kind and the delivery of goods that are evidently not those ordered must be reported to us within ten days of receipt of the goods or not later than ten days after discovery of the defects; after this amount of time the purchaser would lose his/her entitlement to claim against warranty. We also have the benefit of the relevant statutory regulations, and more particularly Articles 377 and 378 of the HGB.
- Rejected goods may only be processed or sold on with our written agreement; this also applies in particular for the use of building materials.
- Breakage and shortfall within the usual trade limits may not be refused.
- Hairline cracks of less than 0.2 mm are not always avoidable technically. They do not constitute defects giving entitlement to complaint. Differences in dimensions dependent on manufacturing do not constitute an error or deviation from the required composition as long as they remain within the standardised tolerance levels.
- White flecks on the surface (bloom) may occur as a result of particles of lime being released while the concrete hardens and forming a white deposit on the surface of the concrete elements. They disappear under normal weather conditions, as precipitation dissolves the surface deposits of lime. They may also be removed by abrasion under traffic. The properties and value of the elements are not affected, and they do not constitute a defect.
- If the customer is a merchant and the contract falls within the scope of his/her commercial activity, we are entitled in the context of our liability to repair defective goods or make a new delivery. If repair or repeat delivery does not resolve the issue, the remaining warranty rights come into play.
- Claims in respect of material defects and legal entitlement must be made within one year of delivery. This does not apply to claims for damages resulting from death, physical injury or damage to health that involve a breach of obligation that is at least negligent, nor to other claims for damages involving a deliberate or grossly negligent breach of obligation on our part or a deliberate or grossly negligent breach of obligation on the part of our legal representative or our vicarious agents. Also, this time period does not apply if the customer is a consumer (Article 13 of the BGB), or if the final delivery of the goods is made to a consumer, unless for the purpose of asserting claims for damages not covered by the second sentence. However, if the goods are a building structure or an object usually used in connection with a building structure and has caused its defectiveness, the warranty period, in accordance with the statutory regulations, is five years from the date of delivery. This does not affect the limitation periods under the legislation on product liability, or those for restitution to third parties (paragraph 1(1) of Article 438 of the BGB), or in the case of deceit on the part of the vendor (paragraph 3 of Article 438 of the BGB).

VI. LIABILITY

- Any advice and information given is not legally binding unless we are liable by contract in respect of the advice or information given.
- The customer may not make any claim for compensation, whatever the legal foundation, including delay, positive breach of obligation, negligence in contracting, and unauthorised procedure,

against either us or our sub-contractors or vicarious agents unless we have been deliberately or grossly negligent. This does not apply to damage involving loss of life, physical injury or damage to health, or if the customer asserts infringement of a contractual obligation on the basis of the legislation on product liability. The limited liability resulting from Paragraph 1 does not apply either if we deliberately conceal a defect or have taken over a guarantee for the composition of the goods. In the case of delayed delivery, the customer is entitled, after the fruitless expiry of a reasonable subsequent period laid down by the customer, to withdraw from the contract if our delay is merely the consequence of slight negligence.

VII. PAYMENT

- In the case of special orders, the customer must pay a deposit of 50%.
- Invoices are due for payment within two weeks of receipt. Discounts and rebates, which may only be deducted from the net value of the goods, are only allowed by special agreement, and only on condition that the invoice is paid on time and that all previous outstanding invoices have been settled.
- Payments are always applied to the settlement of the earliest outstanding invoice.
- We are prepared to accept bills and cheques in individual cases, but this is always conditional and does not constitute cash payment. Discount charges and other costs are to be borne by the purchaser.
- In the event of late payment, suspension of payments or the submission of an application for the opening of composition or insolvency proceedings on the part of the purchaser, we may demand the immediate payment of all outstanding payments, even those not yet due for payment or deferred; this does not apply if the customer is not responsible for the non-payment. In the case of partial deliveries these circumstances would entitle us to demand advance payment or security in respect of those quantities not yet delivered.
- The purchaser may not discount demands that are disputed by us or have not been not legally validated. If the purchaser asserts a legal right of retention on the grounds of an actual or alleged defect, the right of retention would be limited to that part of the due payment for which retention in respect of the cost of making good the alleged defect in relation to the overall amount due does not infringe good faith.
- If the purchaser is a merchant and the contract falls within the scope of his/her commercial activity, he/she would only be entitled to retention, even if a complaint for defectiveness or other counter-claim has been asserted, if the claims are made within the statutory time period or an undisputed.
- If the purchaser is authorised to make a security deduction, we would be entitled to redeem the amount retained by means of a guarantee from a bank or a German credit insurer, limited to the duration of the warranty period.

VIII. CLAIMS FOR COMPENSATION

- Should the purchaser delay in paying, we would be entitled, from the start of the period of delay, to charge interest amounting to 2% above the amount of the marginal lending facility of the European Central Bank, unless we indicate a higher amount or the customer indicates a lower penalty.
- For as long as we have contractual claims for compensation in respect of the customer, we are entitled to assert loss of earnings amounting to a flat-rate sum of 20% of the gross invoice amount and a further 5.00 euros to cover our costs, unless we indicate a higher amount or the customer indicates a lower penalty.

IX. SECURITY RIGHTS

- The delivered goods remain our property until complete payment of the purchase price including ancillary charges and the cost of any legal proceedings.
- If the purchaser is a merchant and the contract falls within the scope of his/her commercial activity, the delivered goods remain until complete clearance of all our current or future claims in respect of the business relationship.
- For current invoices, retention of ownership constitutes our security for the payment of the balance.
- If the purchaser is a merchant and the contract falls within the scope of his/her commercial activity, we revocably authorise the purchaser in the context of his/her ordinary business to process the delivered goods or combine or mix them with other items. Such processing, combination or mixing by the purchaser is carried out on our behalf but does not incur our liability. In respect of the object resulting from such processing, combination or mixing, we claim our share of ownership, corresponding to the invoice value of the goods delivered by us in relation to the value of the other items used. The purchaser shall keep the items that are partly our property for us free of charge.
- If the purchaser is a merchant and the contract falls within the scope of his/her commercial activity, we revocably authorise the purchaser to sell on the goods that are our property as part of his/her normal commercial activity unless he/she has already effectively transferred the claim to a third party. The purchaser transfers to us as of now all claims and associated rights arising out of such selling on. This shall also apply for claims and all rights arising from the selling on of items through combination, mixing or processing of the goods sold with other items that do not belong to us. The purchaser is revocably authorised to collect the transferred claim for us; this would not affect our authority to collect. As long as the purchaser continues to abide by its payment obligations we would not assert the claim ourselves. The purchaser undertakes to refrain from transferring the claim against a third-party debtor to a third party, and from agreeing with third parties to any transfer in respect of our claim.
- If the achievable value of the security exceeds our claims by more than 10%, we would at the purchaser's request release securities of our choosing; the pre-requirements for release are usually that the estimated value of the security is more than 50% of our claims.
- The purchaser may neither pledge the goods nor use them as security.
- The purchaser is obliged to inform us of any pledging or other interference in our security rights in respect of third parties spontaneously and without delay. The purchaser must hand over to us all the documentation necessary for intervention, and bear any expense we may incur in intervening.

X. DATA PROCESSING

We process personal data concerning the customer solely in the context of the contract relationship, in accordance with the prescriptions of German federal legislation on data protection.

XI. PLACE OF JURISDICTION

If the customer is a merchant within the meaning of the HGB or a legal person under public law or the subject of public-sector special funding, it is agreed that any dispute arising out of the contract relationship, its existence and its effectiveness, and for complaints in respect of bills of exchange and certificates shall be dealt with by the courts in Bayreuth exclusively, even in international disputes. We are also entitled to bring cases before any statutorily competent court.

XII. APPLICABLE LAW

In respect of the contract concluded with the customer, its performance and termination, and for any claims arising out of the contract, German law alone shall apply.

XIII. PARTIAL INVALIDITY

The invalidity of any single condition shall not alter the effectiveness of the remaining conditions of the present Terms and Conditions for Delivery and Payment.

XIV. LEGAL SUCCESSION CLAUSE

Rights and obligations arising out of agreements founded on the present Terms and Conditions for Delivery and Payment shall be comprehensively transferred to any legal successor. The agreement would be valid as if it had been made with that party.

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