



Kaltenpoth – table fittings

7. General terms of trade (July 2010)

I. Applicability

1. These sales conditions apply to entrepreneurs, legal persons under public law and private property under public law.

2. All offers and agreements will be made in accordance with the following terms of trade. Terms of the customer conflicting herewith will not be binding unless they are expressly recognized by us in writing.

II. Offer and conclusion of the contract

1. Our offers are always made without obligation and are only valid for a reasonable period of time. They are subject to prior sale.

2. Orders and amendments thereto are only binding on us once they have been confirmed by us in writing. The same also applies to orders submitted through our representatives.

3. The customer will check the order confirmation, immediately on receipt, for correctness of the articles, sizes, quantities, prices and delivery date.

4. The information and illustrations contained in prospectuses and catalogues are approximate values customary in the trade, unless they are expressly stated by us to be binding.

III. Prices without tax

1. Unless anything else is expressly agreed, prices are ex works, and do not include packing materials, freight, postage and insurance.

2. If prices are not quoted or are to be at "current list prices", the list prices valid at the date of delivery will be charged. This applies, however, only to sales where the delivery term exceeds four months and for price adjustments of up to 10%. Where the price adjustments exceed this level, it will be necessary to agree the prices again. If such an agreement is not reached, the customer can withdraw from the contract.

3. If in the case of long-term contracts (contracts with a lifetime of more than four months or unlimited contracts) a substantial change occurs in wage, materials or energy costs, then each contracting partner is entitled to demand an appropriate price adjustment taking these factors into account.

IV. Amendments to orders, special parts

1. Amendments to orders made before or after receipt of the order confirmation can only be taken into consideration if the customer bears any additional costs resulting therefrom, and an adequate extension to the delivery time is agreed.

2. Tools, equipment, models, assembly parts, etc., which are to be provided by the customer, are to be delivered free of charge at the time agreed in the contract. We are entitled to charge storage of any tools or goods paid for which have not been collected by a date defined by us, after the customer has been requested three times in writing so to do, at 2% over the rate for warehousing customary at the location in question.

3. Tooling costs incurred for the manufacture of special parts will only be charged pro rata, separately from the cost of the goods. The customer does not obtain the right to be given the tools by reimbursing the pro rata costs. They will remain our property and will be retained in our possession. We promise to retain tools for one year after the last delivery. If we are informed in writing at the expiry of this period that a further order will be issued within the following six months, the retention period will be extended by a further year. We can dispose of the tools as we think fit, after the end of this period, when no further orders have been received.

V. Delivery

1. The agreed delivery term is approximate. It commences with the day on which the order confirmation is sent, and will be regarded as having been complied with if the goods leave the factory or warehouse on the agreed day, or, should shipment be impossible, if the customer has been informed that the goods are ready for delivery. If delivery is delayed, a reasonable extension to the delivery term must be set. We can make partial deliveries, unless complete deliveries without the times for deliveries are expressly defined. The customer will bear any additional transportation and packaging costs arising on account of partial deliveries.

2. Over or under-deliveries arising for technical reasons can be made, if this is unavoidable. An over or under-delivery of up to 10% is permitted in the case of articles made to the customer's specification.

3. The delivery term will be extended by an appropriate amount, if we are prevented from fulfilling our obligations by unforeseeable and exceptional occurrences, which we are unable to hinder, despite taking that due care which is reasonable in the circumstances, whether they occur in our factory or at our supplier, including in particular governmental intervention, operating breakdowns, strikes and delays in the delivery of significant raw materials and supplies. If delivery becomes impossible as a result of the above-mentioned events, we will be freed from our delivery obligations, without the customer being able to withdraw from the contract or to claim damages. If the above-mentioned hindrances occur at the customer's premises, the same legal consequences shall also apply to his obligation to take delivery. The parties to the agreement must report hindrances of the kind mentioned above to the order party without delay.

VI. Dispatch, packaging

1. Dispatch is carried out at our discretion, without any obligation to employ the cheapest and most certain means of transportation, and at the expense and risk of the purchaser. The risk in respect of accidental loss or deterioration of the goods passes to the purchaser once they have left our factory, even if delivery is free of charge. The customer will bear the costs of transportation and postage.

2. If the goods are ready for dispatch, and if delivery or acceptance is delayed for reasons for which the customer is responsible, the risk passes to the customer once he has been notified in writing that the goods are ready for dispatch.

3. Packaging materials will be charged at a reasonable rate, and are not returnable.

VII. Payments

1. All invoices are payable without any deductions within 30 days of the invoice date. Cash discount of 2% will be granted if payment is made within 14 days, provided the customer is not otherwise in default in respect of payments for goods.

2. Invoices with a commodity value of up to EUR 50,-- and invoices for paid labour or assembly work are payable immediately without any deductions.

3. If payment terms are exceeded, we are entitled to charge interest at a rate of 2% over the discount rate of the German Federal Bank applicable at that time.

4. Bills of exchange will only be taken in fulfillment if this has been agreed, and provided they are capable of being discounted. Discounting charges will be levied from the due date of the invoice amount. No guarantee can be given for the correct presentation of the bill and for the bill being protested.

5. If a significant risk arises, after the contract has been signed, in respect of payments to which we are entitled, we can require payment in advance or the provision of securities within a reasonable period, and can refuse to fulfill the contract until our demands have been satisfied. If they are refused or if the time which has been set expires, we can withdraw from the contract or claim damages for non-fulfillment.

6. The purchaser can only set off counterclaims which have been recognized by us or which are legally enforceable.

VIII. Retention of title

1. We retain the title to the delivered goods ("reserved goods") until compliance with our entire, also future claims originating from the business connexion with the customer. In cases of account current, the retention of title shall be considered as collateral for our respective claim on balance. However, in cases of payment on basis of cheque/bill of exchange, the retention of title shall remain in effect until encashment/discharge of the cheque/bill of exchange by the purchaser.

2. The purchaser is entitled to sell these goods in the course of his normal business, provided he fulfills his obligations arising from his business connexion with us in good time. He is however not permitted to pledge the goods which are the subject of the retention of title or to assign them as security. He must secure our rights with respect to the goods which are the subject of the retention of title if they are resold on a credit basis.

3. All claims and rights arising from the sale or the possible renting out of the goods which are the subject of the retention of title are already assigned to us now as security. We hereby accept their assignment.

4. Any reworking or processing of the goods which are the subject of the retention of title by the customer will always be carried out on our behalf. If the goods which are the subject of the retention of title are processed or irrevocably mixed with other items not belonging to us, we will obtain joint title to the new product in that proportion which the invoiced value of the goods which are the subject of the retention of title bears to the value of the other items processed or combined at the point in time when they were so processed or combined. If our goods are connected to or combined with other moveable items to form a unified article, and if this other article is regarded as the principal product, it is deemed to be agreed that the customer will transfer joint ownership to us pro rata, so long as the product shall belong to him. The customer will preserve the title or joint title for us. Otherwise, the same shall apply to the product which is created by processing, connecting or mixing as to the goods which are the subject of the retention of title.

5. The customer must inform us immediately of any levies of execution by third parties in respect of goods which are the subject of the retention of title, debts which have been assigned to us or other forms of security, and hand over to us any documents necessary for our intervention. The same applies to other kinds of notification.

6. We shall be entitled to cancel the authorisation for resale of the reserved goods and/or the new item and the authorisation for the collection of the book account assigned to us in case of default of payment and suspension of payment by the customer as well as an application for the opening of insolvency

proceedings or in other cases of impaired creditworthiness and trustworthiness of the customer. In case of the cancellation of the authorisation for resale and/or collection, the customer shall undertake to inform his purchasers without delay of the assignment of claim and to relinquish all information and documents required for the collection to us. In addition, in this case the customer shall undertake to hand over and/or transfer possible collateral, which he is entitled to for customer claims.

7. The customer shall undertake to inform us without delay of a distraint or any other legal or actual impairment of the reserved goods or other collateral existing for us. 8. The customer shall undertake to insure the reserved goods at his own expense adequately against fire loss, water damage or theft at replacement value. He shall already relinquish his claims from the insurance contracts to us now. Herewith we accept the relinquishment.

9. In case of default of payment or suspension of payment or any other not only minor performance contrary to the terms of the contract or in cases of impaired creditworthiness and trustworthiness of the customer as well as an application for the opening of insolvency proceedings and in case of the rescission of the contract, we shall be authorised to cancellation and may demand the preliminary delivery of the reserved goods at the customer's expense without granting any period of grace. In this connexion, the customer shall now already give a declaration of consent that we are authorised to re-move or give an order to remove the reserved goods located with the customer and/or the new item if we are the sole owners of it. The removal shall only constitute a cancellation of the contract if we declare this explicitly. The customer shall grant our representative access at any time in order to conduct this measure as well as a general inspection of the reserved goods and/or the new item.

10. After prior threat of action, we shall be authorised to utilisation of the removed reserved goods. In doing so, the utilisation proceeds – minus adequate utilisation costs – shall be credited against the liabilities of the customer.

11. The customer shall grant us a lien on the material relinquished for the execution of the order and the claims taking the place of it for the protection of all present and future claims from the business connexion with him.

12. As far as the retention of title or the assignment of claim should be invalid or infeasible on account of unalienable foreign regulations, protection corresponding to the retention of title or the assignment of claim in this area shall be considered as agreed. If the cooperation of the customer is required accordingly, he shall be committed to take all measures required for the substantiation and the maintenance of the protection.

13. We promise that we will release any security to which we are entitled, at the request of the customer, if the items which have been assigned exceed the amount of the debt which is being secured by more than 20%.

14. If a purchasing co-operative takes over the del credere in respect of invoices issued by us to member firms, the rights in respect of retention of title will pass to the co-operative following settlement of our debts.

IX. Material defects

1. Any deficiencies determined regarding condition, weight or quantity must be reported to us in writing immediately, within five days of receipt of the goods. Deficiencies which can not be determined at once must be reported to us in writing immediately they are discovered.

2. The nature of the goods complies exclusively with the agreed technical supply instructions. If we have to supply according to drawings, specifications, samples etc. supplied by our customer, then the customer accepts the risk of suitability for the intended use. The time of transfer of risk as in point 8 is decisive for the condition of the goods as required by the contract.

3. We are not responsible for defects arising because of unsuitable or improper use, incorrect assembly or adjustment by the purchaser or third parties, normal wear and tear and negligent handling, nor for the results of improper and unauthorized modifications and adjustments by the purchaser or third parties. The same applies to defects which have only an insignificant effect on the value or the function of the goods.

4. Claims for defects expire after 12 months. This does not apply in cases where the law compulsorily lays down a longer period.

5. If removal of the goods or a first sample test has been agreed, no complaint is allowable regarding defects which the customer could have observed by careful removal or careful first sample testing.

6. We must be given the opportunity to observe for ourselves the defects complained of. Goods complained of care to be sent back to us immediately if requested; we pay the transport costs if the complaint of defect is justified. If the purchaser does not comply with these requirements, or if he undertakes modifications to the goods already complained of without our agreement, he loses all claims for defects.

7. In the case of justified defect complaints made within the time limit, we either, as we choose, repair the goods complained of or replace them with perfect goods.

8. If we do not within a reasonable time comply with these obligations or do not do so in accordance with the contract, the customer can give us in writing a latest date by which we must comply with our obligations. If this date is passed without our having done so, the purchaser can demand a price reduction, can withdraw from the contract or himself carry out the necessary repairs or have them carried out by a third party, at our expense and risk. No compensation of cost will be made if the costs rise because the goods, after delivery, have been moved to a different place, unless this corresponds to the agreed use of the goods.

9. Legal claims in recourse against us by the purchaser exist only if the purchaser has made no agreement with his customer which goes beyond the legal defect claim. For the extent of the claims in recourse point 9 number 8 last sentence applies, as appropriate.

X. Returns

1. It should be noted that goods may only be returned to us for exchange or for crediting with our prior approval in writing and provided they are in perfect condition.

2. The credit note or the exchange will be in accordance with the value at the delivery date. Details of the delivery date should be provided with every return. A deduction of at least 15% of the value of the goods will be made from the credit note to cover our expenses in respect of examining the goods as to their condition and for any defects, renovation of the packing materials and returning the goods to the warehouse or factory.

3. Returns for which we are not responsible must be delivered freightfree.

XI. Other claims, liability

1. Except as may be denoted by what follows, other and more extensive claims against us by the purchaser do not exist. This applies particularly for claims for damages for neglect of duty because of obligations and because of forbidden activity. We are therefore not liable for damage which has not occurred to the goods supplied themselves.

2. The above restrictions of liability do not apply to intentional damage, to gross negligence by our legal representatives or senior employees, nor to culpable infringement of basic contractual obligations. In the case of culpable infringement of basic contractual obligations we are liable – except in the event of intentional damage, or gross negligence by our legal representatives or senior employees – only for damage which is relevant to the contract and reasonably foreseeable.

3. The restriction of liability is further inapplicable in cases where under the product liability law liability exists for personal injury or material damage to privately used items. It is also inapplicable in the case of injury to life, body or health and of lack of guaranteed characteristics, if and to the extent that the purpose of the guarantee was precisely to protect the trading partner against damage which did not occur to the goods supplied themselves.

4. Where our liability is non-existent or limited, the same applies to the personal liability of our office workers, employees, collaborators, legal representatives and supplementary staff.

5. The legal rules pertaining to the burden of proof remain unaffected by this.

XII. Patents, protection of industrial designs

In the cases of special designs, the purchaser will warrant that the rights of third parties are not infringed by any samples and drawings provided to us.

XIII. Copyright

Our catalogues, price-lists, drawings, sketches, samples and models may not be used for the purposes of reproduction, imitation or being passed on to third parties.

XIV. Place of performance and jurisdiction

1. The place of performance in respect of all obligations arising out of this contractual relationship is the domicile of the supplier.

2. The place of jurisdiction for all legal disputes arising out of this contractual relationship is the domicile of the supplier. This condition with regard to the place of jurisdiction shall also apply if the purchaser is domiciled outside the area of validity of the German Rules of Civil Procedure, or moves his domicile to such a location, or if his domicile is unknown at the time that proceedings are commenced.

3. The law of the Federal Republic of Germany shall apply to the entire contractual relationship and all legal relationships connected therewith.

4. No use can be made of the United Nations' agreement of April 11th 1980 (CISG – "Vienna trade law").

We reserve all rights for improvement on technical details