

GENERAL TERMS AND CONDITIONS

Kling Swiss SA

1. Area of application
- 1.1 We provide all our deliveries and services exclusively under the present delivery and payment conditions. We will not recognize contradictory or different conditions of the customer unless we have explicitly agreed to their applicability.
- 1.2 Our conditions of delivery and payment shall be applicable to future businesses even if they have not been appended in individual cases.
- 1.3 If we agree on the applicability of an Incoterm commerce clause with a customer on the basis of an individual contract, it means that the Incoterms 2000 will be applicable. In cases of doubt, the Incoterm commerce clause agreed will have priority over any other, differing regulations in our printed terms and conditions of business.
2. Offer and conclusion of the contract
- 2.1 Our offers are non-binding and open unless they have been marked explicitly as binding.
- 2.2 Definitive for the order is our written order confirmation. If the customer has any objections to the contents of the order confirmation, he will have to express the contradiction without delay. Otherwise the contract will be executed as per the order confirmation.
- 2.3 Drawings, figures, dimensions, weights and other performance data will be binding only if they have been agreed upon explicitly.
- 2.4 If, during the execution of the contract, any unintentional errors should occur on our part such as due to errors in transmission, misinterpretations, etc., then there can be no claims for damage compensation.
3. Prices
- 3.1 The prices mentioned in the order confirmation will be definitive. The prices will be applicable ex location of our company and do not include the charges for packaging, freight, postage and handling, insurance, customs duties and other expenses and the statutory VAT.
4. Delivery
- 4.1 The delivery schedules mentioned by us are not binding unless they have been agreed upon as binding. Fixed schedules should be agreed upon explicitly as such.
- 4.2 We shall not be liable for delays in delivery and services due to forces majeure and to events that are not foreseeable and for which we are not liable, which impede us significantly from delivering the services or make it impossible to do so, even in the case of schedules and deadlines that we have agreed upon as binding. We shall be entitled to postpone the delivery or service by a period commensurate with the impediment, along with a reasonable lead time. If the impediment should last longer than three months, the customer shall be entitled after an appropriate re-definition of the delivery periods to withdraw from the contract. Damage compensation claims from the customer will be ruled out in this case.
- 4.3 The buyer shall be entitled to press claims of damages due to delay in the case of delivery schedules that have been agreed upon as binding, if any such delay can be proved to be due to us, and the buyer can show that he has incurred damages as a consequence of this delay. Regarding the damage compensation due to delay in the services our liability on counts of slight negligence, so long as no significant contractual duties have been violated, will be restricted for every full week of delay to a consolidated damage compensation of 1%, however, up to a maximum of 5 % of the delivery value of that part of the delivery that could not be used as stipulated in the contract. In case the damages due to delay are claimed to be higher, the burden of proof rests with the client. However, this requires that an appropriate, renewed period granted to us should have elapsed without result. This restriction of liability will not be applicable if a commercial fixed business has been agreed upon, or if the customer can show that his interest in the fulfilment of the contract has ceased to exist owing to the delay in delivery for which we are responsible.
- 4.4 For reasons related to production technology, the delivery may be subject to deviations of plus/minus 10 % of the order quantity. The invoice will be adjusted accordingly.
5. Payment
- 5.1 Unless otherwise mentioned, invoices should be settled within 30 days, payable net at port (Switzerland).
- 5.2 The payment can be considered to have been effected only once we are able to access the funds.
- 5.3 Bills of exchange and cheques will be accepted in payment only if this has been agreed to explicitly. Discount expenses and other costs should be borne by the client.
6. Settlement (accounting) and retention
- 6.1 The customer is allowed to make settlements only against an uncontested or legally enforceable counter claim. The customer is allowed to enforce his right to retention of payment only if it is based on the same contractual relationship and if the underlying counterclaims are found to be uncontested or legally enforceable.
7. Transfer of risks/Despatch
- 7.1 The despatch and transportation of the goods will take place at the expense and risk of the customer. The risk will be transferred to the customer as soon as the goods leave our premises. This will be applicable even if in individual cases freight free transfer has been agreed upon by us.
- 7.2 If the despatch is delayed due to circumstances for which the customer is responsible, then the risk will be transferred to the customer on the day that the goods are ready for despatch.
- 7.3 If we select the type of despatch, the path or the despatch person, in case the customer does not specify anything in this regard, we shall only be liable for a gross negligence in the selection concerned.
8. Notice of defects
- 8.1 The customer shall be obliged upon receiving every delivery to examine and notify us without delay about obvious defects, latest within one week, and in writing. Hidden defects should be notified in writing immediately after they are discovered. Otherwise, the delivery will be considered to have been accepted.
- 8.2 The customer shall be obliged to safeguard proof of the defects and give us an opportunity to check them.
9. Warranty
- 9.1 In the case of justifiable defect notices we are under obligation to render supplementary performance. Here, we can choose between improvement and delivery of fault-free goods. If the supplementary performance fails, if we refuse to oblige, or if the customer cannot be reasonably expected to accept it, the customer shall be entitled to reduce the price or withdraw from the contract. Further claims, especially damage compensation claims or claims for reimbursement of expenses incurred on account of defects and their consequent damages, exist only to the extent defined in Section 10 of these conditions.
- 9.2 A warranty for normal wear and tear is ruled out. Differences in colour caused by the nature of the material as well as the respective tolerances in the strength, format and cut specific to the material do not constitute reasons for warranty claims.
- 9.3 In the absence of any other agreement, the warranty shall be valid for a period of twelve months. This begins with the acceptance of the delivery by the buyer. If the despatch or the acceptance of the delivery is delayed due to reasons for which we are not responsible, the warranty period shall end latest by 18 months after the readiness for delivery has been announced.
The warranty will expire prematurely if the buyer or third parties make unwarranted changes or repairs, or if the buyer fails to undertake without delay all the appropriate measures for diminishing the damages in case a defect occurs and fails to allow the supplier a chance to correct the defect.
- 9.4 Warranties for certain specific properties of our goods must be agreed upon explicitly as such. The warranty needs to be in written form.
10. Limitation of liability/Damage compensation
- 10.1 We shall be liable for
 - 1.intentional or grossly negligent violation of obligations through our management, top employees and agents;
 - 2.without restrictions in the case of intentional or negligent violation to the life, limb or health;
 - 3.for malicious intent and negligence if we have violated any significant contractual obligation: in the case of slight negligence our liability will however be restricted to the replacement of the foreseeable damage typical to the contract;
 - 4.as part of a warranty that we have undertaken, as well as without restrictions, if we have suppressed a defect with malicious intent;
 - 5.to the extent that there is liability under the product liability law in the case of defects in the delivered goods, regardless of liability for the death, damages to life and health or damages mainly to goods that are mainly used privately;
 - 6.in the event of delay in delivery as per Point 4.3 of these conditions.
- 10.2 Further reaching claims for damage compensation against us are ruled out regardless of their legal nature. This also holds good for claims arising from non-contractual liability.
- 10.3 To the extent that our liability is excluded or limited, this applies even to the personal liability of our employees, representatives and agents.
- 10.4 In the area of liability for material defects, the stipulations under Point 9.3 of these conditions will hold good for the obsolescence of damage compensation claims and claims for compensation of unfruitful expenses.
11. Reservation of proprietary rights
- 11.1 The delivered goods shall remain our property till it is paid for completely, together with all the claims ensuing from our business relation, including all auxiliary claims and till the time of realization of bills of exchange and cheques. In the case of running bills, the reservation of proprietary rights is ensured by our balance claims.
If, in connection with the payment, a claim based on exchange is pressed against us, the reservation of proprietary right will cease to exist only once our claims from the exchange have been excluded.
- 11.2 In the case of mortgages or other interventions by third parties, the customer has to inform us without delay and in writing. The customer shall bear all the costs of that may be incurred in undoing the intervention and in restoring the object of delivery, if these cannot be obtained from the third parties.
- 11.3 The customer shall be under obligation to adequately insure the goods under reservation at his expense and in our favour against all losses and damages. Insurance claims that may arise in the event of a damage will be relinquished in our favour herewith.
- 11.4 The customer shall be entitled to avail of the object of delivery as part of a proper business transaction, reserving the right of recall on important grounds. In particular, transfer of insurance and mortgage are not allowed.
In the event of further sale, the customer herewith relinquishes in our favour all the claims from this further sale; as well as other claims in connection with the sale, to the extent of the final invoice amount (including VAT), and regardless of whether the object of delivery has been sold further with or without further processing.
The customer is entitled to include the relinquished claims in a trust, except for a recall by us on important grounds. The further sale of the claims as part of a genuine factoring requires our prior consent. On important grounds, we shall be entitled to announce the relinquishing of claims even in the name of the client to the garnishees. With the notice of relinquishing to garnishees, the customer's right of collection will expire. In the event the right of collection is recalled, we can demand from the customer that he should disclose the relinquished claims and their liable parties, all the details necessary for collection, hand over the corresponding documents and inform the liable parties of the assignment.
- 11.5 If the delivered object has been handled with other objects that do not belong to us, then we will acquire the co-ownership of the new object in relation to the value of the invoice amount at the procurement price of the other processed goods. The goods that result from the processing will be governed by the same stipulations as the object of delivery.
- 11.6 If a commodity delivered by us becomes an important part of another commodity which is the main commodity through association, then it is agreed that we shall have a co-ownership stake in the main commodity that is proportionate to the value of our commodity (end amount of the invoice including VAT) in relation to the value of the main commodity at the time of association. Our co-ownership will be assured to us by our customers free of cost, and with the customary due diligence.
- 11.7 We undertake to release the securities that we are entitled to upon being requested by the customer, and based on our discretion, to the extent that their realizable value exceeds the claims that are to be insured by more than 10 %.
12. Place of fulfilment, court of jurisdiction, applicable law
- 12.1 The place of fulfilment for the claims arising from the order, especially for delivery and payment, shall be the location of our company for both parties.
- 12.2 The court of jurisdiction for all the legal disputes arising from the contractual relationship as well as through its existence and effectiveness shall be Biel-Nidau (Switzerland) for business representatives from both sides. If we choose to do so, we could also shift the case to the customer's location. The agreement on optional court of jurisdiction shall be applicable even to customers who do not have any general legal domicile in Switzerland.
- 12.3 The contractual relationship shall be governed by Swiss Law. The Convention on Contracts for the International Sale of Goods (CISG) will not be applicable.