

GENERAL TERMS AND CONDITIONS (GTC)

Status January 2024

I. APPLICABILITY

The following terms and conditions apply to all current and future deliveries and to all purchase and delivery contracts that we conclude with customers or clients (customers, buyers), unless otherwise agreed in writing. These terms and conditions shall be deemed to have been accepted at the latest upon acceptance of the delivery. We hereby expressly object to any conflicting terms and conditions of purchase of the buyer; we shall not be bound by them even if we do not object to them again.

II. OFFER & ORDER

Our offers are always subject to change. A written order confirmation by Kapferer GmbH is required to conclude the contract. The contracting party shall be obliged to check the order confirmation. If this is not objected to within ten days of delivery to the contracting party, it shall be deemed to have been correctly accepted by the contracting party. All amendments and supplements to a contract as well as all subsequent legal transactions shall be made in writing and must be confirmed in writing by Kapferer GmbH. Partial amendments can only be considered after prior approval of the offer. Orders must be made in writing to be legally effective, whereby orders sent by e-mail with a qualified signature fulfill the written form requirement.

III. CONFIDENTIALITY OBLIGATION

All documents made available to the contractual partner, such as drawings, samples, product descriptions, various process documents, etc., may not be made accessible to third parties and must be stored in such a way that access by third parties is excluded. The contractual partner undertakes to treat all non-public commercial and technical details and matters of which it becomes aware through the business relationship as business secrets.

IV. PRICES & TERMS OF PAYMENT

Our prices are the prices valid at the time of conclusion of the contract, exclusive of VAT and ex works; they do not include freight, transport insurance and customs duties. Deliveries free domicile are agreed individually.

We reserve the right to adjust the price if higher energy or material prices or tax or wage increases have occurred by the date of delivery. Payments are to be made in accordance with the written order confirmation.

Unless otherwise stated on the order confirmation, our invoices are due for payment net without deduction within 30 days of the invoice date. In the event of late payment, interest on arrears shall be charged from the due date at the bank interest rate for overdraft facilities. The costs of dunning and collection procedures shall be borne by the purchaser. The purchase price is due immediately if the buyer is in arrears with other payments to us or if we become aware of the uncertainty of his financial situation. We shall then also be entitled to make outstanding deliveries only against advance payment. Offsetting or withholding of payments is excluded. Payments are to be transferred exclusively to the bank accounts specified in our invoice.

V. DELIVERY

Specified delivery times shall be approximate wherever possible; fixed delivery dates shall only be binding if they have been expressly confirmed in writing. The delivery period shall not commence until the order has been fully clarified and the written order confirmation has been issued. The delivery period is subject to unforeseen obstacles that are beyond our control, in particular in cases of force majeure, operational disruptions and material shortages due to delays in delivery. If these events affect the timely fulfillment of the purchase contract, the delivery periods shall be extended accordingly or entitle us to withdraw from the contract. Claims for damages by the buyer due to delayed delivery are excluded. In the event of a delay in delivery, the buyer may withdraw from the contract after setting a grace period. Partial deliveries are permissible in any case; each partial delivery is considered an independent transaction. Industry-standard excess or short deliveries of approx. 10% of the agreed quantity are permissible.

VI. DANGER TRANSITION

In the absence of an express written agreement to the contrary, the goods are deemed to be sold „ex works“. The Incoterms shall apply in the version valid on the day the contract is concluded. The risk shall pass to the customer at the latest upon dispatch of the goods, notification of readiness for dispatch or handover to a forwarding agent or carrier, even if partial deliveries are made or Kapferer GmbH assumes the shipping costs.

VII. RESERVATION OF OWNERSHIP

We reserve the right of ownership to all delivered goods until full payment of the respective total debt of the customer from the existing business relationship, including all interest and costs. Pledges etc. are therefore permissible. The goods may be reclaimed by us for safekeeping at the customer's expense and risk even without simultaneous withdrawal from the contract. In the event of the only permissible sale of the goods in the ordinary course of business, the customer hereby irrevocably offers us the assignment of the resulting claim against his own customer, including all ancillary rights, until the balance is fully settled. In the event of default of payment, we shall be entitled to take back the goods after issuing a reminder and the customer shall be obliged to surrender them.

VIII. WARRANTY

The warranty period is 6 months from fulfillment. The existence of a defect upon delivery of the goods must be proven by the customer. Any legal presumption in this respect, in particular that of § 924 ABGB, shall be excluded. Kapferer GmbH shall have the sole right to choose between repair, replacement or price reduction. The contracting party waives its right to rescind the contract in this respect. Replacement or repair of the goods shall be carried out by Otto Kapferer GmbH if possible. The contracting party shall be obliged to send the defective goods to Kapferer GmbH. In all other cases, the improvement shall be carried out on site. If it turns out that Kapferer GmbH is not responsible for the defect, the contracting party shall be obliged to reimburse all costs incurred. The contracting party shall be obliged to carefully inspect the goods accepted or services rendered immediately upon receipt to ensure that they are free of defects, also by means of functional tests, and to notify Kapferer GmbH of any defects in writing immediately - at the latest within one week - after receipt of the delivery, describing the defect as precisely as possible. If the defect is not claimed in due time, the assertion of warranty claims and claims for damages including consequential damages as well as the right to contest errors due to defects shall be excluded. Kapferer GmbH shall not be liable for minor deviations in dimensions that are customary in the trade. The warranty obligation shall only apply to defects that occur in compliance with the intended operating conditions and during normal use. It therefore does not apply to defects that are due to poor assembly, lack of maintenance and servicing, incorrect operation, faulty or normal wear and tear. The special recourse according to § 933b ABGB is excluded. Any rectification of defects shall not result in an extension, suspension or interruption of the warranty period.

IX. DAMAGE REPLACEMENT

In the event of slight negligence, all claims for damages are excluded. This shall not apply to personal injury. If Kapferer GmbH is obliged to pay damages, it shall not be obliged to pay damages to the contracting party for damage to goods which are not subject matter of the contract, for pure financial loss, for production standstill, loss of profit, loss of use, loss of contract or any other economic or indirect consequential damage. In the event of claims for damages due to the defectiveness of the goods themselves, Kapferer GmbH's liability shall be limited to the value of the order amount; for all other claims for damages, Kapferer GmbH's liability shall be limited to the amount covered by Kapferer GmbH's liability insurance. The amount covered by the liability insurance shall be communicated at any time upon written request. The contracting party undertakes to request Kapferer GmbH in writing to remedy any defect of the delivered goods within a reasonable period of grace. If he fails to do so, claims for damages shall be excluded. The existence of slight or gross negligence must be proven by the injured party, who must also provide proof of causality. The application of § 1298 ABGB is hereby expressly excluded. Claims for damages shall become time-barred 6 months after knowledge of the damage and the damaging party, but in any case 5 years after Kapferer GmbH has rendered the service or delivery. An assignment of warranty and claims for damages shall not be permitted.

X. PRODUCT LIABILITY

Any recourse claims directed against Kapferer GmbH under the title of product liability within the meaning of the Product Liability Act shall be excluded, unless the party entitled to recourse proves that the defect was caused by Kapferer GmbH and was at least due to gross negligence.

XI. OFFSETTING, RETENTION

The contracting party may set off claims of Kapferer GmbH against claims of Kapferer GmbH only if such claims have been finally adjudicated or recognized by Kapferer GmbH. The contracting party shall not be entitled to withhold payments due to guarantee, warranty or damage claims or other reasons.

XII. OTHER

In the case of production according to specifications, drawings or drafts of the purchaser, the client is liable for the fact that he is entitled to the copyright. The customer is obliged to indemnify us against all third-party claims. If production is carried out according to the purchaser's drawing or design, the purchaser shall bear sole responsibility for the constructively correct design and practical suitability of the parts supplied, even if he was advised by us during development. Technical advice, data and information on the application and processing possibilities of the supplier's products or those acting on behalf of the supplier are provided to the best of our knowledge, but without obligation and to the exclusion of any liability.

XIII. PLACE OF JURISDICTION AND PLACE OF PERFORMANCE

The rights of the buyer under this contract are not transferable. Legal ineffectiveness or changes to individual provisions shall not affect the validity of the remaining provisions. The place of performance for delivery and payment is the registered office of our company in Fulpmes/Tyrol (Austria). The place of jurisdiction for both parties to the contract is Innsbruck/Tyrol (Austria). The legal relationship shall be governed by Austrian law. The application of the UN Convention on Contracts for the International Sale of Goods is hereby expressly excluded. The language of contract and negotiation is exclusively German.