

# Sales, Delivery and Payment Conditions of KNECHT GmbH Gewächshaus-Einrichtungen Linear Elemente, Metzingen

## § 1 Scope of Application; Object of the Contract

1. These conditions shall apply exclusively. We do not accept any contrary or deviating conditions unless we have expressly consented to their application in writing. These conditions shall be legally binding upon any, including future, transactions between us and the customer even without express reference from case to case.
2. Any side agreements or special agreements shall require our express written confirmation to be valid.
3. Our conditions shall apply even if we perform the delivery without reservation, knowing of contrary conditions of the customer.

## § 2 Offer and Conclusion of the Contract; Offer Documents

The client's order shall be a binding offer that we can accept within two weeks of receipt by submission of an order confirmation. Our offers or cost estimates by us are non-binding subject to confirmation. Samples and templates shall be deemed approximate display pieces in terms of quality, dimensions and colour.

## § 3 Passing of Risk, Installation

1. Shipping of the goods shall generally be ex works Metzingen (EXW Metzingen Incoterms 2000) and therefore for the account and at the risk of the customer.
2. In case of a collection of the goods by the customer, the customer shall load the goods himself and he shall check whether the goods have been properly loaded. We shall not be liable for any damage due to improper loading.
3. If, as an exemption and in agreement with the customer, we do organise the transport of the goods, this shall be made in the name and on the account of the customer and it shall not change the passing of the risk ex works. In such case, the delivery shall be made to the agreed location; if the instruction regarding the site of delivery changes, the customer shall assume the additional costs.
4. At delivery to construction sites, this means delivery without unloading. Delivery roads accessible to heavy trucks are required, and must be provided by the customer. Damage and unloading delays shall then be at the expense of the customer if the unloading point does not correspond to the requirements as specified by us. If the delivery vehicle leaves the accessible delivery road on the instruction of the customer, he shall be liable for any damage resulting from this. The customer shall be obliged to accept and inspect the goods without delay after delivery to the construction site.
5. The installation, placement and assembly of delivered goods, parts or elements shall be charged separately. If we do also perform installation, placement or assembly of delivered goods or elements, the customer shall be obliged to declare acceptance after completion of our work. He shall also confirm completion of installation to our installers without delay and sign the acceptance record. Services of the customer or of third parties which are required as a prerequisite for services must be performed as planned, in time and so that no additional services and waiting times for us arise at commencement of installation. Additional services and/or waiting times shall be invoiced separately. Power, water and any helpers agreed on according to an individual contract shall be provided by the customer at his expense.

## § 4 Lead Time, Delay; Impossibility

1. Any lead times confirmed by us shall commence at dispatch of the order confirmation. The lead time shall be met if the we have notified the customer that the goods are ready for shipment or when the goods have left our site. In cases of strike or force majeure, the lead time shall be extended for the respective time. The same shall apply if the customer does not fulfil his co-operation obligations.
2. In case of delay in performance of our supplier or impossibility of his performance due to his fault, or in case of our delay in performance or impossibility of our performance due to our fault, damages claims of the customer shall be excluded unless they are due to wilful intent or gross negligence of us or of our statutory representatives or servants or suppliers.

## § 5 Prices and Payment Conditions

1. Invoices shall be due for payment at once after receipt without deduction. Payment terms and discounts shall require special written agreement. Only the net value of the goods, without freight costs, shall be discount-capable.
2. Any changed VAT rate shall be effective from the time at which the law enters into effect.

3. The consequences of payment default shall be according to the applicable law.
4. The customer shall only have a right to set off if this has been finally awarded by court, undisputed or recognised by us.
5. The customer shall only have the right to execute any right of retention if his counterclaims are due to the same contractual relationship and in any event only if his counterclaims are finally awarded by court, undisputed or recognised by us.

## § 6 Liability for Defects

1. For any defects we shall, at our choice, provide warranty by repair or new delivery. If we seriously and finally refuse performance or if we refuse the removal of the defect and subsequent performance due to unreasonable costs or if our attempts to repair or re-deliver have objectively failed twice, the customer may, at his choice, only demand reduction of the price (reduction) or reversal of the contract (rescission).
2. We do not grant any guarantees in the legal sense from us.

## § 7 Liability for Damage

1. Our liability for violation of contractual obligations and from tort shall be limited to wilful intent and gross negligence. This shall not apply in case of violation of life, body and health of the customer, claims from the violation of cardinal obligations, i.e. of obligations which performance are a prerequisite of the proper fulfilment of the contract. In these respects, we shall be liable for any degree of fault.
2. The above exclusion of liability shall also apply to slightly negligent violation of obligations of our servants.
3. Where liability for damage not due to violation of life, body or health of the client is not excluded for slight negligence, such claims shall expire within one year, starting with the creation of the claim. This shall not apply to damage due to delay in repair/re-delivery in respect to a defect of the goods.

Where our liability for damages is excluded or limited, this shall also apply regarding the personal liability for damages of our employees, workers, colleagues, representatives and servants.

## § 8 Retention of Title

1. We reserve title in the goods delivered by us until complete payment of all claims from a current business relationship. The inclusion of individual claims in a current account or balancing and its recognition shall not revoke the reservation of title.
2. If goods subject to our retention of title are connected to a property/building of the customer as essential parts, the customer already now hereby assigns any claims resulting from possible sale of the property or property rights to us at the amount of the value invoiced for the goods subject to retention of title with all secondary rights. We do already now accept this assignment.

## § 9 Form of Declarations

Legally relevant declarations and notices that the client/customer makes towards us or a third party shall require written form.

## § 10 Choice of Law; Jurisdiction

1. This contract shall be subject to the law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods shall not apply.
2. The exclusive place of jurisdiction is, for contracts with merchants, legal entities of public law or public law special funds or for contracts customers outside of Germany, the court which has jurisdiction for our legal seat. As an exemption hereto we shall also be entitled to initiate legal action at the court having jurisdiction for the place of the customer.

KNECHT GmbH

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