

Conditions of business of the Bamberger Kaliko GmbH, D-96052 Bamberg

1. Invoicing shall be done at the prices, terms and conditions established by the Company on the date of dispatch; in the event of changes in the cost of raw materials, labour, energy and other items, the Company is entitled to adjust accordingly those prices previously quoted in offers, confirmations of orders or elsewhere.
The Company is obliged to complete an order only after the customer has been notified in writing that such order has been accepted.
2. All goods supplied by the Company shall be transported at the risk of the Customer, regardless of which party bears the freight charges, the Company is entitled to select the carrier or the shipping company. Incoterms regulations as amended from time to time will be valid for the interpretation of commercial clauses.
3. The Company is not bound by any data or information given in its pricelists or other publications; all weights and measurements are subject to a tolerance of up to 10% (ten per cent), and minor deviations in the colour of any article supplied must be accepted.
4. Although the Company undertakes to do all in its power to adhere to delivery times and performance times indicated or quoted for individual orders, it does so on the assumption of an absence of events or happenings interfering, or likely to interfere, with its operations; in particular, acts of force majeure or similar events affecting the operation of the Company itself or its suppliers or carriers, such as breakdowns, fire, floods, shortages of labour, power or raw materials, strikes, lockouts, governmental restrictions and suchlike exonerate the Company from its obligations to supply or to provide the performance by the date quoted and furthermore entitle the Company to suspend its delivery without any subsequent delivery date being stipulated. In no instance can the Company be held responsible for any damage or inconvenience resulting, or purporting to result from delayed or suspended delivery, unless specific intent or gross negligence are imputable to its legal representatives or senior executive. In no instance can the Company be held responsible for any damage or inconvenience resulting, or purporting to result, from ordinary negligence, unless such damage is a foreseeable typical damage resulting from the violation of essential contractual obligations. Any legal right of rescission by the Customer remains unaffected, provided that the relevant qualifications are fulfilled. In the event of orders with performance consisting of more than one delivery, non-fulfilment, deficient or late fulfilment of one delivery has no effect on other deliveries comprising the order.
5. All goods supplied are to be paid for in the currency arranged, the rate of exchange being that ruling on the date of dispatch. Payments shall discharge debts only when made to a bank etc. stipulated by the Company.
After expiry of the due settlement date the Company shall be entitled to charge interest at 5% (five per cent) per annum above the level of the then prevailing base interest rate of the "Europäische Zentralbank". The Company's right to assert a further claim for damages arising from default shall not be limited by this regulation. The Customer shall only be entitled to set off or retain payments if its counter claim is indisputable or assured final and binding. Deductions that have not been expressly agreed upon shall not be recognized.
Cash discounts, bonuses or other allowances shall be granted only when all financial obligations arising out of previous deliveries have been met and the invoiced sum has been paid in cash to the Company or has been credited to the Company's account by the due dates. The presentation of bills of exchange shall thus not entitle the Customer to cash discount. In the case of cashless payment, in particular by cheque, the date on which the sum is credited to the Company is decisive in all cases. The Customer shall bear the risk arising out of the form of payment.
Bills of exchange and cheques, whose acceptance can be agreed upon, shall be credited only when the full amount has been duly received for the Company's free disposal. Costs and discount fees shall be debited to the Customer. The Company gives no guarantee for the correct presentation and for the protesting of bills. Any protests entered against promissory notes issued by the Customer or any delay in the repayment of such disputed bills of exchange issued by third parties shall entitle the Company to return all bills receivable; all the Company's claims shall then fall due immediately. The Company reserves the right to revoke at any time any credit granted, even within the terms of payment agreed upon. The Company shall also be entitled to demand at any time adequate security to be determined by the Company. If such security is not provided at the request of the Company, the Company's claims shall fall due immediately.
The Company shall not pay interest on advance payments or payments on account and other credit balances.
6. The Company shall retain the legal title to and the copyright on estimates, drafts, drawings and other documents; such documents shall be made accessible to third parties only with the consent of the Company.
In the event of the Company having supplied objects in accordance with drawings, models, samples or other sources provided by the Customer, the latter shall guarantee that patent rights held by third parties are not infringed. If the Company is prohibited by third parties, with reference to patent rights, from manufacturing and supplying such objects in particular, the Company is entitled to suspend any further activity to this extent and to demand compensation or to be released from all claims by third parties arising from this.
The Company reserves the right to charge for prototype parts and for tools required for the production of such parts (moulds, mandrels, dies etc.). Tools required for series production are charged pro rata by the Company. All tools remain in all events the property of the Company.
7. Goods supplied by the Company shall remain the property of the Company until such time as all claims on the Customer, including conditional and future claims arising out of business with the Company and its subsidiaries, shall have been settled and the sum paid by bills of exchange and cheques accepted for this purpose shall have been credited to the Company for its free disposal. In the event of processing or conversion, combination or incorporation of the Company's products with other products not belonging to the Company, the latter shall acquire joint ownership proportional to the ratio of the value of the Company's product to that of the other products used by the Customer at the time of processing or conversion, combination or incorporation. The new product shall remain in the custody of the Customer, who, in this respect, acts on our behalf.
Claims on the part of the Customer arising out of the resale of such product are forthwith assigned to the Company to the extent of the selling price, to serve as security for the Company of the claims in conformity with Item 7, paragraph 1 hereof. If so requested by the Company, the Customer shall advise his debtors of the assignment and provide the Company with all relevant information. Until cancellation of this provision, the Customer shall be entitled to resell the said product under property reservation, but only in the normal course of business, and to collect the assigned claims. Financial difficulties being encountered or a considerable deterioration in the financial circumstances of the Customer shall entitle the Company to suspend all deliveries immediately. At the same time the Company's authorization to resell the property and to collect claims assigned to the Company shall expire. If the Customer fails to meet his obligations arising from the property reservation or makes default, the Company shall be entitled to reclaim its products under property reservation from the Customer. The Company undertakes to release securities, at its own option, to the extent that the value thereof exceeds by 20% (twenty per cent) that of the claims to be secured.
In the event of the property reservation not being valid in the above-stated form according to the legal provisions of the country to which the goods are shipped, the Customer shall act on the Company's behalf in establishing a security interest complying with the regulations of his own country, if so requested by the Company.
8. The Company warrants its products and performances in accordance with the following provisions:
In the event of not only insignificant complaints, the Company will repair or replace the product in question as it thinks fit. Claims for cancellation or for abatement of the purchase price can only be entertained when in the opinion of the Company it is not possible to repair or replace the product in question or the deadline for repair or replacement has not been met. In the event of repairs or replacements proving a failure or of the guaranteed properties not being present, the Customer shall be entitled to make a deduction from the payment or to rescind the contract as he thinks fit. No claims beyond this, in particular claims for damages of any kind whatsoever, can be brought against the Company unless specific intent or gross negligence is imputable towards legal representatives or senior executives. In no instance can the Company be held responsible for any damage or inconvenience resulting from ordinary negligence, unless such damage is a foreseeable typical damage from the violation of essential contractual obligations.
Statements made by the Company on the object of the delivery and performance, on its applications etc. (e.g. dimensions, weight, hardness, service values) represent only descriptions or designation and not guaranteed properties; they are to be regarded as only approximate and are subject to the variations customary in the industry, unless otherwise agreed. Deviations from samples or from previous deliveries are avoided as far as technically feasible. The Company reserves the right to make modifications that the Customer can reasonably be expected to accept, in particular if such modifications assist technical progress and insofar as the object in question is not substantially changed.
The Company accepts no liability for defects arising from natural wear or from damage due to inexpert handling by other than the Company's own employees, in particular due to warehousing or if the defect becomes manifest when the product is used in a special way, except in individual instances where agreement has been given in writing. There is no warranty on any goods that are not new.
Our deliveries and performances are subject in all events to the statutory liabilities relating to inspections and complaints and to the statutory limitation periods. The Customer shall return rejected goods to the Company carriage paid at the Company's request; if the complaint proves in such a case to be justified, the costs of the cheapest means of reshipment shall be charged to the Company.
9. In accordance with long-standing custom in this branch of industry, no claims for damages of any kind whatsoever and under any title whatever, including claims arising out of negligence on conclusion of the contract, collateral negligence and tort, can be brought against the Company, its legal representatives, servants and employees, unless specific intent or gross negligence are imputable to its legal representatives or senior executives. In no instance can the Company be held responsible for any damage or inconvenience resulting from ordinary negligence on the part of the Company, its legal representatives, servants and employees, unless such damage is a foreseeable typical damage resulting from the infringement of essential contractual obligations. This liability provision shall also apply to any infringement of the Company's contractual accessory obligations by testing or in any other way and to advice given orally or in writing by the Company; the Customer is in particular not released from his obligation to check the suitability of products for the intended application himself.
10. Place of execution and jurisdiction is Bamberg, in respect of all claims arising out of commercial relation with the Company as well as the origin and effectiveness of contracts, agreements, etc. It is pointed out that recourse may be had to litigation in the country of domicile of the Customer. Disputes will be settled in accordance with German Law, to the exclusion of Standard Commercial Law (Convention on Contracts for the International Sale of Goods dated April 11, 1980). Invalidity of any provision herein contained shall not affect the validity of the remaining provisions.
The foregoing conditions of business, on which all offers and agreements are based, are to be regarded as having been accepted by the Customer through his placing an order with the Company or by taking delivery of goods supplied. No conditions other than the foregoing will be applicable or valid without the prior written consent of the Company in each instance.