

General Terms of Sale, Delivery and Payment of Keller & Kalmbach GmbH, Unterschleissheim

I. General – Scope of validity

- 1) The supplies and services of Keller & Kalmbach are carried out solely on the basis of these terms. We shall not accept any terms of the customer that are inconsistent with or deviate from these terms, unless we have expressly agreed to the validity thereof in writing. The terms set out below apply also if we deliver to the customer without reservation in knowledge of the customer's terms which are inconsistent with or deviate from our terms. Our terms below also apply to all future business transactions with the customer.
- 2) These terms do not apply in relation to consumers.
- 3) Transmission by fax or remote data transmission suffices to comply with the written form as defined by these terms.

II. Offer and conclusion of contract

- 1) Our offers are without obligation, unless stated as binding by us.
- 2) We can accept purchase orders as defined by Section 145 of the German Civil Code (BGB) within four weeks unless a longer period is agreed in an individual case.
- 3) A supply contract materialises only after written confirmation by us, however upon delivery of the goods at the latest. In case of doubt our order confirmation is relevant for the type and scope of delivery.

III. Prices

- 1) Unless otherwise stated in the offer, all prices of Keller & Kalmbach are net plus the statutory value-added tax as well as packaging, insurance and transport costs.
- 2) The minimum order value is EUR 25.00. If an order does not reach this amount, we are entitled to invoice our minimum order value.
- 3) We charge a flat delivery rate of EUR 5.50. Parcels with a value exceeding EUR 100 are delivered free of charge, however we charge EUR 0.50 as a share of the toll fee and EUR 1.50 for all consignments delivered using our own lorries or a forwarding agency.
- 4) If more than six weeks pass between conclusion of contract and the agreed delivery date, Keller & Kalmbach is entitled to reasonably increase the prices if costs rise as a result of higher wages, material costs or the purchase prices customary on the market in accordance with these increases.
- 5) If we take back the goods as an accommodating arrangement without any legal obligation to do so, we are entitled to a restorage fee of 15% of the value of the goods, however EUR 15.00 at the minimum.

IV. Terms of payment

- 1) Our invoices are payable after invoicing, however no later than 14 days after delivery. Unless otherwise agreed or stated on our invoice, payment is due net within 14 days after the due date.
- 2) If Keller & Kalmbach instigate summary proceedings for the payment of a debt before a court against the customer, all outstanding invoices, irrespective of the period allowed for payment, immediately become due for payment.
- 3) The customer is entitled to a right to offset his counterclaims only if we have accepted these or they have been declared legally valid or are uncontested.

V. Retention of title

- 1) The goods delivered remain our property until payment in full of all receivables under the business relations between us and the customer.
- 2) The customer is entitled to re-sell the reserved goods owned by us in the ordinary course of business. The customer shall assign to us in advance all receivables from the sale of the reserved goods, irrespective of whether the goods were joined or mixed with another item. In case of reserved goods joined or mixed with another item, the customer shall assign to us the receivables at the amount of our invoice for the goods concerned.
- 3) Despite assignment, the customer is entitled to collect his receivables from the buyer. Our right to collection of the receivables from the buyer becomes effective only if the customer fails to meet his payment obligations. In this case the customer is obliged to provide all the information required for collection to Keller & Kalmbach, to hand over the related documents and to inform the debtor of the assignment.
- 4) If the reserved goods are processed or joined with other materials we acquire joint ownership to the new item in relation to the invoice value of our reserved goods without our entering into any obligation in this connection. The customer shall store the goods under the joint ownership of Keller & Kalmbach free of charge on behalf of Keller & Kalmbach.

- 5) The customer may not pledge the reserved goods nor transfer them as security. In case of a pledge or seizure the customer must immediately notify Keller & Kalmbach and provide all the information and documents so that Keller & Kalmbach can assert its right. Pledge claimants, bailiffs, insolvency administrators or other third parties must be informed of the rights of ownership of Keller & Kalmbach.
- 6) If the customer meets his payment obligations by giving cheques or bills of exchange, our rights of ownership continue to exist until we can no longer be claimed upon based on these means of payment.
- 7) If the customer violates our rights of ownership under these provisions, we are entitled to cancel the contract without notice and to demand that the goods be surrendered. The assertion of our rights of ownership without declaring our cancellation of the contract shall not apply as the latter.
- 8) Upon demand by the customer, we undertake to release the security to which we are entitled if this exceeds the receivables for which security is to be furnished by more than 10%.

VI. Deliveries, delivery period, delivery default

- 1) Our compliance with delivery periods requires that all documents required for the execution of the order to be submitted by the customer have been received, technical issues have been clarified and the customer has met his contractual obligations, in particular his payment obligations under all business transactions with Keller & Kalmbach.
- 2) Upon occurrence of force majeure and the existence of other unforeseeable and extraordinary circumstances the delivery period shall be reasonably extended.
- 3) Keller & Kalmbach shall deliver to the customer subject to its receiving deliveries itself in due time and correctly.
- 4) Keller & Kalmbach is entitled to make part deliveries to the customer.
- 5) Keller & Kalmbach reserves the right to make excess delivery or short delivery by up to 10% for the customer's account in the case of consumable goods.
- 6) If a delivery is delayed at the request of the customer, Keller & Kalmbach shall store the goods at the risk of the customer.
- 7) Default damage can only be asserted at the amount of the foreseeable damage typical for the contract. This does not apply if the damage was caused intentionally or grossly negligently by K&K.

VII. Dispatch, passing of the risk

- 1) The goods are dispatched at the customer's risk; this also applies if delivery was agreed as carriage paid and in the case of transfer orders.
- 2) We are entitled but not obliged to insure the goods to be delivered against transport risks and to invoice the insurance costs to the customer.
- 3) In the absence of special dispatch instructions by the customer or any other arrangements, we shall send the goods via the best route at our discretion.
- 4) We are not obliged to take back transport packaging or any other packaging.

VIII. Warranty

- 1) The warranty rights of the customer require the immediate examination and notification of any defective goods. Notification of the defect must be given in writing within a period of 10 days at the latest. Posting the notification in due time suffices for compliance with the period.
- 2) The information contained in our brochures, price lists, catalogues, advertisements and offer documents including drawings, illustrations, technical data etc. are not binding and do not release the customer from his obligation to check the goods for their suitability for the aspired purpose of use. The above information and documents shall only become a part of the contract if they are expressly confirmed by us as binding.
- 3) Keller & Kalmbach reserves the right to customary deviations to the measurements of the delivery items stated in the customer's order, unless exact compliance with the measurements is expressly warranted or agreed.
- 4) If a fault occurs for which Keller & Kalmbach is responsible, Keller & Kalmbach has the option of choosing either to make subsequent improvement or to provide a replacement. In case of subsequent improvement, Keller & Kalmbach is not obliged to pay the expenses incurred or increased as a result of the object of purchase being taken to a place other than the place of performance. Should subsequent performance fail, the customer is entitled to reduce the appropriate remuneration by a reasonable extent or to cancel the contract. In case of cancellation, the assertion of claims for damages instead of performance is excluded unless Keller & Kalmbach caused the damage by intent or gross negligence.
- 5) Warranty claims are excluded for faults for which Keller & Kalmbach is not responsible.
- 6) If the goods are lacking a warranted or guaranteed characteristic, Keller & Kalmbach shall be liable in

accordance with legal provisions.

7) All warranty rights become time-barred 12 months after the passing of the risk unless this concerns an item which was used as customary for a building. Our subsequent performance does not cause the limitation period for the item to start running anew.

8) Unless we expressly accept the warranty claims of the customer in an individual case, we shall comply with these in order to accommodate the customer's wishes.

9) The customer shall not receive any guarantees from us in a legal sense. This is without prejudice to manufacturer's warranties.

IX. Liability, statutory period of limitation

1) If the customer asserts damage caused as a result of death, bodily injury or a health impairment or Keller & Kalmbach caused the damage intentionally or grossly negligently – including the intent and gross negligence of representatives and vicarious agents of Keller & Kalmbach – Keller & Kalmbach shall be liable in compliance with legal provisions. In case of grossly negligent damage by Keller & Kalmbach liability for damage is restricted to the foreseeable damage typical for the contract.

2) If Keller & Kalmbach is at fault for acting in breach of an essential duty under the contract, liability is based on legal provisions, however it is restricted to the foreseeable damage typical for the contract.

3) Liability remains unaffected under the German Product Liability Act.

4) In other respects, liability for damages – irrespective of the legal grounds – is excluded. In particular, Keller & Kalmbach is not liable for damage which was not caused on the delivery item itself. Liability for default damage is governed by VI. Para. 7.

5) To the extent that Keller & Kalmbach is not liable for damage caused as a result of death, bodily injury or a health impairment or due to an intentional or grossly negligent breach of contractual duties, any and all claims for damages against us become time-barred twelve months after the commencement of the statutory limitation period.

X. Place of performance, place of jurisdiction, applicable law

1) Unless otherwise agreed, the place of performance is the official business location of Keller & Kalmbach.

2) The competent court is determined by the place of jurisdiction of Keller & Kalmbach. However, Keller & Kalmbach may also bring legal action against the customer at his place of ordinary jurisdiction.

3) The laws of the Federal Republic of Germany are applicable to the exclusion of the UN Sales Convention. In addition to German law, UN sales law is applicable in relation to foreign contracting parties.

Keller & Kalmbach GmbH
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85716 Unterschleissheim

Managing Directors: Dr. Florian Seidl (having sole power of representation), Thomas Obermeyer, Rudolf Karl (authorised to represent together with a proxy) – Court of Registry Munich, HRB 54200

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