

General Terms and Conditions („GTC“) of KNAPP GmbH for legal relationships with Companies according to the Consumer Protection Act

1. General

All our declarations of intent and legal transactions and acts (in particular, supplies and services) have these general terms of business as their basis. Terms in offers, orders, or the general terms of business of the purchaser, which are not identical to those indicated in the general terms of business, are invalid even if we do not contradict them. If a provision in these general terms of business is or becomes invalid, this does not affect the validity of the remaining provisions. Any changes made must be in writing (for which purpose fax suffices), including waiving of this requirement of written form. These terms and conditions do not apply to consumers as defined by the Austrian Consumer Protection Act.

2. Conclusion of the contract and cancellation of the contract

Our offers are provisional and without a guarantee. The terms and conditions of the contract come into full effect only after a written order confirmation. This sets out the content of the contract – in particular, regarding scope and price – at the latest, however, when we have initiated the service or supply. If the order confirmation differs from the purchaser's order, it is deemed accepted if the purchaser does not raise a written objection to it in writing within 3 days of service. Cancellation of a contract by a purchaser is permissible only in writing and furthermore requires our written consent. In this instance, the purchaser must pay a cancellation fee of 30% of the gross sale price. In addition, we must be remunerated for the (advance) services already provided for the purposes of contractual fulfilment, although we may fix a flat rate fee, if we wish, without furnishing evidence, of a sum of 15% of the gross sale price. If there are material grounds, we may cancel the contract, i.e. in particular if (a) the purchaser remains in arrears with payment despite the setting of at least a 14-day rectification period, (b) the purchaser's financial situation deteriorates or threatens to deteriorate materially, or (c) important grounds exist in accordance with Point 3 of these general terms of business. If a petition for the initiation of insolvency proceedings is filed with a court concerning the assets of the purchaser, insolvency proceedings concerning the assets of the purchaser are initiated, or a petition for the initiation of insolvency proceedings is rejected because there are not enough assets to cover the costs, any payment obligation towards us falls due, in deviation from any agreed prepayment obligation, in parallel with full payment on the part of the purchaser.

3. Supply

All supplies are made unfranked ex warehouse. As soon as the goods leave our warehouse or are available for collection by the purchaser in accordance with the agreement, the goods are deemed transferred, and the risk of any destruction or accidental damage passes to the purchaser. Supply deadlines and supply periods are binding, if we have committed expressly to compliance therewith; as long as the purchaser has not made the advance payments necessary for contractual fulfilment or has not made a downpayment due, the anticipated delivery deadline is extended by this period. If, however, the thus revised delivery deadline falls more than 4 weeks away, the purchaser may cancellation cancel the contract on written establishment of a reasonable rectification period which will, however, be at least three weeks, unless material grounds exist within the meaning of the following. We may, on materials grounds (which have not been generated by us deliberately or with gross negligence), cancel the contract in full or in part or delay delivery for the period of the obstacle to the provision of our service. Material grounds include in particular strikes, operational downtime (in particular specifically of a technical nature or due to staff absence due to illness, etc.), delay in upstream supply or loss of an upstream supplier (in particular due to insolvency, etc.), plus force majeure of any nature.

4. Prices

Our prices (in particular specifically the price lists available on the Internet to download) are provisional and are net, excluding additional costs of any type (e.g. in relation to packaging, transportation, or dispatch). Any transport insurance must be arranged by the purchaser. When a quantity is ordered below the minimum threshold (i.e. below the smallest packaging unit in accordance with the valid price list), a minimum quantity flat rate is charged in accordance with our price list prevailing at the time. If the total costs or expenses change by more than 5% between the time of conclusion of the contract and provision of the service (e.g. if payroll costs, procurement costs for the materials used, energy costs, etc., change), prices will fall/rise accordingly, unless a period of less than 2 months has elapsed between the making of the offer and the provision of the service. This applies regardless of whether the change in costs has arisen out of primary legislation, secondary legislation, collective bargaining agreement, by-law, measures taken by the authorities of whatsoever nature, or changes in market prices.

5. Payment terms; dunning and collection costs

Payment of our invoices must be made within 14 days with no discount. We deliver against invoice, but we can also deliver against direct debit or prepayment. We are therefore entitled at any time and without giving reasons, to demand partial or full prepayment to the buyer. We could accept payment by SEPA direct debit, after notification of name, address, IBAN and BIC of the bank in order to receive a direct debit authorization mandate. The collection takes place and the sum will be debited within 8 working days from the invoice date. In the event of a successful (final) direct debit within this period, we grant a 2% discount, except in the case of quantities below the minimum threshold, which are charged without discount and plus the minimum quantity flat rate. The purchaser is not entitled to offset own claims against our payment claims, unless the buyer's claims are in legal connection with our payment claims, have been recognized by us or judicially determined. In the case of payment arrears on the part of the purchaser, we are entitled, at our discretion, to seek compensation for the interest actually incurred or default interest in amount of 10 percentage points above the base rate (subject to a minimum, however, of 10% p.a.). Furthermore, the purchaser, in the event of his falling into arrears, must reimburse us for the dunning and collection costs arising, provided that they have been incurred necessarily for the purposes of suitable legal proceedings, namely to the maximum of the remuneration charged by a collection agency engaged, which charges are set out in the Statutory Instrument of the Federal Minister of Economic Affairs concerning Maximum Rates of Remuneration due to Collection Agencies. Where we ourselves are conducting the dunning procedure, the purchaser undertakes, in respect of each dunning letter issued, to pay a sum of EUR 19. If partial invoices have been issued and the final invoice is not paid within the applicable discount period, any discount deductions made by the purchaser in the partial invoices will cease to apply and must be repaid to us.

6. Retention of title

All goods remain our property until full payment. In the event of onward disposal, the purchaser now assigns to us all his claims arising out of this onward disposal to the level of the sums still outstanding to us. The purchaser undertakes to inform the third-party purchaser of the assignment that has taken place and to make a memorandum entry to this effect in his accounting records. In the event of onward disposal in return for cash, the purchaser now transfers to us the sum to be received from the third-party purchaser to the level of the sums still outstanding to us. If the goods are processed, combined, or mixed with the materials of third parties, we acquire co-ownership of the products thus produced proportionate to their contribution to the creation of value. Debts arising out of the sale of these new products are now assigned by the purchaser to us, and the purchaser undertakes to provide to us the necessary information to enforce these debts.

7. Guarantee and damages; right of retention

7.1. The purchaser is responsible for all necessary drawings and calculations of a technical nature, in particular those that concern structural integrity. Any drawings, calculations, instructions for use, assembly instructions, or other advice of whatsoever nature provided by us constitute non-binding information or suggestions and are without guarantee or liability for accuracy; they never relieve the purchaser of the obligation himself to have such drawn up and/or checked by a specialist. Product changes that result in an improvement in the technical quality and/or functionality and differences between the appearance of the product and images in a catalogue are not defects; the same applies to minor technical/cosmetic changes. Such changes are reasonable for the purchaser to accept.

7.2. The purchaser may claim damages only if personal injury has occurred or we have acted deliberately or with gross negligence. Any claims for damages must be made through the courts within 12 months from awareness of the loss and who caused it, at the most, however, within 5 years from transfer of the goods, and the purchaser must furnish the evidence of our gross negligence or intent. Precluded in all cases are claims for damages in respect of consequential and/or pecuniary losses and losses arising out of the claims of third parties towards the purchaser.

7.3. The goods must be checked carefully by the purchaser immediately upon handover. Defects must, for any claim to be made, be notified in writing, immediately or, in the case of hidden defects, within 7 days after they could first have been identified, although notification of defects to representatives is not sufficient. The guarantee period is 6 months. We may, if we wish, rectify the reported defect through improvement or exchange of the goods or offer a price reduction in the form of a credit note. The assumption of defectiveness in accordance with § 924 Line 2 of the General and Special Terms of Business and right of recourse towards us on the part of the purchaser in accordance with § 933b of the General and Special Terms of Business are waived. All statutory rights of retention on the part of the purchaser are precluded.

8. Other

The place of fulfilment for all supplies and payments is 3324 Euratsfeld. The application of Austrian Law (excluding the case of conflict of laws provisions contained in international private law plus UN law of the sale of goods) is agreed upon. For all contractual disputes between KNAPP GmbH and the Buyer, the exclusive jurisdiction of the competent court of A-Amstetten is applied.