

General Terms and Conditions

GENERAL TERMS AND CONDITIONS of H.Kufferath GmbH (hereinafter: Kufferath)

1. General, APPLICATION OF THE CONDITIONS

(1) Deliveries, services and offers by Kufferath are made exclusively on the basis of these terms and conditions. Therefore they also apply to all future business relationships, even if they are not expressly agreed again. These terms and conditions are deemed to have been accepted at the latest upon receipt of the goods or services.

(2) Our terms and conditions apply exclusively. Conditions of the customer that contradict or deviate from these GTC will not be recognized, even if Kufferath does not contradict, unless Kufferath has expressly consented to their validity in writing. This also applies if Kufferath carries out services without reservation in the knowledge of conflicting or deviating terms and conditions of the customer.

(3) Kufferath is entitled to assign monetary claims from the business relationship with the customer.

2. OFFERS AND CONCLUSION OF CONTRACT

(1) Our offers are subject to change and non-binding. Declarations of acceptance and all orders require written or telex confirmation by Kufferath to be legally effective.

(2) The contract is deemed to be concluded when Kufferath sends a written declaration (acceptance of the order) which is decisive for the scope of the performance obligations. The delivery replaces the written acceptance of the order. Our sales employees are not authorized to make verbal subsidiary agreements or to give verbal assurances that go beyond the content of the written contract.

(3) The performance features specified in the catalogs and offers, such as illustrations, drawings, etc., are only to be regarded as approximate. Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing. Kufferath reserves its property and copyright exploitation rights without restriction to cost estimates, drawings and other documents (hereinafter: documents). These documents may only be reproduced and made accessible to third parties with our prior consent and must be returned to us immediately upon request if the order is not placed with Kufferath.

(4) The customer is responsible for the correctness, accuracy and completeness of the order documents and order information supplied by him, in particular in drawings as well as for technical data and samples. Verbal information, including changes and additions to the documents and data provided, require written confirmation. If an order is not confirmed or executed in writing by Kufferath within one month of receipt, in special cases (e.g. custom-made products) within 3 months, during which period the customer is bound to his order, the customer is entitled to withdraw the order, without authorization to claim for damages against Kufferath.

3. PRICE

(1) Our prices are € prices (EURO of the ECB). They apply ex works, within domestic countries plus the applicable VAT, and do not include installation, commissioning and assembly costs as well as packaging, freight, postage and insurance costs. They are calculated on the basis of the wage, material and other costs applicable on the day we submit our offer. If these cost factors change, Kufferath reserves the right to adjust the price of its offers until a binding purchase contract has been concluded. Additional deliveries and services will be charged separately.

(2) Unless the customer requests otherwise, the goods will be transported by a shipping company selected by Kufferath. The customer generally bears the transport risk. The type of packaging is at the discretion of Kufferath. It will be charged to the customer at cost price and will not be taken back.

4. TERMS OF PAYMENT

(1) Unless otherwise agreed, our invoices are payable 30 days after the invoice has been issued without any deductions. If acceptance has been agreed in accordance with Section 6 (3), if the customer receives the invoice before or at the time at which the acceptance takes place, the payment deadline is 30 calendar days after the latter date.

(2) Kufferath is entitled to offset payments against older debts in spite of the customer's provisions to the contrary, and will inform the customer about the type of offsetting that has taken place. If costs and interest have already arisen, Kufferath is entitled to offset the payment first against the costs, then against the interest and finally against the main service.

(3) A payment is only deemed to have been made when Kufferath can dispose of the amount. In the case of checks, payment is only deemed to have been made when the check is cashed.

(4) If Kufferath becomes aware of circumstances which question the creditworthiness of the customer, in particular if he does not cash a check or suspends his payments, or if Kufferath becomes aware of other circumstances which call the customer's creditworthiness into question, Kufferath is entitled to make the entire remaining debt due, even if Kufferath has accepted checks. In this case, Kufferath is also entitled to demand advance payments or security.

(5) The customer is only entitled to offset, withhold or reduce the price, even if notices of defects or counterclaims are asserted, if the counterclaims have been legally established or are undisputed. The purchaser is only entitled to retention due to counterclaims from the same contractual relationship.

(6) In the case of deliveries abroad, Kufferath can request the opening of an irrevocable and confirmed letter of credit, payable to a bank specified by us, or other equivalent securities.

(7) If the customer is in default of any payment obligations towards Kufferath, all existing claims are due immediately.

5. RESERVATION OF TITLE

(1) Until the fulfillment of all monetary claims (including all balance claims from current account; provision of a letter of credit does not count as payment) to which Kufferath is entitled now or in the future for any legal reason, Kufferath shall be granted the following securities, which Kufferath upon request will be released to the extent that their value exceeds the claims by more than 10%.

(2) The goods remain the property of Kufferath. Until the goods have been paid in full, the customer is not entitled to install the goods in another system in such a way that the goods can no longer be easily separated from this system. Processing or transformation always takes place for Kufferath as the manufacturer, but without any obligation for him. If the (joint) ownership of Kufferath expires through connection, it is already agreed that the (joint) ownership of the customer in the unitary item shall pass to Kufferath in proportion to the value (invoice value). The customer keeps the (co-) property of Kufferath free of charge. Goods to which Kufferath has (joint) ownership are referred to below as reserved goods.

(3) The customer is entitled to process and sell the reserved goods in the ordinary course of business, as long as he is not in default. Pledges or collateral assignments are inadmissible. As a precaution, the customer hereby assigns to Kufferath in full the monetary claims arising from the resale or any other legal reason (insurance, tort) with regard to the goods subject to retention of title (including all balance claims from current account). Kufferath accepts the assignment. Kufferath revocably authorizes him to collect the monetary claims assigned to Kufferath for his account in his own name. This authorization to collect can only be revoked if the customer does not properly meet his payment obligations.

(4) In the event of third-party access to the goods subject to retention of title, in particular seizures, the customer shall point out the ownership of Kufferath and notify it immediately so that Kufferath can enforce its property rights. If the third party is unable to reimburse Kufferath for the judicial or extrajudicial costs incurred in this connection, the customer shall be liable for them.

(5) In the event of breach of contract on the part of the customer - in particular default of payment - Kufferath is entitled to withdraw from the contract and to demand the return of the goods subject to retention of title.

(6) The customer is obliged to keep Kufferath informed of the location of the reserved goods at all times until the reserved goods have been paid for in full.

6. DELIVERY / ACCEPTANCE

(1) Delivery dates or periods, which can be agreed as binding or non-binding, must be in writing. Our delivery time is calculated from the date of our order acceptance. Its start requires the receipt of all documents to be supplied by the customer, necessary permits, releases, the clarification and approval of the plans, compliance with the agreed terms of payment and other obligations as well as compliance with all technical questions that the parties reserved the right to clarify when the contract was concluded. If these requirements are not met in time, the delivery time will be extended accordingly.

(2) Delays in delivery and performance due to force majeure and due to events that not only temporarily make delivery significantly more difficult or impossible for Kufferath - this includes in particular strikes, lockouts, official orders, operational disruptions, or failure of important production facilities, machines, delays in the delivery of essential raw and building materials, delays in transport and all cases of force majeure, even if they occur at our suppliers or their sub-suppliers - Kufferath is not responsible for binding deadlines and dates. The above also applies if the aforementioned circumstances occur during an already existing delay in delivery. They entitle Kufferath to postpone the delivery or service for the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part because of the part that has not yet been fulfilled.

(3) If formal acceptance of the delivery is desired, the terms and conditions must be specified at the latest when the contract is concluded. The acceptance has to take place at Kufferath immediately after the reported readiness for acceptance. The costs of the acceptance are borne by the customer. Part deliveries are permitted.

In all other cases, the delivery item is deemed to have been accepted when it has been put into operation as intended, but no later than 30 days = 1 month after delivery to the customer. With the acceptance, the risk is transferred to the customer, unless he already bears it according to section 7.

7. TRANSFER OF RISK

(1) All shipments, including any returns, including delivery parts, are at the risk of the customer. The risk is transferred to the customer when the goods are handed over to the customer or his agent in our factory, even if the delivery is carriage paid, otherwise, when the shipment leaves us, regardless of the route and means of transport (own or third-party).

(2) If dispatch is delayed as a result of circumstances for which Kufferath is not responsible, the risk shall pass to the purchaser on the day of readiness for dispatch. The customer bears storage costs after the transfer of risk.

(3) Kufferath is not obliged to contract a transport insurance, even for international business. At the request and expense of the customer, deliveries will be insured by Kufferath against the usual transport risks.

8. RIGHTS OF THE CUSTOMER IN RESPECT OF DEFECTS

(1) The goods are delivered free of construction, manufacturing and material defects; the deadline for asserting claims for defects is one year from the transfer of risk. The shortening of the limitation period according to paragraph (1) does not apply in the case of willful intent and gross negligence, nor in the case of injury to life, limb or health, in the event of malice or in the event that Kufferath has assumed a guarantee. In these cases the statutory limitation period applies.

(2) If Kufferath's operating or maintenance instructions are not followed, parts are exchanged or consumables are used that do not correspond to the original specifications, claims due to defects in the goods do not apply if the customer makes a corresponding substantiated claim that one of these circumstances caused the defect, not refuted. The same applies to the extent that defects are due to poor installation, incorrect installation, poor maintenance, incorrect or negligent treatment or storage, improper repairs not carried out by Kufferath, changes without our written consent, excessive use, unsuitable conditions of use and operating resources, as well as those for which we are not responsible chemical, electrochemical or electrical influences as well as weather or other natural influences.

(3) Claims for material defects on the part of the purchaser presuppose that the purchaser has properly complied with the inspection and complaint obligations incumbent on him in accordance with Section 377 of the German Commercial Code (HGB); The customer must notify the Kufferath customer service management of any defects in writing without delay, but no later than one week after receipt of the delivery item. Defects that cannot be discovered within this period even with careful inspection must be reported to Kufferath in writing immediately after their discovery.

(4) In the event that the customer is notified that the products are defective, Kufferath will, at its option and at its own expense, request that a) the defective part or device be sent to Kufferath for repair and subsequent return; b) the customer has the defective part or device ready and a Kufferath service technician is sent to the customer to carry out the repair. The place of subsequent performance is always the place to which Kufferath has delivered the goods in accordance with the contract. If the goods are subsequently moved to a different location than this, any additional costs incurred for subsequent performance are to be borne by the customer alone. This applies both in the event that the goods are sent back to Kufferath for repair and if the subsequent performance is carried out by Kufferath directly at the customer / at the location of the goods.

(5) If the supplementary performance fails after a reasonable period of time, the customer can, at his option, request a reduction in the remuneration or withdraw from the contract.

(6) Liability for normal wear and tear is excluded.

(7) For third-party products and materials, Kufferath's liability is limited to the assignment of the claims we are entitled to against our suppliers.

(8) In the case of parts used for completion, reconditioning or reworking, which the customer sends to Kufferath, we assume no liability for their behavior during processing; if the material becomes defective, Kufferath is to be reimbursed for the costs already incurred for processing. Unless the damage is due to a grossly negligent breach of duty on the part of Kufferath, an intentional breach of duty on the part of Kufferath, an intentional or grossly negligent breach of duty by vicarious agents or a breach of duty essential for the purpose of the contract. This limitation of liability does not apply to personal injury.

(9) Claims due to defects against Kufferath are only available to the direct purchaser and are not transferable.

9. LIABILITY

(1) Claims for damages are excluded regardless of the type of breach of duty, including unauthorized actions, unless there is intentional or grossly negligent action.

(2) In the event of a breach of essential contractual obligations, Kufferath is liable for any negligence, but only up to the amount of the foreseeable damage. Claims for lost profit, saved expenses, claims for damages from third parties as well as other indirect and consequential damage cannot be demanded, unless a quality feature guaranteed by Kufferath aims to protect the customer against such damage.

(3) The limitations and exclusions of liability in paragraphs (1) and (2) do not apply to claims that have arisen due to fraudulent behavior on the part of Kufferath, as well as liability for guaranteed quality features, for claims under the Product Liability Act and damage resulting from the violation of life, body or health.

(4) As far as the liability of Kufferath is excluded or limited, this also applies to employees, workers, representatives and vicarious agents of Kufferath.

10. DESIGN CHANGES

Kufferath reserves the right to make design changes at any time; However, Kufferath is not obliged to make such changes to products that have already been delivered.

11. EXPORT REGULATIONS

In the event that the products are exported, the customer will observe the German and American export regulations and inform his customers that German and American export regulations apply in the event of export.

12. CUSTOMS PROCESSING

If deliveries are carried out duty unpaid at the request of the customer, he is liable to Kufferath for any additional claims by the customs administration.

13. SOFTWARE

(1) The customer has a non-exclusive and non-transferable right of use for internal use with the Products for which the software is supplied. All other rights to the software and the documentation, including copies and subsequent additions, remain with Kufferath or the software supplier.

(2) The customer must ensure that this software and documentation are not accessible to third parties without the prior written consent of Kufferath.

(3) Copies may only be made for archiving purposes, as a replacement or for troubleshooting. The provision of source programs requires a special written agreement. If the originals bear a note referring to copyright protection, this note must also be attached to the copies by the customer.

(4) Unless otherwise agreed, the right of use is deemed to have been granted upon acceptance of the order and delivery of the software, documentation and subsequent additions.

14. PROPERTY RIGHTS

(1) Checking and liability with regard to any third party property rights is the sole responsibility of the customer in the case of custom-made products. He guarantees Kufferath to the full extent that this does not infringe the property rights of third parties and releases Kufferath from any third-party claims for damages arising from any infringement.

(2) For its part, Kufferath will indemnify the customer and his customers against claims arising from infringements of copyrights, trademarks or patents, unless the design of the goods comes from the customer. The amount of our indemnification obligation is limited to the foreseeable damage. An additional prerequisite for the exemption is that Kufferath is left to conduct legal disputes and that the alleged infringement is exclusively attributable to the construction of the goods from Kufferath without connection or use with other products.

(3) Kufferath has the right to free itself from the obligations assumed in Paragraph (2) by either a) obtaining the necessary licenses for the allegedly infringed patents or b) providing the customer with modified goods or parts thereof who, in the event of an exchange for the infringing goods or part thereof, eliminate the allegation of infringement with regard to the goods.

15. CONFIDENTIALITY

(1) Technical documents, drawings, service and operating instructions from Kufferath as well as all information received from Kufferath during the contract negotiations about the function and structure of the goods are subject to confidentiality. The customer undertakes to refuse unauthorized persons access to the relevant information.

(2) Unless otherwise expressly agreed in writing, the information submitted to Kufferath in connection with orders is not deemed to be confidential.

16. FINAL CLAUSE

(1) A transfer of contractual rights and obligations to third parties by the customer is only permitted with the written consent of Kufferath.

(2) The law of the Federal Republic of Germany applies to these terms and conditions and the entire legal relationship between Kufferath and the customer. The provisions of the UN sales law do not apply.

(3) If the customer is a merchant, legal entity under public law or a special fund under public law, Moers / Germany is the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. Kufferath is also entitled to sue at the seat of the customer.

(4) In accordance with Section 33 of the Federal Data Protection Act (BDSG), the customer is informed that his data will be saved by Kufferath. The data is processed in compliance with the Federal Data Protection Act and the Teleservices Data Protection Act (TDDSG).

(5) Should a provision in these terms and conditions or a provision in the context of other agreements be or become ineffective, this shall not affect the validity of all other provisions or agreements.