

Küppersbusch Großküchentechnik GmbH & Co. KG General Terms and Conditions of Purchase for Use in Business-to-Business Transactions

§ 1 General Terms and Conditions

1. The following Küppersbusch Großküchentechnik GmbH & Co. KG ("Küppersbusch") General Terms and Conditions of Purchase shall apply for the legal relationships between Küppersbusch and its business partners and suppliers (hereinafter referred to as "Sellers") as long as they are entrepreneurs in terms of § 14 Paragraph 1 of the German Civil Code (BGB), legal persons governed by public law or special funds under public law.
2. The General Terms and Conditions of Purchase shall also apply as amended as a general agreement for all future contracts for the sale of goods.
3. The Küppersbusch General Terms and Conditions of Purchase shall apply exclusively. Deviating, opposing or supplementary General Terms and Conditions of the Seller will not be recognised unless Küppersbusch expressly agrees with their validity in writing.
4. Individual agreements concluded with the Seller shall prevail over the General Terms and Conditions of Purchase.
5. Notifications and other declarations to be submitted to a party to the contract shall become effective upon receipt by this party. If a period has been specified, notifications and declarations shall be received within this period.

§ 2 Conclusion of Contract

1. Küppersbusch orders shall not be binding before being submitted or confirmed in writing. Prior to accepting an order, the Seller shall draw the attention of Küppersbusch to obvious errors and/or any incompleteness in the order, including the order documents, for the purpose of adjustment or completion. Otherwise the contract shall be deemed not concluded.
2. The Seller shall confirm an order from Küppersbusch in writing within a period of two weeks or execute the order without reservation by delivering the goods (acceptance).

§ 3 Delivery Period and Delay in Delivery

1. The delivery time specified by Küppersbusch in an order is binding. Should no delivery period have been specified in an order and no other agreement have been made, the delivery period shall be 20 working days as of the conclusion of the contract. Should it appear likely that an agreed delivery date cannot be met by the Seller – for whatever reason – the Seller shall be obliged to notify Küppersbusch accordingly in writing without any delay.
2. Should the Seller fall behind with a delivery, Küppersbusch may demand payment of a contractual penalty in the amount of 1% of the net price for each completed week, but not more than 5% of the net price of the goods delivered late. Küppersbusch is entitled to demand payment of the contractual penalty in addition to fulfilment and compensation from the Seller owing in accordance with legal provisions as a minimum amount. The assertion of further claims shall remain unaffected. If Küppersbusch accepts a late delivery, the contractual penalty shall be claimed with the final payment.

§ 4 Performance, Delivery, Transfer of Risk, Default in Acceptance

1. The Seller shall not be entitled to have third parties provide the performance owing by the Seller without the prior written approval of Küppersbusch. The Seller shall bear the risk of procurement for its performance unless performance concerns individual production.
2. Delivery within Germany shall be effected free domicile to the place specified in the order. Should no place of destination be specified and nothing otherwise have been agreed, delivery is to be made to the Küppersbusch place of business in Gelsenkirchen. The respective place of destination is also the place of execution (obligation to provide).
3. Delivery is to include a delivery note stating the date (issue and despatch), content of the consignment (article number and quantity) and the Küppersbusch order identifier (date and number). In the absence of a delivery note or in the case of an incomplete delivery note, Küppersbusch shall not be responsible for the resulting delay in processing and payment.
4. The risk of accidental loss and the accidental deterioration of the goods shall pass to Küppersbusch when the goods are handed over at the place of fulfilment. If acceptance has been agreed, this shall be authoritative for the passing of risk.
5. Legal provisions shall apply in the event of a delay in acceptance by Küppersbusch. The Seller must also expressly offer Küppersbusch performance when a defined or definable calendar time has been agreed for an act or participation by Küppersbusch.

§ 5 Prices and Terms of Payment

1. The price specified by Küppersbusch in the order is binding. Unless specifically provided for, prices shall all to be understood to be exclusive of statutory Value Added Tax.
2. The price shall include all the services and ancillary services of the Seller and all the ancillary costs unless otherwise agreed.
3. The agreed price shall become due payable within 30 calendar days of complete delivery and performance and of receipt of a valid invoice. The Seller shall grant Küppersbusch a 3% cash discount on the net amount if Küppersbusch effects payment within 14 calendar days.
4. The legal provisions shall apply in the event of the occurrence of a delay by Küppersbusch. In any case, a reminder shall be sent by the Seller.
5. Küppersbusch shall be entitled to the right of offsetting and retention as well as a plea of non-fulfilment of the contract performance or incomplete performance of the contract to the extent permitted by law. Küppersbusch shall be entitled to withhold due payments as long as Küppersbusch still has claims against the Seller due to incomplete or defective performance.
6. The Seller may only offset Küppersbusch claims with uncontested, legally binding counterclaims.

§ 6 Reservation of Ownership

1. Goods shall be assigned to Küppersbusch unconditionally, regardless of payment of the price. In any case, all the other forms of extended or prolonged reservations of ownership shall be excluded, so that a reservation of ownership declared

effective by the Seller shall only apply until such time as Küppersbusch is paid for the goods and shall only apply for these goods.

2. Processing, mixing or combining the goods supplied shall be undertaken by the Seller for Küppersbusch. If, in the case of processing, mixing or combining with items of a third party, ownership by said third party is maintained, Küppersbusch will acquire co-ownership of the new item in relation to the value of the item provided by Küppersbusch and the other items. The items provided by Küppersbusch shall be held separately by the Seller and insured against destruction and loss to the usual extent.

§ 7 Defective Delivery

1. Legal provisions shall apply in terms of the rights of Küppersbusch concerning defects in the quality and defects in title of the goods and concerning other breaches of contract by the Seller unless agreed otherwise in the following.
2. In accordance with legal provisions, the Seller shall in particular be liable for the goods being of the agreed quality when the risk is transferred to Küppersbusch. In particular the product descriptions which are the subject matter of the respective contract or have been included in the contract in the same manner as these General Terms and Conditions of Purchase, through designation or reference in the order from Küppersbusch, are deemed to be an agreement on the quality. In this case it is irrelevant whether the product description originates with Küppersbusch, with the Seller or with the manufacturer.
3. Küppersbusch shall also be entitled to claim for defects without restriction if the defect remained unknown to Küppersbusch as a result of gross negligence.
4. The Küppersbusch duty to inspect is limited to defects which are revealed during the Küppersbusch incoming goods inspection by way of an external examination including the delivery documents and during a quality control at Küppersbusch by way of the random sample test procedure. There is no duty to inspect if inspection and acceptance has been agreed.
5. The Küppersbusch obligation to give notice of defects identified at a later point in time shall remain unaffected. Notice of defects shall be deemed to be given without delay and in good time when received by the Seller within ten calendar days.
6. The costs incurred by the Seller for the purpose of inspection and rectification shall be borne by the Seller even if it transpires that there was in fact no defect. Küppersbusch liability for compensation shall remain unaffected in the case of unwarranted requests for the rectification of a defect. Liability in such cases shall, however, only be given when Küppersbusch recognises or is grossly negligent in not recognising that there was no defect.
7. Should the Seller fail to meet its obligation to supplementary performance – at the option of Küppersbusch by remedying the defect or by delivery of an item free of defects - within a reasonable time limit as set by Küppersbusch, Küppersbusch shall be able to remedy the defect itself and demand from the Seller reimbursement of the costs required for remedying the defect or a corresponding advance payment. No time limit needs to be set should subsequent performance by the Seller fail or be unacceptable for Küppersbusch. The Seller shall in this case be notified immediately, if possible in advance.

§ 8 Manufacturer's Liability

1. Should the Seller be responsible for damage to a product, the Seller shall exempt Küppersbusch from third-party claims insofar as the cause of damage lies in the domain and field of organisation of the Seller and the Seller itself is liable in relation to third parties.
2. As part of the Seller's indemnity obligation, the Seller shall reimburse Küppersbusch with expenses incurred as a result of or in connection with any claims enforced by third parties including any product recalls carried out by Küppersbusch. Küppersbusch will notify the Seller of the content and scope of product recalls insofar as possible and reasonable, and will give the Seller the opportunity to duly comment. Further legal claims shall remain unaffected.
3. The Seller shall take out and maintain product liability insurance with flat-rate insurance coverage in the amount of not less than EUR 10 million per personal injury/damage to property.

§ 9 Limitation

1. The mutual claims of the parties to the contract shall become time-barred according to legal provisions unless agreed otherwise in the following.
2. The general limitation period for claims for defects is three years as of the transfer of risk. The limitation period shall commence upon acceptance should inspection and acceptance have been agreed. The two-year limitation period shall correspondingly also apply for claims resulting from defects in title, with the legal limitation period for in rem claims for return remaining unaffected. Over and above this, claims resulting from defects in title shall on no account become time-barred as long as a third party may still enforce a claim against Küppersbusch, in particular in the absence of limitation.
3. The periods of limitation for purchase rights shall apply as stipulated by law for any contractual claim for defects. Should Küppersbusch also be entitled to non-contractual claims for damage due to a defect, the regular limitation period shall apply unless the application of limitation under the sale of goods law in each case results in a longer limitation period.

§ 10 Choice of Law and Jurisdiction

1. The contractual relationship shall be governed by the law applicable at the registered office of Küppersbusch on the inclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, whether or not the Seller has its registered office in a CISG contracting state.
2. If the law chosen in favour of German law is invalid or ineffective in respect of the conditions and effects of a reservation of ownership, the *lex rei sitae* law shall apply.
3. The court of jurisdiction is the registered office of Küppersbusch or - at the discretion of Küppersbusch - the general jurisdiction of the Seller.