

General Terms and Conditions of Sale, Delivery and Payment of Erba Kälte GmbH for use when dealing with companies

(As of 01-12-2022)

A) General

The following general terms and conditions of sale, delivery and payment shall apply exclusively to the supply of all our goods, also insofar as the law on contracts for work and services applies. They shall be deemed to have been accepted by the placing of the order or accepting of the delivery and shall be authoritative in each individual case in the case of an ongoing business relationship even without reference. We shall only be bound by any deviating conditions of purchase of the buyer if we have expressly confirmed our acceptance of those conditions in writing. Oral agreements are only binding on both sides if they are confirmed in writing.

Our general terms and conditions of sale, delivery and payment only apply to companies as defined in Section 310 Para. 1 of the German Civil Code (BGB).

B) Offers and orders

1. Our offers are always non-binding until the order is confirmed in writing.
2. The information, drawings, images and performance specifications contained in catalogues, price lists or the documents supporting the offer are approximate values customary in the industry, unless they are expressly designated as binding in the order confirmation. We expressly reserve ownership and copyright to all documents originating from us, in particular illustrations, drawings and calculations attached to the offer. We have to give our express written consent before it is passed on to third parties and/or used by third parties.
3. Orders placed with us require our written confirmation.
4. Price changes are only allowed if more than 4 months have passed between the conclusion of the contract and the agreed delivery date; then our price valid on the day of delivery shall apply. If delivery takes place within the 4-month period, the price valid on the day the contract was concluded shall apply. In the case of delivery periods of up to 6 months, increases of up to 4% per half year may be applied in the event of tariff increases and/or changes in the price of materials; in the case of longer delivery periods, increases of up to a further 4% per half year may be applied.

5. We reserve the right to withdraw from the contract without compensation within a maximum of 4 weeks after we have given our written order confirmation. This withdrawal shall take place under the following conditions: If our suppliers fail to deliver to us, even though we have placed identical orders with reliable suppliers, we are released from our obligation to perform and can withdraw from the contract. We are obliged to inform the buyer immediately about the unavailability of the ordered service and will immediately reimburse any payments already made by the buyer.

C) Delivery period and shipping

1. Unless expressly agreed, the delivery dates specified by us are non-binding. The beginning of the delivery period specified by us assumes that all technical questions have been clarified. The delivery period begins with the dispatch of our acceptance of the offer, but not before the documents to be procured by the buyer have been provided and before an agreed down payment has been received. We shall only be liable to the extent specified below.

2. If there is a delay due to circumstances for which we are not responsible, for example, due to force majeure or during shipment by the company commissioned by us for this purpose, the delivery period shall be extended accordingly.

3. If the buyer is in default of acceptance or violates other obligations to cooperate, we shall be entitled to demand compensation for the damages we incur, including any additional expenses; in this case the risk of accidental loss or accidental deterioration of the item shall be transferred to the buyer at the point in time at which the buyer is in default of acceptance.

4. We shall be liable in accordance with the statutory provisions insofar as the underlying contract is a fixed-date transaction as defined in Section 323 Para. 2 Clause 2 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the buyer is entitled to claim that its interest in the further performance of the contract has ceased to exist.

5. Furthermore, we shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is not due to an intentional breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.

6. We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is due to the culpable breach of a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.

7. If orders are placed on call, there shall be an obligation to take delivery no later than three months after the order has been placed, unless expressly agreed otherwise in writing. Upon expiry of this period, we shall be entitled, with prior notice, to deliver the total or remaining stock of ordered goods still in our warehouse. If the agreed period of three months or another acceptance period is exceeded, we shall be entitled, without prejudice to our other rights, to charge the costs incurred for storage.

8. If the buyer requests an expedited shipping method, the additional costs for this shall be borne by him.

9. Cartage or delivery charges at the place of receipt shall be borne by the buyer.

D) Payment & Factoring

1. Unless otherwise specified, our prices are net prices without any deductions.

2. The statutory value added tax is not included in our prices; it is shown separately on the invoice at the statutory rate on the day of invoicing.

3. For small orders below a value of goods of 50,- EUR a minimum quantity surcharge of 25,- EUR will be charged, if no deviating individual agreements exist. For deliveries abroad, a country-specific minimum quantity surcharge may be assessed, which will be determined on a effort-related basis.

4. The deduction of a cash discount requires a special written agreement. If the buyer has been granted a discount in the contract in the form of a cash discount, the buyer shall be entitled to deduct a cash discount from the total contract amount if he has met all payment obligations, i.e. also each individual down payment, if any, within the period granting the cash discount; in this respect, the time the payment has been credited to our account shall be decisive.

5. If the payment term granting a cash discount is exceeded even with regard to a partial performance or down payment, the buyer shall not be entitled to claim a cash discount at all; in particular, the buyer shall not be entitled to claim a discount on a pro rata basis for the partial performances that were made on time.

6. Special packaging requests shall be charged at cost price. The applicable statutory value added tax shall be added to this price.

7. We shall be entitled to deliver against cash on delivery.

8. Our right to claim any damage caused by delay as a result of late payment shall remain unaffected.

9. All payments shall be made with debt-discharging effect exclusively to VR Factoring GmbH, Hauptstraße 131 - 137, 65760 Eschborn, to which we have assigned our present and future claims arising from our business relationship. We have also transferred our reserved property to VR Factoring GmbH.

In order to fulfill our factoring contract (assignment of our receivables and transfer of accounts receivable management), we will forward the following data to the financial services institution VR Factoring:

- Names and addresses of our debtors
- Data of our receivables from our debtors (in particular gross amount and due date)
- If applicable, names of contact persons and contact data of our debtors (telephone number, e-mail address) at their premises for the purpose of reconciling the accounts receivable department

VR Factoring will pass on the debtors' company data to credit agencies and trade credit insurers as well as to order processors (IT data processing, printing service providers, etc.).

Further details on data processing can be found in the "Clarification on Data Protection" of VR Factoring GmbH, which can be viewed online at <http://www.vr-factoring.de/datenschutz> and downloaded.

Offsetting by the customer with counterclaims is excluded, unless the counterclaims are undisputed or have been legally established. The assertion of a right of retention by the customer is excluded, unless it is based on the same contractual relationship or the counterclaims are undisputed or legally established.

10. If due invoice amounts including interest on arrears have not yet been paid in full, we shall not be obliged to make any further deliveries under any contract. If the purchaser is in arrears with a due payment or if unfavourable information becomes known about his financial circumstances, we may demand immediate payment for all deliveries that are still unpaid, with the payment period being cancelled, and advance payment for new deliveries.

11. The Buyer may only set off counterclaims that are undisputed by us or have been established by a court of law and may only assert a right of retention on account of such counterclaims. In cases of warranty, there shall be a right of retention to the outstanding purchase price to the extent that the value of the performance is reduced by the defect.

12. Withdrawal from the contract is not required to assert the rights arising from retention of title, unless the customer is a consumer.

E) Retention of title

1. All goods delivered by us shall remain our property until full payment has been received for all our invoices and our other claims, in the case of cheques and bills of exchange until they have been honoured.

2. The buyer shall be entitled to resell the goods subject to retention of title in the normal course of business; however, he shall not be permitted to pledge or assign them as security.

The buyer hereby assigns to us by way of security any claims arising from the resale or any other legal reason (insurance, tort) with regard to the goods subject to retention of title (including all current account balance claims); we accept this assignment. Notwithstanding the assignment and our right of collection, the buyer shall be entitled to collect as long as he meets his obligations towards us and does not suffer a financial collapse.

At our request, the buyer must provide us with the information about the assigned claims required for collection and notify the debtors of the assignment.

3. The buyer shall process or finish the goods subject to retention of title on our behalf without any obligations arising from it for us. When processing, combining, mixing or blending the goods subject to retention of title with other goods that do not belong to us, we shall be entitled to the resulting co-ownership share in the new item in proportion to the value of the goods subject to retention of title to the other processed goods at the time of processing, combining, mixing or blending. If the buyer acquires sole ownership of the new item, the contracting parties agree that the buyer hereby grants us co-ownership of the new item in proportion to the value of the processed or combined, mixed or blended goods subject to retention of title and shall keep it for us free of charge.

If the goods subject to retention of title are resold together with other goods, whether without or after processing, combination, mixing or blending, the advance assignment agreed above shall apply only to the amount of the value of the goods subject to retention of title which are resold together with the other goods.

4. We are obliged to release the securities to which we are entitled in accordance with the above provisions at our discretion at the request of the buyer if the value exceeds the claims to be secured by 10%.

5. The buyer must inform us immediately of any foreclosure measures taken by third parties against the goods subject to retention of title or the claims assigned in advance, handing over the documents necessary for an intervention.

6. Samples, drawings and tools shall remain our property, even if the buyer bears the costs for them in whole or in part.

7. We will credit goods taken back from the buyer equal to the value after taking the condition and age of the goods into account. Return shipment costs are also borne by the buyer.

F) Transfer of risk – packaging costs – property rights

1. Unless otherwise specified in the order confirmation, delivery “ex works” is agreed.
2. Transport and all other packaging in accordance with the packaging regulations shall not be taken back; pallets are excluded. The buyer shall be obliged to dispose of the packaging at his own expense.
3. In the case of goods manufactured according to the buyer's specifications, the buyer shall be fully responsible for ensuring that no industrial property rights or other rights of third parties are infringed. In the event of a violation of third-party property rights, the buyer shall indemnify us against any claims for damages by third parties and costs of any kind.

G) Warranty – compensation for damages

1. The buyer's rights in respect of defects presupposes that the buyer has duly complied with its obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB). The further processing or installation of the delivered goods constitutes a waiver of the notice of defects, provided the defect was recognisable. If the goods are installed in a plant, the buyer shall be obliged to allow us to inspect the design documents, insofar as this is related to our delivery item. Refusal of inspection excludes the buyer's warranty claims.
2. In the case of returns, a warranty check of a compressor shall only be possible if the piping is sealed (soldered) so that the oil cannot leak out. Furthermore, the complete electrical system must be connected and all other possible attachments must be present. The nameplate must be attached to the compressor in its original condition.
3. The limitation period for claims for defects is 12 months from the date of delivery and handover. The limitation period in the event of a delivery recourse pursuant to Sections 478, 479 of the German Civil Code (BGB) shall remain unaffected.
4. If there is a defect in the purchased item, we shall be entitled, at our discretion, to supplementary performance in the form of rectifying the defect or to deliver a new item without any defects.
5. If the supplementary performance fails, the buyer shall be entitled to withdraw from the contract or to demand a reduction in price. The right to withdraw from the contract is excluded if our services are qualified as construction work or other work and services that do not fall under Section 651 of the German Civil Code (BGB).
6. We shall be liable in accordance with the statutory provisions insofar as the buyer asserts claims for damages which are based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Unless we are accused of intentional breach of contract, liability for damages shall be limited to foreseeable, typically occurring damage.

7. We shall be liable in accordance with the statutory provisions if we culpably violate a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
8. If the buyer is entitled to claim compensation for damages instead of performance, our liability shall also be limited within the scope of paragraph (5) to compensation for the foreseeable, typically occurring damage.
9. Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability in accordance with the Product Liability Act.
10. Warranty claims for essential third-party products shall first be asserted against our upstream suppliers on the basis of assigned rights. Only then shall we be liable for unenforceable claims and costs incurred for legal action.
11. Unless otherwise regulated above, liability shall be excluded.
12. The above regulations apply accordingly to pre-contractual breaches of duty.
13. Our liability shall also not apply in the case of insignificant defects which do not reduce the value or the suitability for the use owed under the contract and for delivery parts which are subject to premature wear and tear due to their nature or the type of use they are intended for. Minor deviation defects shall also be considered insignificant defects.
14. Liability shall also not apply in the event of defects attributable to faulty assembly or commissioning by the customer or third parties, as well as in the event of defects attributable to unsuitable or improper use, faulty operation, natural wear and tear, unsuitable operating materials, etc. Design changes can limit or fully invalidate the validity of quality and test marks.

H) Joint liability

1. Any further liability for damages other than provided for in lit. G is excluded, regardless of the legal nature of the asserted claim. This applies in particular to claims for damages arising from a fault when concluding the contract (culpa in contrahendo), from other breaches of duty or from tortious claims for compensation for property damage pursuant to Section 823 of the German Civil Code (BGB).
2. The limitation pursuant to paragraph (1) shall also apply if the buyer demands reimbursement of fruitless expenses instead of a claim for damages.
3. Insofar as liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

I) Repairs

We assume liability for repaired and replaced parts in accordance with our provisions set out above.

J) Final provisions

1. The place of performance for all liabilities arising from the contract shall be our place of business, unless otherwise stated in the order confirmation.
2. The place of jurisdiction for both parties shall be Böblingen or Stuttgart in Germany if the customer is a merchant.
3. The law of the Federal Republic of Germany shall apply; the validity of the UN Convention on Contracts for the International Sale of Goods is excluded.