

Standard Terms and Conditions of Sale and Delivery of KNÖLLINGER Thermal Insulation GmbH

I. Applicability, quotation and conclusion

1. Our goods are supplied and our services are provided exclusively on the basis of these standard business terms and conditions (STCs) which apply to the entire business relationship with our contractual partners. Any standard terms and conditions of our contractual partners are expressly rejected.
2. Our quotations are without obligation. The conclusion of contracts and other agreements are not binding until confirmed by us in writing.
3. Any brochures, drawings, promotional materials etc. issued by us and any data contained in them e.g. weight, quality, dimensions, characteristics and performance are only definitive if we expressly designate them as binding.

II. Prices

Our prices are deemed to be ex works excluding packaging, freight and Value Added Tax unless otherwise agreed.

III. Delivery/provision time / part delivery

1. The periods and dates proposed by us for deliveries and the provision of services are always deemed to be approximate except where we have expressly promised or agreed a fixed period or fixed date.
2. Any delivery periods promised are extended by the period by which the customer falls behind with its obligations to us plus a reasonable lead time.
3. If we have promised to observe a date or a period and if we fall behind, the customer may grant us in writing a reasonable extension period. Once this period has expired without success, it may cancel the quantities and services that have not been delivered / provided by the expiry of the extension period. If the partially provided services are of no interest to the customer, it is entitled to cancel the entire contract.
4. Even where they occur with our suppliers or their own suppliers, instances of force majeure entitle us to postpone the delivery or provision by the duration of the hindrance and a reasonable lead time or to cancel the contract entirely or in part because of the as yet unfulfilled part. The following are deemed to be force majeure: strike, lockout, mobilisation, war, blockade, bans on imports and exports, traffic incidents and other circumstances that cannot be influenced by us and which make delivery unreasonably more difficult or impossible. In such cases the customer may demand from us a declaration of whether we are cancelling the delivery or are going to make it within a reasonable period. If we do not make such a declaration, the customer may cancel.
5. We are entitled to make part deliveries of reasonable size. Part deliveries are deemed to be independent transactions. Under or over-deliveries of the agreed quantity usual for the sector (+/- 10%) are permitted.

IV. Dispatch and transfer of risk

1. The dispatch route and means of transport are at our discretion in the absence of any special agreement.
2. Risk is transferred to the buyer with handover of the material to a carrier or shipper, when the goods leave our factory at the latest, even where delivery is free to the destination. If dispatch is delayed for reasons for which we are not to blame, risk is transferred with notification of readiness to dispatch. The customer bears any storage costs after transfer of risk.
3. The goods will be insured against damage in transit and other risks only at the customer's express wish.

V. Payment terms / setoff

1. Unless expressly agreed otherwise in writing, invoices are due for payment immediately upon their receipt and without any deductions.
2. The retention of payments or setting off of any counterclaims by the customer where these counterclaims are disputed and not determined by law is not permitted.
3. If the customer is in arrears with payment, it must pay interest at the statutory level from when it first falls into arrears. We may be able to claim higher compensation for arrears.
4. We are entitled to make outstanding deliveries and provide outstanding services only in return for payment in advance or for a security deposit if after conclusion of the contract we become aware of circumstances that are likely to significantly reduce the creditworthiness of the customer and as a result of which payment by the customer of our outstanding claims arising from the relevant contractual relationship (including from other individual orders to which the same framework contract applies) is put at risk.

VI. Reservation of title

1. All goods delivered (goods subject to reservation of title) remain our property until all our claims now or in the future against the customer have been met and in fact this includes all claims for balances on current accounts.
2. Working on and processing goods subject to reservation of title applies to us as a manufacturer within the meaning of § 950 BGB (Civil Code) without it being an obligation upon us. When other goods not belonging to us are processed by the customer, we have joint ownership in the manufactured item in proportion to the invoice value of our processed goods subject to reservation of title to the total of the invoice values of all the other goods used in this manufacture.

If our goods are mixed or combined with other items and if as a result our ownership of the goods subject to reservation of title is extinguished (§§ 947, 948 BGB), then it is agreed as of now that the customer's share of the ownership of the mixed stock or the unified item is transferred to us in the amount of the invoice value of our goods subject to reservation of title and that the customer will safeguard these goods for us free of charge. The items created from the processing, combination or mixing are goods subject to reservation of title within the meaning of these terms and conditions.

3. The customer may sell, dispose of or process the goods subject to reservation of title in the course of its ordinary business activities. It is only authorised to sell them on/dispose of them if the claim arising from the onward sale or disposal, as well as any associated invoice, at a level determined in accordance with the following paragraphs, is transferred to us. It has no other rights of disposal.

The following are deemed to be onward sale or disposal: incorporation into land or constructions or use of the goods subject to reservation of title to fulfil other contracts for work or for the supply of work by the customer.

4. As of now the customer's claims arising from the onward sale or disposal of the goods subject to reservation of title as well as all associated invoices, regardless of whether they are sold on to one or more customers, are assigned to us in full.

If the goods subject to reservation of title are sold after combination, mixing or processing with other goods not belonging to us, the assignment will be made only at the level of our share of ownership of the goods or stock sold. The customer is entitled to collect the claim assigned to us provided that it does not fall into arrears with us. In this event, we are entitled:

- a. to withdraw the authorisation to sell or work on or process or incorporate the goods subject to reservation of title and to collect the claims assigned to us,
 - b. to inform the third party debtors of the assignment.
5. The customer undertakes to provide the information required for claiming our rights and to issue the documents required for this.
 6. If the value of the securities provided for us exceeds our claims, not just temporarily, by over 20 percent in total, upon request we will release securities of an appropriate amount as we see fit.

VII. Defects / guarantee

1. Evident defects are to be reported without delay following receipt of the goods or the ending of our service. Timely issue of the notification is sufficient for observance of the period. The defective goods are to be retained unchanged for our inspection in the condition in which they were at the time of discovery of the defect. In particular, they must not be worked on or processed.

The customer must give us an opportunity to check the justification for any complaint about a defect. It is also obliged upon demand to provide us without delay with samples of the material complained about. Breakages and shortfalls are to be noted on the bill of lading / delivery note.

Any breach of these duties excludes any liability on our part. Moreover, claims concerning defects can no longer be made if the defect is not complained about until after mixing with other goods or after being processed or worked on.

2. In the event of a justified timely complaint about a defect, we take back goods recognised as defective and deliver replacement goods free of defects or, if we choose, correct the defects by rework.

If the subsequent rectification fails, the customer still expressly has the right to a reduction or, if it so chooses, to cancel the contract.

3. Special products are excluded from such an exchange and cannot be taken back.

VIII. Liability

1. We are liable only for damage that results from grossly negligent or deliberate breach of duty by us, our legal representatives or our agents unless we are dealing with claims for loss of life, physical injury or damage to health. Our liability based on the provisions of the Produkthaftungsgesetz (Product Liability Act), arising from breach of major contractual duties for which we are to blame, from wilful deception and regarding guaranteed characteristics is unaffected. In the event of the breach of major contractual duties, liability is restricted to the foreseeable damage or loss that typically occurs.

2. Any advice given by us, our employees or people acting on our behalf and also all associated statements do not give rise to either a contractual legal relationship or to a minor duty arising from the contract, so, subject to any other express written agreements issued, we are not liable as a result of such advice.

IX. Place of fulfilment, jurisdiction and applicable law

Unless otherwise agreed, the place of fulfilment for our service is Hilscheid.

In so far as the contractual partner is a businessman, Koblenz has exclusive jurisdiction.

The law of the Federal Republic of Germany applies between the parties to the contract. Application of the UN Convention on the International Sale of Goods (CISG) is excluded.

As at: September 2018