

I. General Provisions

1. These General Terms and Conditions of Delivery and Payment apply to all business relations between Kessler & Co. GmbH & Co. KG, Hüttlinger Str. 18-20, 73453 Abtsgmünd, Germany, (in the following the "**Supplier**") and its customers (in the following the "**Customer**"). These General Terms and Conditions of Delivery and Payment only apply if the Customer is a company (as defined in section 14 German Civil Code (*Bürgerliches Gesetzbuch*), a legal person under public law or a special public fund.
2. The General Terms and Conditions of Delivery and Payment apply in particular to agreements for the sale and/or delivery of movable goods, irrespective of whether the Supplier manufactures the goods itself or purchases them from suppliers.
3. Unless otherwise agreed, the General Terms and Conditions of Delivery and Payment in the version valid at the time of the Customer's order or, in any case, in the version most recently communicated to the Customer in text form will also apply as a framework agreement for similar future offers and agreements for the sale and/or delivery of movable goods with the same Customer, without the Supplier having to refer to them again in each individual case; the Supplier will inform the Customer without undue delay in the event of any changes to its General Terms and Conditions of Delivery and Payment.
4. The Supplier's General Terms and Conditions of Delivery and Payment apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business of the Customer will only become part of the agreement if and insofar as the Supplier has expressly agreed to their validity. This requirement to expressly agree applies in any event, even if, for example, having knowledge of the general terms and conditions of the Customer, the Supplier delivers to the Customer without reservation.
5. Any statements and information which the Customer sends after the agreement has been concluded and which are of legal relevance, (e.g. deadlines, reminders, notices of defects, statements of withdrawal or reduction) are valid only if they comply with text-form requirements.

II. Offer and Conclusion of the Agreement

1. All offers made by the Supplier are its invitations to initiate an agreement only, i.e. non-binding and subject to change, unless they are expressly marked as binding by the Supplier. The Supplier may accept orders or assignments within 14 days of receipt. Offer documents may not be made accessible to unauthorised third parties and must be returned to the Supplier on request if the order is not concluded and any copies made must be destroyed by the Customer if they are no longer required in the normal course of business. This does not include saving electronic copies of data provided for data back-up purposes. Illustrations are not binding. The Supplier reserves the right to make design changes before conclusion of the agreement.
2. The legal relationship between Supplier and Customer is solely defined by the order and the order confirmation, including these General Terms and Conditions of Delivery and Payment. These fully reflect all understandings between the parties regarding the subject of the agreement. Provisions in the order confirmation take precedence over these General Terms and Conditions of Delivery and Payment. Verbal commitments made by the Supplier prior to the conclusion of this agreement are not legally binding and verbal agreements between the contracting parties are replaced by the written agreement, unless it is expressly agreed that they continue to be binding.
3. Additions and amendments to the agreement concluded between the parties, including these General Terms and Conditions of Delivery and Payment, must be made in text form to be valid. This also applies to any amendment to this text-form requirement.
4. The documents contained in the offer and the order confirmation, such as descriptions, drawings, dimension and weight specifications, are only approximate unless they are expressly stipulated as binding. Unless limits for permissible deviations are expressly stipulated in the order confirmation and labelled as such, customary deviations (manufacturing tolerances) are permissible. Deviations due to legal regulations and/or technical improvements and the substitution of components by equivalent parts are permitted as far as they do not impair the fitness for the contractually agreed purpose.
5. The Supplier reserves property rights and copyrights in samples, estimates, drawings, etc., tangible and intangible information – including information in electronic form; these must not be disclosed to third parties. The Customer undertakes to only disclose information and documents labelled by the Supplier as confidential to third parties with the Supplier's consent. The Customer will not perform reverse engineering.

III. Price and Payment

1. The prices in offers (section II (1) of these General Terms and Conditions of Delivery and Payment) are subject to changes, unless the offer is expressly marked as binding, and these prices relate only to the goods themselves as net prices in euros, not to other additional services. Only the prices in pro forma invoices or order confirmations are the final net sales prices for the sale of goods. Unless expressly agreed otherwise, packaging, transport, handling costs or legalisation costs for export or export costs, etc. are not included in the price. The total price does not include the statutory value added tax. The costs of transit and import will be borne by the Customer.
2. The invoice is issued on the day the goods are made available for pickup or the delivery is made. Payment will be made without undue delay after receipt of the respective invoice and without any deduction, unless the contracting parties have expressly agreed otherwise. The Customer is only entitled to retain payments to the extent that such counter-claims are undisputed or have been declared final and absolute by a competent court. The Customer is only entitled to set off counter-claims arising from other legal relationships to the extent that they are undisputed or have been declared final and absolute by a competent court. The Supplier is entitled to make the supply of outstanding goods and services conditional on an advance payment or the provision of a security if, after the agreement has been concluded the Supplier becomes aware of circumstances which are likely to materially adversely affect the Customer's creditworthiness and which could jeopardise the Customer's ability to pay the Supplier's outstanding claims under the respective contractual relationship (including other individual orders under the same framework agreement).

IV. Delivery, Delivery Time and Delay in Delivery

1. Unless otherwise specified in the order confirmation, delivery will be FCA Kessler & Co. GmbH & Co. KG, Hüttlinger Str. 18-20, 73453 Abtsgmünd, Germany, Incoterms 2020. Delivery periods and delivery dates relate to the time when the goods are handed over to the forwarding agent, freight carrier or other third party commissioned with the shipment at the Supplier's facilities.
2. Partial deliveries are permissible to the extent that the acceptance of such partial deliveries can reasonably be expected of the Customer.
3. The delivery period is indicated in the agreements between the contracting parties. The Supplier's compliance with the delivery date requires that all commercial and technical questions between the contractual parties have been resolved and that the Customer has fulfilled all its obligations such as the provision of the necessary official certificates/permits or the making of a down-payment. If this is not the case, the delivery period will be extended appropriately. This provision does not apply if the Supplier is responsible for the delay. Subsequent changes requested by the Customer will result in an interruption of the delivery period.
4. If the dispatch or the pickup of the contractual goods is delayed due to reasons for which the Customer is responsible, the Supplier reserves the right to charge the costs arising from the delay to the Customer.
5. The Supplier is not liable for delays in delivery if these are due to the fact that the Supplier was not supplied, not supplied correctly or not supplied in due time by a sub-supplier (reservation of self-supply) and the Supplier is not responsible for these circumstances. The reservation of self-supply does not apply if it is evident from the contractual agreement that the Supplier has – as an exception- assumed the procurement risk.
6. Furthermore, the Supplier is not liable for the impossibility of the delivery or for delays in delivery, as far as these are caused by force majeure or other events not foreseeable on the date of the conclusion of the contract, (e.g. operational disruptions of all types, difficulties in procuring materials or energy, transport delays, strikes, lawful lock-outs, lack of personnel, energy or raw materials, difficulties in obtaining the required official permits, official measures, epidemics, pandemics) for which the Supplier is not responsible.

7. If the Supplier becomes aware of an impediment to performance in accordance with section IV (5), (6), the Supplier will inform the Customer without undue delay. If such events make delivery or performance significantly more difficult or impossible for the Supplier and the impediment exists for more than two (2) months, the Supplier and the Customer will be entitled to withdraw from the agreement. If the impediments are temporary, the delivery or performance periods/dates will be extended/postponed by the duration of the impediment plus a reasonable start-up period.
8. If the Supplier is in default and the Customer suffers damages as a result, the Supplier's liability for damages is limited to the value of 10% of that part of the total delivery which the Customer cannot use as intended according to the agreement due to the default.

V. Place of Performance and Transfer of Risk

1. The Supplier's registered office is the place of performance for all obligations arising from the contractual relationship.
2. In accordance with section IV (1) of these General Terms and Conditions of Delivery and Payment in conjunction with the provisions of FCA, Incoterms 2020, the risk passes to the Customer at the latest when the delivery item is handed over to the forwarding agent, freight carrier or other third party designated to carry out the shipment at the Supplier's facilities. The Supplier has no obligation to the Customer to take out an insurance policy. If shipment or handover is delayed for a reason for which the Customer is responsible, risk passes to the Customer on the day on which the goods are ready for dispatch/shipment and the Supplier has notified the Customer accordingly. Any storage costs which arise after the transfer of risk will be borne by the Customer. If the Supplier stores the goods, the storage costs will be 0.25% of the invoice amount for the goods to be stored per full week elapsed. The parties reserve the right to claim, subject to proof, that the storage costs are lower or higher.

VI. Retention of Title

1. The Supplier retains title in the delivered goods ("**Reserved Goods**") until all claims arising from the purchase agreement and, in addition, all other claims by the Supplier against the Customer arising from deliveries and services existing at the time of the respective conclusion of the agreement, including balance claims from current account, have been paid in full by the Customer.
2. The Customer will store the Reserved Goods on the Supplier's behalf. The Customer is obliged to treat the Reserved Goods with care and to maintain them in good condition. The Customer will insure the Reserved Goods against fire, theft and water damage and hereby assigns to the Supplier any claims to which the Customer is entitled against its insurance company in this respect, as well as any other claims for compensation due to loss or destruction of the Reserved Goods.
3. The Customer performs any processing of or alteration to the Reserved Goods on behalf of the Supplier. If the Customer processes the Reserved Good with goods not belonging to the Supplier, the Supplier acquires co-ownership of the new item in the ratio of the invoice value of the Reserved Goods to the other processed goods at the time of the processing.
4. The Customer is entitled to resell the Reserved Goods delivered by the Supplier in the ordinary course of business. The Customer hereby assigns to the Supplier in advance the claims arising from the sale in the amount of the value of the Reserved Goods. The Supplier herewith accepts this assignment. This provision applies accordingly to balance claims from a current account, if the Customer entered into current account agreements with third parties. The Customer is still authorised to collect the assigned claim even after this assignment. This does not affect the Supplier's right to collect the claim itself. However, the Supplier undertakes not to collect the claim as long as the Customer meets its payment obligations, and in particular as long as no application for the opening of insolvency proceedings has been filed. However, if this is the case the Supplier may demand that the Customer notifies the Supplier of the claims assigned and their debtors, that the Customer provides the Supplier with all data required to collect the claims, the associated documents and the Customer notifies the debtors (third parties) of the assignments. Furthermore, in this case the Supplier is entitled to revoke the Customer's right to sell and process the Reserved Goods.
5. The goods which are subject to the retention of title may not be pledged to third parties or assigned as collateral until the Supplier's secured claims have been paid in full. The Customer must inform the Supplier without undue delay in writing if an application is made for the opening of insolvency proceedings or if third parties take hold of or seize Reserved Goods owned by the Supplier, (e.g. seizures).
6. If the Customer is in breach of contract, in particular, if the Customer is in default of payment, the Supplier is entitled to take back the Reserved Goods after issuing a warning. The Supplier's demand for the return of the Reserved Goods does not constitute an automatic withdrawal from the agreement by the Supplier.
7. If the realisable value of the securities exceeds the Supplier's claims by more than 10% the Supplier will release securities at its own discretion on request by the Customer.

VII. Warranty Claims

1. The statutory provisions on warranty claims are applicable. In the event of defects, the Supplier may, at its discretion, either remedy these defects or replace the defective goods free of charge, without affecting potential other warranty rights of the Customer. It is not part of the agreed quality/fitness of the goods that the goods comply with regulations applicable outside the EU for use intended by the Customer. The Customer will check this on its own responsibility.
2. Deviating from the statutory provisions, warranty claims become statute-barred 12 months after the transfer of risk to the Customer (warranty period). This reduction of the warranty period does not apply to claims for damages due to Supplier's intentional conduct or gross negligence, to claims for damages due to culpable injury to life, body or health, to claims due to fraudulent concealment of a defect, in case of a granted guarantee by the Supplier or in the case of an assumption of a procurement risk and this reduced warranty period does not apply to recourse claims in case of resale within the meaning of sections 445a, 445b German Civil Code (*Bürgerliches Gesetzbuch*).

VIII. Liability

1. Unless set out otherwise in these General Terms and Conditions of Delivery and Payment and in the following provisions, the Supplier is liable for a breach of contractual and non-contractual duties according to the statutory provisions.
2. The Supplier is liable for damages - irrespective of the legal grounds - within the scope of liability for intent and gross negligence. In case of simple negligence, subject to statutory limitations of liability, (e.g. care in own affairs; insignificant breach of duty), the Supplier is only liable for damages caused by the breach of a cardinal duty (this is an obligation the fulfilment of which is required for the proper performance of the agreement and compliance with which the contractual partner regularly relies on and may reasonably rely on); in this event, however, the Supplier's liability is limited to compensation for foreseeable, typical damages.
3. Insofar as the Supplier is liable according to the above clause 2, its liability is in any case, with the exception of liability for intent, limited to the amount of EUR 500,000.00. This will not affect section IV (8).
4. The limitations of liability stipulated in the above clauses 2 and 3 also apply to breaches of duty by or in favour of persons whose fault the Supplier is responsible for according to statutory provisions. They will not apply if the Supplier has fraudulently concealed a defect or has granted a guarantee for the quality of the goods, as well as in the case of damages resulting from injury to life, body or health. This has no effect on any mandatory statutory liability, including without limitation under the German Product Liability Act (*Produkthaftungsgesetz*).

IX. Software Licences

Insofar as software is included in the scope of delivery, the Customer is only granted a non-exclusive right - that is transferable only in the ordinary course of business - to use the delivered software, including its documentation, within the scope of the license conditions provided, unless otherwise stipulated in the license conditions of the delivery item. The Customer may only reproduce, modify, translate the software or convert the software from the object code to the source code to the extent permitted by statutory law (sections 69a et seqq. German Act on Copyright and Related Rights – *Urhebergesetz*) and in accordance with the licence conditions provided.

The Customer will not remove manufacturer's data, in particular copyright data, or to alter it without the prior express consent of the Supplier. The Supplier or software supplier retains all other rights in the software and the documentation including the copies. The granting of sub-licenses is only permissible to the extent permitted by law (sections 69 a et seqq. German Act on Copyright and Related Rights) and in accordance with the license terms granted.

X. Export Control

1. The deliveries and services (i.e. the fulfilment of the agreement) are subject to the condition that the fulfilment is not restricted by national or international regulations, in particular export control regulations and embargoes or other restrictions.
2. The Customer will provide all information and documents required for export or shipment. Any delays caused by export controls or licensing procedures will suspend any time limits and delivery periods. If it is not possible to obtain the necessary approvals for certain items, the agreement will be deemed not to have been concluded with regard to the parts concerned.
3. If it is necessary to terminate the agreement in order to comply with national or international regulations, the Supplier will be entitled to terminate the agreement without notice. In this case, the assertion of damages or other rights by the Customer due to the termination is excluded.

XI. Governing Law and Place of Jurisdiction

1. The contractual relationship and all non-contractual obligations between the parties arising from and in connection with the agreement (including the initiation of the agreement) are governed by German law. The UN Convention on the International Sale of Goods (CISG) does not apply.
2. The exclusive place of jurisdiction for any disputes arising from or in connection with the contractual relationship between the Supplier and the Customer is the competent court for the registered office of the Supplier. However, the Supplier is also entitled to assert claims against the Customer at the Customer's general place of jurisdiction.
3. Should individual provisions be invalid or unenforceable, or should the agreement contain unintentional lacunae, the rest of the agreement remains valid. As far as the agreement or these General Terms and Conditions of Sale and Delivery contain unintentional lacunae those valid legal provisions are deemed to have been agreed to fill the lacunae which the contractual partners would have agreed reflecting the commercial aims of the agreement and the purpose of these General Terms and Conditions of Delivery and Payment if they had been aware of the lacunae.