

Conditions of sale and delivery

KOLEKTOR MAGNET TECHNOLOGY GmbH

A. General conditions

I. Contracts

1. These Conditions of Sale and Delivery shall apply to all current and future contracts, deliveries and other services including consulting services, information and the like, unless altered or excluded with Seller's express written agreement. Purchaser's conditions of purchase are expressly rejected. They shall not be accepted even if Seller does not expressly reject them again on receipt. Seller's Conditions shall be deemed to have been accepted at the latest on Purchaser's receipt of Seller's delivery or service.
2. Seller's offers are submitted without engagement. Seller reserves the right to alter the promised delivery or service, as well as the time and price thereof. Contracts and other agreements, especially verbal agreements and promises, shall not be binding upon Seller unless they have been confirmed by Seller in writing.
3. The details, drawings, diagrams, technical data and specifications of weights, dimensions and ratings contained in leaflets, catalogues, circular letters, advertisements, price lists or in the documents appertaining to the offer and to which Seller retains title and copyright shall be non-binding unless they are expressly designated as binding in the acceptance of order.
4. Purchaser shall warrant that no third party rights will be infringed by Seller's use of any drawings, samples and other aids supplied to him and shall save Seller harmless from and indemnify him against any claims made against him in respect of any such infringement.
5. Unless otherwise stipulated in these Conditions, the International Rules for the Interpretation of Trade Terms (Incoterms) 2000, as amended, shall apply for the interpretation of the individual sales clauses.

II. Prices

1. Prices are quoted ex works or ex stock plus freight charges, packing and value-added tax at the rate obtaining.
2. If Seller's costs change (e.g. as a result of governmental measures) or if, after conclusion of the contract, freight, taxes or other charges or dues are introduced or increased, Seller shall be entitled – even for carriage-paid and/or duty-paid delivery – to change the price accordingly, unless Seller is responsible for the increase or Purchaser is not a registered business and delivery to him takes place within four months after conclusion of the contract.

III. Terms of payment

1. Payment of the purchase price shall be made to Seller without any deductions within the agreed time or, if no time has been agreed upon, within 30 days of the invoice date.
2. Cheques and notes acceptable by the Deutsche Bundesbank will be accepted by Seller towards fulfilment (solutionis causa), if this has been expressly agreed. Notes and cheques will be credited to Purchaser less costs, and subject to their receipt, on the date that their money value becomes available to Seller.
3. In event of default in payment by Purchaser, Seller shall charge interest of 6% in excess of the current discount rate of the Deutsche Bundesbank. Default in payment shall be determined in accordance with the legal provisions. Default shall also be deemed to have taken place if the contractually agreed date of payment is passed insofar as determined by the calendar. Seller reserves the right to assert further damages claims.
4. Irrespective of the maturity date of any notes accepted and credited, Seller's claims shall immediately become due if the payment terms are not complied with or if, after conclusion of the contract, Seller learns of any circumstances which, in Seller's sound commercial judgment, may impair Purchaser's credit-worthiness. In such event Seller shall be entitled to deliver any outstanding goods only against prior payment or contemporaneously with payment. Seller shall also be entitled to forbid Purchaser to re-sell or process the goods delivered and to demand their return or the transfer of their indirect possession at Purchaser's expense and to revoke Purchaser's right of collection under Section IV 5. Seller shall be entitled, after a fixed time limit, to enter Purchaser's premises in the cases stated above, to take away the goods delivered and sell them on the open market in the best manner possible in order to set off the amounts resulting therefrom against any outstanding amounts under the Purchase contract, less costs arising.

IV. Collaterals

1. All goods delivered shall remain Seller's property (goods in which title is retained) until all claims, on whatever legal grounds, are paid, including claims arising in the future or conditional claims and those arising from contracts concluded with Purchaser at the same time or subsequently. This shall also apply if payments are made on specially designated claims. Purchaser undertakes to treat the goods in which title is retained with care, to maintain them and to inform Seller immediately in the case of their attachment, damage or loss, as well as of change of ownership or domicile.
2. Machining and processing of the goods in which title is retained shall take place for Seller as manufacturer in the meaning of Article 950 BGB (Civil Code) without any obligation devolving upon Seller therefrom. The processed goods shall be deemed to be goods in which title is retained within the meaning of Para. 1. If the goods in which title is retained are processed, combined and/or mixed with other goods by Purchaser, Seller shall have joint title to the resultant merchandise in the proportion of the invoiced value of the goods in which title is retained to the invoiced value of the other goods used. If by such combining or mixing Seller's title shall cease to exist, Purchaser shall hereby assign to Seller title to the newly created stock or merchandise to the extent of the invoiced value of Seller's goods and shall keep them for Seller free of charge. Seller's co-ownership rights arising hereunder shall be deemed to be goods in which title is retained within the meaning of Para. 1.
3. Goods in which title is retained by Seller may only be sold by Purchaser in the normal course of business under his standard terms of business and as long as he is not in default vis-a-vis Seller, provided that his claims arising out of such re-sale shall be assigned to Seller as set forth in Paras 4 to 5. If in the case of sale by Purchaser or in the case of other dispositions in favour of third parties the assignability of his claims to third parties is excluded, this shall not be deemed to be a normal course of business in the meaning of this provision. Purchaser may not in any other way use or dispose of the goods in which title is retained by Seller.
4. All claims accruing to Purchaser from the re-sale of goods in which Seller retains title, including the use of such goods in fulfilling other contracts, are hereby assigned to Seller. The assigned claims represent collateral to the same extent as the goods in which title is retained by Seller. If such goods are sold by Purchaser together with other goods not purchased from Seller, the assignment to Seller of Purchaser's claims from such re-sale shall be limited to the re-sale values given in Seller's invoice for the goods in which Seller retains title. In the case of the sale of goods in which Seller has co-ownership rights in accordance with Para. 1, the assignment to Seller of Purchaser's claims shall correspond to Seller's share in ownership.
5. Purchaser shall have the right to collect his claims arising from the re-sale until Seller revokes this right, as he is entitled to do at any time. Purchaser may not assign said claims to any third party – including the sale of such claims to factoring banks – unless he definitely obtains the equivalent amount of the claim. Upon Seller's request, Purchaser shall notify his customers immediately of the assignment of his claims to Seller – unless Seller does so himself – and shall furnish Seller with all information and records required by him to collect the amounts assigned.
6. Any rights arising from the retention of title as well as any special rights created in connection therewith by these Conditions shall be valid until Seller's complete release from obligations, including conditional obligations, which Seller has assumed in the interest of Purchaser.
7. Purchaser shall not dispose of the goods in which title is retained, or permit such disposition by others, if such disposition fails to comply with these Conditions.
8. In the event that the value of the delivered goods which serve as collateral and in which title is retained exceeds Seller's total claim (secured claims) by more than 20%, Seller shall, at Purchaser's request, release collaterals to this extent at Seller's discretion.

V. Place of performance, venue and law applicable

1. The place of performance for both parties to the contract shall be Essen.
2. The venue for any disputes arising out of the contract – if Purchaser is a registered business or Article 38, para. 1 ZPO (Code of Civil Procedure) is fulfilled – shall be Essen. Seller may also take proceedings against Purchaser at Purchaser's legal venue.
3. The applicable law shall be the law applicable at Seller's place of business. The uniform laws on the international sale of goods shall not be applicable.

B. Delivery

I. Force majeure and other circumstances impeding delivery

1. In the event of force majeure, Seller shall be entitled to extend the time of delivery by the duration of the impediment, plus a reasonable start-up period, or to withdraw entirely or partially in respect of the unfulfilled part of the delivery. Force majeure shall include any circumstances beyond Seller's control, such as strikes, lock-outs, mobilization, war, blockades, export-import restrictions, raw material and energy shortages, fire, blocking of traffic, plant and transport disruptions, etc., irrespective as to whether such events occur at Seller, his suppliers or a sub-supplier.
2. In such event, Purchaser shall be entitled to demand from Seller a statement as to whether Seller intends to deliver the goods within a reasonable period or to withdraw from the contract. If Seller fails to make such a statement within a reasonable period, Purchaser may withdraw in respect of the unfulfilled part of the delivery.
3. A supplier's or sub-supplier's declaration to Seller regarding the occurrence of circumstances under Para. 1 shall be deemed as sufficient proof of Seller being prevented from making delivery in time.

II. Delivery periods and deadlines

1. Seller's deliveries and delivery deadlines are subject to Seller being fully supplied unless the delay or failure to deliver is caused by Seller. Seller assumes no liability for punctual shipment.
2. Delivery periods shall begin on the date of Seller's letter of acceptance of the order. Delivery periods and deadlines relate to the date of dispatch ex-works or ex-stock. Should dispatch be delayed for reasons beyond Seller's control, they shall be deemed to have been met if notice is given to Purchaser that the goods are ready for shipment.
3. If delivery is delayed Purchaser shall be entitled to withdraw from the contract on account of Seller's failure to meet the delivery deadline only if he has given Seller a reasonable alternative delivery period by means of registered letter which has likewise not been met. An alternative delivery period of at least eight weeks is considered reasonable.

III. Shipment, passing of risk, part-shipment, continuous delivery

1. Seller shall determine route and means of transport, as well as forwarding agent or carrier, unless an alternative agreement has been made in writing.
2. Goods reported ready for shipment in accordance with the contract shall be immediately called for delivery, otherwise Seller, at his own discretion, shall be entitled to dispatch them at Purchaser's risk and expense or to warehouse them, invoicing them immediately.
3. Seller reserves the right to choose the means of transport and protection and the transport route without incurring any liability therefrom.
4. In all transactions the risk shall pass to Purchaser as and when the goods are handed over to the forwarding agent or carrier, but at the latest on leaving the warehouse or manufacturer's works, even in the case of carriage-paid delivery or confiscation of the goods.
5. Seller shall be entitled to make part-shipments to a reasonable extent unless otherwise stated in an individual arrangement. Shipments in excess of or short of the quantity contracted by up to 10% shall be permissible.
6. In the case of contracts providing for continuous delivery, Purchaser shall make calls for approximately equal monthly shipments of the various types of goods covered by the contract. If Purchaser fails to indicate in time the quantity and type of goods to be shipped, Seller shall be entitled, after granting in vain a reasonable respite, to determine the quantity and type himself and to ship the goods, or to cancel the unfulfilled portion of the contract and to demand damages.

IV. Defects and warranty

1. The reference date for the contractual condition of the goods shall be the date of the passing of risk.
2. After an agreed inspection of the goods by Purchaser, no complaints will be accepted by Seller with respect to such defects as could have been discovered by the agreed inspection procedure.
3. Purchaser shall inspect the goods immediately after receipt with the thoroughness that can reasonably be expected of him under the given circumstances; claims for any defects discovered during such inspection shall be made in writing within a time limit of two weeks.
4. In the case of a justified complaint being made Seller shall at his discretion and free of charge repair or replace any parts that can be proved to have become unserviceable or to have had their serviceability substantially impaired within the warranty period as a result of circumstances prevailing prior to the passing of risk, or indemnify Purchaser for the reduction in value.
5. If Seller repeatedly fails to fulfil his obligations to repair or replace under the warranty clause within the due period or in accordance with the contract for reasons for which he may be held responsible, Purchaser shall be entitled to claim a reduction in payment or, at his option, the cancellation of the contract. The acceptable number of attempts at repair shall be determined by the nature of the individual case and in adherence to the dictate of good faith.
6. If Purchaser does not immediately give Seller time and opportunity to verify the defect and to comply with the warranty clause, and if in particular Purchaser does not immediately make available to Seller, upon request, the goods about which a complaint has been made or samples thereof, Seller shall be released from liability for such defect.
7. Purchaser's right to enforce claims under the warranty shall lapse one month after the date on which the claim has been repudiated in writing by Seller, and at the latest – also if Purchaser is not a registered business – six months after delivery.
8. Claims for making good damage not caused to the goods themselves (consequential damage from defects) shall be excluded in accordance with C.I. In the case of the absence of guaranteed properties we shall be liable only insofar as the guarantee served to protect Purchaser against exactly that consequential damage from defects which has arisen.
9. The above Conditions shall also apply in the case of the delivery of other goods than in accordance with the contract.

C. Miscellaneous

I. General limitation of liability

1. Any claims not expressly allowed in these Conditions, especially claims for damages arising from the impossibility of performance, default, infringement of contractual accessory obligations, negligence in concluding the contract or tort – even if such claims are connected with Purchaser's warranty rights – shall be excluded insofar as the damage was not caused by wilful or grossly negligent action.
2. All claims against Seller, on whatever legal grounds, shall be barred not later than 6 months after the passing of risk to Purchaser, unless the statutory time limitation is shorter.

II. Severability

Should any provision of these Conditions be held entirely or partly invalid, the remaining provisions shall be severable and remain valid and enforceable. Invalid provisions shall be replaced by such other provisions as conform most closely with the economic purpose of the contract, whilst reasonably safeguarding the interests of both parties.

III. Data protection

It is pointed out to Purchaser that personal data are stored at Kane Magnetics GmbH (Article 26 BDSchG [German data protection law]).