

Standard Sales and Delivery Terms of Kaba GmbH to be used in dealings with enterprises, legal entities governed by public law and special trusts under public law

The delivery of goods and services as well as any independent or dependent warranties for all business relations with enterprises, legal entities governed by public law and special trusts under public law shall be based exclusively on the terms and conditions set forth below, even if they are not explicitly referred to in an individual case. These terms and conditions, in whole or in part, may only be excluded by an explicit written agreement when the individual business transaction is concluded. The standard terms and conditions of the Purchaser, and in particular the purchasing terms, shall not be applicable to the delivery of our goods and services. We shall not be bound by these terms and conditions even if we do not object to them expressly in an individual case, we herewith object to them. Our Standard Sales and Delivery Terms shall be deemed as accepted with the acceptance of our goods or services, at the latest.

1. Scope of Delivery Obligations

1.1. Our offers shall be subject to confirmation even if they are issued on demand of the Purchaser. A legally binding contractual relationship with the Purchaser shall only be constituted once we have confirmed the order in writing, which may also be possible by fax or e-mail transmission or by letters created automatically without signature as far as it is beyond doubt that we are the sender. The same shall apply to any modifications or amendments to the contract. As far as the scope, the type and the time of the delivery of goods or services are concerned, our order confirmation shall be relevant.

1.2. Any documents belonging to a particular offer, such as drawings, data sheets, figures, diagrams etc., shall only have contractual relevance for the goods or services to be delivered if they have explicitly been qualified as binding. The documents shall remain our property, we reserve all rights to them. Without our prior written consent, they must not be disclosed to any third party and they must be returned to us at any time on request.

1.3. We reserve the right to any modifications of design. Our catalogues and all details and information published on the Internet are continually being updated. Any descriptions, illustrations and drawings contained therein shall not be binding and shall not represent any specification of qualities or a statement of guarantees.

1.4. Any release orders must be placed and accepted in due time and with the partial quantities agreed. In case of release orders where term, production batch quantities and release times have not been agreed, we shall be entitled to request a binding definition of the releases 3 months after the date of the order confirmation, at the latest. If the Purchaser does not comply with his purchase obligation within 3 weeks, we shall be entitled to grant him a last additional period of two weeks for doing so and when this additional period has lapsed as well, we shall be entitled to withdraw from the contract or to refuse delivery and claim damages if the further legal conditions for this are fulfilled.

2. Warranties

2.1. All warranties concerning the goods or services to be delivered given before the conclusion of the contract shall only be applicable if they are explicitly confirmed in the contract itself.

2.2. The accuracy of our warranties stated in the contract shall only refer to the quality of the goods at the contract date.

3. Prices

3.1. All prices are quoted in EURO and are net prices. The applicable value added tax shall be charged separately.

3.2. For deliveries within Germany, the prices quoted apply to delivery ex works, without insurance and packaging; for deliveries outside Germany, the prices quoted apply to deliveries free German border or FOB German airport or sea port, including appropriate packaging for export and transport insurance. Neither the costs for installation and/or assembly are included in the prices nor the costs for packaging material in case of deliveries within Germany. The packaging material shall be charged at cost price to the Purchaser. If we are legally obliged to take back the packaging material, the costs for the return transport of the packaging material shall be borne by the Purchaser.

3.3. Surcharges and a recalculation of the agreed remuneration shall be admissible as far as they are necessitated by the circumstances, e.g. material costs, wage increases, an increase of the public charges etc., and if the goods or services are to be provided later than 4 months after the contract date. In case of any other price increases, the Purchaser shall be entitled to withdraw from the contract if the list price has been increased far more than the general costs of living. Any deliveries for subsequent orders that are placed after the date of the price adjustment shall be charged at the new prices without the Purchaser being entitled to withdraw from the contract.

4. Delivery, Preparatory Work of the Purchaser

4.1. The delivery term shall start with the dispatch of the order confirmation but not before all details of the performance of the order have been clarified and not before receipt of an agreed advance payment or provision of material. The delivery term shall be deemed to have been complied with when the delivery item has been dispatched or collected before the expiration of this term or when a ready-for-dispatch note has been issued in cases where the goods could not be dispatched or collected without our being responsible for this.

4.2. In case of force majeure or other events beyond our responsibility that would threaten the smooth processing of the order, in particular delivery delays of our suppliers, disturbances of traffic or operation, industrial disputes, shortage of materials or energy, we shall be entitled to withdraw, entirely or partially, from the contract or to postpone delivery without the Purchaser being entitled to claim damages. The Purchaser may request from us a statement specifying whether we want to withdraw or whether we want to fulfill the contract within an adequate period of time. If we do not make such a statement within two weeks after having been asked in writing to do so, the Purchaser shall be entitled to withdraw from the contract. We shall not be liable for the events or circumstances referred to above even if they occur during an existing delay of delivery.

4.3. In case of a delivery delay for which we are responsible, the Purchaser shall grant us in writing an adequate additional period. Once this period has expired, the Purchaser may withdraw from the contract by written notification if the goods have not been delivered or indicated as being ready for dispatch. The delivery obligations and the delivery terms shall be suspended as long as the Purchaser is in delay with acceptance or any other obligations, in particular with the payment of a not insignificant amount, without our rights from the Purchaser's default being thereby affected. In case of an acceptance delay, the risk of accidental loss or accidental deterioration shall pass to the Purchaser from the date he is in delay. From the date of an acceptance delay, we shall be entitled to request from the Purchaser adequate storage costs in accordance with local custom for storing the goods, at least however € 30 per square meter of storage space for a period of 30 days or part thereof from the date the delay has started or to hand over the goods to a depositary at the Purchaser's costs. In this case, we shall be entitled to refuse to hand over the goods to the Purchaser until our own or any third-party storage costs have been fully paid, without being in default.

4.4. The delivery term originally agreed shall no longer apply if and in so far as the order is modified.

4.5. Adequate partial deliveries as well as deviations from the order quantities (+/- 10 % max.) shall be admissible if the Purchaser can be reasonably expected to accept this and as long as the latter's interests are taken into account.

4.6. The weight and the number of pieces of the goods delivered determined by us shall be decisive for the invoicing.

4.7. The Purchaser, at his own costs, shall provide the necessary constructional and technical prerequisites for an installation and assembly of the delivery item. In particular as regards electrical supply cables, he shall see to it that all safety standards required by law are complied with.

5. Dispatch

5.1. The goods shall be dispatched at the Purchaser's costs from a location to be determined by us.

5.2. Unless the Purchaser has submitted any special requests, we shall choose, at our own discretion, the type and channel of dispatch as well as the packaging material (for deliveries outside Germany). The additional costs for special wishes of the Purchaser shall be borne by the latter. We shall not be obliged to choose the cheapest type of dispatch.

5.3. If the dispatch or the delivery is delayed upon the Purchaser's request, we shall be entitled to set him an adequate period of time for accepting the goods and to demand immediate acceptance as well as a compensation for the damage caused by the delay once this period has lapsed.

6. Terms of Payment, Default in Payment

6.1. Payments shall be made in accordance with the conditions specified in our order confirmation. Payments for deliveries within Germany shall be made within 30 days after receipt of the invoice without any deductions. 30 days after delivery of the invoice, the Purchaser shall be in default without the necessity of a reminder letter. Any additional services, such as documents, tools, labor, services, traveling expenses etc., shall be paid for immediately after receipt of the invoice. Payments for deliveries outside Germany shall always be made by means of an irrevocable confirmed letter of credit.

6.2. Checks shall only be accepted with the usual proviso, bills of exchange only after a special agreement. Discount charges shall be borne by the Purchaser. They shall be paid to us when the bill is negotiated. For all types of payment, the day of performance shall be the day when the amount is at our disposal.

6.3. If a deferment of payment is granted or if the Purchaser is in default with his obligations to pay, he shall be liable to pay interests of 8 percent above the basic interest rate valid at the time from the date the deferment is agreed or from the first day of default. We reserve the right to claim further damages due to the delay.

6.4. If an outstanding payment is not made despite an additional period of time granted by us, we shall be entitled to withdraw from the contract and to claim damages if the Purchaser is at fault. The damages shall amount to 15 % of the list prices (without VAT) of the goods ordered (cancellation costs) unless the Purchaser provides evidence that no loss occurred for us or that the loss is considerably lower than the cancellation costs.

6.5. The Purchaser shall not be entitled to offset payments against any counter claims or rights unless his claims or rights are acknowledged by us, uncontested or final and absolute.

6.6. Even in an ongoing business relationship, we shall be entitled to request immediate settlement of all payments due to us, irrespective of any accepted and credited bills of exchange, if the Purchaser is in default with not insignificant amounts and this not only for a short period of time, or if we gain knowledge of circumstances that give rise to the assumption that payments are threatened and do not receive valuable securities, or if liquidation of the Purchaser is resolved. In addition, we may prohibit the resale or processing of the goods delivered and request that the Purchaser, at his costs, return the goods to us or assign the indirect possession of the goods delivered, and withdraw the authorization to collect claims pursuant to Section 10.7. The Purchaser agrees that we shall be authorized to enter into his premises and to take away the goods delivered.

6.7. Payments shall generally be set off against the oldest invoice that is due for payment.

7. Complaints and Notices of Defect

7.1. Complaints because of incomplete or incorrect delivery or notices of evident defects must be delivered to us in writing immediately, at the latest, however, within 2 weeks after receipt of the goods. Any other defects must be reported to us in writing immediately, at the latest, however, within 2 weeks after they have been detected.

7.2. If we have not received the complaint or notice of defect in due time, any claims of the Purchaser based on defects shall be excluded. In case of defects reported in due time, the Purchaser shall be entitled to the claims based on defects set forth in Section 8.

7.3. In case of damage in transit, the Purchaser must procure an ascertainment of the damage by the railroad company, the postal service or the transport company.

7.4. If a part of the goods delivered is defective, the Purchaser shall not be entitled to reject the entire delivery unless a partial delivery is of no interest to the Purchaser.

8. Warranty for Defects

8.1. Within a warranty period of 12 months, we shall be obliged, at our option, to eliminate any defects or make a replacement delivery if the delivery items are defective. This shall not apply if longer periods are imposed by law, in particular for defects in a building and in goods that have been used in a building according to their customary use and have caused its defectiveness. In case of an elimination of defects, we shall be obliged to bear all expenses, in particular transport, labor and material costs as far as these costs are not increased by the fact that the delivery items have been moved to another location than the place of performance.

8.2. The Purchaser shall grant us the time and opportunity that, in our equitable discretion, is required for the elimination of the defects. Any parts that are replaced shall become our property.

8.3. If the subsequent performance fails, if we let the adequate period granted to us for this purpose expire without making a new delivery or without eliminating the defect, or if subsequent performance is impossible or refused by us, the Purchaser shall be entitled to withdraw from the contract or demand a reduction of the purchase price, the same shall apply to cases where we are unable to provide subsequent performance.

8.4. The warranty shall neither apply to defects and/ or damage due to normal wear and tear nor to damage caused by inappropriate use, handling errors etc. or circumstances that are not provided for in the contract unless the damage is due to our fault.

8.5. Without our consent, warranty claims may not be assigned to any third party.

8.6. We shall not be liable for any defects caused by improper modifications or repairs that are carried out by the Purchaser or a third party.

8.7. Our liability for essential third-party products shall be restricted to the assignment of the warranty claims we are entitled to from the supplier of the third-party product unless satisfaction from the assigned right fails or the assigned claim cannot be enforced for any other reasons.

8.8. Unless otherwise provided below, any further claims of the Purchaser against us, irrespective of the legal cause thereof, shall be excluded, in particular claims for the compensation of a damage that does not exist and/or occur in the goods delivered themselves (e.g. loss of profit, consequential damage or other economic losses; this disclaimer of liability shall not apply if liability is required by law because of deliberate action, gross negligence or a promise of guarantee or if an essential contractual obligation has been violated or in case of injuries to life and limb or health.

In cases of negligent, but not grossly negligent, violation of the contract, our liability shall be restricted to the replacement of the typical foreseeable damage.

8.9. The above provisions shall apply accordingly to the delivery of other goods than those agreed upon in the contract.

9. Liability, Period of Limitation

9.1. The exclusion and the limitations of our liability for damages as set forth in Section 8.8 shall apply accordingly to all cases of our liability for damages due to violation of contractual and non-contractual obligations and tortious act. They shall not apply to claims pursuant to Articles 1 and 4 of the Product Liability Law and to claims due to initial inability to perform or impossibility to perform for which KABA is liable. This disclaimer of liability shall not apply if liability is required by law because of deliberate action, gross negligence or a promise of guarantee or if an essential contractual obligation has been violated or in case of injuries to life and limb or health.

9.2. If our liability for damages is excluded or restricted, this shall apply in the same way to the personal liability of our executive bodies, employees or authorized agents.

9.3. The claims of the Purchaser referred to in Para. 1 shall become time-barred after 24 months, calculated from the end of the year of the passing of the risk. If the statutory period of limitation is shorter than 24 months, this statutory period shall be applicable to the relevant claims on the part of the Purchaser. This reduction of the period of limitation shall not apply to claims for reasons of tortious act or product liability.

9.4. The statutory provisions concerning the burden of proof shall remain unaffected.

10. Retention of Title

10.1. All goods delivered (goods subject to retention of title) shall remain our property until all and any claims to which we are entitled because of the business relationship, in particular the outstanding balance claims, have been fully settled by the Purchaser. This shall also apply when payments are made on specially designated claims.

10.2. Until this permission is revoked, the Purchaser shall be entitled to combine or blend the goods subject to retention of title with other goods in the framework of his regular business operations. In such a case, we shall be entitled to a co-ownership share in the new product proportional to the value of the invoice for the goods subject to retention of title as against the invoice value of the other goods used. If our ownership lapses due to a combination or blending of goods, the Purchaser herewith agrees to assign to us his property rights to the new articles or objects in the corresponding ratio and to keep them in custody for us, free of charge. The resulting co-ownership rights shall be considered as goods subject to retention of title within the meaning of Section 10.1. We accept the assignment.

10.3. Until this permission is revoked, the Purchaser may sell the goods subject to retention of title in the normal course of business at his terms and conditions only if these contain a comprehensive stipulation concerning the retention of title in accordance with the provisions set forth herein, provided that the claims from the resale pass to us pursuant to Sections 10.4 to 10.6. hereof. The Purchaser shall not be permitted to pledge the goods subject to retention of title or to transfer them by way of security.

10.4. Any claims of the Purchaser from reselling the goods subject to retention of title are herewith assigned to us. They serve as security to the same extent as the goods subject to retention of title. We herewith accept the assignment.

10.5. If the Purchaser sells the goods subject to retention of title together with other goods not obtained from us, the assignment of claims from the resale shall only correspond to the amount of the invoice value of the goods subject to retention of title that are sold in the individual case. When goods in which we have a co-ownership share pursuant to Section 10.2. are sold, the claims shall be deemed to have been assigned corresponding to the value of this co-ownership shares.

10.6. If the Purchaser uses the goods subject to retention of title for the execution of a contract for work and services or a contract for work and materials, Sections 10.3. to 10.5. shall apply accordingly to the claims from this contract.

10.7. The Purchaser shall be entitled to collect claims from sales according to Sections 10.3. to 10.6. until this permission is revoked by us, which shall be admissible at any time. Any other assignment of the claims by the Purchaser shall not be permitted.

10.8. We shall be entitled ipso jure to revoke the authorization to sell or process the goods or to collect claims if we gain knowledge of a violation of the provisions set forth in Section 10.3. as well as under the conditions of Section 6.5. In case of such a revocation, the Purchaser shall be obliged ipso jure to inform his customers immediately about this assignment to us - unless we do it ourselves - and to provide any information and documents required for the collection of claims to us. Upon receipt of the revocation, the Purchaser's right of possession of the goods subject to retention of title shall expire.

10.9. Our retention of title implies that, once all our claims have been fully paid, the title to the goods subject to retention of title shall ipso jure pass to the Purchaser and he shall be entitled to the assigned claims without any restrictions. If the value of the existing securities exceeds the secured claims by more than 20% in total, we shall be obliged to release securities accordingly, at our option, on request of the Purchaser. The assessment of securities shall be based on their realizable value.

10.10. The Purchaser shall inform us immediately about any seizure or any other threat or impairment to our ownership rights or claims by a third party and provide the bailiff's return or any other documents to us and he shall do anything within his power to protect our rights.

10.11. We shall be entitled at any time to enter into the warehouse and the business premises of the Purchaser in order to inspect the goods subject to retention of title, and, in case of a revocation of the authorizations pursuant to Section 10.8, to remove, separate or label the goods. At our request, the Purchaser shall provide any relevant information concerning the goods subject to retention of title and hand over the related documents.

10.12. The Purchaser, at his costs, shall be obliged to provide comprehensive insurance coverage for the goods subject to retention of title in our favor and to supply evidence thereof on request. He herewith assigns all claims from these insurances to us; we accept the assignment.

10.13. The assertion of our retention of title or the revocation of the authorizations granted herein shall not be considered as a withdrawal from the contract. We shall then be entitled to take possession of the goods subject to retention of title ourselves and to exploit them in the best possible way by means of a private sale or an auction, without prejudice to the payment obligations or any other duties of the Purchaser. The proceeds thus realized shall be appropriated to the Purchaser's outstanding payments after the costs have been deducted. Should there be any surplus, this shall be paid to the Purchaser.

10.14. If the retention of title or the assignment is not effective under the law to which the goods belong, the corresponding security valid in this field of law shall be deemed as agreed. If the co-operation of the Purchaser is required in this context, he shall take any measures that are necessary for the constitution and preservation of such rights.

11. Special Provisions for Software

11.1. In our relationship with the Purchaser, we shall be entitled to all copyrights for the software created by us, in particular within the meaning of Articles 69a to 69g of the German Copyright Act.

11.2. If the Purchaser uses the hotline services provided by us, this shall be charged with the usual fees according to our price list - except in cases where he raises a claim because of a software defect.

12. Miscellaneous Provisions

12.1. These Standard Sales and Delivery Terms are available for download on our Internet pages <http://www.kaba.com/workforce-management>.

12.2. The sole place of performance and jurisdiction for both parts of the contract with regard to any rights and duties from or in connection with the contracts concluded with us, including all related statutory claims or rights, shall be Villingen-Schwenningen; this shall also apply to any bills of exchange we accepted or any checks we received. We shall also be entitled to sue the Purchaser at his usual place of jurisdiction.

12.3. All legal relations between the Purchaser and us shall be governed exclusively by German law, the CISG being excluded.

12.4. We shall store the Purchaser's data for the purposes of the contractual relationship.

12.5. Should one or several of the provisions of these terms and conditions or the other contractual provisions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provisions shall be reinterpreted in such a way that the legal and economic purpose intended with them is achieved to the greatest possible extent. The same shall apply if, during the execution of the Agreement, a gap in the Agreement requiring an amendment becomes evident. The contracting parties agree to replace the ineffective provisions immediately by legally valid provisions or to close the contractual gap.