

# KIESELSTEIN®

## WIRE SOLUTIONS

### Standard conditions of supply

#### I. Validity

The following standard conditions of sale and supply shall apply, unless otherwise agreed in writing in an individual case, to all current and future transactions between us and the customer. This also applies if we no longer separately refer to the application of these standard conditions of sale and supply. If the customer has terms of business – of whatever type – which are at variance with these standard conditions of sale and supply, we expressly reject them here, and those terms of business will not even become part of the contract in the event that we do not object to them. The written consent of the member of our staff who is authorised to deal with special agreements is required for such agreements.

#### II. Conclusion of a contract

1. We are bound by the offer we submit for 90 days, unless we are entitled to amend it in accordance with these standard conditions of supply or the contractual agreement. We reserve the right to only partially accept offers made to us and/or orders given to us. Our confirmation of order is authoritative here. The latter shall apply provided it is not contradicted within three working days.
2. Side agreements and amendments must be confirmed in writing by us.
3. Legally significant declarations and notices, which the customer must make or give to us or to third parties, must be made in writing.

#### III. Subject-matter of supply

The descriptions of goods and performance in relation to items to be supplied by us are only binding on us to the extent that they are expressly confirmed in writing by us. In the event of doubt, the descriptions in our written confirmation shall apply. We reserve the right to make creative and structural changes which we consider to be appropriate on the basis of technical progress or in accordance with our discretion.

#### IV. Price

1. Prices apply ex works including loading at the factory but excluding packaging and unloading. Turnover tax at the applicable statutory level shall be added to the prices in Germany.
2. We are entitled to make price adjustments during the period for which the offer is binding in accordance with Clause II(1) of our standard conditions of supply and also after the conclusion of the contract, provided and to the extent that our suppliers increase their prices charged to us or where there is an increase in salary costs at our company. The price adjustment must be made applying the reasonable exercise of discretion (Paragraph 315 of the Bürgerliches Gesetzbuch, the German Civil Code, 'BGB') and may be reviewed by a court.

#### V. Payment

1. Payment must be made on account without any deduction, namely:  
40% deposit after receipt of the order confirmation  
60% as soon as the customer is notified of readiness to deliver.
2. Our invoices must be paid post-paid and free of charges within 14 days of the invoice date (due date for payment). In the event of payment after the due date for payment, we reserve the right to charge late payment interest in the sum of 8 % above the base rate of the Deutsche Bundesbank. The statutory provisions shall apply to claims for default interest and/or claims for losses caused by default. The right to claim more extensive losses caused by default shall not be affected by this provision. We reserve the right to allocate payments received for the purposes of settling the oldest account receivable plus the default interest which has accrued on it together with costs incurred.
3. If the customer is in arrears in relation to a payment which is due or if we have justified doubts about the customer's creditworthiness, then we may demand cash in advance in relation to supplies which are still outstanding and cease to allow a credit period. In addition, we may, in whole or in part, withdraw from all existing contracts. The delivery period for all goods which have not yet been delivered shall be extended until payment is received in full. We shall also be entitled to demand security for our accounts receivable at a level which we consider to be sufficient according to our discretion. If the customer does not provide such security we may immediately accelerate the maturity of all our accounts receivable.
4. The customer shall only be entitled to set-off claims against our claims for payment or to exercise rights of

retention if its claims against us are undisputed or have been finally determined by a court and are non-appealable.

### **VI. Default**

In the absence of special agreements, the customer shall be in default 10 days after the expiry of the credit period specified by us.

### **VII. Delivery period**

1. We constantly strive to comply with the delivery periods and dates stated in an order. Statements we make as to delivery and performance periods are essentially only guidelines and consequently are not binding on us. This shall not apply if we have expressly confirmed these dates as being binding delivery dates. Compliance with these binding delivery dates by us requires that all commercial and technical issues between the contracting parties have been clarified and the customer has fulfilled all duties incumbent upon it, such as, for example, procuring the necessary certificates or approvals from authorities or the payment of a deposit. If this is not the case, then the delivery period shall be extended as appropriate. Three weeks after such a guide date has not been met, the customer may set us an appropriate delivery deadline in writing. Only after this deadline has expired, shall the customer be entitled to set us an additional period of time with an indication that it will refuse to accept the goods after the expiry of the additional period of time.
2. The customer shall only have claims for compensation in respect of delay in delivery if our statutory representatives or managerial staff caused the delay intentionally or as a result of gross negligence. In the event of force majeure, industrial action, actions taken by authorities, operational breakdown which is not due to our fault or traffic hold-ups, fire, flood, water damage, lack of energy supply or lack of raw materials, the delivery period and/or the additional period of time shall be extended at once for the duration of the interruption concerned.
3. Compliance with a binding delivery date stated by us shall be subject to correct and punctual delivery to us by our suppliers. We will inform you as soon as possible of delays of this type which become apparent.
4. The delivery period is complied with if before it expires the supplied item has left the supplier's factory or notification of readiness to dispatch has been given. If it is necessary for the customer to accept the supplied item, except where the refusal to accept delivery can be justified, the date on which delivery is accepted is decisive, or alternatively, notification of readiness to accept delivery.
5. If the failure to comply with the delivery period is attributable to force majeure, industrial disputes or other events which are outside the supplier's sphere of influence, then the delivery period shall be extended as appropriate. The supplier shall notify the customer as soon as possible about the start and the end of such circumstances.

### **VIII. Packaging, supply, dispatch, passing of risk, insurance and acceptance of the goods**

1. The choice of packaging material and the packaging shall be made at our discretion. The supply shall be made on the basis of Incoterms 2000 EXW at our production plant in Erzbergerstraße 3, 09116 Chemnitz. The risk shall pass to the customer regardless of whether we invoice the customer for the costs of the transportation and regardless of whether we have appointed the carrier. If we appoint the carrier, then the selection of the carrier shall be made to the best of our judgment.
2. At the customer's cost, the supplier undertakes to take out the insurance which the customer requests.
3. Part deliveries and advance deliveries are permitted provided this is reasonable for the customer.
4. The customer must take delivery of goods which have been delivered even if they have minor defects. The goods which have been delivered must be accepted immediately on delivery. If this does not happen, after the expiry of an additional period of one week set for acceptance, we can, at our option, either demand the immediate payment of the purchase price or withdraw from the contract or demand damages.
5. The customer must only acknowledge receipt of the goods on the delivery notes accompanying the goods or respectively on the shipping documents of parcel services or other transport businesses, with a stamp, date of receipt and signature or, where available, electronically.

**IX. Retention of title**

1. The goods shall remain our property until full payment of all of our accounts arising from the business relationship with the customer, including ones arising in the future and/or until the encashment of all means of payment connected with the supply of the goods. Means of payment are encashed when they are irrevocably credited to our account. For running accounts, the retention of title shall be deemed to be security for our claim for the balance.
2. Whilst it is a trader, the customer shall be authorised to sell our property in the ordinary course of business, however only subject to its own retention of title. This authority shall expire if the customer defaults in making a payment arising from the business relationship with us or if the customer agrees with his clients that the account receivable is not assignable. Goods which are subject to our title may not be pledged or transferred by way of security. The customer's accounts receivable arising from supplies to third parties are assigned to us now with all ancillary rights, regardless of whether our goods are supplied on their own or together with other items. If they are supplied with other items, the account receivable shall be assigned to us in the amount of the proportion of the value of our goods. If an agreement on a current account has been reached between the customer and its client, the balance in favour of the customer at any given time is hereby assigned to us up to the amount of our outstanding invoices. In the event of a re-sale, the customer shall, at any time and at our request, be obliged to give us the name and address of the client; the claims arising from bills of exchange accepted by the customer on account of or in lieu of payment are hereby assigned to us now. The customer keeping the bill of exchange in safe custody for us shall be substituted for the surrender of the bill of exchange. The accounts receivable which are assigned to us serve as security for all our claims, including those which arise in the future.
3. The retention of title also covers the full value of products which are created by means of processing, mixing or combining our goods. Work on the goods and processing of them is always carried out for us and subject to the exclusion of those working on or processing the goods acquiring title under Paragraph 950 of the BGB, but without putting us under any obligation. If the goods are mixed, combined or processed with other items, then provided that we have not become co-owner of the new object anyway according to the proportion of the value of the goods subject to the retention of title (cost price) to the value of the other goods at the time of the mixing, combining or processing, the customer now hereby assigns to us its ownership or co-ownership rights and its right of possession in relation to the new entity and shall keep it in safe custody for us.
4. In the event of insolvency proceedings, the customer shall be obliged to make the goods distinguishable to any third party as our property by labelling them or by some other means. In the event that the customer applies for insolvency proceedings itself, this must be done prior to making the application, in the event of a creditor's application it must be done immediately after the hearing of the debtor (the customer). The same applies in relation to third parties' steps to levy execution on the goods by seizing them.  
If such an event occurs, we must be informed immediately by telephone and then in writing. While we still have accounts receivable due to us, we are, at any time, entitled to demand from the customer information as to which goods which are subject to retention of title are still in its possession and where they are located. In addition, the customer shall be obliged to notify us immediately if the place where the goods are kept in safe custody is changed, giving details of the new place where there are being kept in safe custody. We are also entitled to inspect these goods at any time at the place where they are kept. In the event that the customer's conduct is in breach of contract, in particular where the customer defaults on payment, we are entitled, after a demand for payment, to withdraw from the contract. The customer shall then be obliged to deliver up the goods. Due to the retention of title we can only demand the return of the item supplied if we have withdrawn from the contract. The right to demand damages for failure to fulfil the terms of the contract shall be unaffected by the withdrawal from the contract. However, we will try to sell the goods taken back at the best possible price. The sale proceeds will be deducted from our claim for damages.
5. In all cases, we shall be entitled to claim our costs for taking the goods back as a lump sum of 10 % of the net invoice sum in respect of the goods taken back and a further 10 % as lump sum damages, without prejudice to our right to prove higher costs and/or higher losses. The customer retains the right to prove a lower actual decrease in value and lower costs for taking the goods back.
6. The customer shall bear the risk in respect of the goods supplied by us and shall be obliged to keep them carefully in safe custody and to insure them adequately in respect of loss (theft, water, fire e.t.c.). It hereby assigns to us in advance the claim against the insurer in the event of a loss, being a first-ranking portion in the sum of the purchase price of the goods supplied by us which are subject to the retention of title.  
We shall be obliged, at the customer's request, to transfer the title which we have retained or to which we have a right or other means of security, if, and to the extent that our security exceeds the total amount of our claim at any given time by 50 %.

## **X. Duty to notify defects, claims for defects and packaging**

1. Immediately after delivery, the customer must carefully inspect the goods and notify us fully about any defect. Differences in the quantity supplied should be indorsed on the delivery notes or shipping documents (see Clause VIII(6)). Defects in the packaging shall be disregarded provided that they do not detrimentally affect the goods' fitness for purpose. The notice of defect must be given immediately in writing. Later notices of defects which could have been discovered on careful inspection on receipt of the goods shall be disregarded and shall not establish any claims for the customer. Defects which could not have been discovered despite careful examination must be notified to us in writing immediately on discovery. In these circumstances too, failure to immediately give notice of the defect leads to the notice of defect being disregarded and the loss of all claims. Our employees are not authorised to accept notices of defects made orally or by telephone. Claims for defects do not exist in relation to merely immaterial deviations from the agreed characteristics or in relation to merely immaterial damage to the goods' fitness for use.
2. If the contract is based on the performance of works and services by us (a contract for works and services: Paragraphs 631 et seq. of the BGB apply), the performance of the contract shall be deemed to be accepted, unless otherwise agreed, on delivery to the customer unless the customer gives notice of defined defects in accordance with paragraph 1 above.
3. Where there are justified notices of defects we shall perform the warranty obligations on the basis of the statutory provisions. In each case we shall have the right to choose between remedying the defect and re-supplying the goods. On performing the warranty obligations, the title to the defective item is transferred to us. Recourse is excluded in the event that the customer's warranty obligation is based on a customer warranty which exceeds the statutory claims for defects. The limitation period commences on transfer to the customer. In the event of supplementary performance the limitation period shall not cease to run and shall not be interrupted.
4. Any more extensive claims for damages due to defects shall be governed by Clause XI (Extent of liability) of these standard conditions of sale and supply.
5. If supplementary performance fails, the customer shall have the right to a reduction in the purchase price or to withdraw from the contract.
6. No responsibility will be assumed in the following circumstances in particular:  
Inappropriate or improper use, defective assembly and/or putting into operation by the customer or third parties, normal wear and tear, parts subject to wear and tear, defective or negligent handling, improper maintenance, inappropriate equipment, defective construction work, inappropriate construction ground, chemical, electrochemical or electrical influences – to the extent that they are not the responsibility of the supplier.
7. If the customer or a third party rectifies defects improperly, the supplier shall not be liable for the consequences arising from this. The same applies to changes to the item supplied which are carried out without the consent of the supplier.
8. If the contract is based on the supply of spare parts for a product which was not supplied by the supplier, the supplier shall not assume any liability for characteristics which go beyond the spare part itself, if the spare part has been supplied as ordered. However, the supplier is liable where the customer has requested a technical check.

## **XI. Extent of liability**

1. Claims for damages and for reimbursement of expenses by the customer against us, our organs, statutory representatives and/or vicarious agents (hereinafter: 'claims for damages'), for whatever reason, in particular due to the breach of the relationship under the law of obligations and/or arising from tort are excluded. That does not apply where intention or gross negligence is imputed to us, our organs, statutory representatives and/or vicarious agents and/or where fundamental contractual duties are breached. In the event that there is liability for the breach of fundamental contractual duties, the extent of the liability shall be limited to the reimbursement of typically foreseeable loss if only ordinary negligence is imputed to us, our organs, statutory representatives and/or vicarious agents, although in relation to ordinary vicarious agents this limitation of the extent of liability shall apply for any type of negligence.
2. The limitations on liability in subparagraph 1 above shall not apply in the event that our liability is mandatory, e.g. according to the Produkthaftungsgesetz (Law on product liability) and/or in the event of death, personal injury and/or harm to health.

## **XII. Time-bar**

All of the customer's claims - on whatever legal grounds – shall become time-barred 12 months from delivery. The statutory limitation periods shall apply to claims for compensation in accordance with Clause XI. They also apply to defects in a structure or to items supplied which have been used for a structure in accordance with the usual means of using them and which have caused that structure to be defective.

## **XIII. Software use**

1. Where the scope of supply includes software, the customer is granted a non-exclusive right to use the software supplied including the related documentation. It is provided for use on the item supplied for which it is intended. The use of the software on more than one system is prohibited.
2. The customer may only reproduce, revise, translate or convert the software from the object code into the source code to the extent that this is permitted by statute (Paragraphs 69 a et seq. of the Urhebergesetz, Law on copyright, 'UrhG'). The customer undertakes not to remove details of the manufacturer – in particular copyright notices – or to amend them without the prior consent of the supplier.
3. All other rights in the software and the documentation including the copies remain with the supplier and/or with the software suppliers. The granting of sub-licences is not permitted.
4. In other respects the licence terms forwarded shall apply.

## **XIV. Withdrawal from the contract**

1. In the event that supplies due to us from our suppliers are overdue, incorrect or not on time, we shall be entitled to withdraw from the contract.
2. We shall be entitled to withdraw from the contract if the customer has made an application for the commencement of insolvency proceedings in respect of its assets, has made a statutory declaration under Paragraph 807 of the Zivilprozessordnung (German Code of Civil Procedure, 'ZPO') or insolvency proceedings have been commenced in respect of its assets or such commencement has been refused due to a lack of assets.

## **XV. Place of performance, place of jurisdiction and applicable law**

1. The exclusive place of performance and the exclusive place of jurisdiction for all present and future claims arising out of the business relationship with us, including claims under bills of exchange and cheques, shall be Chemnitz for both parties.
2. German law shall apply exclusively to all agreements and legally significant acts, subject to the exclusion of the Uniform Laws on the International Sale of Goods.

## **XVI. Side agreements**

Side agreements shall only be valid if they are confirmed in writing by us. The same applies to an amendment of these standard conditions of sale and supply, in particular an amendment to this provision.

## **XVII. Rule of interpretation**

In the event that one or more provisions of these standard conditions of sale and supply are or become invalid, the remaining provisions shall be unaffected. Instead, the parties shall be obliged to replace the invalid provision with a provision which comes as close as possible to the meaning expressed in these standard conditions of sale and supply.

## **XVIII. Data protection**

The customer is referred to the fact that if necessary personal data will be saved and processed by our organisation in accordance with the provisions of the Bundesdatenschutzgesetz (Federal Law on data protection, 'BDSG').