



General Terms and Conditions of Sale of KLEBCHÉMIE M. G. Becker GmbH & Co. KG

§ 1 General – Scope

1. Subject to deviating written agreements, the following general terms and conditions of sale valid at the time an order is placed (hereinafter “Terms and Conditions”) shall apply to all business transactions, including all, even future, contracts, deliveries and other services, between **KLEBCHÉMIE M. G. Becker GmbH & Co. KG** (hereinafter “Company”) and non-consumers as defined in § 310 sub-section 1 of the German Civil Code (hereinafter “Customer”). Customer terms and conditions which conflict or deviate from the Terms and Conditions shall only be accepted if Company has expressly agreed to their validity in writing. Company’s Terms and Conditions shall apply even if Company carries out unconditional delivery to Customer, despite being aware that the terms and conditions of the Customer conflict or deviate from the Terms and Conditions.
2. All agreements made between Company and Customer in order to fulfil contracts originating from Company’s order confirmation, or in any other way, are set out in writing in the Terms and Conditions and in the order confirmation.

§ 2 Quotation – Contract Conclusion, Quotation Conditions

1. Unless otherwise specified, Company’s quotations are binding offers for the conclusion of a purchase contract. Customer can accept the offer by telephone, in writing, by fax or by e-mail.
2. Company reserves ownership and copyrights to all the documents it provides. This shall also apply to written documents designated as “confidential”. Customer must have Company’s express written consent before publishing confidential information or forwarding to third parties.

§ 3 Prices – Payment Terms

1. Unless the order confirmation specifies otherwise, Company prices are “free carrier, FCA, 76356 Weingarten, Max-Becker-Str. 4 according to INCOTERMS 2010”, including packaging. If, in the case of sales specified as “freight or carriage paid” or “duty paid”, the freight and customs duties are increased after conclusion of the sales contract, these additional costs shall be borne by Customer.
2. Company’s prices are net prices in EURO and exclude the value added tax amount valid on the day of invoicing. This amount shall be stated separately on the invoice.
3. Unless otherwise specified in the order confirmation, the net purchase price shall be due and payable (without deduction) within 30 days of the date of the invoice. Payments shall be made in Euro, without any deductions and free of costs and charges, to the bank account specified by Company on the invoice. Unrestricted crediting to the bank account shall be decisive for punctuality of the invoice. The legal provisions shall apply in the event of default in payment.
4. Customer shall only be entitled to offset payments, if its claims are legally binding or have been acknowledged by Company. In addition, Customer shall only be entitled to withhold a payment if its counterclaim is based on the same contractual relationship.

§ 4 Cooperation Duties, Delivery Time, Transfer of Risk

1. Company’s compliance with its delivery obligations is subject to Customer’s timely and proper compliance with its cooperation duties, in particular fulfilment of its requests to obtain export approvals or transportation of hazardous substances. Company reserves the right to the plea of a non-performed contract. If Customer defaults on acceptance of a delivery or culpably breaches other cooperation duties, Company shall be entitled to demand reimbursement of the damage incurred by it to this extent, including all and any additional expenditure. Company reserves the right to make further claims.
2. Company shall be entitled to fulfil contractual duties after the planned delivery date provided that Customer is informed of the exceeded deadline and has been notified of the timeframe for subsequent fulfilment, unless subsequent performance cannot be reasonably accepted by Customer or Customer objects to the offer of subsequent fulfilment within a suitable timeframe. In the event of subsequent fulfilment, Company shall reimburse Customer’s additional expenditure proven to be necessary as a consequence of the exceeded deadline, to the extent that the Company is responsible for such damage according to the regulations of the Terms and Conditions.
3. If sales agreements stipulate the delivery of certain quantities during an agreed period of time, this is subject to the condition that the instalments are distributed evenly across the agreed completion period. The parties shall agree fixed delivery dates to regulate this. If the total quantity is not ordered within the contractually planned timeframe, Company’s duty to deliver shall expire. Company shall reserve the right to invoice the goods not ordered by the last day of the agreed completion period, in breach of the contract, and to request payment.
4. For sales according to samples, Company shall merely guarantee that these are correct samples, no guarantee is given of any kind of suitability for particular applications. The weights determined after production (on the label) or after weighing of tank deliveries are decisive for invoicing.
5. The risk of destruction or deterioration of the ordered goods shall pass to Customer upon delivery of the goods. If dispatch is postponed upon Customer’s request or if the Customer is responsible for a delay of dispatch, risk shall transfer to Customer from the day of actual delivery to Customer. If Customer defaults on acceptance of delivery or breaches other cooperation duties, also as defined in sub-section 1, risk of accidental destruction or deterioration of the goods purchased shall pass to Customer at the time of default.

§ 5 Return of Packaging, Transport Insurance

1. Packaging is included in the sales price.
2. Return of packaging material shall be based on the directives of the German Packaging Ordinance.
3. In the event of transport damage and external impairments of the packaging, in particular in any kind of deformation of the packaging, Customer shall have it confirmed in writing by the transport company upon acceptance and shall state this on the waybill. Until confirmation, no alterations shall be made to the packaging and Company shall be informed without delay. A breach of this duty can lead to a loss of warranty.

§ 6 Liability for Defects

1. Customer’s claims concerning defects shall require that it has properly complied with its obligation to examine and provide notification of defects according to § 377 German Commercial Code. Complaints must be made without delay and in writing before the goods are provided for regular processing. A sample of the rejected goods must be sent to Company for each complaint. Resale and processing after a complaint are not permitted until Company issues a release.
2. If the purchased goods are defective, Company shall have the option to remedy the defect or to deliver new goods free of defects. In the event Company opts to remedy the defects, Company is obliged to bear all the expenditure necessary for the purpose of remedying the defects, in particular transport, travel, work and material costs, provided that the costs are not increased by the fact that the purchased goods have been moved to a place other than the place of delivery.
3. If subsequent fulfilment fails, Customer shall have the option to demand termination of the contract or a price reduction.
4. Customer can only terminate the contract within the framework of the statutory provisions if Company is responsible for the delay in delivery. No change in the onus of proof to Customer’s disadvantage is associated with the preceding regulations.
5. Company shall also be liable according to the legal provisions, provided that the defect is based on its deliberate or grossly negligent breach of contract or on a culpable breach of a material contractual obligation; fault of Company’s representatives or vicarious agents shall be assigned to Company.
6. Liability for damages arising from culpable injury of life, limb or health shall likewise remain unlimited; this shall also apply to mandatory liability in accordance with the Product Liability Act.
7. If Customer is entitled to damages, Company’s liability shall be limited to the foreseeable damage typically occurring, provided that it is not based on one of the instances defined in § 6 sections 5 and 6.
8. Cases of force majeure and unforeseeable or unusual events that are not preventable in normal circumstances with the due care of a prudent businessperson shall entitle Company to postpone the delivery for the duration of the hindrance and a reasonable start-up period following the termination of the hindrance. Such events include in particular mobilisation, war, unrest, strikes, lock-outs, limitation and lack of raw and operating materials as well as unforeseeable disturbances in operation and delivery with our suppliers.

9. Defect claims cease to be enforceable after 12 months, starting from transfer of risk, provided that nothing to the contrary has been prescribed by law.
10. In the event of recovery from supplier according to §§ 478, 479 of the German Civil Code, the time limit shall remain unaffected; it shall be five years starting from delivery of the defective goods.
11. In the event of an unjustified claim, Company shall be entitled to charge to Customer a lump sum of € 150.00. Customer shall be allowed to prove that lower or no damage has occurred. The lump-sum shall then be reduced accordingly. In any case, Company shall be entitled to prove greater damage.

§ 7 Retention of Title

1. The supplied goods shall remain Company’s property until they are paid in full. For goods which Customer purchases from Company in the course of a current business relationship, Company reserves ownership of all supplied goods until all outstanding debt due from Customer from the business relationship, including debts resulting from contracts executed in the future, simultaneously or at a later date, have been settled. This shall also apply if any or all of Company’s receivables have been included in a current account and the balance has been struck and acknowledged.
2. Customer shall be entitled to resell the conditional goods in the ordinary course of business. It here and now assigns to Company all of its receivables resulting from the resale in the amount of the final invoice total (including value added tax), regardless of whether the purchased goods have been resold without or after further processing.
3. Customer shall be entitled to collect the receivables even after assignment. Company’s entitlement to collect the receivables themselves shall remain unaffected; however, Company agrees not to collect the receivables as long as Customer properly complies with its payment and other obligations, in particular does not fall into arrears of payment, has not initiated an application for composition or insolvency proceedings or have not ceased to make payments. Company can demand that Customer discloses the assigned receivables and their debtors, gives all information necessary for collection, hands over the pertinent documents and notifies the debtors of an assignment.
4. If Customer is in breach of contract, in particular in arrears in payment, Company shall be entitled to repossess purchased goods. Company’s repossession of purchased goods does not constitute its termination of the contract, unless it has expressly declared it in writing. Seizure of the purchased goods by Company shall always mean withdrawal from the contract. After taking back the purchased goods, Company shall be entitled to their utilization; the revenue minus any reasonable costs for utilization shall offset the Customer’s liabilities.
5. Customer shall treat the purchased goods carefully; in particular, it shall insure them adequately against fire/water damage and theft at its own expense, with the insured sum being adequate to cover the replacement value.
6. In the event of seizures and other interventions by third parties, Customer shall notify Company in writing without delay, so that Company can initiate proceedings pursuant to § 771 Code of Civil Proceedings. If the third party is unable to reimburse Company for the judicial and extra-judicial costs of initiating proceedings according to § 771 Code of Civil Proceedings, Customer shall be liable for the losses suffered by Company.
7. Processing or modification of the purchased goods by Customer is always done as processor on Company’s behalf. If the purchased goods are processed with other goods not belonging to Company, Company shall acquire co-ownership of the new item in proportion to the value of the purchased goods (final invoice amount including VAT) to the other processed items at the time of processing. For items originating through processing, the same shall apply as for the conditional delivery of goods.
8. If the purchased goods are inseparably blended with other objects not belonging to Company, Company shall acquire co-ownership to the new item in proportion to the value of the purchased goods (final invoice amount including VAT) to the other blended objects at the time of blending. If blending is done in such a way that Customer’s object is to be regarded as the main object, it shall be deemed agreed that Customer assigns proportional co-ownership to Company.
9. To secure Company’s receivables from Customer, the latter shall also assign the receivables due to it from a third party from the blending of the purchased goods with a real property to Company.
10. Upon request from Customer, Company agrees to release the securities due to it, provided that the realizable value of its securities exceeds the receivables to be secured by more than 10%; the Company shall select the securities to be released. The assignment shall expire as soon as all Customer’s debts have been settled.

§ 8 Application Information

1. Company’s technical application advice, instructions for use etc. are based on practical and scientific experience. They are however non-binding and shall not release Customer from the obligation to check the suitability of the goods for the intended purpose and proceed by conducting their own preliminary adhesion and bonding tests.
2. Even if Company provides technical application support to Customer, Customer shall assume risk of the outcome of its work. All and any claims of Customer against Company pursuant to § 6 shall not be excluded as a result.

§ 9 Data Protection

In order to be able to guarantee fast and error-free processing of Customer’s order, Customer’s data (name, title, academic degrees and address) are stored in Company’s electronic data processing system. Treatment of the personal data provided shall be in harmony with the provisions of the Federal Data Protection Act as well as the Telemedia Act. Customer’s personal data shall only be forwarded to third parties for the purpose of handling of the order (e.g. to delivery companies). To the extent that Company makes advance payments, Company shall, if applicable, obtain creditworthiness information from the SCHUFA Holding AG, Kormoranweg 5, 65201 Wiesbaden, to attend to Company’s justified interests. Sensitive Customer matters shall be taken into account pursuant to statutory directives. Company shall use the data provided by Customer for performance and handling of Customer’s order. If Customer registers for the newsletter, Customer’s e-mail address will, with Customer’s consent, be used for Company’s own advertising purposes until Customer de-registers from the newsletter. Naturally, Company treats Customer’s personal data confidentially, it is not utilized or forwarded over and above the scope regulated here. According to the Federal Data Protection Act, Customer has the right to receive information free of charge about its stored data and, if applicable, the right to correction, blockage or deletion of this data. Company stores the content of Customer’s contract and sends Customer the order data and its General Terms and Conditions of Sale by e-mail. Customer can also review Company’s General Terms and Conditions of Sale at any time on its homepage.

§ 10 Place of Jurisdiction - Place of Fulfilment

1. Provided Customer is a business person, legal entity under public law or special fund under public law, Karlsruhe (Germany) shall be the place of jurisdiction; Company shall however be entitled to sue Customer at the court of its place of residence.
2. For all rights and duties resulting from the transaction concluded with Customer, Weingarten/Baden is agreed place of performance for both parties.
3. If trade clauses according to the International Commercial Terms (INCOTERMS) have been agreed, INCOTERMS 2010 shall apply.
4. The Law of the Federal Republic of Germany shall apply, ruling out UN purchase law (DSG).
5. If one or more of the above conditions is/are or become(s) ineffective or contain(s) a loophole, this shall not affect the validity of the remaining provisions. In such an event, the contracting parties agree to negotiate with the objective of agreeing on replacement of the ineffective provision with a legally effective provision that best reflects the intended commercial purpose or which the parties would have intended according to the intent and purpose of the provision if they had considered this point.