

General Terms and Conditions (AGB)

1. General; scope of application; contractual agreements

- 1.1 Our deliveries, services and offers are exclusively subject to these terms and conditions. We do not recognise any terms and conditions of the customer or purchaser that conflict with or deviate from our terms and conditions. Our terms and conditions of business shall also apply if we carry out the delivery to the customer without reservation having knowledge of the terms and conditions of business which are contrary to or deviate from our terms and conditions of sale. Acceptance of our delivery or service without objection shall be deemed to be acceptance of our terms and conditions of business.
- 1.2 Our terms and conditions shall also apply to all future business transactions, even if they are not expressly agreed on again.
- 1.3 Our terms and conditions of business shall only apply vis-à-vis businesses in terms of § 310 paragraph 1 BGB (German Civil Code).
- 1.4 The agreements made upon entering ~~into~~ the contract, including any representations, promises and ancillary agreements, are only effective if they are set out in writing in the contract. Amendments or supplements shall always require our express written confirmation. The waiver of this requirement of form can also only be declared in writing.

2. Offers; documents; delivery and performance; delivery time; delivery quantity; debtor's delay; packaging

- 2.1 Our offers are not binding. Orders are only binding for us if we confirm them in writing with reference to the offer or carry out the delivery directly.
- 2.2 We can accept offers directed towards us within 14 days of receipt.
- 2.3 Delivery dates stated by us are non-binding unless we have expressly confirmed them as binding in writing. The beginning of the delivery period confirmed by us presupposes that all technical issues have been clarified.
- 2.4 The delivery period is deemed to have been complied with if the item to be delivered is made available for collection within the period and the purchaser is notified of this.
- 2.5 Compliance with our delivery or performance obligation presupposes the timely and proper fulfilment of the purchaser's obligations. We reserve the right to raise the defence of contractual non-performance.

- 2.6 In the case of a purchase where the purchaser specifies certain matters in terms of § 375 HGB (German Commercial Code), the terms and conditions to be specified by the purchaser must be received by us in writing no later than 14 days after receipt of the order. Otherwise, the customer shall be in default with its obligation to specify the terms in accordance with § 375, paragraph 2 HGB.
- 2.7 The purchaser is responsible for the correctness of any documents supplied by it, such as drawings, instructions, samples and the like. Our liability in this respect is limited to intentional misconduct and gross negligence. Oral information about dimensions and the like must be confirmed in writing.
- 2.8 We reserve all proprietary rights and copyrights to illustrations, drawings, calculations and other documents. This applies in particular also to written documents which are marked "confidential". Any disclosure of these to third parties requires our express written consent.
- 2.9 In the case of special tools that do not originate from serial production, the following excess delivery or insufficient delivery quotas are deemed to be agreed to: up to 6 units = 1 unit; from 7 to 12 units = 2 units; as of 13 units = 3 units; over 30 units = 10 % of the order quantity.
- 2.10 The risk shall pass to the purchaser as soon as the item to be delivered is ready for collection and the purchaser has been notified of this. Loading and transport are carried out on an uninsured basis at the risk and expense of the purchaser. If the purchaser so wishes, we will arrange for transport insurance coverage for the delivery; the costs incurred in this respect shall be borne by the customer.
- 2.11 If the customer is in default of acceptance or culpably violates any other participation obligations, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to make further claims.
- 2.12 Provided that the conditions in no. 2.10 are fulfilled, the risk of accidental loss or accidental deterioration of the item to be delivered shall pass to the purchaser at the point in time at which the purchaser is in default of acceptance or debtor's delay.
- 2.13 We reserve the right to make correct and timely own delivery. We shall inform the purchaser immediately where services are not available. Payment will be refunded immediately.
- 2.14 If we are in debtor's delay, the purchaser shall only be entitled to withdraw from the contract or to claim damages in lieu of performance if it has granted us a grace period of 14 days for delivery or performance; the provision contained in § 280 paragraph 1 BGB remains unaffected. The same applies in the case of partial default.
- 2.15 We shall otherwise be liable in accordance with statutory law if the underlying contract is a fixed date transaction or if, as a consequence of a debtor's delay for which we are responsible, the purchaser may claim that its interest in further performance of the contract has lapsed. In this case the liability for damages is limited to the foreseeable, typically occurring damage.

- 2.16 Furthermore, we shall be liable in accordance with statutory law if the debtor's delay is based on an intentional or grossly negligent breach of contract for which we are responsible; any fault on the part of our representatives or agents shall be attributed to us in accordance with statutory law. If the delay in delivery is not due to an intentional breach of contract for which we are responsible, liability for damages is limited to the foreseeable, typically occurring damage.
- 2.17 We shall also be liable in accordance with statutory law to the extent that the debtor's delay for which we are responsible is based on the culpable breach of a fundamental contractual obligation; in this case, however, liability for damages shall be limited to the foreseeable, typically occurring damage.
- 2.18 Otherwise, we shall be liable in the event of our debtor's delay for lump-sum compensation for the damage caused by default. In any case, however, a reminder from the purchaser is required. Lump-sum compensation shall amount to 0.5 % of the net price (delivery value) for each full calendar week of the default, but in total no more than 5 % of the delivery value of the goods that are delivered late. We reserve the right to prove that the purchaser has not incurred any damage or that the damage incurred is considerably less than the above lump sum.
- 2.19 In individual cases we are entitled to make partial deliveries. The entitlement to partial delivery is subject to the condition that the corresponding partial delivery is reasonable for the purchaser.
- 2.20 Packaging is charged at own-cost price and will not be re-accepted.
- 3. Prices; terms of payment; payment default**
- 3.1 Our prices are daily prices that follow from the price lists valid at the time the contract is entered into. When the latest price list comes into force, all other lists and any other price agreements shall no longer be valid.
- 3.2 The prices are absolute net prices. In particular, they do not include value-added tax, any customs duties or other taxes and are exclusive of freight. This also applies to partial deliveries. Costs for freight, postage, insurance and packaging as well as value-added tax at the statutory rate on the day of invoicing shall be invoiced for in addition to our own-cost prices.
- 3.3 We reserve the right to adjust our prices accordingly if, after the expiry of two months after entering into the contract, cost reductions or cost increases occur, in particular due to collective agreements, changes in the prices of materials and other - also inflation-related - additional or reduced expenditures. We will provide evidence of these to the purchaser upon request.
- 3.4 Any reductions based on early-payment discounts require a separate written agreement.
- 3.5 Payments are due after receipt of the goods or performance of the services within the periods specified on the invoices, but at the latest within 30 days net (without deductions). This applies in particular to invoice amounts below € 100.- and to payments for exclusively services or wage-based works such as refining or repairs.
- 3.6 Payments must be made in euros in cash or by cheque or direct debit without any deductions. Any other method of payment requires a separate written agreement. In the case of payment by cheque, direct debit, debit charge or bill of exchange, payment shall be deemed to have been made when the amount is credited.
- 3.7 If bills of exchange are submitted, their expenses and costs as well as the risk of timely presentation protest shall be borne by the purchaser.
- 3.8 Charge-back debit fees and associated expenses and costs shall be borne by the purchaser.
- 3.9 The purchaser shall be in default where payments are not received within 30 days after receipt of the goods or performance of the services. During the period of default, interest shall be charged, subject to the right to assert further damages, at the actual and proven amount incurred, and at least at the statutory default interest rate.
- 3.10 In the event of payment default and justified doubts about the solvency or creditworthiness of the purchaser, we are entitled - without prejudice to our other rights - to demand collateral or advance payments for outstanding deliveries and to render all claims arising from the business relationship immediately due and payable.
- 3.11 The purchaser is only entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship. Under these conditions, only claims which are undisputed, legally binding or ready for decision shall entitle the purchaser to withhold payment.
- 3.12 Only claims which are undisputed, legally established or ready for decision entitle the purchaser to undertake any offsetting.
- 4. Liability for defects**
- 4.1 The purchaser shall inspect any items delivered immediately upon delivery and carefully for defects with regard to the quantity and type of goods delivered. Any complaint in this respect must be notified immediately; otherwise the goods shall be deemed to be accepted in this respect. Other defects must be reported in writing within three working days of delivery; this does not apply to defects that could not be detected during proper inspection. The latter must be reported in writing within three working days of their detection. The timely dispatch of the notification shall be sufficient to meet the deadline. Otherwise, complaints regarding defects are excluded.

- 4.2 With regard to the design of our standard tools, our catalogue specifications apply, however these are subject to technical development. Changes based on this further development do not found any warranty rights to the extent that they are reasonable for the purchaser.
- 4.3 The purchaser must check delivery notes, invoices and other account statements for correctness and completeness. Objections to these delivery notes, invoices or other account statements must be reported in writing within two weeks of their respective receipt. Otherwise they shall be deemed to be approved. The timely dispatch of the notification shall be sufficient to meet the deadline. We shall indicate the significance of non-notification in the delivery notes, invoices and other account statements.
- 4.4 If there is a defect in the item delivered, our warranty obligation shall be limited to subsequent performance, at our election, either by repair or substitute delivery. The purchaser's right to choose reduction of the purchase price or withdrawal from the contract in case of failure of subsequent performance remains unaffected.
- 4.5 We shall be liable in accordance with statutory law if the purchaser asserts claims for damages based on intentional misconduct or gross negligence, including intentional misconduct or negligence on the part of our representatives or agents. As far as we are not alleged to have committed intentional breach of contract, liability for damages is limited to the foreseeable, typically occurring damage.
- 4.6 We shall be liable in accordance with statutory law if we culpably violate a fundamental contractual obligation; in this case, however, liability for damages shall be limited to the foreseeable, typically occurring damage.
- 4.7 Claims for defects shall become time-barred within nine months, calculated as of the transfer of risk.

5. Total liability

- 5.1 Any further liability other than that provided for in nos. 2 and 4 is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from pre- contractual liability, other breaches of duty or claims for compensation for material damage in tort in accordance with § 823 BGB.
- 5.2 To the extent that liability for damages on our part is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and agents.
- 5.3 Unless provided for otherwise above, our liability is excluded.
- 5.4 Liability for culpable injury to life, bodily integrity or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.

6. Retention of title

- 6.1 We retain title to delivered goods until full payment of all our claims, including those arising in the future, as well as any default interest, arising from the business relationship with the purchaser. In the case of several claims or open accounts, we reserve the title rights in the delivered goods until receipt of all payments arising from the business relationship; the reservation refers to the acknowledged balance and, in the event of the purchaser's insolvency, to the then existing "causal balance". Where we agree with the purchaser on payment of the purchase price debt on the basis of the bill of exchange procedure, the reservation shall also extend to the cashing of the bill of exchange accepted by us from the purchaser and shall not expire when the cheque received is credited to our account.
- 6.2 The purchaser is obliged to treat the delivered goods with care; in particular, it is obliged to sufficiently insure them at its own expense against fire, water and theft damage at replacement value (goods as new). If maintenance and inspection works are necessary, the purchaser must carry this out in due time at its own expense.
- 6.3 The purchaser may resell goods in the ordinary course of business subject to retention of title, but may neither pledge them to a third party nor assign them as collateral before their total debt has been fully covered. The purchaser is in particular not entitled to resell the goods if it is in default of payment.
- 6.4 We irrevocably agree with the purchaser that the claims on its part arising from resale or other legal grounds (e.g. tort claims or claims against insurers) against its customer or third parties are assigned to us in advance with all ancillary rights on a precautionary basis. This applies regardless of whether the reserved-title goods have been resold without or after further processing. The claim assigned to us in advance by the purchaser shall also refer to the acknowledged balance, provided that an overdraft account relationship exists between the purchaser and its customer, and in the case of insolvency of the customer on the then existing "causal balance". The purchaser is authorised to collect the assigned claims for our account until the recall or until the suspension of its payments to us. The purchaser is not authorised to assign these claims to third parties, in particular also not for the purpose of collection of claims by way of factoring, unless the obligation of the factor to effect payment directly to us in the amount of our share of the claim is established at the same time as we still have claims against the purchaser. At our request, the purchaser shall provide us with exhaustive information on the claims assigned under the factoring, their debtors and all information necessary for collection, and shall make available all necessary documents on the assigned claims and inform the debtors of the assignment.

- 6.5 We are entitled to revoke the direct debit authorisation and collect claims ourselves at any time if the purchaser does not properly fulfil its payment obligations to us from the collected proceeds, in particular if it defaults on payment, if enforcement measures are taken against it or if an application is made for the opening of insolvency proceedings. In this case, the purchaser must provide us with exhaustive information on the transferred claims, their debtors and all information necessary for collection and shall make available all necessary documents on the transferred claims and inform the debtors of the transfer.
- 6.6 The processing or alteration of the title-reserved goods by the purchaser is always carried out on our behalf. If the title-reserved goods are processed together with items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the title-reserved goods (final invoice amount, including VAT) to the other processed items at the time of processing. For the item resulting from processing, the same applies as for the goods delivered under reservation of title.
- 6.7 If the title-reserved goods are inseparably mixed or commingled with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item delivered under reservation (final invoice amount, including VAT) to the other mixed or commingled items at the time of mixing or commingling. If the mixing or commingling is carried out in such a way that the item of the purchaser is to be regarded as the principal item, it is deemed to be agreed that the purchaser transfers proportionate co-ownership to us. The purchaser shall hold the sole ownership or co-ownership thus created in on our behalf.
- 6.8 If the purchaser acts in breach of contract, in particular if it stops payments, we are entitled to reclaim the title-reserved goods after setting a reasonable deadline for performance. Any reclamation of the title-reserved goods by us means the withdrawal from the contract. After reclaiming the reserved goods, we shall be entitled to freely sell them and to offset the proceeds of such sale against the purchaser's liabilities after deducting reasonable realisation costs. Without prejudice to further rights, in particular the assertion of damages, we shall also be entitled to withdraw from the contract after setting a reasonable deadline for performance if an application is made for the opening of insolvency proceedings, if out-of-court creditor settlement discussions have been initiated or if there are other justified circumstances which give cause to believe that our claims will not be settled punctually and properly.
- 6.9 In any case of withdrawal, we are entitled to demand the return of or take possession of the goods to which we retain title. For this purpose, the purchaser already now irrevocably permits our employees or third parties commissioned by us to enter its property or business premises and reclaim the reserved goods.
- 6.10 The purchaser is obliged to inform us immediately by registered letter and in advance by fax of any judicial measures (e.g. seizure) or other access by third parties to the goods subject to retention of title or to the claims assigned to us. In such cases, the purchaser must also provide notice of our title to the title-reserved goods. To the extent that the third party is not in a position to reimburse us for the in and out of court costs of an action pursuant to § 771 of the German Code of Civil Procedure (ZPO), the purchaser shall be liable for the loss incurred by us.
- 6.11 If the realisable value of our collateral exceeds all claims to be secured, and not only temporarily, by more than 10 %, we shall release collateral at our election.
- 7. Place of performance; place of jurisdiction; applicable law**
- 7.1 Unless otherwise stated in the order confirmation, our registered office is the place of performance.
- 7.2 If the purchaser is a merchant, the place of jurisdiction is our registered office.
- 7.3 The law of the Federal Republic of Germany applies; the validity of the UN Convention on Contracts for the International Sale of Goods and the provisions of the IPR are excluded.
- 8. Data protection clause**
- KROMI Logistik AG only collects, processes and uses personal/company data under this agreement for the purpose of contract settlement and customer support, as well as for its own advertising campaigns. These are the data provided by the respective purchaser. The processing of this data of the purchaser collected within the scope of the contract is carried out in accordance with the GDPR and the other relevant data protection laws. The data processing is based on Art. 6 paragraph 1 a) and Art. 6 paragraph 1 b) GDPR and only for the above mentioned purposes of contract settlement, customer service and advertising campaigns. No data processing outside of the purpose of the contract will take place. If it becomes necessary to collect or process additional data outside of the purpose of the contract, KROMI Logistik AG will separately obtain the purchaser's consent for this.
- With regard to the scope and purpose of the data collection and the clarification of the rights of the persons concerned, we also refer to KROMI Logistik AG's data protection policy.
- 9. Severability clause**
- Should any provision of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions.