

GENERAL TERMS OF SALE, DELIVERY AND PAYMENT (AGB)

§ 1 SCOPE

1. These general terms and conditions (hereinafter referred to as "GTC") apply exclusively and for all contractually agreed services. These terms and conditions also apply if we provide services on our part in the knowledge of conflicting terms and conditions of the client without reservation. Other terms and conditions shall only form an integral part of the contract if we have agreed to them in writing. These Ts and Cs do not apply to consumers.
2. On receipt of a quotation, an order confirmation or - at the latest - on placement of an order or receipt of goods/services, the client recognises that all business relations shall be governed exclusively by these Ts & Cs. Having been agreed, the Ts & Cs shall be deemed agreed for all contracts concluded in the future as well. A silence on our part regarding different or conflicting terms and conditions of the client should not be regarded as an agreement with these conditions. Different or conflicting terms and conditions of customers are contradicted. Any deviation from our Ts and Cs will result in the contract not being deemed concluded unless we agree to this change in writing on our part. Acceptance of our delivery, even with reservations, is deemed to be acceptance of these Ts and Cs.
3. Orders only become legally binding upon written confirmation by us. Ancillary agreements, reservations, changes or additions to a contract require our written confirmation in order to be valid. By derogation from clause 1.3, even informal agreements shall be effective if they consist of individual agreements in accordance with Section 305b of the German Civil Code.
4. If the client sources products (sun protection systems, awnings, etc.) from the contractor, the CE declaration and any other associated written material shall also be the object of this agreement in addition to the installation instructions and instructions for use. The client must hand these documents in full to the end user in the event of any resale.
5. The terms in these Ts and Cs are defined as follows:
 - "We/Contractor/Supplier"
KADECO Sonnenschutzsysteme GmbH
Hindenburgiring 14-16, 32339 Espelkamp
and
KADECO Markisen GmbH
Hindenburgiring 16, 32339 Espelkamp
 - "Parties": The clients and contractors involved in the contract
 - "Force majeure": means any reason that makes it impossible for us or the supplier to fulfil the respective contractual obligations and that arises from circumstances beyond the reasonable control of the respective party, including but not limited to natural disasters, pandemics, actions by governments or supranational institutions, outbreaks of violence, national emergencies, terrorist attacks, riots, civil unrest, fires, explosions or floods.
 - "Order": means any offer to us to provide services or purchase goods with reference to the terms of this contract.
 - "Client/Customer/Buyer": means the purchaser of the goods specified on the order.
 - "Goods": are the economic goods dispatched/sold/installed by us.
 - "Product description": is a detailed representation of the goods with specific instructions for use.
 - "Receiving point": is the place to which we send the goods at the customer's request.

§ 2 QUOTATIONS AND CONCLUSION OF CONTRACTS

1. We shall remain bound by written quotations on our part for 2 weeks after they are issued. Thereby, the date of receipt of the offer made by us counts. We can accept orders from the client without a previous offer that can be accepted (orders based on an invitatio ad offerendum) within 2 weeks of receipt of the order. Thereby, the date of receipt of the offer is decisive. The acceptance takes place in principle through an order confirmation. If a delivery is made within two weeks of receiving the order, this shall likewise constitute acceptance of the offer.
2. Commercial agents, or other sales representatives are not authorised to make deviations or to make guarantees that deviate from our written order confirmation. Subsidiary agreements or modifications by commercial agents or other sales representatives must be confirmed by us in writing in order to be valid.
3. We point out that at the time our order confirmation is received, the order will be sent to our production department at the same time, which will immediately begin production in order to produce the order for the client as quickly as possible. Change requests by the client after the contract has been concluded therefore usually lead to additional costs, possibly even to rejects. If additional costs arise, these should be borne by the client and will be communicated to him immediately and additionally billed.

§ 3 PRICES AND PAYMENTS

1. Unless otherwise agreed on a case-by-case basis, our prices valid at the time of conclusion of the contract shall apply accordingly. All prices are net prices. Statutory VAT shall be determined based on the time when the service is performed. Any supplementary charges, public charges or similar shall be borne by the client unless there are any mandatory legal regulations to prevent this. We shall be entitled to demand immediate reimbursement of any freight charges that we have paid in advance and of the aforementioned charges.

2. Invoices can be sent to the customer by mail, e-mail (e.g. as a PDF) or by storing them in a personal mailbox on our part.
3. Any bank charges incurred shall be borne by the client. If an early payment discount is offered by us, this amount shall only be accepted if all payment obligations pertaining to previous deliveries have been met. A payment is only considered to have been made when it has been credited to our bank account. In the case of payments by cheque, the payment shall only be deemed to have been made once the cheque has cleared. We must redeem it immediately.
4. If the client is in default with a payment, all other claims (instalment payments, deferrals, etc.) are due immediately, provided that the contractual partner is at fault for the default.
5. The client shall only have rights of set-off if its counterclaims have been established as undisputed, finally determined or have been recognised by us. Set-off based on an assigned right shall be excluded, particularly applicability of Section 406 of the German Civil Code.
6. The client shall have no right to withhold payment or offer a defence unless we commit more than a minor breach of our obligations under the same contractual relationship despite having received a written warning and we fail to offer appropriate security for the performance obligation (e.g. performance guarantee). This shall not apply to claims that are undisputed or have been established as final and absolute.
7. As a basic principle, payments are to be set off against the oldest debts first. If costs and interest have already been incurred, we shall be entitled to set the payment off against the costs first, then the interest and finally the main service performed. Unless the client has made explicit definition of purpose. If financing aids are involved, the payment shall be set off against the main service performed first, then against the interest and costs.
8. If we become aware of circumstances that call into question the solvency and creditworthiness of the client, we are entitled to make the entire remaining debt due immediately.

Reasons for early payment of the remaining debt are:

- The client does not pay a bill.
- The client stops his payments.
- Cheques cannot be cashed.
- It is known that an application for the opening of insolvency proceedings has been made.

In these cases we can also request advance payments and security deposits. If the circumstances mentioned become known, we are entitled to withdraw from all orders after the deadline for the agreement of the security has expired. Agreements can include a step by step performance in accordance with the existing securities or a security for the entire scope of the order. As long as the client has not provided sufficient security, we are not obliged to continue the service. The same shall apply if payment for a previous delivery is delayed. If the insolvency administrator declares entry into the contract, this will be carried out in full by us once the purchase price has been paid (advance payment). From the time of filing for insolvency, goods will only be delivered to the customer against prepayment, regardless of whether the order was placed before or after the insolvency application. In the case of partial deliveries - partial delivery before and after filing for insolvency - goods that have not yet been delivered before filing for insolvency will only be delivered against prepayment. In the event of withdrawal, the client must reimburse us for the demonstrable expenses we have incurred. This shall not affect our right to assert more extensive claims for damages.

§ 4 PROPERTIES AND CONDITION OF THE PURCHASE ITEM

1. The quality of the purchased item results from the respective product data that can be viewed on our website. To clarify, we would like to point out that the quality specifications stored on our website take precedence over those in the catalogues or other print-outs. We reserve the right to allow for minor and reasonable deviations with regard to the dimensions and finishes (colour and texture), provided that these are attributable to the nature of the materials used and are usual. This shall apply in particular to repeat orders.
2. With the order, but in any case prior to the conclusion of the contract, the client is obliged to give us an express notice if the goods ordered are not intended to be suitable exclusively for normal use. It must be expressly pointed out if the ordered goods are exposed to unusual, i.e. special health, safety or environmental risks, so that the usual steps will be taken more cautiously. The client is obliged to inform the end customer about the quality of the goods and special features, in particular that sun protection, depending on the product, does not represent rain protection and that incorrect use of the goods can lead to damage. If the client fails to inform his customer and we therefore deliver a product that is unsuitable for the end customer, the customer bears the resulting expense and/or damage. Furthermore, the client releases us from any claims for damages or reimbursement of expenses by the end customer. This shall apply in particular to the resulting installation and removal costs.
3. The client has to provide the technical or other documents and information necessary for the execution of the service (e.g. special properties of the goods) free of charge and in good time, i.e. to be handed over to us with order or to be communicated to us. Production begins immediately after the contract has been concluded. Subsequent changes can then no longer be taken into account. If the deadline is missed and the wrong goods are therefore produced, the client has to bear the resulting additional work and/or damage. This shall apply in particular to special orders (4 Para. 2).

§ 5 DELIVERY TIME AND TIME OF PERFORMANCE/PACKAGING

1. Delivery dates or periods shall be determined by the relevant quotations/order confirmations. In the event that we cannot meet an agreed delivery date, we will notify the customer of the new delivery date by means of a new order confirmation. If the customer does not object to this order confirmation within 2 working days of receipt, the date specified in this order confirmation is deemed to be the agreed delivery date. A delivery deadline is met if the goods are ready for dispatch (provision) within the deadline and the customer has been notified of this. A delivery deadline is met if the consignment leaves our company within the deadline and is handed over to a shipping company.
2. In the event of force majeure or other unforeseeable, extraordinary and uncontrolled circumstances, we are entitled to postpone the delivery or service beyond the duration of the hindrance plus a reasonable start-up time.

3. We shall be entitled to make partial deliveries of a reasonable size up to the end of the delivery period. Partial deliveries and invoices relating to functional units shall be permitted.
4. If the dispatch of the goods is delayed due to circumstances, for which the client is responsible, we shall be entitled to levy a storage fee to the value of 0.5% of the invoice amount for each full or partial month. The client shall be entitled to demonstrate a lower level of loss or damage. Further claims for damages shall remain unaffected by this regulation. Liability in the event of a delay in delivery shall take the form of a lumpsum compensation payment for delayed delivery that shall be limited, for each full week of delay, to 0.5% of the value of the goods to be delivered up to a total maximum of 5% of the total goods value.
5. In the case of call orders where no period, production lot sizes and acceptance dates have been agreed, we shall be entitled to demand binding specification thereof within a maximum of 3 months following order confirmation. If the client fails to meet this demand within 3 weeks of being requested to do so, we shall be entitled to set a 2-week final deadline and, if this expires, to withdraw from the contract and/or claim damages.
6. Transport and all other packaging in accordance with the applicable packaging ordinance will not be taken back. The customer is obliged to dispose of the packaging at his own expense. The client assumes the obligation to properly dispose of the delivered goods after the end of use at his own expense in accordance with the statutory provisions.
7. If we are unable to keep binding delivery dates for reasons beyond our control (non-availability of performance), we shall inform the buyer of such without delay and at the same time, notify the anticipated new delivery date. If performance is not available within the new delivery period either, we will be entitled to fully or partially withdraw from the contract; we shall refund without delay any counter-performance that has already been effected by the buyer. In particular, the failure of our own suppliers to deliver to us on time shall be deemed to be non-availability of performance in this sense if we have concluded a congruent covering transaction, neither we nor our suppliers are at fault or we are not obliged to procure on a case-by-case basis.

§ 6 LIABILITY FOR DEFECTS/WARRANTY

1. We point out that the goods are individually manufactured and custom-made products for the client.
2. The client is obliged to check deliveries immediately (§ 377 HGB). The discovery of defects must be communicated to us in writing within a cut-off period of 7 (seven) calendar days stating the specific complaint. The period shall commence on handover in the case of obvious defects and on discovery in the case of latent defects. After the deadline has expired, warranty claims are forfeited and therefore excluded. We point out that the goods must be checked immediately. The buyer is obliged to check the goods at the agreed place of receipt before taking the goods to a construction site, customer, etc. that is outside the receiving point. If he fails to check this and only discovers a defect in the goods on the construction site or similar, that prevents him from carrying out and/or completing the work, we are only obliged to pay damages/reimbursement of expenses (e.g. additional journeys, additional wage costs, etc.) if the deficiency preventing the work and/or completion would not have been recognizable for the customer when dutifully checking the goods at the place of receipt. In particular, it must be checked that the product additions sent by us (such as the assembly material) are completely included in the delivery.
3. If the client or his customer has installed defective goods, attached them to another item or mixed them with another item and the defect in the goods is attributable to us and this was already present when the risk was passed, we are not obliged to pay the client the necessary expenses or compensation for removing the defective goods and installing or attaching the repaired or delivered defect-free goods. Section 439 Para. 2 and 3 BGB is contracted out. This applies in particular if the client had or should have been aware of the defect at the time the contract was concluded, installed or attached to the defective item (see Paragraph 2).
4. The limitation period for warranty claims from purchase and work supply contracts is two years from delivery of the goods. If the client is responsible for collecting the goods, the period begins when the goods are made available. This does not apply to cases of Section 439 Paragraphs 2 and 3, as well as Sections 478, 479 BGB (recourse in the supply chain, Paragraphs 2 and 3). In these cases the limitation period is 1 year.
5. Our guarantee and the resulting liability are excluded if defects and related damage cannot be proven to be based on faulty material, faulty construction, faulty execution, faulty manufacturing materials or, if owed, faulty instructions for use. In particular, the warranty and the resulting liability due to breaches of duty due to poor performance as a result of incorrect use, incorrect or defective assembly, unsuitable storage conditions (e.g. humidity/temperature), chemical, electromagnetic, mechanical or electrolytic influences that are not included in our product descriptions or a different agreed product specification or the respective product-specific data sheet on our part or on the part of the manufacturer and are excluded which do not correspond to the average standard influences. Insofar as our products are used as weather protection without this being explicitly "recorded" in writing, this is to be assessed as incorrect use. In the event that services on our part became necessary due to customer installation, which were ultimately the fault of the contractual partner, we reserve the right to charge the contractual partner for the costs we incurred as a result.
6. The aforementioned exclusion of liability shall likewise apply to slightly negligent violations of obligations by our vicarious agents. As far as liability for damages cannot be asserted against us or is restricted, this shall also apply with regard to the personal liability for damages of our legal representatives, or vicarious agents.
7. The warranty claims of the client cannot be assigned to third parties that are external to the contract.
8. Warranty claims by the customer are excluded if it is a matter of a defect from an assurance based on advertising statements or other contractual agreements made by him that do not originate from us, were not coordinated or if the client has given the end user a special guarantee of its own. This shall also apply if the client has given the end consumer a warranty that goes beyond the scope of what is legally required.
9. We are not liable for damage caused by slight negligence, only in the event of a breach of such obligations, the fulfilment of which enables the proper execution of the contract in the first place and on the fulfilment of which the client can rely to a particular extent (cardinal obligations). In the event of negligent breach of cardinal obligations by us and/or our vicarious agents and/or legal representatives, liability for financial and property damage is limited to the amount of typically foreseeable damage.

§ 7 RESERVATION OF TITLE/DIFFERENTIAL DAMAGE

1. We reserve title to the delivered goods until such time as the outstanding debt claims due from the contractor have been paid in full. The reservation of title shall also apply until all debt claims arising from the business relationship including any future and conditional ones, have been discharged between us and the contractor.
2. The client is entitled to process the delivered goods in the course of its routine business operations. If the delivered goods are processed with other goods that do not belong to us, the contractor shall acquire joint title to the newly created item based on the ratio of the invoice value of the goods that are subject to reservation of title to that of the other processed objects. Should our property nevertheless perish and the client become (joint-) owner, he transfers his position of ownership to us as security in accordance with the ratio of the invoice value of the goods that are subject to reservation of title to that of the other processed objects. In all the cases referred to above, the items that are owned or jointly owned by the contractor must be kept safe by the client free of charge. The client's power of sale shall automatically expire in the event of failed compulsory execution measures, when a cheque or bill of exchange from the client is protested. The same applies when filing an application to open insolvency proceedings over the client's assets. Aside from this, other forms of disposition over the goods that are subject to reservation of title, in particular pledging and transfer by way of security, are not permitted and shall result in a prohibition on sale.
3. The client hereby now assigns to us in advance all the debt claims arising from the resale of the processed and unprocessed goods that are subject to reservation of title, along with all subsidiary to rights. In cases where processed, combined, mixed or mingled goods that are subject to reservation of title are sold on, the supplier shall acquire a first-priority partial amount corresponding to the invoice value of its delivered goods in per cent plus a safety margin of 5%. The client shall be entitled to collect the claims assigned to us in the routine course of business with the proviso that this right may be revoked at any time. We shall not make use of its own power of collection provided that the client fulfils its payment obligations - including in relation to third parties - as agreed. If the client assigns its subsequent debt claim to a factoring institution within the context of genuine factoring with assumption of the del credere risk, the client shall assign to us its claims against the factoring institution for disbursement of the factoring proceeds and shall notify the factoring institution of this assignment immediately as soon as the invoice has been issued by us. On request, the client must provide us with a precise list of the debt claims owed to us that includes the names and addresses of the customers/debtors, the amounts of the individual debt claims, invoices, etc., and must supply us all the information required to enforce the assigned debt claims and must allow this information to be checked. The client is obligated to treat the goods with care.
4. In the event of a levy of distress or other interventions by third parties, the client must inform us immediately. The client shall only be permitted to carry out subsequent processing, connection, remodelling or installation (Sections 946, 947, 950 of the German Civil Code) of the goods still owned by the contractor with the supplier's prior written permission.
5. If the value of the securities to which we are entitled exceeds the total debt claim against the client by more than 10%, at the client's request we shall be obliged to release the securities of our choice to this extent. Should we take back the goods by mutual consent, they shall only be credited to the client's account at the relevant current value.
6. In the event that we make use of our retention of title and receive the goods back, the client undertakes to pay compensation in the amount of the difference in value if the goods were issued by him or were handed over more than a year after the retention of title was asserted. The damage to be compensated by the customer is the difference between the value of the goods at the time they were handed over to the customer and when they were returned to us, minus advance payments and/or partial payments already made by the customer for the goods included in the assessment. If the parties do not agree on the differential damage within 1 month of the return of the goods, an expert appointed by the IHK Bielefeld will be commissioned to determine the differential damage. The parties undertake to recognize the evaluation as binding.

§ 8 INDUSTRIAL PROPERTY RIGHTS

1. Where we are required to deliver products in accordance with drawings, models, samples, photos or by using parts provided by the client, the client provides an assurance that no industrial property rights of third parties are thereby infringed in the country of destination for the goods. We shall draw the client's attention to all the rights of which we are aware. The client shall hold us harmless against claims from third parties and indemnify us against any loss or damage incurred. If a third party should prohibit us from manufacturing or delivering the goods by citing an industrial property right registered in its name, we shall - without investigating the legal position - be entitled to cease the work until the legal position has been clarified by the client and the third party. If it is no longer reasonable for us to continue processing the order because of the delay, we shall be entitled to withdraw from the contract.
2. Drawings and samples that have been submitted to us, but have not resulted in an order, shall be returned at the client's request; otherwise, we shall be entitled to destroy them 3 months after the quotation was issued. This commitment shall also apply mutatis mutandis to the client.
3. We shall retain title, copyright and rights conferred by patent and utility model legislation to photos, illustrations, drawings, calculations, the results of data processing operations and other documentation that we make available to the client in the course of processing the contract, including via the Internet. These shall be entrusted only for the purpose of the respective quotation concerned and contract implementation and may not be reproduced, whether in full or in part, and/or made available to third parties external to the company without our written permission. This shall apply in particular to written documentation that is termed "confidential". However, this does not apply to documents that are already known to the third party or have been published by us.
4. The client is obliged to adhere to the advertising standards established by us in a separate agreement with regard to the products we deliver and/or manufacture.

§ 9 CHANGE OF TS AND CS

1. We are entitled to unilaterally change these Ts and Cs, insofar as this is necessary to eliminate equivalence disruptions that arise subsequently or to adapt to changed legal or technical framework conditions. We will inform the client about this in writing, notifying the content of the changed regulations.

2. The change becomes part of the contract if the client does not object to the inclusion in the contractual relationship in writing within six (6) weeks after receipt of the notification of change.

§ 10 SEVERABILITY CLAUSE

1. If a provision of this contract is or becomes wholly or partially ineffective/void or not feasible for reasons of the law of the general terms and conditions according to Sections 305 to 310 BGB, the legal regulations shall apply.
2. If a current or future provision of the contract is or becomes wholly or partially ineffective/void or unenforceable for reasons other than the provisions relating to the law of the general Ts and Cs according to Sections 305 to 310 BGB, the validity of the remaining provisions of this contract will not be affected, unless the execution of the contract - also taking into account the following regulation - would represent an unreasonable hardship for one party. The same applies if there is a gap that needs to be filled after the conclusion of the contract. Contrary to the principle of the case law of the Federal Court of Justice, according to which a severability maintenance clause should basically only reverse the burden of proof, the validity of the other contractual provisions should be maintained under all circumstances and thus Section 139 BGB should be waived altogether.
3. The contractual partners will replace the ineffective/void/unenforceable provisions or gaps that need to be filled for other reasons according to the provisions relating to the law of the general terms and conditions according to Sections 305 to 310 BGB with an effective provision, which corresponds in its legal and economic content to the invalid/void/unenforceable provision and the overall purpose of the contract. Section 139 BGB (partial invalidity) is expressly excluded.
4. If the invalidity of a provision is based on a measure of performance or time (time limit or deadline) specified therein, the provision must be agreed with a legally permissible measure that comes closest to the original measure.

§ 11 OTHER PROVISIONS

1. Insofar as "written form" or "in writing" is required in these Ts and Cs, the text form in the sense of Section 126b BGB is meant. Declarations in text form are therefore always effective.
2. The contractual relationship is subject to the law of the Federal Republic of Germany. The Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods shall not apply.
3. The place of performance for all commitments arising from the contractual relationship in terms of deliveries - including freight paid deliveries - and payments, etc. shall be our official place of business.
4. The place of jurisdiction, including for legal action relating to a bill of exchange or cheque, shall be our official place of business if the client is classified as an entrepreneur or a legal person under German public law. The same place of jurisdiction shall apply if the client has no general place of jurisdiction within Germany or if it moves its domicile or usual place of residence abroad following conclusion of the contract. In any case, we shall be entitled to take legal action against the client at its own domicile.
5. Notwithstanding more extensive statutory regulations, suspension of the limitation period shall also end when the negotiations at the root of the suspension are discontinued in respect of the matter for more than four weeks. Our express written confirmation is always required before the limitation period for client claims is allowed to restart.