

# General terms and conditions for Conradi + Kaiser GmbH

## 1. Range of Application, Excluding Customers' General Terms of Business

- 1.1. All deliveries and services rendered by the manufacturer will be performed exclusively in accordance with the following Terms of Business. These are only applicable to companies, legal entities and fund assets subject to public law.  
1.2. Conflicting or differing terms of business of customers do not bind the manufacturer, unless he has explicitly acknowledged their applicability in writing. The manufacturer's Terms of Business and his objection to conflicting or differing terms will also be applicable, if he renders goods or services without reservation to customers with knowledge of their conflicting or differing terms.

## 2. Formation of a Contract

- 2.1. The manufacturer's offers are non-binding and subject to confirmation. The manufacturer is entitled to accept offers by the customer within a period of four weeks after their submission. Declaration of acceptance as well as confirmation of orders has to be made in writing. For the execution of orders within the period of acceptance, both delivery note and/or invoice for goods will be regarded as a declaration of acceptance or a confirmation of the order.  
2.2. The manufacturer exclusively offers goods and services from his own production. Therefore, unascertained debts are limited to the manufacturer's own production. Likewise, claims to replacement and repairs are limited to the manufacturer's own production as well.

## 3. Prices, Terms of Payment, Default of Payment

- 3.1. Orders are based on the prices of the price list valid on the day of the conclusion of the contract unless differing fixed prices have explicitly been agreed upon. The prices stated in catalogues and price lists do not include the compulsory VAT, the amount of which will be specified separately in the invoice on the day of billing.  
3.2. In case of a considerable change in the factors relevant for price calculations (e.g. increase or decrease of costs of materials, wages, freight or customs rates), each partner to the contract may ask for a re-definition of the prices by means of negotiation.  
3.3. Payment of the purchasing prices will become due at once, claims to payment resulting from a contract for works and services will become due upon acceptance of the work. A default of payment sets in upon reminding when due, but in any case 20 days after the due date and receipt of an invoice or an equivalent request for payment.  
3.4. If the customer is in the state of default of payment, the manufacturer – irrespective of any other rights – will be allowed to carry out any subsequent deliveries to the customer only against advance payment.

## 4. Place of Fulfilment, Transfer of Risks, Stocking

- 4.1. The place of fulfilment is the manufacturer's registered offices. Unless the contractual agreement with the customer specifies differing conditions, deliveries will be performed "ex works".  
4.2. The risk of accidental destruction and accidental deterioration is transferred to the customer upon delivery at the place of fulfilment.  
4.3. In the case that the goods or services are ready for collection and the collection is delayed for reasons that the manufacturer is not liable for, the risk is transferred to the customer upon his receiving the note which informs him that the goods are ready for collection.  
4.4. If the goods or services are sent to the customer upon his request, the risk of accidental destruction and accidental deterioration will be transferred to the customer upon delivery to the forwarder or haulage contractor, but at the latest upon leaving the manufacturer's factory or warehouse, irrespective of who bears the forwarding costs. Unless otherwise agreed upon, the customer will have to bear all the costs of transport, transport insurance and customs duties. The customer has to make sure that the goods or services can be sent to the address stated by him. If due to impossibility to the place of delivery or similar obstacles delivery is impossible, the customer will have to bear the additional expenses caused by the failed attempt to deliver.  
4.5. It has to be made sure that goods and services delivered are stored in a dry and sufficiently ventilated environment. When keeping them in stock for a long time (more than 4 months), the packaging has to be removed in order to prevent damages above all due to dampness.

## 5. Delivery Times, Force Majeure, Labour Disputes

- 5.1. Delivery and performance deadlines are non-binding. Agreements on binding delivery times have to be made in writing. Delivery times are to be regarded as fulfilled, when the customer has been informed about the availability of the goods or services for collection or when the goods or services have been handed over to the forwarder or haulage contractor within the stated time of delivery. We as manufacturers reserve the right of proper and punctual self-supply from congruent hedging transactions.  
5.2. Partial deliveries and their separate invoicing are permitted.  
5.3. The manufacturer's obligation to deliver can only be fulfilled if the customer has properly and punctually fulfilled his obligations.  
5.4. Manufacturer's late performance based on a reminder may only develop if the reminder has been made in writing. Deadlines for repairs have to be reasonable. If in doubt, reasonable shall mean a period of at least four weeks. Fixing a deadline has to be made in writing.  
5.5. The manufacturer will not be liable for delays in deliveries and late performance due to force majeure or to events which, without the manufacturer's fault, considerably impede or make the delivery of goods or the performance of a service impossible for him – also including posterior difficulties in acquiring materials, hold-ups, strikes, lock-outs, staff shortages, lack of means of transportation, official regulations etc. This also applies if these events occur at his suppliers' or their sub-suppliers' premises and also in the case of existing binding agreements with respect to times and deadlines for delivery or performance. These events will entitle the manufacturer to postpone the delivery or performance by the duration of the impediment plus an adequate time for re-start or to partly or entirely withdraw from the contract for the part which has not been fulfilled so far. The manufacturer has to inform his customer without delay about the existence of such impediments. In the case that the impediment lasts for more than three months, the customer – after fixing a reasonable extension and with all other rights being excluded – will be entitled to withdraw from the part of the contract not fulfilled so far.  
5.6. In the case that with the circumstances described in 5.5., delivery or performance is impossible for the manufacturer, he will be released from his obligation to deliver or perform.

## 6. Manufacturer's Rights upon Breach of Duty by the Customer

- 6.1. If the customer fails to fulfill one of his duties arising from the contract, e.g. with respect to acceptance or collection of goods or the acceptance of works as stipulated in the contract, the manufacturer – after having fixed a reasonable deadline which must have passed without success – is entitled to withdraw from the contract. If the breach of duty falls into the customer's liability, he will have to compensate the manufacturer for any damages or additional expenses (e.g. storage costs) arisen; prior fixing of a deadline will not be required.

## 7. Title Retention

- 7.1. The manufacturer reserves the ownership of the goods until the purchase price has been completely paid and until all claims resulting from the business relationship with the customer have been entirely compensated for. The goods under reserve will be treated and processed without binding the manufacturer. The customer is entitled and authorized to sell, combine or mix the goods under reserve only in the normal and proper course of business and provided that the claims described subsequently will in fact be transferred to the manufacturer. The customer will not be entitled to any other dealing with the goods under reserve, including pledging or security transference among others. At this point in time already, the customer cedes to the manufacturer all claims resulting from the selling of the goods under reserve or their combination or mixing with other goods (including any balance claims from open accounts) amounting to the value of the goods under reserve with all subsidiary rights and with the manufacturer ranking before the rest. The manufacturer accepts this cession. It is herewith agreed that the value of the goods under reserve shall be the amount invoiced by the manufacturer plus an additional security charge of 10%, which, however, will not be applicable when rights of third parties conflict with it.  
7.2. In the case of the customer's default of payment the manufacturer will be entitled to reclaim the goods if he has unsuccessfully set a reasonable deadline for payment. After taking back the goods, the manufacturer is entitled to the best possible exploitation of the goods. The proceeds from this exploitation have to be credited to the customer's liabilities, after having deducted an appropriate amount for covering the exploitation costs. In such a case, the customer's claim to fulfilment will expire. Taking back as well as pledging the goods under reserve does not represent the manufacturer's withdrawal from the contract.  
7.3. The manufacturer revocably entitles the customer to collect in his own name the claims ceded to him on account of the manufacturer, as long as he meets his obligations with respect to the manufacturer, does not fall into arrears and insolvency or composition proceedings have not been applied for. Upon the manufacturer's request, the customer will have to give him the names of the debtors of the claims ceded to the manufacturer, to notify them of the cession, give all the information on the claims ceded which are required for collection as well as to hand over all the documents necessary for collection. The manufacturer is also entitled to notify the debtors of the cession.  
7.4. The manufacturer is obliged to release securities, if and as far as these exceed the claims to be secured by at least 20%.  
7.5. In the case of third party's access to the goods under reserve, the customer will be obliged to notify them of the ownership under reserve and also to inform the manufacturer without delay about the access.

## 8. Warranty, Product Description

- 8.1. The warranty time for the purchase of new things is two years from delivery, unless a longer period of time is stipulated by German legislation as per §§ 438 Abs. 1 Nr. 2 BGB (German law ruling construction works or materials) or §§ 479 Abs. 1 or Abs. 2 BGB (regress claim). Warranty claims for the purchase of second-hand goods are herewith excluded.  
8.2. In the case that a duly presented notice of defects is justified, the manufacturer shall have the right to deliver replacement at his free choice. When purchasing, the manufacturer does not have the right to deliver replacement if and as far as the customer asserts claims to regress as per §§ 479 Abs. 1 and Abs. 2 BGB (German Civil Code). If the manufacturer fails to deliver replacement, the customer will be entitled upon his choice to withdraw from the contract, to claim rescission (nullification) of the contract or the corresponding markdown of the price agreed upon (reduction) as long as the legal conditions required are given.  
8.3. When having noticed a defect, the customer is not allowed to carry out any modifications of the goods delivered. Otherwise, any type of warranty will be excluded.  
8.4. If the fault can be attributed to the performance specifications, to instructions given by the customer or to material delivered or prescribed by him, the manufacturer will be exempt from the warranty for these faults, unless he has failed to inform the customer about faults to be expected which represents a duty incumbent on him.  
8.5. Assurance of characteristics of the goods or services has to be made in writing. Information given in advertising media is non-binding and is not to be understood as assurances.  
8.6. Unless otherwise specified by the parties to the contract, the use of the goods or services as laid down in the contract complies with the range of applications laid down in the product descriptions and catalogues. Within the framework of a contract for sale or for works, the manufacturer offers advisory service free of charge to help the customer choose the product or services suitable for his intended purpose.  
8.7. Unless otherwise specified in writing, the manufacturer's obligation covers the delivery of plates according to the specifications agreed upon. Mounting the plates, however, is part of the duty of the customer or of the company engaged with it. The plates have to be mounted in accordance with the rules applicable for the building trade and above all with the mounting technology corresponding to the intended purpose. Specific instructions for mounting, sticking and care, among others, have to be observed. Upon request, the manufacturer will place them at the customer's disposal. Mounting the plates with system plugs, i.e. without gluing them to the fundament, has to be carried out in the semi-compound way. Generally, plates without system plugs have to be glued to the fundament accordingly.  
8.8. Faults which can be attributed to the fact that the manufacturer's goods or services have been used in defiance of the intended purposes specified in his product descriptions or catalogues or to the fact that the customer, irrespective of the manufacturer's advice, has chosen a different product or work than the one recommended by the manufacturer as suitable for the purpose intended, will be excluded from warranty.  
8.9. Faults which can be attributed to the fact that the customer has not professionally mounted or installed the goods or services in compliance with the manufacturer's instructions, will be excluded from warranty.  
8.10. With respect to length and width, dimensional tolerances of +/- 1% are acceptable, with respect to thickness the tolerance is +/- 2mm. Minor deviations in the colours of the goods when comparing them to each other or to colour samples have to be attributed to the production process and do not entitle the customer to claim warranty. The surface cover is subject to wear depending on the sort and way of how it is used. These wear marks, which may lead to visible differences in colour, are inherent in the product and do not represent a fault. Intensive UV-light may lead to minor discolouration of the surface, apart from having a slight chalk effect, which, however, does not interfere with other factors of lasting quality. Impact protection figures measured and certified according to (HIC 1000) EN 1176/77 refer to the quality of the goods or services at the time of delivery. They may be subject to changes, depending on the place of application, the environment and the influence of external factors during their useful life. Using the goods or storage them in a permanently damp environment may lead to changes in shape, mouldy spots, the development of algae or similar phenomena as results of dampness.  
8.11. In the case of a notice of defects, the customer is obliged – as far as can reasonably be expected – to describe the fault in as much detail as possible. Among other factors, this shall include the description of the fundament, of mounting details, of climatic and other conditions as well as sending convincing photos with details, photos of the entire area and, if still available, samples of the goods or services he complains about.

## 9. Limited Liability

- 9.1. The manufacturer will only assume liability if he or one of his agents has infringed upon a substantial obligation of the contract (cardinal obligation) in a way which endangers the purpose of the contract or if a fault can be attributed to the manufacturer's own or his agents' gross negligence or criminal intent. If the non-accidental infringement of a substantial obligation of the contract (cardinal obligation) cannot be attributed to gross negligence or criminal intent, the manufacturer's liability is limited to the damage which was reasonable for him to foresee at the time of the conclusion of the contract.  
9.2. The customer is obliged to inform himself about the characteristics, the appropriate use as well as existing risks, especially due to inappropriate use, of the products and also to pass this information on to his customers. The manufacturer's liability for damages caused by inappropriate use of the products is herewith excluded.  
9.3. The afore-mentioned limited liabilities are applicable for contractual and non-contractual claims. Liability in consequence of compulsory legal regulations, contractual agreements or assurances and as a result of damage to persons and its consequences will remain unaffected.

## 10. Excluding Transfer of Claims

- 10.1. Transferring customer claims, not being monetary claims, will require written approval by the manufacturer. The manufacturer will only deny his approval when objective grounds oblige him to do so.

## 11. Offsetting Costs, Retention

- 11.1. The customer may only offset costs with his own claims, when these claims are assessed as indisputable or legally valid. The same applies for the enforcement of the right of retention, unless this right of retention can be attributed to the manufacturer's breach of contract due to criminal intent or gross negligence.  
11.2. Additionally, the customer may only enforce his right of retention to the extent that his rights cover the same contractual relationship as the manufacturer's claims which his rights refer to.

## 12. Place of Fulfilment, Place of Jurisdiction, Applicable Legislation

- 12.1. Place of fulfilment for any obligation arising from the contractual relationship is the manufacturer's registered office.  
12.2. Unless a different exclusive place of jurisdiction has been stipulated, the exclusive place of jurisdiction shall be the manufacturer's registered office. Additionally, the manufacturer is entitled to sue the customer at his general competent court.  
12.3. For these terms of business as well as for all the legal relationships between the contract partners, legislation of the German Federal Republic will be applicable excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).