



Powder Compacting Systems

General Terms and Conditions of Sale

KOMAGE Gellner Maschinenfabrik KG

§ 1 General - Scope of validity

1. Our terms and conditions of sale apply exclusively. We do not recognise any conflicting conditions of the customer contrary to our terms and conditions, or which diverge from said terms and conditions, unless we have expressly given our written consent to their validity. Our terms and conditions of sale apply likewise if we effect delivery unconditionally to the customer while aware of conflicting conditions of the customer contrary to our terms and conditions, or which diverge from said terms and conditions.
2. All agreements reached between us and the customer with regard to execution of this contract are set out in writing in this contract.
3. Our terms and conditions of sale apply only with respect to enterprises in accordance with § 310 para.1 BGB (civil code).

§ 2 Offer - Documentation relevant to offer

1. If an order can be qualified as an offer according to § 145 BGB, we can accept it within 2 weeks.
2. We reserve ownership and copyrights to images, drawings, cost estimates, and other materials. This also applies to such written documents that are identified as "confidential". Prior to forwarding such documentation to third parties, the customer must obtain our express written confirmation.

§ 3 Prices- Terms of payment

1. Provided that nothing else is stated in the order confirmation, our prices are "ex works", from the boot sill, exclusive of packaging. Packaging is invoiced separately.
2. The statutory value added tax is not included in our prices. It shall be indicated separately on the invoice in the statutory amount valid on the day on which the invoice is issued.
3. Cash discounts require separate written agreement.
4. Unless the confirmation of the order states otherwise, the purchase price is payable net (without a discount) within 30 days from the date of invoice. The legal requirements regarding consequences of delayed payment apply.
5. The customer will be only entitled to rights set-legally determined, undisputed or recognized by us. In addition, the customer is authorized used on the same contractual relationship.



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§ 4 Delivery period

1. The delivery period indicated by us shall commence only after all technical points have been clarified. Modifications to contractually agreed goods and services extend the delivery period accordingly.
2. obligation in a proper and timely manner. Plea of non-fulfilment of the contract is reserved.
3. In the case of default on the part of the customer in taking delivery or in otherwise culpably infringing the obligation to cooperate, we are entitled to demand that we shall be indemnified for any damage that we sustain, including any additional expenditure. The right to pursue further claims is reserved.
4. Inasmuch as the requirements of paragraph (3) are satisfied, the risk of accidental loss or accidental deterioration of the object of purchase is transferred to the customer the moment the customer defaults on acceptance of delivery or on payment.
5. We accept liability under the statutory regulations insofar as the underlying contract of sale is a fixed-date transaction in accordance with § 286 para. 2 no. 4 BGB or § 376 HGB. We also accept liability under the statutory regulations inasmuch as the customer is entitled, as a consequence of a delay in delivery for which we are responsible, to assert that the customer has no further interest in the fulfilment of the contract.
6. Furthermore, we accept liability under the statutory regulations insofar as the delay in delivery is due to intent or a grossly negligent breach of contract on our part; or the fault of our representatives or agents is attributable to us. Should it be the case that a delay in delivery is not due to any intentional breach of contract on our part, our liability for compensation shall be limited to the foreseeable damage that typically occurs.
7. We also accept liability under the statutory regulations insofar as the delay in delivery attributable to us is due to a culpable breach of a substantial contract commitment; in this case, however, our liability for compensation shall be limited to the foreseeable damage that typically occurs.
8. Furthermore, we accept liability in the case of a delay in delivery to the amount of 5% of the value of the delivery.

§ 5 Transfer of risks - Packing costs

1. Unless otherwise stated in the order confirmation, delivery shall be agreed as effected
2. Special agreements shall apply for the return of packaging.



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3. Insofar as agreed, we shall cover the shipment with transport insurance; the costs incurred to this extent shall be borne by the customer.

§ 6 Liability for defects

1. Defect claims of the customer shall only be accepted on condition that the customer has duly fulfilled his proper inspection obligations and his duty to give notification of defects, in accordance with § 377 HGB.
2. If the object of sale is defective, we are entitled to remedy this at our sole option by either repairing the defect or supplying a faultless new object. In the case of repairs, we shall be obliged to bear all the necessary costs, in particular transport costs, delivery costs, expenditure on labour and materials, provided that these are not increased due to the fact that the object of sale is taken to a place other than the place of fulfilment. Costs shall only be borne up to the amount of the purchase price.
3. If it is not possible to remedy the defect, the customer shall have the right at his sole option to withdraw from the contract or to demand a reduction.
4. We accept liability under the statutory regulations, should the customer lodge claims in respect of intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Unless we are accused of wilful breach of contract, our liability for compensation shall be limited to the foreseeable damage that typically occurs.
5. We accept liability under the statutory regulations if we culpably infringe any essential contractual obligation. However, if this is the case, our liability for compensation shall be limited to the foreseeable damage that typically occurs.
6. Liability for culpable injury to life, body or health remains unaffected; this also applies in respect of mandatory liability according to product liability law.
7. Unless otherwise specified above, our liability is excluded.
8. The period of limitation for claims for defects is 12 months, calculated as of the transfer of risk.
9. The period of limitation for claims for redress for inadequate delivery according to §§ 478, 479 BGB shall remain unaffected. This period is five years calculated as of completion of delivery of the defective object.



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§ 7 Total liability

1. Further liability for compensation other than that provided for in § 6 is excluded irrespective of the legal nature of the asserted claim. This applies especially to compensation claims arising from negligence at the time of conclusion of the contract, or due to other infringements of obligation or tortious claims for compensation in accordance with § 823 BGB.
2. Limitation according to para. (1) also applies as far as the customer instead of a claim for damages demands reimbursement of useless expenditure instead of performance.
3. Insofar as liability for compensation on our part is excluded or limited, this also applies to the personal liability of our employees, personnel, co-workers, representatives and agents.

§ 8 Retention of title

1. We reserve the right to retain title of the object of sale until all payments relating to the business relation with the customer have been received. In the case of behaviour on the part of the customer contrary to the terms of the agreement, in particular default on payment, we shall be entitled to recover the object of sale. Recovery of the object of sale shall constitute a termination of the contract on our part. After recovery of the object of sale, we are entitled to resell it. The proceeds of the sale are to be credited towards the sums owed by the customer, after deduction of reasonable realisation costs.
2. The customer shall be obliged to handle the object of sale with care; the customer is especially obliged to take out adequate insurance on same at his own expense for the original price against damage by fire, water or theft. If maintenance and inspection work is necessary, the customer shall carry this out in a timely manner at his own expense.
3. In the case of seizure or other intervention by third parties, the customer shall notify us immediately in writing, so that we can sue according to § 771 ZPO. Insofar as the third party is not in a position to reimburse us for the costs incurred by litigation according to § 771 ZPO both in and out of court, the customer shall be liable for the loss incurred.
4. The customer has the right to resell the object of sale in the course of regular business; however, the customer shall immediately assign to us in the total invoiced amount (including value added tax) all proceeds accruing to him from the sale to the purchaser or third party, irrespective of whether the object of sale is resold prior to or subsequent to reprocessing. The customer shall remain authorised to collect the sum due, even after it has been assigned. Our authorisation to collect this debt ourselves remains unaffected by this.



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However, we undertake not to collect the debt, provided that the customer meets his payment obligations from the proceeds of the resale, does not default on payment and in particular does not apply for composition or initiation of insolvency proceedings, or does not suspend payments. Should this be the case, we can demand that the customer notify us of the assigned claim and the identity of the debtors, provide us with all the detailed information necessary for collection of the debt, hand over to us all the relevant documents and inform the debtors (third parties) of the assignment.

5. The reprocessing or transformation of the object of sale by the customer shall always be undertaken on our behalf. If the object of sale is reprocessed together with other items not belonging to us, we shall acquire co-ownership of the new item proportional to the value of the object of sale (final invoiced total, including value added tax) in relation to the other processed items at the time of reprocessing. For the item created through reprocessing, the same also applies as for the object of sale delivered subject to retention of title.
6. If the object of sale is inextricably combined with other items not belonging to us, we acquire co-ownership of the new item proportional to the value of the object of sale (final invoiced total, including value added tax) in relation to the other combined items at the time of combining. If the combining takes place in such a way that the object of the customer is seen to be the main item, it shall be understood to be agreed that the customer grants us proportional joint property rights. The customer shall thus hold the resultant sole ownership or joint ownership for safekeeping on our behalf.
7. As security for our own claim, the customer shall also assign to us the claims against a third party arising from the combination of the object of sale with a plot of land.
8. We undertake to release the securities to which we are entitled as and when the customer demands, insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; we shall be responsible for selecting which securities shall be released.

§ 9 Place of jurisdiction - place of performance

1. If the customer is a merchant, our place of business shall be our place of jurisdiction; however, we are entitled to take the customer to court at his place of residence.
2. The law of the Federal Republic of Germany shall apply; UN law relating to the sale of goods is excluded.
3. Unless otherwise stated in the order confirmation, our place of performance is our registered office.

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