

GENERAL TERMS OF DELIVERY AND PAYMENT OF DER-KERN.AT

1. General

- a) These General Terms of Business (GTB) governing product use, delivery and payment in the following shall apply to the use of all web sites run by der-kern.at and to all deliveries related too goods made available by means of telesales/orders to der-kern.at. By using these web sites or, at the latest, by ordering goods, the customer accepts these GTB.
- b) For changes or collateral agreements to be valid, they must be confirmed by der-kern.at Business Management and shall be applicable to exceptional business cases only. The rest of our staff has not been authorized to make any changes or collateral agreements regarding these GTB.
- c) We expressly and fully reject any special provisions made by the customer whatsoever.
- d) In the event that individual clauses of the present GTB become invalid, this will neither render the remaining regulations ineffective or/nor any other contracts based upon these. The contracting parties will jointly agree to find a valid alternative that most closely fulfills both content and purpose of the former regulation.

2. Contractual Relationship

- a) Our offers are all subject to alteration. The customer's orders represent offers as defined by law, to which the customer will be legally bound once the grace period of three weeks is over. The contract between ourselves and the customer will become legally binding as soon as the customer has received our order confirmation, delivery has been made or the service(s) rendered. We are not required to send the customer any more information in order to confirm his order.
- b) We are entitled to accept and perform partial deliveries.
- c) Before we dispatch the customer's order, the customer will receive a list with all order items and prices to make final corrections and confirm the information provided therein. Upon placing an order with us, you will receive an automatically produced email confirming the receipt of order, which does, however, not represent a proper order confirmation.
- d) The customer should know that the internet does not represent a secure medium of communication and

that data transferred via the internet may either become known to or be changed by third parties. The customer bears the risk of data either not being delivered or being delivered differently from how it was sent. We assume that the data that arrives here has been sent as received from the customer.

3. Prices

- a) Our prices include the normal Austrian VAT, but any costs for shipping and handling, which will be listed separately, are not included and will always depend on the product ordered and its location. For deliveries outside Austria, additional fees for import and export costswill be charged.
- b) The prices displayed on our web sites and in the price lists are subject to alteration. We reserve the right to change the information provided at any time. Our prices represent current market prices until further notice. The invoice will be in EURO

4. Delivery and Time of Delivery

- a) Delivery will be made at the risk and cost of the customer (cf. section 3) to the address provided at the time of order.
- b) Quoted delivery dates are subject to change. If delivery dates could not be kept, this will entitle the customer to make use of the right to withdraw from the contract only after an extension period of at least two weeks. If we fail to meet the extension date, the customer is entitled to withdraw from the contract.
- c) Delivery time is prolonged by any circumstances going beyond the contracting party's intention to deliver in due time in the event of: An Act of God, any unforeseeable breakdown of services, interference by authorities, delays owing to sluggish transport or customs clearance, damage during transport, rejections of important production components and unforeseeable interruptions of services.
- d) If partial deliveries are possible, they may also be lawfully carried out. All partial deliveries count as independent deliveries, for which we may invoice you separately.

5. Import/Export and Customs Regulations

- a) When placing an order, the customer must observe the import and customs regulations of the respective country.
- b) The customer bears the risk for all consequences resulting from invalid goods dispatch abroad, disregard of the import and customs regulations of foreign countries (including transit regulations), wrong

or incomplete information given in the customs declaration, the green customs slip or accompanying papers, as well as for non-observance of the applicable export regulations. This applies also to damage in transit by warranty losses as a result of goods not being replaced after confiscation by the customs authorities of a foreign country. It is incumbent on the customer to procure information himself necessary for proper delivery of the goods (e.g. the customer may contact the agencies abroad in the countries of destination or transit, foreign trade offices, Chambers of Industry and Commerce, etc. regarding local regulations and practices.).

6. Warranty

a) Notification of defects (the consumer will forfeit any of his rights warranted by the Customer Protection Law if he fails to indicate these in good time) should be made upon receipt of delivery or as soon as these defects are noticed. If the customer is an entrepreneur as defined by the Customer Protection Law, he must inspect the goods delivered or services rendered to him immediately upon delivery as to their completeness, correctness and any contingent faults. We must be informed by the customer about any faults in writing within 5 working days following a proper examination of the goods delivered or services rendered to substantiate any contingent customer claims.

b) Claims for replacement deliveries – irrespective of the legal grounds they are based upon – (especially warranty, damage compensation, special right of recourse) come under the statute of limitations within the legal two-year warranty period upon delivery or when the service(s) have been rendered. For consumers as defined by the Customer Protection Law, this period starts upon the detection of the fault.

c) In the event the customer finds a fault, he can choose between correction and replacement. If these services are not expedient, the customer can demand an adequate reduction or change in price in accordance with the current legislation. If we correct a fault, this will be free of cost and we will not charge you for any expenses incurred. However, we can ask the customer to return the goods to us – if this is expedient – at our risk and at our costs. The customer is obligated to give us the opportunity to correct a fault. Warranty is governed by current legislation.

7. Damage compensation

We do not assume liability for any damage irrespective

of the legal grounds it is based upon, in particular due to delays, services rendered impossible, defective performance, conditions prevailing upon signing the contract, consequential fault damages, faults or unlawful acts, caused by us or by persons for whom we are responsible, due to slight negligence.

Customers, who are entrepreneurs as defined by the Customer Protection Law must provide evidence that we acted with gross negligence or intent. With consumer contracts, personal injuries and damage caused to goods that were accepted with the purpose of processing these are excluded from the liability exclusion. Expressly and by mutual agreement, we wave any responsibility for warranty in the event of slight negligence.

8. Terms of Payment

a) Our invoices must be paid by prepayment before the period of delivery begins.

b) For late payments, we will charge interest on arrears at a rate of 5 % above the current base-rate of the European Central Bank.

c) If the customer is late with his payment or any other services he needs to provide, we are entitled (irrespective of any other legal provisions) to withhold our deliveries until the agreed quid pro quo has been made. After an appropriate extension time has elapsed, we have the right to withdraw from the contract and claim damage for breach of contract. In this case, the customer must return the delivered goods to us without delay and at his own costs. We reserve the right of claiming damage compensation for depreciation, wear and tear, transport expenses etc., while being entitled (if we withdraw from the contract ourselves) to claim or retain 25 % of the purchase price as a minimum contract penalty.

d) The customer obligates himself to pay adequate compensation to fully cover our claims if he breaks his contractual obligations. We will charge EURO 10,-- per reminder and EURO 50,-- for keeping the customer up to date with the costs he owes us. In addition, the costs for collection agencies must be paid, up to the maximum amount that can be charged by these agencies, as well as any costs for legal advice in accordance with the law regulating lawyers' fees.

e) The customer can only offset any costs with us or with connected undisputable or legally valid claims if he is insolvent. Entrepreneurs as defined by the Customer Protection Law may place a lien (right to withhold) for such claims only.

9. Reservation of Proprietary Rights

We retain the exclusive title of the items supplied by us without any restrictions until these items are paid in full including any extra charges. Until that time, these items are goods entrusted to the customer and may neither be sold, loaned or given away for free. The customer has no right to avail of these items without our explicit permission and bears the full risk for the goods entrusted to him, especially regarding any risk of destruction, loss or deterioration.

10. Applicable law, place of performance, legal venue

a) The legal relationships with the customer are solely based on the applicable Austrian Substantive Law to the exclusion of the UN Convention on International Sale of Goods.

b) Place of payment and performance for all contractual obligations is our registered business office.

c) The legal venue for any disputes arising directly or indirectly from this contract shall be the Austrian Court which has "in-rem" and territorial jurisdiction for the Viennese District 1020. If the customer is a consumer as defined by the Customer Protection Law, the venue shall be at this place only if he resides or normally stays or works within this Court district, or for the time he lives abroad. We are also entitled to sue the customer at his legal venue.

11. Right to withdraw from Contract in accordance with § 5 e of the Customer Protection Law.

a) The customer, who is a consumer as defined by the Customer Protection Law, can withdraw from a telesales contract or a contractual declaration given while ordering online or by telecommunication media until the fixed periods of time listed below have elapsed. It suffices if the cancellation is sent within the cancellation period. The cancellation period is fourteen (14) working days excluding Saturday, which does not count as a working day. The cancellation period for contracts governing the delivery of goods starts upon their receipt by the customer, and for contracts regulating any services, it starts on the day when the contract is concluded. If we have not complied with our obligation of providing [relevant] information to the customer as defined by § 5d, sections 1 and 2 of the Customer Protection Law, the cancellation period shall be three months from the times mentioned in the previous section. If we fulfill our obligation to inform the customer, the cancellation period, which has been

explained in the previous section, shall start from the time we sent this information.

b) The customer has no right to withdraw from the contract because of/regarding:

1. Services that were started as agreed with the customer within seven working days (§ 5e section 2, clause 1 of the Customer Protection Law).
2. Goods or services, the prices of which will develop according to fluctuations on the financial markets, which we cannot influence,
3. Goods manufactured to customer specifications and tailored precisely to individual needs, which cannot be returned for this very reason or because they might go bad quickly or because their shelf-life would be exceeded,
4. Audio or video recordings or software, if the customer has broken the seals of these goods,
5. Newspapers, periodicals and magazines except for contracts relating to periodical publications (§ 26, section 1 Z 1 of the Customer Protection Law),
6. Betting and lottery services
7. Deliveries made to the door step or leisure time services (§ 5c, section 4 Z 1 and 2 of the Customer Protection Law). Thus, the customer has no right to withdraw from the contract regarding products, which can be ordered from der-kern.at internet web sites.
8. The delivery of foods and drink (as there is a risk of manipulating these and because of their limited shelf life).
9. High delivery costs for deliveries abroad.

c) If the right to withdraw from the contract is exerted in accordance with section a, we must

1. Reimburse the customer step by step for his payments made as well as for all expenses required and appropriate
2. The customer must return the received goods/services (immediate costs for returning goods/services must be paid by the customer as agreed) and reimburse us adequately for their use and pay an indemnity fee to compensate for the general deterioration in value of the goods/services rendered; accepting goods/services by the customer alone is not deemed as value deterioration.

12. Miscellaneous

a) Deliveries and professed intentions must be made to the valid address provided by the customer until further notice of any address changes. Upon conclusion of contract, the customer obligates himself to fill in the form completely and correctly with all

data required. If the customer fails to provide correct or complete information, he will be liable for the expenses caused by this. In the event of other compensation claims, the customer must inform us of any changes regarding his name or permanent address without delay. If the customer fails to provide this information, any written notice sent to the customer's last address will be deemed as properly delivered information.

b) A transfer of rights resulting from the Contract with us to third parties will be subject to our written approval.

13. Use of Web Sites

The customer is not entitled to use content, graphic arts, source texts, offers, price information, logos, company logos, trademarks, intangible rights or other content displayed at der-kern.at web sites. The use of der-kern.at web sites will be a the customer's own risk.