

GENERAL TERMS AND CONDITIONS

For use opposite:

1. **Merchants**, if the contract is part of the operation of the trade;
2. **Legal persons**, if the contract is part of the operation of the trade;

§ 1 General

1. Our terms of business, delivery and payment apply exclusively. All subsidiary agreements to these conditions, even if they are accepted by representatives or employees, require our express written confirmation to be valid. General terms and conditions of the customer shall only apply insofar as we have expressly agreed to them in writing.

2. The possible invalidity of individual provisions shall not affect the validity of the remaining provisions.

§ 2 Offer and conclusion of contract

1. Offers that are not limited in time are always subject to change. They represent an invitation to the business partner to submit an offer to conclude a contract. Samples and specimens shall be deemed to be approximate demonstration pieces for quality, dimensions and colour.

2. Orders are only binding for us if we confirm them or comply with them by sending the goods. Oral subsidiary agreements are only valid if we confirm them in writing.

3. Upon confirmation of the order, the customer is obliged to accept the goods listed in the order confirmation.

4. The placing of the order must always be made in writing (also by fax or e-mail). If the order is only placed verbally, transmission errors and any misunderstandings shall be borne by the customer. If there is a written order confirmation, the scope and content of the order shall be determined by this.

5. Erwin Kowsky GmbH & Co. KG reserves the ownership and copyright of the documents handed over to business partners. They may not be made accessible to third parties without the prior written consent of Erwin Kowsky GmbH & Co. KG.

§ 3 Prices

1. The price lists valid at the time the contract is concluded shall apply. Erwin Kowsky GmbH & Co. KG is bound to price agreements for three months after the conclusion of the contract, if the delivery is to take place within this period. All prices are understood to be exclusive of the respectively valid value added tax without additional services.

2. Unless otherwise agreed in writing, shipping and packaging costs within Germany shall be borne by the purchaser. Export prices are always ex factory.

3. Erwin Kowsky GmbH & Co. KG reserves the right to demand a surcharge on the agreed prices if and insofar as wage, freight and tax increases have occurred after the conclusion of the contract, as well as price increases by subcontractors.

§ 4 Delivery and delivery times

1. In the case of dispatch, the risk, including the risk of confiscation, shall pass to the buyer upon handover to the forwarding agent or carrier, but at the latest when the goods leave the factory premises. This also applies if partial deliveries are made or Erwin Kowsky GmbH & Co. KG has taken over other services such as shipping costs or delivery. If the shipment is delayed due to circumstances for which the business partner is responsible, the risk is transferred to the business partner from the day of readiness for shipment; however, Erwin Kowsky GmbH & Co. KG is obliged to arrange the insurance policies that the business partner demands at the request and expense of the business partner. The supplier selects the dispatch route and mode of dispatch; the delivery is made to the address of the buyer. Deviating unloading points must be agreed upon.

2. The goods are delivered in the specified designs and packaging units. We reserve the right to make partial deliveries.

3. Deliveries shall be made within the Federal Republic of Germany; from a net goods value of 700.00 Euro, deliveries shall be free of charge. For orders with a net order value of less than 52.00 Euro, we reserve the right to charge a minimum quantity surcharge of 5.50 Euro. The insurance is borne by us.

4. If there are no special instructions of the business partner, the choice of the transport route and means of transport is made by Erwin Kowsky GmbH & Co. KG to the best of its knowledge without liability for the cheapest or fastest shipment. If the business partner wishes an accelerated dispatch, e.g. by express or courier, the additional costs are at his expense.

5. If the buyer detects damage to the packaging, he undertakes to consult the carrier immediately to determine the damage. The original bill of lading, a statement of facts and the recipient's declaration of assignment must be forwarded to us without delay. Transport damages, which are only determined after unpacking the goods, must be reported to us in writing and received within three days after receipt of the goods.

6. We (Erwin Kowsky GmbH & Co. KG) accept the transport packaging returned by the customer carriage paid and recycle it in accordance with the packaging regulations.

7. Events of force majeure entitle us to postpone deliveries for the duration of the hindrance and a reasonable start-up time and/or to withdraw from contracts in whole or in part.

8. Strike and lockout of unforeseen circumstances which make it impossible for us to deliver on time despite reasonable efforts are equivalent to force majeure. This also applies if the aforementioned hindrances occur during a delay or at a subcontractor. The buyer can request us to declare within two weeks whether we wish to withdraw from the contract or to deliver within a reasonable period of grace. If we do not declare, the buyer can withdraw from the unfulfilled part of the contract.

9. As long as the buyer is in arrears with an obligation, our obligation to deliver shall be suspended.

§ 5 Terms of payment (inland)

1. Unless otherwise agreed in writing, payments must be made net cash within 30 days from the date of the invoice without any deductions to one of the bank accounts indicated by Erwin Kowsky GmbH & Co. KG. In case of receipt of payment on one of the bank accounts indicated by Erwin Kowsky GmbH & Co. KG within 10 days from the date of the invoice, the business partner is entitled to deduct 2% discount.

2. We grant a 3% discount for participation in the SEPA Corporate Direct Debit Mandate. Deviating payment and delivery terms can be regulated by individual condition agreements.

3. Erwin Kowsky GmbH & Co. KG accepts cheques and bills of exchange only after express agreement. The acceptance is made on account of payment. The business partner of Erwin Kowsky GmbH & Co. KG must reimburse the costs associated with the cashing of the cheques and bills of exchange. Credit notes for cheques and bills of exchange are subject to encashment. Value dates are on the day on which Erwin Kowsky GmbH & Co. KG finally disposes of the equivalent value.

4. If the payment period is exceeded, we are entitled to charge interest on arrears at a rate of at least 7,5% p.a. from the time of default. Both the buyer and Erwin Kowsky GmbH & Co. KG reserve the right to prove lower or higher damages in individual cases.

5. In case of default of payment and justified doubts about the solvency or creditworthiness of the business partner, we are entitled to demand securities or advance payments for outstanding deliveries, to make all claims arising from the business relationship immediately due and payable and to take back goods delivered under reservation of title.

6. The retention of payments or the set-off with counterclaims of the business partner is excluded, unless these have been recognized by Erwin Kowsky GmbH & Co. KG or have been legally established.

§ 6 Terms of payment (abroad)

1. Unless otherwise agreed in writing, payments must be made in advance.

§ 7 Reservation of title

1. The sold goods remain our property until full payment of our claims arising from the business relationship with the buyer. The buyer may dispose of the purchased goods in the ordinary course of business. The buyer hereby assigns to us by way of security any claims against third parties arising from the resale. He is authorised to collect these for our account until revocation or suspension of his payments to us.

2. The business partner is entitled to resell the goods belonging to us in the ordinary course of business. In the event of resale, the customer assigns to us in advance all resulting payment claims. Upon request, the business partner is obliged to provide the addresses of his customers and the amount of the claims with copies of invoices. If our property is mixed or processed with other goods, the assignment is made in the amount of the value share of the goods delivered by us to the other processed items. If the value of the securities exceeds the value of the claims to be secured by more than 20%, Erwin Kowsky GmbH & Co. KG is obliged, upon request, to release securities of its own choice in the amount of the exceeding value.

3. In case of access of third parties, in particular bailiffs, to the goods belonging to us, the buyer will point out our ownership and inform us immediately by registered letter or by fax.

§ 8 Warranty and liability

1. The business partner is obliged to immediately inspect received deliveries for the presence of obvious and hidden defects. Warranty claims for obvious defects only exist if they are reported to Erwin Kowsky GmbH & Co. KG in writing within one week after receipt of the delivery, enclosing receipts (delivery note invoice). Warranty claims for hidden defects only exist if they are reported to Erwin Kowsky GmbH & Co. KG in writing within one week after discovery.

2. The limitation period for material defect claims is one year from delivery of the goods.

3. In cases of defective delivery, Erwin Kowsky GmbH & Co. KG has the right to choose between repairing the defective goods or replacing them with a defect-free replacement. The business partner is obliged to make the defective goods available to Erwin Kowsky GmbH & Co. KG for inspection and rectification. If the rectification/replacement delivery fails, the customer is entitled to demand cancellation of the contract or a corresponding reduction of the purchase price. The warranty that Erwin Kowsky GmbH & Co. KG assumes towards the first user of the rehabilitation equipment is not affected by these regulations.

4. Only the manufacturer's product description is considered agreed as the quality of the goods. Public statements, recommendations or advertising by the manufacturer do not constitute a contractual description of the quality of the goods.

5. If the customer receives faulty assembly instructions, we shall only be obliged to supply faultless assembly instructions and this only if a defect in the assembly instructions prevents proper assembly.

6. The customer receives no guarantees in the legal sense from us.

7. Claims for damages by the customer are excluded, unless they are based on a grossly negligent or intentional breach of duty by the seller. The above limitations of liability do not affect claims under the Product Liability Act or claims for damages in the event of physical injury.

8. It should be noted that stricter legal provisions apply to our products, especially custom-made products. We cannot accept any liability for damage caused by changes to our products. Constructional changes of Kowsky articles by the business partner or a third party commissioned by him are only permitted if they comply with the safety requirements and if the management of Erwin Kowsky GmbH & Co. KG has given its prior written consent. For this purpose, a modified model together with a construction drawing must be made available to Erwin Kowsky GmbH & Co. KG on request. If constructional changes are made without the written consent of the management of Erwin Kowsky GmbH & Co. KG and if third parties suffer damages due to the changes for which Erwin Kowsky GmbH & Co. KG is responsible, the business partner is obliged to indemnify Erwin Kowsky GmbH & Co. KG internally from all claims of the third party.

9. Only when using original Kowsky parts can we guarantee the safe and perfect functioning of our products, provided that they are installed or modified professionally. We can also only accept claims arising from the product liability law if original parts have been used. Therefore, as a specialist dealer and as a user, please make sure that Kowsky parts are used exclusively, not only for reasons of warranty and liability, but also to ensure the proper functioning of the products.

10. The warranty does not cover defects that are due to wear and tear or improper handling. The warranty obligation expires if repairs or modifications or replacement of individual parts, which are not original Kowsky spare parts, are carried out by parties other than the seller or supplying company. The warranty is only valid for the first user of the article manufactured by Erwin Kowsky GmbH & Co. KG. It expires if the article was repaired or constructively modified by others than the Erwin Kowsky GmbH & Co. KG itself or a dealer authorized by the Erwin Kowsky GmbH & Co. KG.

11. We assume liability according to the product liability law only for the first time placing our products on the market. We only agree to reuse the product if it has been tested by us beforehand.

§ 9 Disclaimer for the countries USA and Canada

1. For insurance reasons, Erwin Kowsky GmbH & Co. KG is only liable for damages in the USA and Canada if the delivery of the goods to these countries was made with the express permission of Erwin Kowsky GmbH & Co. KG.

§ 10 Return of goods

1. Returns are only accepted after prior consultation and free delivery. Unfree returns of goods are not accepted by us.

2. In the case of an agreed return, the reason for the return must be stated on the completed return slip; the corresponding copy of the invoice must be enclosed with the return delivery.

3. In the case of goods returned for credit, which are accepted in individual cases as a gesture of goodwill, only 70% of the net invoice amount can be credited. Articles whose delivery is older than 4 weeks, as well as custom-made products, are excluded from return.

4. The return of items that have been altered or damaged by the buyer is excluded.

§ 11 Place of performance and jurisdiction

1. The place of performance for all obligations from the contractual relationship is Neumünster.

2. For all disputes arising from the contractual relationship, if the customer is a registered trader, a legal entity under public law or a special fund under public law, legal action shall be taken at the court having jurisdiction for our registered office. We are also entitled to take legal action at the customer's headquarters.

3. The contractual relationship shall be governed exclusively by German law, to the exclusion of the UN Sales Convention.

§ 12 Use of personal data

Erwin Kowsky GmbH & Co. KG is entitled to store personal data of the business partner within the framework of the legal regulations, in particular the Federal Data Protection Act, and to process them within the company.

§ 13 Severability clause

If for any reason individual provisions of the above general terms and conditions are invalid or non-binding, this shall not affect the validity and binding nature of the remaining provisions.

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