

Kyowa Hakko Europe GmbH - General Terms and Conditions

I. General

1. For all offers and contracts these General Terms and Conditions shall exclusively apply. Dissenting or inconsistent terms and conditions of the buyer shall not be applicable and valid, even if KYOWA has not expressly rejected the terms of the buyer.
2. Modifications and/or amendments to these General Terms and Conditions or other terms of the contract are only effective, if they are acknowledged in writing by KYOWA.
3. In case of doubt the English version of these General Terms and Conditions shall have priority over versions in other languages.

II. Orders

1. An order placed with KYOWA any modification and supplement, is legally binding in every respect only after written confirmation of such order by KYOWA.
2. All comments and declarations of KYOWA made in preparation of the completion of a contract (e. g. in brochures, price lists, catalogues, advertisements, advertisement letters, estimates of costs) shall be regarded as non binding offers to place an order.

III. Delivery

1. The time quoted for delivery is not binding, unless confirmed by KYOWA in writing as binding. Where a definite time for delivery is expressly fixed, this time for delivery can be reasonably extended by KYOWA on the occurrence of unforeseen events, such as but not limited to cases of force majeure, which delay deliveries by KYOWA.
2. Unless agreed differently all prices are to be regarded "EXW" (Incoterms 2010).
3. If KYOWA ships the goods to the buyer, KYOWA has the choice of the means of transport and the route which the goods are transported.
4. Part deliveries by KYOWA are permitted, if this is within the scope of customary trade and not unreasonable for the buyer. In such case KYOWA may issue part invoices.
5. KYOWA has the right to withdraw from a contract in case of force majeure or other cases beyond reasonable control of KYOWA, which render substantially difficult or render impossible supplies by KYOWA. Such causes shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, failures of third party vendors and suppliers (such as supply delay), power failures, earthquakes, floods or other natural disasters. In such event claims for damages by the buyer are excluded. If circumstances of the aforementioned nature contribute to a substantial increase of cost for KYOWA, KYOWA may increase prices accordingly, and where the buyer rejects these price increases withdraw from contract.
6. In case of multiple delivery contracts KYOWA may fix a reasonable deadline for the request or acceptance for the partial delivery and after its expiration terminate the contract and claim damages for non performance in respect for the remaining quantity ordered by buyer.
7. If by fault of KYOWA a delivery time is not kept which was assured and confirmed in writing buyer shall be entitled to set a reasonable period of grace after the expiration of the delivery time and to terminate the contract after the expiration of the period of grace. Claims for damages caused by undue delay shall be excluded. Insofar as goods are delivered from overseas "reasonable" shall be a period of grace of at least 8 weeks.
8. Unless otherwise agreed in written form, the risk of loss or damage to the goods shall pass to buyer when the goods are placed at the disposal of the buyer at the place of delivery in accordance with Incoterms 2010 (EXW).

IV. Payment

1. Terms of payment will be separately agreed. If no separate agreement is made, the payment shall be effected within thirty (30) days from the date of invoice without costs and without any deduction to the account of KYOWA indicated on the invoice.
2. Where customs duties, freight rates, insurance premiums or other ancillary costs are included in the agreed price for a supply, the buyer shall bear any increase which results after the date of the making of this contract in the scales of charges or rates in force at such date, in respect of such costs. Where prices to be paid to KYOWA have been agreed in other than Euro currency KYOWA is entitled, where the exchange rate against Euro is officially altered after the conclusion of the contract, either to claim the difference in value from the buyer or to rescind the contract without hereby being liable to pay damages to the buyer.
3. When payment is delayed by the buyer upon maturity, interest at 8 percent points above the basic interest rate according to Section 288(2) German Civil Code shall be due unless KYOWA proves a higher damage.
4. A breach of the obligation by the buyer to make payment (such as default of payment) or the occurrence of circumstances which could reduce the creditworthiness of the buyer, shall entitle KYOWA to effect deliveries not yet executed only against advance payment or lodgement of security. KYOWA shall give notice to the buyer of its intention to exercise such right by registered letter fixing a time limit. On expiry of the time without the conditions of the notice having been met KYOWA shall be entitled to cancel the contract or to claim damages for non-performance.
5. The buyer is only entitled to offset against claims of KYOWA or to exercise a right of retention, if the buyer's claim is undisputed or if the buyer has obtained a final judgement.

V. Reservation of Ownership

1. KYOWA reserves the right of ownership in the goods until full payment of all claims including all ancillary costs resulting from the business relationship.
2. Processing, remodelling or mixing the goods by the buyer is always regarded as performed on behalf of Kyowa being the manufacturer in the meaning of section 950 of the German Civil Code and without any obligation for Kyowa. In such cases Kyowa and the third parties whose reserved property has been processed, remodelled or mixed with Kyowa's goods, shall get co-ownership of the new goods in proportion to the invoice value of Kyowa's goods to the invoice value of other goods at the time of the processing.
3. The buyer is only allowed to sell the goods and the new goods respectively within the ordinary course of business. All receivables arising from a sale of the goods or new products or other reasons (insurance, tort) are hereby assigned by the buyer to KYOWA in full extent. KYOWA authorises the buyer to collect the receivables being assigned to KYOWA on the account of KYOWA. KYOWA is entitled to revoke this authority to collect the assigned receivables, if the buyer does not fulfil his contractual obligations properly. Upon request of KYOWA the buyer shall disclose the assignment and provide KYOWA with all necessary information and documents to enforce the assigned receivables.
4. The buyer shall neither assign the goods for safe keeping nor pledge nor otherwise encumber them. In the case of seizure, attachment or other measures taken by a third party the buyer must inform KYOWA forthwith. The buyer is liable for the costs of a third party counter claim proceeding.
5. Until paid for in full the buyer shall insure the goods delivered against loss or damage of any kind, for an appropriate sum and give KYOWA evidence of the policy.
6. KYOWA is obliged to release the securities at the request of buyer or a third party which is impaired by KYOWA's exceeding securities, as far as their value exceeds the claim to be secured by more than 10 percent.
7. As far as the national law of the country, where the goods remain, requires further steps for the validity of the reservation of ownership, for example the registration with a registry, the buyer has to perform them on his costs and has to deliver KYOWA proof about this.

VI. Representations / Warranty

1. The buyer is obliged to check the goods supplied right after receipt and to inform KYOWA in writing without delay of any apparent defect, but within 7 days after receipt at the latest. If the buyer does not comply with these obligations KYOWA's warranty obligation is excluded in respect of any such apparent defect. KYOWA's warranty for hidden defects shall be excluded, if KYOWA is not informed in writing about such hidden defect within seven days after the defect has been detected or could have been detected by a reasonable buyer.
2. Where receipt and acceptance is made in the presence of a representative of KYOWA, the goods are deemed to be approved if no notification of apparent defects is made at acceptance.
3. KYOWA's warranty obligation is restricted to replace defective goods ("Nacherfüllung"). In case the replacement fails, the buyer is at his option entitled to withdraw from the contract ("Rücktritt") or to reduce the purchase price ("Minderung").
4. The warranty of goods supplied extends only to defects which are proved to be due to defective material or faulty manufacture. Defects which arise from transportation, improper handling, tampering with the goods supplied or normal wear and tear are excluded.
5. All warranty claims are subject to a limitation period of 12 months starting with delivery.
6. Public statements of KYOWA, its manufacturers or assistants in the sense of section 434 subsection 1 sentence 3 German Civil Code do not give a reason for any warranty going beyond the above stipulations.
7. KYOWA shall be liable against the buyer in case of an injury of life, body and health, if such injury is caused by negligence or by intention of KYOWA's legal representatives or persons engaged by KYOWA for the performance of its obligations. In cases of all other damages KYOWA is only liable, if such damage is caused by intention or gross negligence of KYOWA's legal representatives or persons engaged by KYOWA for the performance of its obligations ("Erfüllungsgehilfen"). In such cases the liability is restricted to the typical foreseeable damage.

VII. Place of Performance, Place of Jurisdiction

1. All legal relations between the parties that may occur in connection with the conclusion and execution of this contract, regardless whether based on contract, tort or other statutory law are subject to German Law with the exclusion of the rules of conflict of laws of the German Private International Law. The rules of the UN-Convention for the International Sales of Goods (CISG) of April 11, 1980 shall not apply.
2. The Place of Performance as well as the place of exclusive jurisdiction is where KYOWA's registered office is located (Düsseldorf).
3. If one or more of these provisions are ineffective or invalid, the effectiveness of all other provisions shall not be affected.