

**FKuR Kunststoff GmbH**

Siemensring 79, D - 47877 Willich  
Tel.: +49 (0) 21 54 / 92 51 - 0  
Fax: +49 (0) 21 54 / 9251 - 51  
<http://www.fkur.com>  
eMail: [info@fkur.com](mailto:info@fkur.com)



## General Conditions of Sale

### I. Application & Conclusion of a Contract

1. We supply goods and services exclusively on the basis of these General Conditions of Sale. General purchase conditions of the buyer are hereby rejected and excluded.
2. Our offers are not binding unless the offer explicitly provides that we are bound by it for a specific period. All other, non-binding offers are invitations to the buyer to submit a binding offer. The contract is concluded by our acceptance of the buyer's offer. If our acceptance deviates from the offer of the buyer, such acceptance constitutes a new, non-binding counter offer from us.
3. Our declarations must be in written form to have legal effect.

### II. Prices and Payment Conditions

1. Our prices are exclusive of freight and insurance costs as well as applicable taxes/duties which will be charged additionally (where applicable).
2. The purchase price is due and payable at the latest 14 (fourteen) days as of the invoice date.
3. Payment is to be made in such a way that we have access to the amount paid on the day that it is due.
4. The buyer may only set off claims with undisputed or adjudicated counterclaims and, only with respect to such claims, does the buyer have a right of retention.
5. We are entitled to interest on any amount due and outstanding at the rate of 8 (eight) % above the basic rate of interest applicable at the time the payment is due as announced by the Deutsche Bundesbank as per § 247 of the German Civil Code (BGB).
6. The statutory provisions on payment delays apply.
7. If, after conclusion of a contract, circumstances arise that indicate that our claim for payment may not be fulfilled, then we are entitled to set an appropriate deadline to the buyer for providing a security. If the buyer does not provide the security within the set deadline, we are entitled to revoke the contract.

### III. Execution of Delivery

1. Unless agreed otherwise, all our deliveries are ex works (EXW Willich, Germany as per INCOTERMS 2020)
2. Delivery periods commence on the date of our order confirmation but not before all details concerning the delivery have been clarified and confirmed. The same applies for delivery dates. Delivery periods and delivery dates shall be extended reasonably in case of interruptions in our production that were not foreseeable and that we are not responsible for and/or delays in procuring required (raw) materials that were not foreseeable and that we are not responsible for. This also applies if we shall source part of the agreed quantities from third parties.
3. Notwithstanding our rights and remedies available in case of default in acceptance by the buyer, we are entitled to reasonably defer our delivery periods and dates in line with the needs of our production processes if the buyer does not meet his contractual obligations including secondary obligations and duties to cooperate and support, (e.g. providing required raw material, opening of a letter of credit, providing domestic or foreign certificates, advance payments).
4. The date of dispatch of the goods at our factory/warehouse is decisive for meeting agreed delivery periods/dates.
5. In case of goods specially produced for the buyer or goods customized as per the needs of the buyer it is agreed that the quantity supplied may vary by 10 (ten) % and that we are, therefore, entitled to supply and that the buyer is obliged to purchase 10 (ten) % in excess or 10 (ten) % less than the quantity fixed at the time of the order.
6. In case of a delay of a delivery that could not reasonably have been avoided by us due to occurrence of an event that is beyond our reasonable control and that could not reasonably have been foreseen at the time of conclusion of

the contract (force majeure) the delivery periods and delivery dates will be prolonged/deferred reasonably. Force majeure events under this clause include but are not limited to industrial disputes in our and third party plants, transport interruptions, epidemics, pandemics, cyberattacks, breakdown of machinery and acts of an authority. We will notify our customers without delay of force majeure events. In case of a force majeure event, the buyer may revoke the contract, at the earliest, six weeks after receipt of our notification.

7. In case we do not meet a delivery period or a delivery date the buyer shall only be entitled to exercise the rights under Sections 281, 323 BGB after he has set an additional deadline for delivery along with – in deviation of Sections 281, 323 BGB - a notice that he will reject the performance after expiry of the additional period; the claim for performance is excluded if the additional period has expired without result.

8. In case of a delay, the buyer shall purchase the quantities affected by the delay from third party sources identified and notified by us and revoke the contract partially with respect to the quantities affected by the delay. Documented additional costs for such covering purchases and evidenced damages incurred by the buyer due to the delay until the supply of the covering purchases shall be borne by us. In case the buyer does not purchase the products affected by the delay from such third party our liability for damages arising out of or in connection with the delay is limited to 50 (fifty) % of the value of the respective goods/services.

8. In case of material supplied solely for testing purposes, we may accept return of the material. If the buyer is not satisfied with the test results provided that the material is returned in its original packaging and before expiry of its shelf life. Any reimbursement is, however, subject to an inspection of the returned material by us upon its return. Details of the return must be coordinated with us in advance.

### IV. Dispatch and Passing of the Risk

1. If the delivery of goods is delayed for a reason attributable to the buyer, we are entitled to store the goods at the expense and risk of the buyer, to take all suitable measures for maintaining the goods and to invoice the goods as delivered.
2. We do not take back packaging materials and protection/transport aids.
3. If the goods are damaged during transport, the buyer shall immediately initiate an investigation by the carrier.
4. The risk passes to the buyer when the goods are handed over to the forwarding agent or carrier, at the latest when the goods leave our factory or warehouse.

### V. Claims for Defects

1. A product is free of defects if it does not deviate or only deviates insignificantly from the agreed specifications at the time of passing of the risk. The absence of defects and conformity of the goods with the contractual requirements are solely governed by the details on quality and quantity stipulated in the purchase contract (including specifications on our website referred to in the contractual documents). Unless explicitly agreed in writing, we do not warrant and do not assume any responsibility for suitability of the goods for a particular purpose or for their fitness for a particular use and the suitability of the goods for a particular purpose or their fitness for a particular use are the sole responsibility of the buyer. We are not liable for any deterioration or loss or unsuitable handling of the goods after passing of the risk.
2. If not specified otherwise, the product shelf life is 6 (six) months after dispatch of the goods at our warehouse, provided that the product is stored in its original packaging in dry (max. 70% relative humidity) and dark (not exposed to direct sunlight) conditions at a temperature between 5°C and maximum 30°C (ambient temperature). It shall be noted that exposure of the packaged product to a major drop in external

**FKuR Kunststoff GmbH**

Siemensring 79, D - 47877 Willich  
Tel.: +49 (0) 21 54 / 92 51 - 0  
Fax: +49 (0) 21 54 / 9251 - 51  
<http://www.fkur.com>  
eMail: [info@fkur.com](mailto:info@fkur.com)



air temperature (e.g. during transportation) can result in the development of water condensate. Prior to the processing of the product, it should be ensured that there is no condensate on the unpacked product.

3. Our products are protected by intellectual property and know-how rights. The buyer is only allowed to apply standard tests for quality assurance to our products; he shall not reverse engineer, disassemble, reproduce or modify our products and/or our recipes. If the buyer modifies material received from us by the use of additives or otherwise then he accepts full responsibility and liability for all products manufactured with such modified material. In case of modifications, the buyer is obliged to confirm safety as well as commercial and technical usability of such modified material by own tests and analyses and, if required, third party certifications. The buyer shall comply at all times with all statutory requirements applicable for handling, processing, selling and/or other use of any materials received from us and products manufactured with these materials.

4. The agreed specifications as well as any expressly agreed use of the products do not amount to a guarantee within Section 443 BGB. Such guarantee must be assumed explicitly in writing by us and said requirement of written form can only be waived in written form.

5. The buyer shall immediately examine the goods upon receipt. Any defects that can be discovered by due examination must be notified to us immediately after receipt. Any other defect must be notified immediately to us at the time it is discovered. Any notification of a defect to us must be in writing with details on the nature of the defect. Claims of the buyer for defects are excluded if the buyer does not examine the goods and/or does not notify a defect immediately as per this Clause.

6. In case of a complaint, the buyer shall grant us the opportunity to inspect the goods immediately. Upon request, the allegedly defective goods or a sample thereof shall be made available to us at our expense. If a complaint was not justified, we reserve the right to charge to the buyer transport and handling costs, as well as compensation for the efforts we spent on the inspection.

7. In case of a material defect, we will, at our sole discretion taking into consideration the interests of the buyer, either remedy the defect of the supplied product or supply a product free of defects as cure.

8. If the cure fails, the buyer may either reduce the purchase price or revoke the contract; further claims are excluded.

9. In case of a legal defect, the same principles apply as in case of a material defect.

10. Claims arising out of or in connection with the supply of a defective product are subject to a limitation period of one year as of delivery of the product. The statutory statute of limitation applies in case of products that are normally used for a building and have been used that way and that have resulted in the defectiveness of the building.

11. Claims of recourse of the buyer against us under Section 478 BGB are limited to the statutory liability of the buyer for defects invoked by third parties and are subject to compliance of the buyer with his duty to notify defects pursuant to Section 377 German Commercial Code (HGB).

12. The buyer acknowledges that we do not assume any guarantee for the merchantability of the goods and/or products made with the goods and/or their suitability for a particular purpose.

13. The buyer is obliged to ensure that he makes no wrong or misleading statements with respect to properties of our goods and/or the final products made with our goods and/or the compliance with standards and regulations. The buyer shall pay particular attention to statements relating to environment, climate and similar topics and shall only use such statements to the extent that they are true and permissible. In case the buyer modifies our products (e.g. by use of additives) he shall not use our trade marks and certificates in connection with the

modified product. The buyer is obliged to apply for certificates himself in case of semi-finished or finished goods that he produces with our products.

**VI Retention of Title**

1. All goods supplied by us remain our property ("Retained Goods") until the buyer has paid in full the purchase price (simple retention of title) and other debts arising out of his business relationship with us (extended retention of title). This also applies for future payment claims against the buyer.

2. We are the manufacturer within Section 950 BGB without any obligation on our part in case of any processing of the Retained Goods by the Buyer. The processed goods are deemed Retained Goods as per Clause VI.1.

3. If the buyer processes, combines and/or blends the Retained Goods with other material, we are entitled to joint title in the new good pro rata (i.e. invoice value of the Retained Goods in proportion to the invoice value of the other material used). If our ownership ends due to any processing, combining and/or blending, the buyer hereby transfers ownership rights and remainder in the new goods corresponding to the invoice value of the Retained Goods; in case of a processing, rights/remainder are transferred to us pro rata (invoice value of the Retained Goods in proportion to the invoice value of other material used).

4. The buyer may sell the Retained Goods only in the ordinary course of business applying his usual terms and conditions for sale, provided that he is not in default of any payment to us, that he retains title in the sold goods and that any claims arising out of the sale are transferred to us pursuant to Clauses VI.5 and VI.6. The buyer is not authorized to dispose of the Retained Goods in any other way. Use of the Retained Goods by the buyer to fulfill a contract within the meaning of Sections 631 and Section 650 BGB is deemed a sale under this Clause.

5. The buyer hereby transfers to us all claims arising out of a sale of the Retained Goods. The transferred claims secure our payment claims to the same extent as the Retained Goods pursuant to Clause VI.1

6. If the buyer sells the Retained Goods with other goods, the payment claims of the buyer arising out of the sale are transferred to us pro rata (invoice value of the Retained Goods in proportion to the invoice value of the other goods). In case of sale of goods in which we have joint title pursuant to Clause VI.3, the payment claim is transferred to us on a pro rata basis corresponding to our share in the jointly owned goods.

7. The buyer is entitled to collect payments arising out of a sale of the Retained Goods unless we revoke the collection authorization in single cases. Revocation of the collection authorization is permitted if payment of our claim against the buyer is uncertain due to reasons that have arisen after our sale of the Retained Goods to the buyer. Upon our request, the buyer shall immediately inform his customers of the transfer of claims to us and provide to us all information and documents required for payment collection. The buyer is, under no circumstances, authorized to transfer payment claims arising out of sales of the Retained Goods. The prohibition to transfer the claims does also apply to all forms of factoring and the collection authorization does not entitle the buyer to transfer claims under a factoring arrangement.

8. In case of default of payment by the buyer indicating that a significant part of our payment claim will not be fulfilled, we are entitled to prohibit processing of the Retained Goods, to demand their immediate return and to take them back respectively and, if required, to enter the buyer's premises to take possession of the Retained Goods. Taking back the Retained Goods under this Clause VI.8 shall not be deemed a revocation of the sales contract.

9. The buyer must inform us immediately in case the Retained Goods are seized, attached or impaired in any other way by actions of third parties.

**FKuR Kunststoff GmbH**

Siemensring 79, D - 47877 Willich  
Tel.: +49 (0) 21 54 / 92 51 - 0  
Fax: +49 (0) 21 54 / 9251 - 51  
<http://www.fkur.com>  
eMail: [info@fkur.com](mailto:info@fkur.com)



10. At the request of the buyer, we are obliged to release collaterals at our choice if the total value of collaterals securing us exceeds the total amount of secured payment claims by more than 10 (ten) %.

**VII Limitation of Liability**

1. Unless otherwise provided for in these conditions of sale, we are only liable for gross negligent and/or intentional violation of contractual or non-contractual obligations or duties arising prior to the execution of a contract by our legal representatives and/or vicarious agents (Erfüllungsgehilfe) and for negligent violation of fundamental contractual obligations. A contractual obligation is fundamental if our customer can rely on its fulfillment and if the proper execution of the contract is only possible in case of fulfillment of the obligation. In case of negligent violation of fundamental contractual obligations our liability is limited to typical, foreseeable damages; the latter limitation does not apply in case of gross negligence or intent of our legal representatives or vicarious agents,

2. The limitations of liability under Clause VII.1 do not apply in case of damage to life, body or health.

3. The limitations of liability under Clause VII.1 do further not apply in case of claims for personal injuries or damage to items of property for private use under the German Act on Product Liability (Produkthaftungsgesetz).

**VIII Proof of Export**

If a buyer located outside the Federal Republic of Germany (extraterritorial customer) or his authorized representative

collect goods and transport or send them to the external territory, then the buyer shall provide us with the necessary proof of export for tax purposes. If the proof is not provided, the buyer shall bear and pay value added tax on the invoiced amount at the rate applicable for deliveries within the Federal Republic of Germany.

**IX Applicable Law**

These conditions of sale and any contract between us and the buyer shall be governed by and interpreted in accordance with the laws of the Federal Republic of Germany without reference to its conflicts of law rules and under the exclusion of the United Nations Convention on Contracts for the International Sales of Goods (CISG).

**X Place of Fulfillment and Jurisdiction**

The place of fulfillment for both parties is the seat of FKuR Kunststoff GmbH. Venue/place of jurisdiction for all disputes between us and the buyer is Krefeld. We are also entitled to sue the buyer at the courts of his general venue/his general place of jurisdiction.

**XI Partial Invalidity**

If any provision of these conditions of sale is or becomes invalid for any reason whatsoever, the validity of the other provisions shall remain unaffected.

Willich 08/2021