

**Terms and Conditions for the Sale and Delivery of Goods by KUGELFINK GmbH**

**Scope of application:** All our legal relationships are governed by the following Terms and Conditions (hereinafter "Terms"). These Terms are applicable to any - also future - business with KUGELFINK GmbH (hereinafter "KUGELFINK"), unless otherwise agreed and confirmed by KUGELFINK in writing. We hereby explicitly object to contrary terms and conditions of our contracting party. No further objection is necessary in a particular case. Under no circumstances shall our behaviour, including but not limited to any action we take in connection with the performance of a contract, or lack of communication, the unconditional transmission of a confirmation of an order, an order or the like, be construed as our consent to such terms and conditions. By ordering or accepting the goods, the customer acknowledges the binding nature of our Terms. Oral statements containing an additional obligation are binding on KUGELFINK only if confirmed in writing.

**Conclusion of contract:** All our offers are non-binding recommendations subject to change and any other sell-off. Business is concluded only once KUGELFINK accepts or executes an order. KUGELFINK may refuse to accept an order without stating any reasons. We hereby expressly disclaim any liability claims. All agreements, including commitments of KUGELFINK employees, are legally effective only if confirmed in writing. Customer's orders and offers are irrevocable. In the event of violations, KUGELFINK may bill all expenses and charge an additional cancellation fee equal to 30% of the net order value.

**Technical consulting:** KUGELFINK will provide consulting services (product & type selection, calculation, oscillation and error analysis, maintenance recommendation etc.) based on information provided by the customer. KUGELFINK is not liable for actual fitness, feasibility and completeness. To the extent permitted by law, KUGELFINK does not accept any warranty or guarantee for technical consulting, including but not limited to consequential damage and/or lost profit.

**Delivery times:** KUGELFINK indicates delivery times without a guarantee and will observe these, if possible. Indicated days mean working days. Delivery times commence on the date on which the order is accepted, yet not before all delivery details and commercial and technical issues were clarified between the parties. A delivery period can be observed only subject to correct and timely self-delivery.

Unless agreed call-off deliveries are accepted not later than within once year of the date on which an order was accepted, any legal consequences of default shall be the customer's responsibility. If there is any delay in shipment or acceptance of the deliverable for reasons within the customer's control, the costs incurred due to such delay will be charged to the customer, commencing ten days after readiness of shipment or acceptance was notified.

Whenever delivery times cannot be observed due to force majeure, labour disputes and strikes, pandemics or supply bottlenecks due to acts of war as well as failures of material supplies/production downtimes or other events beyond the control of KUGELFINK, these times will be extended accordingly. KUGELFINK will notify the customer as soon as possible of the commencement and end of such circumstances. The customer may withdraw from the contract without notice if KUGELFINK is unable to provide the full service prior to the transfer of risk. If this event occurs while the customer is in delay with acceptance or if the customer is solely or predominantly responsible for these circumstances, the customer shall be obliged to provide counter-performance. If KUGELFINK is in default and the customer suffers any damage due to that default, the customer may demand a flat-rate compensation equal to 0.1% for each full week of delay, yet in total not more than 2% of the value of that part of the entire delivery which the customer cannot use in time or according to the terms of the contract due to the delay. Should the customer allow us to provide the services within a reasonable deadline - in consideration of the legal exemptions - and if we do not meet the deadline, the customer may withdraw from the contract in accordance with the legal provisions. Customer shall not have any other claims based on a delay of delivery.

**Shipment:** Shipment takes place for the account and at the risk of the ordering party. Partial deliveries are permitted. Unless the customer requires otherwise, KUGELFINK may at its election choose the transport route, the means of transport and the type of packaging without a guarantee. The condition and quantity of a shipment and its packaging can be challenged only within 10 days after receipt of the goods. If KUGELFINK considers a complaint to be justified, KUGELFINK may either supply replacement products or grant a credit. Whenever shipment or acceptance is delayed or omitted due to circumstances not attributable to KUGELFINK, the risk shall transfer to the customer on the date on which a deliverable's readiness for shipment or acceptance was notified. The customer must bear all costs incurred by KUGELFINK.

**Price:** Prices indicated by KUGELFINK are non-binding (ex works Lustenau -EXW) without packaging or other ancillary costs, unless otherwise agreed. Prices valid on the date of delivery will be billed. Discounts from the relevant basic price or list price are granted always on the condition that the full price is paid in due time.

The price for services stated on the order confirmation is based on requirements, scope and content of the service known to KUGELFINK on the date on which the confirmation is signed, based on the documents mentioned therein. Cost estimates are non-binding; KUGELFINK is required to inform the customer only if the cost estimate is significantly exceeded. KUGELFINK is entitled to a reasonable additional compensation if there is any change in requirements, scope and content of a service resulting in extra expenditure for KUGELFINK. Fixed prices shall explicitly be labelled as such. If no price was agreed, KUGELFINK will charge customary compensations based on expenditure. In addition to the relevant compensation, KUGELFINK is also entitled to any expenditure and expense incurred in connection with executing the service (such as travel expenses, packaging, shipment, customs duties) as well as value added tax.

**Terms of payments:** As a matter of principle, payments shall be made in EURO, plus statutory VAT. Unless otherwise agreed, all invoices issued by KUGELFINK are due for payment, without any deduction, within 30 days of the invoice date. In case of late payment, KUGELFINK is entitled to default interest at a rate of 9 % p.a. as well as reimbursement of dunning charges and collection fees. KUGELFINK may accelerate the payment of all claims vis-à-vis the customer if the customer is in default with payment or if circumstances arise due to which the fulfilment of the customer's obligations appears to be questionable. KUGELFINK is entitled to collect supplies via cash on delivery at the customer's cost and expense. Collection and discount charges must always be borne by the customer and are payable immediately after notification. Counterclaims can be set off only once these were acknowledged by KUGELFINK by way of a credit.

**Retention of title:** KUGELFINK reserves title to all goods supplied until the purchase price, including any interest, cost and ancillary charges, was paid in its entirety. The installation, processing or conversion of a deliverable by the purchaser shall always take place on behalf of KUGELFINK. If the deliverable is installed, processed or converted along with other items not belonging to KUGELFINK, KUGELFINK will retain shared title to the new item in proportion of the deliverable's value compared to the other items. The item created by processing shall be subject the same provisions as those applicable to the deliverable supplied subject to a reservation of title.

Should the customer resell the deliverable in the ordinary course of business, the customer assigns to KUGELFINK already now all claims up to the final invoice amount (including value added tax), which he incurs from such resale vis-à-vis its customers or third parties, whether or not the deliverable was resold without or after processing. Customer may collect this claim also after having assigned it. This shall not affect the right of KUGELFINK to independently collect the claim. However, KUGELFINK undertakes not to collect the claim as long as the customer meets its payment obligations from the collected proceeds, is not in default with payment, does not make a request to initiate insolvency proceedings, and does not suspend payments. Should this be the case, KUGELFINK may ask the customer to disclose to KUGELFINK the assigned claims and the related debtor, to provide any information which is necessary to collect the claim, to make available the related documents, and to notify the debtors (third parties) of the assignment.

The customer may sell, pledge or transfer the deliverable for security purposes only with the prior written consent of KUGELFINK. The customer shall immediately inform KUGELFINK of any pledge, seizure or other dispositions of third parties.

**Warranty:** The liability of KUGELFINK for material and legal deficiencies covers only the condition of its deliverable pursuant to the terms of the contract in accordance with legal provisions, to the exclusion of any further claims. Customer shall promptly inspect the deliverable and notify any defects by written notice to be given within 10 work days of delivery of the deliverable at the latest; otherwise the customer shall not have any rights, especially no rights to warranty, damages and avoidance on the grounds of error. Regardless of a notice of defects, invoice amounts or portions thereof may not be withheld. Once a defect was notified in due time, KUGELFINK may either exchange or improve the deliverable, supply another deliverable, reduce the purchase price or cancel the contract, regardless of the legal requirements.

Customer shall always prove the flawed nature of a deliverable on the delivery date; the application of Section 924 of the Austrian Civil Code shall be expressly excluded.

No warranty is accepted in particular in the following cases: Inappropriate or improper use, inappropriate application or inappropriate requirements, defective assembly or commissioning by the customer or third parties, natural wear and tear, wear parts, faulty or negligent treatment, improper maintenance, inappropriate resources, faulty construction work, inappropriate design, chemical or electro-chemical or electrical impact as well as installation proposals and calculations.

If the customer or a third party takes inappropriate corrective action, KUGELFINK shall not be liable for the resulting consequences. The same shall apply to any changes to deliverable made without the prior consent of KUGELFINK.

KUGELFINK is only liable for any defects of the deliverable that occurred within six months of the date on which the risk transferred due to any cause that arose prior to that date.

The contract may not be avoided on the grounds of error or shortfall exceeding fifty percent.

**Liability:** If the customer is not able to use a deliverable according to the terms of the contract due to the supplier's fault, the following final provisions apply, to the exclusion of any further claims on the part of the customer:

KUGELFINK shall be liable for any damage that was not caused to the deliverable itself, regardless of the legal ground, only in case of

- premeditation,
- gross negligence of the owner/of officers,
- culpable harm to life, body, health,
- defects that were maliciously concealed or whose absence was guaranteed,
- deficiencies of the deliverable, to the extent the Product Liability Act prescribes liability for personal injury or property damage to privately used items.

In case of any culpable breach of material contractual obligations, the liability of KUGELFINK is always limited to the reasonably predictable positive damage typical for the contract (but never for lost profit or claims of third parties).

The customer cannot assert any further claims.

**Statute of limitations:** All claims of the customer, regardless of the legal basis, are statute barred after 12 months. Legal deadlines apply to cases of premeditation or bad faith and to claims brought according to the Product Liability Act.

**Place of performance and jurisdiction:** Place of performance with respect to all supplies and payments shall be Lustenau. All disputes arising directly or indirectly in connection with the business relationship between KUGELFINK and the customer, including complaints involving bills of exchange and cheques, shall be subject to the court with jurisdiction *ratione materiae* in Feldkirch. However, KUGELFINK may also sue the customer before the court having jurisdiction for the customer's seat or residence. The contractual relationships between KUGELFINK and the customer shall be governed by and construed in accordance with Austrian law.

**Final provisions:** These Terms & Conditions are applicable to all orders placed by the customer without requiring any special reference. Should any term hereof be ineffective, invalid or unenforceable, this shall not affect the validity of the remaining terms hereof and the transactions concluded in reliance on these Terms. If any term hereof is found to be ineffective, invalid or unenforceable, the parties shall agree on an effective, valid or enforceable term that closest reflects the economic purpose of that term. Any commitment by KUGELFINK or any amendment of this contract is valid only if made by a written instrument containing an authorized signature.