

Terms and conditions for sale and delivery of KristallTurm® GmbH & Co. KG (KRISTALLTURM)

I. Scope

1. The following terms and conditions (the "T&Cs") shall prevail over any terms and conditions of the customer. Any conflicting or additional terms and conditions of the customer do not form part of the contractual arrangements between KRISTALLTURM and the customer, unless KRISTALLTURM has expressly confirmed in writing that the customer's terms and conditions (or any part of them) shall apply. These T&Cs apply to all contractual arrangements between KRISTALLTURM and the customer forming part of the business relationship between KRISTALLTURM and the customer (including future arrangements).
2. The standardized definitions and abbreviations of the Incoterms 2010 apply to any deliveries.
3. These T&Cs only apply to business relationships with entrepreneurs (according to sec. 14 of the German Civil Code), corporate bodies under public law and public special estates according to § 310 I BGB (German Civil Code).

II. Contract, Scope of Deliveries, Written Form

1. A contractual agreement only comes into effect after the customer has received a written order confirmation issued by KRISTALLTURM. Where a product is sold by means of a separate sales agreement, the respective sale comes into effect on the date the sales agreement is entered into by KRISTALLTURM and the customer.
2. Scope, nature and specifications of KRISTALLTURM's deliveries are exclusively determined by the respective order confirmation or, as the case may be, the relevant sales and purchase agreement.
3. Any specifications or indications regarding weight, power, speed, performance and size (also where provided for in sketches, drawings, pictures and other visual descriptions) are prepared / provided by KRISTALLTURM to the best of its knowledge and belief, but represent only approximate values (within a tolerance range of 20% upwards or downwards).
4. Any agreements, amendments, addendums and other ancillary arrangements to agreements are only valid if confirmed in writing (the "written form requirement"). This also applies to any agreements or arrangements intending to abandon, rescind or nullify the written form requirement.

III. Payment Conditions, Set-offs, Rights of Retention

1. All prices quoted by KRISTALLTURM are exclusive of costs for delivery, transport or packaging and do not include any value added, turnover or sales tax applying to the relevant sale.
2. Any indicative prices provided by KRISTALLTURM are only binding, if KRISTALLTURM expressly confirms in writing that an indicative price shall be binding on KRISTALLTURM.
3. All invoices are due and payable at the payment date specified in the invoice. Where no payment date is specified in the invoice, an invoiced amount is due and payable 10 days after the date of the invoice.
4. In the event of a payment default, KRISTALLTURM is entitled to charge default interest in the amount permitted by law. Additional compensation for any loss and damage suffered from the payment default may be charged where permitted by law.
5. KRISTALLTURM is entitled to (i) withhold, or temporarily retain or interrupt performance of its obligations under a contract or (ii) (to the extent this is reasonably justified), make the performance of its obligations conditional upon an adequate advance payment of the customer, if the customer is in default with any of its payments owed to KRISTALLTURM.
6. All payments to be made by the customer have to be made without (and free and clear of any deduction for) set-off or assertion of retention rights, unless such claim of the customer is undisputed by KRISTALLTURM or has been upheld in a final judgment.

IV. Deliveries, Dates, Delays, Defenses

1. Deliveries are – unless otherwise specified in an order confirmation or a sales agreement - ex works, i.e. at cost and risk of the customer. This also applies where a delivery is split up into several partial deliveries. Where a delivery is delayed (i) due to a customer requesting a delay, (ii) as a result of circumstances outside the control of KRISTALLTURM or (iii) for other reasons outside the responsibility of KRISTALLTURM, the risk of any deliveries to perish or being destroyed or damaged transfers to the customer on the date KRISTALLTURM has notified the customer of its ability to carry out the delivery. Where requested by the customer and agreed by KRISTALLTURM, KRISTALLTURM will take out transport insurance on behalf of and at the cost of the customer.
2. KRISTALLTURM is entitled to partial deliveries of goods and services. This is without prejudice to any rights and claims of the customer arising under law from a partial performance or non-performance of KRISTALLTURM's obligations.

3. Goods and services will be delivered at the times specified in the respective order confirmation or sales agreement. Delivery periods only begin if (i) an order confirmation has been delivered by KRISTALLTURM (or a sales agreement has been entered into), (ii) all payments which, according to the order confirmation/sales agreement, have to be made prior to delivery, have been made, (iii) KRISTALLTURM has received all technical information and data required to carry out the delivery and (iv) the customer has complied with its other cooperation duties set out in section VI.1 of these T&Cs.
4. A delivery period / delivery timeline is deemed to be complied with if KRISTALLTURM has released the relevant goods for delivery within the relevant delivery period / delivery timeline.
5. In case of any of KRISTALLTURM's suppliers not delivering in time (without KRISTALLTURM being responsible for this) or other force majeure events like strike, lockouts, war, trade bans, lack of energy or raw material or governmental actions, KRISTALLTURM is entitled to postpone the delivery of goods and services for the duration of the delivery hindrance but in any event not longer than for a period of 12 weeks.
6. Where KRISTALLTURM is obliged to make any advance deliveries and there is evidence that the customer might not be able to comply with its contractual obligations, KRISTALLTURM is entitled to withhold a delivery. In such case KRISTALLTURM is entitled to (i) either request the customer to comply with its contractual obligations within a reasonable period of time or (ii) make the delivery conditional upon receipt of an advance payment payable to KRISTALLTURM within a reasonable period of time. Where any of these deadlines has expired without result, KRISTALLTURM is entitled to terminate the contract and claim reimbursement of all losses, damages, costs and expenses suffered or incurred by it as a result of the early termination of the contract.
7. In case of a delay in delivery of goods or services for which KRISTALLTURM can be held responsible, the customer is entitled to set a reasonable deadline for KRISTALLTURM's performance in writing and, should the deadline expire without result, terminate the contract. In the event of such termination, the provisions in section VIII. will apply to any of the customer's claims for damages resulting from the delay or non-performance.
8. Where the delivery of goods is delayed due to reasons falling within the responsibility of the customer and the delay so caused exceeds the period of two months after the agreed delivery date, KRISTALLTURM is entitled to charge to the customer a storage fee of 0,5 % of the total purchase price for each started month of delay, provided, for avoidance of doubt, that such fee shall only become payable for the third monthly period (and subsequent months) commenced after the agreed date of delivery, and not for the two monthly periods following the initial delivery date.

V. Intellectual Property, Retention of Ownership Rights, Collateral

1. All of KRISTALLTURM's patent, trade mark, utility model and other intellectual property rights pertaining to, related to or arising from delivered products or services or other KRISTALLTURM products remain exclusively with KRISTALLTURM. KRISTALLTURM does not issue or grant any licenses or other rights of use in any such rights unless expressly agreed by KRISTALLTURM and the customer in writing.
2. KRISTALLTURM retains the full ownership and all property rights in any delivered product until all of the customer's payment obligations under the business relationship between KRISTALLTURM and the customer are fully complied with by the customer. Prior to fulfilment of these obligations no on-sale, transfer, pledge, assignment for security purposes, encumbrance or other disposal of the delivered goods or services is permitted, unless permitted by paragraph 3 of this section V.
3. The customer is entitled to on-sell the delivered goods and services in its ordinary course of business. Where this happens, the customer herewith (and already now) assigns all of its outstanding claims for payment of the relevant purchase price against any purchaser of goods or services to KRISTALLTURM. The customer remains entitled to collect the proceeds of the assigned claims. This entitlement to collect is revoked (and ceases to exist) if the customer is in default with any of its payments towards KRISTALLTURM, insolvency proceedings over the assets of the customer are applied for, the customer is unable to pay its debts when due or KRISTALLTURM's reasonable interests to be properly secured/collateralized become otherwise materially jeopardized or harmed. In any of these circumstances the customer is obliged to disclose to KRISTALLTURM all receivables being the subject of the assignment (including the names of the debtors under the receivables), provide KRISTALLTURM with all data, documents and other information related to the receivables and notify the debtors that the receivables have been assigned to KRISTALLTURM.
4. The customer is obliged to treat all goods and services that are subject to the retention of ownership rights specified in paragraph 3 with due care. This includes, but is not limited to, the obligation to insure the relevant goods (at the customer's cost) against theft, damage and destruction and to carry out all regular maintenance works as and when

required. The customer hereby assigns all its claims for insurance proceeds against the insurer to KRISTALLTURM. In case any such assignment is not effective, the customer will ensure that KRISTALLTURM is loss payee under the respective insurance contracts, i.e. will (by notifying the relevant insurer) ensure that any insurance proceeds are paid out directly to KRISTALLTURM. At the request of KRISTALLTURM, the customer will provide evidence of satisfactory insurance cover to KRISTALLTURM.

5. The customer will notify KRISTALLTURM in writing about any damaging, encumbrance, seizure, attachment, pledge or other adverse effects on any goods that are subject to the retention of ownership rights specified in paragraph 3. In case of a seizure or an attachment of any goods that are subject to KRISTALLTURM's right of retention of ownership, the customer has to bear all costs necessary to replace the relevant goods including any legal costs reasonably incurred by KRISTALLTURM in this context, provided KRISTALLTURM is not able to obtain reimbursement of these costs from the third party initiating the seizure or attachment.
6. The customer is entitled to claim a partial release of any security taken by KRISTALLTURM if the realizable value of KRISTALLTURM's security exceeds the amount of KRISTALLTURM's outstanding claims against the customer by 20% or more; KRISTALLTURM has the right to select which security it releases in this context.
7. For any construction works the following applies: Every plot of land owned by the customer is considered a 'building plot of the customer' in the sense of § 650e BGB (German Civil Code).

VI. Other duties of the customer

1. The customer has to ensure within his area of responsibility that KRISTALLTURM is able to deliver all goods and services owed to the customer within the delivery times notified to the customer. This involves in particular that all information and data necessary to enable KRISTALLTURM to carry out the delivery is submitted to KRISTALLTURM (either in writing or via E-mail) in time, all relevant documents are shared with KRISTALLTURM and all required authorizations, approvals, permits and permissions are obtained by the customer without delay. The customer has to notify KRISTALLTURM of any known impediments or obstacles to expedite a delivery no later than two weeks prior to the delivery date agreed with (or announced by) KRISTALLTURM. Any impediments or obstacles occurring at a date that is later than 2 weeks prior to the delivery date have to be notified to KRISTALLTURM immediately upon the customer becoming aware of them; in this case KRISTALLTURM will use its best endeavours to (where reasonably possible) cancel the delivery; where this is not possible, KRISTALLTURM is entitled to carry out the delivery and default of acceptance (*Annahmeverzug* in the sense of the German Civil Code) occurs once (and if) the customer rejects to accept the delivery.
2. If KRISTALLTURM has notified the customer that a product (or, where a product is produced in several parts, the relevant part of that product) is completed, the risk of the relevant product (or part of a product) being damaged or destroyed by a third party (i.e. a party unrelated to KRISTALLTURM) transfers to the customer.

VII. Liability for Defects, Warranty

1. Any claims in relation to defects of new products become time-barred in accordance with the statutory provisions of the German Civil Code. Limitation periods commence with the date of delivery. KRISTALLTURM does not assume any liability where a used product (and not a new product) is to be delivered by KRISTALLTURM.
2. As long as KRISTALLTURM has not rectified / remedied a defect which it is obliged to rectify / remedy, the customer is entitled to withhold payments in the amount of monies necessary to rectify the defect.
3. In order to maintain its liability claims against KRISTALLTURM, the customer has to notify KRISTALLTURM in writing of any obvious defects immediately after delivery. Other defects have to be notified to KRISTALLTURM in writing within the statutory liability period.
4. Where a defect occurs, KRISTALLTURM is entitled to choose whether to deliver a replacement product or whether to rectify the defect. Where KRISTALLTURM fails to deliver a replacement product or rectify the defect within a reasonable period of time, or where the delivery of a replacement product or the rectification of a defect is reasonably not possible for KRISTALLTURM, the customer is entitled to a reduction of the purchase price or terminate the contract in accordance with the section VIII. of these T&Cs.
5. KRISTALLTURM's liability for defects / damages is subject to the provisions set out in section VIII.
6. Unless otherwise specified in any order confirmation / sales agreement, KRISTALLTURM does not assume or give any express or implied warranty or indemnity (*verschuldensunabhängige Garantien*) for or in relation to damages.
7. KRISTALLTURM reserves the right to charge the customer for any efforts KRISTALLTURM makes in relation to any unjustified claims for damages or minor / trifle damages (*Bagatellschäden*).

VIII. Liability of KRISTALLTURM

1. KRISTALLTURM's, its officers', employees', representatives' and agents' liability for damages and losses is restricted to damages/losses a) which have either resulted from KRISTALLTURM's (negligent) violation of an essential contractual duty (*Kardinalpflicht*) that also jeopardizes the achievement of the contractual goals of the parties or b) have been caused by KRISTALLTURM's gross negligence or willful misconduct.
Any liability of KRISTALLTURM for other reasons / causes is excluded.
2. If KRISTALLTURM can be held liable in accordance with the provisions set out in paragraph 1.a) above (but cannot be held liable under paragraph 1 b) above), KRISTALLTURM's liability for losses / damages is limited to such damages which (based on KRISTALLTURM's reasonable judgement at the time the contract has been entered into by KRISTALLTURM and the customer) were reasonably foreseeable for KRISTALLTURM at the time the contract has been entered into.
3. Any liability for indirect losses, losses caused by a defect (*Mangelfolgeschäden*) or loss of profit is excluded, provided these damages were for KRISTALLTURM, acting reasonably at the time the contract has been entered into, not foreseeable.
4. The qualifications set out in paragraphs 1 to 3 above do not apply in cases of (negligently or intentionally caused) harm to life, body or health; they also do not apply to any liability under the German Product Liability Act (*Produkthaftungsgesetz*) and where KRISTALLTURM has expressly assumed liability for damages under a contractual warranty (*verschuldensunabhängige Garantie*).
5. KRISTALLTURM cannot be held liable for damages that are not related to defects of products delivered by KRISTALLTURM. This includes, without limitation, damages and injuries arising from the operation of climbing installations delivered by KRISTALLTURM. KRISTALLTURM will not take out insurance for any such damages. It is therefore advisable that the customer takes out its own insurance (for instance a public liability insurance) in this regard.

IX. Termination of Contracts by the Customer

1. In case of KRISTALLTURM (negligently or intentionally) violating a contractual duty, the customer is entitled to terminate the contract in accordance with the statutory provisions of the German Civil Code.
2. Where KRISTALLTURM only fails to deliver parts (but not the entirety) of the goods or services it has to deliver, the customer is only entitled to terminate the contract if the customer, acting reasonably, has provided satisfactory evidence that the delivery of the remaining goods or services is not of interest to it.
3. The customer is not entitled to terminate a contract for reasons of minor product deviations that do not constitute a defect in the sense of the German Civil Code.
4. The right to terminate a contract is excluded where the customer is solely or predominantly responsible for the violation of a contractual duty or where the customer is in default of acceptance (*Annahmeverzug*) in the sense of the German Civil Code) of any goods. The right to terminate a contract is also excluded where the breach of KRISTALLTURM's duties consists in a breach of ancillary obligations (*Nebenpflichten*) only, provided it is not unreasonably onerous for the customer to remain bound to the contract with KRISTALLTURM.

X. Confidentiality

The parties will keep all information, data and documents (drawings, plans, etc.) related to, or shared between them in their business relationship, details of the parties' operations and operation processes, documents related to patent, trade mark, utility and other intellectual property rights ("Confidential Information") in strict confidentiality and will, unless inevitably necessary to achieve the goals of the contract between the parties, not record, disclose or promulgate any Confidential Information to any third parties. Each party will advise its officers, employees, advisors, agents and representatives of the confidential nature of the Confidential Information. Each party is liable towards the other party for any breaches of the confidentiality duties under this paragraph by its officers, employees, advisors, agents or representatives.

XI. Place of Jurisdiction, Governing Law

1. Unless otherwise agreed between the parties, the place of delivery for all goods and services is the place of business (*Geschäftssitz*) of KRISTALLTURM in Lenggries, Bavaria, Germany.
2. Place of jurisdiction for any disputes out of or in connection with the business relationship between KRISTALLTURM and the customer is the Regional Court of Munich II. Each party's rights to commence proceedings at the common place of business of the respective other party remains unaffected.
3. Any agreement entered into between the parties is governed by, and shall be construed in accordance with German law, excluding the laws of the United Nations Convention on Contracts for the International Sale of Goods.

These sales terms and delivery conditions of the KRISTALLTURM GmbH & Co. KG are a translation of KRISTALLTURM's German language T&Cs. In case of any disputes on the content of the T&Cs, the German version of the T&Cs will prevail.

Last updated in February 2019