



SEKELS GmbH – General Terms and Conditions of Sale and Delivery

A. Conclusion of Contract

1. The following conditions shall apply to all technical information and consultations, offers, deliveries and services of SEKELS GmbH. When not expressly agreed otherwise in writing, they shall apply from the beginning of the business relationship, even if SEKELS GmbH does not expressly make reference to them again for every business transaction.
2. Other conditions shall not apply. This shall also apply if this has not been expressly objected to.
3. Addenda, changes and side agreements to these conditions shall require the written confirmation of SEKELS GmbH to be valid. This shall also apply to the lifting of this written form requirement.
4. All technical information and consultations and all offers of SEKELS GmbH and its auxiliary persons shall be non-binding. This shall not apply if binding force has been agreed in writing or an offer has a period of validity. Purchase contracts shall only come about either when SEKELS GmbH confirms an order of the customer identically in writing or when it performs the delivery and/or service in accordance with the order without a separate written confirmation.
5. The use of an electronic signature according to the respective state of technology and in accordance with the legal provisions for this shall be permitted for a valid conclusion of contract or a change in the contract and shall replace the written form requirement according to Article A.3 of these conditions.

B. Deadlines and Terms

1. Although determinable by calendar the deadlines and terms in the otherwise binding purchase contracts shall be non-binding and not be seen as fixed. This shall apply insofar as nothing else is expressly agreed in writing. If the customer as part of the fulfilment of the purchase contract by SEKELS GmbH has a duty of cooperation in the form of timely provision of information, documents or material, all terms shall begin to run only once the customer has fulfilled their duties of cooperation according to contract.
2. Unforeseeable and unavoidable events such as war, lack of raw materials, sabotage or strikes as well as other interruptions of operations or official actions for which SEKELS GmbH is not answerable shall release it from its delivery and service obligations for their duration. This shall also apply even if SEKELS GmbH should be in default. All terms and deadlines shall be extended appropriately. This provision shall also apply to delay in delivery and service by suppliers of SEKELS GmbH insofar as the latter is not answerable for it.
3. If a delay in delivery or service occurs through SEKELS GmbH for which it is answerable, the customer, if they can prove damages, may demand compensation for delay. It shall be calculated on the basis of the value of the delivery and/or service with which SEKELS GmbH is in default. The compensation shall amount to up to 0.5% of this value for every completed week of delay up to a total amount of 5% of this value. Higher compensation payments on account of delay shall be excluded. The exclusion shall not apply in cases of proven gross negligence or intent. It shall also not apply if due to the delay injury to life, limb or health occurred. In these cases strict liability shall apply.
4. The right of the customer following fruitless expiry of a set reasonable period of grace shall remain unaffected. This shall also apply to the possibility of withdrawal by SEKELS GmbH from the purchase contract.

C. Prices, Delivery and Payment Conditions

1. If not agreed otherwise in writing, SEKELS GmbH shall deliver ex works on the basis of the clause EXW Ober-Mörlen, INCOTERMS® 2020. Place of fulfilment and transfer of risk shall likewise be regulated according to the named INCOTERMS® 2020, even if SEKELS GmbH, notwithstanding the respective clause, should take over shipping costs or export and/or import duties.
2. SEKELS GmbH shall reserve the right to provide partial deliveries and services. If the delivery or service is delayed for reasons for which the customer is answerable, the latter shall bear the costs of the failed offer and the risk of further storage by SEKELS GmbH or a professional third party commissioned by it from the date of the written notification of readiness for shipment.
3. The prices agreed in the purchase contract shall be binding for 30 (thirty) days from the date of order confirmation, alternatively the date of the purchase order. If in this period or even later, cost increases have occurred, SEKELS GmbH shall be entitled with reasonable consideration of its interests to charge additionally for these.
4. The payment shall be made by the customer after delivery and invoicing by SEKELS GmbH according to the term of payment stipulated in the purchase contract cost-free to the likewise named point of payment. The date of fulfilment shall be the date of receipt of the payment. Drafts and cheques shall be accepted only by agreement and only on account of performance. All transaction fees in these cases shall be at the expense of the customer. Satisfaction only after receipt of money.

5. Payment default shall occur without further reminder after expiry of the payment term named in the purchase contract or exceeding of the payment date. In this case SEKELS GmbH shall be entitled to charge default interest on the invoice amount in default in the amount of 8% above the respective base interest rate published by the ECB. Alternatively the actual provable resulting damage from the delay may be invoiced.
6. A right of offsetting and retention shall only be due to the customer insofar as their counterclaims are determined without further legal recourse and expressly recognised by SEKELS GmbH. A cession of the customer's claims on SEKELS GmbH, of whatever type, to third parties shall require the express written consent of SEKELS GmbH to be valid. § 354 a of the German Commercial Code shall remain unaffected.
7. Should the customer during or after conclusion of a contract suffer significant deterioration in their pecuniary circumstances they shall be obligated to inform SEKELS GmbH of this immediately. It shall then reserve the right to provide deliveries and services henceforth only against cash in advance or presentation of surety by the customer. Terms or deadlines already named may change accordingly due to this. For deliveries and services already provided, immediate payment may be demanded on deviation from agreed payment terms or deadlines.

D. Manufacture According to Customer's Instructions

1. In the case of manufacture according to customer drawings or specifications or according to prototypes provided by them or according to other customer instructions regardless of type and in what form transmitted, SEKELS GmbH shall assume no responsibility for the functionality of this specification and/or no liability for its correctness and flawlessness.
2. Insofar as the products manufactured or the services provided by SEKELS GmbH are based on specifications as described under Article 1 the customer shall release SEKELS GmbH from all claims of third parties including product liability claims.
3. The customer shall assume the responsibility that products manufactured and delivered or services provided according to their specification do not violate the trade mark rights of third parties. If such trade mark rights are asserted by third parties, SEKELS GmbH reserves the right to withdraw from the contract after prior hearing of the customer. The customer is obligated to compensate SEKELS GmbH for all costs and damages provably arising for the latter through the assertion of trade mark rights by third parties. If a withdrawal from contracts occurs, all costs for previously provided services and for manufactured parts and products are to be reimbursed by the customer according to invoicing by SEKELS GmbH.

E. Provisions by Customers

1. If materials, parts, other substances or tools are made available by the customer for the execution of the concluded contract, the customer shall be responsible for their suitability and shall release SEKELS GmbH with respect to third parties from all warranty claims with regard to the use of the provisions.
2. This shall be irrespective of whether the provision is made subject to a charge or free of charge. SEKELS GmbH is not obligated to carry out an incoming goods inspection or suitability test.
3. The customer shall be liable to SEKELS GmbH for their provisions. If the use of the provisions causes damages and/or additional costs for SEKELS GmbH which were not to be expected by it, the customer shall be obligated to compensate these according to invoicing by SEKELS GmbH.

F. Data Protection and Copyright

1. Irrespective of the conclusion of a separate confidentiality agreement, the customer and their representatives shall be obligated not to pass on to third parties any economic and technical information on SEKELS GmbH that become known in the context of the business relationship, insofar as they could not be deemed assessed as generally known and irrespective of which way and in what form they were transmitted. In case of doubt a written authorisation for the passing on of such information to third parties shall be obtained from SEKELS GmbH.
2. SEKELS GmbH shall reserve ownership, copyright and all other trade mark rights connected with all documents entrusted to the customer, irrespective of which way and in what form they were transmitted. They shall be subject to confidentiality with respect to third parties and may also not be used commercially by the direct recipient. The documents together with all copies made (including in electronic form) shall be returned to SEKELS GmbH on demand.

G. Technical Changes and Quantity Deviations

1. SEKELS GmbH shall reserve the right in the course of fulfilling a contract to undertake as far as necessary and advantageous technical changes to tools,

materials, specifications and type descriptions. This shall take place only after prior notification of the client and taking into account their interests as far as they are known to SEKELS GmbH.

- In the manufacturing of products fluctuations in output may occur due to production parameters. This shall oblige SEKELS GmbH to reserve the right with respect to its customers to deliver reasonable shortfalls and/or excesses. The customer shall be obligated to accept delivery of the actual quantity delivered and shall pay the corresponding amount invoiced for the actual quantity delivered.

H. Incoming Goods Inspection Duty and Warranty

- The customer shall, irrespective of the possible previous provision of prototypes or samples, subject the delivered products or provided service to a careful and comprehensive incoming goods inspection immediately after arrival on their premises. This chronological connection between incoming and inspection date may be waived in relation to technical inspection through the conclusion of a quality assurance agreement. Quantity deviations and transport damage shall be excluded from the waiver.
- Every quantity deviation, every damage and every defect shall be reported to SEKELS GmbH in writing immediately after detection. The notice of defects shall clearly describe the fault, prove faultiness, be given within the warranty period according to Article G and shall be cost-free. If the deviation from the agreed specification is only negligible and the impairment to the usefulness of the delivered products or service provided is only negligible, no claims from liability for defects shall obtain against SEKELS GmbH. Costs arising for SEKELS GmbH from unjustified notices of defects shall be borne by the customer.
- The warranty period shall last 12 months and begin at the time of fulfilment and handover to the customer at the place of fulfilment. Insofar as services or deliveries to do with unacceptable matters are contractual objects, the warranty obligation shall begin with the acceptance in the sense of § 640 of the German Civil Code.
- SEKELS GmbH shall give no guarantees of durability or quality for its deliveries and services in the sense of § 433 of the German Civil Code. All information on products, especially in brochures, advertisements and offers shall represent descriptions and identifications only. This shall apply also to depictions, drawings and references to norms and specifications of third parties.
- Insofar as not determined otherwise here, SEKELS GmbH shall assume responsibility for its deliveries and services according to the provisions of the German Civil Code and Commercial Code. SEKELS GmbH shall assume no liability for wear due to normal use and for defects because of improper use by the customer or by third parties. Improper use shall also be understood as the non-observance of instructions for use, mounting or operation. Liability according to § 478 of the German Civil Code shall be excluded insofar as parts or materials are delivered by SEKELS GmbH.
- For the purposes of subsequent improvement in the case of a justified notice of defects, SEKELS GmbH shall take on the costs accruing such as transport, work and material costs. If the delivery due for subsequent improvement is no longer at the original place of delivery, the customer shall bear all additional costs associated with this in the course of executing the subsequent improvement. This shall not apply if the transfer to another place than the place of delivery was in accordance with the normal use of the delivered object.
- Claims beyond the provisions of these general sales conditions, in particular for damages, are excluded.

I. Ownership and Reservation of Title

- The deliveries and services provided by SEKELS GmbH ("goods subject to retention of title") shall remain the property of SEKELS GmbH until full payment of the total contract price for all deliveries and services provided by SEKELS GmbH has been received by SEKELS GmbH (current account retention).
- The reservation of title shall also extend to cover the things created from their working and processing, without this having to be separately agreed with the customer. Working and processing without prior, separate consent from SEKELS GmbH shall happen exclusively in the customer's proper course of business and as a defence against disproportionate damage for the customer (extended reservation of title). The customer shall not be entitled to undertake or permit other dispositions of the deliveries and services provided by SEKELS GmbH such as chattel mortgages or pledges. The right to dispose of the goods subject to retention of title under this provision may be withdrawn by SEKELS GmbH at any time if the customer does not meet or only insufficiently meets their obligations. Otherwise the legal provisions respectively applicable in Germany to reservation of title shall apply.
- The customer shall be obligated to inform SEKELS GmbH immediately of all circumstances connected with the goods subject to retention of title and possibly assigned claims according to Article E1 and E2. Corresponding documents shall be delivered on request.

- The customer shall instruct third parties who declare claims including possible compulsory enforcement measures on the goods subject to retention of title immediately of the rights of SEKELS GmbH under these conditions and effectively ward off the claims. They shall inform SEKELS GmbH immediately, presenting all necessary documents, of the claims and their defensive measures. The costs of warding off such claims shall be borne by the customer.
- If the customer is in default of payment or violates their obligations from these conditions, SEKELS GmbH may demand the surrender of the goods subject to retention of title, or realise the claims assigned by the customer to SEKELS GmbH in the context of the extended reservation of title. The customer shall surrender the goods subject to reservation of title and permit the disclosure of the assignment. The implementation of these measures shall not affect the existence of the existing contracts.

J. Claims for Damages

- Damage claims by the customer regardless of their legal basis, in particular due to the violation of duties from the obligatory relation and from civil offences, shall be excluded. This shall not apply in cases where SEKELS GmbH or its auxiliary persons are mandatorily liable (intent, gross negligence, injury to life, etc.)
- SEKELS GmbH shall be liable in the case of violation of fundamental contractual obligations if the customer was able to rely on their fulfilment to a particularly high degree, as well as in cases of slight negligence.
- The liability of SEKELS GmbH shall in any case extend only to the amount of damages typically foreseeable when taking into account all applicable and recognisable circumstances. Liability according to the product liability law shall remain unaffected. A change in the burden of proof to the detriment of the customer shall not be associated with the foregoing.

K. Arbitration Court

- All disputes arising from the application of these sales conditions and in the context of the creation and the transaction of the purchase contracts between SEKELS GmbH and its customers shall be conclusively decided according to the arbitration code of the German Institution of Arbitration (DIS), to the exclusion of legal recourse, by three arbitrators whose presider must be a qualified judge.
- The arbitration court may also rule on the validity of this arbitration agreement for the concluded purchase contracts and its binding validity for the state courts of the Federal Republic of Germany. The place of the arbitration court shall be Frankfurt; the language of the proceedings shall be German.

L. Other

- German law shall apply to the exclusion of the UN law on the International Sale of Goods (CISG) to these sales conditions and to the purchase contracts concluded between SEKELS GmbH and its customers.
- Any invalidity of individual provisions of these sales conditions shall not affect the validity of the other provisions. It shall be replaced by the contracting parties by a provision that is valid and comes as close as possible in content to the original provision.