

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

OF GRUPA KĘTY S.A.

I Scope of Use of the Terms and Conditions

1. The following general terms and conditions (hereinafter “the Terms and Conditions”) apply to selling and buying of Goods (hereinafter “the Goods”) by Grupa Kęty S.A. (hereinafter “the Seller”), performed based the Order Confirmation issued by the Seller (hereinafter “the Confirmation”), unless agreed otherwise in writing by the parties.
2. The Buyer and the Seller agree that these Terms and Conditions apply to any and all sales and supply contracts of the Goods, exclusive of the Buyer’s general terms and conditions of purchase applicability.

II Placing orders, Pricing and Payment Terms.

1. The Buyer will place orders only in writing, sent by post or by courier service. Sending orders by fax or by email is allowed. An order is not binding unless confirmed in writing by the Seller. Terms of delivery indicated in the order confirmation, if different from these indicated in the order, need to be accepted by the Buyer. In absence of the Buyer’s written confirmation of the terms indicated in the order confirmation within 3 working days they shall be considered as accepted.
2. In case of any overdue payment to the Seller, the Seller may block supplies resulting from the following orders placed by the Buyer until the payment is made in full (including incidental dues, such as default interest and costs) or demand the payment to be secured appropriately. In case the Buyer refuses to pay or to secure the payment, the Seller may withdraw from the contract within 7 days, with no compensation to the benefit of the Buyer.
3. The payment date shall stand for the date of crediting the amount paid to the Seller’s bank account.
4. In case of overdue payment for the Goods the Buyer shall pay statutory default interest. Moreover, in such situation the Buyer shall lose the right to any and all so far granted rebates, discounts, bonuses, sales commission, etc., while any and all liabilities of the Buyer shall become due immediately, and the Seller will be entitled to change the terms of delivery with regard to transportation costs.
5. Payments made by the Buyer may be accounted by the Seller first towards the Buyer’s due liabilities – towards the oldest due liability, and in case of incidental dues (default interest, cost) – towards the liability.
6. If after the sale of the Goods legitimate doubts arise whether the Buyer remains solvent or creditworthy, or if such a fact – being true in the moment of contract signing – arises later, the Seller may block further supplies until the payment is made in full (including incidental dues, such as default interest and costs) or demand the payment to be secured appropriately, while any and all liabilities of the Buyer shall become due immediately. In case the Buyer refuses to pay or to secure the payment, the Seller may withdraw from the contract within 7 days, with no compensation to the benefit of the Buyer.

III Title retention

1. The title to the Goods shall be transferred onto the Buyer only upon the sales price has been paid in full, including any incidental dues default interest, costs). The Buyer shall protect the Goods against damage and adverse environmental exposure, including moisture and temperature in particular. The Goods delivered should be handled, unloaded and stored in the way that meets at least all the requirements included in the instruction "Recommendations for Customers on Storage and Transportation of Aluminium Profiles", available on the website: <http://profile.grupakety.com/pl/profile-aluminiowe-grupa-kety/#ogolne>
2. The Goods owned by the Seller shall be visibly marked by the Buyer (in particular by means of appropriate stickers, tags, records in the Buyer’s business documentation), as the property of the Seller, while any and all costs of such marking shall be borne by the Buyer.
3. The Buyer may not encumber the Goods owned by the Seller with any third-party rights.
4. The Seller will acquire free of charge the right to improvements of the Goods subject to title retention by the Seller.
5. The Buyer authorizes the Seller to take back, at the Buyer’s cost, the Goods subject to title retention by the Seller in case of payment overdue for the Goods or in case after sale of the Goods legitimate doubts arise whether the Buyer remains solvent or creditworthy, or if such a fact – being true in the moment of contract signing – arises later.
6. The Buyer authorizes the Seller to check how the title retention is complied with, and such authorization shall not be limited in any way by the Buyer.

IV Delivery

1. The risk of accidental loss or damage of the Goods shall be transferred from the Seller onto the Buyer upon the receipt of the Goods. If the Goods are taken back by the Seller, disregarding the reason (complaint-based goods return, goods taken back due to payment overdue), the Buyer shall be liable for any damage of the Goods resulting from breaching the requirements on the Goods transportation, unloading and storage.

2. case of the Goods delivery is delayed for more than weeks, the Buyer may set an additional deadline.
3. Once such deadline has not been met, the Buyer may withdraw from the contract in writing, within two weeks.
4. Partial deliveries are allowed.
5. If the Goods are kept at the Seller's warehouse longer than for 14 days the Buyer shall be charged with the storage costs, i.e.:
 - from 15 to 20 days – 0.2 % of the Goods net value per each day,
 - above 21 days – 0.5% of the Goods net value per each day.

V Warranty

1. The Seller's warranty liability defects of Goods is restricted to: (I) replacement of the Defective Goods with the defect free ones, or (II) reduction for the sales price – at the Seller's discretion. Other damage claims of the Buyer due to the Goods defects have been excluded. Goods defects shall stand for physical and legal defects. A physical defect refers solely to a nonconformity with the technical documentation confirmed by the Seller and agreed at the stage of ordering the Goods. The Seller shall not be liable for the Goods fitness for the use intended by the Buyer or for any design faults. Any and all remarks of the Seller concerning the shape and the features of the Goods reported at the stage of ordering the Goods relate solely to the of the Goods, rather than to their impact on the use intended by the Buyer.
2. The warranty liability of the Seller is excluded: (I) if the defects concern less than 4% the Goods sold or collected at one time, or (II) if the Goods claimed have been processed, exchanged or stored improperly, or (III) if the Buyer failed to check the Goods conformity with the order promptly after the receipt of the delivery.
3. Any and all warranty rights for the Goods shortage shall expire if the Buyer fails to record the reservations on the delivery note and to notify the Seller on the defect of the Goods delivered within 24 hours upon the receipt date. Such notification should be sent by telegraph, telefax or email, and then confirmed in writing. In the case of the Goods shortage and transportation damage the Buyer's and the carrier's confirmation it is required. In the case of quality defects – the confirmation of the Buyer and of the Buyer's quality control. A complaint will be effective only if the Buyer, having performed the tests retains the test samples and unprocessed Goods for inspection and evaluation of the Seller.
4. In the complaint form the Buyer should indicate the number of the batch claimed, the order number and the reference of product claimed (according to the product marking used by the Seller) as well as a detailed description of the defect. Furthermore, the Buyer should provide the Seller with any and all clarifications necessary for handling the complaint, within 14 days upon the receipt of such request to complete the complaint form, otherwise the complaint will not be handled. The Buyer may appeal from the Seller's decision on the complaint within 14 days upon on the decision date. In absence of an appeal submitted within such deadline the Seller's decision shall be considered as accepted.

VI Limitation of Liability

1. The Seller shall not be liable for non-performance or improper performance of its obligations, provided such non-performance or improper performance results from the Force Majeure circumstances. The parties agree that the "Force Majeure" shall stand in particular for: (I) any and all circumstances due to which order fulfilment by the Seller becomes impossible, hindered or unproportionally costly, to the extent that the Seller may not be expected to perform the contract, (II) strikes, (III) supply shortage suffered by the Seller of products, materials or services necessary for the Buyer's order fulfilment, (IV) wars, (V) natural calamities, and (VI) other similar events.
2. Subject to the binding provisions of law, the parties exclude the Seller's liability for damage, except for damage caused intentionally or due to the Seller's gross negligence.
3. In each case the Seller's liability is limited to the net value of the Goods, and exclusive of liability for lost profits.

VII Final Provisions

1. Unless upon written consent of the Seller, the Buyer may not use the name, the trademarks or the trade names of the Seller.
2. A transfer of the rights resulting from supply of the Goods subject to these Terms and Conditions requires the Seller's written consent.
3. The Buyer agrees to processing of its personal data by the Seller solely for the needs related to the Seller's business activity and for its own needs.
4. For the avoidance of doubt, it has been agreed that any and all notifications between the parties, in order to be valid, need to be made in writing.
5. Supply of Goods based on the Confirmation and on these Terms and Conditions shall be governed by the Polish law, and the Civil Code in particular. Unless the parties agree otherwise, any and all disputes resulting from or related to these Terms and Conditions or to the contracts concluded according to them, shall be resolved by the public Court in the Republic of Poland, appropriate for the registered office of the Seller.
6. In order to be valid, any and all changes and amendments to the contracts, and corrections of the order, the Confirmation and the Terms and Conditions need to be made in writing.

GK Kęty S.A.