



Terms and conditions of sale and delivery

of KriSSL Watches Warenhandels GmbH, 4600 Wels, Maria-Theresia-Strasse 41

FN 252760g

As of: January 2017

1. Scope of validity

All legal transactions, deliveries, other performances, and offers shall be made solely on the basis of these terms and conditions. The customer expressly acknowledges that we already at this point in time raise an objection against all deviating regulations in an order or in other business documents of the client. These terms and conditions shall apply as a framework agreement, also for all other legal transactions with the client. The version which is applicable at the time of the conclusion of the contract shall be decisive.

2. Conclusion of the contract

Our offers and price lists shall be non-binding and without engagement. The contracts shall only be regarded as concluded upon our written order confirmation or by a fulfilment action performed by us (e.g. delivery/shipment of the goods). All other agreements or subsidiary agreements, including those subsequently agreed upon, shall only become effective upon our written confirmation. Our employees are not authorized to make legally binding declarations on our behalf, unless we granted a special power of attorney which has been presented to the client.

3. Prices

All prices indicated by us shall be without engagement and they are quoted in Euro (€), exclusive of value-added tax, unless expressly stated otherwise. All prices are understood ex distribution centre and without supplementary expenses, unless otherwise agreed in writing. The costs for packaging, shipment, customs duties, and other services (assembly, installation, etc.) shall be invoiced separately. The transport is carried out at the risk and expense of the client. We are not obliged to take out transport insurance for the goods.

In the case of possible amendments of labour costs due to regulations in collective agreements or legal regulations or due to internal agreements as well as changes of other costs necessary for the calculation of the relevant costs or for the provision of the performance, such as those for material, energy, transports, subcontracted works, financing, etc., we are allowed to increase the prices accordingly. The contractor does not have a right of withdrawal and he is not allowed to claim frustration of contract for this reason.



4. Delivery

The agreed delivery periods shall begin with the dispatch of the order confirmation by us. However, the respective period shall not start before we confirmed the receipt of all technical and other information, documents, advance payments or other performances of the client (in the following referred to as advance performances) which are required for the fulfilment of our obligations. In the case of a default concerning the agreed advance performances the delivery period shall be extended accordingly. The delivery period is met if the delivery item leaves our warehouse before expiry of the period or if informed the client about the readiness to deliver by then.

Agreed delivery dates shall be adhered with where possible; however, they are not binding. Any delay in delivery does not grant the client a right to withdraw from the contract or to assert warranty claims, claims due to avoidance on the grounds of error, or claims for damages. We are entitled to carry out and invoice partial or advance deliveries.

We reserve the right to choose the method and the means of shipment; this shall apply with the exclusion of every liability. In particular, there is no obligation to choose the cheapest method of transportation.

The packaging – also in the case of partial and/or advance deliveries – shall be carried out according to customary commercial practice. Any further packaging shall be for the account of the client.

Any surcharge for express and air freight will be charged separately. Transportation insurance shall only be taken out by order and for the account of the client.

In the case of business interruptions and events of force majeure as well as all other events outside our sphere of influence, in particular delays in delivery and the like by our subsuppliers, we shall have the right to extend the periods accordingly or to withdraw from the part of the contract which has still not been fulfilled, with the exclusion of all legal claims, in particular warranty claims, claims due to avoidance on the grounds of error, or claims for damages. This shall also apply if the events occur at a time when we are in default.

With our notification of the client concerning the readiness to dispatch, however, at the time of dispatch of the delivery from our warehouse, in the case of direct delivery ex warehouse of our suppliers, at the latest, the risks concerning price and performance shall be transferred to the client, irrespective of a possible separately agreed price regulation for the delivery. In the case that goods ready for shipment cannot be dispatched through no fault of our own; we are allowed to store the goods at our own discretion at the client's expense and risk; the delivery shall be deemed to be performed by this. In this case we are in particular allowed to store the goods on



our premises at usual market prices or to store the goods ready for shipment on behalf and at the expense of the client with a third party.

5. Payment conditions, default, prohibition to set off, deliveries abroad

Our invoices - also partial invoices - shall be due for payment 10 days after the date of issue net, free of expenses and deductions, in particular without any discount deduction. Invoice complaints must be made in writing within 14 days after the date of the invoice, otherwise all claims are excluded. Bills of exchange or cheques will only be accepted after a separate agreement has been made in this regard. We reserve the right to assign payments received to possible several claims at our discretion.

In the case that the client is in default of payment, we are released from all further performance and delivery obligations and we shall have the right to retain deliveries or performances already outstanding or to request advance payments or collaterals.

Furthermore, the client shall be obliged, without fault, to pay default interest in the amount of 1% per month; in this case we are entitled to claim any further bank interest to the usual extent. Furthermore, the client shall compensate the costs incurred by us for reminders and collection whereby he shall in particular be obliged to reimburse at most the fees of the collection agency which result from the Regulation of the BMWA [*Bundesministerium für Wirtschaft und Arbeit*, Austrian Ministry for Economics and Labour] concerning the maximum rates for the fees payable to collection agencies. In the case of a reminder by us, the client commits himself to pay an amount of **€ 15.00** for each reminder.

In the case that a significant deterioration of the client's financial circumstances occurs after the conclusion of the contract or if we become aware of circumstances which might reduce the creditworthiness of the client from our point of view, all claims shall immediately become due for payment. In this case further deliveries will only be carried out against advance payment.

The client is not entitled to retain payments. The client shall only have a right to set off if his counterclaims have been established as being legally valid or have been accepted by us.

In the case of export transactions, the client shall exclusively be responsible for obtaining and maintaining the necessary export, customs, and other authorisations and the like at his own expense. We do not assume a warranty or guarantee of any kind concerning the admissibility of the export of the purchased goods. Furthermore, the client shall send back to us the originals of all export and customs documents, otherwise he is obliged to pay possible value-added tax. In the case of deliveries abroad, our delivery also requires the issuance of an irrevocable documentary letter of credit with a bank to be determined by us which can be used against presentation of the shipping documents or the Forwarders Certificate of Receipt.



6. Retention of title

We reserve the title of ownership to all goods delivered by us until the complete payment of the purchase price or the compensation for work, including interest and supplementary fees, for whatever legal reason – also resulting from preceding transactions. In the case of a current account the reserved ownership shall also serve as collateral for our balance claim. Insofar as we do not declare the withdrawal from the contract – to which we are entitled unilaterally – the assertion of the retention of title shall in general not be considered to be a withdrawal from the contract and it does not release the client from his obligations, in particular from his obligation to pay the remuneration.

The client is entitled to transfer, in the course of his business, the expectant rights existing within the framework of our retention of title concerning the object of purchase; however, he is not entitled to any pledging or chattel mortgage concerning the object of purchase.

The client is obliged to immediately inform us about every seizure or other impairment of property by a third party. The client shall be obliged to bear the costs and measures for removing the intervention, in particular the costs of intervention proceedings and the like.

The retention of title shall also extend to the products arising from processing. In the case of processing, combining, or blending of our goods with other materials we will acquire joint ownership in the resulting new products, in proportion to the pro-rata value added.

The client shall already at this point in time assign for security and satisfaction all claims arising from the sale of goods to which we have title - in the amount of our joint ownership, if applicable. We accept this assignment. The client is obliged to immediately inform us about the name and the address of his customer, the existence and the amount of the claims arising from the resale and to verifiably notify his customer about the assignment of the claim. Furthermore, the client is obliged to make the assignment of these claims apparent in his books of account in an appropriate manner. We are always entitled to inform the customer of the client about the assignment. Possible fees for the assignment shall be borne by the client.

The client shall transfer already at this point in time all amounts received due to cash sales of goods to which we have title, up to the amount of the claim that we have against him resulting from the delivery of these goods at that time; we already at this point in time instruct the client to separately keep in custody and hold these amounts on our behalf.

IF the client does not fulfil his obligations or if he stops his payments, the complete remaining debt shall immediately become due, even in the case of bills of exchange with a later maturity date. In this case we are entitled to require the immediate return of the object of purchase under exclusion of any right of retention. After taking back the object of purchase it shall be at our discretion to sell the object of purchase and to credit the proceeds achieved less 20% resale



expenses to the client with regard to his obligations still existing or to take back the object of purchase at the invoice price deducting possible reductions in value and to charge the client a rental fee in the amount of the usual rent for the delivered products for the time in his possession.

7. Withdrawal from the contract

In the case of default of acceptance or for any other important reason, such as in particular insolvency of the client or rejection of insolvency for lack of assets, as well as in the event of a default of payment on the part of the client, we have the right of immediate withdrawal from the contract or parts thereof without granting a grace period and without prejudice to any other claim of any kind. The withdrawal from the contract shall be legally effective with our unilateral statement.

8. Warranty, delivery of wrong goods

The client is obliged to assert a notice of defects in writing and immediately after receipt of the delivery; however, at the latest 5 days after delivery and before any treatment or processing, otherwise warranty claims and/or claims for damages and/or claims due to avoidance on the grounds of error shall be excluded. However, the notice of defects does not justify the retention of the invoice amounts or parts thereof.

For defects which could not be detected during the examination of the delivery, the **warranty period** shall be **two years** beginning at the time of the delivery and it shall not be extended or interrupted by improvement attempts; it shall also apply for partial deliveries. Such defects must be claimed in writing within 5 days after detection of the defect, otherwise warranty claims and/or claims for damages and/or claims due to avoidance on the grounds of error shall be excluded. However, they do not justify the retention of the invoice amounts or parts thereof.

Deviations of the ordered goods from the goods delivered, such as incorrect dimensions or wrong goods (delivery of wrong goods), must be claimed within 5 days after the delivery and before any treatment or processing, even in the case that the goods are not directly delivered to the client. Otherwise the goods shall be deemed as accepted and we cannot take them back or exchange them.

Our advice, irrespective of whether orally or in writing, is not binding and does not release our client from testing our products on his own whether they are suitable for the intended purpose. In the case of subsequent deliveries we do not assume any liability for the exact conformity with the first delivery.

The client must always prove that the delivered goods were defective at the time of handover, the legal presumption according to section 924 ABGB [*Allgemeines Bürgerliches Gesetzbuch*, Austrian Civil Code] shall expressly be excluded.



The warranty shall expire if the client himself or a third party makes changes or repairs to the delivered item without our written consent. In the case of any complaint, the client is first obliged to accept the goods, to unload them properly and to appropriately store them.

For the goods which we, on our part, have obtained from suppliers, we only grant warranty within the framework of the warranty claims that we have with respect to the supplier. With regard to the products delivered by us, we only grant the warranty that they have the qualities which are the usual standard for these kinds of products. We only grant a warranty for any further qualities, such as in particular qualities mentioned in public statements - e.g. advertisement and information accompanying the products - if these qualities have been assured by us in writing in the course of the placing of the order.

It shall remain at our discretion if we fulfil the warranty claims by way of exchange, improvement, price reduction, or rescission.

Unless otherwise agreed in a special agreement, the place of performance for the services we have to render according to the title of warranty shall be the registered office of our company.

The assignment of warranty claims and claims for damages or the like - with the exception of pecuniary claims - shall not be permitted.

9. Claims for damages

We shall be liable for any damage incurred by our client within the framework of the business processing up to a maximum amount not exceeding the value of goods ordered and only in the case of our own gross negligence or the gross negligence of the vicarious agent acting on our behalf; this shall not apply for personal physical injury for which we are liable already in the case of slight negligence. The compensation of consequential damages, purely financial losses, lost profits, and any damage arising from claims of a third party shall be excluded. The person having suffered the damage has to prove the existence of gross negligence. The application of section 1298 ABGB (reversal of the burden of proof) shall be excluded. For this reason, the client must always provide evidence for our culpability.

10. Product liability

In the case that our client himself should be held liable according to the Austrian Product Liability Act or according to similar foreign provisions, he expressly waives every right of recourse against us, in particular according to section 12 of the Austrian Product Liability Act or similar foreign provisions.

If our client should market the goods delivered by us outside of the European Economic Area, he commits himself to exclude the obligation to pay compensation to his customer according to the Product Liability Act, insofar as this is possible according to the laws applicable between him and



the customer or according to the agreed laws. In this case or in the case that this mandatory exclusion is not agreed upon, the client shall be obliged to indemnify us against claims of any third party arising from the title of product liability.

11. Property rights of a third party

The client shall assure that we do not violate property rights of a third party by our delivery according to the contract or any other performance carried out by us (patent rights, trademark rights, design rights, copyrights, equipment, product designations, know-how, territorial protection, and similar rights, even if these rights have only been applied for). We are not obliged to verify if intangible rights of a third party exist concerning the goods to be produced or if such a right is violated. The client shall completely indemnify us and hold us harmless against any claim of a third party in this respect.

12. Place of performance, choice of law, jurisdiction, severability clause

The place of performance for all contractual obligations of our client is the place of our headquarters in Wels/Austria; this shall apply irrespective of any agreement concerning the place of delivery and the assumption of possible transportation costs or the place of payment.

Austrian substantive law shall exclusively apply for all legal transactions, in particular those which are subject to the contractually stipulated (delivery) agreement and these terms and conditions, however, excluding the principles on conflicts of law, in particular those of the Private International Law, insofar as they refer to the application of foreign law. If Austrian law, in the case that foreign countries are involved, establishes the application of special international material provisions which are also applicable in Austria - such as e.g. the UN sales convention - these provisions are not applicable. This shall also apply for disputes concerning the conclusion of the contract or the interpretation of the terms and conditions and the contract.

The exclusive place of jurisdiction for our clients concerning all disputes arising from this contractual relationship or which are in connection with it shall be the court that has the competence *ratione materiae* for Wels/Austria. However, we have the right, at our choice, to file an action against the client at any other court which can be the competent court according to national or international law.

The invalidity of individual provisions of our terms and conditions shall not affect the validity of the remaining provisions of these terms and conditions. The contracting partners are obliged to agree on a new provision which comes closest to the purpose of the invalid provision.