

## **Terms and Conditions of Sale and Delivery**

### **§ 1 General terms and conditions**

- (1) Our offers are non-binding.
- (2) An order is accepted by us only if we have confirmed it in writing. Our written order confirmation determines the scope of delivery. The documents that are part of the offer such as images, drawings, weight and dimensions information are only approximate in nature unless they are explicitly designated as binding. We retain title and copyright to drawings and other documents. Such documents may not be made accessible to third parties.
- (3) Additions and ancillary agreements require our written confirmation.
- (4) The Ordering Party may not assign rights under this contract without our consent.
- (5) All agreements and offers are subject to our terms and conditions; they are acknowledged by the issue of an order or acceptance of the delivery.
- (6) General terms and conditions of business which differ from, are contrary to or supplement these general terms and conditions do not become, even if known, an integral part of the contract unless we expressly consent to their application.

### **§ 2 Prices and payment terms**

- (1) Our prices are subject to VAT at the statutory rate. Orders for which fixed prices are not expressly agreed shall be charged at the list prices applicable on the date of delivery. This shall not apply if there is a period of less than 4 months between the time the contract is entered into and the scheduled delivery date. In this case the list prices at the time the order is made shall apply. The agreed prices shall be calculated in euros.
- (2) The prices shall apply ex works.
- (3) The Ordering Party shall additionally be billed for packaging, transport, assembly and other ancillary costs, and customs duties and other charges associated with the delivery.
- (4) Packaging is non-returnable.
- (5) The invoices are payable within 14 days after the invoice date with a 2% discount, or within 30 days net. A discount is only granted on the net value of the goods (after deduction of any allowances, freight etc.).
- (6) Cheques and bills of exchange are only accepted on account of payment, not in lieu of performance. Bills of exchange are only accepted under a special agreement, taking into account all collection and discounting expenses.
- (7) The minimum net order value for an order is EUR 130.

### **§ 3 Delivery by instalments**

- (1) Delivery by instalments is permitted provided this is reasonable for the contracting party.
- (2) If quantities in excess of the original order volume are requested by the Ordering Party, we may cancel the surplus volumes or charge for them at the prices applicable on the date of delivery.
- (3) Differences in volume of 10% are acceptable; the purchaser accrues no rights to additional claims as a result and/or the excess delivery cannot be declined either. Partial call-up orders shall be made in the same intervals and for the same volumes.

### **§ 4 Tooling costs**

- (1) Tooling charges for special orders shall generally be prorated, separate from the value of the goods.
- (2) The remuneration of contributions towards tooling costs does not give the Ordering Party any claim to the tools; they remain our property and in our possession.
- (3) For orders which are cancelled in the development phase or in the start-up period, we reserve the right to charge the costs actually incurred.

- (4) The tooling costs for requests for modifications shall be invoiced in addition at cost. It is possible to subsequently bill for part or the entire difference between tooling costs that are already prorated and actual tooling costs when the number of items upon which the final order is based are not accepted within the agreed timeframe.

## **§ 5 Licences and permits**

The Ordering Party must procure in a timely manner all permits necessary to implement the contract, including the authorisation for the monetary transaction. If the necessary permits cannot be obtained within a reasonable period, we may after setting a reasonable grace period of at least two weeks resile from the contract by notifying the Ordering Party or claim damages for non-performance.

## **§ 6 Delivery times**

- (1) Delivery times/delivery deadlines are only deemed to be approximate unless they are expressly designated as binding.
- (2) The delivery time shall commence on the date of order confirmation but not before all necessary agreed preliminary services are performed by the purchaser. The delivery time shall be adhered to if by the end of the delivery period the delivery item has left the factory, and where the shipment is to be effected by the Ordering Party, as soon as the Ordering Party has been advised that the delivery item is ready for shipment.
- (3) Correct and timely self-delivery is also an option.
- (4) In the event that we are in default with a delivery, damages for delay to the Ordering Party are limited to the foreseeable loss or damage that is standard in a contract. No compensation is paid in particular for lost profit.

## **§ 7 Passage of risk**

- (1) Risk of accidental loss and accidental deterioration of the goods shall pass (including as regards partial deliveries) to the Ordering Party upon its handover to the Ordering Party, a forwarding agent or carrier. It is irrelevant here whether the goods are dispatched from the place of performance and who bears the freight costs. If the goods are ready for shipment and dispatch or final acceptance is delayed for reasons for which we are not responsible, risk passes to the Ordering Party upon receipt of the notification concerning shipment readiness.
- (2) In cases where transport is payable by us, we shall be liable only for proper selection of the means of transport described in the contract. Selection of the means of transport shall be made at our discretion. We are not obligated to choose the least expensive means of transport . We only take out insurance policies at the express wish of the Ordering Party on the latter's account.
- (3) All agreements in relation to the assumption of the transport costs and the costs of insurance relate, including when the application of Incoterms/TRADE Terms is agreed in this respect, exclusively to the specified costs and do not affect the passage of risk.

## **§ 8 Inspection and notification of defects**

- (1) If a delivery has minor defects, the Ordering Party is not authorised to refuse delivery.
- (2) Defects which are visible in the course of reasonable inspection must be notified no later than 8 days after the goods are delivered, and latent defects no later than 8 days after the defect is noticed.
- (3) All costs of an inspection shall be borne by the Ordering Party.

## **§ 9 Warranty and damages**

- (1) If when risk passes the item that is delivered is defective or lacks warranted characteristics, we have the option to either remedy it or deliver a replacement. If only part of the delivery is defective, the Ordering Party can assert rights only in respect of the defective part.
- (2) If our remediation attempts fail, the customer may, to the exclusion of all other claims, call for a reduction in the remuneration or ask for the contract to be rescinded.
- (3) The warranty period for all products is 12 months.
- (4) In respect of replacement deliveries and remediation work, we are liable to the same extent as for the original delivery.

- (5) Payment of the purchase price may only be refused by invoking alleged defects if the warranty claims are admitted by us or are judicially determined as non-appealable.
- (6) We shall be liable in cases of wilful intent or gross negligence – including cases of wilful intent or gross negligence of our agents or assistants - in accordance with the statutory provisions. In all other respects we shall be liable only in accordance with the Product Liability Act, for death, physical injury or impairment to health or for the culpable breach of material contractual obligations. Material contractual obligations are obligations the performance of which is essential for proper implementation of the contract and where the contracting party is entitled to duly rely on the fact that said obligations will be complied with. The damages claim for the breach of material contractual obligations shall be limited to the foreseeable loss or damage that is standard in contracts. No compensation shall be payable in particular for lost profit. Our liability shall also be limited in cases of gross negligence to the foreseeable loss or damage that is standard in contracts unless one of the exceptions listed in sentence 2 of this paragraph applies.
- (7) Liability for loss or damage caused by the delivery item to legal interests of the purchaser, such as damage to other property, is, however, completely excluded. This does not apply where there is wilful intent or gross negligence or where there is liability for death, physical injury or impairment to health.
- (8) The above provisions shall apply to the area of contractual and tortious liability.

#### **§ 10 Retention of title**

- (1) The items delivered shall remain our property until payment in full of all claims, including those only arising in the future, which we have against the Ordering Party under the business relationship with the latter, regardless of the legal grounds. The allocation of individual claims to a current invoice and the netting out of claims and recognition thereof shall not affect the retention of title. In this case title shall pass to the Ordering Party only upon settlement of the outstanding balance.
- (2) The Ordering Party may use our goods for their intended purpose, and process or integrate them in the ordinary course of business and deliver and sell them as a retailer.
- (3) Notwithstanding the fact that we may cancel it at any time, this authority shall terminate upon cessation of payments by the Ordering Party or if an application is made to open insolvency proceedings on its assets.
- (4) The Ordering Party is not authorised to pledge or to transfer or assign our goods as collateral. In the event of the sale of our property, the Ordering Party hereby irrevocably assigns to us its entire claim under the underlying purchase agreement, or proportionately in the case of co-ownership, up to the amount of our residual claim. We hereby accept this assignment.
- (5) To the extent that this is not possible under the law of the state in which delivery is made, the Ordering Party must retain or agree other security rights to the goods. The Ordering Party hereby assigns these rights to us and we hereby accept same.
- (6) The integration of the item into land or buildings or the use of the goods subject to retention of title until the performance of other manufacture or supply contracts by the Ordering Party is equivalent to resale.
- (7) The Ordering Party is authorised to collect the claims as long as he meets his obligations to us in full and does not suffer financial collapse. At our request he must provide the information required for collection and must at his expense notify the debtors of the assignment.
- (8) Any processing of the goods subject to retention of title shall be performed by the Ordering Party for us without us incurring any liabilities as a result. If our goods are processed, mixed or commingled with other goods we shall have the resulting co-ownership share in the new item in the proportion the invoice value of the goods subject to retention of title bears to that of the other processed item at the time of the processing, combining, mixing or commingling. If the Ordering Party acquires sole ownership of the new item, it is agreed that the Ordering Party shall, in proportion to the invoice value of the processed or combined, mixed or commingled goods subject to retention of title, grant us co-ownership in the new item and hold same on our behalf at no charge.
- (9) The Ordering Party must immediately notify us of any compulsory third party enforcement measures over the goods that are subject to retention of title or over the claims assigned in advance and submit the necessary documents.

- (10) We undertake at our discretion to release the collateral we have at the request of the Ordering Party when its value exceeds the claim to be secured by 20% or more.
- (11) The Ordering Party shall keep the subject of purchase in proper condition and insure it against fire and theft and provide evidence that it has taken out the insurance. The claims against the insurance are hereby assigned in the amount of our claims.
- (12) In the event that we incur contingent liabilities on behalf of the Ordering Party (payment by cheque/bill of exchange), the renewed and extended retention of title shall continue to exist until we are discharged in full from these liabilities.

#### **§ 11 Jurisdiction and place of performance**

- (1) The jurisdiction for all disputes arising directly and indirectly from the contractual relationship shall be the registered office of Kaltenbach KG if the purchaser is a businessman, public legal entity or a public investment fund. Otherwise the registered office of Kaltenbach KG shall be deemed to be the agreed jurisdiction in the event that after the contract is concluded the purchaser moves his residence, his ordinary place of abode or his branch from this jurisdiction or in the event that the latter is not known at the time the action is initiated. German law shall apply exclusively.
- (2) The place of performance for all mutual contractual obligations of the seller and purchaser is the registered office of Kaltenbach KG, provided both parties are business people.
- (3) The general provisions of law shall apply in all other respects. In the event that a provision of these terms and conditions is ineffective or invalid this shall not affect the validity or effectiveness of the other provisions.