

## **General Terms of Sale of the KettenWulf Betriebs GmbH**

### **I. General provisions**

1. These General Terms of Sale apply to all business relations with our customers ("purchasers"), where the purchaser is a businessman (article 14 of the German Civil Code), a legal entity under public law or a special fund under public law.
2. For the scope of deliveries or services (hereinafter: deliveries) the mutual written declarations shall be relevant. The purchaser's terms and conditions only apply where the supplier or service provider (hereinafter: supplier) has explicitly agreed to them in writing. In all other cases only these General Terms of Sale shall be relevant for the contract. Unless stipulated otherwise the General Terms of Sale in the version valid at the time of ordering or the last written version provided to the purchaser apply also to identical future contracts without the supplier having to point this out to the purchaser in every individual instance.
3. The supplier reserves the unrestricted right of ownership and exploitation of copyright for all quotations, drawings, programs and data, even stored in electronic media, and other documents (hereinafter called : documents). The documents may only be made available to third parties after express written agreement of the supplier. If the contract is not awarded to the supplier, they must be returned immediately and without specific request. Clauses 1 and 2 apply correspondingly to the purchaser's documents. However, they may be made available to third parties to whom the supplier has permissibly transferred deliveries. The supplier has stored the purchaser's data according to the data protection law.
4. Legally binding declarations and notifications required from the purchaser following the conclusion of the contract (e.g. setting of deadlines, notifications of defects, declarations of cancellation or reduction) must be in writing to be effective.

## **II. Bids, purchase orders**

1. Bids by the supplier – in particular with reference to quantities, price and time of delivery – are subject to confirmation and non-binding, unless explicitly marked binding or containing a specific term of acceptance.
2. Any amendments to and modifications of the agreement including the General Terms of Sale must be in writing to be effective. The requirement of written form shall also be deemed fulfilled if transferred by means of telecommunication such as facsimile or e-mail if a copy of the signed statement is transmitted. Verbal admissions by the supplier prior to the conclusion of the contract are not legally binding and any verbal agreements shall be replaced by the written contract unless they were meant to remain specifically valid after the conclusion of the contract.

## **III. Prices and payment terms**

1. The prices are quoted in EURO ex works excluding packaging, statutory sales tax, in case of export shipments customs duties and fees and any other public dues.
2. If the supplier has taken over the setup or installation and unless otherwise agreed, the purchaser shall bear all additional costs such as travel expenses, expenses for the transportation of tools and personal luggage as well as separation allowances in addition to the agreed compensation.
3. Invoices are payable within thirty days without any deductions unless otherwise agreed in writing. The relevant date of payment is the date the payment is credited to the account of the seller. Cheques are considered as payment only after encashment.
4. The purchaser is deemed in default once the payment term has expired. When in default the purchase price is accruing interest at the statutory default interest rate. Any claims for higher interests and further damages in case of default remain unaffected.
5. The Purchaser may set off only those claims or withhold payment due to claims that are undisputed or have been determined in a legally binding manner.

6. If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk through insufficient [...] ability of the Buyer to pay (e.g. by an application for opening of insolvency proceedings) then according to the statutory regulations we are entitled to refuse service and –if applicable after setting a deadline –to cancel the contract (§ 321 BGB). In the case of contracts for the manufacture of specific items (making to specification) withdrawal is possible immediately; this shall not affect the legal provisions concerning the dispensability of fixing a time limit.

#### **IV Retention of title, security**

1. We reserve the ownership of the item purchased until all payments resulting from the existing business relation with the purchaser have been received. To the extent that we agree with the customer on payment of the purchase price owed on the basis of the cheque/note payment procedure, the retention also extends to the redemption of the note accepted by us from the customer and is not extinguished by the crediting of the check received by us. If the purchaser acts in a way contrary to the contractual obligations in particular in the event of a default in payment, we shall be entitled to demand the return of the goods. Our taking back the sold goods does not constitute a cancellation of the contract unless we explicitly consented to it in writing. If the purchaser does not pay the purchase price due, we may assert these rights only if we have first set the purchaser an appropriate time limit for payment without result or if setting a time limit may be dispensed with according to the provisions of law. If we obtain the seizure of the object of sale this shall always be construed as a cancellation of the contract. After taking back the object of the sale we shall be entitled to sell it. The proceeds from its sale shall be applied to the debt of the purchaser less adequate costs associated with the sale.
2. Purchaser shall treat the goods with due care; in particular, he shall adequately insure it at the replacement value at the time of purchase against fire, water and theft damages. Provided that service and inspection work is required, the purchaser must carry out such work at his own expense.
3. In the event of seizures or other action by third parties, the purchaser must notify us **immediately in writing.**

4. The purchaser has the right to resell the purchased goods in the ordinary course of business; however, the purchaser assigns to us, already now, all demands in the amount of the final commercial invoice (including value-added tax if applicable) of our demand that accrue to the purchaser by reason of the resale to its customer or third party, irrespective of whether the purchased goods are sold with or without processing. Supplier accepts this assignment. The purchaser shall remain entitled to collect this claim even after assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we agree not to recover debts ourselves as long as the purchaser complies with his payment obligations from the amounts received, does not default and in particular applications for insolvency proceedings have not been submitted and the purchaser does not cease payment. Should this, however, be the case we are able to demand that the purchaser makes the assigned claim and the debtors known to us, provides all details necessary for collection, hands over the appropriate documents and informs the debtors (third parties) of the assignment.
5. The processing or transformation of the purchase item by the purchaser shall always be done for us. If the object of sale is processed with other objects not belonging to us, we shall acquire part ownership of the new object in the same ratio as the value of the object of sale to the value of the other objects used at the time they were processed. Apart from that, for the goods being processed the same shall apply as for the purchase item, which was delivered with reservations.
6. If the object of sale is indivisibly mixed with other objects not belonging to us, we shall acquire part ownership of the new object in the same ratio as the value of the object of sale to the value of the other objects used at the time they were mixed. If the intermixture is performed in such a way that the purchaser's article must be regarded as the main article, it is agreed that the purchaser shall give us pro rata co-ownership. In doing so, the purchaser preserves the accrued sole or co-ownership for us
7. As a security for our own claim, the purchaser also assigns to us the claims arising against a third party by integration of the purchased goods into real property. The purchaser accepts this assignment.

8. We shall undertake to release the sureties due to us at the demand of the purchaser, in so far as the realisable value of the same exceed the guaranteed claims by more than 50 %; the selection of the sureties to be released shall be incumbent on us.

## **V. Deliveries; default**

1. Unless agreed otherwise in writing, the place of shipment and the way and means of transport is chosen by the supplier at his best discretion, without acceptance of any liability for cheapest or fastest transport.
2. The place of performance for delivery and possible supplementary performance shall be the supplier's plant in Kückelheim.
3. Partial deliveries shall be permissible, provided they are acceptable for the purchaser.
4. The delivery time shall be agreed individually or shall be stated by the supplier upon acceptance of the order. If this is not the case, the delivery period is approximately six weeks. If shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, carrier or other third party assigned to transport the goods.
5. Provided we are unable to fulfil delivery periods for reasons for which we cannot be held responsible (non-availability of performance) we shall immediately inform the purchaser to this effect and at the same time specify the likely new delivery time. If the service is not available within the new delivery deadline either we shall be entitled to cancel the contract in full or in part; we will reimburse an already provided consideration of the purchaser immediately. Deemed as case of non-availability of the service within this meaning is in particular the late self-delivery by our suppliers if we have concluded a congruent hedging transaction, through no fault of our own or our supplier or we are not responsible for the procurement in a specific case.
6. The compliance with deadlines for deliveries shall only be binding if all documents to be furnished by the purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the

- purchaser are fulfilled. If these prerequisites are not met in time, the terms and deadlines shall be extended appropriately, on condition that the supplier is not culpably responsible for the delay.
7. If non-observance of the time-limits is the result of force majeure, e.g. mobilization, war, riot or similar events, e.g. strike or lock-out, the agreed time-limits shall be extended appropriately.
  8. The occurrence of default in delivery is determined in accordance with legal regulations. In any case a reminder in writing by the purchaser is required. If the supplier defaults in delivery, the purchaser is entitled to demand lump-sum compensation for his default damage. The lump-sum compensation shall be 0.5 % of the net price (delivery value) per complete calendar week's default, subject to a maximum of 5 % of the delivery value of the goods delivered late. The supplier reserves the right to provide proof that the purchaser suffered no loss at all or a significantly smaller loss than the aforementioned lump-sum.
  9. Both claims for damages on part of the orderer due to a delayed delivery and claims for damages instead of the performance exceeding the limits specified in 8. are excluded for all cases of delayed performance, even after the expiry of a delivery deadline the supplier has possibly been set. This does not apply in the case of intention, gross negligence or due to bodily injury, damage to health or in the case of loss of life where there is mandatory liability. The purchaser may only rescind the agreement within the framework of the statutory provisions, if the supplier is responsible for the default in delivery. Shifting the burden of proof to the disadvantage of the purchaser is not connected with the regulations above.
  10. At the request of the supplier the purchaser is required to state within a reasonable period of time whether he is withdrawing from the contract as a result of the delay, or whether he insists on the delivery.
  11. Should on request of the purchaser the dispatch or delivery be postponed for more than one month after the cargo-ready notification, the supplier is entitled to invoice the orderer a storage fee for each month started in the amount of 0.5 % of the price of the

goods, however, not more than a total of 5 %. The parties to the contract are free to prove that the warehousing costs were higher or lower.

## **VI. Transfer of risk**

1. The risk of accidental loss and the accidental deterioration of the goods is transferred to the purchaser, even if delivery terms are carriage-paid, at the moment in which the consignment is made ready for despatch or collected. The goods shall be transported uninsured at the expense and in any event at the risk of the purchaser. This shall also apply in cases of any delivery free of charge and regardless of which means of transport shall be used. At the purchaser's request and expense, deliveries are insured by us against customary transport risks.
  
2. If the purchaser is responsible for the delay of shipment, delivery, start, accomplishment of installation or mounting, taking over in the own factory or the test run, or if the purchaser is late in accepting delivery for any other reason, the risk shall be passed to the purchaser.

## **VII. Warranty for material deficiencies**

1. The seller is liable for material defects under the following terms:
  - a) All those parts or services which evidence a material defect within the limitation period – regardless of the length of service – shall, at the option of the supplier, be improved, delivered again or performed again at no charge, provided that the cause thereof already existed at the time of the passage of risk.
  
  - b) Claims for material defects expire after 12 months. This shall not apply insofar as the law stipulates longer deadlines as well as in cases of the injury to life, the body or the health, with a wilful or grossly negligent breach of duty of the supplier and with malicious non-disclosure of the defect. Legal regulations with regard to suspension of the running of a period, or suspension and the fresh start of periods are not affected.

- c) The purchaser shall notify Defects to the supplier in writing and without undue delay in the Eslohe branch office. The notification must indicate clearly the kind and extent of the alleged defect. Any good to which objections shall not have been raised in accordance with the procedures and deadlines set out above shall be regarded as approved and accepted.
- d) In case of reports of defects, purchaser's payments may be withheld to an extent which is in reasonable proportion to the occurred defects of quality. If the notification of defect was unjustified, the supplier shall be entitled to demand the reimbursement of expenses incurred from the purchaser unless the lack of a defectiveness was unrecognisable by the user.
- e) The supplier shall first be given the opportunity to supplement his performance within a reasonable period of time. If the supplementary performance is unsuccessful, the purchaser is entitled – notwithstanding any compensatory damage in accordance with article IX – to rescind the contract or reduce the remuneration.
- f) Claims for defects shall be excluded in the case of merely insignificant divergence of the quality of the delivered goods from the agreed quality, of only irrelevant impairment of the usability, of natural wear and tear, and of defects that occurred after the passing of risk due to improper or careless handling, unsuitable or inappropriate use, incorrect installation and/or putting into service by the purchaser or a third party, deficient construction work, unsuitable foundations, chemical, electronic or electrical effects - insofar as these circumstances are beyond the control of the supplier - or faults due to special influences that are not preconditions in accordance with the contract. If the purchaser or a third party has carried out improper modifications or repair work, claims for defects for these or for results incurred from these are also excluded. Complaints relating to quantity and packaging of the goods shall also be excluded, provided that the required note on the delivery ticket/freight bill or delivery receipt is missing. Besides, any such complaint shall be excluded as

soon as purchaser has re-utilised the delivered goods or started further treatment or processing.

- g) The purchaser is not entitled to claim expenditures required for the purpose of the supplementary performance, in particular carriage, road costs, labour cost and cost of materials, as far as the expenditures are increased because the object of the delivery has been forwarded afterwards to another place than the purchaser's establishment.
- h) The purchaser's claim against the supplier under a right of recourse shall only exist to the extent that the purchaser has not made any agreements with his customer going beyond the statutory warranty claims..
- i) Furthermore, the provisions of art. X (Other claims for damages) apply to claims for damages. Further claims of the purchaser against the supplier and his agents on account of material defects or other claims than those regulated in this article VII. are excluded.

### **VIII. Commercial property rights and copyrights, defects of title**

1. Insofar as nothing else is agreed, the supplier is under obligation to carry out the delivery solely in the country of point of delivery, free of commercial property rights and copyrights of third parties (hereinafter referred to as property rights). If a third party asserts a justified claim against the purchaser due to an infringement of industrial property rights (IPR) caused by the supplies made by supplier and then used in conformity with the agreement, the supplier shall be liable to the purchaser within the time period stipulated in article V11. no 2 as follows:

- a) Supplier shall choose whether to acquire, at its own expense, the right to use the IPR with respect to the supplies concerned or whether to modify the deliveries such that they no longer infringe the IPR or replace them. If it is not possible for the supplier to reasonably do so, the purchaser shall be entitled to exercise the statutory rights of cancellation or price reductions.

- b) The supplier's liability to pay damages shall be governed by art. X.
- c) The above obligations of the supplier shall apply only if the purchaser immediately notifies the supplier of any such claim asserted by the third party in written form, does not concede the existence of an infringement and leaves any protective measures and settlement negotiations to the supplier's discretion. If the purchaser stops using the supplies in order to reduce the damage or for other good reason, he shall be obliged to point out to the third party that no acknowledgement of the alleged infringement may be inferred from the fact that the use has been discontinued.
2. Claims by the purchaser are excluded, if he is responsible for the breach of property rights.
3. Claims of the purchaser are further excluded, if the breach of property rights is caused by special requirement by the purchaser, by an application unforeseeable by us or by the fact that the delivery is changed by the purchaser or is used in connection with products not delivered by us.
4. Regulated claims of the purchaser in no. 1 a) apply in case of violation of property rights, otherwise the regulations of art. VII 2 d), 2 e) and 2 i) apply correspondingly.
5. In the case of other defects of title, the provisions of art. VII. shall apply accordingly.
6. Further claims of the purchaser against the supplier and his agents on account of defects of title or other claims than those regulated in this article VIII. are excluded.

## **IX. Impossibility; adaptation of contract**

1. To the extent that delivery is not possible the purchaser is entitled to demand compensation unless the supplier is not responsible for such impossibility. The claim for damages of the purchaser shall be limited to the typically foreseeable damage caused by the non-delivery of the missing part of the delivery. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of

life, body or health; this does not imply a change in the burden of proof to the detriment of the purchaser. Purchaser's right to rescind the contract remains unaffected.

2. Insofar as any unforeseeable, not only short-term occurrences within the purport of article V, no. 5 considerably alter the economic importance of the item of delivery or exercise a major influence on the supplier's operations, the contract shall be suitably revised in compliance with the principle of good faith. If this is not justifiable economically, both parties have the right to withdraw from the contract. If one of the parties intends to exercise its right to rescind the contract, it shall notify the other party thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed.

## **X. Other claims for damages**

1. Compensation claims and claims of compensation of expenses (in the following: compensation claims) of the purchaser are excluded, irrespective of their legal grounds, especially due to violation of duties from contractual obligations and from tort, with the exception of claims based on default for which the supplier shall be liable according to art. V.
2. This does not apply where liability is legally mandated, such as under the Product Liability Act, in cases of malicious intent, gross negligence, in cases of injury to life, limb or health or failure to fulfil essential contractual duties. However, a claim for compensation with regard to a breach of major contractual obligations shall be restricted to contractually typical, foreseeable prejudice insofar as wilful intent or gross negligence does not exist or liability exists due to injury to life, body or health. Shifting the burden of proof to the disadvantage of the purchaser is not connected with the regulations above.
3. To the extent that the purchaser has a valid claim for damages according to this art. X, it shall be time-barred upon expiration of the limitation period applicable to defects

pursuant to art. VII. no. 2b). In the case of claims for compensation in accordance with the Product Liability Act the legal provisions related to limitation periods shall apply.

## **XI. Place of jurisdiction and applicable law**

1. The exclusive – including international – place of jurisdiction or all proprietary conflicts resulting from this contractual relationship indirectly or directly shall be the court competent for the headquarters of the supplier in Eslohe. However, the supplier is entitled to take legal actions at the general venue of the purchaser.
2. German material law applies to the legal relationship in connection with this contract under exclusion of UN law governing contracts related to the international purchase of goods dated April 11, 1980 (CISG).

## **XII. Binding nature of the contract**

In the event that individual provisions of the agreement are legally invalid, the remaining provisions shall remain in force.

Eslohe-Kückelheim, January 1, 2016