

## GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

### **Ambit**

The following Terms and Conditions of Sale and Delivery of KVS GmbH, Niedersachsenstraße 16, 48465 Schüttorf (supplier) are only applicable towards companies, legal entities of public law or of a separate estate under public law (customer).

### **I. Area of Application**

1. Orders become binding only by order confirmation of the supplier. Modifications and amendments require the written form. All offers are non-binding unless they have been explicitly named as firm offer.
2. In case of repeated business dealings, these terms and conditions also apply to future transactions in which they are not expressly referred to, provided that they have been received by the customer in connection with an order previously confirmed by the supplier.
3. The customer's terms and conditions do not apply, except that they have been expressly acknowledged by the supplier.
4. If single terms are or become invalid, the remaining terms will not be affected by this. Instead of an invalid term, the legally permissible regulation shall apply which is closest to regulation which was intended with the terms and conditions.

### **II. Prices**

1. In case of doubt, the prices are valid ex work excluding freight, customs duties, additional import tax, and packaging plus value-added tax at the statutory rate.
2. If the decisive cost factors change significantly after the offer has been made or after order confirmation until delivery, the supplier and the customer will agree on an adjustment of the prices.
3. For contracts with an agreed delivery time of more than six weeks, the supplier reserves the right to increase prices as a consequence of a cost increase regarding the decisive cost factors. The customer has a right of withdrawal for raises of more 5% of the agreed price.
4. The weights assessed by the supplier are the basis of invoicing.
5. The supplier is not bound to previous prices in case of new orders (= follow-up orders).
6. For calculated freight cost as well as for value added tax, prices and rules will be charged as they are valid on the respective day.
7. For deliveries abroad, the prices are valid free German border or (FAS) German seaports according to the Incoterms 1990 exclusively seaworthy packaging. Customs duties as well as taxes and duties levied by the recipient country will be at the expense of the customer.

### **III. Obligation of Delivery and Acceptance**

1. Delivery dates are only binding insofar as they have been explicitly confirmed by the supplier. Delivery dates, insofar as these have been agreed, start after receiving of all documents required for the fulfilment of the order, the deposit and the timely and complete self-delivery or provisions of material by the customer. With the notification of readiness for dispatch, the delivery date shall be regarded as met when the delivery is delayed or impossible without the customer's fault.
2. If an agreed delivery is not met due to the supplier's fault and if the supplier did not act grossly negligent or deliberately, the procedure is as follows: The customer is obliged to grant an appropriate grace period (additional period of time). If the supplier does not meet this grace period, the customer is entitled to demand default compensation or to withdraw from the contract under exclusion of further claims. The compensation for delay is limited to a maximum of 5% of that part of the delivery, which was not fulfilled according to the con-

tract. Withdrawal is excluded when the customer is in default of acceptance. The customer has the right to prove a higher damage.

3. Reasonable partial deliveries as well as acceptable deviations of order quantities of up to plus/minus 10% shall be permissible. Partial deliveries shall be paid separately within the periods mentioned VIII. 2. If the customer defaults on payment of a partial delivery, the supplier shall be entitled to suspend the further fulfilment of the delivery until payment.
4. For call orders (make-and-hold-orders) without any agreement on term and acceptance date, the supplier can demand a binding specification no later than three months after the order confirmation. If the customer does not comply with this demand within three weeks, the supplier will be authorised to grant another two weeks extension and following the expiry of the extension, to withdraw from the agreement and/or claim damages.
5. If the customer does not meet the obligation of acceptance, notwithstanding any further rights, the supplier shall not be bound by any self-help sale regulation and may sell the delivery item upon prior notification of the customer free-hand.
6. In cases of force majeure, the supplier is entitled to postpone the delivery for the period of the delay or to withdraw fully or partly from the not yet fulfilled part of the contract. Force majeure shall be equated to strike, lock-outs or unforeseeable, unavoidable events, e.g. breakdowns, which make a punctual delivery impossible for the supplier despite of reasonable endeavours; the supplier has to provide proof thereof. This shall also apply if the aforementioned obstacles occur during a delay or with a sub-supplier. The customer may require the supplier to state within two weeks whether the supplier wishes to withdraw or to deliver within an appropriate extension of time. If the supplier does not respond, the customer may withdraw from the unfulfilled part of the contract. The supplier will inform the customer immediately when a case of force majeure, as set out in paragraph 1, occurs. The supplier must keep any impairments of the customer to a minimum.

#### **IV. Packaging, Shipping, Transfer of Risk, and Default of Acceptance**

1. Unless otherwise agreed, the supplier shall choose the packaging, shipping method, and dispatch route.
2. Even in the case of freight-free deliveries, the risk passes to the customer when leaving the works. The risk already passes to the customer with the notification of the readiness for dispatch in case the customer has caused the delay of dispatch.
3. Upon written request of the customer, the goods will be insured against the risks specified by the customer and at the customer's expense.
4. The supplier is not obliged to take out transport insurance, even not for foreign transactions. If goods are damaged or lost during their transportation, the customer shall immediately inform the supplier in order to safeguard the customer's claims and immediately arrange a statement of facts with the carrier.

#### **V. Reservation of Ownership**

1. The deliveries remain property of the supplier until the satisfaction of all claims the supplier has against the purchaser, even when the purchase price has been paid for specially designated claims. In the case of current invoices, the reserved ownership of the deliveries (reserved goods) shall be deemed as a security for the supplier's balance of account. If in connection with payment of the purchase a reciprocal liability of the supplier is constituted, the reservation of ownership shall not be dissolved prior to cashing of the bill of exchange by the customer as drawee.
2. Treatment or processing by the customer takes place under exclusion of acquisition of ownership according to § 950 BGB (German Civil Code) upon order of the supplier; the supplier will become co-owner of the resulted item corresponding to the ratio of the net invoice value of his goods to the net invoice value of the treated or processed goods, which will serve as reserved goods to safeguard the claims of the supplier according to paragraph 1.

3. In the event of processing (combining/mixing) with other goods not belonging to the supplier by the supplier, the regulations of §§ 947, 948 BGB (German Civil Code) apply with the result that the supplier's co-ownership share of the new item shall be considered reserved goods in line with this condition.
4. The customer is only allowed to resale the reserved goods in the normal course of business and provided that the customer agrees reservation of ownership with his customers according to paragraphs 1 to 3. The customer is not entitled to any other dispositions of reserved goods, especially pledging and assignment as security.
5. In the event of resale, the customer hereby assigns to the supplier from now until the fulfilment of all rights of the supplier which arise from the resale as well as any claims towards his customers including all ancillary rights. Upon the supplier's request, the customer is obliged to immediately give all information and documents to the supplier, which are necessary to establish the supplier's rights against the customer's customers.
6. If the reserved goods get resold by the customer after processing according to paragraphs 2 and/or 3 in combination with other goods not belonging to the supplier, the assignment of the purchase price according to paragraph 5 shall apply only to the amount of the invoice value of the supplier's reserved goods.
7. If the value of the for the supplier existing securities exceeds his total receivables by more than 20%, the supplier shall be obligated insofar to release securities at the supplier's choice upon the customer's demand.
8. Distraints or confiscations of the reserved goods by third parties have to be reported to the supplier without delay. Resulting intervention costs are always at the customer's expense, as far as they are not borne by third parties.
9. If the supplier makes use of his reservation of ownership by taking back of the reserved goods according to the aforementioned conditions, the supplier is entitled to sell the goods without holding on (freehand) or to put it up for auction. The assertion of the reservation of ownership and the request for restitution in particular, state reasons for withdrawal from the contract. The taking back of the reserved goods will be made to the obtained proceeds, however at most at the agreed supplier prices. Further claims for damages, especially lost profits, are reserved.

## **VI. Liability for Material Defects**

1. Marginal or customary condition deviations like smaller dimensional tolerances and production-based deviations in colour and in surface quality are no quality defects. Regarding possible effects of moisture at transport and storage e.g. by condensation, the customer is obliged to check the delivery upon receipt for signs of damp, and if appropriate, to unpack the delivery immediately and to take care for a proper drying.
2. Any reference of technical standards serves as service description and is not to be seen as guarantee of quality.
3. If the supplier has advised the customer beyond his contractual obligation, the supplier is liable for the functionality and suitability supplied goods only after previous explicit assurance.
4. Complaints have to be made in writing immediately, at least within 8 days after receipt of the goods at the destination. In the event of hidden defects, the complaint has to be raised immediately after observation. Insofar anything else has not been agreed, in both cases all complaints become statute-barred twelve months after transfer of risk. In case the law mandatorily dictates longer periods according to § 438 Abs. 1 Nr. 2 BGB, § 479 Abs. 1 BGB and § 634a Abs. 1 Nr. 2 BGB (German Civil Code), these are in force.
5. In the event of justified complaint, the supplier shall be obligated to the subsequent performance. If the supplier does not meet this obligation within a reasonable period of time, or if a subsequent improvement fails despite of repeated attempt, the customer is entitled to reduce the purchase price or to withdraw from the contract. Further claims, especially claims for reimbursement of expenses and compensation due to defect

damages or consequential damages, apply only in regard to the terms of VII. Replaced parts shall be returned on carriage forward basis upon the supplier's demand.

6. Any unauthorised post-processing and improper treatment result in the loss of all warranty claims. Merely for defence against unreasonably great damages or in case of delayed remedy of defects by the supplier, the customer is entitled to repair the goods and to demand reimbursement of reasonable costs after previously informing the supplier.
7. Wear and tear due to contractual use do not entail any warranty claims.
8. Any claims to recourse according to §§ 478, 479 BGB (German Civil Code) only exist insofar the claim of the customer was justified and only within the legal scope, but not for arrangements of goodwill which have to be agreed with supplier, and require compliance with own duties of the party entitled to take re-course, in particular compliance with the requirement to give notice of defect.

#### **VII. General Limitation of Liability**

In all cases in which the supplier is obliged to pay damages based on contractual or legal claims deviating from the terms and conditions mentioned above, the supplier is only liable when the supplier, his executive employees or sub-contractors are guilty of culpable intent, gross negligence or injury to life, limb and health. Any fault-based liability according to the German Product Liability Act as well as any liability for the fulfilment of the quality guarantee shall remain unaffected. Also, the liability for the culpable breach of essential contractual obligations shall remain unaffected; however, the liability is limited to a foreseeable damage typical for the contract, yet except in cases according to sentence 1. Any change in the burden of proof to the customer's disadvantage is not associated with the aforementioned provisions.

#### **VIII. Terms of Payment**

1. All payments shall be made exclusively to the supplier in EUR (Euro).
2. Unless otherwise agreed, the purchase price for deliveries or other services is payable with a 2 percent cash discount within 14 days or in full within 30 days after invoice date. An allowance of cash discount presupposes that all previously due, undisputed invoices have been settled. A cash discount will not be granted for potential payments by bill of exchange.
3. If the agreed payment date has been exceeded, interest to the amount of the legal interest rate of 8% above the respective base rate of the ECB will be charged unless the supplier proves that a greater damage has occurred. The customer shall have the right to prove a lower damage.
4. The supplier reserves the right to decline cheques and bills of exchange. Cheques and bills of exchange eligible for rediscount are only accepted on account of performance, all related costs are at the customer's expense.
5. The customer may only count up or claim a right of retention when the customer's active debts are undisputed or legally valid.
6. The lasting non-compliance of payment terms or any circumstances justifying serious doubts concerning the customer's creditworthiness, lead to the immediate due date of all debts of the supplier. In addition, the supplier shall be entitled in this case to demand payment in advance for outstanding deliveries as well as to withdraw from the contract upon unsuccessful expiration of a reasonable period of time.

#### **IX. Provisions of Material**

1. If the customer supplies materials, the materials will be delivered at the customer's expense and risk with an appropriate quality surcharge of 10% both in time and in perfect condition.
2. If these requirements are not met, the delivery time will be extended reasonably. Apart from force majeure events, the purchaser bears the emerging additional costs even for process interruptions.

**X. Place of Performance and Place of Jurisdiction**

1. Place of performance is the place of the supplier's works.
2. At the discretion of the supplier, the place of jurisdiction is either the supplier's head office or the customer's registered office, including legal proceedings related to document, bill of exchange and cheques.
3. German law shall apply. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11th April 1980 (Chapter X Treaty 10 UNTS resp. BGBl. 1989 II S. 586, 588), for the Federal Republic of Germany (BGBl. 1990 II p. 1477) is excluded.

KVS GmbH, Schüttorf (Effective Date: January 2019)