

# General Terms and Conditions of Sale, Delivery and Payment of KUNSTSTOFF VERTRIEB DR. SCHIFFERS GmbH u. Co. KG (Effective as of 01/06/2017)

## 1. Scope of application

All deliveries and services provided by us shall be subject to the following General Terms and Conditions of Sale, Delivery and Payment (hereinafter: T&C).

Terms and conditions deviating from these T&C or the statutory provisions, in particular the buyer's own terms and conditions of purchase, shall be binding for us only if we have expressly confirmed these. The unconditional delivery of goods, the provision of services or the acceptance of payments does not constitute acceptance by us of any deviating terms and conditions.

The T&C only apply to entrepreneurs within the meaning of § 14 (1) BGB (German Civil Code), legal entities under public law and special funds under public law. The contractor is a natural or legal entity or an incorporated partnership which carries out its commercial or independent professional activity on entering into a legal transaction.

## 2. Quotations, orders, contracts

Our quotations are non-binding in terms of price, quantity, delivery period and delivery options. Orders from the buyer shall only become binding for us once we have confirmed these in writing or executed them.

Documents pertaining to the quotation such as product specifications, illustrations, technical data, references to standards as well as information in advertising do not constitute guarantees of any specific properties unless they are expressly identified as such in writing.

Deviations of the delivery item from quotations, samples, tests and preliminary deliveries are permissible according to the respective applicable DIN ISO standards or other relevant technical standards.

## 3. Written form

Amendments and additions to or the mutual cancellation of a contract or these T&C, including the amendment of this clause itself, must be made in writing. Declarations (including terminations) or announcements of the buyer after conclusion of the contract shall require the written form.

## 4. Prices

Unless otherwise agreed, our prices are understood to be ex works plus the statutory value-added tax applicable on the date of the invoice, for exports untaxed.

Irrespective of this, increases in freight rates and statutory duties which influence the price of the goods shall be at the expense of the buyer.

## 5. Payments

Our invoices are payable immediately without deductions. Cheques shall be accepted only as conditional payment and by agreement with us. Credit notes for bills of exchange or cheques shall be valid in each case subject to receipt of the equivalent value of these papers at the value on the day on which we are able to access the equivalent value.

For exports, the costs associated with the payment shall be borne by the buyer, insofar as they are incurred outside the Federal Republic of Germany. If the payment date is exceeded, we shall be entitled, subject to other additional

claims, to demand interest of nine percentage points above the base rate of the Deutsche Bundesbank published in the Federal Gazette and, in addition, compensation for possible price losses.

The buyer can offset counter-claims against us only if these are undisputed or legally binding. This does not apply to claims which are closely related to the main performance obligation.

The buyer may only assert a right of retention from the same contractual relationship. In addition, all rights of retention are excluded, unless these rights are closely related to the main performance obligation.

In the event of reasonable doubt as to the buyer's solvency, especially in the event of arrears, we shall be entitled to demand advance payment or securities before further deliveries. If the buyer fails to comply with this request within a reasonable period, we shall be entitled to withdraw from the contract.

If we subsequently become aware of concrete circumstances revealing a material deterioration in the buyer's asset situation that jeopardises our claim to payment, we shall be entitled to revoke a granted deferral and declare the outstanding purchase price due for payment.

If the buyer is in default of payment, we shall be entitled, after setting a reasonable period of grace, to withdraw from the contract and to return the delivered goods. In addition, we shall be entitled to prohibit the resale and further processing of the delivered goods. We shall be able to demand advance payments or securities for outstanding deliveries.

## 6. Place of performance, shipping, transport insurance

Place of performance for delivery or performance is the location of our company.

Where a dispatch of the goods has been agreed, we shall ship the goods at the risk of the buyer. In this case we shall determine the type of shipment, the shipping route and the freight carrier.

We shall be entitled to conclude adequate transport insurance, at least in the amount of the invoice value of the goods, on behalf of and at the expense of the buyer.

Insofar as trade clauses according to the International Commercial Terms (INCOTERMS) have been agreed, INCOTERMS 2010 shall apply in respect of the application and interpretation of these.

## 7. Partial deliveries and services, delivery deadlines, delay

Partial deliveries and services shall be permitted to a reasonable extent.

In the case of goods manufactured to the buyer's specification, excess and short deliveries of up to 10% of the agreed quantity are permissible.

For call orders we shall be entitled to manufacture the entire quantity ordered or to have it manufactured in one batch. Any change requests can no longer be considered after the

order has been placed, unless this has been expressly agreed.

In the absence of any firm agreements, call-off dates and quantities can only be complied with in accordance with the scope of our delivery and manufacturing capabilities.

If an agreed delivery or service date is exceeded or another contractual obligation is not fulfilled by us in due time, the buyer must set us a reasonable grace period. This grace period shall be at least two weeks.

If the delivery or performance is not executed by the expiry of the grace period and if the buyer wishes to exercise its right to withdraw from the contract or to demand compensation instead of performance, it is obligated to notify us thereof expressly in advance setting a further reasonable grace period in which to deliver the goods or perform the service.

The buyer is obliged at our request to state whether or not it intends to withdraw from the contract due to a delay in the delivery/service or demand damage compensation instead of the delivery/service or insist on the delivery/service within an appropriate period.

#### **8. Retention of title**

The delivered goods shall remain our property (reserved goods) up to the complete payment of all, including future, claims against the buyer.

The retention of title extends also to items resulting from processing. The new item created through processing serves to secure our claims in the amount of the value of the processed reserved goods.

If the reserved goods are combined or mixed with other goods, we shall acquire joint ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods which have been used.

If the reserved goods are combined or mixed with a main item of the buyer or a third party, the buyer herewith transfers to us its rights to the new item. If the buyer combines or mixes the reserved goods with a main item belonging to a third party, it herewith assigns to us its remuneration claims against third parties. We hereby accept the assignment.

The buyer shall be entitled to sell the goods owned by us in ordinary business transactions. Extraordinary dispositions, in particular pledging and collateral assignments to third parties, are prohibited.

If the buyer sells the reserved goods, regardless of the condition thereof, it herewith assigns to us its claims from the resale of these with all additional rights to secure our claims. We hereby accept the assignment.

In the event that the reserved goods are sold by the buyer together with other goods not belonging to us, whether or not the goods have been processed or mixed, the assignment of the purchase price claim shall apply only to the value of the reserved goods.

The buyer is authorised to collect the receivables from the resale despite the assignment, as long as and to the extent that it fulfils its obligations to us in accordance with the contract. At our request, the buyer must notify us of the debtors of the assigned claims and notify the debtors of the assignment.

The buyer must immediately notify us of a seizure, damage or loss of the reserved goods as well as a seizure or any other impairment of our rights. Should the value of securities taken out for our benefit exceed our claim by more than 10 %, we shall in respect of this be obliged to transfer the ownership and/or release securities at the buyer's request.

#### **9. Force majeure**

War, operating disturbances of all kinds, traffic disturbances, orders of high hand and other cases of force majeure as well as strikes and lockouts, lack of raw materials, energies and labour which reduce, hinder or make production or dispatch unreasonable shall free us from the obligation to deliver for the duration of the disruption and to the extent of its effect. If the delivery is delayed by more than four weeks due to the fault, we shall be entitled to withdraw from the contract.

#### **10. Product information**

Unless agreed otherwise, the contractual nature of the goods shall be determined in each case solely by the applicable product specifications. Quality, durability and other information are only guarantees if they are expressly agreed upon in writing and identified as such.

The product information does not release the buyer from its duty to check our products in terms of its suitability for the buyer's own application. This also applies with respect to the protection of third-party property rights.

#### **11. Warranty**

If defects are reported by the buyer which are subject to warranty, we shall be entitled, at our own discretion, to rectify the defect or make a replacement delivery.

Should we decide on subsequent performance by removing the defect, the buyer shall only have further warranty rights if remedying the defects has failed twice.

In the case of obvious defects, complaints must be made in writing without delay, no later than within eight days after receipt of the goods, with a detailed description of the defect. Notification of defects due to concealed defects and such defects which become apparent only after initial operation must be claimed immediately after their discovery, with a detailed description of the defect. In all other respects, the provisions of § 377 HGB (German Commercial Code) shall apply.

If the buyer accepts our delivery or performance with knowledge of a defect, the rights which can be derived from the defect shall only apply if the buyer expressly reserves its rights in respect of this defect upon delivery in writing.

#### **12. Liability**

All claims of the buyer for compensation against us, regardless of the legal reason, are excluded independent of the legal ground unless we or our legal representatives have acted with intent or gross negligence or at least infringed essential contractual obligations through slight negligence. Essential contractual obligations are those obligations which protect the essential legal positions of the buyer under the contract, which guarantee the contract in respect of its content and purpose; other essential obligations under the contract are those, the implementation of which enable the correct performance of the contract and upon compliance with which the buyer can and should be able to rely.

In the case of gross negligence or negligent infringement of an essential contractual obligation, the compensation shall be limited to typical and foreseeable damages.

Liability for injury to life, body and health, for the absence of a quality for which we have assumed a guarantee as well as liability under the Produkthaftungsgesetz (German Product liability Act) remains unaffected.

### **13. Statute of limitations**

The limitation period for warranty claims is one year from the transfer of risk, unless a longer period is prescribed by law.

The limitation period in the event of a supplier recourse according to §§ 478, 479 BGB shall remain unaffected.

A period of limitation of one year shall apply to all claims for compensation or replacement for futile expenses which are asserted against us with contractual and non-contractual liability – except in cases of intent, gross negligence or injury to life, body, health. The period shall begin on the date determined in § 199 of the German Civil Code (BGB). It shall expire no later than upon expiration of the maximum limitation periods provided for under § 199 (3) and (4) BGB. Other limitation provisions of these T&C remain unaffected by this.

### **14. Severability clause**

In the event that individual provisions of these Terms and Conditions are or become completely or partially invalid,

incomplete or require amendment, then this shall not affect the validity of the remaining provisions. In such cases, the parties shall agree upon a provision that most closely reflects the original intention of the invalid provision. The same procedure shall apply for loopholes.

### **15. Place of performance, jurisdiction and applicable law**

The place of performance for delivery, service and payment shall be the registered office of our company.

The exclusive place of jurisdiction for all legal disputes in connection with the business relationship shall be the place of business of our company if the buyer is a registered trader, a legal person under public law, a special fund under public law or if it has no place of jurisdiction in Germany. We shall be entitled to file a suit also in the general place of jurisdiction of the buyer.

German law shall exclusively apply for the business relationship between us and the buyer, even if the buyer's address or company address is abroad. The validity of the standardised United Nations Convention on Contracts for the International Sale of Goods is excluded.

### **16. Language**

The English text version of these Terms and Conditions is for information purposes only. The German version alone remains legally binding.