

## **General Terms of Sale of the KettenWulf GmbH, Ferlach**

### **I. General provisions**

1. 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. The supplier's general terms of sale apply in their latest version also to all subsequent business even if, when the business is entered into, the general terms are not further expressly referred to or agreed.
2. 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 agreement of the supplier. If the contract is not awarded to the supplier, they must be returned immediately if requested. 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 2000, BGBl. No. 165/1999 .

### **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,
2. Orders placed by the purchaser shall not be regarded as accepted before the supplier has confirmed them in writing. If the supplier does not confirm an agreement in writing which has been concluded verbally or in a telephone conversation, then the supplier's invoice will be regarded as confirmation.

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

1. The prices are quoted ex works excluding packaging and statutory sales tax.
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. Payment shall be effected free of charge to the accounts office of the supplier.

4. The purchaser may set off only those claims that are undisputed or have been determined in a legally binding manner.

#### **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 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. 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. In case of the processing of the goods by the purchaser we shall be regarded as manufacturer and acquire direct ownership of the new product.

6. If the sold goods are processed or irreversibly associated (by mixing, amalgamation or blending) with other materials not belonging to us, then we acquire co-ownership on the new item in relation to the value of the goods' invoice value to the invoiced value of the other materials even if the goods delivered by us are considered secondary. In doing so, the purchaser preserves the accrued sole or co-ownership for us Apart from that, for the goods being processed the same shall apply as for the purchase item, which was delivered with retention of title.

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.

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 20 %; 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. Partial deliveries shall be permissible, provided they are acceptable for the purchaser.

3. Supplier's delivery obligation is subject to the correct, punctual supply of material necessary for delivery.

4. 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.

5. 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.

6. If the supplier defaults in delivery, the purchaser - to the extent he is able to substantiate that he has suffered a loss or damage due to such default - is entitled to claim compensation for each full week of default in the amount of 0.5 % but no more than 5% in total of the price for such portion of the deliveries that could not be taken into useful operation due to said default.

7. Claims for damages on part of the purchaser exceeding the limits specified in no. 6. 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.

8. 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.

9. 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 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 request and cost of the purchaser the supplier may take out insurance against common 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 quality of the goods is according to custom unless otherwise agreed in individual cases or confirmed by the supplier.
2. 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. The complaint must be made before the end of the 3rd working day following the delivery of the goods or their acceptance at the agreed location. In the event of a complaint about a hidden defect which, despite a proper first inspection has remained undiscovered a different deadline regime shall apply. In such case the objection must be raised before the expiry of the 3rd working day on which the defect has been discovered but in any event by no later than two weeks after delivery or acceptance of the goods. The complaint shall be delivered to us within the aforementioned deadlines in writing/per fax in our Ferlach branch office. A notification of defects by telephone is insufficient. The functional dimensions of the delivered item must be checked by the purchaser prior to installation and any defects notified without undue delay. 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. The application of article 924 ABGB is excluded. The existence of a defect at the time of transfer must be proven by the purchaser (buyer).
  - 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. The purchaser can hold back payments only, if a complaint is made, about whose justification can be no doubt. If the notification of defect was unjustified, the supplier shall be entitled to demand the reimbursement of expenses incurred from the purchaser.
  - e) The purchaser is not entitled to claim rescission or price reduction. The supplier is free to fulfil his warranty obligations by optional improvement, free of charge repair or replacement or credit note in the corresponding amount of the invoice. The purchaser must provide the

supplier with sufficient time and opportunity for the improvement/replacement. In case of a refusal or improper reduction of time/opportunity the supplier is released from his warranty obligations. Any assembly/disassembly costs must be borne by the purchaser.

f) Warranted characteristics in the sense of art. 922 sect. 1 ABGB are only those which were explicitly specified and confirmed by the supplier. Supplier's product descriptions, brochures and specifications are not to be classified as warranted characteristics.

g) 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.

h) 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.

i) The purchaser's right of recourse against the supplier according to art. 933 b ABGB (or a comparable foreign legal provision) are excluded after the expiration of the warranty period in accordance with VII.2.b).

j) 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; objection to 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. However, the

claim for compensation of the customer shall be confined to 10% of the value of the part of the delivery or services which cannot be put into appropriate operation, due to the impossibility of performance. 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 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, the supplier has the right to withdraw from the contract. If he intends to exercise his right to rescind the contract, he shall notify the purchaser 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.

3. Both supplier and purchaser mutually waive the right to contest legal transactions by resorting to the plea of error in accordance with art. 871 ABGB and by rescission for laesio enormis (lesion beyond moiety) in accordance with art. 934 ABGB.

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

1. Compensation claims and claims of compensation of expenses (in the following: compensation claims) of the purchaser irrespective of their legal grounds, especially due to violation of duties from contractual obligations and from tort, are excluded in cases of slight negligence. The presence of gross negligence must be proven by the purchaser.

2. Other claims for compensation of the purchaser, whatever the type, – with exception of a gross fault of the supplier – are excluded, except claims due to default, for which the supplier is responsible in accordance with art. V. The purchaser's right of recourse in accordance with art. 12 PHG is explicitly excluded.

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) from the time the damage and the damaging party are known.

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

1. If the purchaser is an entrepreneur the sole place of jurisdiction for all direct or indirect disputes resulting from the contract relations shall be the headquarters of the supplier.

However, the supplier is also entitled to take legal action at the headquarters of the purchaser.

2. Austrian law shall apply to all legal relations resulting from this contract with exclusion of the conflict of laws and rules (EVÜ, IPRG) and the United Nations Convention on Contracts for the International Sale of Goods(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. This shall not apply, if continued adherence to the contract would constitute an unreasonable hardship for one of the parties to the contract

Ferlach, January 1, 2016