

# General Terms and Conditions

## Section 1 Basis and scope of application

- I. The General Terms and Conditions (hereinafter referred to as GTC) are the basis for all of the goods and services provided by Dr. Klaus Karg KG (hereinafter referred to as the “User”) to its customers within and outside Germany. They also apply to future goods and services provided to customers.
- II. These GTC apply only vis-à-vis entrepreneurs (pursuant to section 14 of the German Civil Code (BGB)) within the meaning of section 310 I of the German Civil Code.

## Section 2 Choice of law and legal venue

- I. All the User’s business relations with its customers are exclusively subject to the laws of the Federal Republic of Germany. Recourse to UN sales law (CISG) is expressly excluded.
- II. The legal venue for any disputes arising from the contractual relationship is the User’s corporate domicile. However, the User also has the right to pursue additional proceedings before the courts with jurisdiction at the customer’s corporate domicile.

## Section 3 Defensive clause

- I. The User does not recognize any of the customer’s terms and conditions that are contradictory to or that differ from these GTC unless the User expressly confirms their validity in writing. The User herewith expressly rejects any notes on forms referring to the customer’s own terms and conditions.
- II. The User’s GTC and rejection of different or contradictory terms and conditions also apply if the User unconditionally provides the customer with goods or services in full knowledge of the contradictory or different terms and conditions of the customer.

## Section 4 Contractual relationship

- I. The contractual relationship comes into force upon the User’s receipt of the customer’s order and written confirmation or is deemed to exist through the direct de facto fulfilment of the order.
- II. The User’s prior written consent is required prior to the customer transferring any rights and obligations arising from the concluded contract.

## **Section 5 Prices, terms and default**

- I. Customer's orders will only be accepted at the respective current prices, shipping costs, terms of payment and other terms agreed separately from these GTC.
- II. All of the User's prices are net prices plus the statutory VAT.
- III. In the event that the customer defaults on its payments, the User has the right to demand prepayment for further deliveries or to refuse delivery altogether if, upon the User's request, the customer does not make immediate payments or provide security.

## **Section 6 Delivery and shipping**

- I. The goods will be delivered as quickly as possible. Depending on the quantity ordered, production, availability and shipping may take several weeks. The customer has the right to withdraw from the contract if delivery of the goods cannot take place within 4 weeks of ordering, unless a later delivery date was agreed separately.
- II. If the customer specifies a desired delivery date in its order, the User will attempt to meet that desired delivery date, however, that date is not guaranteed.
- III. Depending on the quantity ordered, the ordered goods will either be shipped by parcel post or through a shipping company. It is the User's responsibility to decide on the method of shipment.
- IV. The User will make every effort to avoid partial shipments. However, the User has the right to make partial shipments if they are advantageous for logistical or production reasons or in order to optimize the costs.
- V. Upon delivery, the customer shall immediately inspect the goods for visible transport damage. The deliverer of the goods must be immediately notified of any visible transport damage and must provide written confirmation thereof.

## **Section 7 Grace period and default in performance**

- I. If, after the contract has been awarded, the customer requests changes or supplements to the contract, or if other circumstances occur which prevent the User from delivering on time although the User is not responsible for those circumstances, the delivery deadline specified under section 6 I shall be delayed by a reasonable period of time not exceeding 6 weeks, and the customer will have the option of finding the User in default during that period of delay. Should the User be prevented from fulfilling the contract on time, e.g. due to procurement, manufacture or delivery disruptions at its own plant or that of a supplier, the general legal principles shall apply on condition that, after the 4 week period pursuant to section 6 I, the customer must set a grace period of 3 weeks.
- II. In the case of default in performance for which the User is not responsible (e.g. acts of God, strikes, lock-outs, stoppages incurred through no fault of the User, disasters, mobilization, war or other circumstances which, according to general legal principles, occur through no fault of the User, the delivery deadline shall be extended by a reasonable period of time not

exceeding 6 weeks. The customer may withdraw from the contract if it sets a reasonable grace period for the User after expiry of the deadline specified in section 6 I. The withdrawal must be in written form if the supplier does not fulfil the contract within the grace period. Should the supplier be completely or partially unable to fulfil the contract for any of the above reasons it shall be released from its supply obligation. The User shall also be released from its performance obligation if the deadline specified in section 6 VII, sentence 1, passes and the default in performance continues. However, that does not apply in the case of short-term temporary default merely causing a delay in performance.

### **Section 8 Retention of title**

- I. All the goods delivered by the User shall remain the property of the User until they have been paid in full and until all outstanding accounts from the business relationship have been settled. This also applies for conditional claims.
- II. The customer has the right to resell the goods through normal business transactions. In that case, the customer shall assign to the User all the resulting invoiced amounts that arise from the resale of User's goods to third parties. The User accepts the assignment.
- III. In the event of seizure or confiscation, the customer shall immediately notify the User in writing and shall, by suitable means, immediately inform any third parties of the User's reservation of title.

### **Section 9 Set-off and retention**

- I. The customer may only offset its own claims if those claims are uncontested or are final and absolute pursuant to court ruling. The same applies for the exercise of retention rights. That does not apply if the right of retention is due to wilful or negligent breach of contract by the User.
- II. In addition, the customer may only assert setoff or retention to the extent that the customer's rights are based on the same contractual relationship as the User's claims vis-à-vis which the customer is asserting said rights.

### **Section 10 Customer's obligation to exercise due care and to cooperate**

- I. With respect to the storage of the User's products, the customer shall exercise due care and, in particular, observe the cautions printed on the packaging or shipping containers. The shelf life indicated on the respective products applies only if the goods are stored correctly.
- II. If, upon the User's request, the goods are not labelled prior to shipping, the customer is bound to follow the User's information and instructions related to the labelling and identification of the goods exactly.
- III. If the customer wants special labels for the User's products, the customer shall assume responsibility for the correctness of the information on those labels. This also applies if those labels are designed by the User by order of and according to the customer's

specifications.

- IV. Customers selling the User's products on markets outside the Federal Republic of Germany must, in a timely manner, provide the User with all the pertinent information necessary to ensure that the products meet the regulatory requirements of the respective markets. This applies in particular to regulatory requirements pertaining to foods, labelling and packaging. Should the pertinent requirements change, the customer alone is responsible for ensuring that the User receives all the necessary information in a timely manner to allow the User to continue to meet the regulatory requirements.

## **Section 11 Warranty**

- I. Any warranty provided by the User is based on the customer meeting its obligations pursuant to section 377 of the German Commercial Code (inspection of goods, timely notification of flaws).
- II. After notification of a flaw, the goods must be stored correctly in order to allow the User to verify the complaint. Should a confirmation of the existence of a flaw no longer be possible due to incorrect storage by the customer, the User shall not assume any warranty obligations.
- III. Should deviations in colour, shape, weight of the mixture, etc. occur due existing technical circumstances, they are not considered to be flaws, but rather merely minor flaws for which the User provides no warranty if they are only avoidable with an unreasonable economic investment and if they are within the typical industry range.
- IV. If, in the customer's view, the taste of the goods is inferior, the User reserves the right to have them evaluated by a specialist, the decision on whether or not there is a flaw to be made by an independent expert.
- V. With respect to flawed goods, the User shall, at its discretion, provide a replacement. In the event that subsequent corrective measures are not implemented, the customer has the express right, at its discretion, to demand a reduction or to withdraw from the contract.
- VI. If the User satisfies a customer's complaint of a flaw that is not established without a doubt or if the User is not bound to by law or these GTC to undertake corrective measures, that must never be seen as recognition of a legal obligation and does not justify any future claims by the customer.
- VII. The statutory period of limitations for claims relating to flaws is 1 year.

## **Section 12 Liability and statutory period of limitations**

- I. Unless otherwise set forth, the User and its employees and agents are liable for customers' damage claims based on breach of contract, breach of obligations in the contractual negotiations and tortious acts as set forth below:
  - a) The liability in the case of personal damage depends on the statutory regulations.
  - b) The liability for property damage is limited to € 250,000.00 per damage case and to a

total of € 500,000.00.

c) User assumes no liability for pecuniary losses.

The limitation of liability according to b) and the exclusion of liability according to c) do not apply if, in the case of damage to objects used for personal purposes, compulsory liability applies pursuant to the Product Liability Act or, in the case of intent or gross negligence or breach of fundamental contractual obligations, compulsory liability applies for contract-typical foreseeable damage.

- II. In the event the customer is responsible for contributory negligence pursuant to section 254 of the German Civil Code (BGB) based on the customer's failure to exercise due care pursuant to section 10, that shall be adequately taken into account in any claims asserted by the User.
  
- III. The statutory period of limitations for non-fundamental breach of contract with respect to property damage is limited to 2 years.

### **Section 13 Written form**

- I. If a provision of these GTC requires written form, that provision also applies to email messages and facsimiles.

### **Section 14 Final provisions**

Should individual clauses of these GTC or any provisions set forth in subsidiary agreements be or become completely or partially invalid, this shall not affect the validity of the remaining clauses. The respective optional statutory law shall replace the invalid clauses.