

## General Terms and Conditions of Sale and Delivery

Version as of: 03/2016

### 1. Scope of Applicability of the Terms and Conditions

1.1 All offers placed and goods and services delivered by K+S are exclusively governed by these General Terms and Conditions of Sale and Delivery (hereinafter referred to as the "Terms and Conditions"). These Terms and Conditions also apply to all other business relations with a given contractual partner (hereinafter referred to as the "Purchaser"), also in cases where their applicability has not been expressly agreed again. They shall be considered to be accepted at the latest on receipt of goods or services by the Purchaser.

1.2 No other terms and conditions, including the Purchaser's terms and conditions of purchase, shall apply. This also applies in cases where K+S does not expressly object to such terms and conditions or where K+S is familiar with such terms and conditions and does not express any reservations as to their applicability to the goods and services it supplies to the Purchaser.

1.3 Each deviation from these Terms and Conditions will be effective only if K+S expressly confirms it in writing. This applies also to the amendment or cancellation of this written form requirement.

1.4 These Terms and Conditions apply to enterprises, legal entities under public law and special funds under public law. Transactions with private consumers are governed by statutory provisions.

### 2. Documentation

K+S reserves intellectual property rights and copyrights to all technical documentation (e.g. illustrations, drawings, plans, calculations, references to DIN norms) and other product specifications – including those in electronic format – to be provided by K+S to the Purchaser. Making of copies or the use or transfer of such documentation to third parties are allowed only with prior express written consent of K+S.

### 3. Offers, Contract Signing

3.1 Unless otherwise agreed in an individual contract, K+S prepares its offers based on documents and information available to K+S as of the offer date and the offer is binding for one month.

3.2 A purchase order is considered accepted only upon its confirmation by K+S. A purchase order may be accepted either in writing (e.g. in the form of an order confirmation) or by delivering the goods to the Purchaser.

3.3 The contract solely becomes effective with the content arising from the offer of K+S, the written acceptance of the purchase order and these Terms and Conditions. Any additional arrangements, including supplementations, amendments or side arrangements, must be confirmed in writing by K+S to be valid. The same shall apply to any arrangements made by K+S representatives.

3.4 K+S reserves the right to modify – without separate consent from the Purchaser– the agreed specifications of the goods to be delivered if such modifications represent a technological improvement, or are necessitated by the technological development. Minor deviations are also permissible if it can be reasonably expected that the Purchaser will accept them.

3.5 Should the Purchaser cancel, in whole or in part, a purchase order for a custom solution to be produced especially for the Purchaser after order acceptance by K+S, K+S is entitled to charge the Purchaser for the costs of materials that can no longer be used for any other purpose and for the work in progress and finished goods. The above provision will not affect the right of K+S to assert other claims.

### 4. Manufacture of not fungible things

The right of the Purchaser to terminate the contract as provided for in § 649 of the German Civil Code [BGB] is excluded in the event that the contract has been concluded for the manufacture of not fungible goods within the meaning of § 651 BGB.

### 5. Deadlines and time limits for the delivery of goods and services

5.1 The delivery deadlines and time limits specified by K+S are approximate deadlines and time limits, which are subject in particular to the timely availability of supplies to K+S. Other provisions apply only if expressly agreed in writing.

5.2 In principle, time limits agreed for the delivery of goods and services shall commence upon the date of contract signing. However, they do not commence until K+S receives all documents required for the delivery of goods or services and all questions (if any) regarding such documents have been clarified, the Purchaser meets its duties to cooperate that may be required for effecting the delivery of goods or services by K+S, the parties agree on the manner in which a service must be performed, all permissions required for the delivery of goods or services have been obtained, and K+S receives an advance payment for the delivery if such a payment has been agreed.

5.3 Delivery deadlines or time limits are considered to be met upon timely dispatch of the goods, or upon announcing that the goods are ready for dispatch, or upon announcing the readiness to perform the contractual service.

5.4 K+S is each time entitled to the partial delivery of goods or services in the scope reasonably acceptable to the Purchaser. The delivery of quantities slightly in excess of or below the ordered quantities is permitted within customary quantity tolerance limits.

## Driven by progress.

5.5 If the parties subsequently agree any supplementations or amendments to the contract, the respective delivery deadlines or time limits start anew from the date of the subsequent agreement.

5.6 Where a delivery of goods or services to the Purchaser depends on a timely supply to K+S from its own suppliers, K+S is entitled to withdraw from the contract with the Purchaser or to appropriately extend the agreed delivery time limits if the supplier failed to make a proper or timely delivery to K+S and K+S could not enter – or could not enter in an economically reasonable manner – into a corresponding cover transaction.

5.7 K+S will not be liable for any delays in the delivery of goods or services due to force majeure or other unforeseeable events not caused by the fault of K+S which significantly hinder the delivery or render it impossible, such as disruptions of operations, strikes, lockouts, administrative orders and transport obstructions. This also applies to the binding delivery time limits. The same applies to delays of K+S suppliers or their sub-suppliers or when a force majeure event occurs during an already existing delay of K+S. In such a case K+S is entitled to extend the agreed delivery time limit for the duration of the obstruction plus a reasonable setting-up time or to withdraw in whole or in part from the not yet fulfilled part of the contract.

5.8 In the case of such delay in the delivery of goods and services, the Purchaser is entitled to withdraw from the not yet fulfilled part of the contract upon the expiry of an appropriate additional time limit, if the delay in the delivery of goods or services for any of the reasons referred to in Section 5.7 lasts longer than three (3) months.

5.9 The Purchaser is obliged to obtain export or import licence if such a licence is required for an agreed dispatch of goods abroad. K+S will not be liable for delays in delivery due to any missing licences.

### 6. Prices

6.1 In principle, the prices specified by K+S are net prices ex works or ex warehouse. As a rule, the prices are exclusive of applicable VAT and other relevant taxes. Also, the prices do not include transport, dispatch and packaging costs, or insurance costs, customs duties and other accessory charges. Unless otherwise agreed in writing, K+S will charge the prices applicable on the date of dispatch of the ordered goods or performance of the ordered service.

6.2 K+S is entitled to adjust the agreed prices to cover any increases in the costs of labour, materials and raw materials unless the parties have excluded such adjustment in a separate written agreement. Such adjustment may be made without the Purchaser's consent or permission. The adjustment of agreed prices is possible only when more than six (6) weeks have passed between the signing of the contract and the date of the dispatch of the ordered goods or performance of the ordered service and the relevant costs have increased only after signing the contract.

### 7. Payments

7.1 Invoices of K+S become due without a discount immediately upon receipt. Other provisions apply only if expressly agreed in writing. Should the Purchaser fail to pay K+S the invoiced amount within thirty (30) days of the invoice date, K+S is entitled, without further reminder, to demand payment of default interest of nine (9) percentage points p.a. above the applicable base interest rate as per § 247 BGB. This does not affect the right to claim higher damages for delay.

7.2 A payment is considered to be paid by the Purchaser only when K+S can dispose over the paid amount. K+S accepts money orders, cheques and bills of exchange only for the sake of the settlement of its receivables under the contract, while all collection and discount charges are to be borne by the Purchaser.

7.3 Any price deductions granted by K+S due to large quantities of ordered goods are conditional upon the acceptance of all goods and the timely payment for those goods by the Purchaser.

7.4 K+S reserves the right to demand the payment of the Purchaser's entire remaining liabilities if the Purchaser fails to comply with the payment conditions or if, after concluding the contract with the Purchaser, K+S learns about circumstances that, from banking-related aspects, quite significantly impair the Purchaser's creditworthiness and, in the view of K+S, seem to pose a substantial risk to the payment of its receivables. K+S reserves the same right with regard to accepting bills of exchange and cheques. Furthermore, K+S is entitled to withdraw from contracts already signed with the Purchaser if the latter does not make an advance payment or provide any other security interest at the request and discretion of K+S.

7.5 K+S reserves the right to effect supplies to the Purchaser only on a cash before delivery basis if the Purchaser repeatedly fails to meet its payment obligations in a timely manner. In such a case the Purchaser will receive a pro forma invoice from K+S after order acceptance. Such a pro forma invoice becomes due as cash in advance (cash before delivery) immediately upon placing an order.

7.6 The Purchaser has the right to set off its receivables against those of K+S or retain its receivables from K+S only if the Purchaser's receivables in respect of which the Purchaser claims the right of offset or retention are not disputed by the parties or have already been established as legally valid. The Purchaser hereby agrees to an offset of its receivables and liabilities against those of K+S.

### 8. Transfer of Risk, Dispatch of Goods, Late Acceptance of Delivery

8.1 Unless the parties otherwise agree in writing, K+S will dispatch the goods at the expense and risk of the Purchaser. The Purchaser bears the risk associated with the dispatch of the goods also whenever a carriage-free delivery has been exceptionally agreed or K+S has assumed the costs of other services, such as dispatch, delivery or installation costs. This also applies to partial deliveries.

8.2 The risk is transferred to the Purchaser at the time when the goods to be delivered are made available for dispatch at the premises of K+S. In the case of partial deliveries, the risk is transferred at the time when the respective part of the goods is made available for dispatch.

8.3 K+S can set the Purchaser a reasonable time limit for the acceptance or collection of the delivered goods or services if the latter refuses to accept or collect individual goods, or parts of goods, or services. If the Purchaser does not accept the goods or service within the time limit set to the Purchaser, K+S will be entitled to withdraw from the contract and demand damages for non-performance. In such a case, the Purchaser is obliged to pay damages for all losses or costs incurred, including transport costs. K+S may claim damages either in the amount of the effective damage or as a lump-sum of 30% of the net value of the non-accepted supply

## Driven by progress.

of goods or service. The amount of payable damages is to be determined in an amount either higher or lower than the above amount if the Purchaser proves that the amount of damage or loss was lower or K+S proves that it was higher.

### 9. Retention of title (ROT)

9.1 K+S reserves the right of retention of title to the delivered goods until all of its receivables from the business relationship with the Purchaser have been paid in full. Should the legal validity of this right of retention clause be subject to the fulfilment of special requirements, including formal or registration related requirements, under applicable mandatory law, the Purchaser undertakes to ensure that such requirements are met. If it is impossible to meet the above requirements, K+S will be offered an equivalent security interest.

9.2 The Purchaser is not allowed to pledge or transfer by way of security or otherwise encumber the goods subject to title retention with third-party rights. The Purchaser is entitled to resell the goods subject to title retention or to combine them with other movable things exclusively within the framework of its ordinary business operations.

9.3 If the goods subject to title retention are combined with other movable things, the Purchaser undertakes hereby to ensure that, should K+S lose the title to the goods on that account, K+S will become a co-owner of the resulting item with a share according to the proportion between the values of the goods combined.

9.4 If the goods subject to title retention are sold, the Purchaser hereby agrees to assign to K+S the full amount of the purchase price receivable for such goods, or if the Purchaser is a co-owner of the goods – the share in the receivable purchase price allotted to the Purchaser's share in the co-ownership. K+S hereby accepts the assignment. After the assignment, the Purchaser is entitled to collect the receivable amount. K+S reserves the right to collect the receivable amount by itself if the Purchaser does not properly fulfil its payment obligations and defaults on the payment. In such a case, at the request of K+S, the Purchaser is obliged to name the respective purchasers and to immediately hand over to K+S all documents required to enforce the assigned receivable.

9.5 The Purchaser is obliged to insure the goods subject to title retention against usual risks, including, in particular, fire, flood and theft, at its own expense. Should the Purchaser fail to comply with this obligation despite being reminded to do so, K+S is entitled to take out insurance at the Purchaser's expense, to pay the insurance premium on this account, and to collect the premium amount as part of its receivables under the contract. Having regard to any possible insured event, the Purchaser hereby assigns to K+S all of its claims against the insurer or the injuring party, whereas the assignment will have priority over other security interests. K+S hereby accepts the assignment.

9.6 Any return of the goods subject to title retention to K+S or the assignment of claims for surrender [of the goods] does not require a withdrawal from a given contract. If the Purchaser violates the contract, in particular, if the Purchaser is in default of payment, or if judicial composition or insolvency proceedings have been instituted against the Purchaser's assets, the Purchaser is obliged to surrender the goods subject to title retention or to assign its claims for surrender. Any rights of the Purchaser to retain the goods are excluded. The Purchaser will bear all costs of returning the goods to K+S.

### 10. Warranty

10.1 K+S warrants that the delivered goods comply with the specifications which the parties agreed in writing on the date of contract acceptance.

10.2 The Purchaser is solely responsible for making sure that the goods are fit for the purpose intended by the Purchaser. The Purchaser is obliged to thoroughly test the goods using its application before approving the production of the goods for the market. In this respect, K+S assumes no responsibility or liability for unsuitable use of the goods. Whenever purchase orders are placed based on samples, the sample parameters will serve only as an approximate reference for the parameters of the goods, and K+S gives no warranty in this respect.

10.3 K+S does not accept any warranty for prototypes, samples, non-validated pre-production components, and components that were not approved by the Purchaser. This shall also apply to all goods, with respect to which no approval of the initial sample for serial delivery, or PPAP approval, issued by the Purchaser is available to K+S at the time of delivery. Such goods are intended for installation trials and testing purposes and are not designed for the integration into marketable products. If the Purchaser nevertheless decides to market such goods or integrate them into sales products, the Purchaser will assume the sole liability for the related risks and liability claims.

10.4 The Purchaser shall immediately inspect the goods supplied by K+S. All apparent defects and defects that can be identified during a proper inspection must be reported in writing within eight (8) days of the date of receipt of the goods. All non-apparent defects and defects that cannot be identified during a proper inspection must be reported by the Purchaser in writing within eight (8) days of the date of their discovery. It is sufficient to send the notice of defects in time in order to observe the above time limits. If the Purchaser fails to observe the above time limits, the liability for the defects under the warranty is excluded.

10.5 Notwithstanding the Purchaser's obligation to report defects in due time according to item 10.4, K+S gives warranty for the goods delivered by K+S for a period of 12 months from the delivery date. The warranty period does not apply to damage caused by malicious intent of K+S.

10.6 The following shall apply whenever the Purchaser reports a defect of the goods supplied by K+S in due time and if the complaint is justified:

- The defective goods may not be disassembled without the express consent of K+S;
- Goods which become non-functional during the warranty period and in cases where they are used according to their intended purpose can be either repaired by K+S, or replaced to the Purchaser by way of subsequent supply, or K+S can compensate for the defective goods by issuing a credit note in the amount of up to the simple sale price, at the discretion of K+S; this shall solely apply in the event that the non-functionality of the goods is attributable to a defect in manufacturing or materials that has been recognised by K+S.

10.7 If the Purchaser returns the goods subject to a complaint in connection with a replacement, the Purchaser is obliged to return them to K+S free of charge. The goods to be returned should be clearly marked for defects and should be sent along with information required for the processing of the complaint, including, in particular, delivery note number, Purchaser number, failure cause, mileage, installation date and similar details. If the complaint proves to be justified, the goods will be replaced to the Purchaser free of charge. Additionally, the Purchaser will be reimbursed for the necessary shipping costs incurred by the Purchaser and documented to K+S.

Driven by progress.

10.8 If the goods are to be repaired or replaced, the Purchaser, upon consultation with K+S, shall give K+S enough time and opportunity for carrying out the activities that K+S considers necessary for this purpose.

10.9 If, upon the expiry of an appropriate time limit set by the Purchaser, K+S fails to replace the goods or if the repair of the goods is unsuccessful twice, the Purchaser is entitled to reduce the purchase price (reduction) or withdraw from the contract and claim any damages within the limits set in items 10.6 and 11 as provided for by the law. The Purchaser is not entitled to withdraw from the contract due to only minor contract violations, in particular, due to minor defects. The Purchaser may assert claims for refund of futile expenses, including those incurred due to defects, only according to item 11 hereof. Otherwise, such claims are excluded.

10.10 Warranty claims of the Purchaser are excluded if the defect is attributable, in whole or at least in part, to: improper or negligent use, incorrect installation/assembly or commissioning, unsuitable or defective equipment or substitute materials, normal wear and tear, or chemical, electrochemical or electrical impact. This does apply if the damage was caused by intentional or grossly negligent conduct of K+S or one of its vicarious agents.

Furthermore, warranty claims of the Purchaser are excluded in respect of goods inside of which a thick, burning-induced, strongly adhering layer of rust/oil carbon or RME (rapeseed methyl ester) was formed, thus rendering the goods non-functional, and goods whose failure was caused by a deposit of condensate or dirt in warehouse facilities, or by overheating, vibration damage, normal wear and tear and the like.

10.11 The above provisions do not apply whenever a deviating regulation is prescribed under mandatory law applicable in Germany, such as § 478 (4) BGB.

10.12 The above-mentioned provisions regulate the warranty obligations of K+S in an exhaustive way unless any further obligations were expressly assumed.

## 11. Liability

11.1 The terms and conditions below govern the liability of K+S, its vicarious and performing agents and legal representatives for all cases of damage or loss.

11.2 The liability is unlimited in the case of intentional acts and in the case of absence of a quality for which K+S has provided a guarantee.

11.3 The liability of K+S for damage caused by gross negligence is limited to the amount of the foreseeable damage that would have been avoided if K+S had not violated the relevant duty.

11.4 In all other cases, K+S is liable only for the violation of a significant contractual obligation the fulfilment of which would enable K+S to properly perform the contract. In such cases, the liability of K+S is limited to the amount of foreseeable damage.

11.5 The liability limitations specified in items 11.1 to 11.4 do not apply to liability under the Product Liability Act [ProdHaftG], liability for personal injuries and liability under other mandatory provisions of law.

11.6 K+S assumes no liability whatsoever for materials, order-related components, shipping instructions, processing rules or the like unless such liability has been expressly agreed in writing. K+S is not obligated to examine the compliance of such materials, components, instructions, rules and the like with the provisions of ProdHaftG or BGB. In such cases, the Purchaser bears unlimited liability and indemnifies and holds K+S harmless from all third-party claims.

## 12. Industrial property rights of K+S

12.1 The Purchaser hereby acknowledges that K+S is the exclusive owner of the know-how as well as other intellectual property and industrial property rights incorporated in the goods supplied by K+S. Any transfer of the goods to third parties or their use outside the scope of a given contract is permitted only with prior written consent of K+S.

12.2 The Purchaser undertakes to cease and desist from all activities that could infringe upon the industrial property rights of K+S. In particular, the Purchaser will not challenge, or support third parties in challenging, the legal validity of those rights.

## 13. Assignment of Claims

The Purchaser is not allowed to assign its claims arising from the business relationship with K+S without the express consent of K+S.

## 14. Termination with good cause

14.1 In addition to and as a supplement to the statutory or otherwise contractually agreed termination rights, K+S is entitled to terminate the contract, in whole or in part, for a compelling reason whenever:

- the Purchaser violates a significant contractual obligation and does not cure the violation within an appropriate period, which, however, may not be longer than thirty (30) days from receiving a letter informing the Purchaser that it has violated the obligation;
- the Purchaser's financial situation significantly deteriorates or threatens to significantly deteriorate, which creates a risk that the obligations to K+S under this contract will not be fulfilled. A significant deterioration of the financial situation means in particular a situation where the Purchaser does not pay other supplier invoices, its cheques cannot be redeemed or its bills of exchange are protested;
- an admissible petition for instituting insolvency proceedings is filed, the Purchaser discontinues its business operations, or the Purchaser's legal entity is dissolved for reasons other than the institution of insolvency proceedings or dismissal for insufficiency of assets;
- there is a significant change in the ownership or the shareholding structure or the management of the Purchaser, or similar serious changes on the part of the Purchaser occur which according to a reasonable assessment of K+S may jeopardise the proper performance of the contract.

14.2 In the event of termination, the Purchaser is obliged to continue to fully perform its existing contractual obligations till the termination effective date and also beyond that date in cases where the termination does not apply to such obligations.

Driven by progress.

## 15. Applicable Law, Place of Jurisdiction, Place of Performance, Severability Clause

15.1 The contractual relations between K+S and the Purchaser, including all past and future legal relationships, shall be exclusively governed by German law excluding private international law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) unless this is in conflict with mandatory law.

15.2 Bayreuth shall be the exclusive place of jurisdiction for all legal disputes arising directly or indirectly from a contractual relationship between K+S and the Purchaser, unless another place of jurisdiction is stipulated by mandatory law. However, K+S is also entitled – at its discretion – to file a legal action with the court competent for the Purchaser's registered office or branch office, or the place of performance.

15.3 Where permitted by law, the place of performance for all contractual claims shall be exclusively the registered office of K+S.

15.4 Should any of the provisions of these Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions of the contract. The parties undertake to replace the invalid provision with a legally permissible rule or procedure which corresponds, or comes as close as possible, to the intended economic purpose of the invalid provision. This also applies to provisions of other agreements between K+S and the Purchaser.

Klubert + Schmidt GmbH  
Am Langen Berg 30  
D-91278 Pottenstein