

## **General Terms and Conditions of Knipp GmbH**

### **§ 1 Scope, Form**

- (1) The following General Terms and Conditions (hereinafter referred to as "GTC") apply to all legal transactions entered into by and with Knipp GmbH, Paul-Ehrlich-Str. 10, 63128 Dietzenbach (hereinafter referred to as "us" or "we"), with our customers. The GTC apply only if the buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- (2) Our GTC apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the buyer refers to his GTC within the scope of the order and we do not expressly object to this.

The GTC apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, these GTC shall apply in the version valid at the time of the Buyer's order or, in any case, in the version last notified to the Buyer in text form. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and details in our order confirmation have priority over the GTC.

- (3) Legally relevant declarations and notifications by the buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. Written form within the meaning of these GTC includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- (4) References to the applicability of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

## **§ 2 Order confirmation**

Our written order confirmation shall be decisive for the content of the orders. If an order qualifies as an offer, we can accept this within two weeks. Subsidiary agreements and amendments require our written confirmation.

## **§ 3 Delivery / Delivery period**

- (1) The start of the delivery period stated by us presupposes the clarification of all technical questions. The delivery period shall be agreed individually or stated by us upon acceptance of the order. Compliance with our delivery obligation further presupposes the timely and proper fulfilment of the customer's obligation. We reserve the right to plead non-performance of the contract. The delivery deadline shall be deemed to have been met if the delivery item has left the company or notification of readiness for dispatch has been given by the time the deadline expires.
  
- (2) We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in obtaining the necessary official permits, pandemics or epidemics, official measures or the non-delivery, incorrect delivery or late delivery by suppliers despite a congruent hedging transaction concluded by us) for which we are not responsible. If such events make it considerably more difficult or impossible for us sellers to deliver or perform and the hindrance is not only of temporary duration, we are entitled to withdraw from the contract. In the event of hindrances of temporary duration, the delivery or service deadlines shall be extended or the delivery or service deadlines shall be postponed by the period of the hindrance plus a reasonable starting period. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate written declaration to us.
  
- (3) The occurrence of our delay in delivery shall otherwise be determined in accordance with the statutory provisions. In any case, however, a reminder by the purchaser is required. If we are in default of delivery, the purchaser may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but not more than a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer has not suffered any damage at all or that the damage is significantly less

than the aforementioned flat rate. We are entitled to make partial deliveries and render partial services, insofar as this is reasonable. Blanket orders placed for several call-off divisions generally have a maximum term of twelve months, unless otherwise agreed in writing.

#### **§ 4 Acceptance obligation / compensation**

If the customer does not take delivery of a fixed number of items ordered or does not take delivery of the full number of items ordered, if the customer fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to claim the damages incurred by us including additional expenses (e.g. storage costs). The profit lost by us shall be calculated as a flat rate of 20% of the sales price or partial sales price as damage. The buyer reserves the right to prove that we have not incurred any damage or that the damage from lost profit is significantly lower.

The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, withdrawal, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims.

#### **§ 5 Terms of payment**

The following conditions apply:

10 days after receipt of invoice 2 % cash discount.

30 days net after receipt of invoice.

We shall charge the full amount for tools made for the purpose of fulfilling orders placed by a customer. The following terms of payment shall apply to the tools:

50 % when the order is placed,

50 % on receipt of the initial samples.

Payment shall be made net without any deductions.

For each reminder after delay in payment, we shall charge a processing fee of €15 in addition to the costs otherwise incurred. If the customer is in arrears with a liability towards us, our delivery obligation shall be suspended. If there are justified doubts about the customer's ability to pay, we are entitled to make further performance dependent on securities or advance payments and to declare withdrawal from the contract after setting a deadline to no avail.

## **§ 6 Prices / Shipping**

The prices are ex warehouse, without packaging and without transport. The statutory value added tax is not included in the prices; it will be shown separately in the invoice at the statutory rate on the day of invoicing. Dispatch shall be effected on principle for the account and at the risk of the customer. If, after conclusion of the contract or dispatch of our order confirmation, there is a significant increase in the general prices for energy or any other significant increase in wages, raw materials or auxiliary materials, the agreed sales price shall be re-determined taking into account the increased prime costs and the applicable prices.

## **§ 7 Tools**

We carefully store and maintain the tools for repeat orders. The storage obligation expires if no further order is received from the customer within two years after the last delivery. The customer must then collect the tools at his own expense and risk. We shall not be liable for damage or destruction during storage. A corresponding insurance policy must be taken out by the customer.

## **§ 8 Warranty and liability**

- (1) Claims for defects on the part of the purchaser presuppose that the purchaser has properly fulfilled its obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB). Complaints about recognisable defects must be made in text form within eight days of receipt of the goods, otherwise they are excluded. Obvious defects not notified in due time or form shall exclude warranty claims.

Deviations in quality, thickness, dimensions and colour as well as excess or short deliveries are customary in the trade;

for plastic parts + / - 10 %.  
for cardboard products up to 500 pieces 30 %.  
up to 3,000 units 20 %.  
over 3,000 units 10 %.

They do not entitle the customer to additional claims or to reductions in the purchase price or other warranty claims.

- (2) If the purchased item is defective, we shall first be obliged and entitled to rectify the defect or make a replacement delivery at our discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the

rectification or replacement delivery, the customer may withdraw from the contract or reduce the purchase price appropriately.

In the event of rectification of defects or replacement delivery, we shall not be obliged to bear all expenses required for the purpose of subsequent performance if the purchased item has been transported to a place other than the place of performance. If the subsequent performance fails, the customer shall be entitled to demand rescission or reduction at his discretion.

- (3) Claims of the buyer for reimbursement of expenses according to § 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a purchase of consumer goods (§§ 478, 474 BGB). Claims of the buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall only exist in accordance with this § 8, even if the goods are defective.
- (4) We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage. We shall be liable in accordance with the statutory provisions if we culpably breach a material contractual obligation. An essential contractual obligation exists if the breach of duty relates to an obligation on the fulfilment of which the customer has relied and was entitled to rely. In this case, the liability for damages is limited to the foreseeable, typically occurring damage.
- (5) The limitations of liability resulting from para. 4 shall also apply to third parties as well as to breaches of duty by persons (also in their favour) whose fault we are responsible for according to statutory provisions. They do not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the buyer under the Product Liability Act.
- (6) Due to a breach of duty which does not consist of a defect, the buyer may only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- (7) Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the Product Liability Act.  
Unless otherwise stipulated above, liability is excluded.
- (8) The limitation period for claims for defects is twelve months, calculated from the transfer of risk. The limitation period in the event of a delivery recourse remains unaffected. The Purchaser's claims for damages pursuant to para. 4 as well as pursuant to the Product

Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

- (9) Any further liability for damages than described above is excluded, regardless of the legal nature of the asserted claim. This applies in particular to claims for damages arising from breaches of duty upon conclusion of the contract, other breaches of duty or tortious claims for compensation for property damage pursuant to § 823 BGB. This shall also apply insofar as the customer demands compensation for useless expenditure instead of a claim for compensation for damage instead of performance. If liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.

## **§ 9 Copyrights**

If we manufacture items according to drawings, models or samples which we have received from the customer / purchaser, the customer shall warrant to us that the manufacture and delivery of these items do not infringe the property rights of third parties.

## **§ 10 Retention of title**

- (1) We retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).
- (2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us.
- (3) In the event of conduct by the buyer in breach of the contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand surrender of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) Until revoked in accordance with (c) below, the Buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

- (a) The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
- (b) The buyer hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the buyer mentioned in paragraph 2 shall also apply with regard to the assigned claims.
- (c) The buyer remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer meets his payment obligations towards us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right pursuant to para. 3. If this is the case, however, we may demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the buyer's authority to further sell and process the goods subject to retention of title.

## **§ 11 Exclusion of set-off**

Offsetting against our payment claims is excluded unless the counterclaims are undisputed, acknowledged or legally established.

## **§ 12 Place of performance, choice of law and place of jurisdiction**

The place of performance for all rights and obligations arising from this contract is Dietzenbach. The exclusive place of jurisdiction for all disputes arising from the contractual relationship is our registered office. However, we are also entitled in all cases to bring an action at the general place of jurisdiction of the customer.

The law of the Federal Republic of Germany shall apply to the entire legal relationship between us and the customer.