

General Terms and Conditions of Delivery and Payment of the GKN Walterscheid Companies

*Applicable in business transactions with business enterprises,
public corporations and special funds under public law*

1 General

- 1.1 Our Terms and Conditions of Delivery shall apply exclusively. General Standard Terms and Conditions of the customer that are contradictory to, or deviate from, our Terms and Conditions of Delivery will not be accepted, unless we have expressly agreed to their application in writing. Our Terms and Conditions of Delivery shall also apply even if we make deliveries in awareness of other conditions of the customer deviating from our Terms and Conditions of Delivery.
- 1.2 Our Terms and Conditions of Delivery shall also apply to all future business with the customer.

2 Conclusion of the contract and amendment of the contract

- 2.1 Our offers are without obligation.
- 2.2 Unless otherwise agreed in writing, the documentation belonging to the offer, such as descriptions, illustrations, drawings, weights and measurements, shall only be binding if expressly indicated as being binding in writing.
- 2.3 We reserve the right to make surplus or short deliveries in the case of items manufactured to the customer's specifications.
- 2.4 Unless otherwise agreed, a charge shall be payable for quotations.
- 2.5 Verbal agreements following conclusion of the contract, especially subsequent amendments and supplements to our Terms and Conditions of Delivery, including this stipulation requiring written form, and collateral agreements of any nature shall likewise only be valid if confirmed by us in writing.

3 Article to be supplied

The article to be supplied shall generally not include manuals and drawings, unless otherwise agreed.

4 Delivery

- 4.1 The delivery period shall be governed by the agreements between the parties to the contract. Its meeting by us shall presuppose that all commercial and technical questions have been clarified between the parties and that the customer has fulfilled all his obligations, such as the provision of the necessary official certificates or permits, or the making of a down-payment. Should this not be the case, the delivery period shall be prolonged appropriately. This shall not apply insofar as we are responsible for the delay.
- 4.2 Compliance with the delivery period shall be subject to the proviso that we ourselves obtain the right supplies in good time.
- 4.3 The delivery period shall be deemed met if the article to be supplied has left our works, or its readiness for shipping has been reported, by the time of expiry of the delivery period. If official acceptance is required, the date of acceptance or, alternatively, of reporting readiness for acceptance shall be authoritative - except in the event of justified refusal to accept.
- 4.4 If shipping or acceptance of the article to be supplied is delayed for reasons for which the customer is responsible, he shall, starting one week after notification of readiness for shipping or acceptance, be charged for the costs incurred as a result of the delay.

- 4.5 If failure to comply with the delivery period is attributable to force majeure, industrial disputes, especially strikes and lockouts, or other occurrences beyond our control, the delivery period shall be extended appropriately. We will report the start and end of circumstances of this kind to the customer as soon as possible.

5 Price and payment

- 5.1 Unless otherwise agreed, all prices shall be ex-works, including loading at the works, but excluding packaging, freight, postage, insurance, unloading and other coverable risks. Statutory value-added tax will be added to the prices at the rate applicable from time to time.
- 5.2 Unless otherwise agreed, payments shall be made within 30 days of delivery, without deductions and free to our place of payment.
- 5.3 The customer shall only be entitled to a right to withhold payments, or offset them against counterclaims, insofar as his counterclaims are undisputed or have been determined by final judicial decision.

6 Passage of risk

- 6.1 The risk shall pass to the customer when the article to be supplied has left the works, even if part deliveries are made or if we have assumed other performances, such as the shipping costs or delivery and installation. If official acceptance is required, this shall be authoritative for the passage of risk. It must be carried out without delay on the acceptance date or, alternatively, following our notification of readiness for acceptance. The customer may not refuse acceptance because of a minor defect.
- 6.2 If shipping or acceptance is delayed or not performed owing to circumstances for which we are not responsible, the risk shall pass to the customer on the date of reporting readiness for shipping or acceptance. We agree to take out the insurance demanded by the customer at his expense.
- 6.3 Part deliveries shall be permissible, provided this is reasonable for the customer.

7 Retention of title

- 7.1 We retain title to the article to be supplied until the receipt of all payments arising from the entire business relationship. When we accept bills or cheques, payment shall only be deemed received at the time they are paid or cashed. This shall also apply if some or all of our receivables have been included in a running account and the balance has been struck and accepted.
- 7.2 We shall be entitled to insure the article to be supplied against theft, breakage, fire, water and other damage at the expense of the customer, unless the customer furnishes evidence of having taken out the insurance himself.
- 7.3 The customer may not transfer ownership of the article to be supplied by way of security. He must inform us without delay in the event of attachment, seizure or other third-party dispositions.
- 7.4 In the event of conduct of the customer in breach of contract, especially delay in payment, we shall be entitled to take back, and the customer shall be obliged to surrender, the article to be supplied after setting a period of grace. Our assertion of the retention of title, and attachment by us of the article to be supplied, shall not be deemed to be revocation of the contract.

- 7.5 Filing for commencement of insolvency proceedings on the part of the customer shall entitle us to revoke the contract and demand immediate return of the article to be supplied.
- 7.6 The customer may sell or process the articles to be supplied to which we hold title in the ordinary course of business dealings. However, this shall only apply as long as the customer is not in default with his payment to us. The receivables accruing to the customer from his buyers as a result of such resale shall be assigned to us even now. We accept this assignment and shall be entitled to demand information regarding the buyers and the amount of the receivables. Alongside us, the customer shall remain authorised to collect the receivables from the buyers, unless we determine otherwise. If the article to be supplied is resold together with other delivered articles not belonging to us, the claim of the customer on the buyer shall be deemed assigned to us to the amount of the price agreed between us and the customer.
- 7.7 Any treatment and processing of the article to be supplied shall be done by the customer on our behalf, without this giving rise to obligations on us. If the article to be supplied becomes an essential element of another article as a result of connection or comminglement, or if a new article is produced as a result of processing or transformation, the customer shall herewith assign his ownership or co-ownership of this article to us even now and undertake to keep the article in safe custody for us with the diligence of a prudent businessman and free of charge. In the event of resale, Para. 7.6 shall apply, *mutatis mutandis*. In the event of co-ownership arising, our share shall correspond to the portion resulting from the ratio of the value of the article to be supplied to the value of the new article.
- 7.8 We agree to release the securities to which we are entitled insofar as their value exceeds the claims to be secured by more than 25%.
- 7.9 If the legal system of a country to which the articles to be supplied are to be delivered provides for special requirements as a prerequisite for the validity of the retention of title, especially also *vis-à-vis* the customer's creditors, it shall be the duty of the customer to immediately take all necessary action to ensure that the retention of title materialises and is maintained until the time of payment of the full purchase price. The customer shall bear any costs associated with this.
- 7.10 If the legal system of a country to which the articles to be supplied are to be delivered does not permit retention of title, but allows us to reserve other rights to the article to be supplied, we shall be entitled to exercise all rights of this kind. The customer shall be obliged to cooperate in action which we wish to take in order to protect our title or other rights to the article to be supplied.

8 **Liability for defects and warranty of title**

- 8.1 Defects in the supplied article will be remedied by us following corresponding notification by the customer. This will be done at our discretion by means of free rectification or replacement delivery. In the event of replacement delivery, the replaced parts become our property and the customer shall be obliged to restore the defective article. Following consultation with us, the customer shall give us the time and opportunity required for performing all rectifications and replacement deliveries which we consider necessary; otherwise, we shall be relieved of liability for the resultant consequences. Only in urgent cases of a threat to operating safety or to avert disproportionately severe damage, in which case we are to be notified immediately, does the customer have the right to remedy the defect himself, or have it remedied by a third party,

and demand reimbursement of the necessary expenses from us.

As regards the costs incurred as a result of rectification or replacement delivery, we shall - provided that the complaint proves to be justified - bear the costs of the replacement article, including shipping, the reasonable costs of removal and installation, and additionally, if this can equitably be demanded under the circumstances of the individual case, the costs for any necessary provision of fitters and helpers.

- 8.2 If the defect cannot be rectified within a reasonable period, or if rectification or replacement delivery is to be regarded as having failed for other reasons, the customer can, at his discretion, demand a reduction of the purchase price or withdraw from the contract. Rectification shall not be considered to have failed until we have been given sufficient opportunity for rectification or replacement delivery without the desired success being achieved, if rectification or replacement delivery is no longer possible, if it is refused or unreasonably delayed by the customer, if there are justified doubts as regards the prospects of success, or if it is unreasonable on other grounds. If the defect is only of a minor nature, the customer shall only be entitled to a right to reduction of the purchase price. The right to reduction of the purchase price shall otherwise be excluded.
- 8.3 We expressly assume no liability for defects in the following cases: unsuitable or improper use, faulty installation or putting into service by the customer or third parties, natural wear and tear, faulty or negligent treatment, incorrect maintenance and unsuitable consumables.
- 8.4 If the defect is rectified improperly by the customer or a third party, we bear no liability for the resultant consequences. The same applies in the event of alterations being made to the article to be supplied without our prior consent.
- 8.5 If use of the article to be supplied results in the violation of domestic industrial property rights or copyrights, we will, at our own expense, generally obtain the right for the customer to continue such use, or modify the article to be supplied in a manner acceptable to the customer such that the proprietary rights are no longer violated. Should this not be possible on economically reasonable terms or within a reasonable period, the customer shall be entitled to withdraw from the contract. Under the specified conditions, we shall likewise be entitled to a right to withdraw from the contract. Moreover, we will indemnify the customer against claims of the affected holders of the proprietary rights that are undisputed or have been determined by final judicial decision. Subject to Art. 9, the above-mentioned obligations on our part shall be final in the case of violation of proprietary rights or copyrights. They shall exist only
- if the customer notifies us without delay of claimed violations of proprietary rights or copyrights,
 - the customer assists us appropriately in defending ourselves against the claims raised, or enables us to implement the modification measures pursuant to the above-mentioned conditions,
 - we can continue to reserve all defensive measures, including out-of-court settlements,
 - the defect of title is not based on instructions from the customer, and
 - the violation of the rights was not caused by the fact that the customer altered the article to be supplied without proper authority or used it in a manner not covered by the contract.

9 **Liability**

9.1 For damage not occurring on the article to be supplied itself, we are liable - regardless of the legal grounds - only in case of

- wrongful intent,
- gross negligence,
- culpable injury or damage to life, body or health,
- defects that were maliciously concealed or whose absence was guaranteed by us,
- defects in the article to be supplied, insofar as liability exists under the Products Liability Act for personal injury or property damage involving privately used objects.

In case of culpable violation of material contractual duties, the supplier shall also be liable for gross negligence on the part of non-executive employees and for simple negligence, the latter being limited to the reasonably foreseeable damage typical for the contract.

9.2 Further claims shall be ruled out.

10 **Limitation**

All claims of the customer - regardless of the legal grounds - shall become statute-barred after 12 months. The statutory periods shall apply to wilful or malicious conduct, as well as to claims under the Products Liability Act. They shall also apply to defects in a structure or to articles to be supplied which, in keeping with their customary mode of use, were used in a structure and caused its defectiveness.

11 **General provisions, legal venue, applicable law**

11.1 Should any provision of these Terms and Conditions, or of the other agreements reached, be or become invalid, this shall not affect the validity of the remaining provisions. The parties to the contract shall be obliged to replace the invalid provision by a valid ruling that comes as close as possible to the economic intention of the invalid provision.

11.2 The legal venue for all legal disputes arising indirectly or directly from contractual relationships based on these Terms and Conditions shall be the domicile of GKN Walterscheid GmbH in Lohmar. We shall moreover be entitled, at our discretion, to sue the customer at the court of his registered offices or his branch office, or at the court of the place of performance.

11.3 Supplemental to these provisions, the definitions of Incoterms 2000 shall apply, including any and all addenda.

11.4 The contractual relationships shall be subject exclusively to German law, excluding the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG).