

## **General Terms and Conditions for the Sale of Goods and Services**

Applicable for dealings with merchants, legal persons under public law and public law funds.

### **I. Scope of contract**

1. Any contract entered into by KBT GmbH shall be subject solely to the present General Terms and Conditions.
2. Terms and Conditions which are not in accordance with the present Terms and Conditions shall have effect only once they have been confirmed by KBT GmbH in writing. We hereby explicitly object to any contrary provisions.

### **II. Conclusion of a contract**

Offers of any kind are subject to confirmation, and quotes are not binding. Declarations of acceptance and orders of any kind shall have binding legal effect only once they have been confirmed by KBT GmbH either in writing, by telex or fax (acceptance of the order). The same shall apply to supplements, amendments or collateral agreements.

### **III. Prices**

1. Prices are based upon the costs applicable at the time confirmation is given, pursuant to Clause II of these Terms and Conditions. Prices are understood to include statutory value added tax and shall, unless otherwise agreed, apply ex works excluding packaging and insurance.
2. To the extent that we are obliged to take back any packaging used for the transportation of goods under the German Packaging Ordinance, the buyer shall bear all costs accrued in connection therewith, including the reasonable costs for the processing or – where possible and considered appropriate – recycling of such packaging.
3. In the event of changes in costs, we shall reserve the right to adjust our prices accordingly.

### **IV. Delivery**

1. Stipulated delivery periods shall begin at the time our written acceptance of the order is sent off, pursuant to Clause II of the present Terms and Conditions and not prior to performance of existing compliance duties by the buyer. The delivery period shall be considered to have been adhered to where goods have left the works prior to expiry of the delivery date or the buyer has received notification that the goods are ready for dispatch.
2. Delivery periods may be extended if delivery and production are hindered due to force majeure or similar events which lie beyond the control of KBT GmbH, such as delays in delivery on the part of its subcontractors, traffic disturbances or operational breakdown, industrial disputes, shortage of material or energy, acts of government as well as import or export restrictions that may jeopardize the execution of delivery. If we are unable to deliver as a result of a persisting force majeure situation or similar event, or if such situation or event gives rise to justifiable doubt regarding the execution of delivery, we shall be entitled to either rescind the contract or continue partperformance of the contract. In this case the buyer shall not be entitled to claim damages. The aforementioned shall also apply where the force majeure situation or similar event arises at a time in which KBT GmbH is in default.
3. Should the buyer wish to default acceptance of delivery or cause such default, he shall be obliged to bear all costs accruing in connection therewith for each month as of one week following notification of the buyer or the carrier in charge that the goods are ready for dispatch, in particular storage charges amounting to no less than 0,5 % of the invoice value of the items, unless the buyer can furnish evidence of lower costs. The same shall apply where the buyer or the carrier in charge refuses to confirm the use of different, reasonable means of transport. However, KBT GmbH reserves the right to dispose of the goods alternatively and to supply the buyer within an appropriate extended delivery period provided that an appropriate, ineffectual delivery period had been fixed initially and that such period has expired.
4. KBT GmbH shall, to a reasonable extent, be entitled to make partial deliveries and invoice these accordingly.
5. KBT GmbH is prepared to insure ordered goods against burglary, transport damage risks, damages arising from fire or water or other insurable risks, should the buyer so desire.

### **V. Transfer of risk**

The risk shall transfer to the buyer at the latest on notification of the appropriation of said goods for dispatch or upon transfer of the goods to the person in charge of the transport, i.e. when the goods leave the works of KBT GmbH. The same shall apply to partial deliveries or in the case of KBT GmbH having provided for additional services, such as dispatch, delivery or delivery with assembly. Should the buyer delay dispatch or if dispatch becomes impossible through its fault, the risk shall transfer to the buyer or the person in charge the transport when the buyer or the person in charge of the transport is notified that the goods are ready for dispatch.

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## **VI. Terms of payment**

1. The terms set out in our acceptance of the order pursuant to Clause II of these Terms and Conditions shall be decisive as to the date on which payment becomes due. If our acceptance of the order does not contain any information in this regard, payment of the purchase price shall become due upon delivery ex works. Should the term of payment be exceeded and upon default at the latest, the amounts outstanding shall be subject to interest at a rate of 8 percentage points above the basic interest rate. KBT GmbH shall reserve the right to enforce further claims for damage caused by default.

2. Notwithstanding any contrary provisions set out by the buyer, KBT GmbH shall be entitled to offset payments made by the buyer against any existing older liabilities of the same buyer first. KBT GmbH shall inform the buyer about the kind of set-off carried out. In the event of costs and interest accruing KBT GmbH shall offset the payment against the costs first, then against interest and finally against the principal performance.

3. The buyer may not offset any counterclaims or exercise his right of retention, unless his counterclaims have become res judicata or been recognized as being incontestable. Should the buyer offset payment against our claims, contrary to the provisions hereinabove, and therefore find himself to be in default, KBT GmbH shall be entitled to put forward claims for default interest, subject to Clause VI.1 of these Terms and Conditions.

## **VII. Retention of title**

1. The goods delivered shall remain the property of KBT GmbH until all and any claims arising out of business relations with the buyer have been satisfied, and all bills of exchange and cheques credited. This shall likewise apply to all claims arising out of current account balances.

2. To the extent that the buyer acquires sole ownership of the goods resulting from processing or connection of the delivered goods with other goods, it is hereby agreed that in order to secure our claims, the buyer shall as early as yet assign to KBT GmbH joint ownership of such goods commensurate with the invoice value of our goods as a proportion of the remaining goods. The buyer shall store the goods which form part of our joint ownership free of charge on behalf of KBT GmbH.

3. KBT GmbH shall be entitled to insure the goods against burglary, damage, transport damage risks, damage arising from fire or water or other insurable risks, at the cost of the buyer and to the extent that the buyer is unable to furnish proof of valid coverage.

4. The buyer is herewith authorized to resell the goods within the scope of an ordinary business transaction. This right may be revoked at any time and shall extinguish in the case of cessation of payment or other contractual breaches. The buyer hereby assigns to KBT GmbH any and all accounts receivable accruing to the former as a result of reselling the goods, including all subsidiary rights. The accounts receivable assigned shall secure all claims resulting from retention of title. Until further notice, the buyer shall be authorized to collect such assigned receivables. This right shall extinguish in the case of cessation of payment without explicit revocation. At the request of KBT GmbH, the buyer shall notify the former in writing of such assignment, setting out the party to whom he sold the goods and the accounts receivable resulting from that sale.

5. Insofar as the value of the securities provided for hereinabove exceeds amounts owing to KBT GmbH by more than 10 %, the latter hereby undertakes to release appropriate securities at the request of the buyer.

6. KBT GmbH shall retain all rights of ownership and all copyrights to any and all documents provided, including drawings, illustrations, size and weight specifications as well as any other technical data. The documents provided may not be made accessible to third parties without the prior written consent of KBT GmbH.

7. The buyer may not pledge or assign as collateral any goods or accounts receivable accruing as a result of reselling such items. KBT GmbH shall be notified without delay of any pledges or other legally vitiating factors.

8. In the event of breach of contract on the part of the buyer, particularly the delayed payment by the buyer or the substantial deterioration of his assets, KBT GmbH shall be entitled to withdraw the goods after issuing a formal reminder. The buyer shall be obliged to return the property. Withdrawal and pledge of reserved goods by KBT GmbH do not constitute rescission of the contract, unless the German Statute Covering Instalment Sales applies.

## **VIII. Warranty**

1. The buyer must inspect the goods immediately after receipt thereof and shall notify KBT GmbH without delay of any defects in writing. Furthermore, the buyer shall be obliged to check the goods for defects, especially defects concerning safety and working condition, prior to each individual use. The buyer shall without undue delay provide written notice to KBT GmbH specifying the matters complained of. The supplier shall be given sufficient time and opportunity to remedy

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such defects - i.e. subsequent repairs and delivery of spare parts that are considered necessary. Otherwise, KBT GmbH shall be indemnified from accepting any liability arising as a consequence of such defects.

2. To the extent that the objects and services are defective at the time of risk transfer to the buyer, KBT GmbH shall, at its own discretion, opt for subsequent performance either in the form of remedying the defect or delivery of a new object free from defects in exchange for the defective object. Any objects replaced shall become our property. Should such subsequent performance be impossible, ultimately fail entirely, be unreasonable for the buyer, or should KBT GmbH refuse either method of subsequent performance, or should a reasonable additional period of time for remedying the defect expire unsuccessfully, the buyer may at his own discretion request that the purchase price be reduced or the agreement rescinded. In the event of minor defects, the buyer shall only be entitled to have the purchase price reduced.

3. Arbitrary subsequent repairs carried out by the buyer or a third party shall result in the forfeiture of all claims by the purchaser that are based on defects against KBT GmbH. KBT GmbH shall not bear any costs resulting from such repairs. This shall be without prejudice to urgent – especially unpostponable - cases of operational safety or protection from unreasonable damage. In such cases KBT GmbH must be informed immediately, and we shall only be obliged to reimburse necessary costs.

4. Claims by the buyer for subsequent performance, damages or reimbursement of expenses on the grounds of defects become statutebarred after a period of 12 months as of the date of delivery. Should acceptance of delivery and services be delayed without any fault of KBT GmbH, the warranty period shall be limited to twelve months as of the date on which the goods are ready for dispatch. This shall apply to subsequent performance accordingly. The statutory period of limitation for claims by the buyer shall apply in cases of malicious non-disclosure or guarantee covering the quality of the object. Any and all claims, including claims for damages, other than as expressly set out in these Terms and Conditions shall be excluded. This shall likewise apply to damage other than damage of the object itself. As far as such damage is concerned, Clause IX "Claims for Damages" shall apply.

#### **IX. Damages**

Any and all claims, particularly claims for damages, other than as expressly set out in these Terms and Conditions shall be excluded. This liability exclusion shall not apply if KBT becomes guilty of gross negligence or material breach of its contractual obligations. Furthermore, KBT shall remain liable for culpable loss of life, bodily injury or damage to health and also in cases of mandatory liability for personal injury and damage to property pursuant to the German Product Liability Act. In such case or other cases based on contractual or statutory claims, liability for damages shall be limited to predictable, typical occurrences of damage, the damage being individually established.

#### **X. Liability for collateral duties**

Any and all claims in addition to the claims envisaged hereinabove shall be excluded. Clauses VIII and IX of these Terms and Conditions shall apply accordingly to claims arising from buyer's inability to use the object according to its contractual purpose due to our failure to execute or our faulty execution of advice, suggestions or collateral agreements provided prior to or subsequently to the conclusion of the agreement – in particular with regard to instructions concerning the operation or servicing of the delivered goods.

#### **XI. Severability**

In the event that individual provisions of these Terms and Conditions are legally invalid, the remaining provisions shall remain in force. The contracting parties shall replace the invalid provision with an appropriate legally valid provision which most likely realises the economic purpose of the provision to be replaced.

#### **XII. Governing Law – Jurisdiction and Place of Performance**

1. These Terms and Conditions and all contractual relations between the buyer and KBT GmbH shall be governed by the law of the Federal Republic of Germany. The Vienna UNCITRAL-Convention on the International Sale of Goods shall be excluded.

2. Place of performance and jurisdiction shall be Velbert. However, the agreement on jurisdiction shall only apply where the buyer is either a merchant who has been entered in the commercial register as a merchant, a legal person under public law or a public law funds. We shall, however, be entitled to initiate proceedings in a court that has local jurisdiction over the company seat or branch of the buyer, or the jurisdiction of which results from statutory requirements.

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