

# General Terms and Conditions of Sale Messing & Keppler Abfüllbetrieb GmbH

## 1 Scope

1. These General Terms and Conditions of Sale apply to all business transactions with our customers, even if express reference is not made hereto in later contracts. They apply in the same way for contracts for work and services. In the case of contracts for work and services approval and in the case of services the taking receipt of the service replaces the acceptance of delivered products.
2. Terms and conditions of the customer that are supplementary to or which deviate from these Terms and Conditions do not apply to the contract, unless we would have agreed, in writing, to the application thereof. These General Terms and Conditions of Sale also apply if we make a delivery to the customer without reservation in full knowledge of its contradictory, additional, or deviating Terms and Conditions.
3. Contradictory, additional, or deviating agreements to these General Terms and Conditions of Sale, which are agreed between us and the customer in execution of a contract, are to be set forth in writing in the contract. This also applies to the waiver of this written form requirement.
4. This is without prejudice to any rights going beyond those set forth in these General Terms and Conditions of Sale to which we are entitled pursuant to the statutory provisions or under other agreements.

## 2. Conclusion of the Contract

1. All offers issued by us are non-binding and subject to alteration.
2. We reserve all intellectual property, copyright and other proprietary rights in all contractual documentation. Such documents are not permitted to be made available to third parties. On request, the customer must surrender all offer documentation to us without delay, provided it is no longer required in the course of ordinary business. This applies in the same way in particular also for all documents, drafts, samples, specimens and models.
3. By placing an order for the products, the customer bindingly declares its intention to purchase those products. The contractual offer set forth in the order is bindingly accepted only once we have issued written confirmation of the order within two weeks, or if we fulfill the order, in particular by delivering the products. Order confirmation sent automatically by electronic means that do not state any signature or name are also deemed to constitute written confirmation. Should the order confirmation contain obvious errors, typos, or errors in calculation, it shall not be binding on us.
4. Our silence in response to offers, orders, requests or other declarations of the customer are deemed to constitute confirmation only if this was previously agreed in writing.
5. If the customer's financial circumstances deteriorate significantly or if the justified request for the initiation of insolvency proceedings or comparable proceedings concerning the assets of the customer are rejected due to lack of assets, we are entitled to withdraw from the contract, in full or in part, or to demand advance payments for further deliveries.

## 3. Scope of Performance

1. Our written order confirmation is authoritative as regards the scope of performance. Changes to the scope of performance by the customer are subject to our written confirmation. We reserve the right to make changes to the construction and form of the products, provided such changes are customary in the industry or insofar as the changes are not material and are reasonable for the customer.
2. Partial delivery is permissible. Each partial delivery is payable separately, provided this is reasonable for the customer.
3. We reserve the right to make over or under deliveries to the extent customary in the industry based on production technology reasons. In this context, claims based on defects are excluded. Furthermore, such over or under delivery does not alter the delivery price.

## 4. Acceptance

1. If the parties have agreed on acceptance, each party has the right also to demand partial acceptance. Acceptance, including partial acceptance, is effected by way of a jointly-prepared acceptance protocol.
2. If the customer does not accept our services within a time period stipulated by us, despite being under an obligation to do so, or if the customer commences operation of the products or otherwise uses them, this shall be deemed equivalent to written acceptance.

3. Acceptance is not permitted to be refused based on non-material defects.

## 5. Delivery Period

1. The agreement of delivery periods (delivery dates and times) must be made in writing. Delivery dates and times are non-binding, unless they were previously designated binding.
2. The delivery period commences upon conclusion of the contract, but not before the provision by the customer of all necessary documents, approvals, and permits, clarification of all technical issues, and the receipt of full payment from the customer. In the case of a delivery date, the delivery date will be postponed by a reasonable time if the customer fails to provide the documents, approvals and permits to be procured by it on time, if it fails to clarify all technical issues on time, or if the agreed advance payment - or, in the case of a cross-border transaction, the entire payment - has been received by us in full. Compliance with the delivery period is conditional upon the timely and proper fulfillment of the other obligations of the customer.
3. The delivery period is complied with if by the time of the expiry of the agreed delivery period, the products have left the works or if we have provided notice of readiness for collection or dispatch. Compliance with the delivery period is conditional upon the proper, in particular timely, delivery to us, unless we are responsible for improper delivery to us. In the event of the improper supply to us, we are entitled to withdraw from the contract. We will inform the customer immediately if we intend to make use of our right to withdraw from the contract and will return any advance payments made by the customer.
4. In the event of delayed delivery, the customer is entitled, upon fruitless expiry of an appropriate subsequent period set by it when the delivery became delayed, to withdraw from the contract.

## 6. Cross-border Deliveries

1. In the case of cross-border deliveries, the customer is required to submit to the competent authorities, on time, all declarations required for export from Germany and import into the destination country and to undertake all actions, in particular to procure all documents required for customs clearance, and to fulfil all export controls or other restrictions on marketability.
2. Deliveries are conditional upon fulfillment not being precluded by any impediments based on national or international rules, in particular export control regulations, embargoes or other sanctions.
3. Delays caused by export controls extend the delivery times accordingly; delivery dates are postponed as appropriate.

## 7. Prices and Payment

1. In the absence of any special agreement, all prices are ex-works and do not include shipping, packaging, insurance, statutory taxes, customs charges or other fees. Costs incurred in this connection, in particular the cost of packaging and transport of the products, will be charged separately. This does not apply if the shipping and loading are carried out for the purposes of subsequent performance. VAT at the statutory rate is stated separately on the invoice in the amount applicable on the invoice date.
2. Unless fixed prices were agreed, we reserve the right to make reasonable price adjustments based on changes in the costs of wages, material and distribution costs for deliveries made four months or more from the conclusion of the contract. In the case of price increases of more than 5%, the customer is entitled within a period of two weeks of notification of such price increase to withdraw from the contract.
3. In the absence of any special agreement, all prices are payable immediately after delivery and receipt of the invoice, net and in Euros. The payment date is deemed to be the date upon which we are able to freely dispose of the price. In the case of default of payment, the customer must pay default interest of 9 percentage points above the basic rate p.a. This is without prejudice to any further rights to which we may be entitled.
4. We are not under any obligation to accept bills of exchange. Acceptance of bills of exchange and cheques is made with the effect of discharging the debt. The discharging effect occurs only once the sum concerned has been irrevocably credited to us. The customer shall bear any costs incurred as a result of payment by bills of exchange or cheque, in particular charges for bills of exchange and cheques.

## 8. Transfer of Risk

1. The risk of accidental loss or deterioration passes to the customer as soon as the products have been handed over to the transport

agent, or have left our warehouse for shipping. In the event of collection by the customer, the risk passes on notification to the customer of the readiness for collection. The foregoing sentences one and two also apply if the delivery is made in parts, or if we have assumed further services, such as transport of the products to the customer.

2. If the customer is in default of acceptance, we can demand compensation of the damage incurred, including any additional expenses, unless the customer is not responsible for the non-acceptance of the products. We have the right, in particular, at the customer's expense to store the products for the duration of the default in acceptance. The costs of storage of the products are charged at a flat-rate of 0.5 % of the net invoice value per calendar week commenced. This is without prejudice to any further claims to which we may be entitled. The customer has the right to furnish evidence that we did not incur expenses or that the amount of such expenses was lower. The same applies if the customer is in breach of any cooperation duties, unless the customer is not responsible for the breach of such other cooperation duties. The risk of accidental loss or deterioration of the products passes to the customer no later than at the time he enters default of acceptance. We have the right, upon fruitless expiry of a reasonable period to be defined by us, to otherwise dispose of the products and to supply to the customer with a reasonably extended deadline.
3. If dispatch is delayed as a result of circumstances beyond our control, the risk passes to the customer upon notification of readiness for dispatch.
4. Without prejudice to its claims based on defects, delivered products must be accepted by the customer even if they display non-material defects.

#### **9. Claims based on Defects**

1. The customer's claims based on defects are conditional upon it having inspected the delivered products without delay upon delivery, by means of test use where this is reasonable, and notifying us of any obvious defects no later than two weeks from delivery of the products, in writing (e.g. by letter, fax or e-mail). Latent defects must be notified to us, in writing, immediately but no later than two weeks from identification thereof. The customer's written notification must include a description of the defect.
2. In the case of defects in the products, we are entitled at our discretion to render subsequent performance by rectifying the defect or by supplying a defect-free product. In the event of subsequent performance, we are required to bear all necessary expenses incurred for the purposes of subsequent performance, in particular transport, travel, labour and costs of material.
3. If we are not prepared or able to render subsequent performance, the customer may, irrespective of any claims to compensation or reimbursement of costs, at its discretion withdraw from the contract or reduce the delivery price. The same applies if subsequent performance is unsuccessful, unreasonable for the customer or, for reasons for which we are responsible, is delayed for more than a reasonable period.
4. The customer's right of withdrawal is excluded if it is unable to return the services rendered and this is not attributable to the fact that the return is impossible based on the nature of the service, is our responsibility or if the defect became apparent only upon processing or transformation of the products. The right of withdrawal is furthermore excluded if we are not responsible for the defect and if the customer is required, instead of return, to compensate the value.
5. Claims based on defects are not established with respect to defects attributable to natural wear and tear, incorrect handling, installation, use or storage or incorrectly performed alterations or repairs to the products by the customer or third parties. The same applies to defects attributable to the customer or which can be traced back to another technical cause other than the original defect.
6. Claims of the customer to reimbursement of expenses in place of compensation instead of performance are excluded insofar as such expenses would not also have been incurred by a reasonable third party.
7. Unless otherwise agreed in specific cases, in writing, we do not assume any guarantee, in particular guarantees as to characteristics or durability.
8. The limitation period for the customer's claims based on defects is one year. This limitation period also applies to claims in tort based on a defect in the products. The limitation period commences upon delivery of the products. The shortening of the limitation period does not apply to our unlimited liability for

damage relating to the breach of a guarantee or damage to life, limb or health, for intentional acts and gross negligence and for product defects or insofar as we assumed a procurement risk. Any statement issued by us concerning a claim based on defects asserted by the customer does not constitute entry into negotiations concerning the claim or the circumstances establishing the claim if we reject the claim based on defects in full.

#### **10. Liability**

1. We are liable without limitation for damage based on the breach of a guarantee or damage to life, limb or health. The same applies to intentional acts and gross negligence or insofar as we assumed a procurement risk. We are liable for slight negligence only in the event of the breach of material contractual duties that are inherent to the nature of the contract and of particular importance to the attainment of the contractual purpose. In the case of the breach of such obligations, in the case of default and frustration of contract, our liability is limited to such damage as is typically foreseeable for this type of contract. This is without prejudice to mandatory statutory liability for product defects.
2. Insofar as our liability is excluded or limited, this also applies for the personal liability of our staff, employees, workers, representatives and agents.

#### **11. Product Liability**

1. The customer will not alter the products, in particular it will not alter or remove existing warnings relating to risks of improper use of the products. In the event of the breach of this obligation, the customer must in the internal relationship indemnify us against product liability claims of third parties, unless the customer is not responsible for the defect establishing liability.
2. If, due to a product defect, the products are recalled or a product warning issued, the customer shall take best efforts to cooperate with all measures that we consider necessary and expedient and support us in such measures, in particular in identifying the necessary customer information. The customer is required to bear the costs of the product recall or warning, unless it is not responsible pursuant to product liability law principles for the product defect and the damage caused. This is without prejudice to any further claims to which we may be entitled.
3. The customer will notify us without delay of any risks and possible product defects of which it becomes aware in the course of using the products.

#### **12. Force Majeure**

1. If we are prevented through force majeure from fulfilling our contractual obligations, in particular from delivering the products, we shall for the duration of the impediment and a reasonable subsequent period be released from the performance obligation, without being required to pay the customer compensation. The same applies if the performance of our obligations is rendered unreasonably more difficult or temporarily impossible on account of unforeseeable circumstances beyond our control, in particular by industrial action, official measures, energy shortages, disruptions to supply by an upstream supplier or material operational disruptions. This also applies if these circumstances are experienced by a sub-supplier. This furthermore applies if we are already in default. The customer will immediately be notified of the occurrence of the impediment. If we are released from the delivery obligation, we will return any advance payments made by the customers.
2. We are entitled upon expiry of a reasonable period to withdraw from the contract if such impediment lasts more than four months and we no longer have any interest in fulfilling the contract as a result of the impediment. On demand by the customer, we will upon expiry of the time period, declare whether we intend to make use of the right of withdrawal or deliver the products within a reasonable period.

#### **13. Retention of Title**

1. We hold ownership in the delivered products until such time as the price has been paid in full and all claims to which we are entitled against the customer under the business relationship have been satisfied. The customer is required to treat the products that are subject to retention of title with due care and to keep them safe for the duration of the retention of title. It is required, in particular, to insure the products at its own costs against fire, water and theft in an adequate amount at replacement value. The customer must on request by us furnish evidence of the conclusion of such insurance. The customer hereby now assigns all claims to compensation under this insurance to us. We hereby accept the assignment. If the assignment is impermissible, the customer hereby instructs the insurer to make

any payments only to us. This is without prejudice to any other claims to which we may be entitled.

2. The customer is permitted to sell the products that are subject to retention of title only in the course of ordinary business. The customer is not otherwise entitled to pledge the products subject to retention of title, to assign them as security or to make other disposals that could threaten our ownership. In the case of seizures or other third-party measures, the customer must notify us immediately, in writing, and provide all necessary information, notify the third party of our ownership rights and participate in the measures taken by us to protect the products subject to retention of title. If the third party is not in a position to reimburse to us the judicial and extrajudicial costs of asserting our ownership rights, the customer is required to compensate the resulting shortfall, unless the customer is not responsible for the breach of duty.
3. The customer now assigns the claims relating to the further sale of the products, together with all ancillary rights, to us, irrespective of whether the products that are subject to retention of title are resold without or following processing. We hereby accept this assignment. Should such assignment be impermissible, the customer hereby instructs the third-party debtor to make any payments only to us. The customer is revocably authorized in a fiduciary capacity to collect the claims assigned to us in its own name. The sums collected are to be paid to us immediately. We are entitled to revoke this collection authorization of the customer as well as the customer's entitlement to re-sell the products for good cause ("*aus wichtigem Grund*"), in particular if the customer fails to duly fulfil its payment obligations in respect of us, enters into default in payment, stops making payments or if the initiation of insolvency proceedings or a comparable proceeding for the settlement of debts is initiated in respect of the customer's assets or the legitimate application of a third party for the initiation of insolvency proceedings or comparable debt settlement proceedings is rejected due to lack of assets. In the case of blanket assignment by the customer, the claims assigned to us are to be expressly excluded.
4. At our request, the customer is required to immediately notify the third-party debtor of the assignment and to procure the information and documentation required for the collection on our behalf.
5. In the event of actions in breach of contract, in particular default in payment on the part of the customer, we are entitled, irrespective of our other rights, on expiry of a reasonable additional deadline to be set by us, to withdraw from the contract. The customer must grant us or its agents immediate access to the products subject to the retention of title and to surrender the same. Following appropriate and timely notification, we can otherwise use the products subject to retention of title to satisfy our due claims against the customer.
6. The combination by the customer of the products subject to retention of title with other items not owned by us is always carried out on our behalf. If the products are combined with other items that are not owned by us, we acquire joint ownership in the new item proportionate to the value of the product delivered to the other items at the time of the combination. The customer shall keep the new items for us. In addition, for the item created through such combination, the same provisions apply as for the products that are subject to retention of title.
7. On request by the customer we are required to release the security to which it is entitled insofar as the realizable value of the security, taking account of customary banking valuation charges, exceeds our claims under the business relationship by more than 10 %. In such valuation, the invoice value of the products subject to retention of title and the nominal value in the case of claims are to be assumed. The selection of the specific items to be released is incumbent upon us.
8. In the case of deliveries to other jurisdictions, in which this retention of title does not have the same security effect as in the Federal Republic of Germany, the customer hereby grants us a corresponding security right. If this necessitates additional measures, the customer will take all measures necessary in order to grant us such security right without delay. The customer will cooperate in all measures necessary and expedient to the validity and enforceability of such security rights.

#### 14. Confidentiality

1. The Parties are required to maintain strict confidentiality with respect to all information to which they become privy that is marked confidential or can otherwise be identified as business or operating secrets based on other circumstances and, unless this is necessary for the business dealings, not to record, disclose or otherwise use such information.
2. The confidentiality obligation does not apply if the information was demonstrably already known to the recipient prior to the

commencement of the contractual relationship or was generally known or publicly available prior to the commencement of the contractual relationship or, through no fault on the part of the recipient, became generally known or publicly accessible. The burden of proof is borne by the recipient.

3. The Parties will, by means of appropriate contractual agreements with the employees and agents acting on their behalf, in particular freelance employees and contractors and service providers, ensure that they too refrain from any and all own use, disclosure or unauthorized recording of such business and operating secrets.

#### 15. Final Provisions

1. The assignment of rights and duties of the customer to third parties is permissible only with our prior written consent.
2. The customer is entitled to set-off against our claims only undisputed claims that have been acknowledged by us and legally determined or claims that have mutuality with our claim. The customer can exercise a retention right only if its counterclaim is based on the same contractual relationship.
3. The legal relationship between us and the customer is governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
4. The exclusive place of jurisdiction for all disputes concerning the business relationship between us and the customer is our registered seat. We are also entitled to file suit at the customer's seat and at any other permissible place of jurisdiction. The application of arbitration clauses is hereby excluded.
5. Unless otherwise agreed, the place of performance for all of our services and those of the customer is our seat.
6. The language of the contract is German.
7. Should any provision of these General Terms and Conditions of Sale be or become invalid or unenforceable, in whole or in part, or should there prove to be an omission, this shall not affect the validity of the remainder of the provisions. In place of the invalid or unenforceable provision, the valid or enforceable provision is deemed agreed that comes as close as possible to attaining the purpose of the invalid or unenforceable provision. In the event of an omission, the provision is deemed agreed that corresponds to what would have been agreed, in light of the purpose of these General Terms and Conditions of Sale, had the Parties considered the matter from the outset.