

International Terms and Conditions of Sale Heinrich KUPER GmbH & Co. KG

§ 1 Applicability of these International Terms and Conditions of Sale

(1) The terms and conditions set out in these International Terms and Conditions of Sale shall form an integral part of the Contract of Sale and apply to goods which have been produced by us.

(2) These International Terms and Conditions of Sale do not apply if the goods are bought for personal, family or household use and we knew or ought to have known at any time before or at conclusion of the Contract of Sale that the goods were bought for any such use. The Buyer declares that the goods are not bought for personal, family or household use.

§ 2 Formation of the Contract of Sale

Our offer to conclude a Contract of Sale can be withdrawn by us until accepted by the Buyer. Subject to a withdrawal, our offer can be accepted by the Buyer within 14 (fourteen) calendar days from the date stated therein.

§ 3 Applicable Law

(1) The Contract of Sale is governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.

(2) Should commercial terms be used the Incoterms 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Sale.

§ 4 Specifications of the goods; Third party rights

(1) The goods to be delivered have to conform to the specifications and quality requirements set out in the order confirmation (hereinafter the "Order Confirmation"). To the extent no specifications or quality requirements are stated in the Order Confirmation, the goods conform with the contract if they are fit for the purpose which is usual in Germany and fit for the purpose for which goods of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the goods do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.

(2) Should the Buyer intend to use the goods in circumstances which are unusual or which could entail a particular risk to the safety and health of any person or to the environment, the Buyer has to inform us in writing

about these intentions before concluding the Contract of Sale.

(3) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods in Germany.

§ 5 Obligation to deliver; Passing of risk

(1) We have to deliver the goods referred to in the Order Confirmation. Irrespective of the Incoterms clause used, the goods are not packed unless the Order Confirmation states otherwise. If a packaging is included and this is stated on the Order Confirmation, the Order Confirmation may stipulate the price for such packaging. If no price for the packaging is indicated, the packaging is free of charge.

(2) Delivery has to be made FCA Incoterms 2010 at the place of delivery indicated in the Order Confirmation. If no place of delivery is indicated in the Order Confirmation, delivery has to be made FCA Incoterms 2010 at our premises in 33397 Rietberg/Germany. We are not obliged to contract for carriage and we are not obliged to inform the Buyer that the goods have been delivered or that the carrier or another person nominated by the Buyer has failed to take the goods within the time agreed. We are however entitled to contract for carriage on behalf of the Buyer at the Buyer's risk and expense; the costs resulting therefrom will be charged to the Buyer with the invoice. In such situation where we contract for carriage at Buyer's risk and expense, the place of performance for delivery will remain at 33397 Rietberg/Germany.

(3) Adherence to the delivery date respectively the delivery period stated in the Order Confirmation is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.

(4) All delivery dates and delivery periods are dependent upon the Buyer performing all of his obligations in due time. In particular, the Buyer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.

(5) We are entitled to make partial deliveries and to invoice these separately.

(6) The passing of risk takes place with delivery in accordance with § 5 sec. 2. Should the Buyer fail to take delivery, the risk passes at the time the Buyer fails to take delivery.

(7) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the Buyer will not perform his

obligations under the Contract of Sale, in particular not be able to pay the agreed price in due time.

§ 6 Delivery Note, Invoice and other documents

- (1) We will provide the Buyer with a delivery note issued according to our standard.
- (2) We will provide the Buyer only with such documents explicitly stated on the Order Confirmation.

§ 7 Force Majeure

Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation.

§ 8 Obligation to pay the purchase price

- (1) The Buyer is obliged to pay the agreed purchase price to the bank account nominated by us. The place of payment is 33397 Rietberg/Germany. Banking fees accrued outside of Germany will be borne by the Buyer. The payment shall be made by advance payment one (1) week prior to the delivery, unless the Order Confirmation states otherwise. If a time limit for payment is stated on the Order Confirmation, it shall be calculated from the date of invoice. The Buyer's acceptance of the goods is no precondition for the payment to become due.
- (2) The agreed prices shall exclude any statutory VAT applicable at the date of delivery.
- (3) The Buyer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the Buyer.
- (4) The Buyer may only offset any claims insofar as the Buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- (5) If and till such time the Buyer is in arrears with payment of the purchase price, the Buyer is obliged to pay interest at the rate of nine (9) percentage points above the base rate of the German Central bank per annum.

§ 9 Non-Conforming goods; Goods with a defect in title

- (1) The goods do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 1 and sec. 2.
- (2) The goods are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 3.

§ 10 Duty of examination and notification

- (1) Without prejudice to the legal provisions, the Buyer is obliged to examine the goods comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the Buyer is obliged to conduct the examination with the help of external third parties.

(2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods, in all other cases after the Buyer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing, if possible accompanied by appropriate photographs. The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.

(3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

§ 11 Limitation Period

Without prejudice to claims resulting from a malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the Buyer's claims in respect of the delivery of non-conforming goods and goods with a defect in title become time-barred one (1) year after delivery of the goods. For second-hand goods § 4 sec. 1 sentence 4 applies.

§ 12 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability

- (1) In case of delivery of non-conforming goods, the Buyer can claim delivery of substitute goods or declare avoidance of the Contract of Sale only in accordance with the legal provisions.
- (2) Buyer expressly declares that remedying a non-conformity by repair will in almost all circumstances not be reasonable for us, as this might lead to severe expenditures (travel and accommodation etc.) not being reflected in the purchase price and being disproportionate to the costs for remedying a non-conformity by repair if this was performed by the Buyer. As a reason of this, wherever possible, the Buyer will – if necessary with the help of external third parties – at its own costs install and assemble any spare parts provided by us. Spare parts will be provided by us free of charge for the Buyer. Spare parts will be delivered by us to the Buyer CIF Buyer's place of business Incoterms 2010.
- (3) To the extent any costs associated with performing remedies are increased by the fact that the Buyer has removed the goods to a place not stated in the Order Confirmation or, in the absence of such an indication, to a place other than the Buyer's place of business, these costs will be borne by the Buyer.
- (4) Delivery of substitute goods or repair does not lead to a restart or extension of the limitation period.
- (5) If we deliver non-conforming goods or goods with a defect in title or breach any other obligation resulting from the Contract of Sale or the business relationship with the Buyer, the Buyer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:
 - a. We are not liable for the conduct of our suppliers or subcontractors. Neither are we liable for damages to which the Buyer has contributed.

b. The Buyer has to prove that either our directors or employees or other members of staff have deliberately or negligently breached contractual obligations owed to the Buyer.

c. In case of liability, the amount of damages for late delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent of the purchase price of the goods delivered late or not at all, and in case of remedies because of delivery of non-conforming goods and/or goods with a defect in title and in cases of all other breach of obligations is limited to 50% of the purchase price of the goods affected.

d. Irrespective of § 12 sec. 5 c), we are not liable for loss of profit.

e. The aforesaid limitations in § 12 sec. do not apply

- i. to injury of life, body or health,
- ii. if we have acted gross negligently or intentionally,
- iii. if we are liable according to product liability laws, and
- iv. to liabilities which may not be excluded or limited according to the applicable laws.

(6) Apart from the aforesaid, the statutory provisions apply.

§ 13 Right to use Software; Rights in documents etc.

(1) In case the goods include software, with the delivery of the goods the Buyer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods purchased under this Contract of Sale. With the exception of the right to make one backup copy, the Buyer is not entitled to copy the software.

(2) We reserve all intellectual property rights in any documents, pictures, drawings etc. (collectively "Documents") arising in connection with the performance of the obligations arising under the Contract of Sale and such Documents shall belong exclusively to us.

§ 14 Other Provisions

(1) Title of the goods that have been delivered remains with us until all of our claims against the Buyer have been settled.

(2) We are not obliged to perform any obligations not stated in the written Order Confirmation or in these International Terms and Conditions of Sale.

(3) There are no side agreements to the Contract of Sale.

(4) Any amendments to a concluded Contract of Sale require our written confirmation, duly approved by signature.

(5) The Buyer is not entitled to assign his rights and obligations against us to a third party.

(6) The place of delivery is governed in § 5 sec. 2, the place of payment in § 8 sec.1. For all remaining obligations and irrespective of the agreement of a differing Incoterms-clause, the place of performance is agreed to be 33397 Rietberg/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.

(7) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. The Buyer expressly declares that he understands English even if the Order Confirmation is drafted in a different language. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions of Sale explicitly require a signature.

§ 15 Agreement on arbitration and jurisdiction

(1) All contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract of Sale and these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Buyer and us shall be exclusively resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The tribunal shall consist of three (3) arbitrators, and if the amount in dispute is inferior to € 250.000, there shall be one (1) arbitrator. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

(2) Should the Buyer have its place of business within the European Union, the European Economic Area and/or Switzerland, instead of bringing an action before the arbitral tribunal in accordance with § 15 sec.1 we are also entitled to bring an action before the state court which has jurisdiction for 33397 Rietberg/Germany or the state court of the Buyer's place of business, or any national court with jurisdiction according to domestic or foreign law.

§ 16 Severability

If provisions of these International Terms and Conditions of Sale should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the Buyer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.