

# General terms and conditions of KOLARZ GmbH for companies

## 1. General

1.1 These General Terms and Conditions apply to all our services unless expressly agreed otherwise in writing. These General Terms and Conditions constitute a material part of every offer made by us and of every contract concluded with us.

1.2 The purchaser agrees that our terms and conditions shall be the contractual basis even if he uses general terms and conditions of his own and even if we do not object to the same. Accordingly, actions in performance of the contract on our part shall not be deemed a consent to contractual terms that deviate from our terms and conditions.

1.3 Any general terms and conditions whatsoever that are in conflict with these terms and conditions shall be effective only if acknowledged by us in writing.

## 2. Contract

2.1 Our offers are non binding and contain no obligation to accept the order.

2.2 A contract shall only become legally binding on us if we acknowledge the purchase order in writing or actually execute the purchase order. Promises made by our field staff or commercial agents shall be ineffective. Likewise any performance measures of field staff or our commercial agents shall not result in acceptance of the order.

2.3 Objectively justified and reasonable modifications of our obligation to render services or effect deliveries, in particular reasonable extensions of the delivery periods, shall be deemed approved in advance.

2.4 All information and data on the goods and their look, in particular their colours, that is contained in brochures, drawings, dimensioned drawings and descriptions, is only approximate and shall be non-binding. Technical or formal changes and adaptations reserved. Colour deviations with specific goods (also in comparison with illustrations of the same) may occur due to production and constitute no defects.

## 3. Prices

3.1 Our prices depend on the price lists applicable from time to time and on the agreed delivery period. All prices stated in the price list are subject to printing errors. If delivery dates cannot be observed for reasons for which we are not responsible we reserve the right to claim higher costs.

3.2 Unless expressly stated otherwise all prices stated by us shall be deemed net prices exclusive of all fees and taxes, ex our Müllendorf Logistics Centre and exclusive of packaging, loading, transportation, insurance and disposal. All ancillary costs related to a purchase contract shall be borne by the purchaser.

3.3 If costs change between conclusion of the contract and performance, including but not limited to payroll costs and/or procurement costs for the materials to be used, be it by law, regulation, collective bargaining agreement, articles of association, official recommendation, other official measures or due

to changes in world market prices, the prices concerned shall increase or decrease accordingly, unless the period between placing the order and performance is shorter than three months.

## **4. Terms of payment**

4.1 The place of performance for payments is our registered office in Breitenfurt. Payments to us shall have a debt-releasing effect only if made into an account advised by us or to a person authorised to accept payments. In the case of money transfers the date at which the amount is credited to the account advised by us shall be relevant to timeliness of payment.

4.2 In the case of delays in performance we shall be entitled to invoice the services rendered so far.

4.3 In the case of default in payment the purchaser's right to discounts shall be forfeited.

4.4 If in the case of export contracts the invoice currency is devalued between conclusion of the contract and payment, it is agreed that the amount of such devaluation shall be borne by the purchaser.

4.5 If the purchaser is in default of payment or insolvent we shall be entitled to rescind the contract without having to grant a grace period. In those cases we shall be entitled to take back products that have already been delivered notwithstanding the applicability of Clause 7.

4.6 Unless expressly agreed, the purchaser shall offset none of his own claims against our claims or withhold payments for any reason whatsoever.

## **5. Delivery**

5.1 The place of performance for deliveries shall be our logistics centre in Müllendorf. The goods will be made available to the purchaser in our product packaging exclusive of loading onto the means of transport that collects the goods. Unless expressly agreed in writing, the goods will exclusively be made available in transport packaging that is customary for lorry traffic in our usual packaging dimensions. Subsequent specifications of the purchaser with respect to transport packaging shall not be accepted. The person who collects the goods shall be solely responsible for securing the goods in the means of transport. The purchaser shall obtain all evidence required for exportation and/or importation of the goods and, if applicable, for transit through any country, and shall be solely responsible therefor.

5.2 Delivery periods are always non-binding, unless a specific date is expressly agreed. Delivery periods shall commence when the order becomes effective. If we agree on a change to the order, we shall be entitled to fix a new delivery date. We shall not be liable for delays in delivery that are not caused by us. In that case the purchaser waives his right to rescind the purchase contract and to claim damages. In all other cases the purchaser shall not be entitled to rescind the contract without granting a reasonable grace period. No delivery obligation shall exist in cases of force majeure or other delays beyond control, even if they occur at the subsupplier's (e.g. fire, strike, embargo, lack of means of transport). In such cases we shall be free to rescind the contract with no liability for damages and, at our option, even with respect to follow-up deliveries not yet due.

5.3 We shall not accept or dispose of any packaging material. The purchaser shall be responsible for observing the disposal regulations in his country of destination. Any costs incurred in connection with disposal of packaging and goods shall be borne by the purchaser.

## **6. Passing of risk and default in acceptance**

6.1 Independent of the agreed place of performance and the agreed prices, benefits and risks shall in any case pass to the purchaser upon our advice of readiness for shipment or, in the absence thereof, upon collection of the goods from our logistics centre in Müllendorf.

6.2 In the case of default in acceptance we shall also be entitled, notwithstanding our other claims, to ship the goods, at our option, in the name, at the cost and risk of the purchaser or to store them in any way in the name and for the account of the purchaser.

## **7. Retention of title**

7.1 The object of the purchase shall remain our property until payment of the full purchase price (including value added tax, default interest and costs).

7.2 Moreover, we shall reserve title to all goods delivered by us to the purchaser until all of our claims will have been settled, including interest, expenses and costs.

7.3 As long as title is retained the object of the purchase must not be sold, pledged, transferred by way of security, negotiated or made available otherwise. In the event that we consent to any of those dispositions, the purchase price claim shall be deemed assigned to us already at this point and we shall be entitled to notify the third-party debtor of the assignment at any time. As long as title is retained the purchaser shall keep the object of the purchase in a proper condition.

7.4 If we take back goods this shall not be considered a rescission of contract. All of our rights under the legal transaction, including the right to claim damages on account of non-performance, shall continue to exist.

7.5 The purchaser shall be entitled to resell the goods delivered by us to which title has been retained in the course of his ordinary business as long as he is not in default of payment. Already at this point the purchaser assigns all accounts receivable he may have vis-à-vis third parties under the resale in the invoice amount agreed between the purchaser and us. The purchaser shall continue to be entitled to collect such accounts receivable as long as he is not in default of payment. However, the purchaser shall be obliged to surrender all documents and advise the names of his customers to us for us to be able to collect the accounts receivable ourselves. The purchaser shall be obliged to disclose the assignment to his customers.

## **8. Warranty**

8.1 The warranty period shall be six (6) months and shall commence when the risk has passed to the purchaser.

8.2 The purchaser shall inspect the object of the purchase immediately upon delivery. Defects, short shipments or deliveries of goods other than ordered that can be seen immediately upon delivery shall be recorded in detail on the delivery note or bill of lading; otherwise any claims shall be excluded. If no immediate inspection is possible when taking delivery of the goods, this must be recorded on the delivery note or bill of lading; otherwise all claims shall be excluded. The purchaser shall then inspect the object of the purchase without delay and notify any defects by registered letter immediately and in any case within five (5) working days of delivery of the object of the purchase and in the case of hidden defects after they become noticeable, and shall state the type and extent of the defect;

otherwise any claims shall be excluded. If defects are not notified at all or not in time, the goods shall be deemed accepted. In those cases assertion of claims on the ground of defects shall be excluded. In derogation of Section 824 of the Austrian General Civil Code [ABGB] the purchaser shall prove that the defect already existed at the time of delivery of the service provided.

8.3 Our warranty obligation shall, at our option, be restricted to improvement or replacement of defective parts or price reduction. We shall only be obliged to repair defects if the purchaser has fulfilled his payment obligations in full. Assembly costs or other costs incurred shall not be reimbursed.

8.4 The right of recourse as laid down in Section 933b ABGB shall become time-barred two (2) years after the risk passed to the purchaser.

8.5 The provisions of Clauses 8.1 to 8.4 shall not apply to consumer transactions.

## **9. Damages**

9.1 Any liability of ours for mere gross negligence shall be excluded. Moreover, we shall neither be liable for consequential damage or lost profit. In derogation thereof, the following applies to consumers: any liability of ours for slight negligence shall be excluded, except for liability for personal injury.

9.2 A prerequisite for claims for damages against us shall be a complete and timely notification after the damage has become noticeable as described in Clause 8.2. This shall not apply to consumer contracts.

9.3 In a first step, the purchaser may only demand improvement or replacement as compensation for the damage; only if these two measures are impossible or would lead to unreasonable costs for us is the purchaser entitled to claim pecuniary damages immediately.

9.4 The purchaser shall prove causation, unlawfulness and fault.

9.5 Claims for damages shall become time-barred six (6) months after the damage and the party who caused the damage have become known and in any case two (2) years after the risk passed.

## **10. Product liability**

10.1 Any rights of recourse asserted by the purchaser or third parties against us on the ground of product liability shall be excluded. The purchaser represents that he will include this limitation of liability in all agreements with entrepreneurs and put them under an obligation to impose the same on others and in general to indemnify us against any such liability vis-à-vis business entities.

10.2 Claims for compensation shall expire five (5) years after the goods were into the stream of commerce. The purchaser shall impose that period on his customers with legally binding effect.

10.3 Rights of recourse shall only exist to the extent that the purchaser proves that the defect occurred before the goods were put into the stream of commerce by the supplier.

10.4 Any liability of ours under the Austrian Product Liability Act [Produkthaftungsgesetz/PHG] shall be excluded for any damage caused by non-observance of instructions for assembly and/or use or safety information by violation of statutory or other standards or information.

## **11. Place of jurisdiction and applicable law**

11.1 For all disputes arising out of or in connection with a contractual relationship to which we are a party the court having subject-matter jurisdiction and local jurisdiction over Breitenfurt or the purchaser's registered office shall, at our option, be the exclusive place of jurisdiction.

11.2 Exclusive applicability of Austrian law has been agreed and UN Sales Law shall be excluded. The language of the contract shall be German.

## **12. Miscellaneous**

12.1 Unless provided otherwise in these General terms and conditions, the place of performance shall be our logistics centre in Müllendorf.

12.2 For the purpose of fulfilment of the contract the purchaser's data shall be processed automatically and, if necessary, transmitted to third parties with whom we do business. The purchaser hereby agrees thereto. We shall treat the data in compliance with the provisions of the Austrian Data Protection Act [Datenschutzgesetz/DSG].

12.3 If any provisions of these General Terms and Conditions are or become ineffective in whole or in part, the effectiveness of the remaining provisions shall not be affected. Instead of any ineffective provision a legally permitted provision shall be deemed agreed which comes as close as possible to the commercial purpose of the ineffective provision.

12.4 All agreements, subsequent modifications, amendments, side agreements, etc. shall be made in writing in order to be valid. This shall also apply to an abolishment of the requirement of written form.

Revised on 1 August 2011