

## 1. Scope of Application, Scoring:

The following Terms and Conditions shall apply to all offers, deliveries and performances under purchase agreements, contracts for work or for services including those resulting from future business relations and long term agreements, but only towards customers which are individuals, incorporated entities or partnerships having legal capacity which act in pursuit of their commercial or self-employed business, or legal entities of public law or special funds under public law.

The general terms and conditions of our customer shall not apply. This shall also be the case if we, having knowledge of deviating, conflicting or supplementary terms and conditions of the customer, fulfil our contractual obligations without express reservation.

For the purpose of deciding to enter into, to implement or to terminate a contractual relationship we reserve the right to obtain or have obtained probability scores in the calculation of which also address dates are used.

## 2. Offers, Confirmation of Orders:

### 2.1

Where nothing to the contrary is explicitly agreed, our offers are subject to confirmation. A customer shall be bound to an order placed for four weeks. An order shall not be deemed accepted until acceptance has been confirmed by us in writing or until we have started delivering within this period of time.

Technical specifications in our non-binding offers are not binding, either. The scope of our contractual obligations shall not be fixed until explicitly laid down in the confirmation of order.

We reserve the right to make changes to models, constructions or fittings which are customary in trade, unless the contractual object would be unreasonably changed for the customer; this applies in particular to

- changes in technical specifications resulting from ongoing further developments;
- changes with respect to weight, quantity, colour, form, design and dimensions which are minor and not essential;
- changes to the extent customary in trade resulting from the construction parts and materials used as well as from technical processing possibilities.

This reservation to make changes does not apply to specifications which, in the individual case, have been promised or have been made subject to a warranty.

### 2.2

Each contract is made subject to correct and punctual deliveries of our own suppliers, provided we are not responsible for non-delivery and we entered with the ordinary standard of care into a congruent supply agreement with our supplier. We expressly exclude to assume any procurement risk.

### 2.3

We expressly reserve all proprietary rights and copyrights to all documents relating to the offer or the contract. Such documents shall not be made available to third parties without our express consent and shall be kept secret. This shall also apply to all business and technical information which become known to the customer.

We reserve unrestricted proprietary rights and copyrights in particular to the samples and models developed by us. Such samples and models

shall be used, copied, passed on, sold or pledged only for the agreed purposes and shall not be made accessible to third parties unless explicitly approved by us.

By payment of the amounts invoiced for the afore purposes the customer, by no way, acquires the right to delivery and transfer of title regarding the samples and models mentioned in this paragraph 2.3.

If the customer wishes delivery of the tools produced for the execution of the contract with the intention of using them for a different purpose, an additional price shall be agreed therefore. Until final payment is effected, tools delivered to the customer shall remain our property.

### 2.4

Should the order not be placed with us, all documents relating to the offer or the envisaged contract, samples and models in the meaning of the afore Sec. 2.3 shall be returned to us on request. A right of retention with respect thereto is excluded.

### 2.5

In each case of culpable infringement of our proprietary rights and copyrights as mentioned before under Sec. 2.3, even if occurred after termination of the contract, the customer shall pay to us a contractual penalty in the amount of 3,000.00 €, unless the customer renders proof for the fact that the damage incurred is of a smaller amount. We explicitly reserve the right to enforce damages of higher amounts.

### 2.6

We are entitled to make the customer's documents and data available to third parties, in particular to our suppliers, even without the customer's express consent, if this is required for the provision of our performance.

## 3. Prices:

### 3.1

The prices agreed at the conclusion of the contract shall apply. We shall be bound by these prices for a duration of four months. If delivery shall take place later than four months after conclusion of the contract, we shall be entitled to charge on the basis of the list prices which are in effect at the time of delivery. Only with respect to our services those prices shall apply without changes which are shown in our Service Conditions effective at the time the contract is concluded.

### 3.2

The prices quoted in our offer are "ex works (EXW) Wuppertal" according to the INCOTERMS as in force at the time of the offer, excluding packaging, freight, insurance, storage costs and other ancillary costs.

Customers' pallets and crates shall be delivered to us timely and free of charges or shall be given to us in exchange for our pallets and crates when the goods are collected.

Pallets and crates let to the customers always remain our property and must be returned within four weeks – counting from the date of delivery – and free of charges.

The customer shall be liable for damages of all kinds to the pallets or crates according to the legal provisions.

In the event of loss € 12.00 will be charged per pallet and € 120.00 will be charged per crate. A hire charge of € 2.00 per pallet and of € 20.00 per crate will be charged per week, if the date for returning them is exceeded.

### 3.3

The agreed prices are quoted exclusive of statutory value added tax which shall be payable in addition at the rate effective at the time of performance.

## 4. Delivery:

### 4.1

Delivery dates shall only be binding if they have been explicitly confirmed by us in writing as binding.

Our delivery periods, which do not show a particular delivery date determined according to the calendar, shall begin at the earliest on the day the confirmation of order is sent off. The day the items to be delivered leave our factory or the day on which the notification of readiness is sent off shall be relevant for compliance with the delivery date or the delivery period.

### 4.2

Compliance with our delivery and completion obligations requires the timely and proper compliance of the customer with all of its cooperation obligations. These include, inter alia, a timely provision of all documents required to process the order, full clarification of any open question, receipt of agreed down payments, opening of letters of credit, and submission of required licenses or other official authorizations. The right to raise an objection for non-compliance with contractual obligations is explicitly reserved.

### 4.3

Each delivery or completion deadline shall no longer be effective if the contract is subsequently changed to a more than just minor extent. In such event, we shall be entitled to determine a new reasonable delivery or completion date.

### 4.4

In case we exceed a bindingly agreed upon delivery date we shall be entitled to make available to the customer free of charge replacement equipment with comparable features on a preliminary basis.

If it would be unreasonable for the customer to wait any longer, additional rights can be brought forward provided, however, that we are in default, that we have been reminded of this and that a reasonable additional cure period of at least three weeks was granted to us.

### 4.5

In case of Force Majeure, e.g. military mobilization, war, civil unrest, catastrophes etc. we shall be entitled to postpone our performances for the duration of the hindrance plus a subsequent reasonable start up period or, if the performance is or becomes effectively or commercially impossible, to withdraw from the contract. This shall also apply if there is a delay in the supply of supply materials or accessory parts, also if occurring at our suppliers.

In all these cases the customer shall not be entitled to withdraw from the contract if he is responsible for the hindrances. We shall not be entitled to withdraw from the contract if there is a hindrance for which we are responsible.

### 4.6

Partial deliveries shall be allowed unless unreasonable for the customer which shall be determined by taking into account, inter alia, the type of the subject matter of our performance and its typical use by the customer.

### 4.7

If the customer is in default with the acceptance of delivery we shall, after expiry of a reasonable additional time period to be determined by us, be entitled to refuse fulfilment of the contract and to demand damages. The damages shall at least be 20 % of the agreed upon price provided, however, that the customer shall have the right to prove that our actual damage was lower. We reserve the right to demand reimbursement of higher damages.

## 4.8

In case we ship the subject matter of the contract upon request of the customer this shall occur at the customer's risk. The risk of loss or deterioration shall in all cases pass to the customer when handing on the goods to the freight forwarder, the carrier or any other person appointed to execute the shipment. In order to secure damage claims in case of transportation by post, railway, lorry or car any damages to the goods shall be certified by the recipient on the shipping documents before accepting the delivery from the post, the railway or the transportation companies.

If the customer is in default with acceptance of a delivery at the place of performance or if the customer does not as agreed upon demand delivery or if the delivery is delayed for other reasons for which the customer is responsible or if the customer requests a later delivery, we shall be entitled to demand reimbursement of damages incurred by us including additional costs.

Including without limitation we shall be entitled

- to demand immediate payment of the price of the good concerned;
- to demand as indemnification a flat amount of 1 % of the net contract value of the delivery in question for each month or part of a month reserving the right to the customer to prove that our damage was lower. We retain the right to claim higher damages incurred by us.
- to store the goods in question at the expense and the risk of the customer with the right to invoice for storage 1 % of the net contract value of the delivery in question for each month or part of a month with reserving the right with the customer to prove that our actual damage was lower. We retain the right to claim higher damages incurred by us.

## 5. Payments:

### 5.1

Payments may be made only to us or to persons empowered by us in writing. Invoices shall be payable according to the payment conditions in the order confirmation and in the invoice.

Payments shall be deemed to be made at the place where the amount becomes available to us. Cheques and bills of exchange have to be accepted by us only in case of written agreement in the individual case and only on account of performance and shall be considered as payment only upon being honoured. Discount charges and all costs shall be borne by the customer. Payments shall occur only in EURO.

### 5.2

Partial deliveries and additional equipment delivered later shall be invoiced separately unless unreasonable to the customer.

### 5.3

All our claims shall become due and payable immediately if the customer does not observe the terms of payment or if, after the contract was made, circumstances become known to us which objectively are capable to reduce the creditworthiness of our customer provided, however, that our claim for performance would be endangered by a lack of creditworthiness of the customer.

We shall be entitled to refuse rendering our performance until the customer has fulfilled all our claims which are due or given to us a reasonable security.

## 6. Retention of Title:

The following securities shall be granted to us until all claims (including balance claims out of current accounts), which we have for whatever legal reason against the customer now or in the future, have been fulfilled. We shall release upon request of the customer securities, if the realizable value of the securities exceeds the claims secured for more than a short period of time by more than 10 %. Which security shall be released shall be decided by us at our discretion.

### 6.1

We retain title to all goods delivered until all payments out of the business relationships with the customer have been received by us. In this connection also contingent claims shall be considered as open claims.

If the customer breaches the contract in a not only minor way, for instance in case of payment default, we shall be entitled to take back the subject matter of the contract unless it was paid already by the customer. If we take back or attach goods delivered under a reservation of property clause, this shall be considered as withdrawal from the contract.

After taking back goods we shall be entitled to sell these goods in any other way. The proceeds of such sale after deduction of reasonable sales costs shall be credited against the customer's liabilities.

### 6.2

In case of attachments or other acts of third parties the customer shall inform us without undue delay in text format so that we can bring forward an action according to Sec. 771 German Civil Procedure Code. If the third party cannot reimburse to us court or out-of-court costs of an action according to Sec. 771 German Civil Procedure Code, the customer shall be liable to us for these costs.

### 6.3

The customer shall be entitled to resell the goods delivered in the ordinary course of business.

The customer hereby assigns to us all claims accruing to him out of the sale of the goods to his customers or third parties, up to the amount of our final invoice. This shall apply irrespective of the fact whether the goods were sold without, prior to or after processing them. Also after this assignment the customer shall be entitled to collect the claims.

Our right to collect ourselves the claims assigned to us shall remain unaffected.

We shall, however, not collect the claims assigned ourselves and shall not revoke our consent to the sale of the goods delivered in the ordinary course of business as long as the customer fulfils his payment obligations towards us by using the proceeds received by him nor is in default with payment obligations provided, however, that there is no application to open insolvency proceedings on the assets of the customer and that the customer did not stop payments. If any of the above is the case, however, we can demand that the customer shall make known to us the claims assigned and its debtors, shall make available all information to collect the claims together with the relevant documentation and shall inform third parties about the assignment.

### 6.4

Processing or changes of the goods delivered if done by the customer shall always occur on our behalf. If the goods delivered are combined with other goods not owned by us we shall become co-owners of the new good according to the relationship of the value of the goods delivered by us to

the value of the other goods at the time of combining them.

To goods coming into existing through processing in addition the same provisions shall apply that apply to goods delivered by us under reservation of property.

### 6.5

The value of the goods under reservation of property respectively of our share in the meaning of Art. 6.4 shall be the value according to our invoice unless from the preceding provisions a higher value results.

### 6.6

The customer shall be obliged to enter into additional agreements with us concerning the reservation of property if and insofar as this is the only way to secure our claims.

### 6.7

The goods delivered under reservation of property and the claims out of resale of the goods delivered by us shall not be pledged or given as security by the customer without our prior express consent.

If the customer violates this provision, he shall reimburse to us the damage caused thereby.

### 6.8

Only the above provisions on reservation of property and assignment shall apply irrespective of legal provisions of other states and are explicitly accepted by the customer.

As a precautionary measure such securities shall be considered as being agreed upon which under the foreign law, which geographically applies to our goods delivered under reservation of property, are the equivalent to the reservation of property and the assignment. The customer shall undertake all necessary steps required by him to establish and maintain such securities.

## 7. Default, Impossibility, Withdrawal:

### 7.1

In case of non-delivery by our supplier both parties shall have the right to withdraw from the contract. The customer may withdraw only after having given a reasonable cure period of at least three weeks to us to render our performance with the notice that the customer upon expiry of the cure period will refuse acceptance of the delivery by us and will withdraw.

There shall be no requirement for granting a cure period if the customer when signing the contract agreed upon a binding delivery period with the notice to reserve the right of withdrawal after expiry of this delivery period.

### 7.2

In case of partial default with delivery or in case of partial impossibility, for which we are responsible, to render our performance the customer shall not be entitled to demand damages for not fulfilling the contract or to withdraw from the contract as a whole unless the customer can prove that there is no interest in the partial performances already rendered.

### 7.3

We are entitled to withdraw from the contract for the following reasons:

#### 7.3.1

If it becomes apparent that different from the assumption when signing the contract, the customer is not creditworthy and if our contractual claims are endangered by the lack of creditworthiness of the customer. Creditworthiness and endangering of our contractual claims can always be assumed without further requirements if a cheque or bill of exchange is not paid when due, if the customer stops making payments or if enforcement procedures at the customer are unsuccessful. It is not necessary that any

of the above occurs in relationship between us and our customer.

## 7.3.2

If it becomes apparent that the customer made untrue statements as to his creditworthiness and if these statements were of considerable importance for the entering into the contract.

## 7.3.3.

If goods delivered by us under a reservation of property clause are without justification sold in another manner than within the ordinary course of business of the customer, especially by granting as security or by pledging. The only exception is that we gave our prior consent in writing.

## 7.3.4

If after entering into the contract important circumstances for the fulfilment of the contract have without our possibility to intervene developed in a way that the performance has become impossible or unreasonably burdened for us (e.g. not receiving deliveries from our supplier without our fault or possibility to receive deliveries only under substantially worsened conditions).

## 7.3.5

If the customer materially violates his contractual duties, especially if he violates his duty of care as to dealing with the goods supplied under a reservation of property clause.

## 7.3.6

In addition, our right to withdraw and the right to withdraw of the customer shall be governed by the statutory provisions.

## 8. Liability for defects:

### 8.1

We shall be liable for defects as follows:

#### 8.1.1

In case of newly produced goods and industrial services a one year statute of limitation starting with the transfer of the risk to the goods and services shall apply to claims of the customer because of a defect, except for cases of services for buildings in the sense of Sec. 438 (1) No. 2 German Civil Code and of Sec. 634a (1) No. 2 German Civil Code. The limitations of this para 8.1.1 (statutes of limitation) shall not apply to claims for damages by the customer resulting from injury to life, body or health or from intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents or if we have maliciously concealed a deficiency or have assumed a guarantee for the quality of the goods and for claims of the customer according to the Product Liability Act.

We do not assume any liability for defects in case of used goods unless we intentionally not disclose a defect, undertake a guaranty as to the defective element or if the defect concerns essential security requirements of the good.

#### 8.1.2

The customer shall without undue delay upon delivery inspect the goods as to defects and shall inform us without undue delay in text format about defects which can be discovered; otherwise, no claims can be brought forward. The sending off in due time shall be sufficient to obey the notice period.

The customer shall have the full burden of proof for all requisites of his claim, especially as to the defect itself, as to the point in time the defect became known and that the defect was notified in due time.

Defects not discoverable by inspection which become apparent in the course of time shall be notified to us by the customer without undue delay after detection of such defect.

### 8.1.3

Notices of defects will be accepted by us only if in writing. Notices towards sales representatives or persons transporting the goods or other third parties do not constitute a notice valid as to form and notice period.

### 8.2

The existence of an ascertained defect which was brought to our knowledge by proper notice of defect creates the following rights of the customer:

If the good had a defect when handed over to the customer, the customer may initially only demand additional performance. The additional performance shall in our discretion occur by curing the defect or by delivery of a replacement good. If the additional performance is not successful or does not occur within a reasonable time period to be determined by us, the customer may in its discretion withdraw from the contract or reduce the price if the good has a defect which is not only minor; if the good has a minor defect, the customer is only entitled to demand reduction of the purchase price. The rights to withdraw or to reduce the purchase price are both available to the customer if we sincerely and finally refuse additional performance or if the additional performance is impossible or unreasonable to the customer. There shall be no claim for damages instead of performance unless we intentionally did not disclose a defect or undertook a guaranty for the quality of the good or if we intentionally or grossly negligently caused the damage.

### 8.3

If we offer to the customer in case of additional performance a replacement equipment which is free of defect but used, the customer shall in its discretion decide whether to require a new equipment and to pay for the advantages of the use the customer already had or to accept the used equipment. In the latter case he shall not have to pay an indemnification for the advantages of use.

### 8.4

The liability for defects shall not apply to changes of the goods delivered which are due to normal tear and wear. Further, it does not apply to damages which occur after passing of the risk due to wrongful or negligent treatment, excessive use, incorrect supplies or chemical, electrochemical, electronic or atmospheric influences.

### 8.5

There shall be no liability for defects which are caused by the fact that the customer used additional equipment which was not allowed by us or that work was done by persons which have not been authorized by us or the producer of the goods or that the goods delivered have been changed or enlarged by the customer unless the customer proves that such changes and enlargements are not the cause for the defect.

### 8.6

In case third parties bring forward against the customer claims for violation of intellectual property rights which are in force in Germany through goods delivered or licensed under these Terms and Conditions of Sale and Delivery, we shall reimburse to the customer all finally adjudicated costs and damage payments provided that we have been informed without undue delay in writing about such claims, received all necessary information from the customer, the customer fulfilled his general duties to cooperate, we could take the final decision whether to fight off the claim or enter into a settlement and we acted with fault as to the violation of such intellectual property rights.

If there is a final adjudication that a further use of the goods delivered by the customer would violate intellectual property rights of third parties which are in force in Germany or if in our opinion the danger exists, that such court action could be brought, we can, unless we are not liable anyway, at our own cost and in our own discretion either obtain the right that the customer may continue to use the contractual goods or replace them or change them in a way that there is no further violation of intellectual property rights or repay to the customer against taking back of the goods delivered the value of the good delivered after deducting an indemnification for the use which the customer had so far. The indemnification for use shall be ascertained on the basis of a writing off period of 3 years so that for each month of use one 1/36th of the price shall be paid.

We shall not be liable for the violation of intellectual property rights of third parties which are in force only outside of Germany.

### 8.7

Goods made available or requested by the customer:

If the customer instructs us what goods of third parties we shall use, we shall not be liable for defects of these goods unless they are known to us or obvious. Our inspection upon receipt shall be restricted to an optical inspection upon receipt; there shall be no inspection of the proper functioning.

If the customer makes goods available to us, we shall not be liable for defects of these goods unless they are known to us or obvious. Also in this case our duty to inspect shall be restricted to optically inspect upon receipt. There shall be no inspection of the proper functioning.

## 9. Other Liability:

KARL DEUTSCH Prüf- und Messgerätebau GmbH + Co. KG is liable if the damage is based on an intentional or grossly negligent breach of duty by KARL DEUTSCH Prüf- und Messgerätebau GmbH + Co. KG, its legal representatives or its vicarious agents or if there is a culpable injury to life, the body or health.

Furthermore, KARL DEUTSCH Prüf- und Messgerätebau GmbH + Co. KG is liable for damages caused by slight negligence only in the case of a breach of an essential contractual obligation, but limited to the amount of damages foreseeable and typical for the contract at the time of the conclusion of the contract. Essential contractual obligations are those whose fulfilment characterises the contract and on which the customer may rely.

Limitations of liability do not apply if KARL DEUTSCH Prüf- und Messgerätebau GmbH + Co. KG is liable on the basis of mandatory statutory provisions, particularly the product liability act. The same applies in the event of fraudulent intent.

## 10. Disposal by Customer:

The customer undertakes to dispose of the goods himself and at own expenses according to the statutory provisions; the customer shall hold us free from the obligation according to Sec. 10 (2) sentence 1 Law on Electronic Devices (duty of producer to take back equipment) and the duties in connection therewith and from claims of third parties.

## 11. Subcontractors:

We are entitled to render the contractual performances also through subcontractors. The liability for defects shall remain with us.

## 12. Set-off/Retention:

As long as no defect removal costs are affected, the customer shall only be entitled to declare a set-off

with claims which are undisputed or finally adjudicated.

In case of a justified notice of defect the retention right is given only if there is an adequate and reasonable relation between the defect and the purchase price. The customer may retain payments only if the notice of defect has been accepted by us or if the claim of the customer has been finally adjudicated.

### **13. Non-assignability:**

The claims of the customer from the business transactions with us shall be assignable only with our written consent.

### **14. General Provisions:**

#### **14.1**

Contractual provisions diverting from the above or agreements in addition to the above shall be valid only if entered into in form of a written additional agreement to the contract between the parties in which reference is made to the amended provisions. Any amendment of this form requirement shall require written form as well.

#### **14.2**

Place of performance for all duties out of this contract is Wuppertal.

#### **14.3**

The competent court for all disputes out of this contract and its validity shall, if the customer is a merchant, a legal entity of public law or a special funds erected under public law or if the customer has no general place of jurisdiction in Germany, at our seat; we shall remain entitled, however, to sue the customer at its own court.

#### **14.4**

The laws of the Federal Republic of Germany apply exclusively. The applicability of the United Nations' sales law for international sales of goods is expressly excluded.

#### **14.5**

In case one or several of the afore provisions are or become invalid or are incomplete, the validity of the remaining provisions shall remain unaffected. The parties shall in such case replace the invalid provision by a valid provision which as closely as possible reaches the economic aim of the invalid provision. The same shall apply in case of incompleteness.

#### **14.6**

This is a translation of the German version of the Terms and Conditions of Sale and Delivery. In case of any discrepancies between the two versions the German version shall prevail.