

General Terms and Conditions of Sale and Delivery KMS Trading GmbH

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| <p>1. Scope / Differing terms and conditions of the customer</p> <p>1.1 These General Terms and Conditions of Sale and Delivery (hereinafter referred to as “General Terms and Conditions”) of KMS Trading GmbH (hereinafter referred to as “we”/”our”) apply exclusively to companies within the meaning of Section 14 <i>BGB</i> [German Civil Code] (hereinafter referred to as “customer”) i.e. natural persons or legal entities that are performing their commercial or independent professional activities when concluding a legal transaction.</p> <p>1.2 These General Terms and Conditions shall apply exclusively to our business relations with our customers, also with respect to information and advice. Differing terms and conditions of the customer are expressly rejected. They shall only apply if and to the extent expressly acknowledged by us in writing. Our silence regarding such differing general terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.</p> <p>1.3 Our General Terms and Conditions shall apply in place of any general terms and conditions of the customer, also where such general terms and conditions stipulate that acceptance of an order is deemed to be the unconditional acknowledgement of the general terms and conditions, or where we deliver, after the customer has indicated the validity of its general terms and conditions, unless we have expressly waived the validity of our General Terms and Conditions in writing.</p> <p>1.4 Where our General Terms and Conditions are implemented in business with a customer, they shall also apply to all similar further business relations between the customer and ourselves unless otherwise expressly agreed in writing.</p> <p>1.5 If general contracts have been concluded between us and the customer, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific provisions are agreed.</p> <p>2. Information, properties of the products</p> <p>2.1 Information and explanations regarding our products shall be provided solely on the basis of our experience to date.</p> <p>2.2 Reference to standards, similar technical regulations and technical information, descriptions and illustrations of the delivery item in quotations and brochures and in our advertising shall only represent information about a property of our products if we have expressly declared the quality to be a “<i>property of the product</i>”. These are otherwise non-binding, general specifications of performance.</p> <p>2.3 We shall only be deemed to have given a guarantee if we have designated a property and/or the outcome of performance in writing as “<i>guaranteed by law</i>”.</p> <p>2.4 Basic data for the manufacture of the products provided to us by the customer i.e. the values and specifications stated by the customer shall be the basis, if this is possible in technical and production terms, on which we manufacture the products and we shall attempt to achieve them as closely as possible.</p> <p>2.5 The customer is responsible for checking whether our products are suitable for the intended use. We will only provide binding advice on this if we have agreed this with the customer in writing on the basis of a separate consulting order.</p> <p>2.6 We shall retain title and copyrights to illustrations, drawings, indications of weight and dimension, performance and other property specifications, estimates of cost and other documents about our products and services. The customer undertakes not to make the</p> | <p>3. Product samples, samples, customised products, assumption of costs</p> <p>3.1 Properties of our test versions, sample specimens or samples shall only become an integral part of the contract if expressly agreed in writing. We shall retain title to our test versions, sample specimens resp. samples and they may not be exploited nor made accessible to third parties without our written consent.</p> <p>3.2 If agreed, we shall make test versions, sample specimens resp. samples of the ordered products available to the customer prior to manufacturing all the products. We shall only subsequently manufacture all the ordered products after inspection and confirmation by the customer.</p> <p>3.3 The customer shall not have the right to exploit and pass on test versions, sample specimens resp. samples. We shall retain title to our test versions, sample specimens resp. samples unless a purchase was expressly agreed, and they may be neither exploited nor made accessible to third parties without our written consent. All copyrights, design rights and utility model rights to test versions, sample specimens resp. samples shall remain with the holders of the rights despite them being provided to the customer.</p> <p>3.4 If we have to deliver according to data or samples of the customer, the customer shall assume responsibility towards us that the products manufactured according to his data or samples do not infringe rights of third parties, in particular industrial property rights. If third parties assert claims against us, the customer shall indemnify us against such claims.</p> <p>4. Conclusion of contracts / Scope of delivery / Procurement risk / Guarantee / Acceptance</p> <p>4.1 Our quotations are subject to change unless they are expressly designated as binding or contain binding commitments. They are only requests to customers for orders. A contract shall be created, also in day-to-day business, only when we confirm the customer's order in writing or text form (i.e. also by telefax or email). Where delivery is made immediately, our confirmation can be replaced by our invoice.</p> <p>4.2 Our order confirmation shall be binding for the subject matter of the delivery contract.</p> <p>4.3 All agreements, collateral agreements, warranties and amendments of contracts shall only be valid when given in writing. This shall also apply to any waiver of the written form itself. Verbal amendments or modifications of contracts shall be invalid. This shall not affect the precedence of an individual agreement (Section 305 b <i>BGB</i>).</p> <p>4.4 The customer shall notify us in writing and in due time prior to conclusion of the contract of any special requirements of our products.</p> <p>4.5 We shall only be obliged to deliver from our own product stock.</p> <p>4.6 Assumption of a procurement risk is not based solely on our obligation to deliver an item which is defined solely by its class. We shall only assume a procurement risk by virtue of a separate written agreement stating “<i>we assume the procurement risk...</i>”.</p> <p>4.7 If shipment of our products is delayed at the customer's request or for reasons for which the customer is responsible, we shall have the right to store the products, beginning on expiry of the period set in the written notice that the products are ready for shipment, and to invoice the costs incurred for this at 0.5% of the net purchase price of the stored products for each full month or part thereof. This shall not affect the assertion of further rights or damages. The customer shall have the right to prove that no costs or considerably lower damages were incurred.</p> |
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Furthermore, we shall have the right, after the period expires, to dispose of the contractual products otherwise, and to deliver to the customer again after a reasonable period.

5. Delivery / Delivery time / Default in delivery

5.1 Binding delivery dates and delivery periods must be agreed expressly and in writing as binding. We shall make our best efforts to meet delivery dates and delivery periods that are not binding or approximate (approx., about etc.).

5.2 A commercial transaction for delivery by a fixed date shall only exist if we have expressly confirmed such transaction in writing or the legal requirements for a commercial transaction for delivery by a fixed date exist. The unilateral designation of a delivery as a commercial transaction for delivery by a fixed date by the customer alone shall not be sufficient for this.

5.3 Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all details about the execution of the order have been clarified and all other requirements to be fulfilled by the customer are met, in particular advance payments or securities agreed are made or provided in full. This shall apply to delivery dates and/or service dates. If the customer requests changes after placing the order, a new, reasonable delivery and/or service period shall begin upon our confirmation of the change.

5.4 The customer's interest in our delivery or performance shall only lapse, in the absence of other written agreement, if we fail to deliver material parts or deliver with delay.

5.5 If we default in delivery, the customer must first set us a reasonable extension period for performance of at least 14 days, unless this is unreasonable in a specific case. If this elapses without result, damage claims for breach of duty, for whatever reason, shall exist only in accordance with the provisions of paragraph 5.7 and 11.

5.6 We shall not be in default as long as the customer is in default in fulfilling obligations towards us; this shall also include obligations under other contracts.

5.7 If the customer incurs damage as a result of our default, the customer shall have the right, to the exclusion of further claims, to request compensation for default. It shall amount, for each full week of delay, to 0.5% but as a whole to not more than 5% of the net purchase price for that part of the total delivery which, as a result of the default, cannot be used in due time or according to the contract. No further compensation shall be due from us for damage as a result of delay. This shall not apply in the case of an intentional or fraudulent act by us, in the case of damages due to injury to life, limb or health, and in the case of default where a commercial transaction for delivery by a fixed date has been agreed within the meaning of the law (see paragraph 5.2).

5.8 We shall not be obliged to deliver as long as the means of transport to be provided by the customer is not available. However, we shall have the right, where the shipping order or call order can be executed, to arrange delivery with our own or hired means of transport. In this case, the products shall be transported at the customer's risk.

6. Delivery subject to own receipt of delivery / Force majeure and other obstructions

6.1 If, through no fault of our own, we do not receive deliveries or services from our suppliers to provide the delivery due from us under the contract, despite due and adequate stocking prior to conclusion of the contract with the customer, or they are incorrect or not in due time, or events of force majeure occur, we shall notify our customer in writing or text form in due time. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide infor-

mation and have not assumed a procurement risk. Events of force majeure are strikes, lock-outs, official intervention, epidemics or pandemics, war, energy shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.

6.2 If a delivery date or delivery period is agreed with binding force and the agreed delivery date or the agreed delivery period is exceeded due to events according to paragraph 6.1., the customer shall have the right, after a reasonable extension period has elapsed without result, to rescind the contract for that part not yet fulfilled, if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially claims for damages, in that case.

6.3 The above provision pursuant to paragraph 6.2 shall apply accordingly if a customary delivery period was exceeded for the reasons stated in paragraph 6.1, also if no fixed delivery date was contractually agreed.

7. Shipment, INCOTERMS, passing of risk, packaging, lump-sum disposal costs

7.1 Unless otherwise agreed in writing, we shall ship products uninsured at the risk and expense of the customer and ex works our respective location (INCOTERM EXW).

7.2 If our order confirmation includes a clause stipulated in the INCOTERMS, the INCOTERMS as last amended (currently INCOTERMS 2020) shall apply to the respective clause unless otherwise stated in our order confirmation.

7.3 We reserve the right to choose the route and means of transport. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result, also where delivery freight paid is agreed, shall be borne by the customer.

7.4 If shipment is delayed at the customer's request or through the customer's fault, we shall store the products at the customer's expense and risk (see clause 4.7). In this case, notice that the products are ready for shipment shall be deemed equivalent to shipment.

7.5 The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, forwarding agent, freight carrier or firms otherwise entrusted with shipment of the products but at the latest when the products leave our location.

7.6 If delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date on which the notice is sent stating that the products are ready for shipment.

7.7 Where the customer or third parties determined by the customer take over the products, times/dates for taking over the products must be agreed with us in due time.

8. Notice of defects / Breach of duty / Warranty

8.1 The customer shall give us written notice of recognisable material defects immediately but at the latest 14 days after collection, in the case of delivery ex works, otherwise after delivery. The customer shall give us written notice of hidden material defects immediately after they are detected but at the latest within the warranty period according to paragraph 8.5. In addition, the transport company must be notified immediately of any material defects recognisable on delivery and the recording of the defects must be arranged by the transport company. A notice of defects that fails to comply with requirements of time or form shall exclude any claim by the customer

- for breach of duty due to material defects. This shall not apply in the case of an intentional or fraudulent act by us, the assumption of a guarantee for the absence of defects by us or in the case of liability according to the *Produkthaftungsgesetz* [German Product Liability Act].
- 8.2 Once processing, treating, combining or mixing with other goods has begun, the products delivered, in the case of recognisable material defects, shall be deemed approved by the customer according to the contract. This shall apply if the products are shipped onward from their original destination. Before any of the above activities begin, the customer shall be responsible for clarifying, through appropriate checks in terms of scope and method, whether the delivered products are suitable for the processing purposes, process purposes and other purposes intended by the customer.
- 8.3 The customer must give notice in writing immediately of other breach of duty, setting a reasonable time limit for remedy, before asserting further rights.
- 8.4 If, by way of exception, breach of duty does not relate to the performance of work by us, the contract may not be rescinded if our breach of duty is negligible.
- 8.5 We shall provide a warranty for material defects for a period of one (1) year, calculated from the date on which the risk passes (see paragraph 7). This shall not apply if we are guilty of malice, intent or gross negligence and in the cases pursuant to the following section 11.1 (a) - (h). The limitation period in the event of a delivery recourse according to §§ 445a, 445b BGB remains unaffected.
- 8.6 Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of paragraph 11 unless these are damage claims resulting from a guarantee which is intended to cover the customer against the risk of any defects. In this case too, however, we shall be liable only for contractually typical and foreseeable damage.
- 8.7 If the customer or a third party makes an incorrect rectification, unauthorised changes are made to the products, parts are exchanged or consumables used which do not comply with the specifications or our operating or maintenance instructions are not complied with, we shall not be liable for the resulting consequences. This shall not apply, however, if the warranty claim cannot be proved to be due to one of the above-mentioned reasons for exclusion.
- 8.8 Our warranty and liability arising therefrom shall also be excluded if defects and damages connected therewith cannot be proved to be due to defective material or to defective execution or defective instructions on use. Warranty and liability arising therefrom shall in particular be excluded with respect to the consequences of incorrect use, excessive use or inappropriate storage conditions, for example the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with the intended average standard influences. This shall not apply in the case of fraudulent or intentional conduct by us, or injury to life, limb or health, or liability according to the *Produkthaftungsgesetz*.
- 8.9 Claims based on defects shall not exist in the case of only a negligible deviation from the agreed or customary condition or usefulness.
- 8.10 Recognition of breach of duty, in particular in the form of material defects, shall only be valid when given in writing.
- 8.11 The place of rectification shall be the place to which we have delivered in accordance with the agreement. If the costs of rectification increase due to the fact that the customer has taken the products to a place other than the place of our delivery/service, the resulting costs shall be borne by the customer.
9. **Prices / Payment terms / Objection of uncertainty**
- 9.1 All our prices are in principle quoted in EUROS and exclude packaging, freight and value added tax at the legally valid rate which shall be borne by the customer. Prices and additional charges shall be determined by our general price list, valid at the time the contract is concluded, unless otherwise agreed.
- 9.2 We are entitled, at our reasonable discretion (§ 315 BGB), to unilaterally increase the prices for our deliveries and services in the event of an increase in manufacturing, material and/or procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to statutory requirements, environmental regulations, currency regulations, customs changes and/or other public charges if these directly or indirectly influence the costs of our contractually agreed deliveries and services and increase them by more than 5% and if there are more than 4 months between the conclusion of the contract and delivery/service. An increase in the aforementioned sense shall be excluded if the cost increase for individual or all of the aforementioned factors is offset by a cost reduction for other of the aforementioned factors in relation to the total cost burden for the delivery/service (cost netting). If the aforementioned cost factors are reduced without the cost reduction being offset by an increase in other of the aforementioned cost factors, the cost reduction shall be passed on to the customer in the form of a price reduction. If the new price is 20% or more above the original price due to our aforementioned right to adjust prices, the customer shall be entitled to withdraw from contracts not yet fully performed with regard to the part of the contract not yet performed. However, he may only assert this right immediately after notification of the increased remuneration.
- 9.3 Our invoices are payable within 30 days of delivery of the products without any deduction unless otherwise agreed in writing.
- 9.4 If the customer fails to make payment, the customer shall be in default in payment, also without notice, within 31 days of the delivery.
- 9.5 Once in default, default interest shall be charged of 9 percentage-points above the respective applicable base interest rate when the claim for payment falls due. We reserve the right to assert damage in excess of this.
- 9.6 The date payment is received by us or credited to our account shall be deemed the payment date.
- 9.7 The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments or agreements on payment by instalment, in this case all the customer's liabilities due to us shall become payable immediately.
- 9.8 If payment terms are not met or circumstances known or recognisable that, in our proper commercial judgement, give rise to justified doubt as to the customer's creditworthiness, also including such facts that already existed when the contract was concluded but which were unknown to us or did not have to be known to us, we shall have the right, notwithstanding further statutory rights in such cases, to cease further work on current orders or the delivery, and to request advance payments or the provision of securities which are acceptable to us for deliveries still outstanding, and, after expiry of a reasonable extension period to provide such securities without result, to rescind the contract, irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by failure to fulfil the contract.
- 9.9 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment.
- 9.10 The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.

10. Retention of title

10.1 We retain title to all goods we deliver (hereinafter referred to as a "goods subject to retention of title") until all our claims under the business relationship with the customer, including claims arising in the future from contracts concluded at a later date, are paid. This shall also apply to any balance in our favour if any or all claims are incorporated by us in a current account and the balance has been established.

10.2 The customer shall insure goods subject to retention of title adequately, in particular against fire and theft. Claims against the insurance arising from a case of damage relating to goods subject to retention of title are herewith already assigned to us in the value of the goods subject to retention of title.

10.3 The customer shall have the right to resell the delivered products in the normal course of business. The customer is not permitted to make other disposals, especially pledging or granting of equitable lien. If the goods subject to retention of title are not paid for immediately by a third-party purchaser when resold, the customer shall be obliged to resell under retention of title only.

The right to resell goods subject to retention of title shall cease to apply at once if the customer suspends its payment or defaults in payment to us.

10.4 The customer already herewith assigns to us all claims including securities and ancillary rights that accrue to the customer against the end user or third parties from or in connection with the resale of goods subject to retention of title. The customer may not reach an agreement with its purchasers that excludes or impairs our rights in any way or nullifies the assignment of the claim in advance. If goods subject to retention of title are sold with other items, the claim against the third-party purchaser in the amount of the delivery price agreed between ourselves and the customer shall be deemed assigned unless the amounts applicable to the individual goods can be determined from the invoice.

10.5 The customer shall have the right to collect claims assigned to us until revoked by us, this revocation being admissible at any time. At our request, the customer shall be obliged to give us the information and documents in full required to collect assigned claims and, unless we do so ourselves, notify its purchasers immediately of the assignment to us.

10.6 If the customer incorporates claims from the resale of goods subject to retention of title in a current account relationship with its purchasers, the customer shall already now assign to us any recognised closing balance resulting in its favour in the amount which corresponds to the total amount of the claim from the resale of our goods subject to retention of title, such claim being transferred to the current account relationship.

10.7 The customer must notify us immediately if the customer has already assigned claims to third parties arising from the resale of products delivered or to be delivered by us, especially due to real or unreal factoring, or made other agreements which can impair our current or future security interests according to paragraph 10.

In the case of unreal factoring, we shall have the right to rescind the contract and request the products already delivered to be surrendered. This shall also apply to real factoring if, according to the contract with the factor, the customer cannot freely dispose of the purchase price of the claim.

10.8 In the event of conduct in breach of the contract through the customer's fault, especially in the case of default in payment, we shall have the right, without previously having to rescind the contract, to take back all goods subject to retention of title. The customer shall be obliged in this case to surrender the goods subject to retention of title at once. We may at any time during normal business hours enter the customer's business premises to determine the stock of the goods delivered by us. Taking back the goods subject to retention

of title shall only involve rescinding the contract if we expressly state this in writing or this is prescribed by compulsory statutory provisions. The customer shall notify us immediately in writing of any third-party attachment of goods subject to retention of title or any claim assigned to us.

10.9 If the total value of the securities existing for us according to the foregoing provisions exceeds the secured claims by more than 10%, we shall be obliged, at the customer's request, to release securities at our discretion.

10.10 We treat and process goods subject to retention of title as manufacturer within the meaning of Section 950 *BGB* but without obligation on our part. If goods subject to retention of title are processed or connected inseparably with other items that do not belong to us, we shall acquire co-ownership in the new item in the ratio of the invoice amount for our goods to the invoice amounts for the other processed or connected items. If our goods are connected with other movable items into a uniform item that is deemed the principal item, the customer shall now already assign co-ownership thereof to us in the same ratio. The customer shall maintain ownership or co-ownership free of charge on our behalf. Rights of co-ownership accordingly arising shall be deemed goods subject to retention of title. The customer shall be obliged at any time at our request to provide us with the information required to assert our ownership or co-ownership rights.

10.11 If the customer suspends payments or files for insolvency, the customer shall no longer be entitled to sell, process, combine or mix goods subject to retention of title (see clause 10.1). In this case, the customer shall immediately store and mark the goods subject to retention of title separately and hold in trust for us any amounts due to us from assigned claims for product deliveries and received by the customer.

10.12 If, in the case of deliveries abroad, certain measures and/or declarations are required on the part of the customer in the importing country in order for the aforementioned retention of title or the other rights referred to therein to become effective, the customer shall notify us of this in writing or in text form and shall carry out or submit such measures and/or declarations at its own expense without delay. We shall cooperate to the necessary extent. If the law of the importing country does not permit a retention of title but allows us to reserve other rights to the delivery item, we may exercise all such rights at our reasonable discretion (§ 315 *BGB*). To the extent that an equivalent security of our claims against the customer is not achieved thereby, the customer shall be obliged to provide us with other suitable securities in the delivered goods or other securities at our reasonable discretion (§ 315 *BGB*) at its own expense without undue delay.

11. Liability / Exclusion and limitation of liability

11.1 We shall be liable in principle only for intent and gross negligence by us and our legal representatives and vicarious agents. Our liability and that of our legal representatives and vicarious agents for slight negligence shall, therefore, be excluded except in the following cases:

- (a) breach of material contractual obligations; material contractual obligations are obligations whose fulfilment determines the contract and on whose compliance the customer may rely;
- (b) if, in the event of breach of obligations within the meaning of Section 241 (2) *BGB*, it is no longer reasonable to expect the customer to accept our performance;
- (c) in the event of injury to life, limb and health;
- (d) where a guarantee for the quality of performance, the existence of successful performance, or a procurement risk has been assumed;
- (e) fraudulent intent;
- (f) initial impossibility;
- (g) claims under the *Produkthaftungsgesetz*; or
- (h) other cases of liability prescribed by law.

- 11.2 If we or our vicarious agents are only responsible for slight negligence and none of the cases mentioned in clause 11.1, clauses (a), (c), (d), (e), (g) and (h) apply, our liability is limited to a maximum of EUR 5,000,000.00 and - even in the event of a breach of material contractual obligations - to the damage typical and foreseeable at the time of conclusion of the contract. Any further liability is excluded.
- 11.3 Liability for damages other than the liability stipulated in the above paragraphs shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to damage claims arising from fault when concluding a contract, due to other breach of duty or due to claims in tort for compensation in respect of property damages according to Section 823 *BGB*.
- 11.4 Exclusion resp. limitation of liability according to the foregoing paragraphs 11.1 to 11.3 shall apply to the same extent for the benefit of our executives and non-executive employees and other vicarious agents as well as our sub-contractors.
- 11.5 Claims by the customer for damages arising from this contractual relationship may only be asserted within a preclusion period of one (1) year as of commencement of the statutory limitation period. This shall not apply if we are guilty of malice, intent or gross negligence and in the cases pursuant to section 11.1 (a) - (h). The limitation period in the case of a delivery recourse according to §§ 445a, 445b *BGB* remains unaffected.
- 11.6 There is no connection between the reversal of the burden of proof and the foregoing provisions.
- 12. Export control / Intra-Community trade**
- 12.1 In the absence of other written agreement, the delivered product is intended at all times to remain and to be used and sold in the first country of delivery agreed with the customer.
- 12.2 The export of certain goods may be subject to authorisation e.g. because of their nature or intended purpose or final destination. This applies in particular to so-called dual-use goods. The customer itself shall be obliged to comply strictly with the relevant export regulations and embargos for these goods (products, goods, software, technology), especially of the European Union (EU), Germany resp. of other EU Member States and, if applicable, the USA.
- 12.3 The customer shall in particular verify and ensure that
- (a) the products provided are not intended for use in armaments, nuclear facilities or weapon technology;
 - (b) no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, software and technology;
 - (c) no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with US certificates of origin without relevant approval;
 - (d) no companies and persons are supplied that are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terror List;
 - (e) the early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.
- The customer undertakes to send us immediately on request but at the latest within 10 days the original relevant end-use certificates in the form prescribed by the Bundesamt für Wirtschaft und Abfuhrkontrolle [Federal Office of Economics and Export Control].
- 12.4 Our products may only be accessed and used if they are consistent with the above verification and comply with the assurance; otherwise we shall not be obliged to perform.
- 12.5 Where products are passed on, the customer undertakes to oblige other recipients in the same way and to notify them of the need to comply with such legal provisions.
- 12.6 The customer undertakes to indemnify us against all damages resulting for us from the negligent breach of the foregoing obligations pursuant to paragraphs 12.1 to 12.5. The scope of the damages to be reimbursed shall also include the reimbursement of all necessary and reasonable expenses which we incur or have incurred, in particular the costs and expenses for any legal defence and any official administrative fines or penalties.
- 12.7 In the event of the negligent breach of the foregoing obligations according to paragraphs 12.1 to 12.5 by the customer, we shall have the right to rescind the purchase contract.
- 12.8 The customer confirms the correctness of its VAT ID no. which the customer shall give us without being asked to do so immediately after the contract is concluded. The customer undertakes to notify us and its competent domestic tax authority of any change in its name, address, company name and VAT ID no. immediately. If a delivery is regarded as subject to tax due to errors in specifying the name, company name, address or VAT ID no., the customer shall refund the tax to be paid by us as a result.
- 12.9 In the case of double taxation - sales and purchase tax in the customer's country, turnover tax in Germany - the customer shall pay to us, waiving the defence of disenrichment, the excess turnover tax paid i.e. the turnover tax not owed due to the duty to pay sales and purchase tax.
- 13. Third-party property rights**
- 13.1 We shall only be obliged to supply the products free of third-party rights or claims which are based on industrial property rights or other intellectual property, and which we were aware of when the contract was concluded, or were not aware of as a result of gross negligence, provided that the right or claim is based on industrial property rights or other intellectual property
- (a) according to the law of the Federal Republic of Germany, if our customer has its registered office or branch there; or
 - (b) according to the law of a foreign state, if the customer has its registered office or branch there; or
 - (c) according to the law of a third country only if we have expressly agreed in writing the use or sale of our products in that third country with the customer.
- 13.2 If a third party asserts justified claims against our customer to the products supplied by us pursuant to paragraph 1 above, we shall be liable to the customer within the period determined in paragraph 8.5 as follows:
- (a) We shall at our option first try at our expense to obtain either a right of use for the relevant products or change the products so that the property right is not infringed, or exchange the products. If we cannot do so on reasonable conditions, the customer shall be entitled to its statutory rights which shall, however, be governed by these General Terms and Conditions.
 - (b) The customer shall be obliged to notify us immediately in writing of claims asserted by a third party, not to acknowledge any infringement, and to reserve for us all defensive measures and settlement negotiations. If the customer ceases using the products for reasons of loss minimisation or other good cause, the customer shall be obliged to advise the third party that cessation of use is not deemed to be an acknowledgement of an infringement of property rights. If an action for infringement of property rights is brought against the customer by third parties resulting from the use of products supplied by us, the customer undertakes to notify us of this immediately

and to give us the opportunity to participate in any legal action. The customer shall support us in every way in conducting such legal action. The customer shall not take any action which could impair our legal position.

13.3 Our obligation according to paragraph 1 shall not relate to cases where

- (a) the infringement of property rights results from the fact that, in manufacturing the products, we acted on information or other data that were provided or specified to us by the customer; or
- (b) the infringement of property rights is due to an application of the customer which we could not foresee or is caused by the fact that the products are changed by the customer or mixed or used together with products which were not supplied by us.

13.4 This shall not affect our liability according to paragraph 11.

14. Confidentiality/Data protection

14.1 The customer undertakes to keep confidential such facts, documents and knowledge of which the customer becomes aware in the course of performing the business relations with us, and which contain technical, financial, business or market-related information about our company, if we have specified that the respective information must be kept confidential or we have an obvious interest in its confidentiality (hereinafter collectively referred to as confidential information). The customer shall use the confidential information solely for the purpose of implementing and performing the contractual relationship with ourselves in accordance with the contract and the individual contracts based on this.

14.2 Disclosure of confidential information to third parties by the customer shall require our express and prior written consent.

14.3 There shall be no obligation to maintain confidentiality according to paragraph 14.1 above if it is proved that the respective confidential information:

- (a) is state of the art in the public domain or this information becomes state of the art without any action by the customer; or
- (b) was already known to the customer or is disclosed by a third party authorised to do so; or
- (c) is developed by the customer without any action by us and without exploitation of other information or knowledge acquired through the contractual contact; or
- (d) must be disclosed due to obligatory statutory provisions or orders by a court or official authority.

14.4 With regard to the customer's personal data, we shall comply with the relevant statutory provisions, in particular the General Data Protection Regulation (GDPR). Personal data of the customer will be collected, stored, processed and used by us if, to the extent and for as long as this is necessary for the establishment, performance or termination of the contract with the customer. Any further collection, storage, processing and use of the customer's personal data will only take place if required or permitted by law or if the customer has consented thereto. The customer is aware that the collection, processing and use of the contact data of the customer's contact persons (name, e-mail addresses, etc.) is necessary on the basis of Art. 6 Para. 1 lit. b) GDPR in order to carry out pre-contractual measures and fulfil the contract with the customer. In particular, we are entitled to transfer the data to third parties if and insofar as this is necessary for the implementation of pre-contractual measures and fulfilment of the contract (e.g. for delivery, invoicing or customer care) in accordance with Art. 6 Para. 1 lit. b) GDPR or fulfilment of a legal obligation in the sense of Art. 6 Para. 1 lit. c) GDPR. Furthermore, we may also forward this data to third parties (e.g. debt collection companies) for the purpose of enforcing claims in accordance with Art. 6 Para. 1 lit. b) and/or f) GDPR.

In addition, our data protection declaration applies, which can be viewed and printed out at <https://kms-trading.com/datenschutz/>.

15. Compliance

We have declared the idea of compliance and ethically correct behaviour to be a central corporate value. We therefore also expect our customers to observe the applicable national and international legal provisions as well as the requirements of the UN Global Compact Initiative and the Responsible Care Global Charter. This applies in particular to requirements for labour and employee protection, compliance with human rights, the prohibition of child labour, the punishability of corruption and the granting of advantages of any kind, antitrust and competition law, and environmental protection.

16. Place of performance / Place of jurisdiction / Applicable law

16.1 Place of performance for all contractual obligations is - except where an obligation to be performed at the place of business of the customer is assumed - or unless otherwise stated in our order confirmation - Oberhausen/Federal Republic of Germany.

16.2 All disputes shall be settled, if legally admissible, exclusively before a court of law which in Oberhausen/Federal Republic of Germany. We also have the right, however, to bring an action against the customer at its place of general jurisdiction.

16.3 All legal relations between the customer and ourselves shall be governed exclusively by the law of the Federal Republic of Germany, in particular to the exclusion of the UN Sales Convention (CSIG).

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