

GENERAL TERMS AND CONDITIONS

effective from July 1, 2009



1. Scope

The terms and conditions stated herein (hereinafter the "Terms") apply to all offers, deliveries and services of KETTENBACH GmbH & Co. KG (hereinafter "KETTENBACH") to its customers (hereinafter "Purchaser"). The Terms shall only be applicable if the Purchaser is an entrepreneur (§ 14 German Civil Code), a legal person under public law or a special fund under public law. The Terms shall apply as a framework in its current version to all future contracts regarding the sale and/or delivery of movable goods with the same Purchaser, without the need for KETTENBACH to re-notify the Purchaser of the Terms in any single case. Any conflicting, deviating or additional conditions of the Purchaser shall not be binding notwithstanding any failure by KETTENBACH to object to them specifically.

2. Formation of Contract

2.1 A quotation by KETTENBACH does not constitute a binding offer. A contract shall be formed only by KETTENBACH's written acceptance of, or by KETTENBACH's delivery pursuant to, the Purchaser's order and shall be governed exclusively by the terms of the relevant acceptance or delivery documents and by the Terms which shall be deemed accepted by the placing of an order or by the acceptance of delivery by the Purchaser. Individual agreements with the Purchaser shall prevail over these Terms. For the content and subject of such individual agreements a written contract or confirmation by KETTENBACH shall be decisive.

2.2 Title to and copyright in all cost estimates, drawings and other documents shall remain with KETTENBACH. All such documents and all other information and data received by the Purchaser from KETTENBACH which are not common knowledge in the industry shall be held in confidence by the Purchaser and shall not be disclosed to third parties without KETTENBACH's prior written consent.

3. Prices, Terms of Payment

3.1 All KETTENBACH prices are stated exclusive of customs duties, if any, and of value added tax in the relevant statutory amount. They are stated ex works ("EXW" according to Incoterms 2000) and net of costs for packaging, insurance or transportation.

3.2 Prices shall remain firm for a period of four months from the date of KETTENBACH's order acknowledgement. Thereafter, the price quoted in the then current price list of KETTENBACH shall apply and be invoiced.

3.3 In case of net purchase orders of less than EUR 250.-, a surcharge of EUR 25.- shall be due. KETTENBACH shall be entitled to reduce or increase the purchase order so as to arrive at terms most favourable to the Purchaser.

3.4 Unless agreed otherwise, all payments to be made by the Purchaser shall be due without deduction within ten days from invoice date and delivery or acceptance of goods respectively. All payments shall be deemed made only once KETTENBACH has actually received the relevant funds. Notwithstanding any instructions of the Purchaser to the contrary, all payments will first be applied against interest and cost and then against the oldest amounts outstanding. Bills of exchange and cheques will be accepted only upon specific agreement, subject to receipt of the proceeds and without cost or expense to KETTENBACH.

3.5 Upon expiration of the payment period (Section 3.4) the Purchaser is in default, without the need for a prior reminder. In this case KETTENBACH shall be entitled to demand default interest in the applicable statutory amount. The right to assert claims for further damages due to the default shall remain unaffected.

3.6 The Purchaser is only entitled to set off claims if his counterclaim is uncontested or has been established in a final judgement. The Purchaser is only entitled to assert rights of retention to the extent that his counterclaim is based on the same contract and is uncontested or has been established in a final judgement.

3.7 If KETTENBACH becomes aware of a significant deterioration in Purchaser's financial situation following the conclusion of the contract (for example because the Purchaser is in default of payment) KETTENBACH shall be entitled to only carry out any outstanding deliveries upon advance payment or the rendering of collateral; if such advance payments or collateral have not been rendered even after the expiry of a reasonable period of grace KETTENBACH may cancel the contract wholly or in part; KETTENBACH shall remain free to assert any other rights. In case of contracts regarding the manufacturing of unfungible goods (manufacture to customer's specification), KETTENBACH shall be entitled to cancel the contract immediately.

4. Delivery

4.1 Delivery dates and delivery periods shall only be binding when confirmed by KETTENBACH in writing and further provided that the Purchaser has furnished KETTENBACH with all information and documents necessary for making delivery.

4.2 In case a delivery date or a delivery period is not met, the Purchaser shall first request KETTENBACH to make delivery within a reasonable grace period failing which delivery will be rejected. The Purchaser shall be entitled to rescind the contract only once delivery has not been made within such grace period; this shall in case of default with respect to a partial delivery or partial performance apply only if as a consequence thereof the Purchaser does objectively not have an interest in having delivery or performance made in part only.

4.3 In case delivery cannot be made for reasons for which the Purchaser is responsible, or in case the Purchaser refuses to accept delivery without sufficient cause, KETTENBACH shall be entitled to store the products appropriately at the risk and expenses of the Purchaser. Without prejudice to any other rights it may have, KETTENBACH may rescind the contract when the Purchaser does not accept delivery before the lapse of a reasonable grace period fixed by KETTENBACH.

4.4 In case delivery or other performance is delayed due to unforeseeable and unavoidable events such as war, natural disasters, lack of energy or resourced, manufacturing and operating disturbances for which KETTENBACH is not responsible as, e.g., strike and lockout, or to directives of authorities, periods for delivery and other performance shall be reasonably extended. KETTENBACH and the Purchaser shall be entitled to rescind the contract if the disturbing event or circumstance has lasted four months and if it becomes unreasonable to wait until the relevant event or circumstance ceases to exist.

4.5 KETTENBACH shall be permitted to make delivery in part and in other deviation from the purchase order as, e.g., with respect to form and colour, to the extent this is reasonable. KETTENBACH shall further be entitled to make delivery in greater or lesser quantities within the tolerances that are customary in the industry.

4.6 Delivery shall be made ex works KETTENBACH ("EXW" according to Incoterms 2000). Shipment will be made in an appropriate way determined by KETTENBACH using customary packaging. Shipments will be insured against risks of transportation only upon request and at the expense of the Purchaser.

4.7 The risk shall pass to the Purchaser upon delivery of the shipment to the carrier at the latest ("EXW" according to Incoterms 2000). In case an acceptance is agreed between the parties, the acceptance will be relevant for the passing of risk. If delivery or shipment is delayed for reasons for which the Purchaser is responsible, the risk shall pass to the Purchaser on the day of KETTENBACH's notice that shipment can be made.

5. Duty of Inspection, Warranty

5.1 The Purchaser shall inspect the products delivered without delay upon receipt with respect to damages or defects. Shipments marked "fragile" shall be inspected for damages immediately upon receipt, and if possible in the presence of the carrier. In any event, the products shall be inspected within one week from receipt; in case of defects which can even in case of diligent inspection not be discovered within this period, KETTENBACH shall upon discovery be informed without delay in writing.

5.2 KETTENBACH warrants that upon delivery the product is of the agreed quality. The agreed quality will exclusively be determined by the specific written agreements or confirmations by KETTENBACH concerning the characteristics, features and specifications of the delivered product. KETTENBACH accepts no liability for public statements (e.g. advertisements) of the manufacturer or of other third parties. The legal provisions on defects remain unaffected. Information provided in sales catalogues, price lists and any other informative literature provided by KETTENBACH or any other descriptions of the delivered product or public statements shall under no circumstances constitute a guarantee for any specific quality of the delivered product; for such specific quality guarantee only a written agreement or confirmation of KETTENBACH shall be decisive. Unless specifically agreed otherwise, deviations which are customary in the industry are permitted. All defects subject to warranty shall be eliminated at KETTENBACH's option by way of repair or replacement and shall allow such time and opportunity as is necessary for repair or replacement. The cost of material, transportation and labour accruing in connection with repair or replacement shall be borne by KETTENBACH provided that the defects are claimed for justified reasons. In case the Purchaser's claim relating to defects is unjustified, the Purchaser shall reimburse KETTENBACH for any resulting expenses.

5.3 Purchaser shall alone have the right to remedy the defect himself or through a third party upon prompt notice to KETTENBACH in emergencies or to avert disproportionately greater damage or if KETTENBACH is in default of reme-

dying the defect. The Purchaser shall immediately inform KETTENBACH of any such remedy, in advance whenever possible. Such right to remedy the defect himself does not exist if KETTENBACH would be entitled to refuse the respective elimination of the defect according to the provisions set by law. KETTENBACH shall not be liable for defects resulting from inappropriate or improper use, faulty handling or by normal wear and tear provided that KETTENBACH does not bear any responsibility for the damage.

5.4 In case repair or replacement fails to eliminate defects within a reasonable period, the Purchaser may with respect to the defective part of a shipment rescind the contract or may request that the purchase price be reasonably reduced.

5.5 The period of limitations for claims for defects shall be twelve months from the delivery of the product to the Purchaser. For claims for damages due to other reasons than defects of the delivered product or for rights of Purchaser with respect to defects concealed in bad faith or defects caused intentionally the statutory period of limitations shall apply.

5.6 Purchaser shall only be entitled to cancel or terminate the contract due to a breach of contract that is not a defect if KETTENBACH is responsible for such breach of contract. The right to terminate the contract at anytime (especially §§ 651, 649 German Civil Code) is excluded. Apart from that the conditions set by law and the legal consequences are applicable.

6. Liability

6.1 KETTENBACH shall be liable for damages

- (I) for damage which has been caused by it or its servants intentionally or in a grossly negligent manner;
- (II) for breach of material contractual obligations in a slightly negligent manner but only in the amount of the foreseeable damage typical to such contracts;
- (III) pursuant to the provision of the Product Liability Act and any other mandatory statutory liability provisions.

6.2 If none of the cases listed in section 6.1 is fulfilled KETTENBACH shall not be liable for damages.

6.3 Sections 6.1 and 6.2 shall apply to all claims for damages irrespective of their legal reason, in particular also tort, positive, breach of contract and breach of duty prior to contract.

6.4 The Purchaser is obliged to take appropriate measure to avert and limit any damage.

7. Resale

7.1 The Purchaser may resell the KETTENBACH special products only in their unaltered original packaging.

7.2 In case Purchaser transfers the delivered product unchanged or after processing, transformation, mixing or blending with other goods, Purchaser shall hold harmless KETTENBACH from claims of third parties for product liability, provided Purchaser is responsible for the defect causing the liability.

8. Retention of Title

8.1 Title to the products delivered shall remain with KETTENBACH until all amounts owing in connection with the business relationship between the Purchaser and KETTENBACH shall be paid. In case of a current account, the retained title shall secure all balances due to KETTENBACH.

8.2 The Purchaser may sell the products only within the ordinary course of its business and only as long as the Purchaser is not in default with payments. The Purchaser shall not be entitled to pledge the products, transfer title to the products or dispose of the products in any other way affecting KETTENBACH's title. The Purchaser hereby assigns to KETTENBACH all receivables stemming from a sale of the products; KETTENBACH accepts such assignment. In case the products are sold after their processing or combination, mixing or blending with other products or together with other products, the assignment of receivables shall be agreed only to the extent reflecting the purchase price agreed between KETTENBACH and the Purchaser plus a safety margin of 10% of such price. The Purchaser shall revocably be authorized to collect the receivable assigned for the account of KETTENBACH in his own name. KETTENBACH may revoke the Purchaser's authority and its rights to sell the products if the Purchaser is in breach of its obligations towards KETTENBACH.

8.3 The Purchaser shall treat the products subject to retention of title with care for the duration of the retention of title. Upon request of KETTENBACH the Purchaser shall insure the products subject to retention of title in a reasonable manner, to deliver the respective proof of insurance and to assign its claims under the contract of insurance to KETTENBACH.

8.4 Any processing or transformation of the products by the Purchaser shall be deemed made for KETTENBACH's account. In case the products are processed together with other products, KETTENBACH shall acquire a pro-rata co-ownership interest in the new products considering the value of the products and that of the other processed products at the time of processing. In case the products are mixed or blended with other products so that no separation is possible, KETTENBACH shall acquire a pro-rata co-ownership interest in the new products considering the value of the products and that of the other products at the time of mixing and blending. If the mixing or blending is made such that products owned by the Purchaser are to be considered the main product, it shall be deemed agreed that the Purchaser transfer a pro-rata co-ownership interest to KETTENBACH. Any products with respect to which sole title or a co-ownership interest so exists shall be held in custody for KETTENBACH by the Purchaser.

8.5 The Purchaser shall at any time furnish to KETTENBACH with all desired information with respect to the products and to the rights as signed to KETTENBACH hereunder. The Purchaser shall notify KETTENBACH immediately of all seizures or claims advanced in respect of the products by third parties, and shall at the same time furnish KETTENBACH with all necessary documents. The Purchaser shall also at the same time advise the third party of KETTENBACH's retention of title. The cost of defending against such seizures and claims shall be borne by the Purchaser.

8.6 In case the value of the security exceeds KETTENBACH's aggregate receivables by more than 10%, the Purchaser shall be entitled to request a release with respect to such excess.

8.7 In case the Purchaser defaults with performance of its obligation towards KETTENBACH, KETTENBACH may, without prejudice to any of its other rights, request return of the products after rescission of the contract and may dispose of the product otherwise in order to obtain satisfaction of the Purchaser's outstanding debts.

8.8 In case deliveries are made to other jurisdictions where the foregoing rules relating to retention of title will not afford the same protection as in Germany, the Purchaser shall take all action necessary to provide KETTENBACH with corresponding security. The Purchaser shall cooperate with respect to all steps which are necessary or beneficial for the validity and enforceability of such security as, e.g., registration, publication, etc.

9. Return of Products

Unless cases of warranties are concerned the return of sold products is excluded. In such cases KETTENBACH reserves the right to send back any goods returned to KETTENBACH at the expense of the Purchaser.

10. Miscellaneous Provisions

10.1 Place of performance for all contractual obligations from the business relationship with the Purchaser shall be Eschenburg. Without prejudice to any other exclusive place of jurisdiction, the courts at the place of performance shall be solely competent with respect to any litigation relating to or in connection with the business relationship. KETTENBACH shall, however, be entitled to bring legal action against the Purchaser at any other place of competent jurisdiction.

10.2 The entire legal relationship between KETTENBACH and the Purchaser shall be governed by German law; the application of the UN Uniform Sales Law shall be excluded.

10.3 The parties are aware of the risk that individual or several provisions of the agreement and/or of these Terms may be invalid or void contrary to the present perception of the parties. Even for such cases the parties want to exclude any doubt about the validity of the agreement and/or these Terms. Therefore, the agreement and/or these Terms shall always and not only in case of doubt remain valid also if individual or several provisions of the agreement and/or of these Terms are invalid or void. In such case KETTENBACH and the Purchaser undertake to replace the invalid provision by such valid provision which comes closest to the economical purpose of the invalid

10.4 The Purchaser shall not be entitled to assign any rights from agreements with KETTENBACH to a third party.