

# General Terms and Conditions of Business and Delivery of A. Kayser Automotive Systems GmbH

## 1. Scope and Close of Contract

1.1. The following Terms and Conditions shall be applicable to all deliveries and services executed by us on the basis of an order placed by an entrepreneur. Entrepreneur within the meaning of these Terms and Conditions of Delivery shall be deemed to be any natural and legal entity, acting at the time of conclusion of a legal transaction in a corporate capacity or in a capacity as self-employed professional (entrepreneur). Any deviation from the Terms and Conditions set forth hereinafter shall solely be acknowledged, if such have been confirmed by us in writing. Otherwise, at the latest upon acceptance of our deliveries without reservation, our Terms and Conditions of Delivery shall be deemed as having been acknowledged. Acknowledgement by the contractor by making reference to deviating conditions is herewith contradicted.

1.2. All agreements, reached between us and the purchaser as regards performance of a contract, have to be in the written form. An order shall only then be deemed as accepted, if confirmed in writing. The same shall apply to subsequent amendment of an order. Subsidiary agreements shall solely be valid, if confirmed in the written form.

1.3. Our quotations shall be subject to confirmation, quotations shall be non-binding. Documents, illustrations, drawings, weights and measures pertaining to the quotation shall only be approximate specifications, if not expressly identified as binding.

1.4. We shall reserve unrestricted ownership and copyright exploitation rights to all quotations, illustrations and other documentation; such data may solely be disclosed to third parties after our express prior consent. If we are not awarded the order, illustrations and other documentation pertaining to quotations have to be returned to us upon request without delay. The same shall apply to the purchaser's documentation. However, such documentation may be disclosed to third parties, whom we are permitted to commission with supplying goods and services.

1.5. In the event of call-off orders, we shall be entitled to procure the materials for the entire order and to manufacture the total quantity ordered immediately. Any possible amendment requests by the purchaser can thus no longer be taken into account after awarding of order; unless if this has been expressly agreed.

## 2. Prices

2.1. If nothing to the contrary has been expressly agreed, our prices shall be applicable ex works as specified in the respectively valid price list or in our quotation and shall not include freight, packaging, postage, insurance and other consignment costs, Prices do not include VAT. In addition to the price, the respectively prevailing VAT on the date of delivery shall be due and payable. If nothing to the contrary has been expressly agreed, prices specified in our quotations shall only relate to the quantities specified in the quotation and solely for the periods as specified in the quotation.

2.2. Packaging shall be charged at cost price. Additional costs for urgent and express goods as well as fees for bulk goods shall be borne by the purchaser.

2.3. Additional costs incurred due to subsequent amendment of order shall be charged to the ordering party.

## 3. Payment

3.1. Payment shall be made without deduction within 30 calendar days of date of invoice.

3.2. Bills of exchange shall solely be accepted as means of payment without granting discount after specific agreement. Discounts and charges shall be borne by the purchaser. Such payments shall be made by the purchaser immediately after invoice has been issued. In the event of accepting bills of exchange, we shall not

be liable for punctual presentation, protest, notification and reversing of bill, if we or our vicarious agents are not to blame for intent or gross negligence.

**3.3.** Pre-payment can be demanded in the event of special custom-made products or provision of unusual products or in the case of advance performance.

**3.4.** The purchaser shall solely be entitled to set-off against an undisputed claim or claim established by declaratory judgement. A purchaser, who is deemed to be an entrepreneur within the meaning the "HGB" / German Commercial Code, shall not be entitled to retention or set-off rights. However, rights pursuant to § 320 "BGB" / Federal Civil Code shall remain upright, if and insofar as we have not complied with our warranty obligations.

**3.5.** All cash or non-cash payments on claims may only be made in EURO.

## **4. Delayed Payment**

**4.1.** If settlement a pecuniary claim should be endangered due to deterioration in the financial circumstances of the purchaser or disclosure thereof after conclusion of contract, we shall be entitled to demand advance payment and immediate payment of all outstanding invoices, also such invoices not yet due for payment, retain goods not yet delivered as well as suspend further processing of orders in process. We shall also be entitled to these rights, if, despite justified default reminder, the purchaser should not make payment.

**4.2.** In the event of delayed payment, default interest amounting to 8 percentage points above the base interest rates in terms of § 247 "BGB" shall be due and payable. Asserting further going claims for damages caused by delay shall not be precluded thereby.

## **5. Delivery and Acceptance**

**5.1.** Solely the written confirmation of order shall be authoritative as regards content and scope of supply or services.

**5.2.** Delivery dates shall solely be binding if expressly confirmed by us. Otherwise, specifications with regard to terms or dates of delivery shall be interpreted as indication. However, terms of delivery shall not commence before the purchaser has provided the required documentation, permits, clearances as well as receipt of an agreed quantity. Delivery dates confirmed by us shall be complied with as far as possible. Delayed delivery shall not constitute any claim on contractual penalties.

**5.3.** We shall be entitled to made part-deliveries. If dispatch should be delayed for reasons not attributable to us, we shall be entitled to store such goods, as we may deem fit, for account of and at risk of the purchaser.

**5.4.** If we should fall into delay with our performances, we shall be granted an adequate additional period of grace. An additional period of grace shall only not be set in the event that special circumstances should be prevalent, which justify immediate recession of the contract, after taking into account mutual interests. Otherwise, the purchaser shall only be entitled to rescind the contract after futile expiry of the additional period of grace. Remedy of damages due to delay can only be demanded to the sum of order (own input exclusive of materials for advance performance); unless if damages have transpired due to circumstances, which we or our vicarious agents have caused as a result of intent or gross negligence. If delayed delivers should not be based on intentional contractual violation attributable to us or our vicarious agents, our liability to compensate for damages shall be limited to typically occurring damages. Any claim on delivery shall be precluded in cases described under this clause.

**5.5.** Operational disruptions – both in our factory as well as in that of a sub-supplier -, in particular strike, lock-out, war, unrest and all other cases of force majeure, shall not constitute reasons for termination of contractual relations. The principles as regards frustration of contract shall remain unaffected.

**5.6.** Deliveries shall be carried out ex works at the risk and costs of the purchaser. If nothing to the contrary has been agreed, we shall select the route and nature of dispatch. We shall solely be liable for fault in execution or dispatch in the event of intent or gross negligence.

**5.7.** In the event that a purchaser obliged to collect – or purchasers of call-off orders – should not collect goods, although the delivery date has expired and it has been notified that the goods have been put on readiness, we shall be entitled to store such goods at the costs and risk of the purchaser or to demand payment of costs, in the event that we should store such goods in our own warehouse. In the event that delay in acceptance should exceed 2 weeks, we shall be entitled to rescind the contract and demand compensation for damages, if the purchaser should not prove that non-acceptance is not due to reasons attributable to it. If delayed acceptance should not be attributable to the purchaser, we shall be entitled to rescind the contract, but the purchaser shall have no claim on compensation for damages.

**5.8.** We shall not be obliged to take back faultless goods. If we should nevertheless be prepared to take back faultless goods, we shall be entitled to raise additional costs for testing, accounting and suchlike based on input. Custom-made pre-cut parts shall be – save for the regulation agreed upon in clause 7 – excluded from return. In the event of return of faultless goods, the purchaser shall bear the risk of coincidental destruction or coincidental deterioration of delivered goods.

**5.9.** Goods delivered by us shall possess the major characteristics specified in the confirmation of order or shall comply with the inserted technical specifications.

**5.10.** Irrespective of the rights arising from the covenants under clause 7, goods delivered have to be taken into receipt by the purchaser, even if such goods should reflect major defects.

## **6. Retention of Title**

**6.1.** We shall reserve title to goods delivered until full and final payment of the purchase price. We shall reserve title to goods, which the purchaser should obtain from us within the framework of commercial activities until the totality of our claims against the purchaser arising from and in connection with business relations, including claims arising in future, have been settled; also from concurrent orders placed or contracts concluded later. This shall also then apply, if individual or the totality of our claims should have been included in an open account and the balance has been struck and acknowledged.

**6.2.** In the event of violation against cardinal contractual obligations, in particular in the event of delayed payment, we shall be entitled to seize the goods after admonition and the purchaser shall be obliged to surrender. Taking back or attachment of goods by us shall only then constitute rescission of the contract – if the laws on consumer credit agreements should not be applicable – once we expressly declare so in writing. In the event of attachment or other third party intervention, the purchaser shall notify us in writing by forwarding a bailiff's return as well as an affirmation in lieu of an oath as regards the identity of attached objects.

**6.3.** The purchaser shall be entitled to sell the goods within the normal course of business under the condition that any receivables arising from or in connection with resale shall be assigned to us as follows:

The purchaser already here and now assigns all receivables and ancillary rights to us, which should accrue in its favour from resale to any buyer or against any third party, and in fact irrespective of whether such goods under retention of title are resold without or after further processing. The purchaser shall also be entitled to collect receivables after assignment. Our entitlement to collect receivables ourselves shall remain unaffected thereby, however we undertake not to collect receivables as long as the purchaser duly and properly complies with its payment obligations. We shall be entitled to demand that the purchaser discloses the assigned receivables and the debtors thereof to us, supply all information necessary for collection, hand over the corresponding documentation and that the purchaser discloses the assignment to such debtors. If any goods should be resold together with other goods not belonging to us, our receivables against the buyer shall be deemed as assigned to the sum of the delivery price agreed between us and the purchaser.

**6.4.** To us as manufacturer, reworking and processing of goods under retention of title shall be performed within the meaning of § 950 "BGB"; without us committing ourselves. Processed goods shall be deemed to be goods under retention of title in terms of these Terms and Conditions. If goods under retention of title should be reworked or inextricably amalgamated with objects not belonging to us, we shall acquire co-ownership to the new object at the ratio of invoiced value of our goods under retention in proportion to the invoice value of other goods used at the time of processing or amalgamation. Co-ownership rights arising in this way shall be deemed to be goods under retention of title within the meaning of these Terms and Conditions.

In the event that our goods should be amalgamated with other move-able objects to form a unified object or inextricable mixed and the other object is deemed to be principal object, it shall be deemed as having been agreed that the purchaser transfers proportionate co-ownership to us, if the principal object belongs to it.

The same shall apply in all other respects as in the case of goods under retention of title to any object evolving from processing and amalgamation or mixing,

**6.5.** We undertake to release securities in our favour, as we may select, once such securities exceed 20% of our receivables to be secured.

## **7. Notification of Defect and Warranty**

**7.1.** We shall be liable for defects as follows:

a) Upon arrival of goods, the purchaser shall immediately inspect goods received as regards quantity and quality. Visible defects shall be reported within one week by way of written notification.

b) Claims based on hidden defects, which can not be found during the course of immediate inspection, may only be asserted against us if the notification of defect is received by us within 12 months as of receipt of goods. This clause shall not be applicable, if hidden de-facts should be based on circumstances, which have been caused as a result of intent or gross negligence by us or our vicarious agents, whereby violation of obligation causes damage by loss of life, bodily harm or injury to health or where longer deadlines are provided for in terms of § 479 "BGB".

**7.2.** In the event of justified complaints, the purchaser shall be entitled to demand rectification of defect or substitute delivery, as it may select. However, we shall be entitled to select a different manner of subsequent performance instead of the manner of subsequent performance selected by the purchaser, if the manner of subsequent performance selected by the purchaser should only be possible by incurring excessive costs. In the event of failure, refusal or unacceptability to carry out subsequent performance, the purchaser shall either be entitled to reverse the contract or reduce the agreed compensation, as it may select.

If defect should be based on circumstances, which are attributable to intent or gross negligence by us or our vicarious agents, the purchaser shall be entitled to demand compensation of damages due to non-performance or restitution of futile expenditure. § 361 "BGB" shall remain unaffected.

**7.3.** Asserting further going claims for compensation of damages, in particular consequential damages caused by defect, shall not be permitted. This shall not apply, if damages are attributable to circumstances arising due to intentional or grossly negligent violation of obligation by us or our vicarious agents, whereby the violation of obligation causes culpable damage by loss of life, bodily harm or injury to health or else if we have culpably violated inherent contractual obligations, whereby loss of life, bodily harm or injury to health has not been caused or if we can be blamed for intent; our remedy of damages shall be limited to predictable, typically occurring damages. Our liability in terms of the Product Liability Laws shall remain unaffected.

**7.4.** If a part of goods delivered should prove to be defective, this shall not justify rejection of the entire consignment; unless if partial delivery should prove to be worthless in fulfilling the interests of the purchaser.

**7.5.** If tolerances customary to the trade or industry should be met, no warranty claims shall be constituted.

**7.6.** In the event that defective goods should be attributable to the quality of materials used, we shall be entitled to assign our claims against the respective sub-suppliers to the purchaser. In such a case we shall be liable as guarantor, if such claims against the sub-supplier should not exist or not be enforceable due to fault on our behalf.

**7.7.** Up to 10% over-delivery or short-delivery of order batches con-forms to standard usage in business volume and shall thus not constitute objection. Quantities actually delivered shall be accounted for.

**7.8.** No guarantee is taken over for damages, occurring due to the following reasons:

- unsuitable or improper use,
- faulty assembly by the purchaser or third parties, despite due and proper and clear mounting instructions,

- faulty start-up by the purchaser or any third party,
- natural wear and tear,
- faulty or careless treatment,
- unsuitable operating resources,
- alternative materials,
- chemical, electronic or electrical influences, if such influences are not attributable to fault of the supplier.

**7.9.** The supplier guarantees that deliveries comply with the prevailing laws prescribed by the Federal Republic of Germany pertaining to the respective products.

**7.10.** The purchaser's right of recourse against us pursuant to § 478 „BGB“ (regress by the entrepreneur) shall only exist insofar as the purchaser has not reached agreement exceeding the statutory warranty claims with its buyers.

**7.11.** Products not delivered as factory-new according to agreement shall not be subject to material de

## **8. Safekeeping, Insurance**

**8.1.** Templates, drawings, raw materials, tools and other objects to be re-used as well as semi and finished products, shall solely be kept safe beyond the delivery date after prior agreement and against special compensation. The principal shall only be liable in the event of intent or gross negligence.

**8.2.** If put on readiness by the ordering party until delivery date, the before mentioned objects shall be treated with due care. We shall solely be liable in the event of intent or gross negligence.

**8.3.** If it should be necessary to insure the before mentioned objects, the purchaser shall procure such insurance cover itself.

## **9. Apparatus and Copyrights**

**9.1.** Apparatus, tools and other templates in accomplishment of order, which have been developed and produced by us, shall remain our property, also in the event that pro rata costs should be charged.

**9.2.** Solely the purchaser shall be responsible that through performance of its order, no third party rights, in particular, copyrights, patents or registered designs are infringed upon. The purchaser shall indemnify us from any and all third party claims based on such violation of the law.

## **10. Imprint**

We shall be entitled to make reference to our company name in a suitable way on contractual products. The purchaser shall solely be entitled to refuse consent, if it should have an overriding interest.

## **11. Place of Performance, Venue of Jurisdiction, Effective Date**

**11.1.** Place of performance as regards all goods and services as well as payments shall be Einbeck.

**11.2.** If the purchaser should be a registered merchant, legal entity under public law or special fund under public law, sole venue of jurisdiction with regard to any disputes which may arise between the parties, including bills of exchange and legal proceedings based documentary evidence, shall either be the District Court Einbeck or the District Court Göttingen, in accordance with relevant competence. The same venue of jurisdiction shall apply if the purchaser should have no general jurisdiction locally, relocates its ordinary domicile or habitual residence outside domestic territory after conclusion of the contract or if the domicile or habitual residence of the purchaser should not be known at the point in time of raising action.

**11.3.** In the event that any one or several of the provisions contained in these Terms and Conditions of Delivery should be invalid, the validity of the other provisions set forth herein shall not be affected thereby.

## **12. Miscellaneous**

**12.1.** The laws of the Federal Republic of Germany shall govern these Terms and Conditions under exclusion of UN Purchase Law.

**12.2.** Within the framework of business relations, we shall be entitled to process personal data entrusted to us within the scope of accomplishing the purpose of our assignment i.e. to save, transmit, change and delete.