

## General Terms and Conditions of Sales, Delivery and Payment Keller & Kalmbach GmbH

### I. General - Scope of Application

- 1) Deliveries and services of Keller & Kalmbach shall be carried out exclusively on the basis of these terms and conditions. We do not recognize opposing terms of the ordering party or terms deviating from the terms herein unless we have approved of their applicability expressly in writing. In the event of a written fundamental recognition of the general terms and conditions of business of the buyer, the said shall apply only for those sections of the terms and conditions which do not oppose our general terms and conditions of sales, delivery and payment, subject to an express deviating regulation in an individual case. The following terms and conditions shall apply even if we carry out the delivery to the ordering party without reservation, despite our knowledge of opposing terms and conditions of the ordering party or terms and conditions deviating from ours. The said shall apply also to all future business transactions with the ordering party.
- 2) These terms and conditions shall not apply to ultimate consumers.
- 3) The transmission by facsimile or by remote data transmission shall comply with the need for written form as defined by these terms and conditions.

### II. Offer and Conclusion of Contract

- 1) Our offers shall be without obligation, provided we do not declare the same to be binding.
- 2) In line with the meaning of section 145 of the [German] Civil Code (BGB) we shall accept orders within four weeks, provided that a longer period is not agreed in an individual case.
- 3) A sales contract shall become effective only through our written order acknowledgement, at the latest, however, with the delivery of the goods. In the case of doubt, our order acknowledgement shall be decisive for the type and scope of delivery.
- 4) Orders which are transmitted to us by electronic means shall be considered received by us only after download and opening by us. In the case of orders by electronic means, the ordering party renounces an acknowledgement of receipt of its order.

### III. Prices

- 1) All prices of Keller & Kalmbach shall be strictly net ex stock, plus the legally applicable value-added tax as well as packaging, insurance and shipping costs, unless the offer especially provides otherwise.
- 2) The minimum order value for deliveries within Germany is EUR 25.00. If an order does not reach this value, we shall be entitled to invoice the minimum order value. In the case of deliveries abroad, a country-specific minimum value applies. Orders from abroad, which are below the minimum order value, will not be accepted.
- 3) In the case of deliveries within Germany we charge a lump-sum delivery cost sharing of EUR 7.50. In the case of orders with a net goods value of over EUR 100.00 the lump-sum amount shall be EUR 3.50. For deliveries abroad, the delivery costs depend on the target country.
- 4) If more than six weeks have passed between conclusion of the contract and the delivery date agreed upon, Keller & Kalmbach shall be entitled to reasonably increase the prices caused by increases in wages, material costs or the market-related cost prices corresponding to these increases.
- 5) If, in the case of deliveries agreed for articles, which Keller & Kalmbach obtains from countries outside the euro zone, the costs of procurement increase due to a change in exchange rates, Keller & Kalmbach may adjust the prices accordingly giving three months' notice to the 1st day of the month following expiry of the grace period. At the request of the customer, Keller & Kalmbach will explain the cost increase in terms of content. In the event of a price increase of more than 5.0%, the customer shall have the right to terminate existing contracts with respect to the articles concerned; notice of termination must be given within four weeks after the announcement of the price increase by Keller & Kalmbach. Insofar as any purchase obligations of the customer for special parts and drawing parts exist, these shall continue unchanged in the event of termination by the customer. Quantities already stocked at Keller & Kalmbach will be delivered and charged at the original prices.
- 6) If we take back goods without legal obligation and based on good will, we shall be entitled to a re-storing fee in the amount of 15 % of the goods' value, at least however EUR 15.00.

### IV. Terms of Payment

- 1) Our invoices shall be due for payment after invoicing, but at the latest within 14 days after delivery. In the absence of any other agreements or if otherwise stated in our invoice, payment shall be effected strictly net within 14 days after maturity.
- 2) The receipt of the credit note on the account of Keller & Kalmbach shall be decisive for the payment date.

- 3) If after conclusion of the contract we become aware that the customer's ability to perform is compromised (for example, by the opening of insolvency proceedings), we expressly reserve the right to withdraw from the contract in accordance with section 321 German Civil Code (BGB) - following a reasonable deadline, if necessary. In the case of contracts relating to the delivery of custom products, we are entitled to withdraw immediately. In the case of compromised ability to perform, we are also entitled to demand advance payments contrary to existing agreements on payment terms. If there are any open payment claims from business relations, we can refuse further deliveries until the customer has paid the due payments.
- 4) The ordering party shall only have a right to setoff, if we have recognized his/her counterclaims or the said have been legally established or are undisputed. In the case of defects in the delivery, the buyer's counter-rights remain unaffected.
- 5) Keller & Kalmbach shall have the right to assign the claims entitled to vis-à-vis the buyer for the purpose of factoring without requiring approval from the buyer.

#### **V. Reservation of Title**

- 1) The goods supplied shall remain our property until the complete payment of all claims from the business relationship between us and the ordering party.
- 2) The ordering party shall be entitled to sell the reserved goods in our ownership in the ordinary course of business. The ordering party shall assign all claims from the sale of the reserved goods to us, irrespective of whether the goods have been sold combined or mixed with any other goods. In the case of reserved goods combined or mixed with any other goods, the ordering party shall assign to us the claims in the amount of the invoiced value for the goods concerned.
- 3) Despite assignment, the ordering party shall be permitted to collect his/her claims towards the buyer. Our right to collect the accounts receivable from the buyer shall be effective only, if the ordering party does not fulfil his/her payment obligations, if insolvency proceedings are instituted, if a cheque or bill is protested or if a seizure is carried out. Assigned amounts thereafter received shall immediately be credited to a specially designated account. In this case the ordering party shall additionally be obligated to render to Keller & Kalmbach all information needed for encashment, to hand over the appertaining documents and to inform the debtor about the assignment. Moreover, in this case the right of the customer to resell or process the goods and to collect the outstanding debts shall be forfeited.
- 4) By processing the goods supplied and owned by a third party, the buyer shall not obtain the ownership in the matter produced in whole or in part. In the case of processing, mixing or combining the goods under reservation with other materials, we shall acquire a co-ownership in the newly created goods in proportion to the invoiced value of our goods under reservation without any obligation on our part. The ordering party shall store the goods, in which Keller & Kalmbach has a co-ownership free of charge for Keller & Kalmbach. If the reservation of ownership should expire nonetheless for any reason whatsoever, the seller and the buyer shall hereby agree that with the processing the property shall pass to the seller who accepts the assignment.
- 5) The ordering party shall neither pledge nor place in escrow the goods under reservation. In the case of seizure or distraint, the ordering party must inform Keller & Kalmbach without delay, and must render available all information and documents so that Keller & Kalmbach can assert their rights. Lien claimants, law enforcement officers, insolvency practitioners or other third parties shall be informed about the rights of ownership of Keller & Kalmbach.
- 6) If the ordering party fulfills his/her payment obligations by surrendering cheques or bills, our reservation of ownership shall continue until we are no longer liable any more for any claim based on these means of payment.
- 7) If the ordering party violates our property rights as rendered in these clauses, we shall be permitted to withdraw from the contract without setting a grace period and to demand surrender of the goods. A withdrawal from the contract shall not be required to claim the reservation of ownership. The assertion of our property rights without a statement of withdrawal from the contract shall not be deemed as such.
- 8) In the case of an assignment of claims on our part to a factoring company, all rights due to us from agreed assignments, in particular secured and reserved property in all variants, shall be assigned to this company.
- 9) We undertake to release securities due to us upon request of the ordering party, provided these exceed the claims to be secured by more than 20 %.

#### **VI. Deliveries, Delivery Time, Delays in Delivery, Consignment Warehouse**

- 1) The observance of delivery deadlines by us shall require that all documents necessary for the execution of the order to be provided by the ordering party are made available, that technical matters have been

clarified and that the ordering party meets his/her contractual obligations, in particular his/her payment obligations from all transactions with Keller & Kalmbach.

- 2) Subject to correct delivery in due time, Keller & Kalmbach will supply the ordering party with the contractual goods.
- 3) In the event of force majeure and the existence of other unforeseeable and extraordinary circumstances, the delivery time shall be reasonably extended.
- 4) In the event of force majeure or other reasons beyond our control, we shall be entitled to withdraw from the unfulfilled portion of the contract for delays of more than 14 calendar days, unless we have accepted the procurement risk and informed the customer in good time of the delay in delivery. In the event of any of the aforementioned hindrances to delivery, the customer shall be entitled to withdraw from the non-fulfilled part of the contract if a binding delivery date has been exceeded by more than four weeks or if adherence to the delivery contract cannot reasonably be expected of the customer.
- 5) Keller & Kalmbach shall be entitled to partial delivery to the ordering party.
- 6) In the case of consumer goods, Keller & Kalmbach reserve the right to over- or underdelivery of up to 10 % on account of the ordering party.
- 7) If a delivery is delayed at the request of the ordering party, Keller & Kalmbach shall store the goods at the risk of the ordering party.
- 8) If Keller & Kalmbach deliver goods to a consignment warehouse at the customer's premises, the goods are deemed to have been withdrawn a) in the event of product elimination (the product is no longer required by the customer) b) upon termination of the contract or c) in the event of storage for more than six months, and the products shall be paid for. In the case of non-acceptance, Keller & Kalmbach is entitled to scrap the non-accepted goods at the expense of the customer and to charge them.
- 9) A damage caused by the delay can be claimed only in the amount of the foreseeable damage typical for the type of contract. This shall not apply, if the damage has been caused intentionally or by gross negligence by Keller & Kalmbach.

#### **VII. Shipping, Passing of Risk**

- 1) The risk of accidental loss or accidental impairment of the goods shall pass to the ordering party no later than upon handover. Shipping of the goods shall be carried out at the risk of the ordering party; this shall apply also when delivery freight prepaid has been agreed upon, as well as drop-shipping.
- 2) We shall be entitled, but not obligated to insure the goods to be delivered against the perils of transport and to charge the insurance costs to the customer.
- 3) In the absence of any special shipping instructions of the ordering party or other arrangements we shall dispatch the goods by the best route according to our discretion.
- 4) We shall not be obligated to take back transport or any other packaging.

#### **VIII. Warranty**

- 1) The warranty rights of the ordering party require immediate inspection and notification of the defective goods. The defect shall have to be notified within a maximum period of 10 days after the passing of risk in writing. Dispatch of the notice of defects in due time shall suffice for observance of the time limit.
- 2) The data including drawings, illustrations, technical data, etc. contained in our leaflets, price lists, catalogs and advertisements as well as in our offer documents shall be non-binding and do not release the ordering party from the obligation to check the goods for their suitability for the intended purpose. Aforementioned data and documents shall become part of the contract only if the said have been confirmed expressly by us as being binding.
- 3) Keller & Kalmbach shall reserve the commercially customary deviations with respect to the dimensions of the delivered objects indicated in the order of the ordering party, unless the exact observance of the dimensions is expressly assured or agreed upon.
- 4) The customer shall only be entitled to claim presumed suitability for use when the said has been expressly agreed.
- 5) Keller & Kalmbach expressly wish to point out hereby that given the observance of all due care in transaction the problem of hydrogen-induced brittle fracture (hydrogen embrittlement) in galvanically coated articles with a tensile strength of more than 1,000 N/mm<sup>2</sup> (steel grades of 10.9 and higher) and/or core and surface hardness of over 320 HV cannot be ruled out. Thus, any damage caused by hydrogen-induced brittle fracture shall not be covered by warranty and liability by Keller & Kalmbach, provided that the processes in accordance with DIN EN ISO 4042 have been observed, and Keller & Kalmbach have not caused the defect of the goods intentionally or by gross negligence or the customer claims an injury to health, body or life.
- 6) In the event of any defect for which Keller & Kalmbach is responsible, rectification of the defect shall be

given priority over replacement at the discretion of Keller & Kalmbach. In the case of rectification of the defect, Keller & Kalmbach shall not be obligated to bear expenses, which were caused or increased by the fact that the goods were taken to a location other than the place of performance. If rectification of the defect fails, the ordering party shall be entitled to reduce the corresponding payment appropriately or to withdraw from the contract or cancel the same. In the case of withdrawal from the contract or cancellation of the same, damages instead of service shall not be claimable unless Keller & Kalmbach have caused the damage by gross negligence or intentionally.

7) In order to assert his/her claims, the ordering party shall give us the necessary time and opportunity for implementation and, in particular, shall deliver the defective goods to us for inspection purposes.

8) For third-party parts (products, which, by agreement with the customer, are procured by us from the supplier specified by the customer, or which are completely outside of our product range or which are, by agreement with the customer, specifically classified as third-party parts), we do not grant the customer any warranty insofar as the customer can obtain satisfaction of his/her claims resulting from warranty directly from our supplier. For this purpose, we assign the warranty rights to which we are entitled to the customer in advance. Any further warranty by us in excess thereof shall only be granted if the customer has previously asserted his claims against the supplier in court, but could not achieve full satisfaction of his judicially recognized claims and if we are responsible for the defect.

9) Claims for warranty shall be ruled out for defects, for which Keller & Kalmbach have not been responsible as far as they exceed rectification or subsequent delivery.

10) If the matter lacks a promised or guaranteed feature, Keller & Kalmbach shall be liable according to the statutory provisions.

11) All warranty rights shall become time-barred within 12 months after the risk has passed, unless these concern goods which, according to their usual manner of utilization, have been used for a building. The period of limitation for the respective goods shall not start again, when there is subsequent fulfillment on our part.

12) If we do not recognize the warranty claims of the ordering party expressly in an individual case, we shall render the said for reasons of good will.

13) The ordering party shall receive no guarantees from us in the legal sense. Manufacturers' guarantees shall remain unaffected therefrom.

## **IX. Liability, Limitation Period**

1) Unless otherwise specified in these Terms and Conditions, including the provisions set out in this section, we shall be liable for contractual and non-contractual breach of duty according to the relevant regulations.

2) Regardless of the legal grounds, our liability shall be limited to cases of intent and gross negligence. This excludes:

a) any damages resulting from injury to life, health and body.

b) any damages resulting from the violation of substantial contractual obligations (i.e. contractual duties, the fulfillment of which make the due performance of the contract possible in the first place and on the compliance of which the customer may regularly rely).

Liability is, however, limited to the compensation of predictable damages typical for the type of contract. The limitation of liability in this section shall not apply if we have maliciously concealed a defect or have assumed a quality guarantee for the goods.

3) The liability based on the [German] Product Liability Act shall remain unaffected.

4) Unless Keller & Kalmbach are held liable for injury to life, body or health or for intentional or grossly negligent violation of contractual obligations, all claims for damages against us shall become time-barred twelve months after the legally defined beginning of the period of limitation.

## **X. Spare Parts**

1) If we are obligated towards the customer to supply spare parts after the expiry of a serial delivery in the case of customized special parts or those articles, which at the point of order were not part or no longer part of our catalog program, we shall refuse a fixed price for the spare parts set by the customer. In particular, we shall not be obligated to supply spare parts for the serial parts at the offering price after expiry of the serial delivery. Previously defined prices for spare parts shall always require an individual agreement between us and the customer.

2) We shall not be obligated to supply any amount of spare parts ordered by the ordering party. Instead, when ordering spare parts, the ordering party shall have to take and pay minimum quantities, which are based on the production lot sizes of our upstream suppliers.

3) Provided we have not obligated ourselves expressly in an individual case, we shall not be required to

obligate our upstream suppliers to store and keep tools after the end of the serial delivery.

4) If we obligate ourselves on the basis of an explicit agreement to keep stocks of spare parts for a certain period of time, these stocks of spare parts shall earn interest at five per cent annually above the base interest rate. All costs of warehousing of the parts shall thereby be compensated. This warehousing interest shall have to be paid by the customer annually on 31st March of the following year.

5) After termination of the stockholding obligation for stocks of spare parts, the customer shall have to take and pay the complete stock of spare parts. Alternatively, the customer may request scrapping of the goods by Keller & Kalmbach and shall receive the scrapping return less scrapping costs and the warehousing interest not yet paid, if applicable.

#### **XI. Secrecy**

1) The customer guarantees that documents provided to Keller & Kalmbach for the delivery of customized products (in particular so-called special and drawing parts) are free from third-party protective rights. In the case of defects of title, the customer shall indemnify Keller & Kalmbach against all claims of third parties, unless he/she is not responsible for the defect of title.

2) In principle, Keller & Kalmbach is not obligated to check the documents submitted by the customer for correctness. Keller & Kalmbach is not responsible for any product defects, which are based on incorrect documents of the customer.

3) Keller & Kalmbach is entitled to use the customer's documents for the purpose of processing requests and subsequently for the purpose of fulfillment of the contract vis-à-vis the customer. To this end, by submitting the documents, the customer grants the right to use them for all purposes intended for the fulfillment of the contractual relationship without any restrictions on time or place. In particular, Keller & Kalmbach are entitled to pass on the documents to their sub-suppliers.

#### **XII. Place of Fulfillment, Venue, Applicable Law**

1) Unless agreed otherwise, the place of fulfillment shall be the commercial domicile of Keller & Kalmbach.

2) The venue shall be Munich. However, Keller & Kalmbach shall have the right to pursue legal action against the customer at any other permissible venue.

3) The law of the Federal Republic of Germany shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Law) and with the exclusion of the conflict of laws provisions.

Keller & Kalmbach GmbH  
Siemensstr. 19  
85716 Unterschleißheim

Commercial Register of Munich HRB 54200

As of 10/2016