

# **General Terms and Conditions of Business of** **[k]nord GmbH, D 27777 Gandersee, Germany.**

## **I.**

### **General provisions**

1. The general terms and conditions of business of [k]nord GmbH (hereinafter referred to as KN or the supplier) as stated below are an element of all its contracts about deliveries of goods, services and supplies of work: namely, for all present and future business relations. Third-party terms and conditions of business which oppose KN's general terms and conditions of business will not be recognized unless KN expressly consents to these general terms and conditions of business in writing. A reference to third-party terms and conditions of business will be opposed too.
2. The mutual declarations that are given in writing, by fax or e-mail are decisive for the extent of the deliveries or services (hereinafter referred to as 'deliveries').
3. The supplier unrestrictedly reserves his rights of utilization according to ownership and copyright of cost estimates, drawings and other documents (hereinafter referred to as 'documents'). The documents are only allowed to be made accessible to third parties after the supplier's prior consent has been given and they must be given back to the supplier immediately on demand if the order is not placed with him. Sentences 1 and 2 of this clause apply accordingly to the customer's documents but these are allowed to be made accessible to those third parties to whom the supplier has assigned deliveries in a permissible way.
4. KN's quotations are subject to change without notice, open for acceptance and given without engagement. The right is reserved to make technical modifications as well as alterations in shape, colour or weight, or both, within the framework of what is reasonable for the customer.
5. The contract is being concluded subject to the reservation that KN itself will supply through its own sub-contractor correctly, completely and on time. This rule only applies to the case that KN is not responsible for the non-delivery, especially in the case of concluding a congruent covering business transaction with the sub-contractor. The customer will be informed immediately about the service's unavailability. Any *quid pro quo* payment that has been made already will be refunded immediately, insofar as no substitute business transaction will be concluded with the customer.
6. Partial deliveries are permissible, insofar as they are reasonable for the customer.

## **II.**

### **Prices and terms of payment**

1. The prices are understood to be ex-works excluding packing and packaging, plus the respectively applicable rate of statutory value-added tax.
2. If KN or the supplier has undertaken the installation or assembly and if nothing else is agreed, then the customer bears all of the requisite extra costs like travel costs, costs of transporting the hand tools and the personal luggage as well as accommodation allowances, in addition to the agreed remuneration. The accounting will take place on the basis of KN's respectively valid price list.
3. Payments must be made without deductions to KN's payment office.
4. If the prices of KN's up-stream suppliers are increased for the ordered services in the case of an agreed fixed price or during an agreed period of delivery, then KN is entitled to increase the price agreed with customer accordingly if the customer is a business enterprise. A right of withdrawal from the contract within 2 weeks from receiving the notification about the price increase is vested in the customer, in the case of substantial price rises.
5. The customer has to pay the agreed price into one of KN's bank accounts within 14 days after receipt of invoice, or on an agreed date of required payment at the latest. KN shall charge the statutory interest rate in the case of a defaulted payment, i.e., 8% interest above the basic interest rate vis-à-vis a business enterprise, or 5% above the basic interest rate vis-à-vis a private person. Nevertheless, KN reserves the right to prove and assert higher damages resulting from the default.
6. The customer is only entitled to set-off whenever his counter-claims have been established as legally binding or if they have been expressly recognized by KN in writing. Moreover, the customer can only exercise a right of retention if his counter-claim originates from the same contractual relationship.

## **III.**

### **Reservation of ownership**

1. The articles in deliveries (conditional commodity) made by KN shall remain in its ownership until all of the claims against the customer which are vested in it and arise from the business connection have been fulfilled. The customer is obligated to safeguard KN's ownership accordingly, even whenever the conditional commodity or the entire work is not intended for the customer directly but for a third party to whom he has to expressly point out this reservation of ownership too. KN will release an appropriate part of the security rights at the customer's request, insofar as the value of all security rights that are vested in KN or the supplier exceeds the amount of all secured claims by 20%.
2. The customer is prohibited from mortgaging or pledging the conditional commodity as security while the reservation of ownership exists and a resale is only permitted to resellers during the usual course of business and only subject to the condition that the reseller receives payment from his customer or makes the reservation that the ownership shall only pass to the customer whenever the latter has fulfilled his payment obligations.
3. The customer has to take good care of the conditional commodity or delivered work, on account of KN's reservation of ownership. He is obligated to notify KN immediately about every change of location for the delivered goods or the delivered work before complete payment and to enable KN to have access to the goods or work at any time.
4. The customer has to advise KN or the supplier immediately in the case of seizure, sequestration or other dispositions or interventions by third parties and to forward any records of seizure or mortgage agreements to KN or the supplier immediately. The customer has to reimburse the costs of interventions by KN that become necessary.
5. The customer herewith assigns to KN the debt claims for the value of the work, or of the conditional commodity or of the conditional work arising from the resale, together with all collateral rights and with precedence over the rest, in the case that the conditional commodity or the delivered work is resold by the customer; KN accepts this assignment herewith.
6. KN or the supplier shall be entitled to recover the conditional commodity or the conditional work after issuing a warning and the customer is obligated to hand it over in the case that the customer culpably infringes essential contractual duties, especially in the case of defaulted payment. The recovery or assertion of the right of ownership or the mortgaging of the conditional commodity by KN or the supplier does not constitute any withdrawal from the contract, unless KN or the supplier would have declared this expressly.
7. If the conditional commodity or the conditional work is connected or mixed with third-party articles, then KN acquires co-ownership of the homogeneous article at the ratio between the value of the goods or work delivered by KN and the other mixed or connected articles.

## **IV.**

### **Period of delivery and default of delivery**

1. Periods of delivery and periods of completion only apply if they have been agreed with KN in writing. The prerequisites for complying with the agreed periods of deliveries, as well as for complying with the agreed terms of payment and other obligations by the customer, are that all documents, requisite approvals and releases - especially of plans - which must be delivered by the customer, are received promptly. If these prerequisites are not fulfilled promptly, then the agreed period of delivery is prolonged by the period of delay which occurred because of that. This rule does not apply if KN or the supplier is responsible for the delay.
2. If the non-compliance with the time limits is based on force majeure, e.g., war, unrest, thunderstorm or similar events like for example a strike, lockout, etc., power cuts or disruption in the supply of raw materials, then an agreed period of delivery is prolonged reasonably.
3. If KN cannot comply with the agreed period of delivery or period of completion despite all efforts, then the customer has to give a reasonable period for the subsequent delivery or subsequent work and he can only assert the rights arising from the contract after the period of grace has expired. The period of grace must amount to at least two months, calculated from the day when the written notice of default was received.
4. The customer's claims to damages are excluded in all cases of delayed delivery, even after a period of grace set for KN or the supplier has expired, unless KN or the supplier is provably accused of (criminal) intent or gross negligence for the delayed delivery. No alteration in the burden of proof to the customer's disadvantage is connected with this. The customer's right to withdrawal after a period of grace set for KN or the supplier has expired fruitlessly remains unaffected.
5. If the despatch or the delivery is delayed for more than one month at the customer's request, then KN can charge the customer a storage fee amounting to 0.5% of the price of the articles to be delivered for every commenced month but not more than 5% in total. Both contracting parties are at liberty to prove higher or lower storage costs. The rights that are vested in KN to withdraw from the contract or to compensatory damages because of a delayed acceptance by the customer also remain unaffected.

## **V.**

### **Passage of risk**

1. The risk passes to the customer as follows, even in the case of freight-free delivery.
  - a) The risk passes to the customer whenever the deliveries are brought to the despatch or they have been collected by the customer, in the case of deliveries without installation or assembly. Deliveries will be insured by KN or the supplier against the usual transport risks at the customer's request and at his cost.
  - b) The passage of risk takes place on the day when the deliveries are accepted by the customer, or - insofar as agreed - after a faultless trial run, in the case of deliveries with installation or assembly.
2. If the despatch, delivery, beginning or implementation of the installation or assembly, the acceptance in his own premises or the trial run, are delayed because of reasons for which the customer is responsible, or if the customer falls into delay with the acceptance for other reasons, then the risk passes to the customer with the onset of this delay

## VI. Installation and assembly

The following provisions apply to the installation and assembly, insofar as nothing else has been agreed in writing.

1. The customer has to accept and provide promptly at his own cost:
  - a) all earthwork, building work and other work that is extraneous to the branch of business, including the associated specialists and assistants, building materials and tools,
  - b) the resources that are required for the assembly and commissioning, like scaffolding, lifting devices and other equipment, fuels and lubricants,
  - c) electricity and water to the place of use, including the connections, heating and lighting,
  - d) sufficiently large, suitable, dry and lockable rooms at the assembly site for keeping the mechanical parts, apparatus, materials, tools, etc; reasonable work rooms and rest rooms including the sanitary facilities that are reasonable for the assembly personnel in the circumstances; otherwise the customer has to take the measures that are essential for protecting the supplier's property and the assembly personnel's property on the building site which he would take for protecting his own property,
  - e) protective clothing and protective devices that are required as a result of special circumstances on the assembly site.
2. The customer has to provide unsolicitedly the necessary information about the position of hidden conduits carrying electricity, gas and water or similar installations, as well as the requisite structural information, before beginning the assembly work.
3. The provisions and articles that are required for starting the work must be present on the installation site or assembly site before beginning the installation or assembly and all preliminary work must be so far advanced that the installation or assembly can be begun according to the contract and implemented without interruption. Supply routes and the installation space or assembly space must be levelled off and cleared.
4. If the installation, assembly or commissioning is delayed by circumstances for which KN or the supplier is not responsible, then the customer has to bear the costs of waiting time and travel which are additionally required by KN or the supplier or the assembly personnel. Accounting will take place according to KN's valid price list.
5. The customer has to immediately certify the duration of the assembly personnel's working time as well as the completion of the installation, assembly or commissioning to KN or the supplier weekly.
6. If KN or the supplier demands the acceptance of the delivery after completion, then the customer must carry it out within two weeks. If this does not happen, then the acceptance applies as having taken place. The acceptance equally applies as having taken place if the delivery has been put into use after completion of an agreed test phase if necessary.

## VII. Acceptance

Deliveries must be accepted by the customer. This rule also applies whenever the deliveries have defects, if these defects are insignificant and they only immaterially affect the customer's objectives that are connected with the deliveries.

## VIII. Notice of defects and the warranty

1. The customer has to notify KN in writing about apparent defects in the deliveries or services, or both, as well as about defects that are detectable during inspection, within a time limit of 14 days after the delivery or acceptance; the warranty claims for the defects lapses otherwise. Punctual despatch to KN suffices for complying with the time limit.
2. The customer carries the full burden of proof for all prerequisites of a warranty claim, especially for the defect itself, for the point in time when the defect was established and for the punctuality of serving the notice of defects.
3. The written description of the product by KN or the manufacturer's written description of the product basically applies as agreed for the quality of the services or deliveries. Public statements, recommendations or other verbal advertising do not represent any qualitative information according to the contract by comparison. Guarantees will not be given unless these are expressly recorded by the contract in writing or they are acknowledged by KN.
4. If a defect in KN's deliveries or services is notified as existing and within the agreed time limit, then KN or the supplier fulfils the guarantee first of all by means of a repair or replacement delivery according to its choice. If such a subsequent fulfilment can only be implemented at a cost which is unreasonable for KN, then KN is entitled to refuse the subsequent fulfilment.
5. If a subsequent fulfilment fails despite two requests and a time limit that was set by the customer, or if this is refused by KN, then the customer is entitled to reduce the purchase price or to demand the withdrawal from the contract of sale. The first time limit for implementing the repair or replacement delivery amounts to 2 months, insofar as a prolongation of the period of delivery or period of service according to clause IV of the contract has not occurred already. If only a slight contractual infringement is present, especially only a slight defect, then no right of withdrawal is vested in the customer. The customer cannot in addition assert any compensatory damages because of the defect, in the case of a permissible withdrawal from the contract.
6. If the customer demands compensatory damages after the subsequent fulfilment has failed, then the deliveries or services, or both, or the delivered work remain(s) with the customer if this is reasonable for him. The compensatory damages is then limited to the difference between the purchase price and the value of the defective services or delivered goods or defective work. This rule does not apply if KN can be accused of fraudulently causing the contractual infringement.
7. KN or the supplier is only liable for (criminal) intent and gross negligence in the case that insignificant contractual duties have been infringed, unless physical injuries or injuries to health or the customer's loss of life are attributable to KN or the supplier. The liability of KN or the supplier is limited to the kind of average damage to the goods which was foreseeable, contractually typical and direct, in the case of a slightly negligent infringement of duty.
8. The aforementioned limitations of liability also apply to the actions of a sub-contractor or a legal representative.
9. The warranty claims are time-barred within one year after the deliveries or services have been handed over or after the delivered goods have been accepted. This rule also applies to the customer's claims for compensatory damages unless KN or the supplier can be accused of (criminal) intent or gross negligence, or physical injuries or injuries to health or the customer's loss of life occur which are attributable to KN or the supplier.
10. If the customer culpably does not give KN or the supplier any opportunity for subsequent fulfilment or if he culpably makes it impossible to implement the subsequent fulfilment, then the claim to the guarantee lapses. The guarantee otherwise also includes those damages or defects for which the customer is not responsible himself. This rule especially applies to natural wear and tear or to damages which arise on account of faulty or negligent handling, excessive loading, unsuitable operating resources (e.g., fuel), unsuitable sub-soil on the building site, or on account of special external influences which are not prerequisites according to the contract, as well as software faults that cannot be reduced. If improper modifications or repair works are carried out by the customer or third parties, then KN or the supplier does not have any warranty obligation for these or for the consequences that result from them.
11. The customer is excluded from asserting claims for compensatory damages arising from another legal reason, especially from impermissible handling and the German Product Liability Law, insofar as the aforementioned contractual warranty claims exist, unless KN or the supplier can be accused of (criminal) intent or gross negligence.

## IX. Commercial intellectual property rights and copyrights

1. KN or the supplier is liable vis-à-vis the customer as follows, insofar as a third party asserts justified claims against the customer because of infringement of a commercial intellectual property right or copyright (hereinafter referred to as 'intellectual property rights') by the products which were delivered by KN or the supplier and used according to the contract.
  - a) KN or the supplier will either create a right of use for the product, modify the product in such a way that the intellectual property right is not infringed, or replace the product, according to its choice. If it is impossible for the supplier to do this at reasonable conditions, then he has to take back the product in return for refunding the purchase price.
  - b) The aforementioned obligations of KN or the supplier only exist whenever the customer has informed KN or the supplier in writing immediately about claims that have been asserted by third parties, or an infringement was not acknowledged and KN or the supplier reserve the right to take all defensive measures and to negotiate debt-composition proceedings. If the customer stops using the product for reasons of reducing the damage or for other important reasons, then he is obligated vis-à-vis the third party to point out that no recognition of an infringement of the intellectual property right is connected with stopping the use.
2. Claims against the customer are excluded, unless he is responsible for infringing the intellectual property right.
3. Furthermore, claims against the customer are excluded, insofar as the infringement of the intellectual property right was caused by the customer's special instructions, or by an application or use which was unforeseeable by KN or the supplier, or by the product being modified by the customer because of that or used together with products which were not delivered by KN or the supplier.
4. Further claims against KN or the supplier are excluded, unless they can be provably accused of (criminal) intent or gross negligence.

## X. Salvational clause as well as contractual alterations

1. The operativeness of the remaining provisions is not affected in the case that individual provisions are inoperative or invalid. The legal regulation shall be substituted for the inoperative provisions. Supplementary or divergent agreements require to be made in written form and they will only be an element of the contract in that case.
2. The contract will be adjusted reasonably, subject to observing good faith, insofar as unforeseeable events - for the purposes of the aforementioned clause IV, 2 - change the economic significance or the content of the delivery considerably, or affect the operation of KN or the supplier considerably. Insofar as this is economically unreasonable, then the right is vested in KN or the supplier to withdraw from the contract. If he wants to make use of this right of withdrawal, then he has to notify the customer immediately about this after he becomes aware of the event's significance: namely, even whenever a prolongation of the period of delivery was agreed with the customer.

## XI. Place of fulfilment<sup>1</sup> and place of jurisdiction<sup>2</sup>

Ganderkesee (D 27777 Gandersee, Germany) is agreed as the place of fulfilment for customers who are general businessmen, legal entities according to public law or special assets under public law. The District Court of Delmenhorst and the Regional Court of Oldenburg (Oldb.) are likewise agreed as the places of jurisdiction. The legal regulation applies otherwise. The contractual relationships are exclusively subject to the law of the Federal Republic of Germany. The application of international purchase rights, especially the UN purchase right, is excluded.

Valid from 1<sup>st</sup> November 2012.

<sup>1</sup> *domicilium executandi*

<sup>2</sup> *domicilium disputandi*