

General Terms and Conditions of B. Ketterer Söhne GmbH & Co. KG

I. General, Scope

1. All present and future offers, quotations, deliveries and other services provided by B. Ketterer Söhne GmbH & Co. KG are strictly and exclusively based on these General Terms and Conditions. Buyer's counterconfirmations making reference to its terms of business and/or purchase are herewith opposed. Buyer's diverging terms of business will be accepted and included in the contract only if they are expressly acknowledged by us in writing. Our General Terms and Conditions also apply if we deliver to Buyer without reservation in full knowledge and awareness of Buyer's conflicting terms or terms and conditions diverging from our General Terms and Conditions.
2. All agreements made between us and Buyer for the purpose of performing this agreement have been specified and laid down herein in writing.
3. Our General Terms and Conditions apply only in relation to persons who at the time this agreement is made act in performance of their commercial or independent professional sphere of work (entrepreneurs) and in relation to legal entities under public law or special assets under public law (§ 310 Section 1 BGB, German Civil Code).

II. Offers – Offer Documents

1. Unless stated otherwise in the offer, our offers are made without engagement and are to be understood only as a request for a quote or offer. Buyer's order is to be qualified as an offer pursuant to § 145 BGB which we are free to accept within two (2) weeks by delivering a written acknowledgement of order. This acknowledgement of order is authoritative for the content of the agreement, in particular for the scope of work and services.
2. We reserve our title of ownership and copyrights in samples, quotations, drawings, information physical and non-physical in nature and in other – also electronic - documents. Buyer undertakes not to make these accessible to third parties. We in return undertake to disclose to third parties information and documents marked "confidential" by Buyer only with Buyer's consent and agreement.

III. Price and Payment

1. Unless stated otherwise in the acknowledgement of order, our prices are quoted EXW (ex works) Furtwangen excluding packaging; packaging will be invoiced separately.
2. The statutory value added tax is not included in our prices; it will be shown separately on the invoice on the date the invoice is issued.
3. We are entitled to assign our claims from the business relations.
4. Unless expressly agreed otherwise, payments are to be made without deduction within thirty (30) days after the date of invoice. Payment is deemed to be made as soon as we are free to dispose of the amount (receipt of payment). All payments are to be made in full satisfaction of debt to VR FACTOREM GmbH, Ludwig-Erhard-Straße 30 - 34, 65760 Eschborn to whom we have assigned all our present and future claims from our business relations. Our property under reservation of title has also been assigned to VR FACTOREM GmbH. For payments made within ten (10) days after the date of invoice, Buyer shall be entitled to deduct 2% discount. Further discount deductions require a separate agreement. Discounts deducted without authorisation or justification will be charged by way of separate invoice plus EUR 10.00 handling charge.
5. If Buyer defaults in its payment, we shall be entitled to charge interest on defaulted payment from the date of default forward in the amount of 8% above the current base interest rate. Buyer has the right to show evidence that the damage or loss is, in fact, higher or lower. If Buyer defaults in payment and if a period of reasonable duration set for payment lapses without result, we shall be entitled to withdraw from the appropriate agreement and in our discretion request a blanket damage amount of 30% of the outstanding parts of the agreed total payment, or request compensation for the damage or loss caused by the non-payment.
6. If Buyer is in default with any payments owed to us, all existing claims from the business relation shall be due for payment immediately.
7. Unless the counterclaims are undisputed, pending a court decision or found to be final, Buyer may not offset his claims against ours. Unless the right of retention rests on the same contractual relation or the counterclaims are undisputed, pending a court decision or final, Buyer may not claim the right of retention.

IV. Delivery Dates, Delay in Delivery

1. The delivery date is defined in the agreement made between the contracting parties. We observe the delivery date on condition that all commercial and technical issues arising between the contracting parties have been settled and clarified and that Buyer has

complied with all its obligations, e.g. obtaining the required official permits or licences, or has made the required down payment. If this is not the case, the delivery period will be extended accordingly. This does not apply if the delay is due to causes under our control.

2. The delivery date is observed on condition that our own deliveries are received correctly and within the proper time. Supplier agrees to give notice of any emerging delay as soon as possible.
3. The date of delivery is deemed to be observed if the delivery item has left our works at the expiry of the period or if readiness for shipment is reported. If an acceptance procedure is required, the date of acceptance (except when acceptance is refused) is authoritative, alternatively, the report of the readiness for acceptance.
4. If the shipment or the acceptance of the delivery items is delayed for reasons for which Buyer is responsible, the costs incurred by the delay will be charged to Buyer, beginning one month after shipment and/or acceptance readiness has been reported.
5. If the default in the delivery date is due to force majeure, Act of God, labour disputes or other events outside our control, the period of delivery will be extended accordingly. This also applies if these circumstances arise among our primary suppliers, suppliers, carriers or subcontractors. We will give notice to Buyer of the beginning and end of such circumstances at the earliest time possible. If an obstacle persists for a period exceeding three months, or if it has been established that it will persist for a period exceeding three months, both the Buyer and we may withdraw from the agreement. In the event of such withdrawal, Buyer may not claim damages.
6. If we are in default of delivery owing to negligence, our liability for damages for the delay in delivery shall be limited to 0.5% of the net contract value for every full week of the delay, however to a maximum of 5% of the net contract value. If Buyer in such cases claims damages instead of performance, the claim for damages shall be limited to 20% of the contract value. The liability limitations under the preceding sentences 1 and 2 do not apply in the event of delay or default owing to gross culpability or wilful intent, nor do they apply in the event of personal injury or impairment to health, nor for contracts where time is of the essence.

V. Passage of Risk, Acceptance

1. Unless stated otherwise in the acknowledgement of order, delivery EXW is agreed.

2. Risk passes to Buyer as soon as the delivery items have left the works, also if part deliveries are made or if we have agreed to make other payments, e.g. shipment or freight charges or delivery and erection. Buyer may not refuse acceptance if a non-substantial defect exists.
3. If shipment and/or acceptance is delayed or not performed for reasons beyond our control, risk passes to Buyer after the day notice has been given of delivery or acceptance readiness. At Buyer's expense, we undertake to take out the insurance cover which Buyer requests.
4. We are entitled to make partial deliveries or render partial work and services, provided that this may be reasonably expected of Buyer.

VI. Reservation of Title

1. We reserve title in all work and services being the subject of this agreement until full payment or performance of all our claims arising from our business relations with Buyer has been satisfied.
2. Buyer undertakes to treat the items under reservation of title with utmost care, in particular to sufficiently insure these items at replacement value at his own expense against fire, water and theft and to give us immediate notice in the event of seizure, attachment and/or loss; the infringement of this obligation gives us the right to withdraw from the agreement. Buyer is liable for all costs and expenses incurred in the course of a third-party action against execution for revocation of a seizure or attachment and, if applicable, for the replacement of the delivery items to the extent these cannot be collected by third parties.
3. If Buyer is in default of payment with a substantial part of his payment obligations, we are entitled to provisionally repossess the items under reservation of title provided that we have given sufficient notice thereof. Unless expressly declared by us, the exercise of the right of repossession does not constitute a withdrawal from the agreement. Buyer pays the costs and charges incurred by the exercise of the right of repossession, in particular the costs and charges for shipment and storage. We are entitled to utilise the repossessed items under reservation of title and to obtain satisfaction from their proceeds provided that we have given sufficient advance notice of such utilisation.
4. If Buyer mixes or commingles the items under reservation of title with other goods, we hold co-ownership in the new items in the proportion of the invoice value of the items under reservation of title to the invoice value of the other goods plus the added proc-

essing value. If our ownership lapses through mixing, commingling or processing, Buyer assigns to us already at the time of mixing, commingling or processing his ownership rights in the new item in proportion to the invoice value of the items under reservation of title and holds these in safekeeping for us free of charge. The ownership rights accruing to us thereby are deemed to be items under reservation of title within the meaning of para 1 above.

5. Buyer now assigns to us, and we accept the assignment, the purchase price, compensation for work or other claims (including the approved balance from a current account arrangement) arising from the resale or the further processing or from another legal cause (e.g. insurance claim, from tort or loss of ownership through commingling the delivery item with real property) with respect to the items under reservation of title in the amount of the invoice value of the items under reservation of title. The assignment of claim according to the preceding sentence serves to secure all present and future claims arising from the business relation with Buyer.
6. Buyer shall be revocably entitled to collect on our behalf and in his own name any claims from resale. This authorisation to collect may be revoked only if Buyer fails to comply properly with his payment obligations. Upon our request, Buyer must in this case provide us with the details required for collecting the assigned claims, to make the appropriate documents available to us and to give notice to the debtor of the assignment.
7. If the realisable value of the securities granted to us under the aforesaid conditions exceeds our claims against Buyer not only temporarily by more than 10%, we will in our discretion and to this extent release securities upon Buyer's request. If we are liable for turnover / value added tax incurred by us in the utilisation of the collateral as a result of Buyer delivering with turnover / value added tax, the aforesaid coverage limit of 110% shall be increased by the amount of the turnover / value added tax.
8. If Buyer stops payments or if he files for insolvency proceedings or if insolvency proceedings are instituted against Buyer, Buyer's right of resale and of using the items under reservation of title and his authorisation to collect assigned claims shall lapse. The statutory rights of an insolvency administrator (also of a provisional insolvency administrator) shall remain in full force and effect.
9. Unless Buyer is the consumer, withdrawal from the agreement is not required for asserting the rights of reservation of title.

VII. Claims for Defects

1. Buyer is under the obligation to inspect the delivered goods immediately upon their receipt and to give written notice of defects – with the exception of hidden defects – immediately, at the latest however 48 hours after delivery; the delivery item is otherwise deemed to be approved and accepted. Written notice of hidden defects must be given immediately after their discovery; the delivery item is otherwise also deemed to be approved and accepted. Once the delivery items has been approved and accepted, no further rights may be asserted.

By entering into discussions and negotiations concerning complaints, we in no manner whatsoever waive the defence of late, insufficient or unjustified notice of defects.

2. The condition of the goods is defined solely by the agreed technical delivery rules and regulations. If our delivery must be made in accordance with Buyer's drawing, specification, pattern, etc., Buyer accepts the risk of fitness for the intended purpose. The decisive point in time for the condition of the goods complying with the contract is the date on which the risk passes according to Section V.
3. We shall not be liable for redhibitory defects arising from improper use, incorrect assembly or installation or commissioning by Buyer or by third parties, from usual wear and tear, incorrect or negligent treatment, nor shall we be liable for the consequences of improper modifications or maintenance work made by Buyer or by third parties without our consent. The same applies to defects which reduce the value or the fitness of the goods to a minor degree only.
4. Claims for defects shall be time limited to 12 months, unless a longer period is prescribed by law, in particular for defects in a building and for goods commonly used in a building and having caused its defectiveness.
5. If an acceptance procedure of the goods or an initial sampling has been agreed, no notice of defects for goods may be given which Buyer could or should have detected upon careful acceptance or initial sampling.
6. Buyer must allow us to ascertain the defect for which notice has been given. Upon request, the non-conforming goods must be returned to us forthwith, with us paying the transport and shipment charges if the notice of defect has been justified.
7. If the notice of defect is justified and has been given within the specified period, we in our discretion rework the non-conforming goods or deliver conforming replacement.
8. If we fail to comply with these obligations within a reasonable period, Buyer may set us a period in writing within which we are obliged to comply with our contractual obliga-

tions. If this period expires fruitlessly, Buyer may demand reduction of the price, withdraw from the agreement or at our expense and risk make the necessary rework himself or instruct a third party to do so. If the defect is only minor, Buyer may withdraw from the agreement only with our consent. No costs will be reimbursed if the expenses increase as a result of the goods having been shipped to another location after we have delivered, unless such relocation is in keeping with the proper use of the goods.

9. For damage owing to defects in the contractual item, our liability is otherwise restricted to the limits specified under Section VII herein.

VIII. Liability

1. We accept liability for damage under the provisions of the law in the event of wilful intent, gross negligence, when underwriting a guaranty, under the provisions of the product liability laws and for personal injury and impairment of health. If we negligently infringe a duty the performance of which allows the agreement to come into force in the first place and the observance of which the Buyer may regularly rely upon (cardinal duty), the duty of compensation is limited to the foreseeable damage typical for such agreement. The limitation of liability in the event of delivery delays pursuant to Section IV para 6 remains in full force and effect. In all other cases of liability, claims for damages for infringement of duty from the obligation and from tort are ruled out, with the effect that we to this extent are not liable for Buyer's loss of prospective profits or other economic or financial damage.
2. To the extent liability is ruled out or limited under the preceding terms and conditions, this also applies to the personal liability of our employees, workers, officers, representatives, agents and vicarious agents.

IX. Tools and Moulds

1. The price for tools and moulds includes the costs of one-off sampling, but not for testing and machining devices and for modifications caused by Buyer. The cost for further samplings for which we are responsible will be paid by us.
2. Unless otherwise agreed, we remain the owners of the tools and moulds required for performing the agreement which we or a third party instructed by us have made. Tools and moulds are used solely for the orders placed by Buyer. We are under the duty of safekeeping for a period of two (2) years after the last partial delivery.

3. If Buyer is to become the owner under the agreement, ownership does not pass until all claims from the business relations are satisfied. The provisions under Section IV herein apply mutatis mutandis.

X. Final Provisions

1. The contractual relation is governed solely by German laws, in particular the German Civil Code and the German Commercial Code, excluding the UN Convention on the International Sale of Goods.
2. Jurisdictional venue shall in our discretion be at our registered place of business in Frankfurt am Main; we shall also be entitled to take legal action against Buyer in the Courts at Buyer's habitual residence / his registered place of business.
3. Unless stated otherwise in the acknowledgement of order, the place of performance is at our registered place of business.
4. If one or several provisions herein are ineffective, the remaining provisions remain in full force and effect. The parties hereto undertake to replace such ineffective provision by an effective provision which comes closest to the purpose and intention of the ineffective provision.

Last amended: 08 February 2010