

## **1. Application**

- 1.1 All deliveries, services and offers of companies of the Klein Group (hereinafter “Seller”) shall be exclusively based on these General Terms and Conditions of Delivery. They shall be integral parts of all agreements concluded between the Seller and its contracting partners (hereinafter also “Principal”) about the deliveries and/or services offered by the Seller. They shall also apply to all future deliveries, services or offers to the Principal, even if they are not separately agreed once again.
- 1.2 Terms and conditions of the Principal or third parties shall not apply, even if the Seller does not separately object to their application in the individual case. Even if the Seller refers to a letter containing or referring to terms and conditions of the Principal or a third party, this shall not imply any consent to the application of such terms and conditions.

## **2. Offer and Conclusion of an Agreement**

- 2.1 All offers of the Seller shall be subject to change and not binding, unless they have been expressly indicated as binding or contain a specific term of acceptance. The Seller may accept orders or contracts within fourteen days after receipt.
- 2.2 The legal relationships between Seller and Principal shall be solely governed by the purchase agreement concluded in writing, including these General Terms and Conditions of Delivery. It shall reflect all understandings between the contracting parties on the object of the agreement in full. Verbal commitments of the Seller prior to the conclusion of this agreement shall not be legally binding, and verbal commitments of the contracting parties shall be replaced by the written agreement, unless they explicitly imply in each case that they shall continue to apply in a binding manner.
- 2.3 Amendments and modifications to the agreements made, including these General Terms and Conditions of Delivery, shall require written form to become effective. Except for managing directors or authorised officers, the Seller’s employees shall not be entitled to reach verbal understandings which deviate herefrom. To meet the written form requirement, transmission by telecommunication means, especially by fax or e-mail, shall be sufficient, provided that the copy of the undersigned declaration is transmitted.

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<sup>1</sup> KLEiN-Gruppe:

KLEiN Umformtechnik GmbH, Waldstraße 65, D-57250 Netphen-Deuz  
KLEiN GmbH & Co. KG Umformtechnik Sachsen, Bergener Ring 20, D-01458 Ottendorf-Okrilla  
esb KLEiN GmbH & Co.KG, Bergener Ring 20, D-01458 Ottendorf-Okrilla

- 2.4 Information of the Seller about the delivery or service object (e.g. weights, dimensions, values in use, load-bearing capacity, tolerances and technical data) and our representations of the same (e.g. drawings and illustrations) shall only be approximately relevant, unless usability for the contractually intended purposes requires exact conformity. They shall not be guaranteed characteristics, but descriptions or identifications of the delivery or service. Deviations customary in the trade and deviations made due to legal regulations or representing technical improvements, as well as the replacement of components by equivalent parts shall be permitted, unless they affect the usability for the contractually intended purpose.
- 2.5 The Seller retains title or the copyright to all tenders and quotations submitted by the Seller and all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Principal. The Principal must not make such objects available to third parties, announce them, use them itself or have third parties use them or reproduce them either as such or their contents without the explicit consent of the Seller. At the Seller's request, the Principal must return these objects to the Seller in full and destroy any copies produced of them if they are no longer required by the Principal in the ordinary course of business or if negotiations do not result in the conclusion of an agreement. This shall not apply to the retention of data provided electronically for customary data backup purposes.
- 2.6 Modifications to underlying technical standards and/or specifications must be addressed to the Seller as an official request. They shall not automatically become integral parts of existing agreements.

### **3. Confidentiality**

- 3.1 Either contracting partner shall use only for the jointly pursued purposes and keep secret vis-à-vis third parties with the same due care as corresponding own documents and knowledge any and all documents (also including samples, models and data) and knowledge obtained from the business relationship, where the other contracting partner has indicated them to be confidential or has an obvious interest in their secrecy.
- 3.2 This obligation shall commence with the first-time receipt of the documents and knowledge and shall end 36 months after the end of the business relationship.
- 3.3 The obligation shall not apply to any document and knowledge that is generally known or has already been known to the contracting partner upon receipt without having been obliged to maintain secrecy or is subsequently transmitted by a third party entitled to forward it or is developed by the receiving contracting partner without using any document or knowledge of the other contracting partner that needs to be kept secret.

### **4. Prices and Payment**

- 4.1 The prices shall apply to the scope of services and deliveries specified in the contract confirmations. Extra or special services shall be separately accounted for. The prices shall be in EUR, ex works, plus packaging, the statutory VAT, customs for export deliveries and fees and other public duties.

- 4.2 Where the agreed prices are based on the Seller's list prices and delivery is intended to be performed only more than four months after the agreement is concluded, the Seller's list prices applicable upon delivery shall apply (in each case minus any agreed percentage or fixed discount).
- 4.3 Unless otherwise agreed in writing, invoice amounts must be paid within thirty days without deduction. The date of receipt by the Seller shall be decisive for compliance with the payment date. Payment by cheque shall be excluded, unless it is separately agreed in the individual case. If the Principal fails to perform upon maturity, the outstanding amounts shall bear interest from the due date at 5% p. a.; the assertion of higher interest and further damage in case of default shall remain unaffected.
- 4.4 Offsetting against counterclaims of the Principal or retention of payments due to such claims shall be permitted only where the counterclaims are undisputed or have been legally established.
- 4.5 The Seller shall be entitled to execute or render outstanding deliveries or services against advance payment or provision of security only if, after the agreement was concluded, the Seller becomes aware of any circumstances that are suitable for significantly reducing the Principal's creditworthiness and jeopardise payment of the Seller's outstanding claims by the Principal from the respective contractual relationship (including from other individual contracts which are subject to the same framework agreement).

## **5. Delivery and Delivery Time**

- 5.1 Deliveries shall be performed EXW acc. to the Incoterms 2010.
- 5.2 Any periods and dates held out by the Seller for deliveries and services shall always apply only approximately, unless a fixed period or date has been explicitly promised or agreed. Where shipment has been agreed, delivery periods and dates shall relate to the time of handover to the freight forwarder, haulier or other third parties engaged to carry out the transport.
- 5.3 Without prejudice to its rights from the Principal's default, the Seller may claim extension of delivery and service periods or postponement of delivery and service dates from the Principal by the periods in which the Principal fails to meet its contractual obligations vis-à-vis the Seller.
- 5.4 The Seller shall not be liable for impossibility of the delivery or for defaults in delivery where they have been caused by force majeure or any other events not foreseeable when the agreement is concluded (e.g. all kinds of breakdowns, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of manpower, energy or raw materials, difficulties in obtaining necessary official approvals, official measures or the missing, incorrect or non-timely delivery by suppliers) that are not attributable to the Seller. Where such events make delivery or service significantly difficult or impossible for the Seller or the impediment is not only temporary, the Seller shall be entitled to rescind the agreement. For temporary impediments, the delivery or service periods shall be extended or the delivery or service dates shall be postponed by the period of the impediment, plus a reasonable start-up period. Where acceptance of the delivery or service is unreasonable for the Principal as a consequence of the delay in acceptance, it may rescind the agreement by giving immediate written notice to the Seller.

- 5.5 The Seller shall be entitled to partial deliveries only if
- the partial delivery can be used by the Principal as part of the contractual intended purpose;
  - delivery of the remaining goods ordered is ensured; and
  - the Principal will not incur any significant additional expenditure or costs (unless the Seller accepts absorption of such costs).
- 5.6 Where the Seller comes in default with any delivery or service or any delivery or service, for any reason whatsoever, becomes impossible for the Seller, its liability for damages acc. to clause 8 of these General Terms and Conditions of Delivery shall be limited.
- 5.7 Production-related excess or short deliveries within a tolerance of 20% of the total contract quantity shall be permitted.

## **6. Place of Performance, Dispatch, Packaging, Passing of Risk, Acceptance**

- 6.1 Unless agreed otherwise, the place of performance for all obligations from the contractual relationship shall be the registered office of the respective company of the Klein Group which shall be contracting partner of the Principal in the specific individual case. If the Seller also owes installation, the place of performance shall be the place where the installation is to be performed.
- 6.2 The dispatch method and the packaging shall be subject to the Seller's dutiful discretion.
- 6.3 Passing of risks shall be performed EXW acc. to the Incoterms 2010.
- 6.4 Storage costs after the passing of risks shall be borne by the Principal. In case of storage by the Seller, the storage costs shall be 0.25% of the invoice amount of the delivery objects to be stored for each lapsed week. The assertion and demonstration of further or lower storage costs shall remain reserved.
- 6.5 Dispatch insurance shall be EXW acc. to the Incoterms 2010.
- 6.6 Where acceptance is to be effected, the purchase item shall be deemed accepted once
- delivery and, where the Seller also owes installation, installation has/have been completed;
  - the Seller has notified the Principal while referring to the assumed acceptance acc. to this clause 6.6 and requested the Principal to perform acceptance;
  - twelve workdays have elapsed following delivery or installation or the Principal has started to use the purchase item (e.g. put the delivered system into operation) and six workdays have elapsed in this case following delivery or installation; and
  - the Principal has omitted acceptance within this period for any reason other than due to any defect notified to the Seller that rules out or significantly impairs any use of the purchase item.

## 7. Warranty, Material Defects

- 7.1 The warranty period shall be one year following delivery or, where acceptance is required, following acceptance. This period shall not apply to claims for damages of the Principal from the violation of life, body or health or for wilful or grossly negligent breaches of duty by the Seller or its auxiliary agents which shall come under the statute of limitations of the respective legal regulations.
- 7.2 The products to be delivered must have the contractually agreed nature (drawing, specification or the like). Where no nature has been agreed, the products must comply with the state of the art (DIN standards or the like). Further requirements shall apply only where this has been expressly agreed.
- 7.3 The delivered objects must be carefully inspected immediately after delivery to the Principal or to the third party designated by the Principal. Regarding obvious defects or any other defects that would have been obvious if immediate, careful inspection had been performed, they shall be deemed approved by the Principal, unless the Seller received a written notice of defects within seven workdays after delivery. Regarding other defects, the delivery objects shall be deemed approved by the Principal, unless the Seller receives the notice of defects within seven workdays after the date on which the defect became obvious; where the defect had already been obvious for the Principal at any earlier date under normal use, however, such earlier date shall govern the start of the notice period. At the Seller's request, any complained delivery object must be returned to the Seller carriage paid. In case of any legitimate notice of defects, the Seller shall remunerate the costs of the most favourable dispatch method; this shall not apply where the costs increase because the delivery object is located at any place other than the place of its intended use.
- 7.4 Where the delivered objects exhibit material defects, the Seller shall be initially obliged and entitled, at its choice to be made within a reasonable period, to perform subsequent improvement or replacement delivery. Where this fails, i.e. subsequent improvement or replacement delivery is impossible, unreasonable, refused or unduly delayed, the Principal may rescind the agreement or reduce the purchase price appropriately.
- 7.5 Where any defect is based on the Seller's fault, the Principal may claim damages under the conditions defined in clause 9.
- 7.6 For any defects in components of other manufacturers that the Seller cannot remedy for licensing or actual reasons, the Seller shall, at its option, assert its warranty claims vis-à-vis the manufacturers and suppliers for the Principal's account or assign them to the Principal. Warranty claims against the Seller for such defects shall apply under the other conditions and in accordance with these General Terms and Conditions of Delivery only where the judicial assertion of the aforementioned claims against the manufacturer and supplier has failed or, e.g. due to insolvency, is futile. For the duration of the legal dispute, the limitation of the relevant warranty claims of the Principal against the Seller shall be suspended.
- 7.7 The warranty shall not apply where the Principal modifies or has third parties modify the delivery object without the Seller's consent and remedy of defects thus becomes impossible or is unreasonably hampered. In any case, the Principal shall bear any extra costs for the remedy of defects that are caused by the modification.

- 7.8 Any delivery of used objects agreed with the Principal on a case-by-case basis shall be performed to the exclusion of any warranty for material defects.

## **8. Property Rights**

- 8.1 In case that the delivery object violates an industrial property right or copyright of a third party, the Seller shall, at its option and expense, modify or replace the delivery object such that it will no longer violate third-party rights, but continues to fulfil the contractually agreed functions, or provide the Principal with the right of use by concluding a licence agreement. If the Seller fails to do so within a reasonable period, the Principal shall be entitled to rescind the agreement or to reduce the purchase price appropriately. Any claims for damages of the Principal shall be subject to the restrictions of clause 9 of these General Terms and Conditions of Delivery.
- 8.2 For infringements by any products of other manufacturers that have been delivered by the Seller, the Seller shall, at its option, assert its warranty claims vis-à-vis the manufacturers and upstream suppliers for the Principal's account or assign them to the Principal. In such cases, claims against the Seller shall apply in accordance with this clause 8 only where the judicial assertion of the aforementioned claims against the manufacturers and upstream suppliers has failed or, e.g. due to insolvency, is futile.

## **9. Liability for Damages Due to Fault**

- 9.1 The Seller's liability for damages for any legal reason whatsoever, especially due to impossibility, default, bad or incorrect delivery, violation of the agreement, violation of obligations in contractual negotiations and tort shall, where this comes down to default in each case, be limited in accordance with this clause 9.
- 9.2 The Seller shall not be liable in case of ordinary negligence by its bodies, legal representatives, employees or other auxiliary agents, unless this relates to a violation of essential contractual obligations. Essential contractual obligations shall include the obligation to ensure timely delivery and installation of the delivery object, its freedom from legal defects and any material defects that impact its functionality or usability to a more than insignificant extent, as well as consultative and protective duties and duties of care intended to enable the Principal to use the delivery object as per agreement or to protect the limb or life of staff of the Principal or to protect its property against considerable damage.
- 9.3 Where the Seller is liable for damages acc. to clause 9.2 on its merits, such liability shall be limited to any damage that the Seller had foreseen upon conclusion of the agreement as a potential consequence of a violation of the agreement or would have had to foresee when applying customary care. Moreover, indirect damage and consequential damage caused by defects in the delivery object shall be compensable only where such damage must be typically expected where the delivery object is used as intended.
- 9.4 In case of any liability for ordinary negligence, the Seller's obligation to compensate material damage and resulting further pecuniary damage shall be limited to the value of the specific delivery per damage event (acc. to the current sum insured of its product liability insurance or third-party liability insurance), even if this relates to a violation of essential contractual obligations.

- 9.5 The exclusions and limitations of liability above shall apply to the same extent for the benefit of the Seller's bodies, legal representatives, employees and other auxiliary agents.
- 9.6 Where the Seller provides technical information or acts as a consultant and such information or consultancy is not part of the contractually agreed scope of services owed by the Seller, this shall be effected free of charge and to the exclusion of any liability.
- 9.7 The restrictions of this clause 9 shall not apply to the Seller's liability for wilful conduct, guaranteed characteristics, violation of life, body or health or acc. to the German Product Liability Act.

## **10. Retention of Title**

- 10.1 The retention of title agreed below shall serve to secure all respective existing current and future claims of the Seller against the Principal from the delivery relationship existing between the contracting partners (including balance claims from a current account relationship limited to this delivery relationship).
- 10.2 The goods delivered by the Seller to the Principal shall remain the Seller's ownership until all secured claims have been paid in full. The goods and the goods replacing pursuant to the provisions below and covered by the retention of title shall hereinafter be referred to as "goods subject to retention of title".
- 10.3 The Principal shall store the goods subject to retention of title free of charge for the Seller.
- 10.4 The Principal shall be entitled to process and alienate the goods subject to retention of title in the normal course of business until the utilisation event (clause 10.9) occurs. Pledges and chattel mortgaging shall not be permitted.
- 10.5 Where the Principal processes the goods subject to retention of title, it shall be agreed that processing shall be performed in the name and for account of the Seller as manufacturer and the Seller shall directly acquire the ownership or, where processing is based on substances of several owners or the value of the processed item exceeds the value of the goods subject to retention of title, the co-ownership (fractional ownership) of the newly created item at the ratio between the value of the goods subject to retention of title and the value of the newly created item. Where the Seller is not intended to acquire such ownership, the Principal shall already now transfer its future ownership or, at the aforementioned ratio, co-ownership of the newly created item to the Seller as a security. Where the goods subject to retention of title are combined or inseparably mixed with other items to a uniform item and one of the other items is to be regarded as the main item, the Seller shall transfer co-ownership of the uniform item to the Principal on a pro rata basis at the ratio specified in sentence 1 to the extent that the main item is the Principal's ownership.
- 10.6 If the goods subject to retention of title are further alienated, the Principal shall already now assign the resulting claim against the acquirer to the Seller by way of security, on a pro rata basis according to the co-ownership share for co-ownership of the Seller of the goods subject to retention of title. The same shall apply to any other claims that replace the goods subject to retention of title or arise otherwise regarding the goods subject to retention of title, such as insurance claims or claims from tort for loss or de-

struction. The Seller shall irrevocably authorise the Principal to collect in its own name the payments assigned to the Seller. The Seller may revoke such collection authorisation only in the utilisation event.

- 10.7 Where third parties access the goods subject to retention of title, especially by seizure, the Principal shall immediately point them to the Seller's ownership and shall inform the Seller thereof to enable the Seller to enforce its rights of ownership. Where the third party is unable to compensate the Seller for the court and out-of-court costs incurring in this context, the Principal shall be liable vis-à-vis the Seller.
- 10.8 The Seller shall release the goods subject to retention of title and the items or claims replacing them to the extent that their value exceeds the amount of the secured claims by more than 50%. The selection of the objects to be released accordingly shall be the Seller's responsibility.
- 10.9 If the Seller rescinds the agreement due to the purchaser's conduct contrary to the agreement, especially default in payment (utilisation event), it shall be entitled to claim surrender of the goods subject to retention of title.

## **11. Final Provisions**

- 12.1 If the Principal is a merchant, a legal entity under public law or a special fund under public law or does not have a place of general jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all potential disputes from the business relationship between the Seller and the Principal shall be, at the Seller's option, the Seller's registered office. Mandatory legal provisions regarding exclusive places of jurisdiction shall remain unaffected by this regulation.
- 12.2 The relationships between the Seller and the Principal shall be exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- 12.3 Where the agreement or these General Terms and Conditions of Delivery contain(s) regulatory loopholes, the loopholes shall be deemed filled by agreed legally effective regulations the contracting partners would have agreed pursuant to the economic objectives of the agreement and the purpose of these General Terms and Conditions of Delivery if they had been aware of the regulatory loophole.

### **Note:**

The Principal takes note of the fact that the Seller will retain data from the contractual relationship acc. to Section 28 German Federal Data Protection Act for data processing purposes and reserves the right to transfer the data to third parties (e.g. insurance companies), where required to fulfil the agreement.