

TERMS AND CONDITIONS
OF SALE AND DELIVERY

of KULLEN GmbH & Co KG, Reutlingen

1. General provisions

- 1.1 We take deliveries or accept an order only and exclusively if they are subject to the provisions outlined below.
- 1.2 We reject herewith all diverging terms and conditions of business, buying conditions or terms of delivery which are presented to us in connection with negotiations for orders, or in correspondence prior to the conclusion of an agreement or in connection with the placing of an order.
- 1.3 We shall only consider the terms and conditions of business, buying conditions or terms of delivery of the party or parties ordering or our customers as binding, if we have expressly confirmed them in writing.

2. Placing an order

- 2.1 All orders placed with us shall only become binding after we have confirmed the placing of the order in writing. Any conditions or subsidiary agreements which diverge from our order confirmation must in principal be confirmed in writing. This does not apply in the case of individual arrangements agreed upon with those of our employees who are entitled to represent our company.
- 2.2 All documents appended to our offers such as illustrations, drawings, declarations of weights and measures are only authoritative if they are expressly confirmed in writing when placing the order or are confirmed by us in writing. We shall retain the copyright and all industrial property rights to all technical documentation, data and drawings originating from us. Such documentation or information may not be disclosed to a third party or parties. All drawings and other documentation appertaining to our offers must be returned to us on demand and must, in any case, be returned to us without delay if the order is not placed with us.
- 2.3 In the case of off-the-shelf orders we shall be entitled to procure the materials required to carry out the total order and to manufacture the entire quantity ordered immediately, unless otherwise agreed upon. Eventual alterations or amendments on the part of the person or firm ordering can therefore not be taken into consideration after the order has been placed unless otherwise agreed upon in advance.

3. Conditions:

- 3.1 The supply price stated by us in our offer shall be authoritative. Any deductions or discounts must be expressly confirmed by us in writing. All sales tax/tax on turnover must be paid extra in accordance with the statutory applicable rate.
- 3.2 All prices are ex works Reutlingen, unless otherwise stipulated.
- 3.3 If the period of time between placing the order and the date of delivery shall be more than four months, we shall be entitled to charge any increase in costs for materials, wages or other business costs arising after conclusion of the contract proportionately to the customer. If this should result in an increase of the price by more than 10 % compared to the net overhead price, then the firm or person ordering is entitled to revoke the contract.

4. Deliveries and time limits:

- 4.1 Fixed times for delivery are only binding if we have expressly confirmed them in writing. The statement of a probable or expected delivery date does not constitute a binding term of delivery for us.
- 4.2 In the event of circumstances beyond our control such as strikes, lockouts, import or export restrictions imposed by the government, natural disasters etc., the term of delivery agreed upon shall be extended by the corresponding period of time up to a period of 6 months. This shall also apply in the event that such delivery hold-ups should affect our suppliers. If such occurrences or circumstances should continue for a period of more than six months, then either of the contracting parties is entitled to revoke the contract.
- 4.3 In the event that we should exceed the term of delivery, we shall be entitled to a reasonable additional extension of time of up to two weeks. We shall not be liable for exceeding the time limit, if we are not responsible for the circumstances which led to the time limit being exceeded. Claims for damages arising from the delay are excluded, unless the delay in delivery is caused intentionally or results from gross negligence. Should the delay only be due to slight negligence on our part, then our liability in the regular course of business shall be limited to an amount not exceeding a maximum of 20 % of the value of the specific order.

4.4 In the event that a delivery date agreed upon is postponed at the request of the customer, we shall be entitled to levy charges of 0.25 % interest of the invoice value per week for the extension of time as well as charging any ensuing storage costs to the customer.

4.5. A failure to take delivery on the part of the customer will not affect our claims for payment of the remuneration agreed upon. After a reasonable period has expired without results, we shall be entitled to revoke the contract (in accordance with § 323 BGB [German Civil Code]) without prejudice to our other claims, to dispose of the goods to be delivered elsewhere and/or to claim for damages (§§ 325, 280, 281, 282 BGB [German Civil Code]). All other statutory claims shall be sustained.

5. Packaging and shipment:

5.1 Delivery and shipment shall be effected at the expense and at the risk of the recipient. This shall also apply in the event that delivery is carried out by us using our own vehicles.

5.2 In the event of any damages in transport, the customer must send a written objection citing any damages to goods in transit to the respective carrier or forwarding agent without delay. The circumstances of the case must be established by ascertaining the facts of the case. The ascertainment of loss and the shipping documents must be sent to us without delay.

5.3 The charges for simple packaging will be as low as possible nor we will take back such packaging. Boxes, crates and palettes will be charged to the customer at cost price and, if they are returned undamaged without delay and freight paid, 2/3 of their invoiced value will be credited to the customer.

5.4 Should the customer be in default of taking delivery, then the risk of accidental loss, deterioration or destruction shall pass to the customer.

6. Retention of title and security:

6.1 We shall retain title to all of the items delivered by us until all claims arising from the current business relation have been discharged.

6.2 The customer is entitled to resell such goods to which we retain title within the ordinary course of business. However, such goods to which we retain title may not be

pledged or otherwise assigned to a third party by way of security without our prior consent. The customer is also not entitled to transfer or pledge his claims arising from the resale of goods to which we retain title to any third party or parties.

- 6.3 As a security against our claims arising from our business relations, the customer shall transfer all his claims arising from the resale of the goods to which we retain title to us. If the assigned claim against a third-party debtor is included in a current account, then the transfer of claims agreed upon shall be extended to the claim from the checking account up to the amount of the value of our claim.
- 6.4 The customer shall remain entitled to collect the sum due from the resale of the goods as long as he has not defaulted in payment to us. Should the customer be in default, we shall be entitled at any time to reveal the assignment of the claim and to arrange for the collection of the claim in our own name. In the event that the customer is in default, then the customer shall be obliged to provide us with all necessary particulars required to enforce the assigned claims, including their continuance and the respective third-party debtors, on request.
- 6.5 We shall undertake on request of the customer to release certain securities (goods to which we retain title or claims), if their total value shall exceed 120 % of the sum of our claims outstanding against the customer.
- 6.6 Any further processing or transformation by the customer of the goods delivered by us shall occur in accordance with § 950 BGB [German Civil Code] with us as the manufacturer, without however any obligation to pay remuneration. We shall also hold title to the new product created by the processing or transformation and it shall be considered a product with reservation of ownership in accordance with these provisions. The validity of §§ 932 ff. BGB [German Civil Code] shall remain unaffected.
- 6.7 In the event of a union or mixture of the goods to which we retain title in accordance with §§ 947, 948 BGB [German Civil Code], our co-ownership share of the newly created product(s) shall be determined in accordance with the ratio of the invoice value of the goods delivered by to the joint product, including sales tax. The customer shall assign to us herewith any claims resulting from the resale of the goods to which we retain title up to the amount of the invoice value of the goods to which we retain title.
- 6.8 In the event that the customer should intentionally violate contractual obligations, we shall be entitled, after sending the customer a reminder for payment and granting the customer an additional period to comply, to take back the goods to which we retain ti-

title as collateral for our claims. The customer shall expressly permit us in such a case to remove the delivered goods and also to enter the customer's business premises for this purpose. The removal of the delivered goods to which we retain title due to failure of the customer to pay on due date or the seizure of the delivered goods by us shall not be considered as a revocation of the contract.

6.9 We shall be entitled to realise the best price for such seized or removed goods to which we retained title by private sale and to credit the customer's account with the proceeds of the sale after deducting our costs. Any additional proceeds shall be paid out to the customer. The customer shall bear any costs incurred by us resulting from the removal of the goods to which we retained title. Our claims for performance and compensation for damages shall remain unaffected by the removal of the goods to which we retain title.

6.10 In the event of an attachment of the goods to which we retain title or of the claims assigned to us as security by a third party or parties, the customer shall bear all the costs required to obtain an order of annulment of the attachment; this refers in particular to any action brought in opposition to execution of a judgement brought by a third party claiming title to the attached property or to any action for recovery or replacement of goods.

7. Warranty of quality:

7.1 The customer shall undertake to examine the goods delivered immediately upon their delivery (§ 377 HGB [German Commercial Code]). We must be notified in writing of any visible defects or defects which can be identified after a reasonable examination within two weeks after delivery at the latest. Notification of any other (hidden) defects in the ordinary course of business must be given in writing within 14 days after the defects have been detected. The customer's claims for material defects shall be subject to a limitation period of one year after delivery of the goods.

7.2 In the event of a well-founded claim for defects, we shall undertake to remedy the defect or to replace the goods at our option. If we are unable either to replace the goods or to remedy the defects, then the customer shall be entitled to reduce the purchase price or revoke the contract (§ 441 BGB [German Civil Code]).

7.3 Any additional claims of the customer – in particular, contractual and non-contractual claims for damages – are excluded, unless the defects were caused intentionally or by gross negligence. This does not apply in the event of injuries affecting the life,

health or physical well-being of the customer. Other possible claims for damages based on slight negligence shall be limited to claims resulting from the violation of substantial contractual obligations and to claims for typical foreseeable damages. In the event that the damages are covered by an insurance policy taken out by the customer, we shall only be liable for any prejudice suffered by the customer thereby (e.g. higher insurance premiums, etc.). If the customer's claim for damages are covered by our manufacturer's liability insurance, then any claims for compensation shall be limited to the respective amount covered, notwithstanding the foregoing provisions.

8. Payment:

- 8.1 Our deliveries are payable within 30 days after date of invoice. We shall grant 2 % cash discount for full payment within 14 days after date of invoice.
- 8.2 After expiry of the term of payment of 30 days, the customer shall be in default in accordance to the statutory provisions (§ 286 Abs. 3 BGB [German Civil Code]), without the need for collection letter. In case of default, the customer must pay 8 percent interest above the basic rate of interest on our claims in the ordinary course of business in accordance with the statutory provisions (§ 288 section 2 BGB [German Civil Code]).
- 8.3 We shall only accept cheques and bills of exchange on account of performance. We shall only credit a customer upon receipt of a payment with a value date corresponding to the day on which we can dispose of the counter value. Any costs for discount, bills of exchange and protest fees shall be borne by the customer.
- 8.4 Our claims based on delivery of goods can only be offset against undisputed counterclaims or counterclaims recognised by declaratory judgement.

9. Place of performance:

Place of performance and venue – including any legal actions concerning bills of exchange or cheques – shall be Reutlingen, if the customer is a business man/merchant.

10. Concluding provisions:

- 10.1 In the event that the customer is an ultimate consumer within the meaning of the law, the provisions of §§ 474 ff. BGB [German Civil Code] shall apply absolutely. Other-

wise these provisions shall exclusively apply to business dealings between commercial partners.

- 10.2 In the event that one or more provisions of these terms and conditions of sale and delivery shall be annulled or become invalid, the validity of the remaining provisions shall be unaffected irrespective of the reason for this invalidation. The contracting parties shall undertake to replace the invalid provision by a provision which shall correspond as closely as possible to the objective of the invalid provision.
- 10.3 The foregoing terms of delivery and payment shall apply absolutely for all additional and future orders and deliveries between the contracting parties.
- 10.4 Unless expressly otherwise agreed upon, the law of the Federal Republic of Germany shall apply for all rights and obligations arising from the business relations.