

# General Terms and Conditions of Kunststofftechnik Obernkirchen (KTO), a branch of Joh. Heinr. Bornemann GmbH ("Supplier")

For use in business transactions with:

1. persons acting, with the conclusion of the contract, in the exercise of a commercial or independent professional occupation (business persons);

2. legal persons of public law or a public law special fund (hereinafter "Customer").

## I. Conclusion of Contract, General

1. All deliveries of machines and spare parts by the Supplier shall be subject to these Sales Conditions as well as any separate contractual agreements. Contrary general purchase or business conditions of the Customer are objected to by the Supplier; such purchase or business conditions of the Customer shall not become part of the contract even upon acceptance of the order and shall apply only if confirmed in writing by the Supplier.

2. These Sales Conditions shall apply in their respectively current version also to all subsequent business transactions, without such fact having to be expressly stated or agreed upon at the conclusion of such subsequent business transactions.

3. In the absence of separate agreement, a contract shall come into full force and effect only upon written order confirmation by the Supplier. Offers by the Supplier made previously are, in principle, subject to change without notice.

4. All agreements between the Supplier and the Customer regarding the performance of the contract have been made in writing, including within these Sales Conditions. The written contract shall resemble the complete understanding between the parties regarding the contract matter. Oral statements by the Supplier prior to the conclusion of the contract shall not be considered binding and oral understandings between the parties shall be replaced by the written contract between the parties, insofar it is not expressly agreed that they shall continue to be effective.

5. The Supplier shall retain all intellectual property rights and copyright rights to samples, cost estimates, drawings and similar information in physical and non-physical (including electronic) form.

**The parties agree to allow third parties access to information and documents designated by the other party as confidential only with prior approval by the other party.**

6. Agreements on quality, durability and availability of the sales item shall only be considered as guarantee if expressly designated as such.

## II. Prices and Payment Terms

1. Unless otherwise agreed, prices shall be ex works including loading in the works, but not including packaging and unloading. Value added tax in the respective statutory amount shall be invoiced in addition.

2. Unless otherwise agreed, payment is to be made to the bank account of the Supplier either within 14 days of the invoice date with 2 % discount or within 30 days of the invoice date without any discount.

3. Payment shall be deemed to have been made upon receipt by the Supplier; in case of checks only upon encashment. Should the Customer fail to effect payment as per the due date, the outstanding amounts shall accrue interest at 8% p.a. over the respective base lending rate of the European Central Bank; the possibility to claim higher interest and additional damages in cases of default shall remain unaffected.

4. The Customer shall only be entitled to retain payments or to set-off such with counterclaims insofar as its counterclaims are undisputed or have final, res judicata effect.

5. Should it become apparent after conclusion of the contract that the Supplier's claim for the purchase price is threatened due to lacking performance capability of the Customer (e.g. due to an application for the opening of an insolvency proceeding), the Supplier shall be entitled, according to the statutory provisions, to refuse performance and – if applicable, after affixing a deadline – to rescind the contract (§ 321 German Civil Code (*Bürgerliches Gesetzbuch, BGB*)). With contracts for the manufacture of non-fungible goods (custom-built products), the rescission may be declared immediately; the statutory regulations regarding the dispensability of the setting of a deadline remain unaffected.

## III. Delivery Time, Consequences of Delay in Delivery

1. The delivery time shall be subject to the agreements between the parties. It is, however, only binding if agreed in writing between the parties. Compliance thereof by the Supplier shall be contingent upon all commercial and technical questions between the contractual parties having been clarified and the Customer having performed all obligations incumbent upon it such as, e.g. the provision of the necessary certificates or approvals from government agencies, down payments or the supply of all parts and materials to be furnished by the Customer. If this is not the case, the delivery term shall be extended adequately. This shall not apply insofar as the Supplier is responsible for the delay.

2. Compliance with the delivery time shall be subject to the proviso of correct and timely delivery by the Supplier's own suppliers. Imminent delays shall be notified by the Supplier as soon as possible.

3. The delivery time shall be deemed to be complied with if the delivery item has left the works premises of the Supplier prior to the expiration of the term or the Customer has been notified of the readiness for shipment.

4. Should the shipment of the delivery item be delayed for reasons attributable to the Customer, the costs accruing as a result of the delay shall be invoiced to the Customer, commencing one month after notification of the shipment.

5. If the non-compliance with the delivery time is attributable to force majeure, labor disputes or other events outside the control of the Supplier, the delivery time shall be extended adequately. The Supplier shall notify the Customer of the commencement and end of such events as soon as possible. Should the named events last more than six months, both parties shall be free to rescind the contract without reciprocal settlement obligations resulting therefrom - except for the repayment of any already made advance payments which, as a consequence of the rescission, are no longer offset by adequate counter-performance.

6. The Customer may rescind the contract without giving notice if the undertaking of the entire performance becomes finally impossible for the Supplier prior to passage of risk. If performance of a part of the delivery becomes impossible and the Customer has a justified interest in the refusal of the partial delivery, it may rescind the contract with regard to the respective part of the delivery. If this is not the case, the Customer shall pay the purchase price attributed to the partial delivery. The same shall apply in the case of the Supplier's incapacity to deliver. Apart from that, Section VII. of these Sales Conditions shall apply. Should the performance of a part of the delivery become impossible, but the performance of the entire contract is essentially dependent thereon, the Customer may in addition rescind the entire contract.

Should the impossibility or incapacity of the Supplier occur while the Customer is in delay of acceptance or if the Customer is solely or predominantly responsible for these circumstances, it shall continue to be obligated to undertake counter-performance.

7. Should the Customer incur damages as a consequence of the Supplier's default, it shall be entitled after expiry of an additional grace period of 28 days without the delivery effected to a lump sum compensation, equaling 0.5 % of the purchase price for each full week of the delay, but in total not exceeding 5 % of the purchase price for the respective part of the delivery item which cannot be used in a timely manner or in accordance with the contract as a consequence of the delay.

Should the Customer set a reasonable deadline for performance by the Supplier after the due date – taking into account the statutory exemptions – and should such time period pass without performance, the Customer shall be entitled to rescind the contract within the framework of the statutory provisions. The Customer is obliged to inform the Supplier upon its request within an adequate time period whether it intends to exercise its rescission right. Additional claims due to default are determined exclusively pursuant to Section VII. of these Sales Conditions.

## IV. Transfer of Risk, Acceptance, Testing

1. Subject to of deviating written agreements, the risk with regard to the delivered item shall be transferred to the Customer as soon as the delivery item has left the premises of the Supplier or has been handed over to the forwarder, carrier or any other third party designated for the shipment, in particular also in case of partial deliveries or the Supplier having assumed other obligations, e.g. the transport costs or delivery and assembly.

2. Should shipment be delayed or fail to occur as a consequence of circumstances not attributable to the Supplier, the risk shall pass to the Customer as of the date of the notification of the readiness for shipment. The Supplier agrees to take out insurance coverage at the cost of the Customer as the Customer requests.

3. Partial deliveries shall be permissible if the partial delivery is useable for the Customer within the framework of the contractual stipulation of purpose, the delivery of the remaining ordered items is assured and the Customer does not accrue any material additional expenditures or additional costs hereby (unless the Customer declared its readiness to assume these costs).

## V. Retention of Title

1. The Supplier retains ownership title to the delivery item until receipt of all payments from the delivery contract, including possible ancillary services.

2. The Supplier shall be entitled to insure the delivery item at the cost of the Customer against theft, breakage, fire, water and other damages, unless the Customer proves having concluded such insurance itself.

3. The Customer may neither sell nor pledge the delivery item nor assign it as security. In the event of attachments as well as seizures or other dispositions by third parties, it shall notify the Supplier hereof without undue delay.

4. In case of conduct by the Customer contrary to the contractual agreements, in particular default of payment, the Supplier shall be entitled to take back the delivery item after issuing a warning notice and the Customer shall be obligated to surrender it to the Supplier.

5. On the basis of retention of title, the Supplier may only demand the return of the delivery item from the Customer if it has rescinded the contract.

6. As soon as an application for the opening of an insolvency proceeding concerning the assets of the Customer has been filed, the Supplier shall be entitled to rescind the contract and demand immediate return of the delivery item.

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## VI. Warranty

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The Supplier warrants – to the exclusion of additional claims – except as otherwise provided in Section VII. hereof – as follows:

1. All those parts of the delivery which turn out to be defective as a consequence of circumstances existing before the passage of risk are - at the choice of the Supplier - to be repaired or replaced by defect-free parts at no cost to the Customer. The Supplier must be notified of such defects without undue delay in writing. Replaced parts become the property of the Supplier.

2. After consultation with the Supplier, the Customer shall grant the required time and opportunity to undertake all remedies and replacement deliveries considered necessary by the Supplier; otherwise, the Supplier shall be exempted from liability for the consequences resulting there from. Only in urgent cases where operational safety is endangered or to avoid disproportionately large damages shall the Customer within the statutory provisions, have the right to remedy the defect itself or to have such remedied by third parties and to demand the reimbursement of the costs necessary therefore from the Supplier. The Customer must inform the Supplier immediately in writing about the estimated costs while at the same time stating the particular circumstances due to which the right to remedy the defect itself and have such remedied by third parties instead of the Supplier shall derive from. The afore-mentioned clause shall not limit the statutory rights of the Customer in case of failure of subsequent performance measures.

3. Within the framework of statutory law, the Customer shall have the right to rescind the contract if the Supplier – taking into account the statutory exemptions – allows a reasonable deadline within which to undertake the remedy of the defect to pass without remedying the defect or the remedy or replacement delivery proves unsuccessful. If only an immaterial defect exists, the Customer shall only be entitled to reduce the purchase price. Otherwise the right of reduction of the purchase price shall not exist. Additional claims shall be determined pursuant to Section VII., No. 2 of these Sales Conditions.

4. No warranty shall be assumed for damages caused by

- Unsuitable or improper use of the delivery item by the Customer or third parties,
- Defective assembly or start-up of the delivery item by the Customer or third parties,
- Normal wear and tear of the delivery item,
- Faulty or negligent handling or improper maintenance of the delivery item by the Customer or third parties,
- Use of unsuitable equipment by the Customer or third parties,
- Defective construction work attributable to the Customer or third parties, unsuitable foundation soil or chemical, electro-chemical or electrical influences which affect the use of the delivery item insofar as such damages are not the responsibility of the Supplier.

5. Should the Customer or a third party repair the delivery item improperly, no liability shall be created for the Supplier for damages resulting there from. The same shall apply for alterations to the delivery item without the prior consent of the Supplier, if the remedy of the defect is made impossible or unreasonably more difficult hereby. The Customer shall bear the additional costs of the remedy of the defect accruing as a result of the alteration.

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## VII. Liability

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1. The liability of the Supplier for damages, regardless of the legal grounds, in particular, due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations with contract negotiations and tort is excluded.

In addition to direct damages to the delivery item this exclusion of liability shall also encompass any consequential, incidental or indirect damages, such

as in particular, but not limited to damages for loss of use or loss of production due to defects of the delivery item, lost profits, lost turnover, costs of experts, frustrated expenses (e.g. costs for the disassembly and reassembly caused by a defect of the delivery item), costs for replacements, legal liabilities to pay compensation pursuant to an on-sale of the delivery item.

2. Insofar as the Supplier gives technical information or acts as adviser and such advice or information is not within the scope of the contractual obligations of the Supplier, this shall occur at no charge and under exclusion of any and all liability.

3. In particular the Supplier shall not be liable according to No. 1 of this Section VII. in case of ordinary negligence of its company organs, statutory representatives, employees or other vicarious agents, insofar as such does not concern damages from the culpable breach of a material contractual obligation. In the case of culpable breach of a material contractual obligation, the Supplier shall be liable in the case of gross negligence of non-management employees and with ordinary negligence; in the latter case limited to damage which is typical for this type of contract and reasonably foreseeable.

4. The afore-mentioned limitations of liability of this Section VII. shall not apply to the liability of the Supplier

- insofar as the Supplier maliciously fails to disclose a defect of quality or assumed a guarantee for the quality,
- for claims according to the German Product Liability Act (*Produkthaftungsgesetz*),
- for damages due to culpable injury to life, limb and human health,
- for damages based on wrongful intent, or
- in the event of gross negligence of its company organs or senior executives

Further claims by the Customer against the Supplier are excluded.

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## VIII. Statute of Limitations

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All claims of the Customer – regardless of the legal grounds – shall become time-barred after 12 months. For damage claims pursuant to Section VII, No. 4.a – e., the statutory statute of limitation periods shall apply. These shall also apply for defects of a structure or for delivery items which were used in accordance with their customary manner of use for a structure and caused its defectiveness.

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## IX. Applicable Law, Jurisdiction

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1. All disputes between the Customer and the Supplier arising out of or in connection with these Sales Conditions and agreements concluded on the basis thereof shall exclusively be governed by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (UN Sales Law, CISG). Insofar as incoterms are referenced, the Incoterms 2000 shall be considered agreed.

2. The place of jurisdiction for all disputes arising out of or in connection with these Sales Conditions shall be – as far as legally permissible - the court responsible at the registered office of the Supplier. The Supplier shall be entitled, however, to file actions at the courts having jurisdiction at the headquarters of the Customer.

3. Place of performance for all deliveries from the contract relationship is D-31638 Obernkirchen, Federal Republic of Germany, insofar as not otherwise agreed.

4. Should a provision of these Sales Conditions be or become invalid, void or unenforceable, the legal validity or the enforceability of all other provisions of these Sales Conditions or other agreements shall not be affected thereby. Invalid, void or unenforceable provisions of these Sales Conditions shall be deemed to be replaced by such valid and enforceable

provisions which come as close as possible to the commercial purpose of the cancelled regulation.

Obernkirchen, in June 2009