

# General Terms and Conditions of Delivery of GKN Service International GmbH

*Applicable in business transactions of the user (hereinafter referred to as "we") with business enterprises, legal entities under private or public law and special funds under public law (hereinafter referred to as "supplier").*

## **1 General**

- 1.1 Exclusively our General Terms and Conditions of Delivery stipulated in this document (hereinafter referred to as "(our) Terms and Conditions of Delivery") apply to the rendering of our performances (services) for the customer, the delivery of the works produced by us and the sale of goods (hereinafter collectively referred to as "objects of performance"). General Standard Terms and Conditions of Business of the customer that are contradictory to, or deviate from, our Terms and Conditions of Delivery will not be accepted, unless we have expressly agreed to their application in writing. Our Terms and Conditions of Delivery also apply even if we make deliveries in awareness of other terms and conditions of the customer deviating from our Terms and Conditions of Delivery.
- 1.2 Our Terms and Conditions of Delivery also apply to all future business transactions with the customer, without this requiring separate agreement.

## **2 Conclusion of the contract and amendments of the contract**

- 2.1 Our offers are without obligation, i.e. they do not constitute a binding offer to contract within the meaning of Section 145 BGB (German Civil Code).
- 2.2 Unless otherwise agreed in writing, the documentation belonging to the offer, e.g. descriptions, illustrations, drawings, weights and measurements, are only binding if expressly indicated as being binding in writing.
- 2.3 We reserve the right to make surplus or short deliveries when orders are placed for items manufactured to customer specifications.
- 2.4 Unless otherwise agreed, a charge is payable for quotations.
- 2.5 Verbal agreements following conclusion of the contract, especially deviations from our Terms and Conditions of Delivery, including this stipulation requiring written form, and collateral agreements are only valid if confirmed by us in writing.

## **3 Object of performance**

- 3.1 The objects of performance are rendered in accordance with the law of the Federal Republic of Germany. Compliance with non-German legal provisions does require written agreement in the individual case.
- 3.2 Unless otherwise expressly agreed in writing, the object of performance does not include any manuals, design plans, tools and drawings.
- 3.3 Unless expressly agreed in writing, we will not check the accuracy and completeness of information and data placed at our disposal by the customer, such as specifications and drawings.

## **4 Delivery**

- 4.1 Unless otherwise expressly agreed in writing, delivery will be made on the agreed delivery date, from the manufacturing works to be named by us (EXW Incoterms 2010). The provisions of Incoterms 2010 do ap-

ply, including any and all supplements. Compliance with the delivery period by us presupposes that all commercial and technical issues have been clarified between the contracting parties, and that the customer has fulfilled all obligations incumbent on him, e.g. supply of the necessary official certificates or permits, or making of a payment on account. If this is not the case, the delivery period will be extended appropriately. This shall not apply insofar as we are responsible for the delay.

- 4.2 Compliance with the delivery period is subject to the proviso that we ourselves obtain the right supplies in good time.
- 4.3 Partial deliveries are permissible, provided this is reasonable for the customer.

## **5 Duties of the customer to cooperate**

- 5.1 The customer guarantees that the objects of performance, or products containing the objects of performance, will not be installed in, or constitute parts of, pharmaceutical and medical engineering products, motor racing equipment, power stations and missiles, such as aircraft, satellites and rockets, in particular.
- 5.2 The customer is obliged to notify us in writing at an early stage, but no later than on conclusion of the contract, if objects of performance are subject to Germany's foreign trade legislation. If this is the case, we are entitled to withdraw from the contract within four weeks of issue of the notification, without this giving rise to any claims on the part of the customer.
- 5.3 When using the objects of performance outside Germany, the customer himself is responsible for compliance with the legal provisions applicable there. Within the framework of the scope permissible by law, we assume no liability whatsoever in the event of non-compliance.

## **6 Remuneration, price adjustment and payment**

- 6.1 In the absence of a special agreement, all prices are ex works, including loading at the works, but excluding packaging, freight, postage, insurance, unloading and other coverable risks. The value-added tax applicable to the prices is additionally to be borne by the customer, at the statutory level valid from time to time.
- 6.2 If the labour and material costs for the objects of performance, particularly the world market prices for steel, oil and other raw materials used or consumed in producing the objects of performance, change by more than 5 percent after the time of initial price fixing or the last price adjustment between us and the customer, we will negotiate with the customer with the aim of adjusting the prices accordingly.
- 6.3 In the absence of special agreements, payments are to be made within 30 days of delivery, to our account and free of charge for us. Timeliness is governed by the date of receipt of payment.
- 6.4 The customer is only entitled to a right to withhold payments, or offset them against counterclaims, insofar as his counterclaims are undisputed or have been determined by final judicial decision.

**7 Inability to perform****7.1 Inability to perform for which we are not responsible**

Force majeure, labour disputes, business disruptions through no fault of ours, public disorder, war, official measures, particularly bans imposed on deliveries to specific countries, and other unforeseeable, unavoidable or serious occurrences, relieve us of our obligation to perform, for the duration of the disturbance and to the extent of its impact. The obligations of the customer to perform, particularly the obligation to pay, lapse only in relation to the period during which we are relieved of our obligation to perform.

Insofar as, and for as long as, we are not supplied by our upstream suppliers and we are not responsible for this hindrance of delivery, we are relieved of the obligation to deliver to, or render performances for, the customer.

**7.2 Inability to perform for which we are responsible**

If delivery or rendering of the objects of performance is delayed for reasons for which we are responsible, the provisions in Clause 12 will apply, and the statutory regulations in all other respects.

**7.3 Inability to perform for which the customer is responsible**

If delivery and rendering or acceptance of the objects of performance is delayed for reasons for which the customer is responsible, the risk for these objects of performance will pass to the customer on the date of reporting readiness for shipping or acceptance, and he will be charged for the costs incurred as a result of the delay. We agree to conclude any insurance demanded by the customer for the objects of performance, at his expense.

**8 Used parts take-back**

8.1 Unless otherwise agreed in individual instances, the customer can, on the terms indicated below, return to us objects of performance on which we charged a used-parts deposit at the time of sale ("used parts") and that are in a reconditionable state, in return for payment of the deposit amount, thereby giving us ownership thereof.

8.2 The customer can only return as many used parts within a 12-month period as he has purchased congruent new parts from us within the same period. Upon request, we will draw up for the customer a list of new parts purchased by him and used parts already returned.

8.3 The customer has to ensure that only used parts within the meaning of Clause 8.1 are returned. We otherwise reserve the right to charge the transport costs to the customer.

**9 Reservation of title**

9.1 We reserve the title to all objects of performance delivered by us until the time of complete payment; in this context, all deliveries are deemed to be one continuous delivery transaction. In the event of a current account, the reserved title serves as security for our balance claim.

9.2 If the customer combines the objects of performance with other objects to form a single item, and if the other item is to be regarded as the principal item, the customer is obliged to transfer proportional co-ownership to us, insofar as the principal item is his property. If the customer resells the delivered objects of performance in accordance with the intended purpose, he herewith assigns to us even now the claims on his customers, and all secondary rights resulting from such sale, until the time of complete settlement of all our claims.

9.3 If there is good cause, the customer is obliged, on our demand, to inform the third-party purchasers of this assignment, and to give us the information, and hand over the documents, necessary for asserting our rights.

9.4 We will release the securities held by us insofar as their value exceeds the claims to be secured by more than 20% in total.

**10 Defects of quality and disposal**

10.1 The customer has to examine the objects of performance immediately upon receipt and notify us of any defect discovered without delay, but within two weeks at the latest. This does particularly apply to obvious transport damages, as well as differences in identity and quantity. If the customer fails to notify us, the objects of performance are considered to be approved, taking the defect in question into consideration, insofar as it is not a matter of a hidden defect. The regulations of Section 377 HGB (German Commercial Code) apply in all other respects.

10.2 If the objects of performance display a defect that was already present at the time of the passing of risk, and if we are notified of it within the time limit, we will, at our own discretion and at our own expense, remedy the defect (rectification) or deliver faultless objects of performance (replacement).

10.3 If the defect cannot be remedied within a reasonable period, or if subsequent performance is to be considered to have failed for other reasons, the customer can, at his own discretion, demand a reduction in the remuneration (reduction of the purchase price) or withdraw from the contract (withdrawal). Failure of subsequent performance can only be assumed after we have been given sufficient opportunity for rectification or replacement and the subsequent performance has failed to achieve the desired result, after we have refused or unacceptably delayed subsequent performance, or if our performance is unacceptable for other reasons.

10.4 On demand and at our expense, the objects of performance replaced or substituted in the framework of subsequent performance, and their parts, must be placed at our disposal by the customer without delay. They become our property.

10.5 The customer does have further claims for reimbursement of expenses and damages owing to the defective objects of performance only in accordance with Clause 12.

10.6 Claims for defects of quality do not exist insofar as the defect is attributable to

(a) failure to comply with installation, operating or maintenance instructions, or

(b) incorrect or unsuitable assembly, commissioning, treatment, use or maintenance, or

- (c) use of unsuitable operating materials, or
  - (d) intervention in, or modification of, the objects of performance without our prior, written consent
- on the part of the customer or third parties, or
- (e) natural wear and tear, or
  - (f) the implementation of customer specifications or instructions by us.

10.7 Objects of performance and their parts that do not display a defect of quality for which we are responsible, and which have been submitted to us for assessment and/or repair, and whose repair is technically impossible or economically unreasonable, can, at our discretion, be disposed of 7 days after verbal and/or written notification of the customer, provided that the customer does not demand them back beforehand.

## 11 Defects of title

- 11.1 Unless otherwise agreed, we are only obliged to render our objects of performance free of third-party industrial property rights and proprietary rights (hereinafter jointly referred to as "protective rights") in the country of the place of delivery.
- 11.2 If a third party asserts justified claims because of the violation of protective rights resulting from contractual utilisation of the objects of performance by the customer or his customers, we will, at our own discretion and at our own expense, either obtain a right to contractual utilisation of the affected objects of performance by the customer or his customers, or modify these objects of performance in a manner reasonable for the customer or his customers, such that the protective right is no longer violated. Should both fail, be unreasonable for the customer or refused by us, the customer shall be entitled – notwithstanding possible claims for damages or reimbursement of expenses – to the right to withdraw from the contract or reduce the remuneration.
- 11.3 Beyond this, we hold the customer harmless against all third-party protective rights claims arising from contractual utilisation of the objects of performance pursuant to Clause 11.1 that are undisputed or have been determined by final judicial decision.
- 11.4 The obligations pursuant to Clauses 11.2 and 11.3 only exist insofar as the customer informs us without delay of any asserted violations of protective rights, does not recognise them, and all defensive measures, settlement negotiations and out-of-court settlements remain reserved for us. The customer must grant us the powers of agency necessary for the latter from case to case.
- 11.5 Claims of the customer for violation of protective rights are ruled out if he is himself responsible for them. This is particularly the case if the violation of protective rights is based on specifications or other statements or requirements of the customer, or on use or modification of the objects of performance not foreseeable by us. At the same time, the customer has to hold us entirely harmless against all third-party claims for the violation of protective rights.
- 11.6 The customer is not entitled to more extensive or other claims in connection with the violation of third-party protective rights. In particular, we will not pay compensation for any consequential damages, such as loss of

production and use, or loss of profits. These limitations of liability do not apply insofar as compulsory liability exists for losses typically foreseeable for the contract in the cases indicated in Clause 12.2 (b) to (d).

## 12 Liability

- 12.1 Our liability for losses or damages is ruled out, insofar as it goes beyond the regulations in Clauses 10 and 11.
- 12.2 This does not apply to
- (a) losses or damages resulting from injury to life, limb or health in breach of our duties, or
  - (b) other losses or damages based on
    - (aa) a breach of duties whose fulfilment makes proper implementation of the contract possible in the first place, and on whose fulfilment the customer can regularly rely (cardinal duties), or
    - (bb) a breach of other duties caused by the fault of our legal representatives or executive employees through at least gross negligence, or caused by the fault of our ordinary employees with intent, or
  - (c) compulsory liability under the German Products Liability Act, as well as other compulsory statutory provisions that cannot effectively be contracted away, or
  - (d) guarantees assumed by us or defects maliciously concealed by us.
- 12.3 Liability for loss-of-production losses and loss of profits is ruled out.
- 12.4 Except in the cases indicated in Clause 12.2, our liability is limited to the foreseeable, typically occurring loss.
- 12.5 We are obliged to refund to the customer all necessary expenditure for recall campaigns directed by the competent authority or to be implemented by operation of mandatory statutory regulations, insofar as they are based on a defect in the objects of performance and we are liable for the defect. Insofar as the recall campaign is also based on contributory causes of others, this obligation does only exist for us to the extent attributable to our own conduct or the objects of performance. Insofar as possible and reasonable, the customer is required to inform us, in advance and in writing, of the necessity, content and scope of an envisaged recall campaign, and to give us the opportunity to make a statement.

## 13 Limitation

- 13.1 All claims of the customer relating to defects of quality, defects of title and liability will be statute-barred 12 months after the passing of risk, regardless of their legal grounds.
- 13.2 Clause 13.1 does not apply in the cases indicated in Clause 12.2, or to claims relating to the defectiveness of building structures, associated planning and supervision services, or building materials. These exceptions are subject to the statutory periods of limitation.

**14 Secrecy and surrender**

- 14.1 Regardless of the nature of their embodiment or storage, and regardless of their labelling as secret or confidential, all business or company secrets that have come to the knowledge of the customer, as well as other commercial or technical information that belongs to us or to an enterprise affiliated with us within the meaning of Section 15 AktG (German Companies Act) (hereinafter referred to as "GKN enterprise") or affect us or this GKN enterprise, and in whose secrecy there is a justified interest (hereinafter collectively referred to as "information"), are to be kept secret vis-à-vis third parties, as long as and insofar as they have not demonstrably become publicly known or accessible, and may only be made available to persons in the customer's own company who necessarily have to be called upon to use them within the framework of contractual collaboration with us and are likewise committed to maintain secrecy.
- 14.2 Information of a written nature, as well as its embodiment in documents, parts, samples and models, is and remains our exclusive property, or that of the GKN enterprise in question. All rights thereto are reserved, particularly the right to file applications for patents and/or utility patents.
- 14.3 Upon request, all information, together with any copies or excerpts thereof, must be returned to us or destroyed without delay, proof of which must be furnished to us. Electronically stored information must be deleted in such a way that it cannot be recovered.
- 14.4 To the greatest possible extent permissible by law, we accept no warranty, liability or guarantee for the completeness, timeliness, accuracy or serviceability of the information communicated to the customer or otherwise coming to his knowledge.

**15 Legal venue, applicable law**

- 15.1 The exclusive legal venue for all legal disputes – including non-contractual disputes – and claims resulting indirectly or directly from contractual relationships based on these Terms and Conditions is Cologne. We are moreover entitled, at our discretion, to sue the customer at the court of his registered offices or his branch office, or at the court of the place of performance.
- 15.2 The contractual relation is subject exclusively to the law of the Federal Republic of Germany, excluding the United Nations Convention on the International Sale of Goods (CISG).