

## **General Conditions of Sale & Delivery**

### **KINYO GERMANY GMBH**

#### **I. General**

- (1) For all business relationships between our customers and us solely the following General Conditions of Sale and Delivery (GCSD) are valid. These GCSD are applied solely to companies following the law § 310 BGB (German civil code). Our GCSD are regarded as recognized with the acceptance of the delivery at the latest. They are furthermore regarded as recognized within the continuous business relation. The customer's Terms and Conditions of Trade, even if we do not object these explicitly again, find in principle only application insofar as they are not deviating from our GCSD.
- (2) Our offers are non-binding. Technical data and descriptions of the delivered good in offers, brochures or other informative material are only binding as far as not something else is resulting from the order confirmation. Orders, contracts, contractual amendments and transaction endorsements and all other agreements or declarations, including acceptance of guarantees, are only then binding for us, if these are confirmed in writing explicitly by us (cf. with the delivery dates, section II (2) below).
- (3) All agreements reached between the parties are put down in writing in this contract. Side agreements are only effective, if they are confirmed by us in writing. Oral assurances by us prior to the conclusion of this agreement are legally not binding and oral agreements between the parties are replaced by this written agreement, unless it results from the oral agreements explicitly that they should continue to be binding.
- (4) If any provision of this agreement shall be entirely or partly invalid or unenforceable, this shall not affect the validity and enforceability of all other provisions of this agreement. The invalid or unenforceable provision shall be regarded as replaced by such valid and enforceable provision that as closely as possible reflects the economic purpose that the parties hereto had pursued with the invalid or unenforceable provision.
- (5) The place of performance for all financial and further contractual commitments is the head office of our company. The place of performance for deliveries is the place of dispatch.
- (6) The place of jurisdiction for all litigation, including summary bill enforcement proceedings and cheque proceedings, however with the exception of summary proceedings, is our head office. We reserve the right to take proceedings against the customer at his headquarters.

(7) The law of the Federal Republic of Germany is applicable, with the exception of the uniform UN sales law, the Contract of International Sale of Goods (CISG).

(8) Our customer's rights out of the contract are non-transferable.

## **II. Delivery, devolution of risk, delay in delivery**

(1) The conditions of our delivery are resulting solely from our written offer and/or our written order confirmation.

(2) We are endeavouring to keep the delivery times and/or delivery dates indicated by us. However, the from us indicated delivery times and/or delivery dates are only approximate and they are, in particular, to be seen under the proviso of the delivery in time, in accordance with the regulations and sufficiently by our pre-suppliers. The delivery dates mentioned in our order confirmations are not regarded as guaranteed. The delivery deadline starts with the dispatch of the order confirmation. In case transportation has been agreed, the delivery times and/or delivery dates shall refer to the point in time, in which the goods have been handed over to the forwarding agent, carrier or any other third party entrusted with the transportation. In each case the keeping of delivery deadlines requires that all documents to be supplied by the customer are arriving in time and that the customer is complying with the agreed terms of payment and other obligations. In case the customer violates culpably his obligation to cooperate, we are entitled to claim for damages and additional costs, if applicable, arising insofar. We have the right to make partial deliveries.

On call purchase orders have to be taken by the customer within three months. Between the on call order and the desired delivery date there must be an appropriate period of at least one month.

(3) Should we be in delay in delivery, the customer can then only withdraw by a written statement, in case he has set us an appropriate deadline of at least two weeks in written form, which has been missed futile.

If the customer does not declare already in the course of the fixing of the time limit, whether he is insisting on the further fulfilment or whether he is making use of his right of withdrawal, and if such a statement has not reached us within a further period of two weeks, we have the right to rescind the contract, as far as we have informed the customer of this in written form.

Contractual penalties due to late deliveries are excluded.

(4) In the case of delay in deliveries through no fault of one's own, especially in cases of force majeure or other unforeseeable incidents outside our responsibility including without limitation, interruptions of operations, strikes, lock outs, acts of public authorities, subsequent cease of export or import opportunities, deficiency in manpower, energy or raw materials as well as our reservation of timely supply from our own suppliers in accordance with paragraph (2) above, the delivery time is extended by the duration of the delay. The right of withdrawal for us is only in these cases given, as far as such incidents aggravate the delivery to a high extent and the obstruction is not of temporary nature. As far as the customer cannot be expected to accept the delivery due to the delay, he may upon immediate written declaration towards us rescind from the agreement. Further claims for damages shall not be given for the customer.

(5) In the case of import and export business, we are allowed to withdraw from the contract provided we do not obtain the permissions required.

(6) In case the customer is behind with the on call purchase, acceptance or collection of the goods, or the customer is responsible for delayed dispatch or delivery, we are then, regardless of more extensive claims, entitled

(a) to store the goods at the customer's expense and risk, either at our premises or at a third party, and to charge the customer storage costs of at least 0.5 % of the arising invoice amount for the quantities not bought for each week of storage started, as far as the customer is not proving to us that no or only a substantial lower loss has arisen or

(b) to sell the quantities not bought to somebody else after an appropriate period of time expired; here the customer is liable for the difference between the agreed purchase price and the proceeds on the sales to somebody else as well as

(c) to withdraw from the contract at the amount of not bought quantities.

(7) As far as nothing else is arising from these GCSD, the terms and definitions of the INCOTERMS 2000 apply to the cost clauses.

(8) The risk of conveyance for all deliveries – for CIF or FOB deliveries or self-collection as well – are devolved to the customer as soon as the goods have left the respective supplier or our warehouse or have been handed over to the first means of transport, forwarder or carrier at the factory premises or warehouse premises.

In the case of section (6) above, the risk is already devolved to the customer with the notification of readiness for the shipment.

- (9) As far as claims are raising on transport damage or losses, the customer can only assert these if he has, prior to the payment of freight, arranged an entry of appropriate notes of damage and/ or loss on the freight documents and invoices and the appropriate record and if he has announced us or the transport company such damages or losses within ten days after receipt of the goods at the destination or, in case of non-receipt, after receipt of notification of readiness for the shipment and if he has the goods together with the packaging ready for our inspection.

### **III. Prices, terms of payment, securities**

- (1) Deliveries are carried out at the prices quoted in the order confirmation (plus the corresponding valid value-added tax rate).

In case no order confirmation has been given, the prices agreed the last time are decisive. The prices do not include the packaging charges or freight costs for the delivery from our warehouse.

In case of contracts with a term of more than 3 (three) months, we are entitled to amend the stipulated purchase price accordingly, when there is a belated introduction or amendment of the on the goods encumbered charges, taxes and any other burden, in particular EU-charges, and antidumping or compensatory duties or similar as well as when there are amendments of exchange rate parities.

- (2) Payments are due upon receipt of the invoice and have to be made within 7 working days in cash or by bank transfer. They are regarded as been paid upon the day we are able to have the amount at our disposal.

- (3) We only accept bills of exchange after prior explicit agreement for the sake of payment, namely to the exclusion of our liability for the punctuality and for the accordance with the regulations of submission and protest; and only then when these are re-discountable and taxed in accordance with the regulations.

- (4) Credit notes on bills of exchange and cheques are transacted subject to receipt and value at the day of the value available. Discount and collection charges as well as other expenses and costs, including stamp duty, are charged to the customer. We are not obliged to seek paying initially for bills of exchange, cheques or other on account of performance produced payments submitted to us.

- (5) Should the customer be in default of payment, we have the right to charge interest in the amount at the rate we ourselves have to pay for borrowing, however at least at a rate of 8 percent above the prevailing basic interest rate p.a. of the European Central Bank.

- (6) All claims, including those by discounting of bills of exchange, become due immediately, in case the customer is in delay of payment, does not keep to other fundamental contractual obligations or to these GCSD or in case we become aware of circumstances which are worth reducing the creditworthiness of the customer, in particular suspension of payments, filing of a petition in insolvency proceedings, rejection of the commencement of the insolvency proceedings for lack of assets. In such cases we are entitled to withhold any deliveries still outstanding. In case the customer does not produce the required payment in return within a time limit of at least 10 working days fixed by us and he does not offer any securities, we are then entitled to withdraw from the contract.
- (7) The set-off with other than uncontested or legally valid determined counterclaims are inadmissible. The right of retention of the buyer is ruled out, in particular on account of his warranty claims, unless such claims are not uncontested or legally valid determined. If the customer, without permission, exercises a right of retention on goods to be returned, the customer is prohibited from using this good.

#### **IV. Reservation of proprietary rights**

- (1) The following regulations regarding the retention of title serve as security for all our currently existing as well as future claims against the customer arising from the delivery relationship between the parties.
- (2) The delivered goods remain our property until the full and final payment of all secured claims, in the case of payment by bill of exchange or cheque proceedings as long as we ourselves are in the liability for bill of exchange and cheque concerns. In case of several claims or open invoices, the reservation of proprietary rights serves as security for the claim to the balance, even if single goods deliveries have already been paid. The goods, as well as the goods replacing the original goods and which are covered by the retention of title according to this clause, will in the following also be referred to as reserved goods.
- (3) The customer is only entitled to the resale solely in the ordinary course of business, but, however, not to pledging, collateral assignment or other extraordinary disposals. Claims out of the resale are already now transferred to us in mutual consent for securing purposes. In case we are co-owners of the reserved good, the customer assigns his claim in the ratio of our co-ownership. This is also applicable for claims, which replace the reserved good or arise otherwise, for example claims against insurances. The customer is allowed to collect these on our behalf and on our account in the name of the customer. However, he has to hold for us the received amounts in escrow by individual safekeeping and posting. In case the buyer, within

the bounds of direct debit authorization for the purpose of collection, is ceding his claims from the resale to a third party, already then he is filing his claims against this third party to us by mutual agreement. However, the customer has to leave the collection to us, if he is not meeting his obligations towards us or if he is getting into the fall of assets. The customer has to fully support us in the collection proceedings. For this purpose he has to give all necessary information and submit the necessary documents to us. If the reserved good is resold together with other goods, then the agreed anticipatory assignment is only valid for the value level of the reserved goods.

- (4) In case the customer is processing the reserved goods, it is agreed that the processing is done on our behalf as producer and for our account, without any commitments arising from this for us. In case of processing, combining or mixture of the reserved goods with other goods basically a co-ownership share of this new product is arising for us, namely in case of processing in a ratio of the value (= gross invoice value including additional costs and taxes) of the reserved goods to the value of the new product; in case of combining or mixing in the ratio of the reserved goods value to the value of the other goods. Should the customer become the sole owner, he hereby grants us the co-ownership in the ratio of the mentioned value and safekeeps the product for us free of charge.
- (5) Until the reserved goods have not been paid fully, the customer is obliged to hold the goods as our fiduciary agent, to store them separately, to handle them with care and, at our request, mark them and insure the goods appropriately against all usual risks. . Claims out of a case of damage on the insurance company are hereby transferred to us to the value level of the reserved goods by mutual agreement.
- (6) Pledges of reserved goods or any other forms of access by third parties have to be announced immediately in written form by giving the name and the address of the pledgee or the third party.
- (7) Should the customer get into delay of payment or fails to fulfil any other fundamental contractual obligations, we can withdraw from the contract, demand the surrender of the reserved goods and, after penalty, make use of it. Claims for damages remain unaffected.
- (8) If the value of all securities exceeds the secure claims by more than 50%, the customer can, in this respect, demand the release of securities based on our choice.
- (9) In case of filing of action from the reservation of proprietary rights, we are free to take proceedings against the foreign customer at his local court. In the latter case a regulation of the reservation of proprietary rights is regarded as agreed that is admissible according to the

local law of the customer and that is economically coming closest to the hereby agreed reservation of proprietary rights.

## **V. Claims due to defects and any other liabilities**

- (1) The customer has to examine every delivery carefully and completely immediately upon receipt. Defects detected during the scrutiny have to be censured in written form within seven days after receipt of the goods. Otherwise the complete delivery is regarded as accepted in this respect. If later on a defect is appearing not having been detected in the initial scrutiny, the customer has to inform us immediately in writing. In case of a notice of a defect the buyer has to describe the asserted defect detailed in writing and under which circumstances these defects have occurred.
- (2) We are liable for ensuring that the goods are showing the agreed quality stipulated in the contract. Insignificant differences in colour, dimensions and/or other signs of quality and performance parameter of the goods, however, do not constitute a defect.
- (3) Claims due to defects are only existing, when a defect, despite use, upkeep and maintenance according to the rules and in accordance with any instructions and by deployment of skilled staff, is occurring by the customer and is not founded on the natural wear or corrosion of individual parts or on non-expert repairs or conversions by unfamiliar parties. Changes carried out by the customer or a third party without our consent result in the expiration of all guarantees.
- (4) Before the customer is going to send us the censured goods he has to apply for our written consent. For this purpose he has to return the documents to us (order confirmation, delivery note, invoice etc.) from which the justifiability of a warranty claim is resulting.  
Subsequently the buyer has to return the censured goods to us in the original packaging or in a just as secure packaging.
- (5) Well-founded censured defects according to the rules oblige us to dispose the defects (remediation) or to replace the defective part or goods (replacement) within a reasonable delivery time. In such cases as well the customer bears the transport risk for the delivery and the return delivery. However, the transport costs for delivery and return delivery, labour and material costs, arising as a result of a legitimate notice of defect, are borne by us.
- (6) The customer has only the right to withdraw from the contract or to reduce the price, when we either refuse the remedy of defects and the exchange or do not comment on his well-founded

complaint within an appropriate period of at least three weeks or when the remedy of defects did not result in success or rather when the replacement is faulty as well and this has been censured according to the rules in the sense of paragraph 1 above. On condition of sentence 1, however, the customer can only withdraw from the contract, if the acceptance of the goods at a reduced price cheap wise can not be expected of the customer.

- (7) We exclude our liability for slight negligent neglect of duty, provided these do not affect substantial duties, consequential damages out of life-threatening injuries, physical injuries and detriments of health or claims are affected by the product liability law. The same applies to neglects of duty of our vicarious agents. As far as we infringe substantial duties slightly negligent, the extent of our liability is limited to the damages in comparable businesses of this kind typically foreseeable. Our liability on account of guarantees assumed or fraudulent conduct remains unaffected.
- (8) Warranty claims come under the statute of limitations within 12 months after arrival of the goods at destination. This is not valid, as far as for the quality of goods a guarantee has been assumed or the neglect of duty was wilful or grossly negligent.

## **VI. Packaging**

The customer is hereby asked by us to reuse all packaging of the goods delivered, including cargo packaging, wholesale packaging and sales packaging, or to recycle them apart from the public refuse disposal. In this respect the customer takes action as a commissioned third party in the sense of § 11 of the Packaging Decree. As far as the customer does not fulfil this obligation, we are entitled having the third party to reuse or to recycle and to charge in return the purchaser for the costs arising. As far as we are exempted from our obligations according to the Packaging Decree § 6, section 3, clause 6, in this section the customer is discharged of his imposed duties.

Düsseldorf, January 01<sup>st</sup>, 2009