



## General Terms and Conditions of Kleiber Sales Service GmbH

(Updated: November 2012)

### **1. Application of these General Terms and Conditions**

- 1.1 All offers, deliveries and services supplied by Kleiber Sales Service GmbH (hereinafter "Kleiber") shall be based exclusively on these general terms and conditions; this also applies for all future contractual relationships, even if the application of these Terms and Conditions has not been expressly provided for by the contract in question. At the latest, the customer is taken to agree with these Terms and Conditions on objectionless acceptance of the delivery. Any general terms and conditions had by the customer shall only apply to the extent that they are consistent with these Kleiber General Terms and Conditions; a customer's general terms and conditions may also apply if Kleiber does not expressly object.
- 1.2 Any departures from these General Terms and Conditions shall only be effective if they have been agreed on in writing or if Kleiber provides written confirmation to the customer.
- 1.3 These General Terms and Conditions apply exclusively to transactions between Kleiber and customers who are entrepreneurs within the meaning of § 14 BGB (German Civil Code).
- 1.4 Kleiber's General Terms and Conditions shall apply in their version as current at the time of execution of the contract in question with the customer, as published on Kleiber's website [www.kleibersales.com](http://www.kleibersales.com).

### **2. Offer and Execution of Contract**

- 2.1 All offers by Kleiber are non-binding and subject to the availability of the goods in our warehouse. In order to be effective, customers' notices of Acceptance of Offer must be confirmed in writing by Kleiber. This also applies to additions or amendments to orders. The customer's orders may be accepted by Kleiber within 14 days of receipt by means of written confirmation of order, dispatch confirmation

or delivery of the goods ordered. Mere receipt of the customer's orders shall not qualify as acceptance or confirmation of the order and thus does not signify the execution of a contract.

- 2.2 Diagrams/images, dimensions, colours, weights or other properties relating to the goods shall only be binding if this is expressly agreed on. Subject to error and colour discrepancies.

### **3. Prices**

- 3.1 To the extent that nothing to the contrary is agreed on by the parties, the contract of sale shall be subject to the prices being offered by Kleiber at the point of receipt of the order. Prices quoted in a non-binding offer directed concretely at the customer shall be binding on Kleiber for orders made within 14 days of receipt of the offer in question.
- 3.2 If nothing is specified, prices are "ex works". The customer shall bear the freight costs arising from shipping with a haulier selected by Kleiber.

### **4. Transfer of Risk**

At the latest, the transfer of risk to the customer shall occur on delivery of the goods to a haulier or other shipping service provider. The transfer of risk to the customer may also occur when, at the customer's request, the goods are put into storage either with Kleiber or a third party hired by Kleiber.

### **5. Delivery Times / Partial Deliveries**

- 5.1 Delivery dates or deadlines shall only be binding if this is expressly agreed upon in writing. If the delivery is delayed because of the customer or for reasons for which Kleiber is not responsible (especially force majeure, traffic disruptions, strikes, export/import limitations, political unrest etc) the delivery date/deadline shall be extended accordingly. If a delay of this type exceeds 8 weeks in length, both parties shall have a right to rescind the purchase agreement.
- 5.2 A delivery date or deadline shall be deemed to have been met when the goods are handed over by the haulier or other shipping service provider by the date/deadline agreed upon.
- 5.3 If Kleiber falls into delay with a delivery, the customer shall, in writing, set a reasonable deadline extension of at least 2 weeks. In case of non-compliance with this extended deadline, the customer shall have a right of rescission and can recover any moneys already paid.
- 5.4 In the customer's interests, Kleiber shall have a right to make reasonable partial deliveries.

### **6. Retention of Title**

- 6.1 The goods delivered by Kleiber shall remain Kleiber's property until all amounts owing to Kleiber by the customer have been paid.
- 6.2 If the goods delivered are mixed up with, combined with or attached to other materials, or if the goods are processed, the customer shall, on execution of the purchase contract, surrender its rights to distribute or its property rights or share in

property rights in the newly produced / created goods and shall store these goods in a professional manner on Kleiber's behalf.

- 6.3 The customer must not use the goods which are the subject of this reservation of ownership (hereinafter: conditional goods) as securities or grant any liens over these goods to third parties. The customer may, however, continue to sell the conditional goods in regular trade, as long as the customer includes a reservation of property clause with the same content as this one. To this end, the customer shall, at this point, as a precaution, assign to Kleiber all rights to receivables arising from their sale or from any other related legal transaction. The customer does, however, have revocable authorisation to invoice assigned receivables in its own name. Kleiber may only revoke this authorisation and disclose the assignment of rights to the third party debtor if the customer falls behind with its payment obligations or if the customer's financial situation starts to deteriorate. On request by Kleiber, the customer shall be under an ongoing obligation to provide Kleiber with a written statement outlining the amount, reason for and debtor for all receivables which fall under the security assignment provision, as well as all documents which would be required to collect these debts.
- 6.4 Where third parties access the conditional goods, the customer must indicate that these are the property of Kleiber and inform Kleiber immediately. The customer shall bear any costs which arise / the costs of any loss which arises in this context.
- 6.5 Where the customer breaches its obligations under the contract, stops making payment or has an application for insolvency placed over its assets, Kleiber shall have a right to seize or label the conditional goods and may enter the customer's premises or storage facilities to these ends.
- 6.6 If the total value of the securities held by Kleiber, especially securities arising from conditional goods, exceeds the value of the receivables owed to Kleiber by more than 20%, and on request by the customer, Kleiber shall select securities to be released to remove this surplus.

## **7. Conditions of Payment / Offsetting / Right of Retention**

- 7.1 Where nothing to the contrary has been agreed on in writing, Kleiber's invoices shall be payable within 30 days of the date of issue and delivery. When the relevant payment deadline is passed, the customer shall be considered to be in default without the need for a warning. Where the customer falls into default, Kleiber may charge interest of 8 percentage points above the base interest rate (§ 247 German Civil Code; BGB). Where Kleiber receives a cheque or bill of exchange, payment shall only be deemed to be complete when the instrument has cleared; Kleiber reserves the right to return the bill of exchange and to request immediate payment or the provision of a different security in lieu thereof if there is reason to suspect that the bill of exchange does not provide sufficient security. Discount charges and bill of exchange charges shall be borne by the customer and are payable immediately.
- 7.2 If Kleiber becomes aware of any information which indicates a marked decline in the customer's financial situation since entering into the agreement, especially if the customer is in default, putting Kleiber's rights to payment at risk, Kleiber shall have a right to only make deliveries or take orders in exchange for full or partial payment, in exchange for securities or only on condition of payment in advance. Where the customer's financial situation worsens considerably, or where Kleiber cannot reasonably be expected to continue to perform the contract because the

customer stops making payment, becomes insolvent or has an application for insolvency proceedings made, Kleiber shall have a right to rescind or terminate with immediate effect any contracts which have not yet been performed.

- 7.3 The customer may only have an offset right in respect of moneys owed to Kleiber where the customer's claims in question are uncontested, have been given legal effect or are ready for a decision. This also applies accordingly for the exercise of the customer's rights of retention.

## **8. Guarantee and Liability**

- 8.1 As the deliveries are part of commercial transactions, the customer must check the goods delivered by Kleiber immediately on receipt and report any faults or irregularities between the quantities ordered and delivered within 3 working days of their discovery. Obvious faults must be reported to Kleiber no later than 3 working days after receipt of the goods. If faults which could not be discovered notwithstanding a careful check on receipt of the goods become apparent within the guarantee period, the customer must inform Kleiber of these faults in writing within 3 working days of their discovery. Notification of these faults must, in all cases, be received by Kleiber within the guarantee period. The customer shall not have any guarantee rights arising from complaints made after the expiry of the guarantee period. The customer shall not have any guarantee rights if it fails to carry out a check of the goods immediately after receiving them. The customer shall bear evidentiary onus to prove when the faults or quantity irregularities were discovered, or to prove that they could not have been discovered through a careful check of the goods on receipt. Changes to deliveries and services made without Kleiber's consent exclude rights to subsequent performance.
- 8.2 Where the customer makes a valid guarantee claim, Kleiber may, by way of subsequent performance, choose either fix the fault or to deliver a fault-free replacement. The faulty goods must be returned to Kleiber postage-paid. Where goods are faulty, Kleiber shall pay the freight costs incurred by the customer in returning the goods (domestic shipping within Germany, cheapest freight rate). Where subsequent performance (repair or replacement delivery) is not provided or fails twice for reasons for which the customer is not responsible, the customer may demand that the contract be rescinded or that the contract price be reduced. In cases of minor faults, the customer shall not have a right of rescission. Section 350 German Civil Code (BGB) shall apply for statutory rights of rescission. In providing repairs or replacements, Kleiber does not acknowledge any legal obligation, nor shall this affect limitation periods applying to complaints about faults in the goods.
- 8.3 The customer shall bear the onus of proof for all requirements relating to the guarantee or other claims against Kleiber, especially requirements relating to whether complaints have been made in time.
- 8.4 Subject to the types of claims for compensation provided for under cl. 9, any type of claim arising from any other kind of fault shall be excluded.
- 8.5 Any guarantee or warranty regarding the goods shall only be binding if expressly confirmed by Kleiber in writing. Product descriptions, advertising details, irrespective of their form, shall not be deemed to be guarantees or warranties.

## **9. Limitation of Liability**

- 9.1 Kleiber may only accept liability for loss, irrespective of the legal basis, if:

- a) Kleiber has culpably (or at least negligently) breached a condition (cardinal obligation) of the contract in a way that endangers the purpose of the contract;  
or
  - b) Kleiber caused the loss with intent or gross negligence; or
  - c) Kleiber had provided an express or written guarantee.
- 9.2 In the following cases, Kleiber's liability is limited to loss of a kind which is reasonably foreseeable for this kind of contract:
- a) In cases of a culpable breach of a condition (cardinal obligation) which was not intentional or grossly negligent;
  - b) in cases of a culpable breach of another term (non-cardinal obligation) by Kleiber's employees or agents which are not organs, legal representatives or managerial employees;
  - c) in cases in which a guarantee is given, to the extent that a guarantee for the suitability of the goods has not been given.
- 9.3 Kleiber's liability with respect to foreseeable loss of a kind which is typical for this kind of contract shall be limited to 10% of the value of the order (net, excluding VAT) for cases falling under a). The aforementioned limitation of liability sum also applies in cases b) and c). In cases a) to c) Kleiber's liability excludes liability for indirect loss, consequential loss or loss of income.
- 9.4 Further to cls. 9.1 a) and 9.2 a), in cases of merely negligent breaches of a condition of the contract, Kleiber's shall not accept liability for loss caused by mere negligence.
- 9.5 Kleiber's liability for loss caused by gross negligence relating to deliveries made to the customer shall, to the extent that the limitation of liability under cl 9.2 b) does not apply, be limited to a 20% of the value of the delivery in question (net, excluding VAT).
- 9.6 Kleiber shall not accept liability for indirect loss, consequential loss or loss of income, irrespective of the legal basis.
- 9.7 The provisions under cl 9 shall also apply where goods are only defined by their type.
- 9.9 The provisions under cl 9 also apply in cases of claims for compensation by the customer against any of Kleiber's organs, legal representatives, managerial employees, employees, subcontractors, official representatives and other proxies.
- 9.10 If, in an individual case, it is unclear whether or not Kleiber may accept liability for a loss, the customer shall bear the full onus of proof for all requirements for the claim.
- 9.11 Any liability for loss suffered by the customer on the part of Kleiber exceeding that provided for under cl 9 is excluded.
- 9.12 The limitations of liability under cl 9 of this agreement shall not apply to Kleiber's liability under the German Product Liability Act (Produkthaftungsgesetz) relating to personal injury or fraudulent non-disclosure of a fault and guarantees regarding the product's suitability for its intended use.

## **10. Limitation Period for Claims**

- 10.1 The limitation period for all of the customer's claims against Kleiber, especially arising due to legal or factual faults with the goods delivered by Kleiber shall be 12 months starting at the legal point of commencement of the limitation period. The applicable legal limitation periods shall apply in cases of intentional or grossly negligent breaches of duty, fraudulent non-disclosure of faults, claims arising from illegal conduct, breaches of guarantees or warranties, personal injury and infringement of rights under the Product Liability Act. None of the above affects the operation of § 479 German Civil Code.
- 10.2 Any of the customer's claims and rights to change this contractual relationship (e.g. termination or rescission) shall be barred if not exercised in writing to Kleiber within 3 months of knowledge. All of the customer's claims and rights to change the contractual relationship, especially those arising due to legal or factual faults with the goods delivered by Kleiber shall also be barred if the customer does not take legal action regarding the claims or rights to change the contractual relationship within 3 months of receipt of rejection of the claim by Kleiber.

## **11. Applicable Law / Jurisdiction / Severability Clause**

- 11.1 The sole place of jurisdiction for any controversies arising from or in relation to the contractual and commercial relationship between Kleiber and the customer shall be the place of registration of Kleiber's headquarters at the point in time at which the claim is made. This same place of jurisdiction shall also apply if the customer does not have a general place of jurisdiction in Germany at the point in time at which the claim is made.
- 11.2 The place of performance for deliveries is the place to which the goods are to be delivered or shipped by Kleiber.
- 11.3 This agreement shall be exclusively governed by the laws of the Federal Republic of Germany to the exclusion of references to foreign or international law. The operation of the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.
- 11.4 Where an individual provision of these General Terms and Conditions is invalid or becomes invalid, this shall not affect the legal effect of the remaining provisions.

