Keller
&Kalmbach

General Terms of Sale, Delivery and Payment of Keller & Kalmbach GmbH, Unterschleissheim

I. General aspects field of application

1) Deliveries and services of Keller & Kalmbach shall be carried out on the basis of these terms and conditions exclusively. Opposing conditions or conditions deviating from the said of the ordering party shall not be recognised unless we have approved of their applicability explicitly in writing. In the event of a written fundamental recognition of the general terms and conditions of business of the buyer, the said shall apply only for those sections of the terms and conditions which do not oppose our general terms and conditions of sales, delivery and payment, subject to an explicit deviating regulation in an individual case. The terms and conditions rendered hereinafter shall apply also, if we carry out the delivery of the ordering party without reservation, well knowing of opposing terms and conditions of the ordering party or terms and conditions deviating from ours. The said shall apply also for all future business transactions with the ordering party.
2) These terms and conditions shall not apply for ultimate consumers.
3) The transmission by facsimile or by remote data transmission shall comply with the need for written document within the keeping of these terms and conditions.

II. Offer and conclusion of contract

1) Our offers shall be without obligation, provided we do not declare the said to be binding.
2) Orders in keeping with section 145 of the [German] Civil Code shall be accepted within four weeks, provided no longer period is agreed upon in an individual case.
3) A sales contract shall become effective only through our written order acknowledgement, at the latest, however, with the delivery of the goods. In doubt, our order acknowledgement shall be decisive for the type and scope of delivery.
4) Orders which are transmitted to us by electronic means shall be considered received by us only after download and opening by us. In case of orders transmitted electronically (tele or media service), the ordering party dispenses with the messages and information as well as a confirmation of the receipt of his/her order stipulated by the statutory instrument in keeping with article 241 of the [German] Introductory Act to the Civil Code (EBGB).

III. Prices

1) Provided nothing to the contrary is rendered in the offer, all prices of Keller & Kalmbach shall be strictly net ex stock, plus the legally applicable value-added tax as well as packaging, insurance and shipping costs.
2) The minimum order value shall be Euro 25.00. If an order does not reach this value, we shall be entitled to invoice the minimum order value.
3) For each order we shall charge a lump-sum ship cost share of Euro 7.50. In case of orders with a net goods value of over Euro 100.00 the lump-sum amount shall be Euro 3.50.
4) If more than six weeks have passed between conclusion of the contract and the delivery date agreed upon, Keller & Kalmbach shall be entitled to reasonably increase the prices caused by increases in wages, material costs or the marketable cost prices in keeping with these increases.
5) If we take back goods without legal obligation and based on fair dealing, we shall be entitled to a re-storing fee to the amount of 15 per cent of the goods value, at least however Euro 15.00.

IV. Terms of payment

1) Our invoices shall be due for payment after invoicing, but at the latest within fourteen days after the delivery. Lacking any other agreements or differing data on our invoice, the invoice shall be due strictly net within fourteen days after maturity.
2) The receipt of the credit entry on the account of Keller & Kalmbach shall be decisive for the point of payment.
3) If we learn about circumstances which put the credit worthiness of the customer into question lastingly, in particular the discontinuation of payments by the customer or the dishonouring of the cheque supplied or if individual claims are overdue, we shall be entitled to fix a due date for all claims of the business relationship irrespective of the grace period agreed upon, even if we should have accepted cheques. Moreover, in such a case we shall be entitled to request payment in advance contrary to the terms of payment made. If Keller & Kalmbach institute debt recovery proceedings against the ordering party, all unpaid invoices shall be due for payment immediately irrespective of their terms of payment.
4) The ordering party shall have a right to setoff only, if we have recognised his/her counter-claims or the said have been validated or are undisputed. In addition, he/she shall be authorised to execute a right of

retention only, if his/her counter-claims are based on the same legal relationship.
5) Keller & Kalmbach shall have the right to assign the claims against the buyer for the purpose of factoring without requiring the approval of the buyer.

V. Reservation of ownership
1) Up to the complete payment of all claims from the business relationship between us and the ordering party, the goods supplied shall remain our property.
2) The ordering party shall be entitled to sell the reserved goods in our ownership by normal business transaction. The ordering party shall assign all claims from the sale of the reserved goods to us, irrespective of whether the goods have been sold combined or mixed with another matter. In case of reserved goods combined or mixed with another matter, the ordering party shall assign to us the claims to the amount of the invoiced value for the goods concerned.
3) Despite assignment, the ordering party shall be permitted to collect his/her claims towards the buyer. Our right to collect the claims from the buyer shall be effective only, if the ordering party does not fulfil his/her payment obligations, if insolvency proceedings are instituted, a cheque or bill is protested or seizure is carried out. Subsequently received outstanding debts shall be collected on a special account immediately. In this case the ordering party shall be obligated to render to Keller & Kalmbach all information needed for encashment, to hand over the appertaining documents and to inform the debtor about the assignment. Moreover, in this case the right of the customer to resell or process the goods and to collect the outstanding debts shall be forfeited.
4) By processing the goods supplied and owned by a third party, the buyer shall not obtain the ownership in the matter produced in whole or in part. In case of processing, mixing or connecting the goods under reservation with other materials, we shall acquire a co-ownership in the newly created matter in proportion to the invoiced value of our goods under reservation without any obligation on our part. The ordering party shall store the matter, in which Keller & Kalmbach has a co-ownership, free of charge for Keller & Kalmbach. If the reservation of ownership should expire nonetheless for some reason, the seller and the buyer shall be in agreement now already that with processing the property shall pass to the seller who accepts the assignment.
5) The ordering party shall neither pledge nor place in escrow the goods under reservation. In case of seizure or distraint, the ordering party shall have to inform Keller & Kalmbach without delay, and shall have to render available all information and documents so that Keller & Kalmbach can assert their rights. Lien claimants, law enforcement officers, insolvency practitioners or other third parties shall be informed about the rights of ownership of Keller & Kalmbach.
6) If the ordering party fulfils his/her payment obligations by surrendering cheques or bills, our reservation of ownership shall continue until we cannot be approached any more on the basis of these means of payment.
7) If the ordering party violates our property rights as rendered in these clauses, we shall be permitted to withdraw from the contract without setting a deadline and to demand the surrender of the goods. A withdrawal from the contract shall not be required to claim the reservation of ownership. The assertion of our property rights without statement of withdrawal from the contract shall not be considered as such.
8) In case of an assignment of claims on our part to a factoring company, all rights due to us from agreed assignments, in particular secured and reserved property in all variants, shall be assigned to the said.
9) We undertake to release securities due to us upon request of the ordering party, provided the said exceed the claims to be secured by more than 20 per cent.0%.

VI. Deliveries, delivery time, delay in delivery
1) The observance of the delivery periods by us shall require that all documents required for the execution of the order to be provided by the ordering party are available, technical matters have been clarified and the ordering party meets his/her contractual obligations, in particular his/her payment obligations from all transactions with Keller & Kalmbach.
2) In the event of force majeure and the presence of other unforeseeable and extraordinary circumstances, the delivery time is lengthened reasonably.
3) Subject to correct delivery in due time, Keller & Kalmbach will supply the ordering party with the contractual goods.
4) Keller & Kalmbach shall be permitted to partial delivery to the ordering party.
5) In case of consumer goods, Keller & Kalmbach reserves the right to surplus or short delivery of up to 10 per cent to be charged to the ordering party.
6) If a delivery is delayed at the instigation of the ordering party, Keller & Kalmbach shall warehouse the goods at the risk of the ordering party.

7) A damage during the delay can be claimed only to the amount of the foreseeable contract-typical damage. This shall not apply, if the damage has been caused intentionally or grossly negligently by Keller & Kalmbach.

VII. Shipping, passing of risk

1) Shipping shall be carried out at the risk of the ordering party; this shall apply also when delivery free of freight has been agreed upon as well as drop-shipping.
2) We shall be entitled, but not obligated to insure the goods to be delivered against perils of transport and to charge the ordering party with the insurance costs.
3) Lacking special shipping instructions of the ordering party or other agreements we shall dispatch the goods by the best route at our discretion.
4) We shall not be obligated to take back transport and other packaging.

VIII. Warranty

1) The warranty rights of the ordering party expect the immediate inspection and complaint of the defective goods. The defect shall have to be notified within a maximum period of ten days in writing. The dispatch of the complaint in due time shall suffice for the observance of the time limit.
2) The data including drawings, illustrations, technical data, et cetera contained in our leaflets, price lists, catalogues and advertisements as well as in our offer documents shall be non-binding and do not release the ordering party from the obligation to check the goods for their suitability for the intended purpose. Data and documents mentioned hereinbefore shall become part of the contract only, if the said have been confirmed explicitly by us as being binding.
3) Keller & Kalmbach shall reserve the commercially approved deviations with respect to the dimensions of the delivered objects indicated in the order of the ordering party, unless the exact observance of the dimensions is explicitly assured or agreed upon.
4) The customer shall claim assumed suitability for use only when the said has been agreed upon explicitly.
5) Keller & Kalmbach wish to point out explicitly by the presents that given the observance of all due care in transaction the problem of hydrogen-induced brittle fracture (hydrogen embrittlement) in galvanically coated articles with a tensile strength of more than 1,000 N/mm2 (steel grades of 10.9 and higher) and/or core and surface hardness of over 320 HV cannot be ruled out. Thus, damage caused by hydrogen-induced brittle fracture shall not be covered by warranty and liability by Keller & Kalmbach, provided that the processes in keeping with DIN EN ISO 4042 have been observed, and Keller & Kalmbach have not caused the defect of the goods intentionally or grossly negligently or the customer can claim an injury to health, body or life.
6) If Keller & Kalmbach have caused a defect, remedy of the defect shall be given priority over replacement at the discretion of Keller & Kalmbach. In case of remedy of the defect, Keller & Kalmbach shall not be obligated to bear expenses which were caused or increased by the fact that the goods were taken to another location than the place of performance. If the remedy of the defect fails, the ordering party shall be entitled to reduce the corresponding remuneration or to withdraw from the contract. In case of withdrawal from the contract, damages instead of service shall not be claimable unless Keller & Kalmbach have caused the damage grossly negligently or intentionally.
7) Claims for warranty shall be ruled out for defects, for which Keller & Kalmbach have not been responsible.
8) If the matter lacks a promised or guaranteed property, Keller & Kalmbach shall be liable in keeping with the legal regulations.
9) All warranty rights shall come under the statute of limitations within twelve months after the risk has passed, unless matters are concerned which have been used for a building in keeping with their usual purpose. By subsequent fulfilment on our side, the period of limitation shall not restart for the matter.
10) If we do not recognise the warranty claims of the ordering party explicitly in an individual case, we shall render the said for fairness reasons.
The ordering party shall not receive any guarantees as rendered by law. Manufacturers' guarantees shall remain unaffected

IX. Liability, statute of limitations

1)If the ordering party can claim an injury to life, body or health or if Keller & Kalmbach have caused the damage intentionally or grossly negligently including intent and gross negligence of the representatives and vicarious agents of Keller & Kalmbach Keller & Kalmbach shall be liable in keeping with the legal regulations. In case of a grossly negligent damage caused by Keller & Kalmbach, the indemnification shall be limited to the foreseeable damage typically occurring in such contracts.

2) If Keller & Kalmbach culpably violate an obligation significant to the contract, the liability shall be based on the legal regulations, but shall be limited to the foreseeable damage typically occurring in such contracts.
3) The liability based on the [German] Product Liability Act shall remain unaffected.
4) Otherwise indemnification shall be ruled out irrespective for whatever legal grounds. In particular Keller & Kalmbach shall not be held liable for damage which did not occur on the delivered object itself. The liability for damage caused by delay shall be based on item (6), section (7) of these stipulations.
5) If Keller & Kalmbach are not held liable for injury to life, body or health or for intentional or grossly negligent violation of contractual obligations, all claims for damages against us shall come under the statute of limitations after twelve months after the legally defined beginning of the period of limitation.

X. Spare parts
1) If we are obligated towards the customer to supply spare parts after the expiry of a serial delivery in case of customised special parts or those articles, which at the point of order did not belong or no longer belonged to our catalogue assortment, we shall reject a fixed resale price set by the customer for the spare parts. In particular, we shall not be obligated to supply spare parts for the serial parts at an offer price after expiry of the serial delivery. Previously defined prices for spare parts shall always require an individual agreement between us and the customer.
2) We shall not be obligated to supply any amount of spare parts ordered by the ordering party. When ordering spare parts, the ordering party shall have to take and pay minimum quantities which are based on the production lots of our upstream suppliers.
3) Provided we have not obligated ourselves explicitly in an individual case, we shall not be required to obligate our upstream suppliers to store and supply tools after the end of the serial delivery.
4) If we obligate ourselves on the basis of an explicit agreement to keep stocks of spare parts for a certain period of time, these stocks of spare parts shall earn interest at eight per cent annually over the basic interest rate. Thus, all costs of warehousing of the parts shall be covered. This warehousing interest shall have to be paid by the customer annually on 31st March of the following year.
5) After expiry of a quarter (half and three quarters following) of the period of the stocking obligation, the customer shall be obligated to take and pay a share of the stock of spare parts, which corresponds to the period expired and which has not been taken already.
6) After termination of the stocking obligation for stocks of spare parts, the customer shall have to take and pay the complete stock of spare parts. Alternatively the customer may request the scrapping of the goods by Keller & Kalmbach and shall receive the scrapping return minus the scrapping costs and the stocking interest potentially not paid yet.

XI. Use of data and data protection
1) We shall be entitled to collect, save, process and use information and data on customers and to forward the said to third parties in particular for the purpose of the collection of receivables or for outsourced debtor management
2) Keller & Kalmbach shall use customer-specific data always in conformity with the applicable data protection laws.

XII. Place of fulfilment, venue, applicable law
1) Lacking other agreements, the place of fulfilment shall be the commercial domicile of Keller & Kalmbach.
2) The venue shall be Munich in the Federal Republic of Germany. However, Keller & Kalmbach shall have the right to sue the customer at any other permissible venue.
3) The applicable law shall be the law of the Federal Republic of Germany under inclusion of the United Nations Uniform Law on the International Sale of Goods.
4) The regulations of the UN Convention on the Assignation of Claims in International Trade shall be considered agreed upon now already for the time when the said enter into force.

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