

General Terms and Conditions of Delivery of Kuhmichel Abrasiv GmbH

§ 1 Validity

(1) All deliveries, services and offers of the company KuhmichelAbrasive GmbH (hereinafter referred to as „Vendor“) shall exclusively be based on these General Terms and Conditions of Delivery (AGL). These shall be an integral part of all contracts, which the Vendor enters into with his contracted partners (hereinafter referred to as „Client“) on deliveries and services offered by himself.

(2) The General Terms and Conditions of Delivery also apply for all future deliveries, services and offers to the Client, even if not explicitly mentioned again in agreements.

(3) Business conditions of the Client or a third party shall not apply, even if the Vendor does not contradict separately in each individual case. Even if the Vendor refers to correspondence which contains terms and conditions of the Client or of third parties or makes mention of such, this does not suggest any agreement to the validity of such terms and conditions.

(4) Our Terms and Conditions of Delivery shall only apply in relation with companies as defined in § 310 section 1 of the German Civil Code (“BGB”).

§ 2 Offer and Conclusion of Contract

(1) All offers of the Vendor are subject to change and non-binding, unless they are expressly marked as binding or contain a particular deadline for acceptance. The Vendor may accept orders or commissions within three weeks of their receipt.

(2) Exclusively applicable for the legal relationship between Vendor and Client is the contract concluded in writing including these General Terms and Conditions. The contract shall constitute the entire agreement made between the parties concerning the subject matter in question. Oral agreements made by the Vendor before the conclusion of the contract are not legally binding and are replaced by the written contract provided that they are not expressly defined as a continuing component of the contract.

(3) Any amendments to or changes of the agreements made, including the present General Terms and Conditions of Delivery, must be in writing in order to be valid. **With the exception of Managing Directors and holders of power of attorney, the employees of the Vendor shall not be entitled to make oral agreements deviating from this.** To meet the written form the transfer per telecommunication is sufficient, especially by fax or email, as far as the copy of the signed statement is sent.

(4) Information from the Vendor on the subject of the supply or service (e.g., weight, dimensions, practical value, capacity, tolerances and technical data) as well as our representations of the same (e.g., drawings and illustrations) are only approximately applicable, unless its applicability for the purpose contractually envisaged requires precise conformity. Such specifications shall not be construed as warranties of quality, but rather as a description or identification of deliveries or services.

Deviations according to custom and usage and deviations resulting from legal provisions or deviations constituting technical improvements, as well as a component replacement by equivalent parts are permissible, as far as they do not impair usability for the contractually agreed purpose.

(5) The Vendor retains the ownership or copyright for all offers and cost estimates issued by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the Client. Without the expressive agreement of the Vendor, the Client may not make these objects, or the content of them, accessible to third parties or make them known to third parties, or have them used or reproduced, either by himself or by third parties. On request by the Vendor he must return these objects to him in their entirety and, where applicable, destroy any copies made of them, if they are no longer needed by him in the proper course of business or if negotiations do not result in the conclusion of a contract.

§ 3 Prices and Payment

(1) The prices apply for the scope of supply and service stated in the order confirmation. Additional or special services will be calculated separately. Prices are given in EUROS and ex works plus the costs for packaging, legal value added tax, customs for export deliveries plus duties and other official charges.

(2) Invoiced sums are to be paid in full within thirty days, unless an agreement has been made otherwise in writing. The receipt of payment by the Vendor is authoritative for the day of payment. Cheques will only be valid as payment after encashment. If the Client does not pay by the due date, then interest will be charged on the outstanding amounts at a rate of 8.5 % p. a. as from the due date; the application of higher interest rates and additional damages in the case of late payment remains unaffected.

(3) The offsetting with counterclaims by the Client or the withholding of payments against such claims is permitted only insofar as the counterclaims are undisputed or have been legally upheld.

(4) The Vendor is entitled only to make deliveries or to provide services against prior payment or deposit if, after the conclusion of the contract, circumstances become known to him which are of a nature to considerably reduce the Client's credit worthiness and on account of which the payment of the Vendor's outstanding demands from the relevant contractual relations (including those from other individual orders for which the same framework contract applies) is put at risk.

§ 4 Delivery and Time of Delivery

(1) Deliveries shall take place ex works or ex stock.

(2) Terms and deadlines announced by the Vendor in advance for deliveries and services are deemed to approximate unless a fixed term or fixed deadline has been

specified or agreed. If shipping has been agreed, delivery dates and deadlines refer to the time of transfer to the forwarder, carrier or other third party assigned to transport the goods.

(3) Notwithstanding his rights with respect to defaulting on the Client's part, the Vendor may ask the Client for an extension to terms for supplies and services or a postponement of delivery and service deadlines by the period of time for which the Client fails to meet his contractual obligations with respect to the Vendor.

(4) The Vendor is not liable for impossibility of delivery or for delays in delivery in so far as these have been caused by force majeure or other events which were not foreseeable at the time of concluding the contract (e.g., operating disruptions of all kinds, difficulties in procuring materials or power, transport delays, strikes, lawful lockouts, workforce, energy or raw material shortages, difficulties in procuring necessary official approvals, official measures or non-delivery or incorrect or late delivery by suppliers), for which the Vendor is not responsible. As far as such incidents make delivery or service difficult or impossible for the Vendor and the obstruction is not only of temporary duration, the contract partners are eligible to withdraw from the contract. In the event of impediments that are of temporary duration the deadlines for delivery and service shall be extended or the delivery or service dates shall be postponed by the period of the impediment plus a reasonable start-up period. If as a result of the delay the Client cannot reasonably be expected to accept the deliveries and services, the Client shall be entitled to withdraw from the contract by way of immediate written declaration to the Vendor.

(5) The Vendor shall only be entitled to partial deliveries, if

- the partial delivery can be used by the Client within the scope of the contractual intended use,
- the delivery of the outstanding goods is secured and
- no significant additional expenses or additional costs are incurred for the Client (unless the Vendor declares that he is prepared to bear such costs).

(6) If the Vendor falls behind with a delivery or service or if a supply or service is impossible for him, whatever the reason may be, then the Vendor's liability is limited to compensation in accordance with § 8 of these General Terms and Conditions of Delivery.

§ 5 Place of Fulfilment, Shipping, Packaging, Transfer of Risk, Acceptance

(1) The place of fulfilment for all obligations arising from the contractual relationship is Düsseldorf, unless other arrangements have been made.

(2) The type of shipping and packaging are subject to the dutiful discretion of the Vendor.

(3) The risk shall pass to the Client at the latest when the delivery item is handed over to the hauler, carrier or another third party determined for the performance of the shipment (the beginning of the loading procedure is decisive here). This also applies in the case of partial deliveries or if the Vendor has assumed further obligations (e.g., shipping). If shipping or handover is delayed due to circumstances for which the Client is responsible, the transfer of risks to the Client takes place on the day when the Vendor is ready for shipping and the Client has been informed about this by the Vendor.

(4) Storage costs incurred after risk has been transferred will be borne by the Client. In case of storage by the Vendor, the storage costs amount to 0.25 % of the invoice amount of the objects of supply to be stored per week of elapsed time. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.

(5) The Vendor shall insure the shipment against theft, breakage, transport, fire and water risks only upon explicit request of the Client and at the Client's costs.

(6) In so far as the inspection and approval of the article of sale is concerned, the article of sale is considered accepted when

- the delivery has taken place,
- the Vendor informed the Client about it together with indicating to the fact of the acceptance fiction of this section 5 (6) and requested acceptance of the performance,
- fourteen working days have elapsed since the delivery or the Client has started making use of the delivered item and in this case since delivery seven working days have ensued, and
- the Client has failed to organize the acceptance process within this time period because of a reason or reasons besides the ones indicated to the Vendor, that make the delivered item impossible to use or at least significantly influences the use.

§ 6 Warranty, Material Deficiency

(1) The period of warranty is one year after delivery or, if acceptance is agreed, one year after acceptance.

(2) The delivered goods have to be accurately inspected immediately after delivery to the Client or determined third parties.

(3) Therefore deviations according to custom and usage in weight (up to 5 %), granulation, quality, colour or quantity cannot be considered as material deficiencies.

(4) Deviations from a pattern cannot be considered as material deficiencies, too. A pattern is only for illustrative purposes of the approximate condition of the material, and it is not an assurance of certain properties.

(5) With recycled products the Client's duty to inspect also includes the chemical composition of the material. Minor variations of the chemical composition are due to raw materials and do not represent any kind of material defect.

(6) The delivered products are seen as approved by the Client with regard to obvious defects or other defects, which would have been visible following an immediate and thorough inspection, if the Vendor does not receive a written notification of defects within fourteen workdays after delivery.

(7) The delivered goods will be seen as approved by the Client with regard to other defects, if the Vendor does not receive a notification of defects within fourteen workdays after the date, at which the defect was detected. If the defect was already recognizable by the Client at an earlier date during normal use, this earlier date is relevant for the beginning of the time-limit for claims.

(8) Defective goods have to be sent back freight paid to the Vendor on request by the Vendor. If the complaint is justified, the Vendor will reimburse the costs of the most inexpensive shipment; this does not apply if the costs increase because the object of delivery is at a different location than that of the intended use.

(9) In the event of material defects to delivered goods the Vendor shall, at its own discretion and within a reasonable period, be obliged and entitled to either rework the delivered goods or make a delivery of replacement goods. In the event of failure, i.e., in particular the impossibility, impracticality, refusal or unreasonable delay in reworking delivered goods or delivering replacement goods, the Client shall be entitled to withdraw from the contract or reduce the purchase price appropriately.

(10) If the Vendor is to blame for a defect, the Client may demand compensation under the conditions stipulated in § 8.

(11) The warranty ceases to apply if the Client, without consent of the Vendor, changes the delivered item or allows a third party to carry out changes, thus making the correction or deficiencies impossible or unacceptably difficult. In each case the Client must bear the additional costs of remedying defects caused by the modification.

(12) If delivery of used objects has been agreed with the Client in an individual case, this shall be affected excluding all warranties for defects.

§ 7 Property Rights

(1) In accordance with this § 7 the Vendor guarantees that the delivery of goods or provision of services of the Vendor is not subject to commercial property rights or copyright of third parties. Each party will inform the other contract party immediately if there are any against him according to breaching these rights.

(2) In the event that the object delivered infringes a third party industrial property right or copyright then, according to his choice and at its own costs, the Vendor will either alter or exchange the object delivered in such a way that it no longer infringes any

third party rights, but so that the object delivered continues to fulfil its contractually agreed functions, or procure the right of use for the Client by concluding a licence contract. If he does not manage to do this within an appropriate period, the Client is entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims of the Client to compensation for damages shall be subject to the restrictions set out in § 8 of these General Terms and Conditions of Delivery.

(3) In case of infringements of products from other manufacturers delivered by the Vendor then, according to his choice, the Client will make his claims against the manufacturer and previous supplier on the Vendor's account or transfer this title to the Vendor. Claims against the Vendor exist in this case in accordance with this § 7 if the legal enforcement of the above mentioned claims against the manufacturer and previous supplier was unsuccessful or is futile, for example, because of insolvency.

§ 8 Liability for Compensations Caused by Fault

(1) The Vendor's liability for damages, regardless of the legal grounds but in particular due to impossibility, delay, defective or incorrect delivery, contractual infringement, infringement of duties during contract negotiation and action in tort is, in so far as there is a question of blame in each case, limited in accordance with this § 8.

(2) The Vendor shall not be liable in the event of simple negligence by the officers of the company, employees or other agents unless a violation of obligations under the contract is involved. Key elements of the contract are the obligation to deliver in a timely manner and install the goods delivered free of major defects and the obligations applying to consultancy services, protection and care to enable the ordering party to use the goods delivered in accordance with the contract or protect life and limb of the ordering party's staff or his property to prevent major damage or injury.

(3) In so far as the Vendor is liable for damages on the grounds of and in accordance with § 8 (2), this liability is limited to damage which the Vendor has foreseen when concluding the contract as a possible consequence of a contractual infringement or which, under consideration of the circumstances, were or should have been known to him or which, by applying due care and attention, he should have foreseen. Furthermore, indirect damage and consequential damage resulting from defects in the object delivered are only subject to compensation in so far as such damage is typically to be expected when using the object delivered as stipulated.

(4) In the event of liability for simple negligence, the Vendor's obligation to make compensation for property damage and resulting loss of profits is limited to an amount of EUR 2.000.000 (cover sum, third party insurance, product liability insurance) per claim, even if this a case of infringement of obligations essential to the contract.

(5) The exclusions and limitations of liability mentioned before apply to the same extent in favour of the organs, legal representatives, employees and other agents of the Vendors.

(6) In so far as the Vendor provides technical information or acts as an adviser and this information or advice is not part of the contractually agreed scope of services owed by him, this is done free of charge and with the exclusion of any liability.

(7) The limitations of this § 8 shall not apply to the liability of the Vendor for wilful misconduct, for warranted characteristic features, damage to life body or health, or in accordance with product liability laws.

§ 9 Reservation of Title

(1) The following agreed reservation of title is intended to secure all existing present and future demands of the Vendor against the Client from the delivery relationship existing between the contractual partners.

(2) The goods delivered by the Vendor to the Client remain its property until all outstanding invoices have been paid in full. All goods as well as the goods included in the reservation of title to take their place in accordance with this clause, are hereinafter referred to as „reserved goods“.

(3) The Client stores the reserved goods with no costs for the Vendor.

(4) The Client shall be entitled to process and sell the reserved goods during the course of normal business operations until the time of enforcement of the reservation of title [§ 9 (9)]. Pledging or assigning security on goods is not permitted.

(5) If the reserved goods are processed by the Client, it is deemed to be on behalf of and for the account of the Vendor as the manufacturer and the Vendor directly acquires property or – if the processing involves materials provided by a number of owners or the value of the processed goods exceeds that of the reserved goods – partial property (co-ownership) in the items thus created and in proportion of the value of the reserved goods to the value of the new items. In the event that no such acquisition of ownership should occur for the Vendor, the Client shall transfer now his future ownership or – in the ratio mentioned before – his co-ownership in the newly created items to the Vendor for reasons of security. If the reserved goods are combined with other goods or inseparably intermingled with any other goods to create a single product and one of the other goods is considered the key component, the Vendor hereby transfers to the Client, if the key component is owned by the Vendor, a co-ownership interest in the single product in the ratio defined in sentence 1 above.

(6) In the event that the reserved goods are sold on, the Client hereby transfers the resulting claim against the acquirer – or in case of co-ownership of the Vendor of the reserved goods in proportion to the proportion of co-ownership – to the Vendor by way of security. The same applies for claims which replace the reserved goods or arise in regard to the reserved goods, e.g., insurance claims or claims in tort in case of loss or destruction. The Vendor shall irrevocably authorize the Client to collect the claims assigned to the Vendor for their account and in their own name. The authorization to collect assigned claims may be revoked by the Vendor only in the event of enforcement of the reservation of title.

(7) If third parties take hold of the reserved goods, in particular by garnishment, the Client has to advise immediately of the property of the Vendor and also to inform the Vendor to enable the assertion of the property rights. In the event that the third party is unable to indemnify the Vendor for costs incurred in connection with such proceedings in or out of court, the Client shall be liable for such costs to the Vendor.

(8) Upon demand of the Client, the Vendor shall release reserved goods or the items and claims taking the place of reserved goods, to the extent that the value of such goods exceeds the amount of the Vendor's secured claims by more than 50 %. The individual objects to be released then will be chosen by the Vendor.

(9) If, in the event of behaviour by the Client contrary to the contract – in particular late payment – the Vendor withdraws from the contract (case of recovery), he is entitled to demand the reserved goods.

§ 10 Final Provisions

(1) In case the Client is a businessman, a corporate body under public law, or a special asset governed by public law, or has no general place of jurisdiction within the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business connections between Vendor and Client is at the sole discretion of the Vendor and will be either Düsseldorf or the Client's place of business. Düsseldorf is the exclusive place of jurisdiction for any and all claims filed against the Vendor. Mandatory legal regulations about exclusive jurisdiction remain unaffected from this regulation.

(2) The relationship between the Vendor and the Client is exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) dated 11 April 1980 does not apply.

(3) Should the contract or these General Terms and Conditions contain any escape clauses, then the regulations that would have been agreed upon with respect to the economic goals of the contract and the scope of these General Terms and Conditions (if the escape clauses had been recognized in advance) shall apply and be legally binding.

Note:

The Client shall take note of the fact that the Vendor stores data from the contractual relationship in accordance with § 28 Bundesdatenschutzgesetz (Federal Data Protection Act) for the purpose of data processing, and reserves the right to transmit the data, inasmuch as for the performance of the agreement necessary, to third parties (e.g., insurances).