

1. Scope of validity, partner to the contract, exclusive validity

1.1 The following conditions exclusively apply for quotations and deliveries of KMW. On first contract conclusion, it will be agreed between KMW and the customer that the conditions will serve as basis for all subsequent businesses – even for those which are concluded on a verbal basis, in particular by phone. Purchase terms and other conditions of the customer are excluded. They will not become contents of the contract, unless KMW explicitly agrees to them in the order confirmation. This also applies, if KMW knows of conditions of the customer that are adverse to or deviate from KMW conditions and nevertheless makes the delivery to the customer without reservation.

1.2 Specific agreements and collateral agreements will only become contents of the contract, if they are contained in the order confirmation. Verbal collateral agreements were not concluded.

2. Quotation, contract conclusion, modifications and cancellations

2.1 Quotations of KMW are subject to change. Information contained in offers, data sheets and other product information do not present a warranty as to durability or the condition and the quality of a product, unless such warranty is agreed upon expressly in writing.

2.2 A contract is reached with order confirmation or delivery of the goods through KMW. In case of customized special wishes, KMW will only take action after down payment of the customer.

2.3 The customer is bound to orders for a period of three weeks. If the order confirmation differs from the order, the customer will have to raise objections in writing immediately, however at the latest within 7 working days after date of order confirmation. Otherwise the contract will be reached according to the conditions mentioned in the order confirmation.

2.4 After contract conclusion KMW will take into consideration modification wishes of the customer, if possible, without conceding any legal claim in this respect. Modifications are, on no account, possible within 21 days before delivery. For special furniture, combi freezers, serve overs and glass door cabinets this deadline extends to 42 days. If the customer cancels an order until 21 days before date of delivery, 15 % of the order amount will be due as cancellation fee. After this date no cancellation will be possible any more. It is the undisputed right of the customer to prove that less expenditures did arise to KMW.

3. Prices, payment conditions

3.1 Prices stated are not including costs for packing, freight and insurance, import and export taxes (customs) as well as value-added tax at the legal rate at the date of invoicing ("ex works, Incoterms 2000) ex works Limburg / Lahn.

KMW reserves the right to carry out price changes resulting from costs increased in the meanwhile, in particular due to exchange rate changes, currencies regulations, custom's changes and similar factors, which are beyond control of KMW. In case of price increases, the customer shall have the right to withdraw from orders which are not yet executed. In this case, notification about the cancellation must be given to KMW in writing within 10 days from date of notification about the new prices. After this date a withdrawal will not be possible any more. Exchange rate changes do not entitle the customer to withdraw from the contract.

3.2 Invoices are payable without discount 14 days after receipt of invoice. Bills and cheques are only accepted on account of performance. We explicitly reserve the right to accept bills. Costs associated to this are at the expense of the customer. Differing agreements, in particular the granting of discounts, only apply, if they had been agreed upon previously and identified on the invoice.

4. Default in payment

4.1 If the customer is in default of payment for a period of more than 4 weeks or if he causes a bill or a cheque, which was accepted by KMW, to be protested, KMW may, notwithstanding to all other rights, call due immediately all outstanding invoices, hold back all deliveries and performances of contracts not yet performed and withdraw from the contract, and assert all claims resulting of the reservation of title (figure 10), if the customer, despite of request, is not prepared to performance upon tender of counter-performance and to provision of security.

4.2 In addition, KMW shall have the right to require default interests for damage caused by default in the amount of 10% above the specific base lending rate. The assertion of any other damages caused by default remains unaffected. It is the undisputed right of the customer to prove a smaller damage.

5. Offset, retention

The customer may only offset against claims of KMW, if KMW claims have been legally determined or are undisputed. He may only assert the right to refuse performance or the right of retention, if his counterclaim is based on the same contractual relationship.

6. Delivery and delivery time, availability of own supplies

6.1 Compliance with agreed delivery dates requires that the necessary authorizations, documents and technical information to be provided by the customer, releases, performances to be produced as well as other obligations of the customer are available or are fulfilled in time. In case of non-fulfillment of these obligations, the delay will be extended by a reasonable period of time. Transactions for delivery by a fixed date are not concluded.

6.2 The delivery time is respected if, until expiry of delivery time, the ordered goods have left the works/warehouse or the notification that goods are ready for dispatch was made or the ordered goods were made available for dispatch.

6.3 Breakdowns in the business activities of KMW or his subcontractors, in particular strikes and lock-outs, Acts of God, which are based on unpredictable events or an event, for which KMW is not responsible, extend the delivery time accordingly.

6.4 In case of a delay of more than 3 months, in terms of figure 6.3, KMW and the customer shall have the right to withdraw from the contract. Only the customer shall have the right to withdraw in case of non-compliance with the delivery date for any other reasons as those mentioned under figure 6.3.

6.5 Condition for a withdrawal by the customer is that he grants KMW in writing an appropriate grace period (at least two weeks) with threat of rejection. When partial deliveries are not performed on time, the customer shall only have the right to withdraw from the entire contract, if the partial fulfillment is not of interest for him.

6.6 Figure 9 shall apply for claims for damages because of delay or impossibility, even for those, which had been caused until withdrawal from the contract.

6.7 KMW is not in default, if a subcontractor, with whom a corresponding covering transaction had been concluded, does not perform in time or not at all.

7. Transfer of risk

7.1 Delivery is made ex factory/warehouse at risk and at the expense of the customer ("ex works", Incoterms 2000). This also applies, if partial deliveries are made or if KMW has taken over additional performances e.g. transport costs or carriage. KMW will conclude transport insurance only by written order and on account of the customer.

7.2 The customer is bound to take over the goods at delivery, otherwise within 8 days after receipt of the provision notification at the agreed delivery place. Stall money for losses caused by delay in unloading are borne by the customer, even if he is not responsible for the

delay. This applies accordingly for costs for return transport and new delivery, even if KMW agrees to a return transport in isolated cases.

7.3 If the customer is in default of acceptance or if the delivery is delayed for other reasons, for which he bears the responsibility (e.g. delay of call orders or delivery in case of defined firm delivery dates), the risk is transferred to the customer after provision of goods at KMW, in addition, the purchase price is due in these cases. Costs for storage with KMW or with third parties are borne by the customer. After a reasonable setting of a deadline KMW shall have the right to dispose of the goods. The assertion of any other claim for damages against the customer remains unaffected.

8. Liability for material defects, examination obligation and duty to notify a defect

8.1 Variations in quality usual in trade and structural variations of existing illustrations, descriptions and technical data indicated in sales brochures do not represent a defect, save as provided in an explicit warranty as to durability or the condition and the quality of a product. KMW does not accept liability for only irrelevant decrease in value or suitability of delivery.

8.2 The customer has to examine with care the delivery immediately after its arrival. Incomplete or obviously defective deliveries have to be notified to KMW immediately in writing - if necessary by phone in advance -, however at the latest within ten days after delivery, and clear evidence has to be furnished. Notice of non-obvious defects has to be given of within four weeks. Decisive for meeting the deadline is the dispatch date of the notice of defects. After expiry of the deadlines the delivery shall be considered as approved.

8.3 Condition for the assertion of warranty claims is that the customer makes available to KMW the objected goods for examination upon request. Insofar as a defect of the matter purchased is the responsibility of KMW, KMW shall have the right, at his option, to remedy the defect or to deliver goods without defects (performance within a reasonable period of time).

8.4 If performance within a reasonable period of time fails, the customer, at his option, shall have the right to require the cancellation of the contract or a corresponding reduction of the sales price.

8.5 The warranty period is 12 months from delivery/provision for collection.

8.6 Any other liability of KMW towards the customer on the basis of defects in delivery or in performance is excluded within the scope of the regulation under figure 9.

8.7 If no warranty claim is given and the customer demands the Technical Service (TD) of KMW, the customer shall bear the costs. Details are laid down in the application form of the TC.

9. Liability

9.1 Within the scope of this contract KMW shall principally be held liable for damages of the customer: which have been caused by KMW or his legal representatives or persons employed in performing an obligation with intent or gross negligence; which have been caused by the violation of a duty that is of major importance for reaching the purpose of the contract (cardinal duty); if these claims result from the Product Liability Act; which are based on an organizational responsibility from KMW caused by a not slight degree of negligence; if in case of sales contracts and contracts for work, KMW has given a guarantee for the condition of the thing or there has been fraudulent deceit; or which have been caused by the violation of a life, the body or the health; which are based on the breach of duty of KMW or one of his legal representatives or persons employed in performing an obligation.

9.2 KMW shall be held liable to the full extent for damages, which have been caused with intent or gross negligence. As for the rest, the claim for damages is limited on the foreseeable, contract typical damages, in case of default on 5 % of the order value. The liability according to the Product Liability Acts remains unaffected.

9.3 The liability of KMW is excluded for other cases as those mentioned under figure 9.1 to 9.2, independently of the legal ground.

9.4 Claims for damages against KMW become statute-barred after expiration of 12 months since their coming into being, unless they are based on an unlawful act.

9.5 Insofar as the liability of KMW is excluded, this also applies for the personal liability of employees, representatives and persons employed in performing an obligation of KMW

10. Reservation of title

10.1 KMW reserves ownership of the delivery items (in the following referred to as conditional goods) until complete payment of all claims resulting from the current business relationship.

10.2 KMW authorizes the customer to sell and process the conditional goods within the ordinary course of business. This authorization may be revoked at any time.

10.3 The treatment and processing of the conditional goods through the customer is always made in the name and on behalf of KMW. If the processing results in a combination and / or a mixing of goods with goods that are not owned by KMW, the customer provides KMW co-ownership in the newly created thing, which then will become the conditional goods in the ratio of the value of the goods delivered by KMW to the other parts contained in the new thing.

10.4 If the customer sells the conditional goods, he already now assigns to KMW his purchase price claims and replacement claims towards his customers as security until payment of all accounts receivable. The customer is authorized to collect the accounts receivable assigned to KMW in the normal course of business. This authorization may be revoked by KMW if the customer does not fulfil his payment obligations towards KMW, in particular if he is in default in payment.

10.5 KMW may collect accounts receivable assigned to KMW directly with third parties. Information and documents necessary for this purpose have to be given or handed over by the customer to KMW upon request. The collected accounts receivable - costs and interests incurred to KMW deducted - are offset with the purchase price due by the customer. Any possible surplus shall be paid by KMW to the customer.

10.6 The customer shall not have the right to pledge the conditional goods or to assign them as security. If the conditional goods or the land, on which the conditional goods are located, is pledged by third parties or claimed in any other way, the customer has to point out that these conditional goods are our property and he has to inform KMW immediately in writing.

11. Data protection

According to § 33 of the Federal Data Act (Bundesdatengesetz) we point out that the customer data provided to us in the business relationship can be processed by us for our own purposes and saved, even in our affiliated companies, for the development of the business relationship.

12. Place of business, place of jurisdiction, applicable law

Place of business for both parties is Limburg/Lahn. The contract is governed by German law, United Nations Convention on Contracts for the International Sale of Goods excluded. Exclusive place of jurisdiction for actions against KMW is Limburg/Lahn. KMW shall have the right to bring an action against the customer before any other court, which is competent according to national or international law.