

# General Terms and Conditions relating to Sales

of Krautzberger GmbH, Stockbornstr. 13, 65343 Eltville, Germany.

## 1. Scope of the General Terms and Conditions

- 1.1. The General Terms and Conditions of Krautzberger GmbH (hereinafter referred to as "Krautzberger") relating to Sales shall apply to all contracts concluded between Krautzberger and the customer, unless agreed otherwise. Terms and conditions that diverge from the General Terms and Conditions of Krautzberger or provisions of the supplier that have a contract-modifying effect are hereby objected. This shall also apply, in particular, to cases in which an order is placed with reference to the General Terms and Conditions of the customer.
- 1.2. These General Terms and Conditions shall also form the basis for all future transactions between Krautzberger and the customer.

## 2. Processing of the order

- 2.1. The order placed by the customer shall be binding and may be accepted by Krautzberger in writing, orally or electronically (via Internet). The delivery or invoicing shall be treated as acceptance.
- 2.2. As for the accuracy of his order the customer is responsible; he is also responsible to provide all necessary information in respect of the order and the ordered goods.
- 2.3. All documents, specifications and price lists are strictly confidential and shall not be made available to unauthorized third parties, unless they are publicly available or were already known to the customer.

## 3. Prices, Payment

- 3.1. The price mentioned in the offer or the order confirmation of Krautzberger is applicable, or, subordinated, the price according to the current price list of Krautzberger, in all cases plus valued added tax (VAT). All prices are calculated ex works, unless otherwise agreed.
- 3.2. The customer shall effect the purchase price within ten days from the date of the invoice.
- 3.3. Payments in cash or by bank transfer are accepted only; bills of exchange or cheques will only be accepted, if agreed upon.
- 3.4. The customer shall only be entitled to offset against claims that are undisputed or have been found to be legally enforceable and may only assert rights of retention in so far as they are based on the same contractual relationship. Other deductions (i.e. postage) are not permissible.
- 3.5. The following applies to permanent business relationships only: If circumstances become known that cast doubt on the creditworthiness or solvency of the customer, Krautzberger may, at its discretion, make delivery dependent on advance payment or a different form of security. This shall also apply if such circumstances become known between conclusion of the contract and delivery or after one or more partial deliveries. If the customer refuses to make payment in advance or furnish a different form of security or fails to do so despite having been granted a period in which to do so, Krautzberger shall be entitled to cancel the contract. Krautzberger shall also be entitled to cancel the contract if an application for insolvency is made in respect of the customer's assets, insolvency proceedings are initiated or the initiation of insolvency proceedings is refused because there are insufficient assets. All Krautzberger's claims for payment shall immediately fall due as soon as the cancellation declaration is received. Any further claims by Krautzberger shall remain unaffected by this.

## 4. Delivery

- 4.1. The delivery shall take place ex works from the stocks of Krautzberger or its suppliers. The customer shall retrieve and accept the contract goods as soon as Krautzberger has notified the customer of their availability. The customer shall bear the shipping and handling costs. The risk of accidental destruction or accidental deterioration of the contract goods shall, including in the case of partial deliveries, pass to the customer when the goods are handed over or, in the case of sale by delivery to a place other than the place of performance, when the goods are placed in the care of the forwarding agent, carrier or other person designated to carry out shipment.
- 4.2. Delivery periods shall be non-binding, unless otherwise agreed expressly. Krautzberger shall be entitled to deliver prior to a mentioned or agreed delivery date and shall be entitled to make partial deliveries of goods and services in so far as this is reasonable.
- 4.3. If the deliverable goods or services are not available and Krautzberger is not responsible for the lack of availability, Krautzberger shall be entitled to wholly or partly cancel the contract. In such a case, Krautzberger shall be obliged to immediately inform the customer of the lack of availability and immediately return any consideration that has been received. The same applies to cases of force majeure (i.e. war, embargo, loss of transportation routes, etc.)

## 5. Duty of examination

- 5.1. The customer shall examine the goods delivered by Krautzberger immediately after he has received them and shall immediately complain about any discernable defects. If the customer does not complain about any discernable defects, shortfalls or incorrect deliveries within 4 working days, the delivery shall be deemed to have been accepted.
- 5.2. The customer shall complain to Krautzberger about any hidden defects immediately, but within 4 working days of their discovery at the latest.

## 6. Warranty, statute of limitations

- 6.1. In case of a defect the statutory rights of the customer in respect of defects are applicable subject to the limitations under the following stipulations in sec. 6 and 7 of those General Terms and Conditions.
- 6.2. If the contract goods are defective, Krautzberger reserves the right to rectify the defects by redelivery or rectification (reperformance) at its discretion, unless the reperformance is impossible or unacceptable. In the case of reperformance, Krautzberger shall be obliged to bear all the expenses that are necessary for this purpose, in particular transport, travel, labour and material costs in so far as they are not made greater by the fact that the goods are transported to a place other than the place of destination.
- 6.3. The limitation period for claims made by the customer in respect of defects shall be one year from hand-over or acceptance respectively. This shall not apply in the case of action with intent, gross negligence, malicious silence with regard to a defect, failure to meet a guaranteed quality, injury to life, person or health or claims by the customer for indemnification because of a defect if newly manufactured goods are being sold to consumers in the course of business operations. Statutory rights of recourse exist only insofar as the customer did not enter into agreements with its subpurchaser extending statutory liability for deficiencies.
- 6.4. In case of partial deliveries the limitation period begins separately for each partial delivery.

## 7. Limitation of liability

- 7.1. Krautzberger shall be liable without limitation for losses caused by action with intent or gross negligence. This shall also apply to losses resulting from injury to life, person or health, if Krautzberger is responsible for the failure to meet obligations, and to losses that are due to malicious silence with regard to a defect. Krautzberger shall be liable without limitation for losses due to failure to meet a guaranteed quality or storage life, if the risk of such a loss was obviously covered by a guarantee of quality or storage life. Liability under the product liability law shall not be affected. Failure to meet obligations by a legal representative or vicarious agent of Krautzberger shall be deemed to have the same status as failure by Krautzberger to meet its obligations.
- 7.2. For infringement of important contractual obligations (cardinal obligation or essential secondary obligation) resulting from simple negligence Krautzberger's liability shall be limited to foreseeable and typical losses in view of the type of contract. There shall be no liability resulting from simple negligence in the case of infringement of non-essential contractual obligations.

## 8. Changes to goods

Krautzberger shall be entitled to improve or change the contract goods according to technological progress, if neither form nor function of the goods are changed or affected substantially. Krautzberger is entitled to deliver a follow-up model, if the ordered model is no longer available and if its form or function does not vary from the follow-up model substantially.

## 9. Retention of title

- 9.1. Krautzberger shall retain ownership of the contract goods until all Krautzberger's claims against the customer arising from the business relationship have been settled.
- 9.2. After having duly cancelled the contract, Krautzberger shall be entitled to claim back the goods, sell them elsewhere or otherwise dispose of them. If the goods are taken back by Krautzberger, this shall not constitute cancellation of the contract unless Krautzberger has announced cancellation. Attachment of the goods by Krautzberger shall always constitute cancellation of the contract.
- 9.3. Until full payment the customer shall hold in trust the contract goods and shall store them separately from his or third party property. Furthermore the contract goods shall be stored, secured and insured properly, as well as being marked as property of Krautzberger.
- 9.4. The customer must immediately inform Krautzberger in writing of any attachments or other impairments by third parties so that Krautzberger can take third-party action against execution under § 771 ZPO [Code of Civil Procedure] or other action. If the third party is unable to repay to Krautzberger any court or other legal expenses resulting from action under § 771 ZPO, the customer shall be liable for the loss incurred by Krautzberger.
- 9.5. The customer shall be entitled to use the goods in the normal course of business or resell them subject to retention of title. However, the customer hereby cedes to Krautzberger, which accepts all claims up to the final amount of the invoice that it may come to have against its customers or third parties as a result of resale, including any and all ancillary rights or ranks. The customer is entitled until revoked and obligated to collect the assigned claims. Krautzberger is entitled to notify the sub purchasers of the customer of the assignment in case of default of the customer. The value of the contract goods subject to retention of title shall be the final amount of the invoice.
- 9.6. If the goods are converted or mixed together with other articles not belonging to Krautzberger, Krautzberger shall acquire joint ownership of the new item in proportion to the value of the goods in relation to the other converted articles.
- 9.7. The customer shall refrain from transferring or pledging contract goods subject to retention of title for hedging
- 9.8. This retention of title shall apply, even if some claims of Krautzberger are included into current invoices or if a balance is accepted, unless the balance is settled.
- 9.9. In case the customer ceases to pay or in case bankruptcy is filed or bankruptcy proceedings are started or a preliminary liquidator is assigned, the rights of the customer mentioned above to resell and process the contract goods expire as does the right to collect the claims here from.
- 9.10. Krautzberger undertakes to release the securities due to it at the request of the customer in so far as the realizable value of its securities exceeds by over 20% the claims to be secured; Krautzberger shall be free to choose the securities to be released.

## 10. Place of jurisdiction, applicable law

- 10.1. The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Sales Convention and to the exclusion of conflicts of laws provisions of German law
- 10.2. Wiesbaden (Germany) shall be the place of jurisdiction. Krautzberger shall, however, be entitled to take action at the place of establishment of the customer.
- 10.3. Those General Terms and Conditions have been executed bilingually in German and English. Should a dispute concerning the interpretation or application of those General Terms and Conditions arise, the German version shall prevail.

Date 11.11.2005