

General Terms and Conditions of Krifft & Zipsner GmbH

1 SCOPE OF THE CONDITIONS

- 1.1 The deliveries, services and offers of Krifft & Zipsner GmbH (hereinafter referred to as “**entrepreneur**”) to its customers (hereinafter referred to as “**ordering party**”) will be exclusively in accordance with these General Terms and Conditions of the entrepreneur (hereinafter referred to as “**General Terms and Conditions**”).
- 1.2 The General Terms and Conditions only apply if the ordering party is an entrepreneur within the meaning of Article 14, BGB (Bürgerliches Gesetzbuch [Civil Code]), a legal entity under public law or a special fund under public law.
- 1.3 Conflicting or deviating general terms and conditions of the ordering party will only become an integral part if the entrepreneur has expressly consented to their validity. This requirement of consent does always apply, for example even if the entrepreneur delivers to the ordering party without reservation, whilst in full knowledge of the general terms and conditions of the ordering party.

2 OFFERS AND CONCLUSION OF THE AGREEMENT

- 2.1 Offers of the entrepreneur are not binding and subject to change without notice. This does also apply if the entrepreneur has provided the ordering party with catalogues, technical documentation (for example drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form.
- 2.2 The order of the item by the ordering party will be considered to be a binding offer of entering into an agreement. Unless otherwise stated in the order, the entrepreneur is entitled to accept this offer of entering into an agreement within two weeks of its receipt by the entrepreneur, by sending an order confirmation.
- 2.3 Alternative agreements made in individual cases with the ordering party (including secondary agreements, complements and amendments) will always prevail over these General Terms and Conditions. Subject to proof to the contrary, the substance of such agreements will be governed by a written agreement or a written confirmation of the entrepreneur.

- 2.4 The entrepreneur reserves title of ownership or copyright to all offers and cost estimates submitted by him as well as to drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the ordering party. The ordering party may not make these objects accessible to third parties, disclose them, use them himself or through third parties or reproduce them without the express consent of the entrepreneur. Upon the request of the entrepreneur, he must return these items in their entirety to the entrepreneur and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of an agreement. Exempt from this is the storage of electronically provided data for the purpose of normal data backup.
- 2.5 The entrepreneur reserves the right of making technical changes as well as changes in shape and colour of the delivery item, on condition that such changes are reasonable for the ordering party, thereby taking into account the interests of the ordering party.

3 PRICES, PRICE CHANGES

- 3.1 Except where agreed otherwise in individual cases, the agreed prices apply ex-factory, excluding packaging, customs and excise duties and dispatch costs, without any deduction.
- 3.2 The agreed prices are exclusive of the statutory turnover tax prevailing at the time of delivery.

4 DELIVERY TIMES

- 4.1 The delivery period will be agreed on each occasion or will be specified by the entrepreneur upon acceptance of the order. If that is not done, the delivery period will be approximately five to six months.
- 4.2 The entrepreneur will not be liable for impossibility of delivery or for delays in delivery if it is because of force majeure or caused by other events not foreseeable at the time of conclusion of the agreement (for example operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, lack of manpower, energy or raw materials, difficulties in procuring the necessary official permits, official measures or the failure to receive supplies from suppliers or to receive incorrect supplies or to receive them too late) and the entrepreneur is not responsible for it.

- 4.3 If the entrepreneur is unable to meet binding delivery deadlines for reasons for which the entrepreneur is not responsible (non-availability of the service), the entrepreneur must inform the ordering party thereof without delay and at the same time inform the ordering party of the expected new delivery deadline. If the service cannot be provided within the new delivery period either, the entrepreneur will be entitled to withdraw from the agreement in whole or in part; the entrepreneur must immediately reimburse the ordering party for any consideration already paid. Non-availability of the service in this sense will also be considered to be non-timely delivery by the secondary suppliers of the entrepreneur if the entrepreneur has entered into a congruent hedging deal with them and neither the entrepreneur nor his supplier is at fault or the entrepreneur is not obliged to procure in the particular case. If, as a result of the delay, acceptance of the delivery or service should be unreasonable for the customer, he may withdraw from the agreement by means of immediate written declaration to the manufacturer.
- 4.4 The occurrence of default in delivery on the part of the entrepreneur will be determined in accordance with the statutory provisions. However, in all cases dunning by the ordering party is required.
- 4.5 If the ordering party fails to accept in good time, fails to cooperate or if delivery by the entrepreneur is delayed for other reasons for which the ordering party is responsible, the entrepreneur will be entitled to claim compensation for the resulting damage, including additional expenses (for example storage costs).

5 DISPATCH AND PASSAGE OF RISK

- 5.1 Delivery is ex-factory, regardless of where the fulfilment location for delivery or for possible remedial performance may be. Upon the request and at the expense of the ordering party, the delivery item will be dispatched to another destination (consignment purchase). Unless otherwise agreed, the entrepreneur will himself be entitled to determine the type of dispatch (particularly the haulier, dispatch route, packaging).
- 5.2 The risks of accidental loss and of accidental impairment of the delivery item will pass to the ordering party not later than upon handover. However, in the case of a consignment purchase, the risks of accidental loss and of accidental impairment of the delivery item and also of delay will already pass to the ordering party upon handing over the delivery item to the forwarder, the haulier or the person or institution otherwise designated to handle the dispatch. If formal acceptance is agreed, it will be determinant for the passage of risk. Moreover, the statutory provisions of the law governing work and agreements and services will apply mutatis mutandis to an agreed acceptance. Handover respectively acceptance will be considered to have taken place, whether or not the ordering party is in default with the acceptance.
- 5.3 Upon the request of the ordering party deliveries may be insured in his name and for his account.

6 SOFTWARE

- 6.1 If software is installed in the delivery items that is required for using the delivery item, the ordering party is granted the simple (non-exclusive) right to use such installed software as integral component of the delivery item.
- 6.2 The ordering party will not have the right to use the software independently of the delivery item. Furthermore, the ordering party will not have the right either to publicly reproduce the software wirelessly or by wire, to sell it, rent it, lend it or otherwise make it permanently or temporarily accessible to third parties (especially within the framework of operating an application service or computer centre for third parties). Staff members of the ordering party, who require access to the software in order to fulfil their contractual obligations, are not third parties. However, the ordering party is entitled to resell the delivery items with the installed software integrated to third parties or to temporarily transfer them to third parties, provided that the condition that the software may only be used in accordance with these General Terms and Conditions will be imposed upon such third parties.
- 6.3 Reproducing the software is only permissible to the extent necessary for being able to use the delivery item in accordance with the agreement. The ordering party may make backup copies of the software as necessary, in accordance with the rules of technology. Backup copies on removable data carriers must be marked as such and the copyright notice of the entrepreneur must be affixed on them. Furthermore, the ordering party is entitled to reproducing the software within the framework of a proper and regular data backup regime, in accordance with the prevailing technological standard. The user documentation provided may only be reproduced to the extent that it is necessary for intended use of the delivery item.
- 6.4 In accordance with Article 69d, Paragraph 1, UrhG (Urhebergesetz [Copyright Act]), the ordering party is only entitled to making changes to, processing or reworking the software within the meaning of Article 69c, Clause 2, Copyright Act, if it is necessary for being able to use the software as intended, including remediation of faults. However, before the ordering party or his designated third party takes remedial action, the ordering party must first give the entrepreneur the opportunity of doing so.
- 6.5 The ordering party is permitted to copy or decompile the software to create interoperability with other programs within the scope of Article 69e, Copyright Act, under the stipulations specified therein, if the prerequisite is also fulfilled that the entrepreneur has not made the necessary data available to him within a reasonable period of time, after having been requested in writing to do so. The ordering party must keep the information obtained through decompiling or provided by the entrepreneur confidential.

- 6.6 If, within the scope of remediation of deficiencies (Article 7 of these General Terms and Conditions), the entrepreneur makes additions (for example patches) or a new edition of the software (for example an update or upgrade) available that replaces the software that was previously made available, these will be subject to the provisions of these General Terms and Conditions. If the entrepreneur provides a new edition of the software, the permission granted the ordering party under these General Terms and Conditions in respect of the software replaced by the new edition will lapse forthwith upon the new version being used in production, even if the entrepreneur does not expressly demand return of the old software.

7 CLAIMS FOR DEFICIENCIES

7.1 Deficient New Goods

- 7.1.1 The legal stipulations apply in respect of the rights of the ordering party in relation to material deficiencies and legal shortcomings (including wrong and incomplete delivery as well as improper assembly or faulty assembly instructions), unless determined otherwise below. In all cases, the special statutory special provisions will remain unaffected upon final delivery of the delivery item to a consumer (supplier recourse in accordance with Articles 478 and 479, Civil Code).
- 7.1.2 The basis of the liability for deficiencies of the entrepreneur is primarily the agreement reached on the quality of the delivery item. All product descriptions included in the particular agreement or that have been published by the entrepreneur (especially in catalogues or on the homepage of the entrepreneur on the internet) will be considered to be agreements on the quality of the delivery item. If software is installed in the delivery items, the user documentation will be determinant for the agreed quality.
- 7.1.3 If nothing has been agreed in terms of quality, it must be determined on the basis of the statutory stipulations whether a deficiency exists or not (Article 434, Paragraph 1, Clauses 2 and 3, Civil Code). However, the entrepreneur does not accept liability for public statements of the manufacturer or of other third parties (for example advertising statements).
- 7.1.4 Precondition for the lodging of claims by the ordering party is that the latter must have honoured its inspection and notification obligations as per Articles 377 and 381, HGB (Handelsgesetzbuch [Commercial Code]). If a deficiency becomes apparent at the time of delivery, time of inspection or any time thereafter, the entrepreneur must be notified forthwith in writing. In any case, obvious deficiencies must to be reported in writing within two weeks from delivery and deficiencies that are not apparent during the inspection must be reported within two weeks from discovery. If the ordering party fails to carry out a proper inspection and/or fails to report the deficiency, the entrepreneur is not liable for the deficiency that has not been reported, not been reported in good time or not been reported properly in accordance with the legal stipulations.

- 7.1.5 If the delivered item is deficient, it is initially at the discretion of the entrepreneur whether he repairs the item (remedial action) or whether he replaces it by a fault-free item (replacement delivery). The right of the entrepreneur to refuse to take remedial action under the statutory stipulations remains unaffected.
- 7.1.6 The entrepreneur is entitled to make the owed remedial action dependent on the ordering party paying the purchase price that is due. However, the ordering party will be entitled to retain a reasonable part of the purchase price in proportion to the deficiency.
- 7.1.7 The ordering party must allow the entrepreneur the time and opportunity required for the owed remedial action and must particularly hand over the affected delivery for inspection purposes or to make it accessible upon the request of the entrepreneur. In the event of a replacement delivery, the ordering party must return the defective item to the entrepreneur, in accordance with the statutory stipulations. Remedial action does not encompass dismantling the defective item or reinstalling it, if the entrepreneur was not originally obliged to install it.
- 7.1.8 The expenses required for the purpose of inspection and remedial action, particularly for transport, travel, labour and costs of materials as well as for any dismantling and installation costs, are for the account of or must be reimbursed by the entrepreneur in accordance with the statutory stipulations, provided that a deficiency actually exists. Otherwise, the entrepreneur may demand reimbursement from the ordering party of the costs incurred as a result of the unjustified request to remedy the deficiency (especially inspection and transport costs), unless the ordering party could not discern the absence of the deficiency.
- 7.1.9 If the remedial action has not been successful or a reasonable period set for it by the ordering party has lapsed fruitlessly or may be dispensed with on the basis of the statutory stipulations, the ordering party may withdraw from the agreement or reduce the purchase price. However, in the case of a trivial deficiency, there is no right of withdrawal.
- 7.1.10 Claims of the ordering party for damages or reimbursement of futile expenses will only exist in the case of deficiencies in accordance with the provisions of Article 8 and are otherwise excluded.
- 7.1.11 If operating or maintenance instructions of the entrepreneur are not followed, changes are made to the delivery items, parts are replaced or consumables are used that do not correspond to the original specifications, the rights of the ordering party in relation to deficiencies are excluded, unless those circumstances have no influence on the occurrence of the deficiency.

7.2 Legal Deficiencies New Goods

- 7.2.1 The entrepreneur must make the delivery items available unencumbered with any third-party rights that are in conflict with the agreement concluded with the ordering party with regard to the delivery items. If third parties assert any such rights, the contracting parties must inform each other of this forthwith in writing.
- 7.2.2 The entrepreneur must immediately remove any undisputed rights of third parties. The entrepreneur may replace the affected area with an equivalent service that is reasonable for the ordering party, unencumbered by rights that are in conflict with the agreement.
- 7.2.3 In the event of disputed rights of third parties, the entrepreneur may proceed in accordance with the Clause 7.2.2. The ordering party may set the entrepreneur an exclusion period in writing for remediation of the problem. After the period will have lapsed, the ordering party may satisfy the legal claims of the third party under reserve step by step against ceding to the entrepreneur the return claims of the ordering party against the third party. Ultimately, the distribution of the expense depends on whether the claims asserted by the third party had been justified ones.
- 7.2.4 The ordering party authorises the entrepreneur to alone instigate legal proceedings against such third parties, in and out of court, on account of alleged infringements of rights by third parties. If the ordering party is sued for such alleged infringements of third parties' rights, he must coordinate with the entrepreneur and may only take such legal actions, especially acknowledgements and settlements, with the written consent of the entrepreneur.
- 7.2.5 Other than that, the rules of Clauses 7.1.5, 7.1.6, 7.1.7, 7.1.8, 7.1.9 and 7.1.10 apply correspondingly.
- 7.2.6 The entrepreneur will not be liable under this Paragraph 7.2 in cases where the ordering party or third parties have made changes to the concerned delivery item at the instruction of the ordering party, unless such changes have no influence on the occurrence of the legal deficiency.

7.3 Second-hand goods

The arrangements of Paragraphs 7.1 and 7.2 do not apply to goods that had already been used before they were sold. Rights in relation to deficiencies are excluded for second-hand goods. Excluded from this are claims arising from deficiencies that the entrepreneur has deceitfully concealed or if he has guaranteed the quality of the item, as are claims for damages of the ordering party in accordance with Clause 1 and Clause 2 (a) of Paragraph 8.2 and claims of the ordering party in accordance with Produkthaftungsgesetz (ProdHaftG [Product Liability Act]).

8 **LIMITATION ON LIABILITY**

- 8.1 Unless stipulated otherwise in these General Terms and Conditions, including the stipulations below, the entrepreneur will be liable on the basis of the applicable legal stipulations in the event of a breach of contractual and non-contractual obligations.

- 8.2 The entrepreneur is liable for damages – irrespective of the legal basis – within the framework of liability for culpability in cases of wilfulness and gross negligence. In the event of simple negligence, the entrepreneur will only be liable, subject to a milder standard of liability as per statutory stipulations (for example for due care in his own affairs), for
- a) damages in respect of loss of life, bodily injury or impairment of health,
 - b) damages arising from the not inconsiderable breach of an significant contractual obligation (obligation, of which fulfilment is essential for the proper performance of agreement and where the contractual partner relies on and may rely on compliance); in this case, however, the liability of the entrepreneur is limited to compensation for foreseeable, typically occurring damages.
- 8.3 The limitations on liability emanating from Paragraph 8.2 also apply to breaches of duty by or for the benefit of persons, whose culpability the entrepreneur is responsible for in accordance with statutory stipulations. They do not apply if the entrepreneur has deceitfully concealed a deficiency or guaranteed the quality of the delivery item, nor for claims of the ordering party under the Product Liability Act.
- 8.4 The ordering party can only withdraw from the agreement or terminate it on account of a breach of duty for which the entrepreneur is responsible, and that is not a deficiency. Unrestricted right of termination on the part of the ordering party (especially as provided for in Articles 650 and 638, Civil Code) is excluded. For the remainder, the legal preconditions and consequences apply.

9 PERIOD OF LIMITATION

- 9.1 Other than provided for in Article 438, Paragraph 1, Point 3, Civil Code, the general period of limitation for claims arising material deficiencies and legal shortcomings is one year from the date of delivery. If formal acceptance has been agreed, the period of limitation begins on the date of acceptance.
- 9.2 However, if the delivery item is a building or an object that has been used for a building in accordance with its usual use and that is the cause of the defectiveness (building material), the limitation period in accordance with the period of limitation is five years from the date of delivery (Article 438, Paragraph 1, Point 2, Civil Code). Other legal regulations governing periods of limitation (especially Article 438, Paragraph 1, Point 1, Paragraph 3 and Articles 444 and 445b, Civil Code) are not affected.
- 9.3 The periods of limitation governing contracts of sale law mentioned above also apply to contractual and non-contractual claims for damages of the ordering party based on a deficiency in the delivery item, unless application of the regular statutory period of limitation (Articles 195 and 199, Civil Code) would lead to a shorter period of limitation in individual cases. However, claims for compensation of damages of the ordering party in accordance with Point 1 and Point 2 (a) of Paragraph 8.2 are exclusively subject to the periods of limitation provided for by law.

10 RESERVATION OF TITLE

- 10.1 Until full payment of all present and future claims of the entrepreneur against the ordering party arising from the current business relationship to which the entrepreneur is entitled for any legal reason whatsoever, the entrepreneur will retain title to the delivered items (reserved items).
- 10.2 The ordering party is obliged to inform the entrepreneur forthwith in writing of any liens placed on reserved items of the entrepreneur and must inform the secured creditor of the reservation of title. The ordering party is not entitled to sell, give away, have liens placed on hand over by way of surety the items delivered to him under reservation of title – except in the cases described in the following paragraphs.
- 10.3 If the ordering party contravenes the terms of the agreement, the entrepreneur is entitled to withdraw from the agreement in accordance with the legal stipulations and/or demand handover of the reserved items on account of the reservation of title. The handover demand does not simultaneously amount to a declaration of withdrawal; rather, the entrepreneur has the right of demanding handover of the reserved items whilst keeping his right of withdrawal in abeyance. If the ordering party does not pay the purchase price that is due, the entrepreneur may only assert these rights if the entrepreneur has first fruitlessly set the customer a reasonable deadline for payment or if such setting of a deadline may be dispensed with according to statutory stipulations. This does not affect other rights against the ordering party that the entrepreneur may exercise on account of behaviour of the ordering party in violation of the agreement.
- 10.4 If the delivery is made for a business operation maintained by the ordering party, the reserved items may be resold within the framework of proper business management. For such a case, the claims of the ordering party against the buyer emanating from the sale are already now ceded to the entrepreneur in accordance with Paragraph 10.5, below, either in full or in proportion to the co-ownership. The entrepreneur accepts the cession. The obligations of the ordering party mentioned in Paragraph 10.2 do also apply in respect of the ceded claims.
- 10.5 The ordering party is entitled to work on or to process the reserved items. Any work that the ordering party carries out on the reserved items or any processing of them is done free of charge on behalf of the entrepreneur. If the reserved items are processed, combined, mixed or blended with other goods not belonging to the entrepreneur, the entrepreneur will be entitled to the resulting proportional co-ownership of the new item in the ratio of the factor value of the reserved items to the other processed goods at the time of processing, combining, mixing or blending. For the event that the ordering party acquires sole ownership of a new item, the contracting parties agree that the ordering party will grant the entrepreneur co-ownership of the new item in proportion to the factor value of the processed or combined, mixed or blended items subject to reservation of title and will keep them free of charge in safe custody on behalf of the entrepreneur.

- 10.6 In addition to the entrepreneur, the ordering party remains entitled to obtaining payment for the items ceded in accordance with Paragraph 10.4. The entrepreneur undertakes not to collect such payments for as long as the ordering party meets his payment obligations vis-à-vis the entrepreneur, he is not facing payment difficulties and the entrepreneur does not assert the reservation of title by exercising a right in accordance with Paragraph 10.3. However, should that be the case, the entrepreneur may demand that the ordering party discloses to him all ceded claims and the names of the concomitant debtors, to provide him with all information that is necessary for collecting under the claims, to submit to him all appurtenant documentation and to notify the debtors (third parties) of the cession. In such a case, the entrepreneur will also be entitled to revoking the permission of the ordering party to on-sell and process the delivery items subject to reservation of title.
- 10.7 If the realisable value of the collateral exceeds the value of the claims of the entrepreneur by more than 10 %, the entrepreneur must release collateral upon request of the ordering party, at the discretion of the ordering party.

11 PAYMENT

- 11.1 Except as expressly otherwise agreed, the invoices of the entrepreneur are payable without deduction upon invoicing after delivery.
- 11.2 The entrepreneur does expressly reserve the right to refuse to accept cheques and bills of exchange. Acceptance is always subject to clearing. Discounting and exchange costs are for the account of the ordering party and must be paid at once.
- 11.3 If, after conclusion of the agreement, it becomes apparent (for example through instigating insolvency proceedings) that the entrepreneur's claim to the purchase price is at risk on account of the ordering party's inability to pay, the entrepreneur will be entitled to refuse performance under statutory stipulations and – after setting a deadline if necessary – to withdraw from the agreement (Article 321, Civil Code). In the case of agreements for the manufacture of unrepresentable items (custom-made items), the entrepreneur may declare withdrawal immediately; the statutory stipulations governing the need of setting a deadline will remain unaffected.
- 11.4 Payments of the ordering party will firstly be proportionally be applied against the debt that is due, if several debts are due they will be applied the debt that gives the entrepreneur the least comfort of security, if several debts of equal degree of comfort they will be applied against the debt that is harder for the ordering party pay, if several debts are equally to pay they will be applied against the oldest debt and if they are equally old, they will be applied proportionally to each debt. If costs and interest have already accrued on the debt to which payment is applied in accordance with the preceding sentence, the payment will first be applied against the costs, then against the interest and eventually against the substance.

- 11.5 If the ordering party defaults on payments, the entrepreneur will have the right of charging delay interest at the prevailing statutory level. The entrepreneur reserves the right of demanding payment of additional damages caused by delay, over and above the interest. The claim of the entrepreneur against merchants for payment of commercial interest on maturity (Article 353, Commercial Code) remains unaffected.
- 11.6 The ordering party is only entitled to exercise rights of offsetting or retention to the extent that his claim has been legally established or is not disputed. In the event of deficiencies in the delivered items, the reciprocal rights of the ordering party will remain unaffected, particular those mentioned in the second sentence of Clause 7.1.6 of these General Terms and Conditions.

12 APPLICABLE LAW / JURISDICTION

- 12.1 These General Terms and Conditions and the entire legal relationship between the entrepreneur and the ordering party are governed by the laws of the Federal Republic of Germany, under exclusion of the CISG.
- 12.2 If the ordering party is a merchant within the meaning of the Commercial Code, is legal person under public law or special fund under public law, exclusive jurisdiction is vested in the courts of statutory seat of the entrepreneur in respect of all disputes that may directly or indirectly arise within this contractual relationship.