

# General Terms and Conditions for the Sale of Products

These General Terms and Conditions for the Sale of Products (the “**GTC**”) apply to any agreement regarding the sale of products by Kloeckner Metals Germany GmbH, Peter-Müller-Straße 24, 40468 Düsseldorf (“**KMG**”) to Customer (“**Customer**”).

## 1 Definitions

Capitalized terms shall have the meanings set forth below:

- 1.1 “**Business Day**” means a day from Monday to Friday, except for public holidays in the federal state of the business address of the respective KMG company.
- 1.2 “**Confidential Information**” means all information disclosed by either Party in connection with the GTC and Contract concerning the business, affairs, the Products, services, research and technologies of the disclosing Party and/or its customers or which are identified or recognized as confidential, as well as those information whose premature knowledge would benefit a competitor, that is not publicly available at the time it is disclosed to or learned by the receiving Party. To the extent disclosed in connection with the Contract, Confidential Information includes but without limitation to specifications; data; know-how; formulas; compositions; processes; designs; prints; sketches; photographs; samples; prototypes; illustrations; calculations; concepts; ideas; past, current and planned research and development; past, current and planned manufacturing or distribution methods and processes; the identity of or other information about actual or potential customers, customer contacts and customer sales strategies; market studies, penetration data and other market information; sales and marketing plans, programs and strategies; sales, costs and other financial data; sources of supply for the Products, raw materials, and components; descriptions of plants and production equipment; price lists; business plans; financial reports and statements; computer software and programs (including object code and source code); databases; internal reports, memoranda, notes, analyses, compilations, studies and other data, information, materials or intangible

asset that relate to the disclosing Party’s business and/or Products. Confidential Information also includes any materials or information that contains or is based on any other Confidential Information, whether prepared by the disclosing Party, the receiving Party or any other person.

- 1.3 “**Contract**” means the agreement between KMG and Customer which is formed in accordance with Section 3 of these GTC; for the sale, design, development, manufacturing and/or provision of the Products, incorporating these GTC, together with any relevant order confirmation.
- 1.4 “**Customer**” means the individual or entity set forth in the applicable order confirmation.
- 1.5 “**Intellectual Property Rights**” means any and all intellectual property rights arising under statutory law, common law or by contract including without limitation (i) patents, trademarks, design rights, copyrights, rights in databases, domain names, know-how, look and feel, rights in Confidential Information; (ii) any rights analogous to the foregoing; (iii) application filing, renewal and extensions of the foregoing.
- 1.6 “**Parties**” means KMG and Customer.
- 1.7 “**Party**” means either KMG or Customer as the case may be.
- 1.8 “**Products**” refers to the goods that KMG and the Customer have agreed in the Contract to supply.

## 2 Scope of Application

- 2.1 The legal relationship between KMG and Customer shall be governed exclusively by these GTC. Any terms to the contrary are hereby expressly excluded. These GTC shall apply even in the event that KMG proceeds with the delivery to Customer, knowing that Customer’s terms conflict with or differ from these GTC.
- 2.2 These GTC apply exclusively to ‘entrepreneurs’ within the meaning of Section 14(1) of the German Civil Code (BGB) who wish to purchase Products from KMG within the scope of their business activities.
- 2.3 These GTC shall govern and form an integral part of the Contract entered into between KMG and Customer for the sale of Products by KMG.
- 2.4 Customer acknowledges and agrees to be bound by, and comply with, all (a) terms and conditions contained herein; and (b) all of the foregoing as the same may be



amended by KMG from time to time. Customer shall have accepted each and every one of these terms and conditions when it accepts any Products ordered. Any terms set forth by Customer are rejected in whole, unless explicitly accepted in a writing specifically accepting such terms and signed by KMG.

### 3 Offer and Conclusion of Contract

- 3.1 The offers on the KMG website, brochures and catalogs are non-binding, subject to change and merely constitute an invitation to Customer to make an offer (*invitatio ad offerendum*).
- 3.2 By placing an order, Customer submits a binding offer to purchase the Products, and such an offer is subject to acceptance by KMG. Customer shall be bound by its offer to conclude the Contract, for a period of four (4) weeks and may not cancel it for this period unless KMG consents in writing and Customer pays any applicable cancellation charges.
- 3.3 An order shall be considered accepted by KMG and a Contract shall be effected, only upon the issuance of an order confirmation (*Auftragsbestätigung*) by KMG.
- 3.4 In the event that KMG directly sends a binding offer to Customer, such offer shall have a validity period of four (4) weeks, unless expressly stated otherwise.
- 3.5 Customer acknowledges that the illustrations on the KMG website, brochures and catalogs may not reflect the Products accurately. Images are for illustrative purposes only and may differ from the Product. Technical data, weight, dimension and performance descriptions are detailed as precisely as possible but may have certain variations. Deviations from the characteristics described herein do not constitute defects in the Products.

### 4 Scope of Products

- 4.1 KMG shall provide Customer with the Products specifically set forth in the relevant order confirmation.
- 4.2 Customer acknowledges and agrees that the Contract does not constitute an exclusive agreement between Customer and KMG. Accordingly, KMG may provide such Products to customers other than Customer.

### 5 Cancellations/Modifications

- 5.1 Once Customer has placed an order and a Contract is effected according to clause 3, Customer may not cancel it unless KMG consents in writing and Customer pays any applicable cancellation charges.
- 5.2 Customer may not change orders in progress, except with KMG's written consent and agreement as to appropriate adjustments to be made and the effect, if any, of such changes on the price and time of delivery, provided that when Customer requires expedited service involving overtime, overtime charges will be added at KMG's sole discretion to the price specified on the face thereof or in an attached schedule. If the Customer requests an expedited delivery, Customer shall bear the additional costs incurred.

### 6 Delivery

- 6.1 Delivery dates are dependent upon (i) prompt receipt by KMG from Customer of all information necessary to permit KMG to proceed with the delivery immediately and without interruption; (ii) Customer's compliance with all terms and obligations of the Contract, including payment terms and continued solvency.
- 6.2 Any modification of an order in the process of being executed, in accordance with Section 5 of these GTC, if accepted by KMG, shall lead to an extension of the agreed delivery period as shall be indicated by KMG to Customer.
- 6.3 Upon the specific request of Customer and upon confirmation of costs, delivery shall be insured at the expense of Customer against risks specified by Customer, insofar as this is feasible for KMG at a reasonable expense. Customer shall bear all uploading and related costs.
- 6.4 Unless otherwise specified in writing, KMG shall deliver the Products in accordance with FCA (Incoterms 2020). The place of destination ("*Bestimmungsort*") is the address of business of either KMG or the KMG branch ("*Zweigniederlassung*") delivering the goods.
- 6.5 In the event that Customer fails to retrieve the Products from KMG premises or declines to accept the Products, on the delivery date stipulated in the order confirmation, KMG reserves the right to store the Products at Customer's cost and risk. KMG may also request reimbursement for freight and handling expenses. If the delay in the retrieval of the Products



exceeds fourteen-days from the delivery date stated in the order confirmation, KMG retains the right to terminate the Contract, sell the Products anew, and seek compensation for the difference between the originally agreed price with Customer and the resale price. This Section 6.5 of the GTC applies to all immediate retrievals and acceptances not governed by a call-off order schedule.

- 6.6 Unless otherwise agreed, contractually agreed minimum purchase quantities must be called-off within 365-days of the conclusion of Contract. If this period lapses without all Products being called-off, KMG reserves the right to store any remaining Products at Customer's cost and risk.
- 6.7 Partial deliveries shall be permitted. Delivery dates will be considered fulfilled if KMG informs Customer that the Products are ready for dispatch.
- 6.8 Within a tolerance of 10 % of the total order quantity, KMG may exceed or fall below the agreed quantity.
- 6.9 For Contracts involving continuous deliveries, Customer shall submit call-offs for approximately equal monthly quantities. If not specified, KMG reserves the right to determine the shipment quantities at its discretion, ensuring fairness and equity.
- 6.10 If KMG is ultimately not supplied by its supplier, without any fault on KMG's part, KMG reserves the right to suspend its delivery obligation under a Contract with Customer for the duration of the non-delivery and/or partially or fully withdraw from the Contract with Customer. KMG shall notify Customer of the non-delivery and, where permissible, offer to transfer its claims against the supplier to Customer.

## 7 Customer's Obligations

- 7.1 Customer shall:
  - 7.1.1 co-operate with KMG in all matters relating to the Contract; and
  - 7.1.2 provide KMG with such information and materials as KMG may reasonably require in relation to the Contract and ensure that such information is complete and accurate in all material respects.
- 7.2 If KMG's performance of any of its obligations is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation (Customer Default): (a) without

limiting or affecting any other right or remedy available to it, KMG shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from KMG's failure or delay to perform any of its obligations; and (b) Customer shall reimburse KMG on written demand for any costs or losses sustained or incurred by KMG arising directly or indirectly from Customer Default.

### 7.3 Notification of Defects

7.3.1 Immediately upon receipt of Products, Customer shall inspect whether the Products correspond to the ordered number of units and type and whether there are any externally recognizable defects. If a defect becomes apparent during such inspection, Customer shall promptly notify KMG, in writing. Failure to provide such notification shall result in the Products being deemed accepted by Customer, unless the defect was not reasonably detectable during the inspection. Subsequently discovered defects must also be promptly reported to KMG; otherwise, the Products shall be deemed to be accepted by Customer with respect to the discovered defect.

7.3.2 If Customer intends to install the Products into another object or attach the Products to another object, the inspection must include the internal properties relevant to the installation or attachment. This obligation to examine the Products applies even if an inspection certificate or any other material certificate is provided. Defects that cannot be discovered immediately, even with the most careful inspection, must be reported to KMG in writing as soon as they are discovered. Failure to conduct an inspection of the properties relevant to the designated end use before installation or attachment (e.g. through function tests or a trial installation), shall constitute gross negligence on the part of Customer. In such cases, Customer shall only be able to assert rights regarding these properties if the defect was deliberately concealed by KMG or if there was a guarantee for the specific quality of the Products.



## 8 Title Transfer

- 8.1 Title in and to the Products shall be transferred to Customer upon full and timely payment of any and all invoices issued under the applicable order confirmation. In the event that the Customer receives deliveries from KMG within the framework of an ongoing business relationship, KMG reserves the right of title until all its claims against the Customer arising from this business relationship have been paid in full.
- 8.2 During the period of time that KMG retains the title in the Products (hereinafter, "**Retention of Title Period**") Customer shall handle the Products with due care. In particular, Customer is obligated to obtain insurance coverage at its own expense against risks such as fire, water damage, and theft, covering the replacement value of the Products. Customer also agrees to assign KMG, any compensation claims from such insurance. KMG hereby accepts the assignment. If such assignment is not permissible, Customer hereby agrees to irrevocably instruct the insurer to pay any compensation directly to KMG. Further claims on KMG's part shall remain unaffected. Upon request, Customer shall provide KMG with proof of insurance coverage.
- 8.3 During the Retention of Title Period, Customer may only sell the Products in the normal course of business.
- 8.3.1 Customer hereby assigns to KMG, all claims arising from the resale of Products along with all ancillary rights, irrespective of whether the Products are resold without or after processing. KMG hereby accepts the assignment. If such assignment is not permissible, Customer hereby agrees to irrevocably instruct the third-party debtor to pay any compensation directly to KMG.
- 8.3.2 Customer is authorized to collect the claims assigned to KMG, in trust for KMG, with KMG having the right to revoke such authorization. The payment collected by Customer on behalf of KMG shall be transferred to KMG, without any undue delay. KMG may revoke Customer's authorization to collect and Customer's right to resell, if Customer does not meet its payment obligations to KMG, defaults on payment, suspends payments or if (preliminary) insolvency proceedings are instituted against Customer's assets.
- 8.3.3 Any resale of the claims shall require KMG's prior consent. Upon notification of the assignment to the third-party debtor, Customer's authorization to collect the receivables shall expire.
- 8.3.4 In the event of revocation of the collection authorization, KMG may demand that Customer disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the associated documents, and inform the debtors of the assignment.
- 8.3.5 If Customer's claims resulting from the resale are integrated into a current account, Customer hereby agrees to transfer to KMG its claim from that account against Customer's buyer. Such assignment shall encompass the purchase price, including VAT, agreed for the resold Products during the Retention of Title Period.
- 8.4 Customer shall not use the Products as collateral, pledge them, or undertake any actions that endanger KMG's ownership rights therein. If the Products are seized or intervened upon by third-parties, Customer must promptly notify KMG in writing, providing all necessary details. Customer shall inform the third-party of KMG's ownership rights and cooperate with KMG in the measures taken to protect the Products subject to the retention of title. Customer shall bear all costs related to cancelling the seizure and recovering the Products, except when such costs can be recovered from the third party. Notwithstanding the retention of title, the risk, including the risk of seizure of the goods, shall pass to Customer for all transactions, including carriage paid and free deliveries, when the Products are handed over to a forwarding agent or carrier, but at the latest when the Products leave the KMG warehouse or the supplying plant.
- 8.5 If KMG asserts its claims in accordance with Section 8.3 of these GTC, Customer shall grant KMG immediate access to the reserved Products, send KMG an updated price list of the existing reserved Products, separate the Products and return them to KMG, at KMG's request.
- 8.6 The processing of the Products during the Retention of Title Period, shall always be conducted by Customer on behalf of KMG. Customer's anticipatory right to the Products subject to retention of title persists in the



processed Product. If the Products are processed, combined, or mixed with other items not belonging to KMG, KMG shall acquire co-ownership of the new item based on the value of the delivered Products in comparison to the other processed items at the time of processing. Customer shall store the new items for KMG. All other provisions that apply to the Products subject to retention of title also apply to the item resulting from processing or transformation.

- 8.7 Upon Customer's request, KMG shall release any securities that Customer is entitled to, provided the value of these securities, after applying customary bank discounts, exceeds KMG's claims from the business dealings with Customer, by more than 10%. This valuation is based on the invoice value of the Products during the Retention of Title Period and the nominal value of receivables.
- 8.8 When Products are delivered to legal jurisdictions where the retention of title provision under this Section 8 of the GTC does not offer the same security as in Germany, Customer grants KMG a corresponding security interest. If additional declarations or actions are necessary for this, Customer shall provide them. Customer must also cooperate in all measures necessary to ensure the efficacy and enforceability of these security interests.

## 9 Price, Payment and Packaging

- 9.1 All prices listed in the respective order confirmation are quoted FCA (Incoterms 2020) KMG or the respective supplying KMG branch, exclusive of travel costs, expenses, packaging, shipping, and, if applicable, transport insurance.
- 9.2 Customer agrees to pay KMG in respect of the Products to be provided hereunder the price set forth or determined in the applicable order confirmation. If changes are made in accordance with Section 5.2 of these GTC, Customer agrees to pay increased prices and surcharges accordingly.
- 9.3 Unless expressly otherwise agreed in writing and provided that the Customer has a sufficient commercial credit limit, all payments shall be made within 7 days upon issuance of the invoice. To the extent that the Customer's commercial credit limit is fully utilized, the Customer shall be obliged to make advance payments. In the case of bank transfers, payment is deemed to have been made on time when the invoiced amount is credited to KMG's account.

- 9.4 All prices are quoted and payable in Euros. In case Customer makes the payment in a foreign currency, Customer shall bear the risk of any decline in the exchange rate of the foreign currency against the Euro, from the time the Contract is concluded.
- 9.5 The prices are exclusive of all applicable sales, VAT or other taxes or duties and Customer shall pay all such duties and taxes.
- 9.6 Any deduction of a cash discount shall be agreed to separately in writing. Unless otherwise agreed, an agreed cash discount shall relate to the invoice value excluding freight and shall be contingent upon the prior settlement of KMG's outstanding invoices by the Customer.
- 9.7 If Customer fails to make the payment of the whole or the part of the invoice due, within 7 days of issuance of invoice, KMG shall be authorized to suspend any remaining shipments and, after the giving of formal notice, to cancel the Contract by virtue of Customer's fault, in accordance with Section 16 of these GTC.
- 9.8 Any payment not received from Customer by the due date shall accrue interest (except with respect to charges then under reasonable and good faith dispute), of nine (9) percent points above the base interest rate published by the German Federal Bank from the date such payment is due until the date paid. Any debt collection costs including all legal and attorney costs that KMG may incur for the collection of any amount due shall be borne by the defaulting Customer.
- 9.9 If Customer defaults on payment, KMG shall have the right to require advance payment for any outstanding deliveries. If Customer refuses to make this advance payment after a reasonable grace period, KMG may withdraw from the Contract. KMG further reserves the right to pursue additional legal remedies. All other statutory provisions remain applicable.
- 9.10 Customer may only offset claims that are undisputed by KMG or have been legally established. Except within the scope of Section 354a HGB (German Commercial Code), Customer may only assign claims arising from the Contract to third parties with KMG's prior written consent, which shall not be unreasonably withheld. Customer shall only be entitled to a right of retention or the defense of non-performance of the Contract within the respective contractual relationship.





- 9.11 If, after the conclusion of the Contract, there are unforeseeable wage increases under collective bargaining agreements, price changes by upstream suppliers, or changes in external expenses (such as duties, taxes, or other third-party charges) after conclusion of the Contract, KMG shall be entitled to make corresponding adjustments to the Product prices, if this was not foreseeable at the time of conclusion of the Contract. If the adjusted prices exceed the originally agreed prices by more than 10%, Customer may withdraw from the Contract for the affected Products within one week of receiving KMG's price modification notice.
- 9.12 If, at any time and at the sole discretion of KMG, it is deemed that Customer's capacity to settle invoices promptly is compromised, KMG reserves the right to request guarantees and/or specific payment terms. Additionally, KMG retains the right to suspend the execution of outstanding orders.
- 9.13 At Customer's cost KMG shall be responsible for packaging the Products for transportation. KMG shall ensure that the packaging aligns with industry-standards and is executed in a manner that ensures optimal conditions for the transportation of the Products.

## 10 Customs

Unless explicitly agreed otherwise, customs clearance in both the country of export and the country of import shall be the responsibility of Customer. The Customer shall bear all duties and charges related to the export or import, including any punitive tariffs in the event of tariff quota exceedance.

## 11 Brochures, Technical Information and Documentation

- 11.1 In accordance with Section 3.1 of these GTC, information and characteristics presented in any KMG catalogue, brochure, technical or specification sheets, assembly instructions, or other documentation are for informational purposes only and shall not be construed as binding offers under any circumstances.
- 11.2 Upon delivery of the Products, KMG shall provide, at no additional charge, all necessary documentation, including manuals, reports, operational instructions, specifications, and program/system documentation, essential for the use, maintenance, and operation of the Products.

## 12 Warranty

- 12.1 Customer acknowledges that the properties of the Products, such as grade, dimensions, and quality, are primarily determined by the quality agreed upon in the Contract, including any specified DIN and EN standards, data sheets, or other technical provisions. References to these standards, inspection documents (e.g. EN 10204), certificates, grade, classification, size, dimensions, and usability of the Products do not imply additional warranties or guarantees. This also applies to declarations of conformity and markings such as CE and GS. Decisive for the contractually agreed properties of the Products is the time at which the goods are handed over to the carrier or freight forwarder, or at the latest upon leaving the KMG facility.
- 12.2 Subject to Section 7.3 of these GTC, KMG shall, at its sole discretion and expense, repair or replace any Products that prove to be defective, deficient or non-conforming with the Product specifications set out in the relevant order confirmation, with new Products that are free from defects, during the warranty period of twelve (12) months, provided that the defect is attributable to a circumstance existing prior to the transfer of risk.
- 12.3 Warranty claims shall expire twelve (12) months after the date of delivery at the place of destination as stated in the delivery documentation for the respective Products, but no later than fourteen (14) months after notification of readiness for dispatch. Statutory mandatory longer warranty periods shall remain unaffected.
- 12.4 In the event of a replacement delivery, Customer shall return the Product to be replaced to KMG upon request, in accordance with statutory provisions. In this case, the costs of the least expensive shipping method necessary to return the Products to be replaced to KMG will be reimbursed, unless such costs increase because the Products are located at a place other than the original delivery location. The place of performance for subsequent performance shall be the registered office of KMG or the respective KMG branch. If the defect is not significant and/or the Products have already been sold, processed, or redesigned, Customer shall only be entitled to a reduction in price. In urgent cases where operational safety is at risk or to prevent disproportionately large damages, Customer shall have the right, after immediately notifying KMG, to remedy the defect itself or have it remedied by third



- parties and to demand reimbursement of the necessary expenses from KMG.
- 12.5 Within the framework of the statutory provisions, the Customer shall be entitled to withdraw from the Contract if KMG – taking into account the statutory exceptions – allows a reasonable deadline set for the repair or replacement delivery to expire without rectifying the defect.
- 12.6 Except for the warranty of the technical characteristics and specifications of the Products pursuant to the relevant order confirmation, KMG does not warrant any performance or result of the Product in connection or combination with other products or when installed or fixed on a panel or when being part of a system. Where Products are to be delivered according to drawings, specifications, samples, or other requirements provided by Customer, Customer assumes the risk of suitability for the intended purpose.
- 12.7 If Customer has installed or attached the Products into another object according to its type and designated use, Customer may claim reimbursement for necessary costs of dismantling the defective Products and installing or attaching non-defective Products (hereinafter, **"Dismantling and Installation Costs"**) only under the following conditions:
- 12.7.1 Necessary Dismantling and Installation Costs that directly result from the removal of defective Products and the installation or attachment of identical Products. These costs must be based on competitive market prices and must be proven by Customer with appropriate documents in writing.
- 12.7.2 Additional costs, such as consequential damages (e.g. loss of profit, downtime costs, or extra costs for substitute purchases), are not considered Dismantling and Installation Costs and are therefore not recoverable under Section 439 Paragraph 3 of the German Civil Code (BGB). This also applies to sorting costs and supplementary costs if the Products sold and delivered are at a location other than the agreed place of delivery.
- 12.7.3 Customer shall not be entitled to request advance payments for Dismantling and Installation Costs, or other expenses required to remedy defective delivery.
- 12.8 The KMG warranty is applicable solely to Products delivered by KMG and is applicable exclusively to customers of KMG. It does not extend to any third-party purchasers.
- 12.9 In order to invoke the warranty, Customer must notify KMG, in writing and within the above-stated warranty period, of the defects allegedly found in the Products and provide proof thereof.
- 12.10 Customer must facilitate the assessment of these defects. Customer shall provide KMG with the opportunity to verify the defect and, upon request by KMG, make the defective Products or samples thereof available without delay and at Customer's own cost. Customer shall grant KMG the necessary time and opportunity to carry out any repairs or replacement deliveries deemed necessary, after mutual consultation. Otherwise, KMG shall be released from liability for any resulting consequences.
- 12.11 The warranty provided by KMG shall not cover any defects resulting from:
- 12.11.1 any assembly or installation or use of the Products that does not comply with the instructions or specifications issued by KMG (documentation, operating and assembly instructions, special recommendations, etc.) or professional standards,
- 12.11.2 abnormal use of the Products, defective or unsuitable maintenance, negligence or any use other than the use for which the Products were intended,
- 12.11.3 materials supplied (or design imposed) by Customer, or from servicing or maintenance performed on the Products by third parties not expressly authorized by KMG;
- 12.11.4 acts of God or force majeure as well as defects and consequences thereof resulting from normal wear and tear of the Product; or
- 12.11.5 a non-KMG product being used, assembled with or integrated into a KMG Product (unless so expressly agreed by KMG in writing).
- 12.12 Customer shall not, without the prior written consent of KMG, carry out any repair or removal of the Product.
- 12.13 If, on an individual basis, the costs incurred by Customer to remedy the defective delivery are disproportionate compared to the purchase price of the non-defective Products and considering the



significance of the Contract breach, KMG shall be entitled to refuse reimbursement of such costs. Costs are considered disproportionate particularly if the requested costs, including Dismantling and Installation Costs, exceed 150% of the purchase price of the Products invoiced by KMG or 200% of the value of the defective Products.

- 12.14 Repairs or replacements conducted under the warranty terms shall not prolong the original warranty period. Upon request by KMG, Customer shall send back to KMG, any parts replaced within the warranty period which shall be considered property of KMG.

## 13 Limitation of Liability

- 13.1 Subject to the provisions set forth in the following Sections 13.2 - 13.8 of these GTC, KMG shall only be liable, regardless of the legal basis, for damages caused by intentional or grossly negligent conduct of KMG, its legal representatives, senior executives, or other vicarious agents.
- 13.2 Liability for damages caused by grossly negligent conduct of other vicarious agents shall be limited to damages that typically must be anticipated within the scope of a contract such as the Contract.
- 13.3 KMG shall only be liable for damages caused by neither intentional nor grossly negligent conduct of KMG, its legal representatives, senior executives, or other vicarious agents if a duty is violated, the observance of which is of particular importance for the achievement of the contractual purpose (cardinal duty). In the event of a breach of a cardinal duty, the limitation of liability set forth in Section 13.2 of these GTC shall apply.
- 13.4 For damages pursuant to Section 13.3 of these GTC, KMG's liability shall be limited to a maximum of fifty (50) percent of the order value per damage incident.
- 13.5 KMG assumes no warranty or procurement risk unless KMG has expressly and in writing assumed a warranty or procurement risk designated as such in individual cases.
- 13.6 To the extent that liability of KMG is excluded pursuant to the foregoing Sections 13.1 through 13.6, this shall also apply in favor of KMG's employees when directly invoked by the Customer.
- 13.7 Any liability of KMG for damages resulting from injury to life, body, or health, from assumption of a warranty

or procurement risk, as well as under the Product Liability Act, shall remain unaffected.

## 14 Limitation Period

- 14.1 The limitation period shall be as follows:
- 14.1.1 Claims arising from repayment of the purchase price, withdrawal, or reduction, shall expire one year from delivery of the Products. However, if these claims stem from defects reported within the limitation period, they expire no sooner than three months after the effective declaration of withdrawal or reduction.
- 14.1.2 Other claims arising from material defects shall expire one year from delivery of the Products.
- 14.1.3 Claims arising from defects of title shall expire one year from delivery of the Products. If the defect of title involves a third party's right in rem, statutory limitation periods apply.
- 14.1.4 Claims for damages or compensation for futile expenditure shall expire two years from the date when Customer became aware of the circumstances giving rise to the claim or should have become aware without gross negligence.
- 14.2 In deviation from the statutory provision in Section 445b BGB, according to which Customer's warranty claims against KMG shall arise at the earliest two months after the date of fulfillment of the warranty claims against his customer, such suspension of expiry ends at the latest five years after the date of delivery of the products by KMG to Customer.
- 14.3 If Customer agrees a warranty period with its customers that exceeds the statutory regulation, the limitation period for claims in accordance with Section 437, 445a Para. 2 BGB and Section 445a Para. 1 BGB shall, in deviation from the above paragraph, commence upon expiry of the regular limitation period of Section 438 Para. 1 BGB.
- 14.4 The limitation period expires at the latest upon expiry of the statutory maximum periods (Section 199 (3), (4) BGB).
- 14.5 However, subject to Section 14 of these GTC, statutory limitation periods always apply to damages and reimbursement of expenses due to intent, gross





negligence, warranty, fraudulent intent, as well as injury to life, limb, health, and claims under the Product Liability Act.

## 15 Excusable Delays (Force Majeure)

- 15.1 Each Party shall be excused from any delay in the performance of its obligations hereunder to the other Party (the "Non-Claiming Party") to the extent that the Party (the "Claiming Party") is prevented from performing any obligation hereunder in whole or in part, as a result of events beyond its reasonable control (including, without limitation, acts of terrorism, pandemic, epidemics, boycotts, sabotage, war (whether or not declared), embargoes, sanctions, riots, insurrection or other acts of armed hostility, severe weather conditions such as fire, flood, earthquake, or storm, or any other act of God or any other force majeure events or other cause beyond the Claiming Party's control, provided that:

- 15.1.1 The Claiming Party could not have avoided such circumstances by taking precautions which it ought reasonably to have taken including, without limitation, placing advance orders for the employment of additional staff;
- 15.1.2 The Claiming Party has used its reasonable endeavors to mitigate the effect of such circumstance and to perform its obligation; and
- 15.1.3 The Claiming Party shall promptly notify the Non-Claiming Party of the nature and extent of the circumstances giving rise to the delay or non-performance.

- 15.2 Notwithstanding the foregoing, if the event giving rise to the claim of force majeure continues for a period of ninety (90) days then, without prejudice to the other rights and remedies under the Contract, the Non-Claiming Party may terminate the Contract forthwith.

## 16 Termination

### 16.1 Termination by Material Default

- 16.1.1 If Customer commits a material default of any of its undertakings under the GTCs or the order confirmation, KMG shall notify the Customer of the default in writing, stating a

reasonable time, within which the Customer shall remedy said default.

- 16.1.2 Should the occurred default remain unremedied after the expiry of the reasonable period stated in the above-mentioned notice, KMG is entitled to terminate the Contract by giving written notice of termination to the Customer, the date of such written notice being the termination date.

### 16.2 Termination by Specific Defaults

KMG shall have the right at any time by giving notice in writing to the Customer to terminate the Contract forthwith if:

- 16.2.1 a bankruptcy or composition procedure is initiated against the Customer, or a receiver is appointed to control the assets of the Customer, or a winding up order is made against the Customer; or
- 16.2.2 the financial position of the Customer deteriorates to such an extent that in the opinion of KMG the capability of the Customer to adequately fulfil its obligations under the Contract has been jeopardized. A deterioration of the Customer's financial situation can be assumed, among other things, if the trade credit insurer of KMG reduces or completely removes the limit for the Customer.

## 17 Confidentiality

- 17.1 The Parties acknowledge that Confidential Information may be mutually disclosed.
- 17.2 The Parties agree that Confidential Information shall be used only for the sole purpose of discussions or implementation of the Contract and shall not disclose such Confidential Information, whether directly or indirectly, to any third-party - except to its officers, employees, affiliated companies (§§ 15 ff. of the German Stock Corporation (*AktG*)) and consultants - without prior written approval of the other Party.
- 17.3 Such restrictions on the use or disclosure of such Confidential Information shall not apply to such information which:
- 17.3.1 prior to the receiving Party's receipt thereof was publicly available or in the receiving



Party's possession from a source other than the disclosing Party, or

- 17.3.2 after the receiving Party's receipt thereof becomes publicly available other than as a consequence of a breach of the receiving Party's obligations hereunder, or
  - 17.3.3 is independently developed by the receiving Party and such independent development can be proved without doubt, or
  - 17.3.4 is required to be disclosed pursuant to statutory regulations or regulations under administrative law or by reason of an unappeasable judicial decision, and the receiving Party makes this requirement known to the disclosing Party without undue delay and the extent of the disclosure is restricted as far as possible; the receiving Party will ensure confidential handling of the Confidential Information by the court or the authorities to the best of its ability.
- 17.4 Each Party agrees to exercise reasonable care in protecting the Confidential Information to prevent the disclosure of such Confidential Information to outside parties.
- 17.5 Notwithstanding the above, KMG is entitled to disclose Confidential Information of the Customer to the extent necessary for the procurement of the primary material and the manufacture of the Products, provided that KMG makes reasonable efforts to maintain the confidentiality of this information with third parties by contract or other means.

## 18 Intellectual Property

Customer agrees that the Products contain proprietary information and material that is owned by KMG and/or its licensors and is protected by applicable intellectual property and other laws, including but not limited to copyright. Customer agrees not to use such proprietary information or materials in any way whatsoever except for use of the Products in compliance with these GTC and the applicable order confirmation.

## 19 Relationship of the Parties

KMG and Customer are independent contracting Parties. Nothing in these GTC shall make either Party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either Party any

authority to assume or to create any obligation on behalf of or in the name of the other.

## 20 No-Russia-Clause

- 20.1 The Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with the Contract that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
- 20.2 The Customer shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 20.3 The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, which would frustrate the purpose of paragraph 20.1.
- 20.4 Any violation of paragraphs 20.1, 20.2 or 20.3 shall constitute a material breach of an essential element of the Contract and KMG shall be entitled to seek appropriate remedies, including but not limited to:
  - 20.4.1 Termination of the Contract; and
  - 20.4.2 a penalty of 10 % of the total value of the Contract or price of the goods exported, whichever is higher.
- 20.5 The Customer shall inform KMG about any problems in applying paragraphs 20.1, 20.2 or 20.3, including any relevant activities by third parties that could frustrate the purpose of paragraph 20.1. The Customer shall make available to KMG information concerning compliance with the obligations under paragraphs 20.1, 20.2 and 20.3 within two weeks of the simple request for such information.

## 21 Assignment

- 21.1 Unless expressly permitted herein, Customer shall not assign any of its obligations under the Contract without the prior written consent of KMG. KMG shall be entitled to assign its rights and obligations.
- 21.2 To the extent that KMG assigns to third parties any of its obligations, KMG shall remain fully responsible for such obligations and for all acts or omissions of its assignees or agents.



## 22 Notices

- 22.1 Any notice, request, waiver, consent or approval shall be in writing and shall be sent to the address of the recipient set out in the order confirmation, or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice, request, waiver, consent or approval may be delivered by hand or by prepaid registered post or by e-mail transmission, and shall be deemed to have been duly given or made when:
- 22.1.1 by hand delivery - at the time of delivery;
  - 22.1.2 by registered post with acknowledgment of receipt - at the time of receipt;
  - 22.1.3 by email - on the next business day after dispatch.
- 22.2 The Parties shall notify the other of any change of address or facsimile numbers within three (3) business days of such change.

## 23 Entire Agreement

These GTC together with the relevant order confirmation, together with all addenda, schedules, and exhibits constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous agreements and understandings between the Parties relating to the subject matter hereof. The German version of these GTC shall always apply in the case of deviations.

## 24 Written Form

Any modification of these GTC shall be valid only if in writing and signed by the Parties. A contractual waiver of this clause must also be in writing and signed by the Parties.

## 25 Governing Law

These GTC and any order confirmation along with any dispute arising out of or in connection with these GTC and order confirmation, shall be governed exclusively by German law excluding the UN Sales Convention.

## 26 Dispute Resolution and Jurisdiction

- 26.1 The Parties will use their reasonable best efforts to resolve any dispute hereunder through good faith negotiations. A Party must submit a written notice to the other Party and any such dispute that cannot be resolved within forty-five (45) calendar days of receipt of such notice (or such other period to which the Parties may agree) may be submitted to the courts of Düsseldorf, Germany.
- 26.2 Any and all disputes, claims or litigation arising from or related in any way to these GTC and/or the order confirmation, including its formation, shall be exclusively submitted to and resolved by the courts of Düsseldorf, Germany.

## 27 Severability

If any provision of these GTC should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of these GTC shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject matter, extent, time, place and scope. The aforesaid shall apply *mutatis mutandis* to any gap in these GTC.

