

General Terms and Conditions of Sale

of Kupferrheydt GmbH

(version: July 2016)

1. Scope

1.1

The present General Terms and Conditions of Sale shall apply in all situations involving a sale by Kupferrheydt GmbH (hereafter, the “**Seller**”) to another person or undertaking (hereafter, the “**Buyer**”) of the Seller’s products (hereafter, the “**Products**”).

1.2

If and insofar as the Buyer asserts the validity of its own GTCs, these will not be accepted by the Seller, even if not expressly objected to by the Seller. Under all circumstances, only these General Terms and Conditions of Sale shall form part of the contract. Any exception to this rule shall only apply with the express written approval of the Seller to the application of the GTCs of the Buyer.

2. General provisions, partial deliveries

2.1

The Seller expressly reserves its rights of ownership and copyright over cost estimates, drawings and other documentation (hereafter, “Documentation”) drawn up by it. The Buyer shall not acquire any rights of its own over such materials. It may only make the Documentation accessible to third parties with the prior approval of the Seller. The Buyer shall return the Documentation unsolicited to the Seller following implementation of the contract or in the event of early termination.

2.2

In the event that any industrial property rights or copyright should exist or arise in relation to the Products, these shall remain with the Seller alone. The Buyer shall only receive a simple right of use along with the Products. The Buyer shall be obliged at all times to uphold the Seller’s industrial property rights and copyright by an appropriate reference, both as regards its own actions and also in relation to third parties that come into contact with the Products in accordance with their intended use.

2.3

The Seller may at its discretion process the Buyer’s orders also through partial deliveries and invoice each delivery separately if:

- the partial delivery can be used by the Buyer in accordance with the intended purpose specified under contract;
- delivery of the remaining Products ordered is ensured; and
- no significant additional cost or expense thereby arises for the Buyer (unless the Seller states its willingness to cover such cost or expense).

The Buyer must inform the Seller of such reasons in advance in text form.

2.4

The Buyer's claims under the contractual relationship may not be assigned without the consent of the Seller. The foregoing shall be without prejudice to Sec. 354a of the German Commercial Code [*Handelsgesetzbuch* – HGB].

2.5

Unless specified otherwise, contractual arrangements that are standard within trade shall be construed in accordance with Incoterms 2010, including any supplements as applicable at the time of conclusion of the contract.

3. Prices, payment terms

3.1

3.1.1

Unless expressly specified otherwise, the prices indicated by the Seller for Products are stated *ex works* excluding packaging (spools, containers etc.) and loading, which shall be invoiced separately. The prices stated shall be subject to value added tax at the statutory rate. Unless agreed otherwise, the costs of any transportation or similar insurance agreed to along with surcharges for express goods shall be borne by the Buyer.

3.1.2

In the event that any changes to the basis for calculating prices have occurred at the time of supply and more than three months have passed since conclusion of the contract (e.g. increases in the prices of raw materials, salary increases), the Seller reserves the right to make a corresponding price adjustment at its reasonable discretion (Sec. 315 of the German Civil Code [*Bürgerliches Gesetzbuch* – BGB]), provided that the Buyer is notified in advance.

3.1.3

If no prices were agreed to upon conclusion of the contract, the Seller's prices valid on the day of delivery shall apply. The prices are as a rule hollow-cable prices and do not include the cost of metal. For all-in price transactions, the price of the copper shall be added to the hollow-cable price. The price of copper shall be determined based on the MK price on the day after receipt of the order.

For reprocessing transactions under which the supplier only charges for the hollow-cable price, the order material must be received at the Seller's plant at least 6 weeks prior to the desired delivery date or at the time the finished goods are ordered (supply from stock).

If no copper is available on the delivery date, supply shall occur according to the terms applicable to all-in price transactions with regard to the shortfall only. Any replenishment subsequently received may not be offset *ex post* against such all-in price transactions. Any agreements that depart from this clause, including in particular for export business, must be confirmed in writing by the Seller.

3.1.4

In the event that reusable packaging is returned carriage paid to the address of the Seller in good order and condition within 3 months, a credit shall be issued for 80% of the deposit value.

3.2

The Buyer shall make payments to the Seller without any deductions or charges against the Seller.

3.3

Payments shall be made within the payment term specified by the Seller. In the event of non-payment by the Buyer prior to expiry of the payment term, the Buyer shall automatically be deemed to be in default without any requirement for any further declaration by the Seller. The Buyer shall pay default interest to the Seller for the duration of the period of default according to law, without prejudice to the right of the Seller to demonstrate any additional losses arising as a consequence of default in the specific individual case, which it may claim as compensation from the Buyer.

3.4

The Seller is not obliged to accept bills of exchange and cheques. Any payments made in this manner shall be deemed in all cases to be subject to redemption (on account of payment and not in lieu of performance); the value date thereof shall be the day on which the Seller is able to dispose of the countervalue. Bills of exchange shall be imputed to the debt after deducting the discount charged to the Seller at the time it is endorsed, stamp duty and bank charges, and where applicable collection charges.

3.5

The Seller shall be entitled to demand payment in advance or collateral or payment in cash, notwithstanding any previous agreements, or to withdraw from the contract if the Buyer defaults on the payment of previous invoices, the initiation of insolvency proceedings in respect of its assets is applied for, enforcement measures are taken against it or in the event of a protested bill of exchange or cheque.

3.6

Non-compliance with payment terms, default or other circumstances that are liable to impair the creditworthiness of the Buyer shall result in the immediate enforceability of all amounts due to the Seller, provided that the Buyer is responsible for these circumstances.

4. Conclusion of contract

4.1

Offers made by the Seller or any other documents of the Seller that are not expressly designated as a contractual offer or acceptance shall not constitute a binding declaration of intention for the purpose of concluding a contract of sale.

4.2

The Buyer shall upon request receive an offer from the Seller indicating the Products desired, the prices applicable to them and any other details relating to payment and supply. Such offers shall be governed by **clause 4.1**.

The Buyer shall thereafter declare to the Seller in writing that it agrees in principle to this offer.

4.3

The Seller shall only then send an actual order confirmation to the Buyer in text form, which shall be designated as such.

Tacit acceptance of this offer by the Buyer shall be presumed. If it objects to the offer within five working days of receipt of the offer or submits a different counter-offer, no contract shall be deemed to have been concluded.

4.4

The sales staff of the Seller shall have no authority to conclude oral side agreements or to provide assurances that extend beyond the content of the written contract.

5. Completion period, Seller default

5.1

The completion period means the period of time within which the Seller must prepare and package the Products for collection by the carrier at its facility and give notice thereof to the Buyer. The Buyer and the Seller shall agree to completion periods in each individual case.

5.2

If the agreed completion period cannot be honoured by the Seller due to hindrances beyond its control, specifically:

- due to the failure by the Buyer to provide it promptly with the necessary Documentation, plans and approvals;
- in the event of *force majeure* that makes it impossible for the Seller to supply the Products on time (including strikes or lock-outs at the Seller's facility in addition to armed conflict, acts of terrorism, natural disasters etc.);
- in the event of a supply bottleneck owing to the fact that the Seller's own suppliers have in turn failed to supply on time the materials required in order to manufacture the Products;
- where neither the Seller nor its own suppliers are at fault;
- if the Seller is not obliged to procure the materials in the specific individual case;

it shall not be deemed to be in default. In such an eventuality, the Seller shall promptly inform the Buyer and at the same time give notice of the foreseeable new delivery date. If performance cannot be effected also within the new delivery period, the Seller shall be entitled to withdraw from the contract either in full or in part; it shall promptly reimburse any consideration already paid by the Buyer.

In such an eventuality, the Seller shall also be entitled to withdraw from the contract in full or in part. It shall inform the Buyer promptly that the material is not available and promptly reimburse any consideration paid by the Buyer.

5.3

The Seller shall similarly not be deemed to be in default if it fails to comply with the agreed completion period where the Buyer has in turn defaulted on payment of the agreed price.

5.4

The Seller shall be deemed to be in default if it has failed to make the Products available at its facility within the agreed completion period duly packaged for collection by the carrier and informed the Buyer of this fact, provided that it was at fault for this failure.

In the event of default by the Seller the following shall apply in addition:

5.4.1

If the Buyer demonstrates to the Seller that it has suffered loss as a result of the delay in completion, it may claim 0.5% from the Seller for each full week of default up to a maximum of 5% of the hollow-cable net price of the Products affected by the default that could not be used for their intended purpose as a result of the default. The Seller shall be entitled to demonstrate that the Buyer suffered a significantly lower loss than the above-mentioned lump sum.

5.4.2

The Buyer shall not be entitled to claim damages due to default or in place of performance following withdrawal on the grounds of default in excess of the limits laid down in **clause 5.4.1**. This shall not apply in cases involving gross negligence or wilful wrongdoing or loss of life, personal injury or damage to health.

6. Completion, transfer of risk

6.1

Unless expressly agreed otherwise between the parties, the Seller shall ensure that the Products are packaged and ready for shipping within the agreed completion period at its facility in Mönchengladbach and hand them over to the carrier or to the Buyer for direct collection. This location shall be deemed to be the place of performance and of subsequent performance.

6.2

The cost of shipping or collection of the Products shall be borne by the Buyer. It shall organise this stage itself. It shall bear the risk of the accidental damage or loss of the Products during shipping or collection.

6.3

Risk of the accidental damage or loss of the Products shall transfer to the Buyer as soon as the Seller has made the Products available at its facility and informed the Buyer.

6.4

If the Buyer fails to collect the Products at the agreed time or to arrange for them to be collected by a carrier at the agreed time, it shall be deemed to have defaulted on acceptance. From this point in time, it shall bear the risk of the accidental damage or loss of the Products. The Seller shall store the Products on its premises at the risk of the Buyer. The Buyer shall reimburse the costs of storage to the Seller, which must be duly documented by an invoice, and the Seller may refuse to release the Products until the storage costs have been reimbursed by the Buyer.

7. Reservation of title

7.1

The Products shall remain the property of the Seller, even if they are already in the possession of the Buyer, until all amounts currently or hereafter due to the Seller by the Buyer have been settled (reservation of title). The Products concerned shall be released as soon as such liabilities of the Buyer have been settled in full without any requirement for a separate declaration in this regard by the Seller. If the realisable value of the collateral exceeds the amount owed to the Seller by more than 10%, upon request by the Buyer it shall release collateral of its choosing.

7.2

The Buyer shall be prevented from pledging the Products or from transferring ownership thereof as collateral for the duration of the reservation of title.

The onward sale of the Products shall only be permitted during the ordinary course of business of the Buyer and provided that the Buyer does so subject to the proviso that ownership of the Products will only be transferred to the third party once the Seller's claims relating to the Products have been settled in full.

7.3

In the event of the onward sale of Products that are subject to a reservation of title, the Buyer hereby assigns its future claims against the third party in relation to the onward sale including all ancillary rights to the Seller, which accepts.

The assignment of claims shall be limited to the total of all amounts owed to the Seller by the Buyer at the relevant time under the business relationship, and any reduction in the amount owed shall result in an automatic pro rata release of the claims assigned without any requirement for a specific declaration to this effect by the parties involved.

7.4

The Buyer shall be entitled to process, combine or mix Products that are subject to a reservation of title until revocation pursuant to **clause 7.5**. The following shall apply in such an eventuality:

7.4.1

The processing, combination or mixing of the Products with any other movable object shall be carried out for the Seller. The Seller shall be regarded as the manufacturer. The Buyer shall safely store the new object thereby created for the Seller with the care of a prudent merchant. The new object shall be subject to the reservation of title provided for under **clauses 7.1 - 7.3**.

7.4.2

In the event that the Products are processed, combined or mixed with an object that is owned by a third party and that party's right of ownership continues thereafter, the Seller shall acquire joint ownership over the newly created object. The right of joint ownership shall be determined on the basis of the proportion between the purchase price of the Products and the value of the new object. The new object shall be subject to the reservation of title provided for under **clauses 7.1 - 7.3**.

7.5

The Buyer shall in principle be entitled to collect the claim assigned pursuant to **clause 7**. The Seller's right to collect such claims itself shall not be thereby affected; however, it shall refrain from collecting the claims itself and from revoking the collection authority for as long as the Buyer duly complies with its payment obligations.

However, the Seller may revoke this collection authority either in text form in the event of a breach of contract by the Buyer, in particular if there is a well-founded fear that the Buyer will not comply with its payment obligations towards it. Such a well-founded fear shall under all circumstances arise upon expiry of a reasonable grace period set for the Buyer by the Seller after payment has become overdue.

Should this occur, the Seller may in addition disclose the assignment as collateral, collect the claims assigned itself and in addition require the Buyer to disclose the assignment as collateral to the third party. In such an eventuality, the Seller may also request the Buyer to give notice to it of the assigned claims along with the relevant debtor and that it be provided with all Documentation and information required in order to enforce the claims.

7.6

The Buyer shall be obliged to inform the Seller promptly in the event of pledges, seizures or other third party encroachments on the Products subject to reservation of title. The Buyer shall provide the Seller with all information and Documentation in order to enable the Seller to uphold and exercise its rights over the Products and claims in question to the best of its ability.

7.7

Any action taken by the Seller in accordance with **clause 7.5** shall not constitute withdrawal from the contract. Something different only applies if expressly so declared by the Seller and in addition if the prerequisites for withdrawal from the contract are also met.

7.8

In the event of a breach of contract on the part of the Buyer, such as in particular the failure to pay the purchase price, the Seller shall be entitled to withdraw from the contract according to law and to claim back the Products by virtue of the reservation of title and the withdrawal. In the event that the Buyer fails to pay the purchase price due, the Seller may only exercise these rights following expiry of a reasonable grace period for payment set for the Buyer or if such a grace period is not required by law.

8. Rights relating to defects

8.1

Unless specified otherwise below, the rights of the Buyer in the event that the Products are defective shall be determined according to law.

8.2

The Buyer may not refuse to collect or receive the Products on account of a non-material defect. Any customary technical and construction-related changes to the Products may be made, provided that they do not unreasonably prejudice the Buyer and do not affect the fitness for use of the Products. The Seller reserves the right to deliver to within a tolerance of +/- 10% of the quantity ordered, subject to a corresponding surcharge or reduction in price.

8.3

The Buyer shall examine the Products carefully as soon as they are received and report any evident defects promptly to the Seller in text form. Sec. 377 of the German Commercial Code shall apply.

8.4

In case of a notice of defects by the Buyer without cause, the Buyer shall compensate the Seller for any documented expenses arising for it in relation to this notice of a defect.

8.5

In the event that the Products are defective, the Seller shall be entitled to rectify the defect within a reasonable period at its discretion by repair or exchange of the Products or component(s) in question. The Seller shall be entitled to involve third parties for this purpose at its discretion.

8.6

There shall be deemed to be no defect if the cause of the objection concerning the Products only arose after the transfer of risk. The same shall apply if the Products differ only negligibly from the agreed condition and their suitability for use is not thereby impaired, and in addition if the objection relates to wear and tear or to damage to the Products that results from improper handling/usage/installation,

excessive stress or other external factors or action by third parties occurring after the transfer of risk.

8.7

If subsequent performance is unsuccessful or a reasonable grace period set by the Buyer for subsequent performance has expired or is not required by law, the Buyer may withdraw from the contract of sale or reduce the purchase price. However, there shall be no right of withdrawal in relation to insignificant defects.

8.8

The costs of rectification of defects (shipping, travel, staff, and material costs etc.) shall be borne by the Seller. This shall not apply for cost increases resulting from the subsequent transfer of the Products to a location other than that of the intended usage of the Products. Such increased costs shall be reimbursed by the Buyer to the Seller upon presentation of supporting documents.

8.9

The foregoing shall be without prejudice under all circumstances to the special statutory provisions applicable in the event of final delivery of the Products to a consumer.

8.10

The Buyer shall have no claims to damages or reimbursement of expenses against the Seller in respect of defective Products. This shall not apply in the event of the failure in bad faith to disclose a defect, the failure to honour a guarantee of characteristics agreed to, in the event of loss of life, personal injury or damage to health or in the event of a wilful or grossly negligent breach of duty by the Seller and for any claims available to the Buyer under the German Product Liability Act [*Produkthaftungsgesetz - ProdHaftG*].

The Seller shall bear liability for losses resulting from the breach of a material contractual duty (obligation, the fulfilment of which is essential for the proper implementation of the contract and compliance with which is and may reasonably be relied on by the contractual partner) also in cases involving ordinary negligence; should this occur, its liability shall however be limited to compensation of typical and foreseeable losses incurred.

The statutory rules governing the division of the burden of allegation and the burden of proof shall apply.

The limitations of liability resulting from this clause shall also apply in relation to breaches of duty by or for the benefit of persons whose fault must be imputed to the Seller according to law.

8.11

The Seller shall be entitled to render any subsequent performance owed conditional upon payment by the Buyer of the purchase price due. The Buyer shall however be entitled to retain a portion of the purchase price that is reasonably commensurate with the defect.

8.12

The warranty period shall start to run one year from date of delivery or, where acceptance is necessary, upon acceptance. This period shall not apply to claims for damages available to the Buyer in the event of the failure in bad faith to disclose a defect, the failure to honour a guarantee of characteristics agreed to, in the event of loss of life, personal injury or damage to health or in the event of a wilful or grossly negligent breach of duty by the Seller and for any claims available to the Buyer under the German Product Liability Act. Such claims shall become time barred as provided for by law.

9. Industrial property rights

9.1

Unless expressly agreed otherwise, the Seller shall provide the Buyer with the Products free from third party industrial property rights or copyright only in the country of intended usage of the Products.

9.2

The following shall apply in the event that action is taken against the Buyer by a third party in relation to the infringement of industrial property rights or copyright in the country of intended usage of the Products:

9.2.1

Before issuing any binding statements to the third party, the Buyer shall inform the Seller promptly of the fact that such action has been taken. It shall ensure that the Seller has every opportunity to defend itself against the action, reach a settlement, etc. If so requested by the Seller, the Buyer shall promptly issue any statements or hand over any Documentation that may be necessary for this purpose. The Buyer may discontinue usage of the Products, although should it do so must on its own initiative clarify to the third party that this does not constitute recognition of the claims brought.

9.2.2

The Seller shall thereupon at its discretion either procure a right of usage or offer the Buyer the opportunity to withdraw from the contract according to law.

9.2.3

Clause 8.10 shall apply *mutatis mutandis* to any claims for damages of the Buyer.

9.2.4

The Buyer shall not be entitled to bring any claims in the event that it breaches the duties provided for under **clause 9.2.1** or if the breach of the industrial property right was caused by or is imputable to it.

10. Impossibility

10.1

In the event that it is impossible to make the Products ordered available, statutory provisions shall apply. **Clause 8.10** shall apply *mutatis mutandis* to any claims for damages of the Buyer.

10.2

In situations falling under **clause 5.2** that have a significant effect on the operations of the Seller, the contract concluded between the parties shall be adjusted accordingly in good faith. If such an adjustment is not reasonable for the Buyer - which fact it must demonstrate and prove if so requested by the Seller - it may withdraw from the contract. Withdrawal, notice of which must be given by the Buyer promptly after it becomes aware of the unreasonableness, shall otherwise be governed by statutory provisions. **Clause 8.10** shall apply *mutatis mutandis* to any claims for damages of the Buyer.

11. Other liability

11.1

Clause 8.10 shall apply *mutatis mutandis* in respect of any other claims for damages of the Buyers against the Seller.

11.2

These limitations shall not apply to claims under the German Product Liability Act.

11.3

The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist in a defect if the Seller was at fault for the breach of duty. There shall be no free right of termination. Otherwise, the prerequisites and consequences provided for by law shall apply.

12. Offsetting and retention

The Buyer shall only be entitled to exercise rights of offsetting and retention against the Seller in the event that the claim to be offset or the duty of counterperformance is undisputed, has been expressly accepted by the Seller in writing or has been ascertained by an enforceable court order.

13. Jurisdiction, applicable law, severability

13.1

If the Buyer is a merchant [Kaufmann], a legal person governed by public law or a special fund under public law or does not have any general place of jurisdiction in the Federal Republic of Germany, exclusive local jurisdiction over all disputes arising directly or indirectly out of the contractual relationship with the Seller shall lie at the place of the registered office of the Seller in Mönchengladbach. The Seller shall also be entitled to commence action against the Buyer before any other competent courts. The foregoing shall be without prejudice to any mandatory statutory jurisdiction.

13.2

The contract concluded between the Buyer and the Seller shall be governed by German law. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

13.3

In the event of the invalidity of any individual terms of the contract concluded, the remainder of the contract shall continue to be valid, unless either party asserts and demonstrates that compliance with the contract would be unreasonable for it on account of the invalidity of this clause. Should the contract or these General Terms and Conditions of Sale contain any gaps, such legally valid stipulations as the contractual partners would have agreed to taking account of the economic aims of the contract and the purpose of these General Terms and Conditions of Sale had they been aware of the gap in provision shall be deemed to have been agreed to in order to fill such gaps.