

## **General Terms of Sale and Delivery of Karl Küfner GmbH & Co. KG, Rossentalstraße 87, 72461 Albstadt, Germany**

### **I. General Provisions, Scope of Application, Hierarchy**

1. All deliveries and services of Karl Küfner GmbH & Co. KG (Küfner) shall be made solely on the basis of these General Terms of Sale and Delivery. Any regulations, especially terms and conditions of the contracting party, which differ from or supplement these General Terms of Sale and Delivery shall only apply if they have expressly been confirmed in writing by Küfner before the conclusion of the agreement. This shall apply even if Küfner has, in individual cases, not specifically refuted terms and conditions of the contracting party. These General Terms of Sale shall apply to the current transaction as well as to all future business transactions.

2. Where other contractual provisions in the offer, order confirmation or signed supply contracts conflict with these GTC those other contractual provisions shall have priority. Otherwise the differing provisions shall apply in juxtaposition.

3. The mutual written statements are decisive for the scope of the deliveries and services.

4. Without any limitations, Küfner reserves the property and copyright utilisation rights to quotations, drawings and other documents (hereinafter referred to as Documents). The Documents may only be made accessible to third parties following prior agreement by Küfner and must be returned immediately on request if the order has not been placed. Sentences 1 and 2 shall apply mutatis mutandis to the customer's Documents: said Documents may only be made accessible by Küfner to third parties which Küfner has subcontracted on a project basis.

### **II. Prices and Terms of Payment**

1. Unless otherwise agreed, the prices are ex works plus the respective statutory value added tax.

2. If prices and costs on which Küfner bases its calculations, especially the cost of labour, equipment, raw materials, transport or energy, should change by at least 6% in a period of more than four months between the conclusion of the agreement and the delivery date specified in the agreement – even due to fluctuations in exchange rates – both Küfner and the customer shall each be entitled to negotiate new prices. Küfner shall promptly notify the customer of the change in price and costs and give plausible reasons.

The parties' obligations shall remain in abeyance during the negotiations. If the parties should fail to arrive at an agreement on the new prices within 2 months of notification by Küfner either contracting party may cancel the contract in that respect without becoming liable in damages due to such cancellation.

Küfner shall not be required to take or attempt to take any measures that would result in a reduction in the agreed prices.

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3. Unless otherwise agreed, the minimum order amount shall be EUR 500. Deliveries above or below 10% of the order quantity are permissible on a batch basis.

4. Payments must be made within 14 days with 3% discount or 30 days after delivery without discount. If circumstances become known which could lead to a deterioration of the creditworthiness of the customer Küfner is entitled to withhold outstanding deliveries until the

payments due have been settled and in future only make further deliveries against payment in advance or the provision of sufficient security.

5. The customer is only entitled to offsetting or claiming a right of retention if its counterclaims have been deemed as uncontested, res judicata, or ready for judgment. Offsetting or the exercise of a right of retention shall be equally possible where the customer's claim and Küfner's claim are based in law on a relationship of mutuality.

### III. Deadlines for Deliveries; Force Majeure, Default

1. Upholding the delivery deadlines assumes the customer upholds the punctual submission of all Documents, necessary authorisations and approvals, especially of plans, as well as compliance with the agreed terms of payment and other obligations. If these preconditions are not fulfilled punctually, the deadlines shall be appropriately extended.

2. If and to the extent that force majeure (e.g. pandemics, lawful strikes or lockouts, non-culpable shortages of labour, energy or raw materials, non-culpable measures by authorities, corresponding impediments to performance on the part of Küfner's upstream suppliers for which neither Küfner nor the upstream supplier is responsible) should impede performance to be rendered by Küfner their mutual contractual obligations shall remain in abeyance.

If the impediment due to force majeure should not prove merely temporary either party shall be entitled to effect rescission with regard to performance affected by the impediment.

The party directly affected by force majeure shall promptly inform the other party of the commencement and ending of the force majeure.

Notwithstanding the above rules, as a result of the coronavirus crisis arising in 2020 the parties are in agreement that unexpected situations can always arise in which Küfner, without being at fault, might still be able to effect contractual performance but such performance is not just marginally hampered so that Küfner is justified in its performance remaining in abeyance for the duration of that impediment and being resumed once again after the impediment has ceased. The parties are agreed that in such circumstances Küfner shall have the right to temporarily cease its performance.

3. In the event of delay in delivery Küfner's liability in damages shall be governed exclusively by figure VI of these General Terms of Sale and Delivery

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#### IV. Retention of Title

1. Küfner retains title to all items delivered (reserved goods) until payment for same in full.
2. If the goods are processed by the customer, combined with other objects to form a single item or if they are re-designed, the processing, redesigning and combining shall be made on behalf of Küfner. The customer now hereby transfers proportionate joint title to Küfner in so far as it is the proprietor of the main item. If the customer resells the goods delivered as intended it now hereby assigns to Küfner its accounts receivable from its buyer with all secondary rights resulting from the sale until all payments due to Küfner have been fully met. The assignment shall also cover, in particular, the accounts receivable acquired by the customer against the bank as a result of payment by its buyer. In justified cases (e.g. payment default), the customer undertakes at the request of Küfner to disclose the assignment to third party buyers and to give Küfner all the information and Documents it requires to assert its rights. Küfner shall release the securities it holds if their value exceeds the accounts receivable to be secured by more than 10%.
3. The customer must inform Küfner without delay of any seizure, confiscation or other orders or interventions by third parties.
4. If the customer breaches its obligations, especially in the event of payment default, Küfner is entitled, after an appropriate deadline set has expired in vain, to withdraw from the agreement and to repossess the reserved goods; the statutory provisions regarding the dispensability of setting a deadline shall remain unaffected. The customer is obliged to relinquish the goods.

#### V. Agreement on Quality, Changes, Complaints, Warranty. Warranty Period

1. The agreed quality shall be governed exclusively by the performance features and specifications expressly agreed. Küfner only gives a warranty over and above that quality, especially regarding use for a particular purpose or a contract item's certain fitness, length of use or durability, if this too has been expressly agreed; otherwise the risk of suitability and use shall lie exclusively with the customer.
2. Even after a delivery obligation has arisen Küfner shall be entitled, for product optimisation reasons amongst other things, to make changes to an agreed contract item – especially without being confined to technical changes – and to undertake product enhancement. The changes must be reasonable for the customer and must not, in particular, have any prejudicial effect on the purpose for which the contract item is intended to be used as known to Küfner or on its serviceability or performance. Such changes shall not be deemed a deviation from the quality agreed.
3. There shall be a defect in quality where, on passage of the risk, a contract item does not possess the quality agreed or is not suitable for its contractually intended purpose.
4. The customer must report defects of quality with contracts of sale and contracts for labour and materials to Küfner in writing without delay (email or fax will suffice). If the customer fails to report this the goods shall be deemed approved unless it is a defect which was not evident on inspection. If such a defect becomes apparent later, notification must be made without delay after its discovery, otherwise the goods shall be deemed approved, even with regard to this defect. In order to uphold the rights of the customer it is sufficient to dispatch the notification in due time. The burden of proof for establishing the fault lies with the customer.

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5. Defects in quality shall not exist in the event of natural wear and tear or damage which results after the passage of risk due to faulty or negligent handling, excessive use, unsuitable resources or due to special external influences which are not planned under the agreement.

6. The limitation period for defects in quality is 12 months from delivery of the contract item or – where required by law – from acceptance. In cases governed by §§ 438(1) No. 2, 438(3), 445b BGB [German Civil Code], 634a(1) No. 2 and 634a(3) BGB the limitation period provided for therein shall apply. Where Küfner becomes liable in damages under figure VI of these General Terms of Sale and Delivery the warranty period for those damages shall also be governed by the statutory provisions.

7. In the event of defects arising, Küfner must be granted the opportunity to remedy the fault through subsequent performance within an appropriate deadline. If the customer chooses subsequent performance, Küfner shall have the right to determine the method and type of remedy by due assessment of circumstances. The delivery of a fault-free item shall only take place concurrently in return for the faulty goods. The customer's claims for necessary expenses in connection with the subsequent performance, especially transport, infrastructure, work or material costs, shall be excluded if the costs increase because the object of the deliveries has been subsequently transported to a location other than the seat of the customer; unless this

relocation is in keeping with the intended use. The customer may only assert claims for subsequent performance if a reasonable part of the agreed remuneration proportionate to the scope and gravity of the fault in the goods has already been paid.

8. If the subsequent performance is unsuccessful the customer can withdraw from the agreement or reduce the price to be paid – notwithstanding any claims for damages pursuant to figure VI (Other Claims for Damages).

9. Any rights to recourse action by the customer against Küfner in accordance with § 478 BGB shall only exist in so far as the customer has not made any agreement with its buyers exceeding the statutory claims for defects. Additionally, No. 5 shall apply mutatis mutandis to the scope of the recourse action of the customer against Küfner in accordance with § 478(2) BGB.

## VI. Other Claims for Damages

1. If Küfner, its statutory representatives, employees or agents should be in breach of duty with intent or gross negligence, particularly under the contractual relationship or in tort with intent or gross negligence, Küfner shall be liable for the resultant damage to the customer pursuant to statute.

2. If Küfner, its statutory representatives, employees or agents should be in breach of duty due merely to simple negligence any claims in damages and reimbursement claims against Küfner by the customer of any kind and on any grounds whatsoever, especially for breach of duty under the contractual relationship or in tort, shall be excluded. This shall not apply to a simply negligent breach of a material contractual obligation. In such a case liability shall be limited to foreseeable damage typical of the contract. A material contractual obligation in this sense is one which constitutes a condition sine qua non and on the fulfilment of which the customer regularly relies and is entitled to rely.

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3. The above exclusion from liability and/or limitation on liability shall not apply to liability based on culpable loss of life, personal injury or damage to health; nor does it apply to liability for fraudulent concealment of a defect or to liability for breach of a warranty of quality or where there is liability under the Product Liability Act.

4. The legislative rules on burden of proof are not affected by the above provisions.

## VII. Place of Performance, Jurisdiction and Applicable Law

1. The place of jurisdiction for all performance under the contractual relationship shall be Küfner's registered office unless otherwise dictated by the contract.

2. If the customer is an entrepreneur, legal entity governed by public law or a special fund governed by public law the sole place of jurisdiction for any disputes arising directly or indirectly from the agreement shall be Küfner's registered office. However, Küfner shall also be entitled to file suit at the registered office of the customer.

3. German substantive law shall have exclusive application to the legal relationships in connection with this agreement to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

## VIII. Validity of the Agreement

Even if individual provisions of the agreement should be legally invalid the remainder of the agreement shall remain binding.

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