

# General Terms of Sale and Delivery of KABE LABORTECHNIK GmbH

## I. General – scope of application

1. The following General Terms of Sale and Delivery apply to all current and future business relations between the proprietor and its customers insofar as they are businesses in the sense of § 14 BGB (German Civil Code).
2. Customers' deviating, opposing or complementary general terms of sale and delivery, even if the proprietor is aware of these, are not a contract component unless the applicability was explicitly agreed to in writing or the proprietor has consented to their use in writing.

## II. Offer, quotations and contract conclusion

1. The proprietor's offers and quotations are subject to change. The right to make technical changes and changes in the form, colour and/or weight is reserved within the frame of reasonableness.
2. When goods are ordered, the customer declares its obligation to desire to acquire the ordered goods. The proprietor is entitled to accept the contractual offer included in the order within two weeks after receipt. The declaration of acceptance requires a written copy to become legally effective. The same applies to subsequent additions, changes or collateral agreements. Acceptance can also be implicitly declared through the delivery of the ordered goods to the customer within the above-stated deadline.
3. Drawings, illustrations, dimensions and weights and other performance data are only obligatory if they have been explicitly agreed to or confirmed in writing.

## III. Prices

1. The right to change prices is reserved if more than 4 months lie between the contract conclusion and the delivery date. The prices stated in the proprietor's order confirmation, plus the legally applicable value added tax, are decisive. Additional deliveries and services will be charged separately.
2. The prices, unless agreed to otherwise, are ex works (EXW, Incoterms 2010) including normal packing. Transportation costs will be charged separately.

## IV. Time of delivery and performance

1. The dates and deadlines named by the proprietor are non-binding unless something else has been explicitly agreed to in writing.
2. The proprietor is not responsible for delivery and performance delays due to acts of God (force majeure) and due to unpredictable or non-influencable events that make delivery by the proprietor more difficult or impossible. However, the proprietor is obligated to inform the customer about such predictable delays. In this respect, the parties will negotiate a postponement of the service or a contract modification. If a postponement of the date of delivery is not possible or is unreasonable for the customer, it is given the opportunity to partially or completely withdraw from the contract.
3. The proprietor is entitled to make partial deliveries and render partial performances.

## V. Transfer of risk

The risk of accidental loss or the accidental deterioration of the objects is transferred to the customer with the handover of the objects to the carrier, freight forwarder or other persons or institutions specified for shipping the goods. The transfer is the same even if the customer is in default of acceptance.

## VI. Warranty work

1. The proprietor guarantees for defects in the goods through repairs or replacement delivery as it chooses.
2. If the subsequent performance fails, the customer can always choose to demand a reduction through reimbursement (depreciation) or cancellation of the contract (withdrawal). The customer does not have the right to withdraw in cases of slight breach of contract, especially in case of negligible defects.
3. The customer must immediately notify about apparent defects upon the receipt and the immediate inspection of the goods. Assertion

of warranty claims is excluded in cases of belated examination and notification. Prompt sending of the notification of defects suffices for deadline compliance. The customer carries the full burden of proof for the requirements for establishing the rights, especially for the defects, the time of discovery and the promptness of the notification of defects.

4. If the customer chooses to withdraw from the contract after failed subsequent performance due to legal deficiencies or material defects, it is not entitled to any compensation based on the defect. If after the failed subsequent performance the customer claims compensation, it retains the goods if that can be reasonably expected. The indemnification is then restricted to the difference between the purchase price and the value of the defective object. That does not apply if the contract infringement has been fraudulently caused by the proprietor or its assignees.

5. The warranty is 1 year starting from the delivery of the goods. This restriction is permissible because the contract parties are business in the sense of § 14 BGB. That does not apply if the customer has not promptly informed the proprietor of the defect.

6. Applicable as the product composition is agreed to is always only the product description made by the proprietor if no specified product description has been contractually agreed to, for example, if the contract came into existence based on corresponding specified requirements. Public declarations, recommendations or general advertisements do not represent any kind of contractual declaration of composition of the goods.

7. If one of the installation instructions supplied by the proprietor is defective, it is only obligated to deliver flawless installation instructions and that also only if the defect in the installation instructions opposes proper installation or assembly.

8. The customer does not obtain any guarantees in the legal sense from the proprietor. All manufacturers' guarantees remain unaffected by this.

9. The products manufactured and sold by the proprietor, due to legal regulations and technical specifications, underlie an ageing process so in the final analysis, they can only be sold with limited service lives. Such service life declarations are extant on the products or their packing. The expiration of this service life does not represent any kind of material defect and does not lead to corresponding customer rights.

## VII. Retention of title

1. The proprietor retains the retention of title for the delivered goods until all demands from the current business relation have been completely settled.
2. The customer is obligated to treat the goods with care.
3. The customer is obligated to immediately notify the proprietor about access to the goods by third parties, for instance in cases of a seizure of the goods and any kind of damage or destruction of the goods. The customer must immediately inform of a bill of exchange in hand or change of the ownership of the goods and its own change of business.
4. In case of behaviour contrary to the contract, especially in the case of payment delay or infringement of its rights according to Clauses 3 and 4 above, the proprietor is entitled to withdraw from the contract and demand the goods back.
5. The customer is entitled to sell the goods in an orderly business transaction. In this case, the proprietor already now relinquishes all demands in the amount of the invoice amount, which would accrue by selling to a third party, to the proprietor. The proprietor accepts this surrender. Even after the surrender, the customer is authorised to collect the demands. However, the proprietor reserves the right to collect the demands itself as soon as the customer does not properly satisfy its payment obligations and is in default of payment. In this case, the proprietor will have to disclose the extant surrender to the customer's contract partner.
6. If the customer processes or refines the goods, it always does so in the name of and on order of the proprietor. If processing is done with objects that do not belong to the proprietor, it obtains co-ownership to the new object in the ratio of the value of the goods it has delivered to the other processed objects. The same applies if the delivered goods are mixed with other objects that do not belong to the proprietor.

### **VIII. Modes of payment**

1. The proprietor's invoices are due for payment within 30 days of the invoice date and without any deduction. All cash discounts require a special agreement. Payments per check or similar are only considered made if the proprietor can dispose over the payment amount, i.e., upon its redemption or credit.
2. The proprietor is entitled to demand reasonable advance or partial payments if they correspond to the contract implementation and the owed delivery can be divided.
3. If the customer is in default of payments, the proprietor is entitled to demand interest of 8 percentage points over the respective ECB base interest rate plus legally applicable value added tax starting from the involved point in time.
4. If multiple demands from the proprietor are open, incoming payments will initially be accounted against arising costs, then against the accruing interest and subsequently against the demands based on their respective ages, the oldest ones first.
5. If the customer is in default with a due payment or if a significant worsening arises in its financial circumstances, the proprietor can demand cash payment on all outstanding deliveries before delivering the goods. The proprietor is not obligated to make additional deliveries from current or future contracts before payment of all invoice amounts including interest on arrears have been paid on all due invoices.
6. The customer is only entitled to withholding and offsetting if the proprietor has expressly consented to this or if the counterclaims have been legally established.

### **IX. Limitation of liability**

The proprietor is not liable in the case of slightly negligent breach of minor contract obligations.

The limitation of liability does not affect the customer's rights to product liability. Furthermore, the limitations of liability do not apply in cases of attributable harm to body and health or the loss of life.

The above limitations of liability also apply to slightly negligent breach of duty by the proprietor's legal representative or assignees.

### **X. Place of performance**

The legal venue for both contract parties is the proprietor's headquarters, currently Nümbrecht.

### **XI. Legal venue**

The exclusive legal venue for all disputes arising from this contract is the proprietor's headquarters. That applies even if the customer does not have a general legal venue in Germany or its place of residence or everyday domicile are not known at the time of institution of legal proceedings.

### **XII. Applicable law**

Solely the laws of the Federal Republic of Germany apply. The United Nations Convention on Contracts for the International Sale of Goods is not applicable.

### **XIII. Final clause**

The validity of the rest of the clauses does not become ineffective even if some clauses in the contract or the above general terms of sale or delivery become completely or partially ineffective or null and void. The regulations that have become partially or completely null and void will be substituted with regulations that are as close as possible to the originally pursued commercial interests. Alternatively, laws apply.