



KRONEN GmbH · Römerstraße 2a · GER-77694 Kehl am Rhein

## General Terms and Conditions of KRONEN Nahrungsmitteltechnik GmbH

### § 1 General/Scope

- (1) All deliveries, services and offers of KRONEN Nahrungsmitteltechnik GmbH (hereinafter "seller") shall take place solely on the basis of these General Terms and Conditions. They are an integral part of all contracts concluded by the seller with his contract partners (hereinafter also "customers") for his offered deliveries or services. They also apply to all future deliveries, services or offers to the customer, even if not separately stipulated again.
- (2) Terms and conditions of the customer or third parties shall not apply, even if the seller does not object to their validity in a specific case. Even if the seller mentions or refers to written correspondence that contains terms and conditions of the customer or a third party, this shall not constitute a consent to the validity of such terms and conditions.

### § 2 Offers and contracts

- (1) All offers of the seller are subject to change without notice and are non-binding, unless they are expressly designated as binding or contain a specific time limit for acceptance. The seller can accept orders or contracts within fourteen days of receipt.
- (2) Legal relationships between the seller and customer are governed exclusively by the written sale and purchase agreement, including these General Terms and Conditions of Sale. The sale and purchase agreement represents the entire agreement between the contract parties for the subject matter of the contract. Verbal promises made by the seller prior to conclusion of this contract are not legally binding.
- (3) Information provided by the seller about the delivered item or service (e.g. weights, dimensions, performance values, load capacity, tolerances and technical data) as well as depictions provided by the seller (e.g. drawings and illustrations) are only approximately relevant, unless their usability for the contractually intended purpose requires an exact correspondence. They are not deemed warranted characteristics, but rather descriptions or designations of the delivery or service. Usual deviations and deviations as a result of legal regulations or technical improvements, as well as the substitution of components by equivalent components are permissible, as long as this does not impair the usability for the contractually intended purpose.
- (4) The seller reserves the ownership or the copyright on all offers and cost estimates submitted as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and supplementary materials made available to the customer. Without the express permission of the seller the customer may not make these materials available to third parties as such or with regard to their content, nor may he disclose them or use or reproduce them himself or via third parties. At the request of the seller he will return these materials in their entirety and destroy any copies made if he no longer needs them for regular business transactions or if negotiations do not result in conclusion of a contract.



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### § 3 Prices and payment, setoff and retention

- (1) The prices apply to the scope of service and delivery stated in the order confirmations. Additional or special services will be charged separately. The prices are in EURO ex factory plus packaging, statutory value added tax, fees and other official charges. In the case of export deliveries, the purchaser will additionally bear all costs incurred in this connection, especially costs of the customs formalities required for export, as well as all duties, taxes and other charges due in connection with the export.
- (2) Invoice amounts are due within thirty (30) days with no deduction, unless otherwise agreed in writing. The date of receipt by the seller is decisive as the date of payment. Checks are deemed payment only after redemption. If the customer does not pay the invoice by the due date, then interest will be charged on the outstanding amounts starting on the date following the due date based on a rate of nine (9) percent p.a. above the applicable base interest rate; claims for higher interest and other damages in the event of default are not affected by this clause.
- (3) Offsetting with counter-claims of the customer or the retention of payments due to such claims is permissible only if the counter-claims are undisputed or non-appealable.
- (4) The seller is entitled to carry out or perform outstanding deliveries or services only in return for advance payment or payment of securities if after conclusion of the contract he becomes aware of circumstances that are suited to significantly diminish the customer's credit rating and by which payment of the seller's outstanding receivables from the respective contractual relationship by the customer is jeopardised (including those from other single orders subject to the same general agreement).

### § 4 Delivery and delivery times

- (1) All deliveries are FCA (FCA, Incoterms 2020), Roemerstrasse 2a, 77694 Kehl-Goldscheuer.
- (2) Deadlines and dates for deliveries and services set by the seller are always deemed approximate, unless a fixed deadline or a fixed date is expressly promised or agreed. If dispatch has been stipulated, delivery periods and delivery dates refer to the time of transfer to the shipping agent, carrier or other third parties commissioned with the transport.
- (3) The seller can – notwithstanding rights due to default on the part of the customer – request from the customer an extension of delivery and service periods or a delay of delivery and service deadlines by the period in which the customer has neglected his contractual obligations vis-à-vis the seller.
- (4) The seller is entitled to make partially deliveries only if
  - (a) the partial delivery can be used by the customer within the scope of the contractually intended purpose,
  - (b) the delivery of the remaining ordered goods is ensured, and
  - (c) no substantial additional expenses or additional costs are incurred by the customer (unless the seller agrees to pay these costs).
- (5) If the seller is in delay of performing a delivery or service or if he is unable for any reason whatsoever to perform a delivery or service, then the liability of the seller for damages is limited in accordance with § 8 of these General Terms and Conditions.



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## § 5 Force majeure

The seller is not liable for the impossibility of delivery or for delayed deliveries if they are caused by force majeure or other circumstances that were unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of all types, difficulties obtaining materials or energy, transport delays, strikes, legal lockouts, shortage of manpower, energy or raw materials, difficulties obtaining the necessary governmental approvals, governmental measures or default or delayed delivery or incorrect delivery by suppliers), which are beyond the control of the seller. If such circumstances substantially hinder or prevent the seller from carrying out the delivery or service and the hindrance is not only of temporary duration, the customer is entitled to cancel the contract. In the event of hindrances of temporary duration the delivery or service periods will be lengthened or deferred by the duration of the hindrance plus an appropriate lead time. If acceptance of the delivery or service by the customer is unreasonable as a result of the delay, he can cancel the contract by notifying the seller promptly in writing.

## § 6 Place of performance, dispatch, packaging, transfer of risk, acceptance

- (1) The place of performance for all obligations arising from the contractual relationship is the registered office of the seller, unless otherwise specified.
- (2) The mode of dispatch and packaging are left to the discretion of the seller.
- (3) Transfer of risk to the customer shall take place, at the latest, when the item is handed over to the forwarding agent, carrier or other third party designated to carry out the shipment. This also applies if partial deliveries are made or the seller has agreed to perform other services (e.g. dispatch). If dispatch or handing over is delayed as a result of a circumstance within the responsibility of the customer, transfer of risk to the customer begins on the date on which the delivery item is ready for dispatch and the seller has notified the customer of this.
- (4) The customer will bear any storage costs incurred after the transfer of risk. In case of storage by the seller, the storage costs total 0.25% of the invoice amount for each full week that the items are stored. The parties reserve the right to claim additional or prove lower storage costs.
- (5) The seller will insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the customer and at the customer's expense.
- (6) With respect to taking delivery, the goods shall be deemed accepted if
  - (a) the delivery is completed,
  - (b) the seller has notified the customer of this with reference to the notional acceptance in accordance with this § 6 (6) and has requested that the customer accept the goods,
  - (c) twelve working days have elapsed since delivery or the customer has started to use the goods (e.g. has put the delivered equipment into operation) and in this case six working days have elapsed since delivery, and
  - (d) the customer has failed to accept the goods within this period of time for any reason other than a defect notified to the seller which makes the use of the purchased goods impossible or significantly impairs their use.

## § 7 Warranty and defects



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- (1) The warranty period is one year from the date of delivery or, if an acceptance inspection is required, from the date of the acceptance inspection.
- (2) The delivered goods must be carefully examined immediately after delivery to the customer or to a designated third party. They shall be deemed accepted if the seller has not received a written notice of defects regarding obvious defects or other defects that were recognizable in a prompt, careful inspection within seven work days of delivery of the goods or otherwise within seven work days of discovery of the defect or any earlier point in time at which the defect was recognizable to the customer during normal use of the goods without closer inspection, in the manner defined in § 11 (1), no. 3. At the request of the seller the defective goods will be returned to the seller carriage paid. In the event of a legitimate notice of defects the seller will reimburse the costs of the least expensive shipping method; this does not apply if the costs are increased because the goods are at a different location than the place of intended use.
- (3) In the event of defects of quality in the delivered goods the seller is obligated and entitled at his option, to be made within a suitable period, to rectification of the defects or replacement. In the event of failure, i.e. the impossibility, unconscionability, refusal or unreasonable delay in the remedy or replacement, the customer can cancel the contract or lower the purchase price appropriately.
- (4) If a defect is due to negligence on the part of the seller, the customer can request compensation for damages under the conditions defined in § 8.
- (5) In case of defects in components of other manufacturers which the seller cannot remedy due to licensing laws or actual circumstances, the seller will, at his discretion, either assert his warranty claims vis-à-vis the manufacturers and suppliers for the customer's account or assign them to the customer. Warranty claims vis-à-vis the seller apply in the case of such defects under the other conditions and in accordance with these General Terms and Conditions of Sale only if the legal enforcement of the aforementioned claims vis-à-vis the manufacturer and supplier was unsuccessful or, for example, due to insolvency, is futile. The statute of limitations on the customer's relevant warranty claims vis-à-vis the seller is suspended for the duration of the legal dispute.
- (6) The warranty will be cancelled if the customer modifies the delivery item or has it modified by third parties without the seller's consent, making it impossible or unreasonable to remedy the defect. In any case, the customer will bear the additional costs of remedying the defect as a result of the modification.
- (7) A delivery of used articles arranged with the customer in an individual case is excluded from any warranty for material defects.

## § 8 Liability for damages due to negligence

- (1) The liability of the seller for damages, regardless of the legal basis, especially due to impossibility, delay, defective or incorrect delivery, infringement of contract, infringement of duties with respect to contract negotiations and unauthorized action, is, to the extent that the issue involves negligence, limited in accordance with this stipulation in § 8.
- (2) The seller is not liable in the event of minor negligence on the part of his executive bodies, legal representatives, employees or other vicarious agents, as long as it not a matter of infringement of essential contractual duties. Essential contractual duties are the duty of timely delivery of the goods in a condition of being free of substantial defects, as well as duties to advise, protect and exercise proper care that allow the customer to use the goods in ac-



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cordance with the contract or to protect the life and limb of the customer's personnel or to protect his property against substantial damage.

- (3) If the seller is liable for damages in accordance with § 8 (2), this liability is limited to damages that the seller anticipated as the potential consequence of an infringement of the contract at the time of conclusion of the contract, or that he would have had to anticipate if he had exercised due diligence. In addition, indirect damages and consequential damages that are the result of defects in the goods will be compensated only if such damages can be typically expected when the goods are used as intended.
- (4) In the event of liability for minor negligence the seller's liability to pay compensation for material damages and additional resulting consequential damages – to the extent permissible by law – is limited to the amount of EUR 500,000.-- for each claim, also in the event of infringement of essential contractual duties.
- (5) The preceding exclusions and limitations of liability apply to the same extent for the benefit of the executive bodies, legal representatives, employees and other vicarious agents of the seller.
- (6) If the seller provides technical information or consultation and this information or consultation is not part of the scope of services owed by him and stipulated by the contract, they are provided free of charge and to the exclusion of any liability whatsoever.
- (7) The restrictions of this § 8 do not apply to the liability of the seller, the seller's executive bodies, legal representatives, employees and other vicarious agents due to intentional behaviour, to guaranteed qualities, due to injury to life, limb or health, or in accordance with the Product Liability Act.

## § 9 Retention of title

- (1) The goods delivered by the seller to the customer remain the property of the seller until all secured claims have been paid in full. The goods as well as any goods in lieu thereof and subject to retention of title in accordance with this clause will be referred to hereinafter as reserved goods.
- (2) The retention of title stipulated in the following serves to secure all current and future claims of the seller vis-à-vis the customer in connection with the supply relationship between the contracting parties (including current account balance claims that are limited to this supply relationship).
- (3) The customer will store the reserved goods for the seller free of charge.
- (4) The customer is entitled to process and sell the reserved goods in the ordinary course of business until occurrence of the enforcement event (paragraph 9). Pledging or assigning the reserved goods as security is not permissible.
- (5) If the reserved goods are processed by the customer, it is agreed that the processing is carried out in the name and for the account of the seller as the manufacturer and that the seller directly acquires ownership or – if the processing involves materials of several owners or the value of the processed goods exceeds the value of the reserved goods – co-ownership (proportional ownership) of the newly created goods in proportion of the value of the reserved goods to the value of the newly created goods. If no such acquisition of ownership should occur on the part of the seller, the customer hereby transfers his future ownership or – in the aforementioned proportion – co-ownership of the newly created item to the seller as security.
- (6) In the event of resale of the reserved goods, the customer hereby assigns to the seller by way of security the resulting claim vis-à-vis the purchaser – in the case of the seller's co-



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ownership of the reserved goods, in proportion to the co-ownership share. The same applies to other claims in lieu of the reserved goods or otherwise in connection with the reserved goods, such as insurance claims or claims due to unlawful acts in the event of loss or destruction. The seller revocably authorizes the customer to collect the claims assigned to the seller in his own name. The seller may revoke this direct debit authorization only in the event of enforcement.

- (7) If third parties take possession of the reserved goods, in particular by attachment, the customer must inform those parties immediately of the seller's ownership and inform the seller immediately in order to enable enforcement of the seller's ownership rights.
- (8) Upon request, the seller will release the goods subject to retention of title as well as the goods or claims in lieu thereof at his discretion, insofar as their value exceeds the amount of the secured claims by more than 10%.
- (9) If the seller cancels the contract due to breach of contract on the part of the customer – in particular default of payment – (enforcement event), the seller is entitled to demand the return of the reserved goods.

#### § 10 Jurisdiction and choice of law

- (1) Place of jurisdiction for any disputes in connection with the business relationship between the seller and the customer – insofar as permissible by law – is the registered office of the seller. Imperative statutory regulations concerning exclusive places of jurisdiction are not affected by this provision.
- (2) The business relations between the customer and the seller are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 does not apply.

#### § 11 Concluding provisions

- (1) Supplements and amendments to the agreements made, including these General Terms and Conditions, must be in writing in order to be valid. With the exception of the managing directors or authorized signatories, the employees of the seller are not authorized to conclude verbal agreements that deviate from these Terms and Conditions. The written form requirement is deemed fulfilled if sent by fax; sending by means of telecommunications, in particular by e-mail, is not sufficient.
- (2) If the contract or these General Terms and Conditions of Sale contain gaps, the gaps will be deemed filled by legally valid stipulations which the contract parties would have agreed upon based on the business objectives of the contract and the purpose of these General Terms and Conditions of Sale if they had recognised the gap.

#### Note:

The customer is aware that the seller stores data from the contractual relationship in accordance with § 28 of the Federal Data Protection Act for the purpose of data processing and reserves the right to pass on this data to third parties (e.g. insurance companies) to the extent necessary for fulfilment of the contract.

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