

## General Terms and Conditions of Guenther Karl GmbH

### 1. General, Scope of Application

- a) Our terms and conditions apply exclusively. Opposite or other terms and conditions of the customer are not accepted unless we have expressly agreed to their validity in writing. Our terms and conditions shall apply even if we carry out the delivery to the customer unconditionally in the knowledge of conflicting or deviating conditions of the customer.
- b) All agreements made between us and the customer for the purpose of executing this contract are laid down in writing in this contract.
- c) Verbal agreements are not valid.
- d) Our terms and conditions apply only to entrepreneurs in the sense of § 310 para. 1 BGB.
- e) Our terms and conditions also apply to all future business with the customer.

### 2. Offer, offer documents

- a) Our offers are non-binding agreements, unless otherwise stated in the order confirmation. In particular verbal collateral agreements and assurances made by our distribution partners, become binding only by written confirmation. The documents belonging to the offer are not assurances of property unless they are expressly and in writing designated as such.
- b) We reserve the rights of ownership and copyrights to illustrations, drawings, calculations and other documents. This also applies to such written documents, which are referred to as „confidential“. The customer requires prior to their disclosure to third parties our explicit written consent.

### 3. Prices, terms of payment

- a) Unless otherwise stated in the order confirmation, our prices are „ex works or manufacturer“, excluding packaging, that will be charged separately.
- b) We reserve the right to change our prices appropriately if cost reductions or cost increases occur after the conclusion of the contract, in particular due to wage settlements or material price changes. We will prove these to the customer upon request.
- c) VAT is not included in our prices; it will be shown separately in the bill at the statutory rate on the date of invoicing.
- d) The deduction of cash discount requires special written agreement.
- e) Unless otherwise stated in the order confirmation, the purchase price is due net (without deductions) within 7 days from the invoice date. The legal rules regarding the consequences of late payment apply.
- f) The customer is only entitled to offset rights if his counterclaims are legally established, undisputed or acknowledged by us. Furthermore, he is entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

### 4. Delivery time

- a) Delivery dates and delivery times specified by us are non-binding, unless they are expressly confirmed by us in writing as binding.
- b) The beginning of the delivery time specified by us requires the clarification of all technical questions. Compliance with our obligation to deliver presupposes the timely and proper fulfillment of the customer's obligation. The exception of the unfulfilled contract remains reserved.
- c) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for any damage incurred, including any additional expenses. Further claims are reserved.
- d) If the conditions of point c) apply, the risk of accidental loss or accidental deterioration of the purchased item is transferred to the customer at the time when the latter has come in acceptance or debtor default.
- e) We are liable in case of a delay in delivery for each completed week of delay in the context of a lump-sum compensation for delay in the amount of 3% of the delivery value, but not more than 15% of the delivery value, as far as no further liability arises from the statutory provisions.

### 5. Transfer of risk, packaging, delivery containers

- a) Unless otherwise stated in the order confirmation, delivery is agreed „ex company“.
- b) Transport and all other packaging will not be taken back in accordance with the packaging regulations; except pallets. The customer is obliged to arrange for disposal of the packaging at his own expense.
- c) At the request of the customer, we will cover the delivery by a transport insurance; the costs incurred in this respect are borne by the customer.
- d) Delivery containers which are made available as loaned containers may only be used for the transport and storage of the delivered goods.

### 6. Filling process and storage containers at the customer

- a) The customer is responsible for the proper suitability and freedom from defects of the filling devices and storage containers when machines and storage containers of the customer are filled. Our inspection and control obligations are not protective obligations in favor of the customer. It does not absolve the customer from checking the storage containers and filling equipment for suitability, cleanliness, capacity, other compliance with legal regulations and any existing technical defects before filling and notify us immediately of any defects found.

- b) If storage containers and filling devices are not suitable for filling, or if the customer does not fulfill his duty to co-operate, we are entitled to refuse filling without being liable for this. Any damage arising from justified refusal is borne by the customer.

### 7. Liability for defects

- a) Claims for defects on the part of the customer presuppose that the latter has duly fulfilled his duties of inspection and complaint pursuant to § 377 HGB.
- b) Insofar as there is a defect in the purchased item, we shall be entitled, at our discretion, to supplementary performance in the form of a remedy of the defect or to deliver a new defect-free item. In the case of removal of the defect, we only bear the expenses up to the amount of the purchase price. Status of these Terms and Conditions: August 2006
- c) If the supplementary performance fails, then the customer is entitled to demand rescission or reduction at his discretion.
- d) We are liable according to the legal provisions, as far as the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. Unless we are charged with intentional breach of contract, the liability for damages is limited to the predictable, typically occurring damage.
- e) We are liable in accordance with the statutory provisions if we culpably violate an essential contractual obligation; in this case, however, the liability for damages is limited to the predictable, typically occurring damage.
- f) Liability for culpable injury to life, limb or health remains unaffected; this also applies to the mandatory liability under the Product Liability Act.
- g) Unless otherwise stipulated above, liability is excluded.
- h) The period of limitation for warranty claims is 12 months, calculated from the transfer of risk.
- i) The limitation period in case of a delivery recourse according to §§ 478, 479 BGB remains unaffected; it is five years from the delivery of the defective item.

### 8. Total liability

- a) Further liability for damages as provided for in point 7 is excluded, regardless of the legal nature of the claim asserted. This applies in particular to claims for damages arising from negligence on conclusion of the contract, due to other breaches of duty or due to tort claims for compensation for property damage in accordance with § 823 BGB.
- b) Insofar as the liability for damages against us is excluded or limited, this also applies with regard to the personal liability for damages of our staff, employees, workers, representatives and vicarious agents.

### 9. Retention of title security

- a) We reserve the ownership of the purchased item until receipt of all payments from the terms and conditions with the customer. In case of breach of contract by the customer, in particular in case of default in payment, we are entitled to take back the purchased item. The return of the purchased item by us is not a withdrawal from the contract, unless we have expressly stated in writing. The seizure of the purchased item by us means always a resignation from the contract. After the return of the object of sale, we are entitled to their utilization, the proceeds of sale shall be credited against the liabilities of the purchaser - reasonable utilization costs deducted.
- b) The customer is obliged to handle the purchased goods with care; in particular, he is obliged to insure these at his own expense against damage caused by fire, water and theft to the original value. If maintenance and inspection work is required, the customer must carry it out on time at his own expense.
- c) In the event of seizures or other interventions by third parties, the customer must notify us in writing without delay so that we can file an action in accordance with § 771 ZPO. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of a claim in accordance with § 771 ZPO, the customer is liable for the loss incurred by us.
- d) The customer also assigns to us the claims to secure our claims against him, which accrue by the connection of the purchased object with a plot against a third party.
- e) We undertake to release the securities to which we are entitled at the request of the customer to the extent that the realizable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is our responsibility.

### 10. Jurisdiction, place of performance

- a) If the customer is a merchant, our place of business is the place of jurisdiction; The customer agrees that the jurisdiction is our place of jurisdiction, but we are entitled to sue the customer at his place of residence.
- b) The law of the Federal Republic of Germany applies. The validity of the UN sales law is excluded.