

# **General Terms and Conditions of Distribution and Delivery**

## **State: March 2018**

### **1. Scope of Validity of these Terms and Conditions**

- 1.1 All order and delivery transactions of Kuhne GmbH (hereinafter: „Kuhne“) shall be exclusively subject to the following general terms and conditions of distribution and delivery (hereinafter: “General Terms“) and to the provisions of the respective contract.
- 1.2 Entering into a contract based on these General Terms substantiates the applicability thereof to all other (delivery) transactions with the customer (hereinafter: “Customer“) within the scope of a current business relationship, even if Kuhne does not make explicit reference thereto in future. This also applies if Customer received knowledge of these General Terms after the first conclusion of a contract between the Parties.
- 1.3 Agreements deviating from these General Terms, especially conflicting general terms of Customer, shall require Kuhne’s explicit written consent to become valid and have to be accepted separately by Kuhne in writing for every individual contract. Such conditions shall not be binding upon Kuhne, even if Kuhne fails to explicitly contradict them, or if Kuhne, being fully aware of such conditions, delivers to Customer without reservations.
- 1.4 Kuhne shall inform Customer in written form about modifications of these General Terms at the latest four weeks before they become valid. Customer’s consent is deemed to be given if he does not communicate his rejection in written form until the date of the modifications’ coming into force. Kuhne shall expressly advert Customer to this effect of deemed consent in its information about the modification of these General Terms.

### **2. Offers and Conclusion of Contract; Order of Validity**

- 2.1 Offers of Kuhne shall not be binding unless expressly indicated or confirmed otherwise by Kuhne in written form. Drawings, depictions, dimensions, weights or other performance data shall only be binding if explicitly agreed upon in writing.
- 2.2 Insofar Customer places an order, this shall be considered a binding offer pursuant to Sec. 145 German Civil Code (“Bürgerliches Gesetzbuch”, “BGB”). Customer’s order shall comply with Kuhne’s offer. Unless agreed otherwise in writing, Kuhne may accept this offer within a period of four (4) weeks by sending Customer an order confirmation.
- 2.3 Contracts with Kuhne come into existence upon Kuhne’s acceptance of Customer’s order in text form, e.g. email, fax (sec. 126b German Civil Code), in the form of an order confirmation, the latest at Kuhne’s provision of its performance.
- 2.4 Unless otherwise agreed in the individual contract, in case of conflicting provisions the following order applies:
  1. the individual contract including additional agreements
  2. these General Terms
  3. – if applicable – performance description as arranged with Customer
  4. – if applicable – technical data sheet as arranged with Customer
  5. the essential contractual parts of Kuhne’s offer (e.g. price, amount).
- 2.5 Kuhne reserves rights of ownership and copyrights with respect to the documents mentioned in 2.1 above.

### **3. Customer’s Duties and Obligations**

- 3.1 Customer shall ensure that Kuhne is provided with all necessary cooperation and provision performances in good time, to the necessary extent, and without charge. If Customer does not, not in time, or not in the agreed manner provide necessary cooperation performance, he solely has to bear the consequences resulting therefrom (e.g. delays, additional expenditures).
- 3.2 Customer shall, as from the point in time of the effective arrival of Kuhne’s shipping at Customer’s, ensure to comply at all times with the parameters as laid down in the technical data sheet attached to the offer of Kuhne.

### **4. Delivery and Time of Delivery; Sub-contractors**

- 4.1 As long as Customer does not fulfil its cooperation and provision duties, such as especially the provision of goods for processing or treatment, of printing templates and/or information material for the goods to be manufactured, etc., a delay in delivery of Kuhne is excluded.
- 4.2 Unless agreed otherwise, the delivery period commences at the latest of the following points in time:
  1. the date showing on the order confirmation by Kuhne according to section 2.3;
  2. upon clarification of all technical aspects;
  3. upon receipt of the first part of the contract price according to section 6.3 (40 %) at Kuhne, or, if agreed otherwise between the parties, upon receipt of this otherwise agreed upfront payment at Kuhne;
  4. if applicable: the date Kuhne is being granted the permission by the competent authority.
- 4.3 Deliveries shall be effected ex works “Einsteinstraße 20, D-53757 Sankt Augustin” (that is, if the delivery item is an item of sale: “ex works”, resp. hereinafter “EXW Einsteinstraße 20, D-53757 Sankt Augustin” according to Incoterms 2010) unless explicitly agreed otherwise in writing.
- 4.4 Following the completion of ex works orders as mentioned above, Customer is required to pick up his goods at the delivery destination pursuant to Sec. 4.3 within 10 (ten) workdays (Monday through Friday, legal holidays excluded) from receiving the notice of readiness to dispatch – “Versandbereitschaftsanzeige” (delivery date), unless indicated otherwise by Kuhne. Upon Pick-up, Customer is obliged to settle any transport and/or all other costs concerning the goods which arose after their completion and provision by Kuhne.

- 4.5 Form, modality and scope of packaging are in the sole discretion of Kuhne. If Kuhne committed itself, in an individual case, beyond EXW pursuant to Incoterms 2010, to send goods to Customer, the modality of dispatch is in the sole discretion of Kuhne.
- 4.6 For the period of the existence of circumstances outside of the control of Kuhne ("Force Majeure"), such as inability to source raw materials and transportation means, stoppages in production, strikes and lock-outs, fire and natural catastrophes, Kuhne shall be discharged from its delivery obligation. Delivery deadlines agreed shall be extended by the period of the existence of the circumstances of Force Majeure. Customer shall only have the right to reject the deliveries if it is unreasonable to expect from Customer taking delivery after such lapse of time. If the circumstances of Force Majeure continue following the lapse of four (4) weeks, the parties will agree unanimously about as to how the effects and consequences of Force Majeure will be regulated.
- 4.7 Kuhne shall be entitled to effect partial deliveries and services, if (i) the partial delivery is usable for Customer within the intended purpose of the contract, (ii) the delivery of the remaining ordered goods is secured and (iii) no substantial additional expenses occur for Customer hereby (unless Kuhne agrees in writing to bear these expenses).
- 4.8 In case Kuhne delivers upon Customer's request goods to a non-EU country without being provided with a certificate of export or other relevant information concerning the export of the goods, Customer is liable towards Kuhne insofar as Kuhne is held liable for payment of Value Added Tax (VAT) regarding the respective delivery, unless Kuhne is responsible accordingly.
- 4.9 Kuhne is entitled to perform by subcontracting third parties (subcontractors), unless this contradicts Customer's justified interests. Kuhne is liable for the performance of subcontractors to the same extent as it is liable for its own actions.

## **5. Acceptance Test**

- 5.1 In case the delivery item consists in a work performance, or if, in other cases, it has been agreed to carry out an acceptance, this will be conducted as an acceptance test at the Customer's site during normal business hours of Kuhne, and according to the general practice of the industry. In order to enable the Customer to be attend the test(s), Kuhne shall agree timely and unanimously with Customer on a date to conduct the test.
- 5.2 The exact subject of the acceptance test(s) is stipulated in the individual contract between the parties, in which the acceptance runs are named in detail (especially the foil types and criteria per foil type to be checked, the test period and the power).
- 5.3 Customer bears the costs for the granule needed for conducting the acceptance tests and its procurement and shipping.
- 5.4 An acceptance protocol shall be signed by both parties immediately following the acceptance test. Insignificant defects shall not entitle a refusal to effect acceptance. Defects to be regarded as insignificant are those which do not impair efficiency and industrial safety.
- 5.5 Customer may ask that the test be repeated only in cases of a major defect. The parties will agree timely and unanimously on a prompt date in order to repeat the acceptance test.
- 5.6 Acceptance shall be considered to have been effected, if and when (i) the parties have signed the acceptance protocol, or (ii) Customer refuses to sign the acceptance certificate without justification, or (iii) Customer puts the contractual machine into operation irrespective of whether the acceptance test has been conducted. In all aforementioned cases, an operation of the contractual machine is in the sole risk of Customer.

## **6. Prices and Payment Conditions**

- 6.1 Prices are ex works (that is, if the delivery item is an item of sale: "ex works", resp. hereinafter "EXW Einsteinstraße 20, D-53757 Sankt Augustin" according to Incoterms 2010) and do not include freight, customs, import duties, ancillary levies; they are net prices plus statutory value added tax (VAT).
- 6.2 In case of shipment of the goods to a non-EU country, Customer shall, on its own initiative, send Kuhne as proof of shipment an export certificate in written form within 5 (five) business days after receiving the goods in the non-EU country. In case of not providing the export certificate or any other relevant information concerning the shipment of the goods, Customer is liable pursuant to 4.8 above.
- 6.3 Invoices of Kuhne are due immediately upon receipt and shall be paid without deductions and within five (5) days to the account indicated on the invoice, unless other terms of payment are agreed between the parties in writing or indicated on Kuhne's invoice. They are to be paid in EUR. Unless otherwise agreed the Contract Price shall be invoiced with 40 % (forty percent) at the formation of the Contract and 60 % (sixty percent) from receiving notice of readiness to dispatch – "Versandbereitschaftsanzeige".
- 6.4 Timeliness of payment shall be determined by the date the whole amount is credited to one of Kuhne's business accounts. In the event of default in payment, Kuhne is entitled to charge default interest in the amount of nine (9) percentage points above the base interest rate.
- 6.5 If Customer deducts a cash discount from its payment which is unjustified due to non-execution of a payment within a set payment period, absence of a complaint by Kuhne does not constitute a tacit acknowledgement of the deducted cash discount. Until expiration of the limitation period, Kuhne is entitled to demand payment of the partial amount not paid by Customer due to the cash discount or to settle this partial amount with outstanding claims of other orders of Customer resp. to book it on Customer's receivables account.
- 6.6 If Customer delays on payment with respect to carried out deliveries Kuhne is, at its option, entitled to either withhold not yet carried out deliveries until Customer has performed advance payment accordingly, or to withdraw from the contract about the not yet carried out deliveries.
- 6.7 Checks are only accepted on account of performance and the debt shall only be cleared upon receipt of full payment. Kuhne shall assume no liability for correct and timely presentation and protesting with regard to the negotiated check. Discount charges (2 % above the discount rate charged by Kuhne's bank, minimum € 50.-), and all expenditure and costs in connection with the honouring of check amounts shall be borne by Customer.

- 6.8 Any complaints against the level of Kuhne's remuneration charged to Customer shall be addressed to Kuhne immediately after receipt of invoice. Complaints have to reach Kuhne within eight (8) weeks after receipt of invoice. Omission of timely complaints is deemed as approval of the amount of the invoice. Customer's legal claims concerning complaints after expiration of the deadline remain unaffected.
- 6.9 If, after the conclusion of a contract, there are reasonable doubts as to the solvency or credit standing of Customer or, if such circumstances are prevailing at the conclusion of the contract but become known at a later date, Kuhne shall be entitled to demand advance payment or the posting of collateral prior to delivery, as well as to revoke payment terms granted and render all credited receivables immediately due for payment.
- 6.10 Despite possible conflicting or missing determinations of Customer, Kuhne shall be entitled to initially offset payments against older debts of Customer and shall notify Customer of the nature of any offset. If costs and interest have already accrued, Kuhne shall be entitled to offset payments against these costs first, then against interest and finally against the principal debt.

## **7. Transfer of Risk; Examination for Transport Damages**

- 7.1 If the delivery item is an item of sale, the passing of risk of accidental loss of goods over to the Customer shall be determined by the INCOTERMS 2010 clause as agreed upon between Kuhne and Customer in the individual contract.
- 7.2 If the delivery item is a work performance, the risk of accidental loss passes over to Customer as soon as the consignment is handed over to the third party effecting the transport, or has left Kuhne's warehouse for dispatch purposes.
- 7.3 Immediately after receiving the delivery, Customer shall examine its external condition, notify any transport damages to carrier, secure relevant evidence and immediately inform Kuhne and the carrier by phone and in text form (Sec. 126b BGB). In case of a delivery to a deviating debtor's address, Customer shall ensure that the examination for any transport damage is carried out in accordance with this section 7.
- 7.4 If dispatch cannot be carried out within the agreed delivery period for reasons for which Kuhne is not responsible, the risk of accidental loss of the goods shall pass over to the Customer upon lapse of the delivery date stipulated in section 4.3.

## **8. Duty of Examination; Warranty; Period of Limitation**

- 8.1 If the delivery item is an item of sale, obvious defects and defects noticeable upon proper inspection of the delivery including any transport damages (see section 7.2) shall be notified by Customer in written form immediately upon receipt of the goods. Defects that could not be discovered within this period, even upon proper inspection, shall be notified to Kuhne immediately upon their discovery. The same applies to complaints because of wrong deliveries and discrepancies in quantities. If the period for notification is not observed, warranty claims shall be excluded.
- 8.2 In all cases, Customer shall, prior to processing the delivered goods, be obliged to inspect them for their suitability for the purposes of use, even if samples of goods have been supplied before.
- 8.3 Minor discrepancies in dimensions and formats shall not entitle Customer to raise complaints for defects. Potential discrepancies listed in the relevant quality guidelines known to Customer are all in consistency with the contract.
- 8.4 Warranty rights may only be raised in respect of goods that are available for inspection or return. Without prior mutual agreement products may not be returned to Kuhne.  
Taking back goods by Kuhne does in no case constitute an acknowledgement that the goods taken back are defective.
- 8.5 For defects notified in time Kuhne warrants rectification in the form of remedying defects (repair). In case the rectification by Kuhne turns out to be unsuccessful, Customer shall, at its option, be entitled to reduce the price or to withdraw from the contract. There are no claims for compensatory damages, except as provided for in section 10 below.
- 8.6 The warranty obligation shall expire if the goods delivered are changed, processed or improperly handled. Improper handling also includes an improper storage of the goods.
- 8.7 Kuhne is not liable for such products Customer provides Kuhne with for the purpose of processing or finishing. With respect to such goods, there shall be no warranty rights for Customer, unless the defect is due to the processing or finishing by Kuhne.
- 8.8 The warranty statute of limitations amounts to 12 (twelve) months from transfer of risk, unless another statutory term is prescribed by law apply. The aforementioned does not apply in cases Kuhne is liable for culpable violation of life, limb or health, and in cases Kuhne is liable for claims for damage based on intent or gross negligence, including intent or gross negligence of Kuhne's representatives or vicarious agents.

## **9. Retention of Title**

- 9.1 Until such time as all receivables from the business relationship with Customer have been paid, Kuhne shall retain title (ownership) to the purchased goods. To the extent Kuhne agrees with Customer on payment of the purchasing price on the basis of check procedure, the retention of title shall also extend to the encashment as well as any claims against Customer in connection with a potential liability of Kuhne towards respective third parties holding rights and does not expire with the receipt of money from such check procedure.
- 9.2 Customer bears the risk for the goods delivered by Kuhne. He shall be obliged to keep the goods diligently in custody and sufficiently insure them against usual risks, like damage, loss, theft, fire etc. to usual terms and common extent. Customer herewith assigns to Kuhne any claim against the insurer for the case of damages namely a first ranking partial amount corresponding to the purchasing price of goods delivered under retention of title; Kuhne already now approves this assignment. To the extent that the insurer does not cover the total damage, Kuhne may not be referred to a proportionate compensation.
- 9.3 Pledging or transfer of title for security purposes are excluded. Customer has to inform Kuhne without delay of any event concerning the title of Kuhne and be obliged to use best efforts in particular to make all legal declarations towards Kuhne or a third party in

order to render the agreed retention of title and the pre-assignment effective. Customer shall be liable for all cost of an intervention in court and / or out of court.

- 9.4 Kuhne is obliged to release collaterals in their dutiful discretion, if and to the extent that the estimated value of the collateral exceeds the total receivables of Kuhne to be secured respectively, permanently by 50 % (fifty percent).

## **10. Liability; Product Liability**

- 10.1 Kuhne shall be liable under statutory regulations insofar as Customer raises claims based on intent or gross negligence, including intent or gross negligence of Kuhne's representatives or vicarious agents.
- 10.2 Insofar as Kuhne is not held liable for intentional breach of contract in a case of 10.1, liability for damages is limited to the foreseeable and typically occurring damage.
- 10.3 There are no damage claims by Customer for other damages with respect to the negligent breach of contractual accessory obligations or non-essential obligations.
- 10.4 To the extent that Kuhne, Kuhne's representatives or vicarious agents are accused of the ordinary negligent breach of an essential contractual obligation, the fulfilment of which enables the proper execution of this agreement at all, and the violation of which puts the achievement of the contractual purpose at risk, and the observance of which Customer may regularly rely on,
1. in case of deliveries of machines and plants, liability for damages is limited to the foreseeable and typically occurring damage, up to a maximum of 20 % of the contract value,
  2. in case of all other deliveries, liability for damages is limited to the foreseeable and typically occurring damage, up to a maximum of 50 % of the contract value.
- 10.5 Liability of Kuhne for culpable violation of life, limb or health, including a culpable violation of such by Kuhne's representatives or vicarious agents, and Kuhne's liability according to other mandatory binding provisions, especially according to the German Product Liability Act, shall not be affected thereby.
- 10.6 There are no damage claims for delay based on ordinary negligence; Customer's statutory rights following the expiry of a reasonable grace period shall not be affected thereby.
- 10.7 Kuhne shall not be liable for indirect damages due to a defective delivery, such as production loss or production stoppages, lost profits and increased material consumption, unless Kuhne is held liable for intent or gross negligence, or unless it is a case of the violation of life, limb or health.
- 10.8 Customer shall, in the internal relationship to Kuhne, take the sole risk as (co-)producer in accordance with the German Product Liability Act, insofar as the cause of damage falls within his domain of responsibility and organization, and if he, in his external relationship to the claimant, is liable as producer. Customer shall in the abovementioned cases indemnify Kuhne explicitly from any third party claims and shall, when necessary, provide security insofar as his liability in the internal relationship is concerned. This applies especially, but not exclusively, in cases in which Customer delivered products to Kuhne.
- The provision in 9.4 does not apply insofar as, in cases Customer provided Kuhne with goods or products for the purpose of processing or finishing, the cause of damage is due to the processing or finishing by Kuhne, not even in cases Kuhne does not appear as producer towards third parties.
- 10.9 Insofar as Kuhne's liability for damages is restricted, this also applies to the personal liability for damages of Kuhne's staff, employees, personnel, representatives and vicarious agents.
- 10.10 Unless stipulated otherwise above, Kuhne's liability shall be excluded.

## **11. Confidentiality**

- 11.1 To the extent that nothing deviating arises from a separate confidentiality agreement between the parties, parties undertake to keep confidentiality pursuant to this section 11.
- 11.2 Parties shall mutually undertake to maintain confidentiality about all business and company secrets and about all information designated as confidential ("confidential information") that came to their knowledge in the context of performing this agreement or which the Parties exchange. As confidential information, the parties in particular understand all orders and all commercial and technical information and documents related therewith. Information publicly known at the time of transmission, or later becoming publicly known not resulting from a wrongdoing of the party concerned, is not deemed as confidential. The same applies if an information, without a direct or indirect infringement of the concerned Party's duty to maintain confidentiality, becomes known to a third party other than by the party concerned or its affiliates. A reproduction and dissemination of such secret information shall only be allowed within the scope of operational requirements. It may only be disclosed or made accessible to third parties upon prior express and written consent.
- 11.3 The aforesaid obligation to keep confidential shall survive the termination of the supply relationship, as long as the confidential information has not become common knowledge.
- 11.4 After termination of the supply relationship Customer undertakes to return to Kuhne all business secrets he has received unless they are included in the scope of delivery. All business secrets are to be removed from Customer's data processing equipment and storage media. Reproductions, regardless of their form, are to be destroyed in such way that reconstruction is impossible.

## **12. Offsetting; Right of Retention**

- 12.1 Customer's right to offset is excluded. This does not apply insofar as the counterclaim is based on a violation of an essential contractual obligation of Kuhne pursuant to sec. 320 BGB, or the counterclaim is assessed in a legally binding judgment, or is undisputed.

- 12.2 Unless stipulated otherwise in mandatory law, Kuhne may set off all its claims against Customer's claims. This also applies if Customer used a cash discount in case of a delayed payment.
- 12.3 Customer shall have a right of retention only insofar as its counterclaim is connected with or arising from the same transaction and is assessed in a legally binding judgment, or is undisputed. Apart from that, Customer shall not have a right of retention.

### **13. Written Form**

- 13.1 This agreement shall precede all prior agreements concerning its object, regardless of whether they were agreed in writing or verbally. No subsidiary verbal agreements exist.
- 13.2 Any amendments, addendums and the annulment of this agreement shall be in writing in order to be effective. This also applies for amendments of this written form clause. The aforementioned requirement of written form shall not apply to oral agreements made after the conclusion of this contract. Also, in this case parties agree on the necessity of a written confirmation concerning the content of the oral agreement.
- 13.3 Unless stipulated otherwise in these General Terms, to fulfil the written form requirement, text form pursuant to sec. 126b BGB, e.g. e-mail, fax, is sufficient.

### **14. Applicable Law; Court of Venue**

- 14.1 All contractual and non-contractual relationships between Kuhne and Customer shall be governed by the laws of the Federal Republic of Germany. The application of the consistent United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- 14.2 Exclusive – also international – venue for all disputes shall be Kuhne's seat, provided Customer is an entrepreneur pursuant to the German Commercial Code or a government entity or special governmental estate. However, Kuhne shall be entitled to also raise a claim at Customer's seat. The aforementioned shall not apply if another exclusive jurisdiction is prescribed by a mandatory legal provision.

### **15. Final Provisions**

- 15.1 Should particular provisions of these General Terms be or become invalid, the validity of the remaining provisions shall not be affected hereby. This does not apply if an adherence to the agreement would present an unreasonable hardship to a contracting party.
- 15.2 Customer may only assign rights and obligations arising from the agreement after prior written consent by Kuhne. Kuhne shall only refuse consent for important reason. Customer shall immediately inform Kuhne if he plans to assign rights and obligations arising from the agreement with Kuhne.
- 15.3 These General Terms shall be concluded in both German and English language. In case of any discrepancies between the German and English version, the German version shall prevail.