

## General Terms and Conditions of Sale and Delivery (English Version)

### § 1 Scope

- 1.1 The following Terms and Conditions apply to any sale and delivery of products, drawings, and services (hereinafter collectively “Products”) by KMF Kemptener Maschinenfabrik GmbH (“KMF”).
- 1.2 Any variation, amendment, cancellation, or waiver of these Terms and Conditions and the contract resulting from them (the “Contract”) and any acceptance of other terms and conditions is binding upon KMF only by a written acknowledgement signed by an authorized representative of KMF.
- 1.3 Individual agreements entered into with KMF in particular cases shall in any case have preference over these General Terms and Conditions.

### § 2 Offers

- 2.1 KMF’s offers are non-binding and subject to change without notice. Documents that may be enclosed with an offer, such as catalogs and leaflets contain approximate details only, unless they are expressly described as having binding force.
- 2.2 KMF reserves ownership and copyright utilization rights without restrictions to cost estimates, drawings and other documents enclosed with an offer. These shall not be made available to third parties.
- 2.3 An order placed by the Purchaser for Products is deemed a binding offer.

### § 3 Contract Conclusion / Written Form / Withdrawal

- 3.1 KMF will issue a written order confirmation by letter, fax or e-mail. This order confirmation together with these Terms and Conditions shall be the sole agreement between KMF and Purchaser, constituting the entire Contract between them and superseding all previous representations, communications, either oral or written.
- 3.2 Statements and notification of legal relevance that are forwarded by the Purchaser to KMF after the Contract has been entered into (e.g., setting periods, notification of defects, issuing a withdrawal or stating a reduction in price) are subject to the written form in order to be deemed valid.
- 3.3 KMF shall be entitled to withdraw from the contract if the Purchaser’s economic or financial situation has subsequently deteriorated to such an extent that processing the Contract is no longer acceptable.

## § 4 Prices

- 4.1** In the absence of agreements to the contrary in individual cases, the prices that are KMF's respective current prices at the time an order is confirmed are deemed applicable. In the event of price changes between the placing of an order by the Purchaser and provision of an order confirmation by KMF, the Purchaser may object to the contract that has been entered into. In such a case, the objection must be made without delay in writing.
- 4.2** All prices are construed as net prices.
- 4.3** KMF is entitled to invoice the Purchaser for the cost of test parts, samples, and tools required to manufacture test and series parts.

## § 5 Payment

- 5.1** Unless otherwise specified by KMF in writing, amounts stated in KMF's invoices are due for payment within 30 days after the invoice date without deductions provided goods are delivered and irrespective of the receipt of goods.
- 5.2** Amounts for services and repairs are due for payment within 14 days without deductions after the invoice date.
- 5.3** Deduction of a trade discount is subject to a separate, written agreement.
- 5.4** If Purchaser fails to fulfill the terms of payment or if KMF has any reasonable doubt at any time regarding Purchaser's financial ability, KMF may demand different terms of payment and/or decline to make further deliveries and may claim payment of all invoices, even if not yet due for payment.
- 5.5** In the event Purchaser fails to make payment when due, Purchaser shall pay interest at a rate of one percent (1 %) per month (but not in excess of the maximum rate allowed by law, if any) on the amount of any unpaid payment. Purchaser shall pay, in addition to all other sums payable hereunder, the reasonable costs and expenses incurred by KMF in connection with all actions taken to collect outstanding payments or to preserve and protect its rights under the Contract, whether by legal proceedings or otherwise including without limitation reasonable attorneys' fees and court costs.
- 5.6** Purchaser shall neither retain payment on account of any claim nor shall Purchaser offset any claim against the purchase price.
- 5.7** If the Purchaser has not provided any special notification, payments shall be counted towards the oldest outstanding invoices.

5.8 Payment shall only be deemed made if KMF can freely dispose of the amount. All banking fees associated with the payment shall be borne by the Purchaser.

## § 6 Delivery / Delivery Dates

6.1 The delivery period or the delivery date shall be agreed upon individually or stated by KMF upon acceptance of the order. Adherence to the delivery period or the delivery date is subject to the provision of correct and timely deliveries on the part of third-parties to KMF unless an incorrect or delayed delivery is the responsibility of KMF.

6.2 Any dates indicated by KMF in relation to the Products are binding only if so expressly stated. If KMF is in delay of a binding date due to its fault, KMF shall pay liquidated damages of 0.5% of the price of the Product delayed per each full calendar week of delay, however not exceeding 5% of that price. If non-compliance with the binding date is due to any event of force majeure or other causes beyond KMF's reasonable control, e.g., labor dispute including a strike or lockout, government act or regulation including export controls, inability to obtain supplies, materials or shipping space, plant breakdown, power failure, delay, or interruption of carries, riot, accident, fire, flood, acts of God, the delivery time shall be extended accordingly.

6.3 The period for deliveries and services shall commence on the dispatch of the order confirmation. Adherence to the delivery period is conditional on the fact that the Purchaser honors its duties to collaborate in a timely manner and to fulfill its payment obligations on time. If the Purchaser fails to honor its obligations, the parties shall jointly determine a new delivery date. This does not affect KMF's claims for further-reaching damages – in particular regarding compensation for losses suffered and the reimbursement of expenses.

6.4 If shipping is delayed at the Purchaser's request or if the Purchaser defaults in acceptance, KMF shall be entitled to store the Products at the Purchaser's cost. This does not affect KMF's further reaching claims in the event of default in acceptance on the part of the Purchaser.

6.5 Partial deliveries are permitted where acceptable for the Purchaser.

6.6 KMF shall determine the shipping mode and transport route, provided no agreement has been entered into in that respect.

## § 7 Transfer of Risk / Acceptance

7.1 Delivery is effected EXW at the delivering plant ("KMF's works"; INCOTERMS 2010), except as expressly otherwise agreed.

**7.2** If shipping is delayed due to circumstances that are the Purchaser's responsibility, risk shall pass to the Purchaser on the date of notification of readiness for shipping.

**7.3** The Purchaser may not refuse to take delivery on account of minor defects.

## **§ 8 Inspection**

Within ten business days of receipt of the Products, the Purchaser shall inspect the Products to check for conformity. Purchaser shall thereafter notify KMF in writing of any shortage, loss, or damage and any other nonconformity within five business days of inspection. The failure to provide KMF with such notice within this time period shall constitute an unqualified acceptance of the Products and a waiver of all claims for any non-conformities, including a waiver of any right of revocation of acceptance.

## **§ 9 Retention of Title**

**9.1** KMF retains title to the Products delivered until the full purchase price due under this Contract has been paid.

**9.2** If the retention of title is not effective under the laws of the country in which the Products are located, a respective security shall be deemed agreed upon which is as far as possible, equivalent to the retention of title. If the co-operation of the Purchaser is required for the enforcement of such rights and/or for the retention of title, the Purchaser shall take all measures necessary for the enforcement and preservation of such rights and for the retention of title.

## **§ 10 Cancellation**

The Contract is not subject to cancellation by Purchaser unless Purchaser obtains specific written approval from KMF. If the Contract is cancelled, Purchaser shall pay KMF reasonable cancellation charges, for expenses already incurred and commitments made by KMF in connection with the Contract and performance thereunder, including KMF's overheads and anticipated profit.

## **§ 11 Warranty**

**11.1** KMF warrants the Products against defects in material and workmanship for one year after the date of readiness of the Products for delivery to Purchaser. This warranty extends only to the Purchaser, is non-transferable and does not cover normal wear and tear or damage caused by improper storage, use, installation, or maintenance, harmful chemicals or pollutants or any other events outside KMF's responsibility.

**11.2** In the event that the Products fail to meet this warranty, KMF will — as Purchaser's sole remedy - repair or replace, at its option, the defective part(s) free of charge to Purchaser, provided that the Purchaser

returns the Products to be replaced or repaired to KMF. The purchaser shall bear the costs of removal, shipment, and reinstallation of the Products.

**11.3** The warranty obligations and liabilities of KMF, and the rights and remedies of purchaser set forth in this clause 13 are exclusive and are in lieu of all other warranties, obligations, representations or liabilities, expressed or implied, arising by law or in contract. Civil liability or tort or otherwise, including, but not limited to, any implied warranty of merchantability or fitness for a particular purpose or any other obligation or liability on the part of KMF to anyone of any nature whatsoever.

#### **§ 12 Confidentiality**

The Purchaser undertakes to maintain secrecy regarding all business information and/or know-how, of which it gains knowledge or which are disclosed, including beyond the term of the business relationship. This agreement does not apply to publicly known or disclosed information or information received from third-parties.

#### **§ 13 Purchaser Specifications**

KMF assumes no obligation to check Purchaser's specifications request and other information, and disclaims any liability for any errors or omissions in such information.

#### **§ 14 Patents, Intellectual Property Rights**

**14.1** The sale of the Products under the Contract shall not grant to the Purchaser any right or license of any kind under any patent, utility model or copyright. Software may not be duplicated, reverse engineered, decompiled and used for or transferred to third parties. Software developed by a third party may be subject to other or additional license terms, which shall apply and be provided to Purchaser with delivery.

**14.2** In the event a proceeding is brought against the Purchaser alleging that the Product, its delivery or use constitutes an infringement of any patent utility model or copyright, KMF shall at its own expense at its option (i) defend or settle any such claim of which it is promptly notified and will pay all damages and costs awarded to Purchaser in any such infringement proceeding up to the price of the infringing Product, (ii) replace the Product by a non-infringing Product or (iii) take back the infringing Product against return of the price for such Product.

#### **§ 15 Indemnification**

KMF agrees to defend, indemnify and hold harmless the Purchaser with respect to claims for bodily injury, including death or damage to tangible property caused by (i) a defect in the Product making it unreasonably unsafe or (ii) the intention or gross negligence of KMF, its officers and assigns.

#### § 16 Disclaimer, Limitation of Liability

KMF shall not be liable for any claims, expenditures, losses, damages of any kind, including indirect, consequential, special, incidental and/or punitive damages of any kind and nature under any circumstances, loss of use, income or profit, irrespective of the legal reason, arising directly or indirectly out of or occasioned (i) by the sale, delivery, installation use, repair, or replacement of the products whether such damages are based on a claim of breach of express or implied warranty, tortious conduct including negligence and strict liability or any other cause of action, or (II) by any other breach of any obligation and/or condition of the contract or of the law or any representation.

#### § 17 Severability, Invalidity

If any portion of the Contract shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the valid and enforceable provisions will continue to be given effect and bind the parties thereto. The invalid or unenforceable provision shall be replaced by a provision which comes closest to the invalid or unenforceable provision.

#### § 18 Governing Law, Arbitration, Venue

**18.1** The Contract for all purposes shall be construed and enforced in accordance with and governed by the substantive law of Switzerland under exclusion of the UN-convention on Contracts for the International Sale of Goods. All disputes out of or in connection with the Contract shall be exclusively and finally settled by arbitration according to the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed according to said Rules. Venue shall be Zurich, Switzerland.

**18.2** KMF is also entitled to take legal action at the court having jurisdiction at the registered office or branch office of the Purchaser.