



General Terms and Conditions of Sale of **KNUBIX** GmbH, Birkenstraße 4, D-88285 Bodnegg

As at 1 July 2010

§ 1 Scope of Application

(1) The terms and conditions set out below form part of the agreement concluded with us. Any sales, deliveries of products and work supplies and services are exclusively governed by the following General Terms and Conditions of Sale, unless otherwise agreed expressly in writing.

(2) Our General Terms and Conditions of Sale apply in accordance with its most recent version, as well as to all subsequent transactions without any repeated need of express reference thereto or agreement thereon at the conclusion of such transaction. Agreements or actual arrangements made in a specific case that deviate from these General Terms and Conditions of Sale are applicable only to such specific case and not for other orders.

(3) We hereby object to any counter confirmation, counter offer or other reference by the orderer to its general terms and conditions; any dissenting terms and conditions of the orderer do only apply if and to the extent we have expressly accepted the same in writing. Our General Terms and Conditions of Sale apply even if deliveries are executed by us with knowledge of, and unreservedly and without further expressed objection to, contradictory or deviant general terms and conditions of the orderer.

(4) These Terms and Conditions of Sale do only apply vis-à-vis entrepreneurs, legal persons under public law and public law separate estates within the meaning of Section 310 para. 1 of the German Civil Code.

§ 2 Offers, Quotes and Orders

(1) Our offers and quotes, including drawings or diagrams, are subject to change without notice and are non-binding, in particular with reference to quantities, prices, delivery times and dimensions, performance data and technical specifications, provided that there is nothing stated to the contrary in our order confirmation.

(2) Information contained in leaflets, catalogues, advertising, offers, quotes or order confirmations represents approximations normal in the trade and do not constitute an express or implied description of or agreement on quality, or guaranty of quality or durability, provided that there is nothing stated to the contrary in our order confirmation.

(3) If an order by the orderer qualifies as an offer under Section 145 of the German Civil Code, we may accept it within one week following receipt of the order, or if the order relates to goods or quantities not on stock, within two weeks.

(4) Orders placed by the orderer are only deemed as accepted until these have been confirmed by us in writing. If we fail to confirm an agreement in writing which we have entered into verbally or in a telephone conversation, then our invoice is regarded as order confirmation.

(5) The features expressly described in our order confirmation are a definitive determination of the qualities of our products and services. Otherwise, the quality of the goods shall be in accordance with customary trade practice, unless otherwise agreed or confirmed by us in writing.

(6) We reserve the right to change the technical specifications at any time if and to the extent required through applicable laws or regulations or compelling safety considerations, which does not result in any compensation or other claims of the orderer. We further reserve the right to extend the technical specifications to storage and transport requirements. We will immediately notify the orderer of any such

variation. Discrepancies within tolerances normal within production and the trade are permitted at any time without a need to notify the orderer thereof.

(7) We will check conformity of our products and services with information, documents, drawings, samples and the like of the orderer only on the basis of an express written agreement. We are not liable for mistakes which arise from information, documents, drawings, samples and the like of the orderer provided, however, that we cannot be reasonably expected to recognize these in the ordinary course of business.

(8) Subsequent changes or amendments of an order by the orderer need to be confirmed by us expressly in writing to become legally binding. If such changes or amendments to an order impact the costs or the time needed for the filling of the order, we are entitled to adapt the conditions of the order accordingly.

§ 3 Prices and Payment Conditions; Counterclaims

(1) Our prices are plus value-added tax at the statutory rate at the time of delivery. To the extent applicable, VAT will be itemized separately in the invoice to its statutory amount at the day of invoice.

(2) Except as provided otherwise in our order confirmation, prices are "ex works" (Incoterms 2000), packaging excluded, which will be invoiced separately.

(3) If, as a result of a change of law between the agreement date and the delivery date, additional or increased charges – in particular duties, levies, currency conversion payments – are payable, then we have the right to increase the purchase price accordingly. The same applies to any fees for examination.

(4) For orders with a term for delivery of more than three months from receipt of the order we are entitled to a proportionate adaption of agreed prices of up to five percent if after our acceptance of the order and prior to filling of the order our cost prices and production costs increase without us being responsible for such an increase.

(5) Additional goods and services will be invoiced separately. Orders for which fixed prices or remunerations have not been expressly agreed will be invoiced at the list prices in effect on the day on which the goods or services are rendered or at the rates applicable on this day for invoicing our wages (daily rates) plus postage, freight and packing.

(6) Our claims for payment are "net cash" amounts and payable immediately free of any deduction upon receipt of the invoice unless other payment terms have been agreed in writing. Any cash discount is subject to a special written agreement.

(7) If the invoice amount has not been settled within thirty calendar days after receipt of the invoice or as at another agreed upon due date, then we without the need to a separate warning notice have the right to recover default interest in a proven amount but in any event in an amount equaling eight percentage points above the base rate of the European Central Bank.

(8) We accept promissory notes, cheques or other promises to pay only upon specific arrangement and if so, only in lieu of payment for crediting subject to receipt of payment and not on account of performance. Any fees for discount bills or promissory notes are at the expense of the orderer and immediately payable.

(9) If the orderer's business is operated beyond the ordinary course of business which includes, without limitation, acts of seizure or a situation where a protest in relation to promissory notes or cheques has been made, payments are delayed or even discontinued, or if the orderer petitions for a domestic or foreign judicial or out-of-court general debt

settlement or for bankruptcy or for proceedings in accordance with the German Insolvency Act or if any such proceedings are petitioned against the orderer, then we have the right to declare all our claims arising from the business relationship as immediately due and payable, even if we should have accepted promissory notes or cheques. The same applies if the orderer is in payment default towards us or if other incidents surface which give seriously rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the agreement.

(10) The orderer has no right to set-off, retention or reduction unless the underlying counterclaims are undisputed, or judicially established, or have been expressly acknowledged by us. The orderer is only entitled to retention insofar as the underlying counterclaim derives from the identical contractual relationship.

§ 4 Delivery and Shipment

(1) Dates of delivery and performance are nonbinding, unless identified as binding in our order confirmation.

(2) Agreed-upon or indicated times of delivery commence with the conclusive clarification of all technically compelling aspects and with timely and due fulfillment of the orderer's duties and obligations to cooperate. We reserve the defense of non-performance of the contract.

(3) We are entitled to premature delivery or performance and have the right to reasonable delivery in installments, unless it is recognizable to us that the partial delivery or partial service is of no interest for the orderer.

(4) Delivery is "ex works" (Incoterms 2000) unless expressly agreed otherwise in writing. Goods reported as being ready for dispatch must be taken over by the orderer without undue delay. Otherwise we have the right to dispatch them as we see fit or to put them into storage at normal hauler rates and at the orderer's sole expense and risk; we are also entitled to this if we undertake to dispatch the goods but are unable to do so for no fault of our own. The goods shall be regarded as having been delivered upon storing.

(5) The goods are transported uninsured and in any event at the risk of the orderer. This also applies in cases of any delivery free of charge and regardless of which means of transport is used. Any transport insurance will be provided only upon express demand of the orderer. Any costs arising therefrom will be at the sole expense of the orderer.

(6) If the selection of the place of dispatch, transport route or the means of transport is done by us, it is done subject to our reasonable discretion and without liability for the cheapest and fastest transport.

(7) If the orderer provides the means of transport, then it is responsible for its availability on time. We must immediately be informed of any delays. Any costs arising therefrom will be at the expense of the orderer.

§ 5 Default of Delivery and Default of Acceptance

(1) Our delivery obligation is at all times subject to timely and orderly receipt of the goods from our own suppliers. This does not apply if the defective, delayed or missing shipment by our suppliers is attributable to us.

(2) Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, interruptions of business, strikes, lock-outs, acts of public authorities, subsequent cease of export or import opportunities and our reservation of timely supply from our own suppliers in accordance with subsection (1) above relieve us, for their duration and in accordance with their impact, from the duty to comply with any agreed time for delivery and unloading. They entitle us to also withdraw from the agreement which does not result in any compensation or other claims of the orderer. If such inability to supply persists for more than one consecutive month, the orderer may, after having set a reasonable

period of time, withdraw from that part of the contract which has not yet been fulfilled, which does not result in any compensation or other claims of the orderer. To the extent reasonably possible we will inform the orderer without undue delay of the likely duration of the impediment to delivery and when it will likely be passed and will indicate a new delivery period reasonable under the circumstances.

(3) If any agreed time of delivery or unloading is exceeded and there is no incident referred to in subsection (2) above, then the orderer must specify to us a reasonable cure period. The cure period is a minimum of two weeks. If we fail to meet such cure period also, then the orderer has the right to rescind the agreement but has no right to seek compensation for breach of contract or default unless in cases of willful misconduct or gross negligence on our part. If the default in delivery is due to gross negligence or a negligent or grossly negligent breach of a material contractual duty, our liability is limited to the foreseeable damage typical for the contract. If the default in delivery is due to ordinary negligence and the orderer proves a damage caused by such default, we are liable, by way of lump-sum compensation, for every full week of the delay in an amount of 0.5 % of the respective value of the delayed goods, however, not exceeding a total of 5 % of such value. If our representatives or agents are to blame, this blame is to be attributed to us.

(4) If the underlying purchase agreement is a fixed transaction within the meaning of Section 286 para. 2 No. 4 of the German Civil Code or of Section 376 of the German Commercial Code, or if the orderer is entitled to assert that continuing to have the contract fulfilled has ceased to be in its interests as a result of a default in delivery for which we are to blame, then we are liable in accordance with the law.

(5) If the orderer is in default of acceptance or infringes its duties to cooperate, we are entitled to claim compensation for the damages resulting therefrom, including necessary additional expenditures. Further claims or rights are reserved.

§ 6 Obligation to Inspection and Objection

(1) Upon delivery at the agreed destination or (in the event of self-supply) upon taking possession, the orderer must immediately

- a) check quantities, weight and packaging and record any objections thereto on the delivery note or consignment note; and
- b) conduct a quality check at least representatively on a spot check basis and, for such purpose, open the packaging (cartons, bags, tins, foils etc.) and check its apparent condition.

(2) In case of a notice of defect the orderer must comply with the following procedures and deadlines:

- a) The notification must be made without undue delay. In case of apparent defects such notification is deemed to be effected without undue delay if it is received by us no later than the expiry of the second working day following the day of unloading. In the event of an objection to a hidden defect which, despite a first inspection in accordance with subsection (1) above, has remained undiscovered, the notification must be received by us by the expiry of the second working day following the day on which the defect has been discovered.
- b) The notice must be received by us in writing or fax and must be detailed to be legally effective. An verbal notice or notice by telephone is not sufficient. Any notice to commercial agents or sales representatives is invalid. The notice must unambiguously specify the kind and scope of the alleged defect.
- c) The orderer agrees to make available for inspection the objected goods at the place of inspection; such inspection may be done by us, our suppliers or any expert designated by us.

(3) Objections with regard to quantities, weight or packaging of the goods are excluded unless a note has been placed on the delivery note

or a consignment note or a receipt of acknowledgement in accordance with subparagraph (1) (a) above.

(4) Any good for which objections have not been raised in accordance with the procedures and deadlines set out above are regarded as approved and accepted and free of defects.

§ 7 Warranty

(1) We warrant the flawless condition of the goods delivered by us in accordance with the order confirmation. Discrepancies within tolerances normal within production and the trade are permitted at any time. Otherwise, the quality of the goods shall be in accordance with customary trade practice, unless otherwise agreed in writing.

(2) Our warranty duty is subject to compliance by the orderer proper in form and time with its obligations to inspect and object.

(3) The condition of the goods at the point in time at which risk passes determines whether they are in accordance with the contract.

(4) The orderer bears responsibility for proper usage with regard to the intended application, taking into account compliance with any applicable safety regulations, the selection of additional materials and mounting devices, the necessary testing procedures, for verifying that the technical supply information and the technical documents and drawings supplied to us are complete and accurate as well as for the construction, even in those instances in which we suggest modifications which are approved by the orderer.

(5) Amendments or additions to the services or items delivered carried out by the orderer or through third parties cancel our warranty unless the orderer proves that such amendment or addition did not cause the defect. We are also not responsible for defects caused by improper use or improper operation conditions or the use of unsuitable means of operation by the orderer or by its customers.

(6) If a defect becomes apparent after installation has been carried out by parties other than ourselves, we are only liable for defects if the installation work for the good sold by us has been carried out competently and professionally. The orderer has to prove that the assembly work and / or installation work has been carried out competently and professionally. We are not liable for defects arising as a result of improper or unsuitable use, faulty assembly and/or start-up and normal wear and tear.

(7) Insofar as there is a defect, we have only the duty to render subsequent fulfillment, at our sole discretion either by rectifying the defect or by supplying a new defect-free good.

(8) In the event of failure of subsequent fulfillment, the orderer is, at its sole discretion, entitled to withdraw from the contract or to demand a reduction in the purchase price.

(9) In the event of subsequent fulfillment by way of rectification of the defect we are obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transportation and travelling expenses, and cost of labor and material.

(10) In the event of subsequent fulfillment by way of supply of a new defect-free good we are obliged to bear the cost for packaging and for transport to the original destination, but no more than the cost of transport to the orderer's principal place of business at the time of the original order. This applies correspondingly to the cost of retrieval of the defect goods, also in the event of the orderer's withdrawal from the contract after subsequent fulfillment has failed. We are liable for costs for demounting only if we are accountable at least for ordinary negligence. We are not liable for costs for mounting.

(11) We have the right to refuse subsequent fulfillment for as long as the orderer does not fulfill its payment obligations with regard to the defect-free part of the service rendered by us.

(12) In the event that there are defects, the orderer is not entitled to a right of retention unless the consignment is obviously defective or the

orderer is obviously entitled to a right of refusal to accept the work. In such a case the orderer is only entitled to a right of retention provided that the sum retained is in a reasonable proportion to the defects and the probable costs of subsequent fulfillment (in particular the costs of rectifying the defect). The orderer is not entitled to assert claims and rights on account of the defects if it has not effected payments due and the amount due is in a reasonable proportion to the value of the consignment and / or work affected by defects.

(13) The limitation period for warranty claims is one year as from the time of passage of risk. This does not apply in the case of Section 438 para. 1 No. 2 lit. b) of the German Civil Code (things for buildings). Supplementary performance does not lead to a restart of the limitation period.

§ 8 Liability; Limitation of Liability

(1) Any liability for damages not relating to the purchased good itself, to compensation claims for lost profit, claims for damages based on fault when entering into the contract, on account of other breaches of duty, or on account of tortious compensation claims for property damage in accordance with Section 823 of the German Civil Code, is ruled out, unless in cases of willful misconduct or gross negligence on our part.

(2) We are liable for damages such as are typical for the contract which are incurred by the orderer as a result of a breach of a material contractual duty on our part even if we are accountable only for ordinary negligence. A material contractual duty within the meaning of the aforesaid is a duty whose fulfillment is a prerequisite to proper execution of the contract and on the adherence to which the orderer regularly relies and may rely as a matter of course. In this event our liability is limited to the foreseeable damage typical for the contract. Any further liability for ordinary negligence is excluded.

(3) The liability for culpable fatal or bodily injury or health impairment remains unaffected. The same applies for the mandatory liability under the German Product Liability Act.

(4) Insofar as we are not liable for compensation for damages or our liability is limited, this also applies with regard to the personal liability of our employees, representatives and agents.

(5) Compensation claims against us which are unrelated to a defect, or which are not based on a contractual guaranty of quality furnished by us, or on loss of life, personal injury or physical harm, or the German Product Liability Act, or on malicious or willful intent, or gross negligence, are limited in time to one year from the conclusion of the contract.

§ 9 Retention of Title

(1) We retain full title of the goods that have been delivered until the orderer has discharged all claims arising from the business relationship including any account balance.

(2) The orderer has the right to dispose of the goods delivered by us within the ordinary course of business. The authority granted hereunder ceases in the cases referred to in § 3 (9) above. Moreover, we may withdraw the sales authority of the orderer through written notice if it is in breach of any obligation owed to us and in particular is in payment default or if we become aware of other incidents that give rise to serious doubts about its creditworthiness.

(3) The orderer's right to process the goods delivered is also subject to the limitations set out in subsection (2) above. The orderer does not acquire title to the fully or partly processed goods; the processing is free of charge for our benefit as manufacturer in the sense of Section 950 of the German Civil Code. If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between us and the orderer that we acquire title upon processing of the goods, that we accept such transfer of title, and that the orderer remains custodian of the goods free of charge.

(4) If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are third-party property, then we acquire co-title in the new goods or the mixed stock. The proportion of title follows from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the other goods.

(5) Goods in which we acquire sole or co-title in accordance with subsections (3) and (4), above, are, the same as with regard to the goods delivered under retention of title according to subsection (1) above, regarded as goods delivered under retention of title for the purposes of the following paragraphs.

(6) The orderer hereby assigns to us all claims arising from the resale of the goods delivered under retention of title. Such claims also include claims against the bank which, within the scope of such sale, has issued or confirmed a letter of credit for the benefit of the orderer (and reseller). We hereby accept such assignment. If the goods delivered under retention of title are a processed good or a mixed stock, where, in addition to the goods delivered by us, only such goods exist that are either the orderer's property or a third party property as a result of a (simple) retention of title, then the orderer assigns all of the claim arising from the resale. In the other case, *i.e.*, in the event of a conflict between pre-assignment claims by other suppliers, we are entitled to receive any resale proceeds on a pro rata basis which are determined in proportion to the invoice value of our goods and the other processed or mixed goods.

(7) Where our claims are undoubtedly secured through the assignment and retention by more than 120 %, any surplus of receivables and/or good delivered under retention of title will, upon demand of the orderer, be released in accordance with our choice.

(8) The orderer is authorized to collect any receivables arising from the resale of goods. Such authority ceases to exist in the event that there is no longer an ordinary course of business as defined in § 3 (9) above. Moreover, we may withdraw the orderer's authority to collect, if it is in breach of any obligation owed to us and in particular in payment default or if we become aware of other incidents that give rise to serious doubts about its creditworthiness. If the above authority ceases to exist or is withdrawn by us, then the orderer must upon our demand immediately specify to us its debtors in the claims assigned and provide us with all information and documentation necessary for collection.

(9) In the event of any third party action against our goods delivered under retention of title or any receivables assigned to us, the orderer must notify such party of our property/our right and immediately inform us about such action. The orderer has to bear the costs of any intervention.

(10) If the orderer is in breach of contract, in particular in payment default, then it must, upon our demand, immediately return to us all goods delivered under retention of title and assign to us any repossession claims against any third party in conjunction with such goods. Any repossession or enforcement proceedings with regard to the goods delivered under retention of title will not be regarded as a rescission of this Agreement.

(11) In the cases referred to in § 3 (9) above, we may require the orderer to inform us about the claims arising from the resale that have been assigned to us in accordance with § 9 (6) above including its debtors. Following such information, we have the right to disclose the assignment as we deem appropriate.

§ 10 Transfer of Risk, Packing

(1) Risk passes to orderer "ex works" (Incoterms 2000). If services are rendered which are to bring about a specific result, risk passes to the orderer upon acceptance.

(2) We have no duty to take back empty packaging. The orderer agrees to return to us upon our request empties (Euro-boxes, pallets, Euro-hooks, etc.) of the same type, amount and value that it has received for

the purposes of delivery. If the orderer is unable to return the same at the delivery of our goods, then it must without undue delay ensure a settlement of the account of empties (duty to deliver). If the orderer is in default of the duty to settle the account of empties, then we may, after a reasonable cure period has been specified, refuse acceptance and demand compensation from the orderer.

§ 11 Intellectual Property and Software; Confidentiality

(1) We reserve the proprietary and intellectual property rights to diagrams, drawings, calculations and other documents. This also applies for those written documents which have been designated as being "confidential." The orderer must obtain our express written consent before passing them on to third parties.

(2) If we make available to the orderer a record of formulas for the calculation of dimensioning, this is done as a free-of charge, no-warranty service that can be revoked at any time.

(3) The orderer agrees to keep all confidential information which becomes known to him during or in connection with the performance of the contract confidential and only to use such information for the contractually agreed purposes. Confidential information for the purpose of this provision means information, documents, details and data that is marked as such or is to be seen as confidential because of its nature.

§ 12 Final Provisions

(1) Place of performance is our principal place of business, Bodnegg-Rotheidlen, unless there is something to the contrary in our order confirmation.

(2) We have the right to engage subcontractors to provide the services under the agreement.

(3) The orderer may not assign any claims arising from transactions with us without our prior express written consent.

(4) The substantive laws of the Federal Republic of Germany apply, without reference to adverse conflict of laws provisions and to international laws on sales and to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(5) Place of venue for all disputes arising from the contractual relationship is, except for any exclusive venue, Bodnegg-Rotheidlen, provided that the orderer is a merchant, legal person under public law or public law separate estate. We may elect to take legal action against the orderer at its general venue.

(6) In case of discrepancies between foreign language versions of these General terms and Conditions of Sale the German version shall prevail.

(7) We are entitled to store data of the orderer in accordance with the German Data Protection Act.

(8) Should some parts of the contract with the orderer or of these General Terms and Conditions of Sale be or become ineffective, the rest of it remains unaffected.

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