

## **General Terms of Delivery and Payment (Sales) of Kappa optronics GmbH**

### **§ 1 Scope of Application**

(1) The following Terms of Delivery and Payment as in effect at the respective time shall be applicable exclusively to any and all supply contracts, agreements and offers of Kappa optronics GmbH even if in future instances we should not make express reference to the applicability thereof. By placing an order for or accepting delivery of any goods or services the Customer shall accept the applicability and effectiveness of these Terms.

(2) These Terms of Delivery and Payment shall most particularly be applicable in the event that the Customer communicates, or submits in written form, its own terms and conditions, which may vary from ours. Such Customer's terms shall not become part of the contract unless expressly agreed in writing by us or any authorized person acting on our behalf.

(3) Any modifications of or amendments to these Terms shall be agreed in writing. This shall also apply to the written form requirement itself.

### **§ 2 Conclusion of Contract**

(1) Our offers are non-binding and subject to change. Any purchase order placed by the Customer shall be deemed to be a binding purchase contract offer. In the absence of any indication to the contrary stated in the order placement we shall be entitled to accept such order within three weeks from the receipt thereof. We can also declare our acceptance of an order by sending the Ordered Product.

(2) The Customer shall be under an obligation to check our order confirmation with due care. The Customer shall promptly inform us of any deviation from the Customer's purchase order.

(3) If our order confirmation deviates from an oral purchase order placement or other agreement made orally, the contents of our order confirmation shall be deemed to have been contractually agreed unless written objection is filed within five working days.

### **§ 3 Prices / Payment / Minimum Order Value / Processing Fee**

(1) Agreed prices are net exclusive of statutory German VAT or comparable non-German tax, and exclusive of freight and packaging costs. Unless otherwise agreed in writing, prices are ex works. Invoicing and payment is in euro currency. Any additional costs incurred due to payment in foreign currency shall be borne by the Customer.

(2) Any customs duties, fees, taxes and other public charges due on account of the supply to the Customer shall be borne by the Customer.

(3) Unless otherwise agreed in writing, any packaging material shall pass into the Customer's property upon receipt of the Ordered Product. This applies most particularly to secondary packaging, transport and product packaging. We do not take back any transport packaging or any other packaging pursuant to the provisions of the German Packaging Ordinance [Verpackungsverordnung].

(4) Any circumstances arising four months after contract conclusion which impact the bases of our calculations in a material and unpredictable way and which are beyond our control shall justify us to adjust the agreed prices by an amount exclusively accounted for by these circumstances. This provision applies most particularly to legislative changes, dispositions by governmental agencies, etcetera. The price so adjusted shall be calculated on the same basis as the price originally agreed and shall not serve to increase the profit.

(5) Any amounts invoiced are due for payment no later than 30 days after receipt of the invoice. Payment made within 10 days after invoice date shall authorize the Customer to deduct a 2% discount. The value date stated on our business account shall be relevant for the verification of due date compliance.

(6) The Customer shall pay default interest in the amount of 8 percentage points above the base lending rate. We expressly reserve the right to claim additional damages for default.

(7) Cheques shall only be accepted on account of performance; likewise, bills of exchange shall only be accepted on account of performance and provided that such type of payment is based on a specific agreement.

(8) In the event of any default in payment we shall be entitled to accelerate all Customer's outstanding debts. The same shall apply in the presence of any circumstances suggesting that the Customer's creditworthiness has been materially impaired or in the presence of justified doubts about the Customer's creditworthiness (including futile seizure, non-collection of bills of exchange or cheques, or in the presence of a petition for the institution of composition or insolvency proceedings).

(9) The Customer shall not have any set-off rights against us. This shall not apply to any claims against us that are undisputed, recognised by us, or which have been declared legally effective.

(10) The Customer can exercise the right of retention or any other right to withhold payment only to the extent that such right relates to claims arising from the respective order for which we claim payment by the Customer.

(11) The minimum order value shall amount to 500,00 Euro net per purchase order. For purchase orders of a value of less than Euro 500,00, a processing fee of Euro 50,00 shall be charged to the Customer if the Customer is not a consumer within the meaning of Article 13 of the German Civil Code [BGB].

#### **§ 4 Term for Delivery**

(1) The delivery periods indicated in our order confirmation shall apply. Unless otherwise agreed in writing, the indicated delivery periods are understood as a guideline only and shall be non-binding.

(2) An agreed Term for Delivery is deemed to be met if upon expiration of such term the Ordered Product has left our warehouse, or, if the Product is shipped ex works, has left the manufacturer's factory or readiness for shipment has been notified.

(3) Failing any actions to be performed or preconditions to be met by the Customer in order for us to provide our deliveries and services, the Term for Delivery shall be extended by the respective period of time. Should this happen, a new date for the delivery shall be agreed.

(4) Should we be unable to meet our contractual obligations due to any circumstances attributable to force majeure which were not foreseeable at the time of contract conclusion – such as labour disputes, strikes, lock-outs, unpredictable business disruption or inevitable raw material shortages and other circumstances for which we cannot be held responsible such as unusually long processing times needed by the authorities – we shall be released from our contractual obligations as long as these circumstances persist. Any agreed terms for the delivery of the Product shall be extended by the duration of such disturbance. The Customer shall have no right to claim damages for any circumstances of the type described above. Likewise, the Customer's contractual obligations shall remain suspended as long as the disturbance continues. We will promptly inform the Customer about the onset and end of any circumstances of force majeure in terms of this provision, and no later than six months after the end of the disturbance will we furnish evidence that we were in no way at fault. The Parties' right to withdraw from the contract in accordance with the legal provisions shall remain unaffected.

(5) Sub-section (4) shall not apply if we are found at fault as regards any contributory negligence, precautionary measures or damage control.

(6) If our performance is delayed due to any circumstances attributable to the Customer, the latter shall be liable to pay compensation for any additional costs that we may incur.

(7) If the Customer culpably refuses acceptance of the Product, the Customer shall be liable to pay damages to us in the amount of 0.1% per working day of the net Order volume total. The Customer's total liability to pay damages shall be limited to 10% of the net Order volume total. We expressly reserve the right to claim damages in excess thereof. The Customer shall be expressly authorized to furnish evidence that the actual damage caused is lower than what has been claimed.

(8) If after contract conclusion the Customer specifies any place for delivery other than the place originally agreed, then the Customer shall bear the additional costs attributable to such change, including (but not limited to) additional transport and warehousing costs.

#### **§ 5 Passing of Risk / Shipment**

(1) The risk of accidental loss or accidental impairment shall pass to the Customer as soon as the Product has been handed over to the person entrusted with shipping.

(2) Upon request by the Customer we shall insure the Product against theft, breakage, damage in transit, fire and water damage and any other insurable risks. The respective costs shall be borne by the Customer.

(3) Partial deliveries shall be allowed on condition that such partial delivery can be used by the Customer for the intended purpose and the supply of the remaining Products is guaranteed, and also provided that such partial delivery does not entail any substantial extra costs for the Customer.

## **§ 6 Retention of Title**

(1) We shall retain the title to the supplied Product up to the date of payment of any and all receivables due to us by the Customer on account of the entire business relation with the latter. The retention of title shall include the recognised account balance to the extent we book receivables due to us by the Customer in our current account.

(2) In the event of breach of contract by the Customer, especially in case of default of payment, we shall be authorised to take the supplied Product back; the Customer shall be under an obligation to surrender the supplied Product. Unless expressly stated by us in writing, our taking-back shall not constitute any withdrawal from the contract unless the provisions of the German Civil Code [BGB] on consumer credits are applicable. Any pledging of the Product shall consistently constitute the withdrawal from the contract. The Customer shall be under an obligation to inform us in writing without undue delay about any pledging or other encumbrance of the supplied Product by any third party in order to enable us to file suit pursuant to Article 771 of the German Code of Civil Procedure [ZPO]. If we cannot recover our judicial and extra-judicial costs of the law suit from such third party pursuant to Article 771 of the German Code of Civil Procedure [ZPO], then the Customer shall be liable for the loss sustained by us.

(3) The Customer shall be authorised to sell the supplied Product in the ordinary course of business; at this point the Customer already assigns to us any and all receivables in the amount of the invoice total (including German VAT or respective non-German tax) which are due to Customer by the Customer's customer or any third party on account of the sale of the Product of which the title has been retained, and to do so irrespective of whether or not the supplied Product was sold before or after the agreement. The Customer shall be authorised to collect such receivables despite the assignment thereof. We shall be authorised to collect such receivables ourselves; however, we undertake and promise not to collect any receivables as long as the Customer meets its payment obligations and is not in default. Should the Customer be defaulting, we shall be authorised to request the Customer to disclose the receivables that have been assigned as well as the respective debtors, to furnish the details and the respective documents required for collecting the money, and to inform the creditors (third parties) about the assignment.

(4) If the supplied Product is firmly connected with or integrated into other products that are not owned by us, we shall be deemed to be co-owners of the new item, with the ratio of such joint ownership reflecting the value of the supplied Product as percentage of the new item at the time the connection or integration was made. If the connection or integration is such that the Customer's product constitutes the principal component, it is being understood that the Customer shall transfer co-ownership to us on a pro rata basis.

(5) The Customer shall hold the exclusively or jointly owned product in custody on behalf of us. To collateralise the receivables due to us by the Customer, the latter shall also assign to us any receivables which arise to the Customer by a third party as a result of the connection or combination of the Product with a plot of land.

(6) The Customer shall be entitled to ask for the release of the retained title once the assigned collateral is in excess of 110% of the realisable value. Likewise, the Customer shall be entitled to ask for the release of the retained title if the estimated value of the goods assigned by way of security exceeds 150% of the collateralized receivables.

## **§ 7 Property Rights**

(1) We reserve our ownership rights and copyrights in any and all information, images, drawings, calculations and other documents provided by us to the Customer. The respective information and/or documents shall not be reproduced or put at the disposal of any third party unless our express approval has been given.

(2) If we manufacture a Product according to the specifications stipulated by the Customer, the Customer shall be responsible for compliance with any third party's industrial property rights and copyrights. Should such third party assert any claims against us in this respect, the Customer shall, upon request, indemnify us from any claims and/or reimburse any costs incurred.

(3) Any knowledge gained and technical data generated by us while tailoring a Product to the Customer's needs shall at all times remain our property, and we shall be entitled to use such knowledge and data in relation to third parties even if our Customer is charged the costs thereof on a pro rata basis.

## **§ 8 Confidentiality**

(1) The Customer shall be under an obligation to keep strictly confidential any and all information and documents that we have put at the Customer's disposal or that has been disclosed to the latter in connection with this contractual relationship. No information from or about us shall be made available to any third party or otherwise disclosed unless written approval has previously been obtained from us.

(2) This confidentiality agreement shall not apply if the respective information is obviously in the public domain or has subsequently been disclosed by a third party without contravening this confidentiality agreement. Should the Customer be under an obligation, pursuant to any legal provisions or official ordinance or court order, to disclose any information as specified in sub-section (1), then the Customer shall notify us in writing prior to such disclosure. Should prior notification be impossible, the Customer shall subsequently notify us without undue delay.

(3) This confidentiality agreement shall remain in effect beyond the termination of the contractual relationship.

#### **§ 9 Customer's Rights in the Presence of Defects**

(1) The legal provisions in effect shall be applicable to the Customer's rights in the presence of defects in quality and defects in title (including wrong deliveries and short deliveries) unless otherwise provided herein below. This is without prejudice to the specific legal provisions applicable to the final delivery of the Product to a consumer (recourse against the supplier pursuant to Articles 478, 479 of the German Civil Code [BGB]).

(2) We shall not assume any guarantee for the quality or durability of a Product or any other guarantee unless we have given a binding written promise, designated as guarantee, in the individual instance. In the presence of a negligible impairment of the value and/or suitability of the Product the Customer shall have no right to warranty claims (within the terms of these Terms of Delivery and Payment, warranty shall be defined as "Gewährleistung" pursuant to the legal provisions of the German Civil Code [BGB]).

(3) The Customer shall be under an obligation to inspect the Product without undue delay upon delivery and to notify in writing any defects detected. Notices of defect shall be excluded unless they are filed prior to the expiration of five (5) workdays after Product delivery. Hidden defects shall be notified in writing to us without undue delay upon detection but no later than three (3) workdays after detection. Such term shall be deemed met if communication is by fax, with the original notification following without undue delay afterwards. Notification of the defect is to be addressed directly and exclusively to us. The Customer is obliged to keep the defective Product, or the respective parts thereof, unmodified available for inspection and review by us.

(4) If a defect complaint is justified and has been notified in due time, we shall at our discretion either remedy the defect or supply a Product that is free from defects. We shall have the right to make at least three attempts to supply a new Product that is free from defects.

(5) We shall not be held responsible for the proper functioning of the supplied Product if such functionality is attributable to the specifications laid down by the Customer.

(6) The Customer shall observe the instructions provided by us for storing the Product in order to keep the Product in the best possible condition. In the event that non-compliance with our storage instructions should cause damage to the supplied Product, the Customer shall have no right to assert any warranty claims or claims for damages.

(7) The effects of wear and tear arising within the scope of proper storage and/or proper use shall not constitute a Product defect and accordingly shall not give rise to any warranty claims.

(8) Any parts replaced by us within the scope of remedial performance shall become our property.

(9) The Customer shall give us reasonable and cost-free support that we may need to remedy a Product defect. Upon default by the Customer in that respect we shall not accept any further liability for any additional damage occasioned after the default date on account of such default.

(10) Claims for damages are subject to the general limitations of liability pursuant to § 10 of these Terms.

(11) The warranty period for defects shall be 12 months from the date of delivery of the Product. This shall not apply if we are liable for damages pursuant to § 10 sub-section (5) of the following general liability provision.

#### **§ 10 Non-Liability Clause / Limitation of Liability**

(1) Subject to the provisions of sub-sections (2) to (6) below we shall only be liable, for whatever legal reasons, for any damage caused by intentional or grossly negligent conduct on our part.

(2) We shall only accept liability for any other conduct if we have culpably violated an obligation whose performance is essential for the attainment of the contractual purpose, or if the performance of such obligation is the very precondition for the performance of the contract and the Customer regularly relies, or may rely, on the compliance by us with such obligation (cardinal obligation within the meaning of the German Civil Code [BGB]). Should this case arise, our liability shall be limited to such damage that has to be typically expected within the context of the contractual relationship.

(3) Our liability for damage arising from injuries to the physical integrity, life or health of an individual, or arising from the assumption of a guarantee or a procurement risk as well as our liability pursuant to the legal provisions of the German Product Liability Act [Produkthaftungsgesetz] shall remain unaffected.

(4) We shall not accept any liability for the violation of third party protected rights if we accept outside drawings for the manufacture of a Product.

(5) In the event that we should be acting by intent or gross negligence as well as in the presence of injuries to the physical integrity, life or health of an individual, the statutory periods of limitation shall apply instead of the warranty period for defects specified in § 9 sub-section (11) above.

(6) To the extent that, pursuant to the above sub-sections (1) through (5), our liability is precluded or limited, this shall also apply to our employees if a Customer should assert directly any liability claims against our employees.

#### **§ 11 Withdrawal from Contract**

(1) We shall have the right to withdraw from a contract if, after contract conclusion, essential circumstances affecting the performance of the contract have developed in a way that is beyond our control and that would make it impossible or unreasonably difficult for us to perform the contract (e.g. sub-contractors' non-performance, or performance materially hampered, due to reasons not attributable to us).

(2) We shall also have the right to withdraw from a contract if the Customer materially fails to comply with its contractual obligations, including (but not limited to) the Customer's duty to exercise due care in handling the Product supplied under retention of title.

(3) We shall also have the right to withdraw from a contract if the Customer makes incorrect representations as regards the Customer's creditworthiness. This provision shall apply most particularly in the event that the Customer is objectively not creditworthy and, accordingly, our claims for payment appear jeopardized. The same shall apply if the Customer has submitted an affidavit.

(4) Subject to the aforesaid, our right and the Customer's right to withdraw from a contract shall be governed by the statutory provisions.

#### **§ 12 Other Provisions**

(1) The contractual relationship between the Parties shall be governed exclusively by German law. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG), dated 11 April 1980, shall not apply.

(2) The place of jurisdiction for any and all disputes arising from or in connection with the contractual relationship, including (but not limited to) its performance and its effectiveness, shall be Göttingen, Germany. Additionally, we shall be entitled to sue the Customer at the Customer's general place of jurisdiction. Should that situation arise, the Customer shall be under an obligation to reimburse our legal expenses and the cost of enforcement, including the cost of retaining lawyers and applicable fees, even if such expenses and fees are not subject to reimbursement pursuant to the provisions of the respective local law.

(3) Moreover, it is hereby understood by and between the Parties that if the Customer relocates its permanent or habitual residence to a place that is not within the jurisdiction of the German Code of Civil Procedure [ZPO], or if the Customer's permanent or habitual residence is unknown at the time an action is brought, the place of jurisdiction shall also be Göttingen, Germany.

(4) The place of performance for any and all contractual claims shall be Gleichen, Germany.

(5) Should any of the provisions of these General Terms of Delivery and Payment be or become invalid, or should parts thereof be or become invalid, this shall not affect the validity of the remaining provisions hereof. The Parties shall replace the invalid provision by such valid provision which best meets the economic and business intent of the replaced provision. The same shall apply in the event of any omission