

General Terms and Conditions of KRAIBURG Austria GmbH & Co. KG

A. Introduction

1. These terms and conditions shall apply to any and all our business relationships, including future relationships. Deviating terms and conditions of our contractual partners shall only apply if acknowledged expressly in writing.
2. Individual Contracts (including additional agreements or amendments) have precedence over these terms and conditions. Additional or subsequent verbal agreements are valid only if acknowledged by a duly authorised officer of Kraiburg by e-mail or in writing.
3. Where the following terms and conditions do not provide for any other regulation of the matter, the provisions of Austrian Civil Law shall apply to all Contracts.
4. Definitions:
 1. Austrian Civil Law shall mean Austrian Civil Code (ABGB), Austrian Company Code (UGB) and any other Austrian law applicable to contractual relationships between private parties or companies.
 2. Confidential Information shall mean all business and trade secrets, including but not limited to, technical data, customer data, purchasing terms and contracts, data regarding employees, suppliers and distribution partners, know-how, product ideas, data concerning research, development, production, technology, finances, cost structures, marketing activities and, if applicable, data.
 3. Contract shall mean the contract concluded between Kraiburg and any Customer, including these terms and conditions.
 4. Customer shall mean the company or individual person indicated as the contractual partner of Kraiburg in the Contract.
 5. Kraiburg shall mean Kraiburg Austria GmbH & Co. KG, Geretsberg, Webersdorf 11, A-5132 Geretsberg/Oberösterreich, Company Register-Nr: FN 18036z, hereinafter also referred to as Kraiburg or "we".

B. Conclusion of the Contract and Non-Disclosure

1. Unless otherwise stated, Kraiburg's offers are binding for a period of four (4) weeks from the date stated on the offer. Offers denominated as non-binding are without commitment. In the case of non-binding offers a Contract will only be concluded if Kraiburg accepts the Customer's purchase order.
2. Deviations in our acceptance of the Customer's purchase order in line with the industry standards remain reserved and do not affect the coming into force of the Contract.
3. Non-Disclosure: The Customer shall keep secret Confidential Information and will take any and all precautions to prevent the unauthorised disclosure of Confidential Information and to exclude any unauthorised third party from accessing Confidential Information. The Customer shall not disclose Confidential Information to third parties without the prior written consent of Kraiburg. The Customer shall disclose Confidential Information solely on a strict "need to know"-basis and only to those of its employees who require it for the fulfilment of the Contract. Confidential information shall not be used except for the purpose of the Contract. The obligations of strict confidentiality, non-disclosure and non-use set forth herein shall continue for a period of five (5) years from the last delivery Kraiburg makes to the Customer or for a period of five (5) years from the date stated on the offer.

C. Terms of Delivery

1. In case we are not able to comply with delivery dates stipulated in the Contract for reasons beyond our control, e.g. delays in supply chain, force majeure, we will inform the Customer and propose a reasonable new period for delivery. In case we are not able to comply within the proposed new period for delivery, either party may terminate the Contract in whole, or in part; such termination requires written form or an e-mail signed by a duly authorised Kraiburg officer or employee; prepayments, if any, will be returned.
2. In case we are not able to comply with delivery dates stipulated in the Contract for reasons under our control we will inform the Customer and propose a reasonable new period for delivery. In case we are not able to comply within the proposed new period for delivery, Customer may terminate the Contract in whole, or in part. Damages or indemnity may be claimed only in accordance with section G below, all other claims are excluded.
3. Unless otherwise agreed our deliveries are FCA Geretsberg, Webersdorf 11 (place of delivery), in accordance with the ICC INCOTERMS 2010, cheapest mode of shipment and packing included. Additional cost generated by the Customer's special requests for shipment or packing are to be borne by the Customer.
4. The Customer is responsible to take delivery of the goods on the agreed date. In case of a delayed take over by the Customer we may store the goods to be delivered at cost and risk of the Customer. Furthermore we reserve the right to sell these goods to third parties.
5. Deliverables are separable, partial shipments and invoices for partial shipments are permitted. Deliveries are deemed to be accepted at the latest seven (7) days from being made available FCA Geretsberg, Webersdorf 11.

D. Prices and Terms of Payment

1. All prices are determined in the current valid Kraiburg pricelist, which may be changed quarterly at Kraiburg's sole discretion. All prices are quoted FCA Geretsberg, Webersdorf 11, INCOTERMS 2010 and are exclusive of VAT and any other applicable taxes, all of which are the responsibility of the Customer. All payments are due within fourteen (14) days of the date of invoice.
2. The Customer may only use counter claims for off-setting and right of retention if these claims have been declared by court or expressly acknowledged by Kraiburg.
3. In case Customer's payment is endangered (e.g. by the Customer's poor financial circumstances; in case of a bankruptcy filing against the Customer; in case the Customer does not provide payments or services as agreed, or in time; the Customer declares to refuse to provide its payments or services; or the Customer is in delay with previous payments or services), Kraiburg reserves the right to withhold deliveries and if applicable after setting a period of grace - may terminate the Contract and/or may request that the Customer return goods that have already been delivered. Furthermore we reserve the right to reduce the terms of payment with immediate effect or as the case may be to make deliveries only against cash in advance.

4. In case of delayed payment the legal interest rate applied shall be 9.2 percentage points above the prime lending rate published by the Austrian National Bank. In case of delayed payment we are entitled to claim compensation of forty (40) Euros from the Customer to cover the operating costs. We reserve the right to claim compensation for higher operating costs.
5. If Buyer fails to meet the terms of payment or any other obligation arising from this or other legal transactions, we may without prejudice to our other rights immediately call in debts arisen from this or any other legal transactions. This applies also to deferred claims.

E. Reservation of Title

1. Kraiburg retains title to all goods delivered until receipt of all amounts invoiced including interest and charges.
2. Within its ordinary course of business the Customer may process, combine or resell all goods delivered. In this case the following shall apply: If the retained goods have been processed, integrated or combined with another product, the retained title shall be extended to all such goods manufactured by the Customer, and Kraiburg shall be deemed manufacturer. In case third parties ownership rights remain, Kraiburg acquires co-ownership in proportion to the value of the goods. Additionally such manufactured goods shall be deemed retained goods. If the retained goods are sold, the Customer herewith assigns to Kraiburg all claims owed by the Customer up to the value of the retained goods. Kraiburg accepts this assignment. In addition to Kraiburg the Customer is entitled to collect these debts.

F. Customer's Warranty

1. Kraiburg's warranty is limited to a period of twelve (12) months from acceptance in accordance with Section C5 above.
2. Product features are binding upon Kraiburg only if expressly agreed in the Contract. Kraiburg shall not bear any responsibility for marketing, public relation or advertisement statements of third parties.
3. The aforementioned warranty obligations are contingent upon the Customer giving Kraiburg immediate notice, in writing, of any infringement that has occurred and further contingent upon the Customer proving the existence of such infringement at the date of delivery to the Customer. §924 Austrian Civil Code (ABGB) will not apply. The Customer shall grant Kraiburg reasonable time to verify the asserted defect and will transfer the goods for this purpose to Kraiburg.
4. In case of warranty Kraiburg shall choose the kind of remedy (repair, replacement, price reduction or voiding of Contract) at its sole discretion.
5. Except as expressly set forth in section F.1 to F.4, above, KRAIBURG makes no representations or warranties of any kind, expressed, implied, statutory or otherwise, including, without limitation, warranties of title, merchantability, fitness for a particular purpose, noninfringement, accuracy, or the presence of errors, latent or other defects, whether or not discoverable.
6. Damages or indemnity may be claimed only in accordance with section G below, all other claims are excluded.

G. Liability

1. Kraiburg shall be liable only if the damage in question is proved to be due to intentional acts or acts of crass gross negligence.
2. In any event is Kraiburg's liability limited as follows: Kraiburg shall not assume liability in the case of indirect damages, loss of profits or revenues or other economic loss for the customer or any third party, loss of interest, savings that have not materialized, consequential damage, damage from claims of third parties and for loss of data and programmes and their restoration. Neither the customer nor any other person entity shall be entitled to recover any sum as damages, reimbursement, contribution, indemnity or otherwise in excess of the net order value paid by the customer to Kraiburg.
3. Regardless of the form of action or claims, no action or claims arising from this contract by the customer or any other person or entity may be made more than twelve (12) months from the time the customer or any other person or entity became aware of the damage.

H. Governing Law and Jurisdiction

1. Governing Law: These terms and conditions shall be construed in accordance with, and governed by, the laws of Austria. Application of the UN convention on contracts for the international sale of goods is excluded. If the Customer residency is within the European Union (EU), Switzerland, Liechtenstein, Norway, Turkey, Israel, or Tunisia, or if Austrian court decision is enforceable these terms and conditions shall fall within the exclusive jurisdiction of the competent court at Kraiburg's domicile.
2. If the Customer's residency is not within the EU or the countries mentioned in section H1 above, or if an Austrian court decision is not enforceable, these terms and conditions shall be governed by the local law of the Customer's domicile, and the UN convention on contracts for the international sale of goods shall apply. Kraiburg may also choose to refer the jurisdiction to the competent court at the Customer's domicile.
3. Partial Invalidity: If any provision of these terms and conditions is invalid or unenforceable under the applicable law, it shall not affect the validity or enforceability of the remainder of the terms and conditions, and such provision shall be reformed to the minimum extent necessary to make such provision valid and enforceable.