

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

### **1. Scope of the Terms and Provisions**

1.1 Any and all sales transactions, deliveries, services and offers made by Active Key GmbH, (hereinafter “AK”) are exclusively based upon the General Terms and Conditions of Sale and Delivery set forth herein (hereinafter “General Terms”). These General Terms shall apply to all subsequent transactions and arrangements made with AK contractual partner (hereinafter “Purchaser”), regardless of whether they are expressly agreed upon again. The General Terms shall be binding upon Purchaser at the latest upon receipt of the goods or services ordered from AK (both hereinafter the “Contractual Goods/Services”). Contradictory or conflicting general terms of Purchaser, especially general terms and conditions of purchase, shall not be binding upon AK, even if not explicitly rejected by AK or if delivery to Purchaser has been effected or services have been performed by AK in knowledge of said contradictory or conflicting terms without expressly opposing their application.

1.2 Any and all agreements or arrangements, whether oral or written, contrary to or deviating from the General Terms shall not be effective without AK explicit written confirmation. This shall also apply to the cancellation of this clause on written form itself. The parties agree that no oral agreements have been entered into. All arrangements agreed upon by AK representatives shall also require AK written confirmation.

1.3 Complementary to these General Terms, the current version of the International Commercial Terms (INCOTERMS) published by the International Chamber of Commerce shall apply as reissued from time to time. In the event of a conflict or contradiction between the INCOTERMS and these General Terms, the latter shall apply.

### **2. Offers, Conclusion of Contracts and Right to Make Changes**

2.1 All offers made by AK are not binding, in particular regarding price, quantities and delivery periods, unless they are expressly marked in writing as being binding. Amendments, changes or sub-agreements with respect to the contract require the written confirmation of AK in order to be legally valid. Electronic form shall also fulfill the contractually agreed requirement of written form.

2.2 If AK makes an offer expressly marked as binding, a contract only comes into effect if the binding offer is expressly accepted in writing by Purchaser within two (2) weeks of the date of the offer or if Purchaser accepts Goods delivered by AK pursuant to the terms of the offer. After elapse of this time period, AK shall no longer be bound by its offer. Failing such a binding offer, a contract only comes into effect upon AK written confirmation and acceptance of the Purchaser’s order, or, at the latest, upon AK delivery of the ordered Goods.

2.3 Unless expressly otherwise agreed upon in writing, AK reserves the right to make changes to the Contractual Goods/Services ordered with respect to construction, material and design, as long as such modifications are due to technical innovations or represent technical improvements. Additionally, objectively reasonable minor deviations shall be deemed accepted by Purchaser.

2.4 Neither obvious errors, spelling mistakes and errors in calculation nor any minor changes and modifications in or of AK sales materials and price lists shall entitle Purchaser to any claims based thereon. The same shall apply with regard to any technical or functional modifications and any other reasonably acceptable alterations of the data and information contained in AK advertising and sales material.

2.5 In cases where import and export licenses, authorizations for currency transactions or similar authorizations (hereinafter collectively "Authorizations") are required for the implementation of the contract, Purchaser shall make all efforts to obtain the required Authorizations in time for the fulfillment of the contract, unless expressly otherwise agreed upon in writing.

If the necessary Authorizations have not been obtained within three (3) months of the signing of the respective contract, AK may consider the contract not concluded. In such case AK shall notify Purchaser of this decision without delay.

### **3. Prices**

3.1 All of AK prices shall be net on an ex factory or ex warehouse basis excluding packaging, freight, transportation and insurance plus sales or value added tax, if applicable, unless expressly otherwise mutually agreed upon in writing. All payments of any sum required hereunder shall be in Euro, unless otherwise expressly specified by AK in writing. In any event, any and all customs duties, taxes and other ancillary costs are to be borne by Purchaser. Unless expressly otherwise mutually agreed upon in writing, the price charged by AK shall be that valid on the day of shipment of the Goods or performance of the Services respectively.

3.2 AK shall have the right to revise its pricing schedule without the consent or approval of, or prior notice to Purchaser, if the time period between the date of order confirmation and delivery exceeds six (6) weeks, the cost increase occurred after conclusion of the respective contract and influences AK calculation, or the calculation of its suppliers, such as any increase in cost of materials, wages or of collective wages.

### **4. Terms of Payment**

4.1 Unless expressly otherwise mutually agreed upon in writing, AK invoices shall be due for payment immediately upon receipt without any discounts, deductions or the like. In the event that Purchaser fails to pay any sum to AK at the latest thirty (30) days after receipt of AK invoice, the amount owed shall bear statutory interest at a rate of eight percent points (8 %) p.a. above the base interest rate as defined under Section 247 of the German Civil Code (BGB) and which is published by the German Central Bank (Bundesbank), applicable on the relevant payment date without AK being required to give further notice to Purchaser. AK shall, however, be entitled to claim additional damages caused by any late payment or default in payment of Purchaser.

4.2 Payment shall only then be deemed made when AK has full access to and use of the respective funds. Money orders, cheques, promissory notes, bills of exchange and the like shall only be accepted if expressly approved by AK in writing in advance and shall be subject to complete and unrestricted crediting to AK accounts. Processing, handling and discounting fees shall be solely borne by Purchaser. AK does not assume any responsibility or liability for presenting the foregoing documents on time. Any quantity discounts granted by AK are subject to full and correct acceptance of delivery and timely and complete payment by Purchaser and shall, in the event of any default on Purchaser's part, be debited to Purchaser's account.

4.3 If Purchaser does not pay the purchase price for the Goods or repeatedly does not meet its payment obligations on time, or if AK becomes aware of a substantial deterioration in Purchaser's financial soundness according to objective banking standards of assessment, AK shall be entitled to unilaterally revoke all previously granted payment terms and to declare all payment obligations of Purchaser immediately due and payable. The same shall apply mutatis mutandis in the event that AK has accepted checks, promissory notes, bills of exchange and the like. Additionally, AK shall be entitled to withdraw from all existing agreements with Purchaser, unless Purchaser - at AK sole choice and election - supplies an irrevocable Letter of Credit on terms determined by AK, effects pre-payment in full or supplies AK with any other collateral or security AK may specify.

4.4 All payments made by Purchaser shall be free from deduction and set-off, unless counterclaims of Purchaser are not disputed by AK or are finally assessed by a competent court. To the same extent Purchaser shall not be entitled to withhold any payment owed to AK. Purchaser hereby agrees that AK - at its sole discretion - may offset accounts receivable against accounts payable of Purchaser.

## **5. Terms and Modalities of Delivery and Right of Withdrawal**

5.1 Any delivery periods or times shall be essentially non-binding and are subject to timely and correct supply to AK, unless expressly otherwise mutually agreed in writing.

5.2 AK shall be entitled to make deliveries or perform services in part. Agreed delivery or service times are kept if the relevant Contractual Goods/Services are either expedited on time or are ready for dispatch or for performance, and Purchaser has been notified accordingly.

5.3 Periods of delivery or of service begin with the signing of the contract but, however, not (1) before receipt and clarification of all required documents and (2) official authorizations, (3) full completion of any participation and cooperation necessary on the part of Purchaser and (4) clarification of all technical issues relating to the respective delivery of Purchaser.

5.4 In any case of subsequent changes or amendments of the order made by Purchaser, the respective delivery or service period or time shall start to run anew.

5.5 If materials, components and/or Contractual Goods are purchased by AK from third parties or are manufactured on a contract work basis (hereinafter "Products"), if AK is not supplied with Products duly, properly and/or on time by such third parties and if a respective covering transaction was either not possible or not reasonably viable under consideration of economic aspects for AK, AK shall be entitled to either withdraw from the relevant contracts with Purchaser or to unilaterally reasonably prolong any agreed delivery times.

5.6 In any event where AK performance and, in particular, deliveries are substantially impaired or even become impossible due to reasons for which AK is neither responsible nor liable, such as Acts of God, governmental restrictions, fire, strike, lockouts, traffic limitations, shortages of production, energy and/or raw materials and in general all such events which might adversely affect production and/or shipment of the Contractual Goods concerned (e.g. mobilization, wars, riots, natural disasters and other unforeseeable circumstances beyond AK reasonable control), AK shall - at its sole discretion - be entitled to withdraw from the respective contract in whole or in part or to extend the delivery period or time until a reasonable time after such events have passed. The above shall be applicable mutatis mutandis to the extent that such circumstances apply to any of AK suppliers and/or sub-suppliers.

5.7 If an obstruction to AK performance under Sect. 5.5 and 5.6 hereinabove lasts longer than three (3) months, Purchaser may - after granting AK an additional reasonable respite of at least three (3) weeks - withdraw from the respective contract, however only regarding the part which has not yet been fulfilled by AK.

5.8 Where AK is to select a means of transport or organize transport of the Contractual Goods, the computation and charging of freight cost shall be based upon the weight and sizes as determined by AK and AK shall, at its sole discretion, which will not be exercised unreasonably, select the concrete carrier(s) and shipping routes. AK shall, however, neither be liable nor responsible for having failed to select the cheapest and speediest way of transportation.

5.9 AK is only bound to comply with foreign packing, weight and customs regulations if Purchaser supplies exact information about those regulations prior to the conclusion of the respective contract.

## **6. Passage of Risk**

Unless expressly otherwise agreed upon in writing, Contractual Goods shall be delivered at Purchaser's cost and risk. The risk of loss and/or deterioration shall pass to Purchaser upon delivery of the Contractual Goods to the carrier performing the shipment/ transportation, or, at the latest, upon leaving AK warehouse or factory if the parties have exceptionally expressly agreed in writing that freight costs shall be borne by AK. The foregoing shall apply mutatis mutandis in the event of deliveries in part.

## **7. Default of Acceptance**

In the event that Purchaser does not accept or refuses to accept (part) deliveries of Contractual Goods, AK shall issue a warning with a reasonable remedy period. If Purchaser does not accept the Contractual Goods within the aforementioned remedy period, AK shall be entitled to withdraw from the contract or demand compensation due to breach of contract. In the latter case AK is entitled to demand either compensation for the actual damage (including any transportation and storage costs) incurred or, alternatively, a flat compensation amounting to thirty per cent (30 %) of the net purchase price of the Contractual Goods concerned, unless Buyer can establish a lower damage.

## 8. Retention of Title

8.1 AK shall retain title to all Contractual Goods delivered to Purchaser until the respective purchase price as well as all and any claims resulting from the overall business relationship with Purchaser including all ancillary claims and charges have been fully paid. If payment is made by check, promissory note or the like, title to the Goods shall not pass to the Purchaser until all open accounts of Purchaser are settled and the respective amounts have been credited to AK accounts. To the extent that the validity of the retention of title is subject to any requirements or regulations governing form - in particular as to registration with the competent authority - according to the mandatory applicable laws of Purchaser's country, Purchaser shall fulfill these said requirements and/or regulations at its own expense in order to ensure validity of the retention of title. If securing or upholding AK retention of title is objectively not possible, Purchaser shall grant AK an equivalent security.

8.2 Without AK express prior written approval Purchaser shall not be entitled to mortgage or grant any lien to the said Contractual Goods, or to transfer these by way of security to a third party. In the event of seizure or confiscation or other intervention by a third party Purchaser shall notify AK per registered letter without delay and shall bear the costs of the measures to eliminate the encroachment, in particular in trials of intervention, if the costs cannot be collected from the opposing party. Purchaser is only entitled to sell or combine the Contractual Goods with other movable materials (e.g. in assembly or manufacture of a product) within the scope of its ordinary business. If AK title to the Contractual Goods should perish due to such processing, assembly or manufacture using the Contractual Goods, Purchaser shall procure AK (co-) ownership in the new product in relation to the worth of the so-used Contractual Goods to the new product, i.e. AK is to be granted title to the new products as security to the extent that title is lost on the Contractual Goods processed or otherwise used by Purchaser.

8.3 Purchaser shall uphold AK retention of title as far as possible and hereby assigns AK all claims it may have against third parties resulting from the sale of Contractual Goods and/or products incorporating Contractual Goods as components in the amount of the respective purchase price plus ancillary cost, accrued interest and/or expenditures, if any. AK hereby accepts such assignment. In the course of current account transactions, such retention of title and assignment of claims shall serve as security for any debit balance in AK favor. Subject to AK revocation, which will not be unreasonably made, Purchaser is entitled to collect the assigned claims to the extent and as long as Purchaser is not substantially in default with any obligation stemming from its business relationship with AK. Upon AK request Purchaser shall be obliged to notify concerned third parties of the fact of the assignment of the corresponding purchase price claims and shall further provide AK with all information and documentation AK may require to exercise its rights vis-à-vis said third parties resulting from the assignment made. AK shall be entitled to notify said third parties of the assignment once Purchaser is in default of the respective payments and to collect all outstanding claims.

8.4 In general, Purchaser shall be obliged to treat Contractual Goods which are subject to AK title with diligent care and to insure such Contractual Goods against risks like fire, water damage and theft and all other risks which are customarily subject to comprehensive general liability policies. Should Purchaser not insure the Contractual Goods, AK shall - after giving Purchaser notice and a reasonable respite - be entitled to insure the Contractual Goods at Purchaser's cost, advance the insurance premium and collect the relevant costs as part of the claims stemming from the relevant contract. Purchaser hereby assigns

AK all claims it may have against the insurance company in an insurance event to the amount of the still unpaid purchase price plus ancillary cost, accrued interest and/or expenditures, if any. AK hereby accepts such assignment.

8.5 A withdrawal of the Contractual Goods subject to AK ownership by AK from Purchaser shall not require prior withdrawal from the respective contract with Purchaser. In the event of conduct by Purchaser in violation of its contractual obligations, in particular default of payment or if out-of-court conciliatory or bankruptcy proceedings are initiated, AK shall be entitled to repossession of the Contractual Goods whose ownership remains vested with AK and, excluding any and all rights of retention, Purchaser shall be obliged to surrender the Contractual Goods. Without prejudice to the Purchaser's payment obligations AK shall be entitled to earn the best possible profit from the repossessed Contractual Goods through private sale. Further, AK shall be entitled to seek a court injunction to prevent Purchaser or third parties from selling, transferring or otherwise disposing of the Contractual Goods. All costs relating to the repossession of the Contractual Goods or to any action hereunder shall be borne by Purchaser.

## **9. Warranty**

9.1 Purchaser shall upon receipt of each shipment immediately inspect the Contractual Goods concerned and shall notify AK in writing of any alleged defect thereof without undue delay from receipt of the Contractual Goods. A compatibility check with the hardware and software used by the Purchaser has to be carried out within a period of 10 days. A warranty is excluded for defects occurring in a later point. If substantial defects in material or workmanship are of a hidden nature and consequently cannot be detected by Purchaser within the foregoing deadline upon due and diligent inspection of the Contractual Goods pursuant to Sec. 377 subsec. 3 of the German Commercial Code (HGB), such notification shall be made without undue delay from detection of any such defects. The notices shall be considered timely, if Purchaser sends such notices to AK within the above-mentioned time limits in writing. In case the above-required notices are not given in writing within the specified time limit by Purchaser to AK, the warranty for the concerned defect(s) shall be statute-barred and no warranty shall then be assumed by AK.

9.2 Notwithstanding the above, AK warranty shall expire at the latest two (2) years after delivery of the Contractual Goods. This restriction shall not apply in the case of fraud on AK part.

9.3 If Purchaser gives AK timely notice that Contractual Goods are defective and when it is established by AK that the Contractual Goods in question are truly defective, AK shall be entitled at its sole discretion and choice to either exchange the defective Goods by shipping faultless Goods to the Purchaser at AK cost, to repair the defective Goods or to credit Purchaser for said Goods based on a detailed invoice which the Purchaser is required to provide AK with and which specifies in detail the relevant purchase price.

9.4 AK shall be entitled to request return of the allegedly defective shipment in whole or in part, or otherwise disposal thereof in accordance with AK specific instructions. If a return of allegedly defective Contractual Goods is made by Purchaser, Purchaser shall send to AK the concerned Goods freight prepaid, clean and together with an exact and detailed description of the alleged defect stating all data necessary for processing of the warranty claim, such as delivery note code, customer number, etc.. If



AK confirms that the Contractual Goods are defective, the transportation costs Purchaser proves to have incurred will be reimbursed upon presentation of a detailed invoice and of the relevant proofs.

9.5 If the Contractual Goods are clearly established to be defective by AK and AK refuses repair or exchange without justification or if repair or replacement would be unreasonable to Purchaser, i.e. in case of improper delay or if 2 (two) attempts to repair or to replace the defective Goods ultimately failed, Purchaser shall then be entitled to claim a reasonable reduction of the purchase price or to withdraw from the respective contract. Purchaser shall however not be entitled to withdraw from the contract, if the defect is comparatively of minor significance.

9.6 Any and all liability for defects or damages is excluded, if the said defectiveness or damage has been caused or affected by an undue treatment and/or storage by Purchaser.

9.7 The above terms of this section shall only apply insofar as and to the extent that they do not conflict with applicable mandatory German law, *i.e. pursuant to Sec. 478 subsec. 2 of the German Civil Code (BGB)*.

## **10. Compatibility**

AK is not obliged to check the compatibility of the Contractual Goods with the given specifications of the Purchaser and apart of that with the hardware and software used by the Purchaser. Any liability due to defective or the lack of compatibility with the hardware and software used by the Purchaser is therefore excluded, if the compatibility is not expressly agreed in writing or assured in separate product specifications by AK. If the respective order was based on samples, such samples shall only be considered as an approximate indication of the properties of Contractual Goods. Sect. 360 of the German Commercial Code (HGB) will be expressly applicable for the Contractual Goods of AK.

## **11. Manufacture of not generally tradable Goods**

If AK manufactures Contractual Goods for Purchaser which are not generally tradable *pursuant to Sec. 650 of the German Civil Code (BGB)*, i.e. which are made for the specific requirements of Purchaser and cannot be readily sold to third parties because of this tailor-made character and non-interchangeability, Purchaser's right to terminate the respective contract without giving any reasons or notice under Sect. 648 of the German Civil Code (BGB) is hereby barred and excluded.

## **12. Limitation of Liability**

12.1 In the case of slight negligence, AK liability, including that of its employees, workers, staff members, representatives, or in general any person employed by AK in performance of its obligations including any other person entrusted with covenants and duties which relate to the business relationship with Purchaser, shall be limited to product-specific foreseeable, typical, direct and immediate losses or damages. AK shall further not be liable for any breach of non-essential obligations under the relevant contract due to slight negligence. Any liability for consequential damages is excluded.

12.2 The above shall not impair AK liability under mandatory applicable laws which require AK to accept extended liability or responsibility. Neither shall the above apply for personal injuries or loss of life of Purchaser which are attributable to culpable acts or omissions by AK.

12.3 Purchaser's claims for damages based on the defectiveness of Contractual Goods shall be statute-barred two (2) years after delivery of the concerned Goods. The foregoing shall not apply in case of gross negligence on AK part or in the event of personal injuries or loss of life of Purchaser which are attributable to culpable acts or omissions by AK.

12.4 AK shall by no means be liable for materials, component parts, active ingredients, prescriptions, recipes and compounds, representations and warranties, freight specifications or manufacturing instructions provided by or obtained from Purchaser, unless expressly agreed upon otherwise in writing. AK shall not be obliged to examine the foregoing items with regard to their conformity with product liability laws and/or any other mandatory applicable legal provisions. Purchaser shall fully indemnify and otherwise hold AK harmless against any and all claims raised by third parties in this respect against AK, including any losses, claims for injury and damage, costs and expenses or legal fees.

### **13. Industrial Property Rights**

13.1 Purchaser hereby acknowledges that all know-how and intellectual property as well as the industrial property rights (hereinafter collectively "Rights") on or connected with the Contractual Goods are owned solely and exclusively by AK. Transfer or use of the Rights by Purchaser other than objectively necessary for purposes of the contract with AK is only permitted if AK expressly and specifically allows such use or transfer in advance in writing.

13.2 Purchaser hereby further acknowledges that all trademarks which are used on Contractual Goods (hereinafter "Trademarks") are owned solely and exclusively by AK and that no right, title or interest is given to Purchaser to use such trademarks for an unlimited time period.

13.3 AK grants to Purchaser a non-exclusive right to use its Trademarks solely for the purpose of duly marking the Contractual Goods. Such use of the Trademarks shall by no means entitle Purchaser to continue use the Trademarks after termination of the contractual relationship. Purchaser shall immediately cease to use the Trademarks after termination of the business relationship between AK and Purchaser and after the clearance sale of all deliveries and stocks of Contractual Goods still on hold, which Purchaser shall undertake as swiftly as objectively possible.

13.4 Purchaser shall not do anything to jeopardize AK industrial property and trademark rights or question or seek to impeach their validity or assist others in doing so.

### **14. Assignment**

Purchaser may not assign any claims stemming from the business relationship with AK to third parties without AK prior express written agreement thereto.



## **15. Governing Law, Place of Venue, Place of Performance and Severability**

15.1 The contractual relations between AK and Purchaser, including all past and future legal relationships, shall be governed exclusively by the laws of Germany to the exclusion of all conflict of law alternatives and the terms of the CISG (UN Convention on Contracts for the International Sale of Goods).

15.2 The exclusive place of venue for all legal disputes arising directly or indirectly from contractual relationships shall be Nuremberg, Germany. AK shall be optionally entitled to bring action against Purchaser also at the courts competent at Purchaser's head or branch office, or at the court having jurisdiction at place of performance.

15.3 The exclusive place of performance for all obligations, covenants and deliveries for both Parties hereto shall be the head office AK, as far as allowed under applicable mandatory statutory laws.

15.4 Should any provisions of these General Terms and Conditions of Sale and Delivery and of the further agreements made be or become invalid, this shall not affect the validity of the remaining provisions. In this case the Parties undertake to agree a legally permissible provision which corresponds to or comes closest to the desired commercial effect. This also applies to the filling of omissions.