

## **General Business and Delivery Terms and Conditions of John P. Kummer GmbH (“JPK GmbH”)**

### **Section 1 Definitions**

- 1.1** Entrepreneurs in terms of these terms and conditions shall be natural or legal persons or partnerships with legal capacity with whom a business relationship is established and who act in the exercise of a commercial or self-employed occupational activity.

Consumers in terms of these terms and conditions shall be natural persons with whom a business relationship is established without it being possible that a commercial or self-employed occupational activity is attributed to them.

### **Section 2 Scope of application**

- 2.1** The terms and conditions of JPK GmbH shall apply exclusively. Deviating regulations shall only be valid if they have been agreed in writing between the contractual parties. Even General Terms and Conditions of the contractual partner shall only apply if they have been confirmed by us in writing prior to the finalisation of the transaction.
- 2.2** By way of precaution, the validity of regulations other than the following regulations shall hereby be expressly objected to. This shall also apply to the transmission of different regulations by confirmation letters in commercial business transactions.
- 2.3** All oral agreements and declarations made between JPK GmbH and the purchaser prior to or upon conclusion of the contract shall not be valid without the written confirmation of JPK GmbH.

### **Section 3 Offer, conclusion of contract**

- 3.1** All offers shall be subject to confirmation. A contract shall only be concluded if the customer’s purchase order is confirmed by JPK GmbH within 14 days in writing or in text form or if the goods have been delivered. Technical modifications of the products by the manufacturer shall remain reserved within reasonable limits.
- 3.2** The purchaser shall be solely responsible for the use of the ordered items intended by it.
- 3.3** Details about the features of the products are defined and warranted in mutually approved specifications if the products are assets invested. This shall exclude consumables whose features are set out in a technical data sheet or product specification.

## **Section 4 Prices and terms of payment**

- 4.1** All prices shall be stated in Euros or US Dollars and shall be net sent from the registered office of our company. All shipping costs, particularly packaging, transport and transport insurance as well as the statutory value-added tax shall be borne by the customer. Cash discount or other rebates shall not be granted, unless this is expressly otherwise agreed in writing.
- 4.2** Payments shall be due within *14* days as from the invoice date without deduction and cash discount. Unless higher damage caused by default can be proven, JPK GmbH shall demand, in case of delayed payment, default interest in the amount of 8% above the respective base rate of the European Central Bank. *For transactions with consumers, the default interest shall be 5% above the respective base rate of the European Central Bank.*
- 4.3** If the financial circumstances of the purchaser considerably deteriorate after conclusion of the contract or if JPK GmbH only becomes aware of a previous deterioration of the financial circumstances after conclusion of the contract, JPK GmbH shall be entitled to demand at their option either prepayment or collateral security.
- 4.4** JPK GmbH shall be entitled to demand delivery versus payment without giving reasons and shall reserve the right to demand cash before delivery.

## **Section 5 Reservation of ownership**

- 5.1** With sales contracts, the goods shall remain the property of JPK GmbH until payment is complete. The reservation of ownership shall only expire upon completion of payment. As long as the reservation of ownership applies, the customer shall not be entitled to make use of the goods, i.e. to sell, pledge, rent, lend or otherwise make them accessible to third parties. If purchased items are seized by third parties, the purchaser shall inform JPK GmbH immediately and shall reimburse all costs of a potential intervention to them.
- 5.2** The goods shall be subject to extended reservation of ownership. The purchaser shall hereby assign all receivables they become entitled to from third parties based on a resale of the goods prior to complete purchase price payment. The purchaser shall remain entitled to collect the receivable themselves as long as they fulfil their payment obligations from the contract with JPK GmbH. During this time, JPK GmbH shall not exercise their collection right existing in parallel.
- 5.3** In case of delayed payment, JPK GmbH shall be entitled to take the goods back and make use of them. After deduction of the reasonable disposal costs, the amount realised shall be set off against the liabilities of the purchaser. The acceptance of returned goods

shall not constitute withdrawal from the contract. In addition, JPK GmbH shall be at liberty to withdraw from the contract by express written declaration.

## **Section 6 Delivery terms, transfer of risk**

- 6.1** All shipments shall be sent at the recipient's risk; the packaging must be perfect. If no mode of dispatch is stipulated or expressly agreed, it shall be for JPK GmbH to choose the respective mode of dispatch. Packaging, dispatch and freight shall be invoiced separately.
- 6.2** Delivery times shall only be binding if they have been expressly agreed separately and in writing. The notification of expected delivery dates shall not establish a binding guarantee of delivery dates. If a delivery period is agreed, JPK GmbH shall only be obliged to comply with it if the purchaser fulfils their obligations properly and in due time. For contracts with down payment, the delivery period shall only start upon receipt of the down payment. The compliance with the delivery period shall be subject to correct and timely supply to JPK GmbH. The delivery period shall be complied with if the subject matter of the contract has left JPK GmbH until its expiry or if JPK GmbH has informed the customer about the readiness for dispatch.
- 6.3** If JPK GmbH is in default in delivery, the customer may set a reasonable grace period that must be connected with a refusal to accept performance including the provision that the customer will refuse to accept the performance upon expiry of the grace period. In this case, a claim for fulfilment shall be excluded.
- 6.4** If the purchaser is an entrepreneur, the risk of accidental loss and of accidental deterioration of the purchased item shall be transferred to the customer even in case of sale by dispatch with the handing over of the ordered goods to the person who carries out the transport. If the purchaser is a consumer, the risk of accidental loss and deterioration of the sold item shall be transferred to the purchaser even in case of sale by dispatch only upon handing over the item to the purchaser. This shall also apply if private means of transport are used. JPK GmbH shall be entitled, but not obliged, to insure the goods which are to be dispatched against transport risks of all kinds at the customer's cost. This shall not affect the transfer of risk. The handing over shall be equivalent to default of acceptance on part of the purchaser. JPK GmbH shall be entitled to make partial deliveries.

## **Section 7 Guarantee**

- 7.1** The guarantee for material defects of purchased items shall be six months for entrepreneurs. If the purchaser is a consumer, the guarantee period for used goods shall be one year; for new goods, two years. The limitation of actions regarding claims according to the Product Liability Act (if any) shall remain unaffected.

- 7.2** *The periods named in 7.1 shall not apply to goods subject to limited shelf life. With such goods, the guarantee period shall be defined via the best-before date. In these cases, the guarantee for material defects shall end after expiry of half the time span between production date and best-before date.*
- 7.3** The purchaser shall check the goods for defects immediately upon receipt. If then or at a later time a defect appears, the purchaser shall inform JPK GmbH thereof immediately (within five days). This notification must describe the identified defect in as much detail as possible. If the purchaser fails to notify, the goods shall be deemed approved regarding visible defects, unless JPK GmbH has intentionally concealed the defects. Notification shall also be required if goods other than the agreed goods or less than the ordered quantity have been delivered by JPK by mistake.
- 7.4** If JPK GmbH disputes the defectiveness of the goods, the purchaser shall have the burden of proof of a defect already at transfer of risk.
- 7.5** If there is a defect of the purchased item JPK GmbH is responsible for, JPK GmbH shall be entitled to removal of defects or replacement delivery at their option. This choice shall be made at reasonable discretion and in consideration of the interests of both parties.
- 7.6** If JPK GmbH is not willing or not able to remove defects and/or to make a replacement delivery or if this is delayed beyond a reasonable period for reasons JPK GmbH is responsible for or if the removal of defects/replacement delivery fails otherwise, the purchaser shall be entitled at their option to withdraw from the contract or to demand a corresponding reduction of the purchase price.
- 7.7** The statutory recourse claims of the purchaser if the goods are resold to a consumer shall remain unaffected by the above regulations. However, such recourse claims shall only exist insofar as the purchaser has not made any agreements with their buyer that are beyond the statutory claims based on defects. The regulations on limitation of liability (*Sections 7 and 8* of these General Terms and Conditions) shall apply to the scope of the recourse claims.
- 7.8** The guarantee shall not apply if persons other than the persons commissioned by the dealer carry out repairs or make other interventions or modifications to the purchased items or if unsuitable accessories are used. The guarantee shall not apply either in case of defects to be attributed to operating errors or negligence by the purchaser or their personnel, lack of installations to be provided by the purchaser or otherwise to intentional or negligent behaviour on part of the purchaser, their personnel or third parties.

## **Section 8 Liability**

- 8.1** The liability of JPK GmbH for damages irrespective of the legal ground, particularly based on impossibility, default, defective or wrong delivery, breaches of duties during contract negotiations and tort shall be limited according to the following paragraphs of this section provided there is a question of blame in each case.
- 8.2** JPK GmbH shall be liable to entrepreneurs *only in case of intention or gross negligence* of their organs, legal representatives, employees or other vicarious agents, unless it is about infringement of material contractual obligations. Material contractual obligations shall be the duty of timely delivery of the delivery item free from substantial defects as well as the duties of advice, protection and proper care that are supposed to enable the contractual use of the delivery item for the purchaser.
- 8.3** If JPK GmbH is liable to pay damages according to 8.2 based upon the cause, this liability shall be limited to damage JPK GmbH has expected as potential consequence of a contract violation at conclusion of the contract or JPK GmbH should have expected by applying due diligence. Indirect damage and consequential damage caused by defects of the delivery item can only be compensated provided such damage is foreseeable and to be expected according to the type of goods with intended use of the delivery item.
- 8.4** If JPK GmbH is liable for simple negligence, the liability to pay damages for material defects and resulting further financial losses shall be limited to the amount of €100,000.00 per event of damage, even if it is about a violation of material contractual obligations.
- 8.5** The above exclusions and limitations of liability shall apply to the same extent in favour of the organs, statutory representatives, employees and other vicarious agents of JPK GmbH.
- 8.6** If JPK GmbH provides technical information or gives advice and this information or advice is not part of the contractually agreed scope of services owed by JPK GmbH, this shall happen free of charge and with exclusion of any liability.
- 8.7** The above limitations shall not apply to the liability of JPK GmbH due to intentional behaviour, for injury to life, body or health or according to the Product Liability Act.

## **Section 9 Return, incorrect orders**

- 9.1** The purchaser may return the products ordered by them at their cost to JPK GmbH within 14 days as from the date of dispatch if these products are in their original packaging, unopened and undamaged at the time of return. As from the 15<sup>th</sup> day until the 30<sup>th</sup> day, return shall be possible against a fee of 20% of the purchase price or replacement order. Timely obtaining of a complaint number and dispatch of the goods shall be suffi-

cient in order to meet the deadline (products made according to customer specifications or *products tailored according to customer demand* shall be excluded from return).

**9.2** *If the customer withdraws from their issued order without being justified to do so prior to dispatch of the goods, JPK GmbH may claim 10% of the sales price for the costs accrued due to the processing of the order and for the lost profit without prejudice to the possibility of claiming higher damage. The purchaser shall reserve the right to prove lesser damage.*

**9.3** The purchaser shall only be authorised to return delivered goods to JPK GmbH if they return them to JPK GmbH in their original packaging and JPK GmbH agrees to the return in advance by issuing a complaint number. If the purchaser is at fault (incorrect order, double order, packaging unit not observed, etc.), JPK GmbH shall be entitled to charge the purchaser for the contract-related costs.

**9.4** If the goods are returned to JPK GmbH without prior enquiry, this shall not release the purchaser from their obligation to pay.

### **Section 10 Set-off**

The customer may only set off against counterclaims that are undisputed, acknowledged or established as final and absolute.

### **Section 11 Export control**

In recognition of the American or other applicable (particularly German) export control legislation, the purchaser shall be obliged to obtain all required export licences or other documents independently at their cost prior to the export of products or technical information they have received from JPK GmbH.

### **Section 12 Legal validity**

Should parts of the sales contract or parts of these General Terms and Conditions be void or legally invalid, this shall not affect the validity of the remaining provisions. The contractual partners shall then interpret and draft the sales contract and the Terms and Conditions so that the economic success intended with the void or legally invalid parts is achieved to the greatest extent possible.

### **Section 13 Place of performance for payments and place of jurisdiction**

**13.1** The place of performance for payments shall be the registered office of JPK GmbH.

**13.2** For entrepreneurs, the place of jurisdiction shall be Augsburg. For consumers with their normal residence abroad, Augsburg shall be competent in addition to the general place of jurisdiction. JPK GmbH shall also be entitled to sue at the purchaser's registered office.

### **Section 14 Applicable law**

The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods or international law shall not apply, even if the customer orders from abroad or delivery is made to foreign countries.