

Klimmer Group

General Terms of Sale and Supply

Current as of 4 February 2021

1. Applicability

1.1 These General Terms of Sale and Supply govern each contractual relationship concerning the manufacture and/or supply of products or the provision of services (hereinafter referred to as "Contract Products") by

- **Ernst Klimmer GmbH, Stanz- und Umformtechnik**
Ostpreußenstraße 8, 89331 Burgau, Germany
- **BSB Metallverformung GmbH & Co. Stanzwerk**
Siemensstraße 8, 89331 Burgau, Germany
- **BWB Behälter-Werk Burgau GmbH & Co.KG**
Siemensstraße 8, 89331 Burgau, Germany
- **HMT - Häseler Metall Technik GmbH**
Industriestraße 5, 78112 St. Georgen, Germany

(hereinafter referred to individually as "Contractor") to enterprises, public-law legal entities and special funds under public law (hereinafter referred to as "Client"). The Client and the Contractor are hereinafter also referred to collectively as "Parties" and individually as "Party").

1.2 The Contractor's goods and services are provided exclusively on the basis of these General Terms of Sale and Supply. In addition, other documents, including offers and order confirmations, may be incorporated herein.

1.3 The Client's opposing, deviating or supplemental general terms and conditions (e.g., purchasing terms), if any, are neither recognized nor incorporated herein, unless the Contractor has expressly agreed to their applicability in writing. This also applies if the Client references its terms during the Parties' correspondence (e.g., as part of a long-term supply or call-off contract in connection with the execution of individual orders or call-offs).

1.4 These General Terms of Sale and Supply apply even in the event that the Contractor provides products or services to the Client without reservation and in full knowledge of Client terms opposing, deviating from or supplementing its own.

1.5 Unless otherwise agreed, the General Terms of Sale and Supply apply, as amended by the time of the Client's order, as a master agreement governing similar future contracts without the need for the Contractor to reference them in each instance.

2. Offer and closing

- 2.1 The Contractor's offers are non-binding and subject to change, even if the Contractor furnishes the Client with catalogs, technical documentation, product descriptions or other records.
- 2.2 The Client's orders or requests are deemed binding contractual offers. The Contractor may accept such contractual offer by confirming the order within ten business days of receipt. The Contractor's acceptance constitutes a closing.
- 2.3 In deviation from item 15 of these General Terms of Sale and Supply, orders and order confirmations may be communicated in text form as well.

3. Long-term supply and call-off contracts, rate adjustments

- 3.1 The Contractor may terminate contracts that came into force pursuant to item 2 – as well as any individual orders placed thereunder that will run indefinitely or in any case longer than one year (hereinafter referred to as “Long-Term Supply Contracts”) – on three months' notice with effect at month's end.
- 3.2 In the event of a significant change to wage, material or energy costs during the term of a Long-Term Supply Contract, either Party may initiate negotiations about an appropriate rate adjustment that duly accounts for such factors.
- 3.3 If no binding order volume has been agreed, the Contractor bases its calculation on the non-binding order volume (target volume) that the buyer expected for a certain period and communicated accordingly. If the Client calls off less than the target volume, the Contractor is entitled to increase the price per unit to a reasonable degree. If the Client no longer calls off any Contract Products, and the target volume is not reached as a result, the Contractor may demand to be reimbursed for any non-amortized investment cost.
- 3.4 For purposes of Long-Term Supply Contracts, the Contractor shall be advised of binding order volumes or target volumes at least three months prior to the delivery date by call-off unless otherwise agreed. Added costs caused by a belated call-off or changes to the Contract Products by the Client requested prior to or after the above-mentioned period, the delivery time or the volume shall be borne by the Client to the extent its responsibility; in this respect, the Contractor's calculation shall be decisive.

4. Delivery period, default in delivery

- 4.1 The Contractor sets the delivery period in the order confirmation.
- 4.2 The delivery period commences upon the closing unless the Client's documents and information needed for performance (e.g., permits, releases, downpayments or technical Q&A) have not been provided in full.
- 4.3 Insofar as the Contractor cannot meet binding delivery deadlines for reasons beyond its control (e.g., non-availability of service), it will inform the Client without undue delay and provide a new period for delivery or performance. Instances of a service being unavailable include but are not limited to delayed or defective deliveries by the Contractor's suppliers.
- 4.4 The Contractor is entitled to refuse to commence or resume his activities unless and until the Client has fully rendered (assistive) performance (e.g., making a downpayment / paying an installment, furnishing security, making a decision needed for the completion of the order or paying a partial invoice upon partial acceptance) upon the Contractor's demand.
- 4.5 If the Parties agree to changes to the Contract Products, the delivery period is to be extended to an appropriate degree.

5. Delivery, passage of risk, shipping

- 5.1 Unless otherwise agreed, the Contractor effects delivery EXW (Incoterms 2020) at such location as it may specify. A delivery deadline or period is deemed to have been met so long as the Contractor signals readiness for dispatch or collection by such deadline or within such period. The risk passes to the Client even if the Contractor arranges for on-site delivery.
- 5.2 Without prejudice to the Contractor's liability for defects, the Client shall accept Contract Products upon delivery even if they exhibit insignificant defects.
- 5.3 The Client will promptly claim any Contract Product reported to be ready for dispatch. Otherwise, the Contractor is entitled, at its discretion, to ship or store them at the Client's risk and expense. If the Contractor stores Contract Products, it may charge storage costs at a rate of 0.25% of the invoice amount for the Contract Products to be stored per week, up to a maximum of 5% of the invoice amount for the Contract Products to be stored. The Contractor reserves the right to assert claims for greater costs. If it exercises this right, any storage costs already paid on a percentage basis shall be deducted from the greater costs.

- 5.4 The Contractor is entitled to effect partial deliveries, provided that the Client can make use of such partial deliveries as part of the intended contractual purpose, the delivery of the remaining Contract Products ordered is assured and the Client does not incur significant added expenditures or costs as a result (unless the Contractor agrees to cover such costs).
- 5.5 The Contractor is entitled, at its choice and at the Client's expense, to take out adequate transportation insurance.

6. Rates and terms of payment

- 6.1 With respect to the scope of goods and services specified in the order confirmation, rates are in euros EXW (Incoterms 2020), plus sales tax, standard packaging, freight, postage, customs duty and insurance.
- 6.2 Unless otherwise agreed, all invoices are due and payable in full within 14 days of the invoice date. Payment is deemed to have been made on the day the bank transfer is received in the Contractor's account.
- 6.3 The minimum order value is EUR 250.00. The Contractor reserves the right either to defer orders that fail to meet this threshold until the minimum order value has been reached or to charge a EUR 50.00 processing fee per instance.
- 6.4 The Client holds a right of set-off only if and to the extent that its counter-claims have been effectively established or are recognized by the Contractor. In addition, the Client may exercise a right of retention only insofar as its counter-claim is based on the same contractual relationship.
- 6.5 In the event that the Client faces insolvency or suspends payments, or if it is in default of payment with respect to four successive invoices, the Contractor is entitled to make its future performance contingent on advance payment.

7. Samples and means of production

- 7.1 Unless otherwise agreed, the manufacturing costs for samples and means of production (tools, molds, templates, etc.) are billed separately from the goods to be supplied. This applies also to means of production that must be replaced on account of wear.

- 7.2 In the event that the Client suspends or ends the cooperation while samples or means of production are being manufactured, it must bear all manufacturing costs incurred until then.
- 7.3 The Contractor retains the title to samples and means of production that it has itself made or procured. The title to samples and means of production passes to the Client only if the Parties have expressly so agreed and the Client bears any and all related costs.

8. Retention of title

- 8.1 The below retention-of-title clause serves the purpose of securing the Contractor's current and future claims against the Client under the supply relationship between the Parties.
- 8.2 Until all claims have been satisfied in full, the Contract Products supplied by the Contractor to the Client under any order/supply relationship (reserved goods) remain the Contractor's property.
- 8.3 Prior to the satisfaction in full of the claims so secured, reserved goods may be neither pledged to third parties nor assigned as collateral. The Client must promptly inform the Contractor in writing if an application to open insolvency proceedings has been filed or third parties have seized goods belonging to the Contractor (e.g., by way of distraint).
- 8.4 If the Client fails to conduct itself as contractually agreed, and specifically in the event of non-payment of the purchase price, the Contractor is entitled to rescind the contract in accordance with applicable legal provisions and/or invoke the retention-of-title clause to demand that goods be returned. Such demand for the goods' surrender need not coincide with a notice of rescission; instead, the Contractor may demand that reserved goods be returned to it and reserve the right of rescission. In the event that the Client fails to pay the purchase price due, the Contractor may exercise these rights only if the Client had previously, and unproductively, been placed on adequate notice of payment due or such notice is dispensable under applicable law.
- 8.5 Unless and until such right is revoked pursuant to 8.5.3, the Client is entitled to process and sell reserved goods in the regular course of business pending an enforcement event. Reserved goods may be neither pledged nor assigned as collateral. In such a case, the below provisions apply:

- 8.5.1 The right of retention extends to the products created by means of processing, combining or joining reserved goods at their full value. In the event that a third party's right of retention survives such processing, combining or joining with its goods, the Contractor acquires co-ownership at a rate reflecting the invoice values of the goods so processed, combined or joined. In all other respects, the goods so created (products) are subject to the same provisions hereunder as reserved goods.
- 8.5.2 The Client already assigns to the Contractor by way of a guarantee such claims against third parties as may result from the resale of reserved goods or products as a whole or in the amount of the Contractor's co-ownership share pursuant to 8.5.1, as applicable. The Contractor accepts such assignment. The Client's obligations set forth in 8.3 apply in consideration of the claims so assigned as well.
- 8.5.3 The Client is entitled to collect on claims alongside the Contractor so long as it meets its payment obligations, its capacity for rendering performance remains intact and the Contractor does not invoke the retention-of-title clause by exercising a right pursuant to 8.4. If this is the case, however, the Contractor may demand that the Client disclose the claims assigned and identify the debtors, provide such information as may be needed for collection purposes, hand over any related records and advise the debtors (third parties) of the assignment. In addition, the Contractor is entitled in such a case to revoke the Client's authorization to resell and process reserved goods.
- 8.5.4 In the event that the liquidation value of collateral exceeds the Contractor's claims by more than 50%, the Contractor will release collateral of its choice at the Client's demand.

9. Warranty for defects

- 9.1 If the Contractor makes Contract Products based on drawings and specifications provided by the Client, no oral or written consultation offered to the Contractor releases the Client from its obligation to establish the products' fitness for the intended use by conducting its own examination. To such extent, the Contractor merely warrants the supply of a Contract Product according to Client drawings.
- 9.2 For the Client to assert claims based on defects, it must have satisfied its statutory duties of examination and reporting. Accordingly, notices of defects must be given immediately, but in any case within three business days from defect discovery.

- 9.3 In the event that the Client fails to properly examine and/or report defects, any liability on the Contractor's part is excluded to such extent as permitted by law.
- 9.4 At the Contractor's demand and choice, a Contract Product subject to complaint is to be either (1) made available for pick-up, on-site rectification or third-party repair or (2) returned to the Contractor, carriage paid. In all other respects, claims for the reimbursement of expenses apply as provided by law.
- 9.5 The Client must allot a reasonable grace period for the Contractor's remedial performance. A grace period is deemed reasonable if it accounts for the time needed to place orders for materials with the Contractor's suppliers, to effect repairs or to manufacture new Contract Products based on the form of remedial performance chosen by the Contractor.
- 9.6 If the Contractor earnestly and definitively refuses remedial performance or refuses such performance on account of disproportionate costs, if remedial performance fails or would place an unreasonable burden on the Client, the Client may, at its choice, demand that the rate of compensation be adjusted (abatement) or rescind the contract and assert claims for damages in lieu of performance in accordance with applicable law.
- 9.7 If the Parties entered into a separate ppm (parts per million) agreement, the provisions thereof apply in addition to these General Terms of Sale and Supply and prevail over the same in cases of doubt.
- 9.8 The period of limitation for claims arising from or in connection with material or legal defects equals twelve months.
- 9.9 The period of limitation commences upon delivery or, if acceptance has been agreed, upon acceptance.

10. Liability for Contractor's culpability

- 10.1 The below limitations of liability apply to the Contractor as well as its governing bodies, legal representatives, staff, (vicarious) agents and such other individuals whose culpability may be attributable to the Contractor under applicable law. Liability for third parties is excluded.
- 10.2 The below limitations of liability do not apply to guaranteed characteristics or such claims as the Client may hold under the German Product Liability Act (*Produkthaftungsgesetz - ProdHG*).

- 10.3 For purposes of fault-based liability, liability for damages is limited to intentional misconduct and gross negligence irrespective of legal grounds.
- 10.4 Liability for basic negligence is limited to damages arising from or in connection with (1) injuries to life, body or health and (2) a material violation of an essential contractual obligation. In both cases, liability is capped at the amount of foreseeable damages that are typically incurred.
- 10.5 The amount of default damages is limited to 5% of the agreed purchase price.

11. Reject and loss rates

- 11.1 In the event that the Client furnishes the Contractor with parts for cleaning, the Contractor's liability for rejects and the loss of workpieces is excluded for cleaning parts up to a quota of 2%. If it should be expected, for reasons of geometry or other characteristics, that the quota will be higher, the Parties will agree to raise the aforementioned quota.
- 11.2 The quota does not include reserve samples as well as those removed for residue analysis or glue testing.
- 11.3 For rejects and losses that exceed the applicable quota, the Contractor will reimburse the Client for damaged parts in the amount of the manufacturing costs incurred by the Client.

12. Force Majeure

- 12.1 Force Majeure events, industrial disputes, civil unrest, war, terrorist attacks, official measures, failure of Contractor's suppliers to effect delivery, epidemics, pandemics and other unforeseeable, unavoidable and critical events (hereinafter referred to as "Events") release the Contractor from its duty to render performance for the duration of the disruption and to the extent of its impact.
- 12.2 This applies even if such Events occur when the Party affected is in default, unless it brought about the state of default intentionally or through gross negligence.
- 12.3 The Parties are obligated to promptly notify the other Party of the occurrence of such an Event and its consequences, as well as to coordinate the next steps.

- 12.4 In the event that an Event persists for a period of more than six (6) months, and either Party is impeded from meeting its duty to render performance during such time, the Parties may rescind the contract to the exclusion of any claims accruing to the other Party. The obligation to compensate (partial) services already rendered is not affected.

13. Property rights

- 13.1 Unless specifically agreed otherwise in writing, any and all copyrights and other industrial property rights to the Contract Products and related documents (e.g., manuals, drawings, models and other technical records) are the sole property of the Contractor. The Client must not duplicate, copy or reproduce the Contract Products and related documents, and may use them only as part of the construction for which the Contract Products are intended.
- 13.2 Insofar as the Contractor has refined and completed drawings, models or other (technical) templates at the Client's behest, any and all resulting copyrights and other industrial property rights accrue exclusively to the Contractor's benefit.
- 13.3 Drawings or technical documents provided to the Client in connection with the goods to be delivered and their manufacture remain the Contractor's property.
- 13.4 Insofar as the Contractor has developed and/or made Contract Products on the basis of Client specifications, and such specifications are the object of claims that third parties assert against the Contractor on account of property-right infringement, the Client must indemnify and hold the Contractor harmless from and against such claims at first demand. The Client's indemnity obligation encompasses all costs and expenditures necessarily incurred by the Contractor in connection with third-party claims.

14. Confidentiality

- 14.1 The Parties undertake to hold in confidence any and all knowledge and information gleaned as part their cooperation, including but not limited to technical details as well as all documents, and they must not reproduce or decompile (also known as "reverse-engineering" and "re-engineering") either themselves or through third parties. This duty applies regardless of whether information is shared orally or in writing. The knowledge and information so entrusted may only be put to use in the context of the Parties' cooperation and must not be disclosed to staff not necessarily involved and bound for their part by a duty of confidentiality.

- 14.2 Any exception to the duty of confidentiality is subject to prior express written approval.
- 14.3 The Parties will limit their use of documents (including samples, models and data), information and knowledge gleaned as part their business relationship to the purposes pursued jointly, and they must hold such items in confidence using the very level of care that they apply to their own documents and knowledge in relations with third parties. To this end, the Parties must adopt adequate protective measures within the meaning of the Business Secret Act (*Gesetz zum Schutz von Geschäftsgeheimnissen - GeschGehG*).
- 14.4 The duties set forth in this item 14 take effect when documents, information or knowledge are first received and survive the discontinuation of the business relationship.
- 14.5 The duties of confidentiality do not apply to documents, information and knowledge that (i) are widely known, (ii) were already known to the receiving Party at the time of receipt, to the exclusion of a duty of confidentiality governing the initial receipt thereof, (iii) were transmitted at a later point in time by a third party authorized to do so or (iv) were developed by either Party through no use of confidential documents, information or knowledge belonging to the other Party.

15. Written form, applicable law, legal venue, severability

- 15.1 Changes or amendments to these General Terms of Sale and Supply, including this clause, along with any contract executed hereunder must be made in writing.
- 15.2 Relations between the Contractor and the Client are exclusively subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 does not apply.
- 15.3 The place of jurisdiction for any disputes arising from or in connection with the business relationship between the Contractor and the Client is Günzburg, Germany. This clause does not affect mandatory legal provisions concerning exclusive places of jurisdiction.
- 15.4 In the event that one or more provisions of these General Terms of Sale and Supply are ineffective or void, the remaining provisions hereof continue in full force and effect. The Parties undertake to replace any ineffective provision, as well as to fill any gap found herein, with a legally effective provision that best approximates what the Parties would have agreed in light of their presumed intent, to be established on the basis of the contractual relationship.