



Valid with effect from 1st April 2025 |

**General Terms and Conditions of Business (GTCBs) of Kermi Duschdesign GmbH,  
Pankofen-Bahnhof 1, 94447 Plattling, Germany, registered at Deggendorf District  
Court under Commercial Register "B" (HRB) no. 5859**

**Clause 1 Scope, form**

- (1) These General Terms and Conditions of Business (GTCBs) apply to all of our business relationships with our customers ("purchasers"). The GTCBs shall only apply if the purchaser is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund governed by public law.
- (2) In particular, the GTCBs apply to contracts governing the sale and/or delivery of movable property ("goods"), regardless of whether we manufacture the goods ourselves or buy them in from suppliers (Sections 433 and 650 BGB). Unless otherwise agreed, the GTCBs in the version valid when the purchaser places their order or, as appropriate, in the version communicated to them most recently in text form, shall apply by way of a framework agreement to future contracts of the same kind as well, without us having to refer back to them each time.
- (3) Our GTCBs shall apply exclusively. Any general terms and conditions of business of the purchaser that deviate from, conflict with or supplement these shall only become an integral part of the contract if and insofar as we have expressly consented to their validity. This requirement for consent applies in all cases, i.e. including if the purchaser makes reference to their GTCBs when placing an order and we do not raise an explicit objection with the purchaser.
- (4) Individual agreements (e.g. framework supply contracts, quality assurance agreements and similar agreements) and information in our order confirmations take precedence over the GTCBs. In the event of any doubt, trade terms shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce (ICC) in Paris in the version valid when the contract was concluded.
- (5) Legally significant declarations and notifications by the purchaser relating to the contract (e.g. setting deadlines, reporting defects, withdrawal or reduction) must be made in writing. "In writing" within the meaning of these GTCBs includes both the written and text form (e.g. letter, email, fax). This shall not affect any statutory requirements for a specific form or for additional proof, especially in the event of doubt concerning the verification of the identity of the party making a declaration.
- (6) References to the applicability of statutory provisions shall serve clarification purposes only. Even in the absence of such clarification, therefore, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTCBs.

**Clause 2 Conclusion of a contract**

- (1) Our quotes are subject to change and are non-binding. This also applies if we have provided the purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents, including in electronic form, to which we reserve all property rights and copyrights.
- (2) A binding contract offer shall be deemed to have materialised when the purchaser orders the goods.
- (3) Acceptance is given in the form of an order confirmation.



### **Clause 3 Delivery deadline and default of delivery**

- (1) Delivery deadlines are always agreed individually or, as appropriate, indicated by us when we accept an order. Insofar as this is not the case, any information provided in this regard is merely non-binding and does not constitute a firm transaction.
- (2) Insofar as we are unable to meet binding delivery deadlines for reasons outside our control (non-performability of the service), we shall notify the purchaser accordingly without delay and communicate the expected new delivery deadline at the same time. If the service cannot be performed by the new delivery deadline either, we shall be entitled to withdraw from the contract in whole or in part and shall refund without delay any consideration already paid by the purchaser. "Non-performability of the service" in this context shall include, in particular, us not receiving our own deliveries on time from our supplier if we have concluded a congruent cover transaction, neither we nor our supplier are at fault or we are under no obligation to procure in the individual case.
- (3) The point in time at which we are deemed to be in default of delivery shall be determined based on the statutory provisions. In all cases, however, the purchaser must send a reminder.
- (4) The purchaser's rights in accordance with clause 8 of these GTCBs remain unaffected, as do our statutory rights, particularly if the performance obligation is waived (e.g. if performance and/or subsequent performance is impossible or unreasonable).

### **Clause 4 Delivery, transfer of risk, acceptance, default of acceptance**

- (1) Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. The goods shall be shipped to a different destination at the purchaser's request and cost (sale involving the carriage of goods). Unless agreed otherwise, we shall be entitled to specify the nature of the shipment (especially the carrier, route and packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the purchaser on handover at the latest. In the case of a sale involving the carriage of goods, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall transfer earlier, specifically on delivery of the goods to the carrier, forwarder or other person or entity charged with carrying out the shipment. Any acceptance that has been agreed shall determine the transfer of risk. The statutory provisions of the law governing contracts for work and services shall also apply mutatis mutandis in all other respects to any acceptance that has been agreed. If the purchaser is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- (3) If the purchaser is in default of acceptance or fails to cooperate, or if our delivery is delayed for other reasons for which the purchaser is responsible, then we shall be entitled to demand compensation for the resulting damage or loss, including additional expenses (e.g. storage costs).

### **Clause 5 Prices and payment terms**

- (1) Unless otherwise agreed in individual cases, our current prices at the time the contract is included shall apply, specifically ex warehouse and exclusive of VAT at the statutory rate.
- (2) In the case of a sale involving the carriage of goods (clause 4 para. 1), the purchaser shall bear the transport costs ex warehouse. Any customs duties, fees, taxes and other public charges shall be borne by the purchaser.
- (3) The purchase price is due and payable without delay after invoicing as a basic principle, but within ten days of the invoice date at the latest. However, we are entitled at any time to request payment



in advance for all or part of a delivery, including as part of an ongoing business relationship. We shall communicate a corresponding proviso when we confirm the order at the latest.

- (4) The purchaser shall be deemed to be in default once the abovementioned payment deadline passes. The statutory rate of default interest applicable at the time shall be added on to the purchase price while the purchaser is in default. We reserve the right to assert further claims for damages caused by the default. This shall not affect our entitlement to charge commercial interest as of the due date to merchants (Section 353 of the German Commercial Code (HGB)).
- (5) The purchaser shall only be entitled to set-off or retention rights to the extent that their claim has been legally established or is undisputed. The purchaser's own rights, particularly in accordance with clause 7 para. 6 sentence 2 of these GTCBs, shall remain unaffected in the event of defects in the delivery.
- (6) If it becomes apparent after the contract is concluded (e.g. by an application to open insolvency proceedings being filed) that our claim to the purchase price is being jeopardised by the purchaser's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and to withdraw from the contract (Section 321 BGB), after setting a deadline for this if required. In the case of contracts for the manufacture of specific items (custom-made products), we may announce our withdrawal immediately, with no effect on the statutory provisions governing the need to set a deadline.

#### **Clause 6 Retention of title**

- (1) We shall retain title to the goods sold until all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been settled in full.
- (2) The goods subject to retention of title may not be pledged to third parties or assigned as collateral before the secured claims have been settled in full. The purchaser must notify us in writing without delay if an application to open insolvency proceedings has been filed or insofar as third parties access the goods belonging to us (e.g. in the event of attachment).
- (3) If the purchaser violates the terms of the contract, particularly if they fail to pay the purchase price owed, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or demand surrender of the goods on the grounds of our retention of title. Demanding surrender does not in itself constitute a declaration of withdrawal; instead, we shall be entitled merely to demand surrender of the goods and reserve the right to withdraw from the contract. If the purchaser fails to pay the purchase price owed, we shall only be permitted to assert these rights if we have previously set the purchaser a reasonable grace period for payment to no avail or there is no need to set a grace period of this kind under the statutory provisions.
- (4) In accordance with (c) below, the purchaser shall be entitled until revocation to re-sell and/or process the goods subject to retention of title in the course of their day-to-day business. The provisions set out below shall also apply in this case.
  - (a) The retention of title extends to the full value of the products resulting from our goods being processed, mixed or combined, with us deemed to be the manufacturer in such a case. If the right of ownership to goods remains in the event of them being processed, mixed or combined with goods of third parties, then we shall acquire co-ownership in proportion to the invoice values of the goods processed, mixed or combined. In all other respects, the same shall apply to the resulting product as to the goods supplied under retention of title.
  - (b) The purchaser hereby assigns to us as security any claims against third parties arising from the resale of the goods or of the product, either in full or, as appropriate, in the amount of our potential co-ownership share as set out in the above paragraph. We accept this assignment. The purchaser's obligations set out in clause 2 shall also apply in respect of the assigned claims.

- (c) The buyer remains entitled to collect the claim alongside us. We undertake not to collect the claim as long as the purchaser meets their payment obligations to us, there are no deficiencies in their ability to pay and we are not asserting retention of title by exercising a right set out in paragraph 3. If this is the case, however, we may require the purchaser to inform us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and notify the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the purchaser's authorisation to re-sell and process the goods subject to retention of title.
- (d) If the realisable value of the collateral exceeds our claims by more than 10 per cent, we shall release collateral of our choosing at the purchaser's request.

### **Clause 7 The purchaser's claims for defects**

- (1) Unless stipulated otherwise below, the statutory provisions shall apply to the purchaser's rights in the event of material defects and defects of title (including incorrect delivery and underdelivery as well as incorrect assembly/installation or defective instructions). The special statutory provisions governing the reimbursement of expenses on final delivery of newly manufactured goods to a consumer (recourse on the part of a supplier pursuant to Sections 478, 445a and 445b or Sections 445c, 327 para. 5 and 327u BGB) shall remain unaffected in all cases unless equivalent compensation has been agreed, e.g. under a quality assurance agreement.
- (2) Our liability for defects shall be based primarily on the agreement reached on the condition and intended use of the goods (including accessories and instructions). An "agreement on condition" in this context shall be deemed to include product descriptions and manufacturer's specifications that are covered in the individual contract or that were publicly disclosed when the contract was concluded. If nothing has been agreed with regard to condition, the relevant statutory provision (Section 434 para. 3 BGB) shall be used to assess whether or not a defect exists. Public statements made by or on behalf of the manufacturer, especially in promotional materials or on the label on the goods, shall take precedence in this regard over third-party statements.
- (3) In the case of goods containing digital elements or other digital content, we shall only be liable to supply and, if relevant, update the digital content insofar as this is expressly stated in an agreement on condition in accordance with para. 2. In this respect, we assume no liability for public statements made by the manufacturer or other third parties.
- (4) As a basic principle, we shall not be liable for defects of which the purchaser was aware or of which they were not aware due to their gross negligence when the contract was concluded (Section 442 BGB). In addition, the purchaser's claims for defects are contingent on them fulfilling their statutory inspection and reporting obligations (Sections 377 and 381 HGB). In the case of other goods intended for assembly or other forms of further processing, such an inspection must be carried out immediately before processing in accordance with the relevant operating instructions. If a defect is identified on delivery, during the inspection or at any subsequent time, we must be notified accordingly without delay. In any case, obvious defects must be reported in writing within five working days of delivery and defects that were not identifiable during the inspection within five working days of discovery. If the purchaser fails to carry out a proper investigation and/or report a defect in the proper manner, our liability for the defect that was not reported promptly, properly or at all shall be excluded in accordance with the statutory provisions. In the case of goods intended for assembly, attaching or installing, this shall also apply if the defect was only revealed after corresponding processing as a result of failing to comply with one of these obligations; in this case, the purchaser shall not, in particular, be entitled to claim compensation for corresponding costs ("removal and assembly costs").
- (5) If the item delivered is defective, we may choose in the first instance whether to provide subsequent



performance by eliminating the defect (rectification) or by supplying an item that is free of defects (replacement delivery). If the manner of subsequent performance is unacceptable to the purchaser, they may refuse to accept it. This shall not affect our right to refuse subsequent performance in accordance with the statutory provisions.

- (6) We shall be entitled to make the subsequent performance that we owe contingent on the purchaser paying the purchase price due. However, the purchaser shall be entitled to retain an appropriate portion of the purchase price relative to the defect.
- (7) The purchaser shall give us the time and opportunity required for the subsequent performance and, in particular, shall hand over the goods being complained about so that we can inspect them. In the case of a replacement delivery, the purchaser shall return the defective item to us in accordance with the statutory provisions but shall not be entitled to restitution. Subsequent performance shall not include dismantling, removing or disassembling the defective item or assembling, attaching or installing a defect-free item if we were not originally obliged to perform these services; any claims on the purchaser's part for reimbursement of the corresponding costs ("removal and assembly costs") shall remain unaffected.
- (8) If a defect actually exists, we shall cover or refund the expenses necessary for the purpose of inspection and subsequent performance, particularly transport, travel, labour and material costs and, if applicable, removal and assembly costs, in accordance with the statutory provisions and these GTCBs. Otherwise, we may demand compensation from the purchaser for the costs incurred as a result of their unjustified request to remedy the defect if the purchaser knew that there was actually no defect or was unaware of this fact due to negligence.
- (9) In urgent cases, e.g. if operational safety is at risk or to prevent undue damage or loss, the purchaser shall be entitled to remedy the defect themselves and to demand compensation from us for the expenses objectively necessary for this purpose. Any attempt of this kind by the purchaser to rectify the defect itself must be communicated to us without delay, ideally in advance. The purchaser shall not be permitted to proceed in this way if we would be entitled to refuse to provide a corresponding subsequent performance under the statutory provisions.
- (10) If a reasonable deadline for subsequent performance to be set by the purchaser has passed to no avail or is not needed in accordance with the statutory provisions, the purchaser may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, there is no right of withdrawal in the event of an immaterial defect.
- (11) Claims on the part of the purchaser for damages and/or the reimbursement of expenses incurred in vain shall only be able to be asserted in accordance with clause 8, including in the case of defects, and are otherwise excluded.

## **Section 8 Other liability**

- (1) Unless otherwise indicated in these GTCBs, including the provisions below, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
- (2) We shall be liable for damages – irrespective of the legal grounds – within the scope of fault-based liability in the event of intent and gross negligence. Subject to the statutory limitations of liability (e.g. due care in our own affairs; immaterial breach of duty), our liability in the event of simple negligence shall be limited to:
  - a) damage or loss caused by injury to life, limb or health,
  - b) damage or loss caused by the breach of a material contractual obligation (i.e. an obligation that must be complied with before the contract can be properly performed and on whose fulfilment the

contractual partner regularly relies and is entitled to rely); in this case, however, our liability shall be limited to compensation for foreseeable damage that can typically be expected to occur.

- (3) The limitations to liability set out in paragraph 2 shall also apply vis-à-vis third parties and in the event of breaches of obligations committed by persons (including for their benefit) whose culpability is our responsibility in accordance with statutory provisions. They shall not apply insofar as a defect has been fraudulently concealed or a guarantee has been given for the condition of the goods or to claims on the part of the purchaser under the German Product Liability Act.
- (4) The purchaser may only withdraw from or terminate the contract due to a breach of an obligation that does not constitute a defect if we are responsible for that breach. The purchaser does not have a free right of termination (especially in accordance with Sections 650 and 648 BGB). The statutory requirements and legal consequences apply in all other respects.

### **Clause 9 Limitation period**

- (1) By way of derogation from Section 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall start on acceptance.
- (2) This shall not affect other special statutory provisions governing limitation periods (especially Section 438 para. 1 no. 1, para. 3, Section 438 para. 1 no. 2 and Sections 444 and 445b BGB).
- (3) The abovementioned limitation periods under commercial law also apply to contractual and non-contractual claims for compensation on the part of the purchaser that relate to a defect affecting the goods unless applying the standard statutory limitation period (Sections 195 and 199 BGB) would result in a shorter limitation period in the specific case. Claims for compensation on the part of the purchaser in accordance with clause 8 para. 2 sentence 1 and sentence 2(a) and in accordance with the German Product Liability Act shall only lapse in accordance with the statutory limitation periods.

### **Clause 10 Choice of law and place of jurisdiction**

- (1) These GTCBs and the contractual relationship between us and the purchaser shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, especially the United Nations Convention on Contracts for the International Sale of Goods.
- (2) If the purchaser is a merchant within the meaning of the HGB, a legal entity under public law or a special fund governed by public law, the location of our registered office in Plattling shall be the sole – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies mutatis mutandis if the purchaser is an entrepreneur within the meaning of Section 14 BGB. In all circumstances, however, we shall also be entitled to take legal action at the place of performance of the delivery obligations under these GTCBs and/or of an individual agreement that takes priority or, alternatively, at the purchaser's general place of jurisdiction. Statutory provisions that take precedence, particularly governing exclusive jurisdiction, shall remain unaffected.

### **Clause 11 Miscellaneous provisions**

If individual provisions of these GTCBs are invalid in whole or in part, this shall not affect the remaining provisions. The contractual partners undertake to replace the ineffective provision with one that is equivalent in commercial terms.