

**General Terms & Conditions of Business  
of KEIKO GmbH, Wienerstrasse 115/1.2.I, 2700 Wiener Neustadt, FN 301557t  
hereinafter called KEIKO**

## **1. Scope**

The following Terms & Conditions of Contract shall apply to transactions between KEIKO and its customers for all business, unless explicitly agreed otherwise. Other terms and conditions or the customer's general terms and conditions of business shall form no part of the contract, even if KEIKO does not explicitly protest them. These Terms & Conditions of Business shall form the framework agreement for all further legal transactions between the Contracting Parties.

## **2. Conclusion of contract**

All offers by KEIKO shall be subject to change and shall be non-binding, unless they are expressly designated as binding.

Documents pertaining to offers, such as illustrations, drawings, prospectuses, statements of weights and measurements and other specifications, must be understood only as approximations and shall in particular represent no assurance of characteristics, unless they are explicitly designated in writing as binding.

All the Customer's orders or commissions shall be binding on KEIKO only if they have been confirmed by KEIKO in writing and shall impose a duty on KEIKO only to the extent stated in the confirmation of order. Dispatch of the goods ordered by the Customer shall also effect a conclusion of contract.

## **3. Price**

Should no regulation exist to the contrary, the prices of KEIKO as valid at the time when the contract is concluded shall apply.

All prices listed by KEIKO shall be subject to change and exclusive of VAT, other duties, taxes and charges. Any charges due under the Charges Act shall be payable by the Customer.

Should wage costs change due to regulations under collective bargaining agreements within the industry or to company-internal compacts, or should there be changes in other cost units relevant to estimates or required for fulfilment of performance, such as costs of materials, energy, transport, outside work, finance etc., we shall be entitled to raise or lower the prices accordingly.

The Customer shall be invoiced separately for expenses, such as costs of carriage.

In the case of orders involving delivery of a number of components or the supply of a number of services, KEIKO shall be entitled to make part deliveries and to issue part invoices.

## **4. Terms of payment, arrears interest**

Insofar as no separate agreement has been reached, payment of the sum invoiced must be made promptly following receipt of invoice, without any deduction, to the account designated by KEIKO. Deductions by way of discount shall require a separate agreement. Should payment, including part payments, be in default, any agreements on discount shall be null and void. Payments by the Customer shall be deemed to have been made only at the time when they are credited to our business account.

Should the Customer be in default of his due payments, KEIKO shall be released from performance for the time of default. Should the Customer be in default of payment, we shall be entitled, as we choose, either to require compensation for actual loss sustained, or to charge arrears interest at the statutory level. Should the Customer be in default of payment, KEIKO shall be entitled also to require compound interest from the day when the goods were handed over.

## **5. Withdrawal from contract**

Should the Customer be in default of acceptance (Section 7), or should there be other good reasons – in particular, should the Customer be bankrupt, or should proceedings in bankruptcy have been dismissed due to lack of assets, or should he be in default of payment – we shall be entitled to withdraw from the contract, insofar as it is not yet wholly fulfilled by both Parties. Should withdrawal from contract be made, and should the Customer be culpable, KEIKO shall have a choice either to require damages amounting to 15% of the gross sum invoiced, or to require compensation for loss actually incurred. Should the Customer be in default of payment, we shall be released from all further duties of performance and delivery and shall be entitled to retain any deliveries and performances still outstanding and to require advance payment or sureties or, having set a reasonable period of grace, to withdraw from the contract. Should the Customer withdraw from the contract, without being so entitled, or should he require its abrogation, we shall have a choice either to insist on fulfilment of the contract, or to agree to its abrogation; in the latter case the Customer shall have a duty, as we shall choose, either to pay blanket damages amounting to 15% of the gross sum invoiced, or compensation amounting to the actual loss incurred.

KEIKO may withdraw from contract should it transpire, following conclusion of contract, that delivery is impossible on grounds for which KEIKO is not culpable. Should a withdrawal of this kind be made from the contract, KEIKO must reimburse any advance payments made. Any furthergoing claims by the Customer are hereby excluded.

## **6. Reminder and collection charges**

The Contractual Partner (client, customer) hereby agrees, should he be in default, to reimburse the reminder and collection charges incurred by KEIKO, insofar as these are necessary to pursue the matter at law, and hereby agrees in particular to reimburse as maximum the fees charged by the collection agency employed, such fees being set under the regulations of the Austrian Ministry of Industry and Employment governing the maximum rates for fees due to collection agencies. Insofar as KEIKO undertakes the reminder process itself, the debtor agrees to pay the sum of EUR 10.90 per reminder effected and a sum of EUR 3.63 per half-year for the maintenance of evidence of debt in the reminder system.

## **7. Delivery, carriage, default of acceptance**

Our sales prices do not include costs of delivery, assembly, erection or packaging. We shall supply or organise these services on request, however, in return for separate payment. We shall invoice the costs of carriage and delivery actually disbursed, together with a reasonable administrative surcharge, but no less than the freighting and carriage charges usual or in force on the day of dispatch for the type of transport selected. Assembly or packaging work will be charged by time, a man-hour rate usual in the industry being deemed to have been agreed.

The Customer shall compensate KEIKO for all damage incurred as a result of defective arrangements on his own part during delivery of the goods. Damage in transit must be noted immediately and without fail on the waybill, which will be submitted by the carrier's staff for signature. Later notifications of damage in transit cannot be recognised. Goods must therefore be inspected immediately upon being taken over.

Should the Customer have failed to take over the goods as agreed (default of acceptance), we shall be entitled, having set a subsequent period of grace which has expired without avail, either to store the goods on our premises, for which we shall make a storage charge of 0.1% of the gross sum invoiced per calendar day or part thereof, or to store them at the Customer's cost and risk with an authorised trader. At the same time we shall be entitled either to insist on fulfilment of contract or, having set a reasonable period of grace, covering at least two weeks, to withdraw from the contract and to realise the value of the goods elsewhere. In this case we shall be entitled to require damages for loss incurred, including loss of profit. In case of default of acceptance, following a prior reminder, a market sale or self-help sale under the terms of Section 373 of the Code of Entrepreneur shall be possible.

## **8. Delivery times**

KEIKO shall have a duty to supply performance only when and as soon as the Customer has fulfilled all his obligations requisite for such supply, in particular all technical and contractual details, preliminary work and preparatory measures. Delivery times and deadlines shall only be agreed to legally binding effect if they have been confirmed in writing by KEIKO. Statements of delivery times and deadlines by KEIKO shall be given under the proviso that KEIKO shall be supplied properly and in good time by its suppliers and manufacturers.

## **9. Place of fulfilment**

The place of fulfilment, unless agreed otherwise, shall be the registered office of our company.

## **10. Minor changes to performance**

Minor changes to our obligations of performance or delivery, or other changes to these said obligations which our Customer may be reasonably expected to accept, shall be deemed to have been approved in advance. This shall apply in particular to discrepancies contingent on the article itself (e.g. in the case of measurements, shapes, colours, the external aspect of wood or veneer, the external aspect of plastic, grain, structure, etc.).

A shortfall or overshoot of maximum 10% in the quantity delivered, contingent upon production, shall be allowed and shall be offset. In the case of serial and mass production, the occurrence of a relatively low number of defective goods cannot technically be avoided and a proportion of up to 5% of the total amount shall not be ground for complaint, irrespective of whether the defect lies in the manufacture, printing or material.

## **11. Documents, release**

The Purchaser shall be liable for ensuring that the documents and/or information which he has submitted are correct. The Purchaser shall have a duty, or otherwise forfeit his rights in this regard, to inspect the proof, sample, material specifications etc. to ensure that they are full and correct, to report any changes or supplements at once in writing, and to notify their release at once in writing.

## **12. Award of subcontracts**

KEIKO hereby reserves the right if needed to employ subcontractors to carry out its obligations.

### **13. Transfer of risk**

Risk shall pass to the Purchaser as soon as the shipment has been handed over to the person effecting the carriage. The Purchaser himself must arrange adequate transport insurance.

### **14. Force majeure**

KEIKO shall not be responsible, and shall be released from performance, if it is unable to carry out its obligations due to circumstances for which it is not culpable.

Such circumstances shall be in particular strikes, shortages of raw materials or goods, armed conflicts in a country where a production plant is situated or in a country through which the goods are to be transported.

Removal of disruptions and performances required in the customer's ambit due to incidents of force majeure shall not be covered by flat-rate payments and will be charged separately.

### **15. Guarantee and defects**

Unless explicitly agreed otherwise, KEIKO shall guarantee that the goods delivered shall correspond at the time of delivery or supply of performance with the characteristics set out in the product specifications and that they are not subject to defects which nullify or diminish their fitness vis-à-vis the product specification. A minor diminution or inessential defect shall not be taken into account.

Goods received must be inspected by the Customer immediately. All complaints regarding the goods in question must be made within a reasonable period, in writing, stating the said defect, otherwise any liability, invocation of error and guarantee shall be excluded. KEIKO shall perform its guarantee in the first place through rectification. Such rectification shall be made by removal of the defect or by KEIKO demonstrating means of avoiding the consequences of the defect, or of avoiding the occurrence of a defect.

The Customer may require rescission of the contract or reduction in payment only if, and only insofar as, the rectification of the defect – following several attempts if appropriate – finally fails.

Unless agreed otherwise, the period of guarantee shall be twenty-four months, beginning with the delivery of the goods. Should the transaction concluded with KEIKO be a consumer transaction as defined in the Consumer Protection Act, the period of twenty-four months shall be, but upon expiry of six months the consumer shall bear the burden of proof for the presence of alleged defects. Consumer transactions as defined in the Consumer Protection Act shall therefore be subject to Sections 922 ff. of the General Civil Code.

Guarantee shall be null and void should the Client or Third Parties undertake changes or additions to the goods, wear them out, or interfere with them in any other way, or to cause such changes, additions, wear or interference to be undertaken, without the express approval of KEIKO. Should this nevertheless happen, complaint shall be invalid. Rectification of any defects caused in this way shall be subject to a separate charge.

Should we be only a middleman for the goods sold and merely pass these on, we shall have no duty to subject the said goods on our own part to a detailed inspection to ascertain defects or completeness. Our complaint shall therefore be deemed still to be timely if our purchaser has complained to us immediately and this complaint has been passed on by ourselves immediately to our supplier.

### **16. Compensation**

All claims for damages are hereby excluded in cases of minor negligence. The injured party must prove the existence of gross negligence. We shall accept no liability for damage or loss caused by subcontractors.

KEIKO shall in no case be liable for damage or loss which would have been avoided if the Customer had fulfilled his duty as a correct and proper merchant, or if the Customer had followed the advice given by KEIKO.

### **17. Product liability**

Recourse claims as defined in Section 12 of the Product Liability Act are hereby excluded, unless the recourse beneficiary can prove that the defect was caused in our ambit and involves at least gross negligence.

### **18. Reservation of ownership and assertion thereof**

All goods shall be supplied by ourselves under reservation of ownership and shall remain our property until full payment. Assertion of reservation of ownership shall only signify withdrawal from contract if such withdrawal is explicitly declared. The Customer must ensure proper storage at his own cost of goods subject to reservation of ownership and shall insure them, as far as practicable, against normal local dangers. Should we take back the goods, we shall be entitled to charge the expenses of carriage, storage and handling incurred.

Should legal proceedings in bankruptcy or by way of a creditors' composition be opened on the Customer's assets, or should the Customer have *de facto* ceased payments to KEIKO or be in default, or should his creditors approach him with a view to an out-of-court composition, KEIKO shall be entitled, while continuing the contract(s), to require immediate surrender of such goods as are subject to reservation of ownership and to forbid their further use.

As long as KEIKO is the owner of the Contractual Component(s), the Customer shall have a duty to notify Third Parties of KEIKO's title and to inform KEIKO immediately if

a) Third Parties assert rights to the goods by seizure, lien etc., and/or

b) Proceedings by way of creditors' composition or bankruptcy are opened or applied for on the Client's assets, or if an out-of-court creditors' composition is attempted.

The Customer may not dispose of the reserved goods until full payment of the outstanding purchase price receivable, and in particular he shall not sell, pledge, give or lend them. The Customer shall bear full risk for the reserved goods, in particular for risk of loss, destruction or impairment.

#### **19. Cession of claims, prohibition of cession and prohibition of offset**

In case of delivery under reservation of ownership, the Customer cedes to us here and now on account of payment his claims against Third Parties, as these arise from sale or processing of our goods, until full payment of our receivables. The Customer must name his buyers to us upon demand and inform these in good time of the cession. The cession must be entered in the firm's books, particularly in the Outstanding Items List, and displayed to the Buyer on delivery notes, invoices etc. Should the Customer be in default with his payments to ourselves, the sales proceeds credited to him must be segregated and the Customer shall hold them only in our name. Any claims against an insurer are hereby ceded to us here and now within the limits of Section 15 of the Insurance Policies Act.

Claims against ourselves may not be ceded without our express permission (prohibition of cession).

The Purchaser shall not be entitled to offset his alleged claims against our claims, either in or out of court.

#### **20. Retention**

In case of justified complaint, except in cases of rescission, the Customer shall not be entitled to retain the entire gross sum invoiced, but only an appropriate part thereof.

#### **21. Place of jurisdiction and applicable law**

Austrian law shall apply. Application of the UN law of purchase is hereby expressly excluded. The contractual language shall be German. The Contracting Parties hereby agree Austrian, domestic jurisdiction. The court factually competent at the registered office of our company shall have solely local jurisdiction for decisions on all disputes arising from this contract.

#### **22. Data protection, change of address, confidentiality and copyright**

The Customer shall give his agreement that the personal data contained in the Purchase Contract be also stored and processed by ourselves with the aid of a computer. The Customer shall have a duty to notify us of any changes to his private or business address, as long as the contractual legal transaction has not been fulfilled by both Parties. Should such notification fail to be made, declarations shall be deemed to have been delivered even if they are sent to the last stated address.

Both Contracting Parties shall have a duty to keep the other Contracting Party's business secrets confidential. The Purchaser shall bind his staff to obey the provisions of Section 20 of the Data Protection Act.

Plans, sketches, designs or other technical documents, as well as samples, catalogues, prospectuses, illustrations and similar items, shall remain our property at all times; the Customer shall acquire no working-use or exploitation rights to them.

#### **23. Severability clause**

Should any individual provisions of this contract be or become invalid, or should the contract contain a lacuna, the remaining content of the contract shall not be affected thereby. The Contracting Partners shall work together to find a regulation which shall approach most nearly to the original provisions. Should individual provisions of this contract contradict each other, the more particular provision shall have precedence over the more general one.

#### **24. Trademark and brand designation**

KEIKO shall be entitled to imprint its trademark and brand designation on such work as has reached completion, without the particular permission of the Customer. KEIKO shall be further entitled to use the delivered goods as a reference product for its own purposes of advertisement.