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## **General terms of delivery and sales for business activities with companies**

Offers, deliveries, and other services including consulting, information and similar activities rendered by Karl H. Boddin Chemiehandel GmbH (hereinafter referred to as KHB or KHB's) are governed solely exclusively by these business terms.

Those of the customer's conditions which deviate from KHB's and which KHB has not expressly recognized in writing are non-binding for KHB, even when KHB has not expressly objected to them. These trading conditions shall also apply to all future business relations, even if KHB does not refer to them expressly in later contracts (this includes telephone orders in particular).

Each acceptance of merchandise is deemed to constitute acknowledgement of these conditions. All agreements are to be made in writing. This also applies to special agreements and warranties as well as to subsequent changes to the contract. Any change to this clause must likewise be made in writing.

### **§1. Offers, production descriptions, and scope of supply**

1. Offers are always non-binding; the conclusion of a contract and other agreements only become binding after KHB has confirmed it in writing.

2. The object of the contract is solely the product with the characteristics, features, and intended use as per the product description (in addition if applicable: attached to the sales contract and/or the order confirmation). Public statements, marketing and advertisements do not constitute contractual statement of the commodity's properties.

3. Additional or other characteristics and/or features or any other intended purpose shall only be deemed to have been agreed when KHB expressly confirms this in writing.

4. KHB's written confirmation of the order shall determine the scope of the goods supplied. In the event of an offer being made by KHB which is valid for a limited period and accepted by the due date, the offer shall apply if the order was not confirmed in a timely fashion. Short shipments or excess deliveries up to plus/minus 10% are permissible, as these are customary in this industry.

5. KHB reserves property rights and copyrights to the cost quotations, offers, designs and other documents; they may not be made accessible to third parties.

## **§2. Prices**

1. The prices provided apply exclusive of VAT and only for orders which are dispatched as a single delivery. The prices apply per quantity unit in accordance with the written order confirmation insofar as no special ex-factory/warehouse agreements including loading and packaging exist. The quantity specifications do not include packaging.

2. If a law is passed after the conclusion of the contract which amends the import duties effective for the agreed delivery time or a portion of this time, thereby amending KHB's verifiable expenses, these prices shall change accordingly. KHB shall immediately communicate the new prices to the buyer. Pursuant to this regulation, import duties include import duty, levies and excise tax. If the price, freight remuneration agreements or payment conditions as per this contract or the possibility of such increases or changes to the freight remuneration agreements or payment conditions should change because of a law or official decree or be declared inadmissible for the seller, KHB can withdraw from the part of the contract not yet fulfilled without indemnity.

## **§3. Delivery time**

1. The delivery period begins when written confirmation of the order is sent, though not before the conditions for due completion of the contract (documents, permissions, as well as an agreed down payment) have been met.

2. The delivery period is deemed to have been complied with when the consignment leaves the factory/warehouse or readiness for dispatch is communicated prior to the expiration of this period. Early delivery (following notification) prior to the delivery date is permissible. Adherence to the delivery period presupposes that the buyer fulfills his contractual obligations. Delivery is subject to us receiving our supplies punctually and in good order.

3. The delivery period agreed is binding for the customer. If the customer asks for delivery of the merchandise during a specific, fixed month or week, this delivery period regulation is also binding for the customer.

4. The delivery period shall be extended correspondingly in the event of activities in the context of labor disputes, especially activities during legal strikes and lockouts as well as when unexpected obstacles outside KHB's sphere of influence arise, such as operational disruptions, force majeure, war and interferences by authorities, in so far as it can be proven that such obstacles had a significant influence on the manufacture or delivery of the goods supplied and that KHB, despite reasonable precautions, could not have prevented such obstacles.

KHB shall not accept responsibility for the aforementioned circumstances even if these arise during an existing delay. In significant cases, KHB will communicate the beginning and end of such obstacles to the customer as soon as possible.

5. If there is a delay in performance, the customer is entitled to withdraw from the contract associated with the late single delivery after a reasonable extension period (to be determined by the customer) has expired. KHB is liable for the resulting damages only in so far as the damages were foreseeable by the management. Each compensation claim for damages is limited to the sum of the damages, to be documented by the customer, with a maximum liability being up to 500,000.00 EURO.

6. KHB is entitled to make partial deliveries. For deals with continuous delivery, KHB is to provide the orders and organization for monthly quantities which are approximately the same, and at the latest six weeks prior to the beginning of the corresponding delivery month. If the release order or allocation is not made on time, then the seller is entitled, after setting a reasonable extension period it has chosen, to divide the goods itself and to deliver them or, after setting a reasonable extension period, to conclusively refuse the fulfillment of the residual part of the deal and require compensation.

If KHB falls behind with a partial delivery, then the customer can only assert claims that are related to this delivery unless the partial delivery that has taken place is not of interest for the customer.

7. When there is default of acceptance, the legal regulations apply in other respects.

#### **§4. Payment/late payment/offset/withholding/transfer**

1. So long as KHB has not confirmed otherwise in writing, invoices are to be paid in full within 30 days after receipt of invoice. When there are delays in payment, the buyer is to pay interests amount to 8% of the basis interest rate, unless the buyer can prove less damage or KHB can prove higher damage.

2. The customer is not entitled to offset KHB payment claims with contested or legally ineffective counterclaims or claim rights of lien. Discount payments and other deductions are not permitted, unless otherwise agreed upon in writing.

3. If KHB becomes aware that the customer is in an unfavorable financial position after the contract has been concluded, then KHB can require a quid pro quo security. An unfavorable financial position in particular includes out-of-court offers of compromise, requests to open legal settlement or insolvency proceedings, or entering into a debtor listing or a "blacklist."

4. If partial payments are agreed upon, the full debt balance – regardless of the due date for the draft issued - becomes immediately due for payment when the customer is behind by 14 days, enters an unfavorable financial position or stops making payments.

5. Requirements from this contract may not be transferred to third parties unless otherwise agreed upon in writing.

## **§5. Dispatch and risk transfer**

1. Regardless of the cost, the risk is transferred to the customer as soon as the commodity leaves the KHB factory or warehouse or is given over to the buyer, deliverer, freight carrier or any other person or institute for transport at the factory or warehouse. If it agreed upon that the customer or those assigned by the customer will pick up the commodity, then the transfer of risk takes place at the latest at the end of the second day after it has been reported that the goods are available for collection. If KHB participates in any form in the freightage, then it acts exclusively as a representative of the customer's.

2. The customer is to inform KHB of the desired mode of shipment immediately after the contract has been concluded. If this report is not made within 7 days at the latest after the conclusion of the contract, KHB is free to choose the transit period and method of transport. KHB assumes no liability for problems (damages, delay) resulting from transport. Reloading or forwarding expenses resulting from missing or incorrect data regarding the place of destination are to be paid by the customer, even when, according to agreement, the costs of the shipment are to be borne exceptionally by KHB. KHB selects packaging for the goods at its own discretion.

3. Insurance is not covered by KHB without the corresponding written order from the customer.

4. In all other respects, the "INCOTERMS" in their most current version are applicable.

## **§6. Retention of title**

1. KHB retains the title to the commodity until all requirements from the customer from the business relation, including future requirements, even from concurrent contracts or contracts concluded at a later date, are settled. This also applies even if individual or all claims from KHB were incorporated into an ongoing invoice and the balance has been indicated and recognized.

2. For KHB, the development, processing, and installation of the goods subject to retention of title take place with KHB as manufacturer in the sense of § 950 BGB [German Civil Code] without obligating KHB. The developed and processed commodity or products connected with KHB products apply as commodities subject to retention of title in the sense of these conditions. If the goods subject to retention of title are processed, combined, or mixed inseparably with another manufacturer's goods, then KHB acquires joint ownership of the new commodity in proportion to the invoice value for the goods subject to retention of title to the invoice value for the other commodity used at the time of the processing or mixing. If the buyer acquires the sole ownership of the new item, then the contract partners agree that the buyer will arrange for KHB's joint ownership of the new item in proportion to the invoice value of the processed and/or connected, mixed, or combined goods subject to retention of title and safeguards this for KHB free of charge.

The joint ownerships that then develop are considered as commodities subject to retention of title in the sense of these regulations.

3. If the customer behaves in a manner contrary to the terms of agreement, particularly in the event of a delay in payment, then KHB is entitled to withdraw from the contract and reclaim the commodities. The customer is obligated to surrender the commodities in this instance. KHB reserves the right to require compensation for damages.

4. If it is recognizable as a retailer, the customer is entitled to resell the goods in the standard course of business, though never after a judicial or out-of-court settlement proceedings or insolvency proceedings has been requested or opened – under the condition that the request for resale is vested in KHB as follows: The customer assigns all previously existing demands with all ancillary rights developing for it from the resale towards customers or third parties to KHB, regardless of whether the goods subject to retention of title are resold without or subsequent to processing. KHB already accepts this transfer as of now. If the customer incorporates the claim from the resale of the goods into a current account relationship existing with its customers, then the current account claim is surrendered in full. After a successful settlement has been made, in its place is the recognized balance which applies as surrendered up to the value of the amount which constituted the original current account request. KHB already accepts the assignment of these claims as of now. If the customer resells the goods subject to retention of title on credit, it must secure the rights of the retention seller (KHB) for resale.

The customer is authorized to collect the claim even after the transfer. KHB's authorization to collect the claim itself remains unaffected, though KHB commits itself to not collect the claim so long as the customer duly fulfills its liabilities.

KHB can require the customer to communicate to it the transferred claim and their debtors, all data necessary to make the collection, to provide the affiliated documentation and to communicate the transfer to the debtors. If the goods are resold together with goods which do not belong to KHB, then the buyer's claim against the customer applies as transferred at the amount agreed upon between KHB and the customer as the delivery price.

5. The customer is not entitled to make other orders made for the goods subject to retention of title, and in particular the commodity may not be pawned or transferred by way of security.

The goods are to be excluded from a transfer by way of security of total stock merchandise through an express declaration made to the secured party. KHB commits itself to release the securities to which it is entitled to the extent that their value exceeds more than 20% of the value of the claims to be secured, so long as these have not yet been settled.

6. The buyer is obligated to sufficiently insure the goods which are subject to retention of title against the usual dangers, and this at its own expense.

7. If the law of the country in which the delivered goods are located does not admit the retention of title, then the seller allows for the other laws for the delivery article so that KHB can exercise all rights of this sort. The customer is obligated to participate in the steps which KHB wants to take to protect its vested title or another right to the goods in its place.

## §7. Warranty

Product liability law claims shall remain unaffected by the following regulations.

1. The buyer must immediately – though no later than within 5 working days after obtaining power of disposal over the article delivered – communicate any damages in writing. Damages which cannot be discovered, even after a thorough examination within this period, are to be immediately communicated to KHB in writing as soon as they are discovered.

2. When an effective notice of defect has been issued, the customer is obliged to have the condition of the goods surveyed by a neutral expert at KHB's request. Claims based on the defectiveness of the goods shall become void if the buyer does not give KHB or its sub-suppliers the opportunity to check the defect described on the premises or to have it checked, or if the buyer does not make samples immediately available as requested. All defect claims shall also become void if goods processing is not stopped immediately after the defects are identified or if the mixing of KHB goods with those of another manufacturer is not discontinued; this shall apply until KHB or its sub-suppliers clears the goods. At the same time, the customer shall name the product customers to whom the goods were delivered.

3. KHB assumes no liability for consequences resulting from the inappropriate use of the goods or failure to use a guideline arranged for by KHB.

4. If significant material defects exist, we shall eliminate the defect or deliver a defect-free commodity (supplementary performance). If, after a second attempt to provide supplementary performance, the defect removal or subsequent delivery experiences unreasonable delays or becomes impossible or fails, the buyer can claim a discount, withdraw from the contract, or request compensation for damages instead of performance. If the buyer chooses to withdraw from the contract, he shall not be entitled to any compensation for damages due to the defect.

5. The buyer's claims shall become time-barred within one year, beginning with the delivery of the object purchased to the buyer. This also applies to claims for compensation for consequential harm caused by a defect.

6. In the event of a breach of obligation, in particular any due to consulting errors, breaches of contractual ancillary obligations, or from faults arising during conclusion of the contract which are attributed to us or our executing aides and which are not premeditated or due to gross negligence, our liability is limited to the foreseeable damages typical for this type of contract; this does not apply for damages which the buyer suffers due to injury to life, body, or health for which we or our executing aides are responsible.

7. If claims for compensation are made against KHB from a claim from the customer lodged by own customers, KHB's liability, where appropriate, shall be the same as if it had sold directly to the end customer. If an end customer makes a claim against the customer for a reason which originates in the defectiveness of the goods sold, the customer is obliged to immediately apprise KHB thereof. In addition, he is also obliged to indemnify his customer unless KHB recognizes its obligation to indemnify the customer or his customers,

or makes an out-of-court settlement. If the customer is sued by his customer, the customer must give KHB the opportunity to participate in the legal proceedings.

8. The buyer shall take over all possible claims directed against KHB from any injury to third-party patent rights through the import or use of the goods supplied by KHB insofar as this is not due to premeditation or gross negligence on the part of KHB.

## **§8. Place of fulfillment**

The place of fulfillment is Hamburg. The place of fulfillment for all of the customer's obligations is the seller's (KHB's) registered office.

## **§9. Jurisdiction and applicable law**

German law is applicable. The application of UN conventions relating to uniform legislation on the international sale of goods is excluded.

The area of jurisdiction for all disputes arising in connection with the contract with KHB is Hamburg. If KHB is the plaintiff, proceedings may also be initiated at the customer's registered place of business.

## **§10. Miscellaneous**

Should individual conditions be legally invalid or be modified, the remaining conditions shall continue to be binding. A clause shall be deemed to have been agreed which fulfils the financial purpose of the invalid clause as closely as possible.

Business with entrepreneurs is to be treated the same as business with legal entities of the public right and public special estates.

These general terms of sale and delivery shall also apply to all future business with the buyer. They are located on the KHB homepage on the internet ([www.boddin.com](http://www.boddin.com)), and thus the buyer cannot make the objection that these were not accessible. When these general terms of sale and delivery are published, all earlier agreements shall become void.

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