

## **General terms and conditions of business and sale of Nippon Kornmeyer Carbon Group GmbH for contracts with companies.**

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### **§ 1 General**

(1) The following terms and conditions of sale and delivery shall apply exclusively to all deliveries and other services. They shall only apply in relation to entrepreneurs as defined in § 310 Paragraph 1 and § 14 of the German Civil Code (BGB).

(2) Deviating terms and conditions of the Buyer which are not expressly recognized by the Seller shall be non-binding, even if the Seller does not expressly object to these.

(3) The inclusion and interpretation of these terms and conditions of sale and delivery shall be regulated exclusively in accordance with German law, as is the case with the conclusion and interpretation of legal transactions with the Seller itself. The applicability of the unified law concerning the conclusion of international sales agreements in respect of moveable objects and the unified law for the international purchase of moveable items under the United Nations Convention on the International Sale of Goods shall be excluded.

(4) The ineffectiveness of individual provisions of this contract or parts thereof shall not affect the effectiveness of the remaining clauses. Within the framework of what is reasonable and in good faith, the Contracting Partners shall be obliged to replace an ineffective provision by a clause which fulfils the economic intention in an equivalent manner, unless a significant change to the contents of the contract is caused as a result. The same shall apply should an issue which requires regulation not be regulated.

(5) The place of performance for all direct or indirect obligations under this contractual relationship, including the payment obligation, shall be the place of business of the Seller.

(6) The place of jurisdiction shall be the competent court of the place of business of the Seller, provided that the Buyer is the person making the purchase. The Seller shall also be entitled to bring a lawsuit before a court which has jurisdiction for the place of business or a branch of the Buyer.

### **§ 2 Offers, scope of service and conclusion of the contract**

(1) Contractual offers of the Seller shall be non-binding. These shall be valid for 4 weeks from the date of issue. Oral agreements or undertakings shall only be binding on the Seller if confirmed in writing.

(2) The order confirmation of the Seller shall be solely binding in respect of the scope of the service which is owed under the contract. Contractual conclusions shall not take effect until after the written order confirmation of the Seller.

(3) The Seller shall reserve the right to carry out changes to the construction, the choice of raw materials, the specification and the design type also after the sending of an order confirmation, provided that neither the order confirmation nor the specification of the Buyer object to this. In addition, the Buyer shall declare its agreement to further change proposals of the Seller, provided that these can be reasonably expected of the Buyer.

(4) Partial deliveries shall be permitted.

(5) The documents such as images, drawings and quantity and weight specifications which form the basis of the offer or the order confirmation shall, as a rule, be considered to be only of an approximate nature, unless these are expressly stated as being binding.

(6) It is hereby agreed between the Seller and the Buyer that all information, drawings and data etc which are handed over within the framework of the co-operation are being mutually entrusted in accordance with § 18 of the German Act Against Unfair Competition (UWG) and may only be used in the course of the working relationship. Any other use, in particular the forwarding on to third parties, is strictly prohibited.

### **§ 3 Prices and payment terms**

(1) The prices shall apply ex-factory exclusive of packaging and other shipping and transport costs. The packaging shall be charged for at cost price and will only be accepted for return if the Seller is so obliged in accordance with mandatory statutory regulations.

(2) Should a period of more than 4 months exist between the conclusion of the contract and the delivery, without the Seller being responsible for such a delivery delay, the Seller shall be able to reasonably increase the price, taking into account the material, wage and other ancillary expenses which the Seller must bear. Should the purchase price be increased by more than 40%, the Buyer shall be entitled to rescind the contract.

(3) Should the Seller take into account change requests of the Buyer, the additional costs incurred as a result shall be charged to the Buyer.

(4) In case of culpable exceeding of the payment deadline, subject to the assertion of additional claims, interest to the amount of 8% above the respectively applicable base rate of interest will be charged.

(5) Invoices shall be payable at the latest 30 days after receipt, without any deduction if there is no other existing agreement between the parties.

### **§ 4 Setting off and retention**

Setting off and retention shall be excluded, unless the setting off claim is undisputed or has been recognized by a court.

### **§ 5 Delivery deadline**

The stating of a delivery time shall be in accordance with the discretion of the Seller and shall be reasonably extended should the Seller delay necessary or agreed co-operation actions on its part or should it fail to cooperate. The same shall apply in case of measures within the framework of industrial disputes, in particular strike and blockades, as well as in the event of the occurrence of unforeseeable events outside of the area of control of the Seller, for example delivery delays on the part of a supplier, transportation and operational disruptions, lack of raw materials or energy, etc. Any changes to the delivered products caused by the Buyer shall also lead to a reasonable extension of the delivery deadline.

### **§ 6 Transfer of risk**

The risk shall be transferred to the Buyer, once the Seller has made the goods available to the former and provides notification to the Buyer of such.

### **§ 7 Reservation of ownership**

(1) The Seller shall reserve ownership of the delivered goods until full payment has been made. The reservation of ownership shall also apply until all claims, including future and contingent claims, under the business relationship have been fulfilled between the Buyer and Seller.

(2) The Buyer shall not be entitled to transfer the goods as security or pledge these; however it shall be entitled to sell on the goods which are subject to reservation of ownership in the course of normal business dealings. The Buyer hereby now assigns to the Seller the claims which are accrued against its business partners.

(3) Should the goods be processed or amended, the reservation of ownership shall also fully extend to the new item. The Buyer shall acquire co-ownership to the fraction which corresponds to the relationship of the value of its goods to the items delivered by the Seller.

(4) Should the value of all securities to which the Seller is entitled sustainably exceed the existing claims by more than 10%, then on the request of the Buyer, the Seller shall release securities of its choice.

(5) The Seller shall be entitled to assert the rights of retention without rescinding the contract.

(6) Should justified doubts concerning the payment capability of the Buyer arise before or during the delivery, in order to secure the payment obligation of the Buyer, the Seller shall be entitled to demand sufficient securities on the part of the Buyer and to refrain from providing delivery and performance until such time that the said securities have been provided. Should the Buyer not be able to provide the requested securities, the Seller shall be entitled to rescind the contract.

#### **§ 8 Defect claims**

(1) Should the sale be a commercial transaction for both parties, the Buyer must immediately inspect the goods following receipt, provided that this is feasible in accordance with the proper course of business procedures and, should a defect arise, the Buyer must provide immediate notification. Should the Buyer fail to provide the said notification, the goods shall be deemed to have been approved, unless this concerns a defect which was not recognizable at the time of inspection. Otherwise, §§ 377 ff. of the German Commercial Code (HGB) shall apply. Objections of the Buyer in respect of the quantities stated in the delivery note can only be asserted to the Seller in writing within 48 hours of receipt of the goods.

(2) The defect claims shall be limited to supplementary performance. Should supplementary performance fail, the Buyer shall have the right to choose between a reduction of the remuneration or rescission of the contract.

(3) Further claims of the Buyer shall be excluded, unless these result from the assumption of a guarantee. This shall not apply in case of intent, gross negligence or the breach of essential contractual obligations of the Seller.

(4) The defect claims shall lapse one year after delivery of the object of purchase.

#### **§ 9 Liability**

Damages claim of the Buyer shall be excluded. This shall not apply in case of intent, gross negligence or the breach of essential contractual obligations of the Seller or the assumption of a guarantee.