

## General Terms and Conditions of KHK GmbH

### 1. Area of application

Deliveries, services and offers are solely subject to our General Terms and Conditions of Business. We will not accept any terms and conditions from the purchaser's side. Any exceptions to our General Terms and Conditions of Business will only be valid if approved in writing by us.

### 2. Offers and conclusion of contracts

2.1 Offers are subject to alteration without prior notice and agreement. Declarations of acceptance and orders must be confirmed by us in writing. Any additions, amendments or collateral agreements are also to be agreed in writing.

2.2 Drawings, pictures, proof sheets, films, measures, patterns, any necessary tools required for production, master stamps, etc. required for special designs of all kinds, weights or any other units of performance are binding only when they have been expressly agreed in writing.

2.3 Unless otherwise agreed in writing, orders will be delivered ex-works in Cologne.

2.4 In the event of insolvency or credit-unworthiness on the part of the purchaser, or severe violations of his contractual obligation, KHK GmbH shall have the right to withdraw fully or partially from the contract, unless an appropriate payment is made in advance by the purchaser.

### 3. Samples

We maintain the copyright and intellectual ownership of all product samples sent to the purchasers. This also applies if the purchaser pays for the samples. Should the purchaser, having received our samples for approval, have the order executed by an alternative manufacturer, the customer undertakes to compensate us for our losses. We reserve the right to apply for injunction.

### 4. Tools of all kinds, moulds, films, drawings, clichés

4.1 Tools of all kinds, moulds, films, drawings, any necessary tools required for production, master stamps, and clichés required for special designs of all kinds remain our property – irrespective of whether or not the purchaser contributes to the production costs.

4.2 Tools of all kinds, moulds, films, drawings, tools for production and artworks, master stamps and clichés, etc. required for special designs of all kinds will not be used in any way for other clients for a time period of 5 years starting from the order delivery date.

4.3 Digital data which is received via e-mail will be stored for 12 months and thereafter deleted without further notification of the customer. Data which has been used for an order will be stored for up to 5 years.

### 5. Proof sheets, print

5.1 The order will be executed by KHK GmbH on the basis of the proof sheet. Any later claims on the part of the purchaser which are ascribed to errors on the proof sheet which was still approved by the purchaser are to be excluded.

5.2 Depending on the printing motif, the printing techniques used are direct printing (silk screen printing or pad printing) or digital printing. Direct printing will be in Pantone or HKS. In silk screen printing, the tolerances for polychrome prints can be +/- 0.33 mm. In pad printing, deviations from the print positioning of +/- 0.1 mm are unavoidable. For technical reasons, the deviation from the printing position cannot be ruled out. Resulting deviations do not constitute grounds for complaint. When implementing a motif as a label in digital printing, the CMYK printing process will be used. No exact Pantone colours can be achieved; only an approximation of Pantone can be printed. In order to minimize colour deviations, the customer can make a colour print-out available, to which the label will be matched. If the customer does not send in a colour print-out, and the printing is based on the data made available, no later claim based on colour deviations shall be permissible.

5.3 For direct printing, the printing data will be made available in the following formats: Corel Draw 14, Adobe Illustrator CS 2, Macromedia Freehand MX. Fonts are to be converted to paths (curves). For technical reason, the line thickness may not be less than 0.18 mm. Data in jpeg format may only be used for labels, doming or cardboard packaging. The resolution must be at least 300 dpi with a size of 1:1.

### 6. Prices

6.1 Provided that no other agreements have been made, the offered price is valid for 30 working days from date of the offer. The prices stated in the order confirmation shall apply.

6.2 Prices are ex works in Cologne. The V.A.T. applicable on the day of delivery is added to the prices.

6.3 Prices are exclusive of packaging, freight costs, moulding costs, film costs, drawings, clichés, additional costs for any necessary tools required in the production, costs for master stamps and special designs of all kinds, unless otherwise agreed in writing.

6.4 Prices do not contain design costs. Costs for design proposals, layouts, etc. are to be agreed before placement of an order. We reserve the right to charge for design and layout costs.

6.5 We retain the copyright and intellectual ownership of all design and layout proposals, even if the purchaser's logo has been used. In the event of the purchaser placing the order with another supplier, using our design and layout proposals, the purchaser agrees to compensate us for the losses. We reserve the right to apply for injunction. We are under no obligation to hand out our designs and layouts.

6.6 If the purchaser orders less than the quantity offered by us, we shall have the right to add 10 % to the net price for this shortfall.

6.7 Tolerance of +/- 5 % of the ordered quantity are possible and the price will be adjusted accordingly. Quantity deviations may occur for technical reasons and do not entitle the purchaser to any supplementary deliveries.

### 7. Time of delivery and service

7.1 All dates and time limits are subject to change, unless otherwise expressly agreed.

7.2 Even where dates and time limits have been agreed as binding, we shall not be responsible for any delays in delivery and service due to force majeure or occurrences which severely impede delivery, or makes delivery impossible – this also includes difficulties in obtaining raw materials, breakdowns, strike, lock-out, official instructions etc., even if they occur with our suppliers or subcontractors. We are permitted to postpone the delivery date or service for the time of impediment plus a suitable lead time or to withdraw partially or completely from the contract for the delivery or service still unfulfilled up to that time. In the event of a withdrawal, we shall inform the purchaser immediately of the non-availability and reimburse the corresponding payment without delay.

7.3 If the impediment lasts more than 3 months, the purchaser may withdraw from the part of the contract still unfulfilled following notification of an appropriate period of grace.

7.4 We are permitted to make partial deliveries and perform partial services where this can be deemed reasonable for the customer.

### 8. Transfer of risk

The risk transfers to the purchaser as soon as the merchandise has been accepted by the forwarding agent or has left our premises to be shipped. If shipment is impossible through no fault of our own, the risk transfers to the purchaser with the information that the goods are ready for shipment. The purchaser is free to nominate a forwarding agent. If the purchaser does not specify a forwarding agent, we are authorized to commission the forwarding agency who works for us. Unless otherwise expressly agreed, the freight costs shall be borne by the purchaser.

### 9. Warranty

9.1 Complaints regarding obvious faults must be submitted to KHK GmbH in writing by e-mail, fax or letter within 3 days of receipt of the merchandise. Faults which are very minor, particularly those which affect the agreed purpose to only a very minor extent, do not constitute grounds for complaint. If, despite all the care taken, the delivered goods have a fault which already existed at the time of the transfer of risk, we shall, at our discretion and assuming we are notified within the specified period, correct the fault or redeliver new goods. We must always be allowed the opportunity for subsequent performance within a reasonable period of grace.

In the event of the failure of subsequent performance, the purchaser shall be entitled to reduce the price or withdraw from the contract. The new goods will be delivered to the purchaser without delay at our expenses.

9.2 The stipulations above contain the entire warranty for our products and exclude any other warranty claims of any type.

Liability for malicious intent, fraudulent intent and for personal injury as well as liability relating to the product liability laws shall remain unaffected.

#### **10. Payment**

10.1 Unless otherwise agreed, our invoices are payable without deductions within 30 days of issue.

10.2 Payment is considered as having been made only when the amount is at our disposal. In the case of payment by cheque, payment is considered as having been made only when the cheque has been credited to our account and not reversed.

10.3 If the purchaser should fall into payment arrears, KHK GmbH shall be entitled to charge interest at a rate of 8% above the relevant basic discount rate.

10.4 If the purchaser does not meet his liability to pay or if conditions become known which throw doubt on the credit-worthiness of the purchaser, the entire remaining debt of the purchaser shall immediately become due for payment, even if cheques had been accepted. In this case we are furthermore entitled to demand payments in advance or security deposits.

10.5 The purchaser is entitled to claim offsetting, retention or diminution, even when complaints or counter-claims have been raised, only if we have given our express consent in writing or if the counter-claims have been established as final or are undisputed. The purchaser is not entitled to set off the vendor's payment entitlements against rights to offsetting, retention or diminution – even in the case of complaints – unless they originate from the same legal transaction.

10.6 The amount payable on this invoice has been purchased by and assigned to ABN AMRO Commercial Finance GmbH, Postfach 10 02 05, 50442 Cologne. Payments with discharging effect can only be made to the account of this

company Acc.-No. 975 127 031, Commerzbank AG, Cologne (Bank Code 370 800 40), IBAN DE 5137 0800 4009 7512 7031, SWIFT DRESDEFF370.

#### **11. Retention of proprietary rights**

11.1 We deliver merchandise subject to the retention of proprietary rights described in greater detail below. This shall also apply to all future deliveries, even when we do not expressly refer to them.

11.2 KHK GmbH (vendor) retains ownership of the merchandise (reserved goods) until such time as all the vendor's claims against the purchaser arising from the business relationship have been settled, including the claims arising in the future from contracts concluded at the same time or later. This shall also apply when individual claims or all claims of the vendor have been entered in a current account and the balance has been drawn and recognised.

11.3 The purchaser shall be entitled to sell on the reserved goods in the course of normal business. The purchaser already assigns the buyer's claims arising from the selling on of the reserved goods to us up to the amount of the invoice total (including VAT) agreed with us. This assignment shall apply regardless of whether the merchandise was sold on without or following further processing. The purchaser shall retain the entitlement to collect the claim even after the assignment. Our authorisation to collect the claim ourselves shall not be affected by this. However, we shall not collect claims as long as the purchaser honours his payment obligations from the revenue achieved, is not in arrears with payment and, in particular, no petition for insolvency proceedings has been filed or payments have not been suspended.

11.4 Should the value of the merchandise serving us as collateral delivered under retention of proprietary rights exceed the total claim against the purchaser by more than 20%, we shall be obliged, at the request of the purchaser, to release/transfer the merchandise with regard to the excess value.

#### **12. Place of execution and jurisdiction, partial invalidity**

12.1 German law shall apply for this business relationship and for the entire legal relationship between KHK GmbH and the business partner. The conflict of laws rules of international private law are excluded. German law shall also apply for cross-border transactions.

12.2 As far as legally authorised the place of execution and jurisdiction for any disputes that may arise between the parties out of their contractual relationship shall be Cologne, Germany.

12.3 Should any provision of these Terms and Conditions of Business or of any other agreement prove to be invalid, this shall not affect the validity of the other provisions or agreements.

12.4 The purchaser is to give his consent to the storage of his data in our EDV system and to the utilization of these data for the entire execution of the contract.