

General Terms and Conditions (GTC)

1. Definitions

- 1.1 *Content:* The following conditions rule settlement, content and transaction of purchase contracts between KAGO AG and its clients and suppliers (both shall be called „partners“ in the following paragraphs for reasons of simplicity). These conditions apply to all our deliveries, services and contracts, as long as no diverging written agreements have been made.
- 1.2 *Validity:* The partner acknowledges these Terms and Conditions with his order or the acceptance of our contract. Legal or commercial conditions of the partners are only valid when explicitly accepted by us. References to conditions in the inquiry will be ignored.
- 1.3 *Language:* The German version of these Terms and Conditions („Allgemeine Geschäftsbedingungen“) is the original and only legally binding one.

2. Conditions of purchase

- 2.1 *Invoice- and Delivery and pick up address* KAGO AG, Zaystrasse 3, CH-6410 Goldau, Switzerland. Consignments outside of working hours (0800–1200 / 1300–1700 h) are to be arranged in writing. **Costs arising due to non-adherence to these regulations will be charged solely to the partner.**
- 2.2 *Orders* by KAGO AG will only be accepted if effected in writing. All work done on basis of orally conferred instructions occur at the partner's risk alone.
- 2.3 *Surpluses:* If, due to technical reasons, an excess of the ordered quantity is manufactured, KAGO AG is not obliged to pay these.
- 2.4 *Immaterial law of property* on technical records, drawings, projects, inventions and so forth, which KAGO AG provide, remain their property and may not be copied, multiplied nor be brought to the attention of a third party, without the written permission from the above named.
- 2.5 *Proprietary rights:* Data, prototypes, theories, engineering drawings, tools and such, ordered and paid for by KAGO AG, unless otherwise agreed – remain their property and are to be returned without enquiry or stored free of charge, at the conclusion of contract. Property of KAGO AG may not be destroyed within 15 years of production without written permission.
- 2.6 *Observance of secrecy:* The partner and KAGO AG treat all data which is neither public knowledge nor generally accessible as confidential. If in doubt treat all data as confidential. This observance of secrecy must be adhered to before the completion of the contract and also after the conclusion of the contract terms. Rights reserved for legal clarification.
- 2.7 *Penalties:* If the partner infringes his duty on §§ 2.4, 2.5, and 2.6, he then owes KAGO AG a penalty of 20% of the selling price of the business concerned, or a minimum of CHF 10'000.- per case.

3. Conditions of sale

- 3.1 *Quotes:* As long as not otherwise stated, the validity of quotes is 30 days. Rights reserved for prior sale at any time.
- 3.2 *Incoterms:* Our delivery conditions are – as long as not otherwise stated – according to the Incoterms 2010 (ICC Publication 715).
- 3.3 *Delivery periods:* The delivery periods are normally valid as from receipt of order, but only start on the day when KAGO AG is in possession of all necessary information from the partner concerning execution, modification etc. The delivery deadline is calculated from the day the goods are ready for despatch, regardless of whether the despatch can result or not due to circumstances which KAGO AG cannot be held responsible for.
- 3.4 *Exceptions:* The delivery periods are normally considered binding and are deemed as observed when the delivery follows accordingly, or respectively the partner has been advised of dispatch. The delivery may be prolonged under following circumstances:
- if the information KAGO AG needs in order to fulfill the contract is not received on time, or if the partner subsequently requires modifications or amendments and causes herewith a delay on performance.
- if hindrances arise beyond the control of KAGO AG, regardless of whether the cause is due to the above named, the partner or a third party, such as factory breakdowns, delays by sub-contractors, acts of God such as natural catastrophes, war, strikes etc. In such a case, the partner must be prepared to renegotiate the contract as necessary.
- if the partner or a called upon third party is behind schedule with the work or the fulfillment of the contract terms.
- if the partner does not adhere to payment conditions.
- 3.5 *Delays:* KAGO AG is obliged to inform the partner of delays. The partner is not entitled to withdraw from the contract nor to demand indemnification on account of delayed deliveries. This is possible only in cases of gross negligence or illegal intention.
- 3.6 *Inspection of goods:* The partner alone is responsible for the costs of all inspections he desires.
- 3.7 *Usage and risk of deliveries* pass over to the partner at the place of hand-over. KAGO AG will not accept responsibility for belated deliveries caused by the partner. The risk of damage passes over to the partner on the originally scheduled delivery date, whether the commodity is still stored on site or already delivered to the end destination.
- 3.8 *Rights to use:* The partner obtains the non-transferable right to use and application of the contract matter. But advertising and publications relating to contract specific performance require the prior written agreement from KAGO AG.
- 3.9 Cancellation or suspension of contracts by the partner is only possible with KAGO AG's explicit agreement in writing. In any case, the accumulated costs for special consignments must be covered. A deduction of at least 20% of the gross amount or CHF 100.- per returned consignment will be claimed for deliveries retracted due to reasons KAGO AG cannot be held responsible for. Only stock products will be accepted as returns. Transport costs will be charged separately.

4. Conditions of rental

Omitted in the English version

5. Prices

- 5.1 *Settlement:* Our products and services will be invoiced in Swiss Francs (CHF) or in Euro (EUR) according to the customer's wish.
- 5.2 *Prices:* All prices are valid per quantity unit, VAT excluded and ex works. Costs for packing, administration, transport, insurance, customs etc. will be charged separately.
- 5.3 *Price modifications:* If conditions of price formation like raw material prices, currency parities, taxes, duties, etc. change between offering and delivery date, KAGO AG is authorized to adapt prices and conditions to the new circumstances without prior notice.
- 5.4 *Extra charge for small quantities:* KAGO AG has the right to claim an extra charge of CHF 50.- on accounts under CHF 300.- All discounts are inapplicable.
- 5.5 *Express charge:* KAGO AG has the right to claim an express charge of 10% of the cost price, at least CHF 50.- for deliveries which are to ensue within five working days, or earlier than the quoted delivery date, or which on account of their urgency lead to production changes.
- 5.6 *Extra charge for expensive material supply:* KAGO AG has the right to claim an expenses charge of 10% or at least CHF 6.- per sales item, if within a delivery items are requested for in uncustomary quantities (no whole packages or wire rolls etc.), which have a work intensive consequence (counting, measuring etc.).

6. Conditions of payment

- 6.1 *Advance Payment:* KAGO AG has the right at any time to insist on advance payment for goods, without stating reasons hereof, especially with first time customers or foreign clients.
- 6.2 *Terms of payment:* Goods not paid in advance are to be paid for without reductions for cash or other discount within 30 days of the account date. The payment is considered effective once the amount owing has been credited to the designated bank account and is at free disposal to KAGO AG. A settlement with counter claim is not permitted. All outstanding accounts must be fully paid up before subsequent deliveries.
- 6.3 *Defaults in the payment conditions:* If the partner doesn't adhere to the arranged payment date then he will be liable without further warning and must pay a default interest of 5% from the 31st day after the account date. A sum of CHF 20.- will be charged for each posted reminder. The non-adherence to the payment conditions dispenses KAGO AG from their delivery obligation, but not the partner from their obligation to accept.
- 6.4 *Reservation of proprietary rights:* The parties agree that the deliveries only then transfer into possession of the partner when all payment obligations have been fulfilled. The partner will maintain the delivered products at their own cost during the duration of reservation, insure against theft, breakage, fire, water and other risks and overall take measures so that the claim to possession of KAGO AG will neither be impaired nor dismissed.

7. Faults – Guarantee – Liability

- 7.1 *Contract fulfillment:* KAGO AG is obliged in all cases to fulfill contracts competently. But as they strive to continually develop their products and to adjust to the latest technical standards, they retain the right at all times, without prior notice, to make adjustments to construction and fittings. Hence, content of advertising brochures or descriptions in technical documents are only binding as long as they have been explicitly expressed for the present project.
- 7.2 *Faults:* The partner must check the condition of the delivery and immediately notify KAGO AG in writing of possible defects. Defects are considered to be evidently poor material, defects in construction, faulty design and non-adherence to the ensured specifications. If no advice follows within 8 days of the delivery time, then the delivery and the performance of KAGO AG is considered approved. Faults which despite accurate inspection cannot be detected within this time frame are to be reported immediately upon being detected, or no later than 3 months after goods being received. Later notification of faults will not be accepted.
- 7.3 *Guarantee:* The guarantee responsibility of two years is only valid to the direct partner and is restricted by choice of KAGO AG to improvement or replacement delivery. If an improvement or a replacement isn't economically reasonable, then a right to an appropriate reduction of the price exists. All other claims, also for time or indemnification will be rejected. Excluded from the guarantee are damages resulting from natural wear, non-adherence to our mounting instructions or excessive strain. Furthermore the guarantee ceases or lapses in case of the partner undertaking changes or repairs on the goods themselves or through a third party, without advising or without authorization from KAGO AG; likewise if the partner does not take immediate steps to prevent more damage and to enable KAGO AG to rectify the defect.
- 7.4 *Guarantee time limit:* The guarantee term is 24 months unless explicitly otherwise agreed. The term begins with the dispatch of the goods. If dispatch is delayed for reasons beyond the control of KAGO AG, the guarantee term shall expire no later than 18 months after the notification for dispatch. The guarantee term for replaced or repaired parts is 6 months from their replacement if guarantee of other parts expires beforehand.
- 7.5 *Liability:* All installation manuals must be strictly obeyed and no KAGO products must be modified mechanically or by welding, otherwise any product liability will be rejected. Other claims of the partner than those explicitly expressed in this GTC, no matter on what legal grounds they are raised, especially all not explicitly named claims on indemnity, reduction, annulment of or withdrawal from contract are invalid. The partner has especially no claim to indemnity which is not incurred on the delivered product itself, like production failures, utilisation loss, loss of contracts, lost returns, as also direct or indirect damages of others. This liability exception is invalid in cases of gross negligence or illegal intentions or as long as opposed to compelling rights.

8. Litigations

- 8.1 *Applicable law:* All regulations shall only be governed by the Swiss „Obligationenrecht“. The UN Convention on Contracts for the International Sale of Goods, signed in Vienna on 11th April 1980, is explicitly excluded.
- 8.2 *Place of performance and jurisdiction* is exclusively our legal domicile in CH-6430 Schwyz, Switzerland.
- 8.3 *Partial invalidity:* If any provision in these GTC is held to be invalid or unenforceable by any court or regulatory agency or body, such invalidity or unenforceability shall attach only to such provision. The validity of the remaining provisions shall not be affected thereby and these GTC shall be carried out as if such invalid or unenforceable provision were not contained herein.