



*KLIMES TRADING, s.r.o. registered since 1993 in the Commercial Register administrated by the Municipal Court in Prague, section C, file no. 22961 with its registered office in Prague, Nad Santoskou 11-11A, 15000. Identification number CZ 49711130. Trade Mark KLIMES registred in Czechia IPO-CZ #197016/#263590 and European Union EUIPO #12624615*

# **GENERAL TERMS AND CONDITIONS OF SALE**

## **PREAMBLE**

Our business is a limited liability company registered in Czechia. Unless otherwise stipulated in the following General Terms and Conditions of Sale, legal transactions with us are subject to commercial law and custom. Our delivery shall be effected solely on the basis of our General Terms and Conditions of Sale, which hereby form an integral part of contracts and are also therefore binding upon our contracting parties. References to General Terms and Conditions of Sale by contracting parties in orders or other documents that precede the order, which deviate from ours, shall not be deemed to have been added.

## **1. OBLIGATION TO DELIVER**

Our confirmation of order in writing shall be authoritative for the scope of obligation to deliver. All orders shall be deemed to have been accepted only if they were confirmed by us in writing, by facsimile or e-mail. Ancillary agreements, exceptional conditions, and subsequent amendments to the contract shall likewise require our confirmation in writing. Terms and conditions that contradict our General Terms and Conditions of Sale shall only be acknowledged by us if we have expressly confirmed this in writing. Any deterioration in the purchaser's financial circumstances which arise after conclusion of the contract shall entitle us to withdraw from any contracts with the purchaser at any time, and shall release us from the obligation to effect delivery from all successive deliveries. In the event of purchaser already being in default in respect of the fulfilment of any of his obligations (e.g. payment of purchase price), we are at any time entitled to change the conditions of payment on our own initiative and by unilateral declaration for future deliveries.

## **2. DELIVERY DEADLINE**

Delivery deadlines shall then be legally binding if set down in the confirmation of order, and confirmed by us in writing as "fixed" or "binding". In the absence of any other agreement, our delivery deadlines shall remain subject to review. The delivery deadline shall prevail, unless circumstances occur which are unforeseeable or beyond the will of the contracting parties, such as all instances of force majeure which impede compliance. Such circumstances shall also include armed conflicts, interventions and prohibitions on the part of official bodies and authorities, delays in respect of transport and customs clearance, loss in transit, energy and raw material shortages, or furthermore rejection of a substantial or significant part of the work, labour disputes, or the loss of a major sub-contractor who is difficult to replace; the same shall apply even in the event of such circumstances arising in the case of sub-contractors. The onset of such impediments

shall entitle us to postpone the deliveries by the period of the impediment, or to withdraw from the contract of sale due to impossibility of fulfilment. In the event of the agreed delivery deadline being exceeded by more than 8 weeks due to our demonstrable fault alone, then the purchaser shall be entitled to rescind the contract. This right of rescission, however, shall be conditional upon the purchaser notifying us, by registered letter, of his intention to exercise the right of rescission at least 14 days prior to exercise thereof. If the delivery is effected within this period, the right of rescission shall not apply. In the event of delayed acceptance by the purchaser, we shall be entitled to set a subsequent period of grace of at least 14 days and; following ineffectual expiry of this period of grace, we shall be entitled either to claim the purchase price, without the opportunity to raise a concurrent objection, to withdraw from the contract, or to claim compensatory damages for non-fulfilment being open to the purchaser. The rights in respect of delayed acceptance shall be due to us without reminder or the granting of a period of grace if the purchaser or one of his creditors has submitted an application for insolvency proceedings. In the event of our demanding compensatory damages due to non-fulfilment, we shall be entitled to claim 10 % of the agreed purchase price by way of compensatory damages, without further proof being required; the right to claim higher damages is reserved.

### **3. DELIVERY**

The delivery shall be effected only on the basis of these General Terms and Conditions of Sale, which the purchaser hereby acknowledges as binding on him. The merchandise shall be transported on the account and at the risk of the purchaser. Insurance for deliveries shall be effected only at the express wish of purchaser, and on his account. The weights determined at the departure point shall be regarded as binding upon both parties. We reserve the right to effect excess or short deliveries of up to 10%. The purchaser shall be obliged to accept the delivery on the agreed date. In the event of unjustified return of merchandise free of defects, the purchaser shall bear all dispatch costs, appropriate storage costs, and additional packing costs. Return of the merchandise shall not exempt the purchaser from the obligation to pay the invoice. In the event of the invoice not being paid, as a result of the merchandise being returned, we shall be entitled to pass on the bank charges we incur for outstanding accounts until the day of final payment. Unless otherwise agreed in writing, call-up orders or master orders are to be fulfilled within one year of the confirmation of order being issued. We shall notify the purchaser of the maturity date by facsimile, e-mail or letter. Merchandise that is not called up by the maturity date shall be stored at the expense and risk of the purchaser, at our premises, from the maturity date, and we shall be entitled to charge on storage costs and the bank charges we incur for outstanding accounts, for the invoice value of the goods not called up. After a further three months have expired, we shall be entitled to utilise the merchandise elsewhere, and to invoice the purchaser for the interest, storage costs, and charges incurred, as well as any income deficit, up until final utilisation.

### **4. GUARANTEE AND COMPENSATORY DAMAGES**

The technical information that we provide is to be regarded as approximate. We reserve the right to effect modifications or design improvements at any time. Complaints regarding the quality, type, or quantity of merchandise are to be notified to us in writing immediately on receipt of the goods; hidden defects shall be subject to the provisions of the Czech Civil Code with regard to the requirement for the purchaser to give notice of defects. In the event of any modifications to the merchandise being carried out by the

purchaser, then any obligation to effect replacement on our part shall expire. A warranty period of six months is agreed. Defective product items are to be returned to us carriage and postage paid, or made available for inspection by us, at our discretion. In the event of the complaint being justified, we shall, upon return of the defective items, provide replacement free of charge and carriage paid. Claims for rescission of contract or for reduction of the purchase price may be asserted then only if neither rectification nor replacement is possible. We will rectify the defect if this should not be impractical. In the event of impossibility or impracticality of rectifying the defect, in particular if this would entail disproportionate expense for us, we shall be entitled to settle the claims under guarantee by a reduction in price, or to rescind the contract, at our discretion, in which case performance and counter-performance are to be deferred. Items which are the subject of complaint are to be returned to us carriage and postage paid or retained for inspection by us, at our discretion. In the event of the complaint being justified, we shall, upon return of the defective items, provide replacement free of charge and carriage paid, or carry out rectification of the defect, at our discretion. Claims for rescission of contract or for reduction of the purchase price or for compensatory damages shall be excluded. Liability in respect of defects shall not relate to natural wear and tear, damage resulting from incorrect or negligent handling, storage, or excessive strain, and the action of chemicals or electricity, which occur through no fault of ours or of our suppliers. The purchaser acknowledges and agrees that, in the event of assertion of a warranty claim by the purchaser, we shall be entitled to transfer remedying of the asserted defect to an expert company to be named by us, with all rights and obligations, and with the effect of discharging us of our liability. We shall only be liable for damages if the purchaser can prove wilful damage or gross negligence to us. Liability for minor negligence, compensation for consequential loss, such as production stoppages or production shutdowns, expenditure for additional work by the purchaser and concomitant expenses, compensation for financial loss, savings not achieved, interest rate losses, and compensation for damages arising from thirdparty claims against the purchaser shall be excluded.

## **5. PRICES**

Prices shall apply ex-works (Praha), including packing, in EURO, unless otherwise agreed, plus statutory Value Added Tax. It is commonly agreed the parties of the contract that our prices are based on the cost situation and rates of exchange at the time of our confirmation of order; in the event of cost changes and/or changes in the rates of Exchange arising by the delivery date, then the latter shall entitle us to effect a commensurate price adjustment to the changed situation. In the event of the business transaction being concluded in a foreign currency, the conversion shall be effected on the basis of the rate of exchange for the foreign currency as published by the Czech National Bank on the date of our confirmation of order, or on the date of delivery, at our discretion, whereby the purchaser shall bear the exchange rate risk. If it is not possible to comply with the agreed method or channel of payment, then the purchaser shall be obliged to inform us thereof immediately by registered letter, facsimile or e-mail, and to present us with suggestions for handling the payment. Thereafter payment is to be effected at our discretion.

## **6. PAYMENT**

Unless agreed otherwise in writing, payments shall be effected exclusively to the payment agencies designated on the invoices. Unless we have confirmed otherwise to the purchaser in the confirmation of order or on the invoice, our invoices are to be paid

within 14 days of the date of invoice, without any deductions. In the event of payment being made by bills of exchange or other forms of payment order, the costs for negotiation and collection shall be borne by the purchaser. Bills of Exchange shall be accepted only with our prior agreement, but in any event only subject to the possibility of negotiation, and only for the purpose of payment. Payment by bill of Exchange shall not be deemed cash payment. The purchaser shall not be entitled to withhold or offset payments, even on the grounds of complaint regarding the delivery or any possible counterclaims, without our prior consent; the purchaser must assert any such claims by means of a legal action for claim. In the event of the agreed payment dates being exceeded, the consequences of default shall ensue, without the need for a prior reminder. Whilst reserving the right to assert further claims, the purchaser shall undertake to pay default interest of one percent per month, and to reimburse all costs of reminders and collection procedures. Every default in payment shall entitle us to withdraw from any sales obligations that have not been performed. In the event of infringement of contractual obligations by purchaser, in particular in the event of default in payment and acceptance by purchaser, even in respect of only one transaction, we shall be entitled to change the conditions of payment for all transactions (e.g. cash payment in advance). In the event of the purchaser experiencing difficulties in effecting payment, in particular also in the event of payment default, the purchaser's bill of exchange proceedings with third parties, judicial attachment of the purchaser's assets and, in the event of a deterioration in the purchaser's assets, we shall be entitled to effect further deliveries only against payment in advance, to demand immediate payment of all outstanding invoice amounts, even if they have an agreed or postponed payment date, and to demand cash payments or sureties against the return of the bills of exchange accepted by way of payment. Further rights deriving from the default in payment shall remain unaffected hereby.

## **7. RETENTION OF TITLE**

We shall retain the ownership of the object of payment until receipt of all payments deriving from the supply contract. In the event of behaviour by purchaser which is contrary to contract, in particular default in payment, we shall be entitled, after the setting of a reasonable period of grace, to recover the object of supply; purchaser shall be obliged to hand this over. The recovery of the object of supply on our part shall always imply withdrawal from the contract. The offering of the object of supply in pledge shall likewise incur withdrawal from the contract. In the event of offering in pledge or other interventions by third parties, purchaser is to advise us of this in writing forthwith, in order to allow us to take legal action. In the event of the third party not being in a position to reimburse us for the court and out-of-court costs of legal proceedings, purchaser shall be liable for these costs. Purchaser shall be entitled to sell the object of supply on, as a due and proper business transaction; he shall, however, already assign to us, as of now, all claims in the amount of the gross sum of the invoice such as accrue to him from the further sale against his customer or against third parties, and, specifically, regardless of whether the object of supply has been sold without or after further processing. Purchaser is empowered to enforce this claim after assignment. Our entitlement to pursue the claim ourselves remains unaffected thereby, but we do undertake not to pursue the claim for as long as purchaser meets his payment obligations in the due and proper manner and is not in arrears with payment. If this is the case, however, we can then demand that purchaser makes known to us the assigned claim and the debtor, provides all information required for action, issues the documents pertaining thereto, and makes the assignment known to the third party concerned. The processing or transformation of the object of supply by purchaser will always be undertaken on our behalf. In the event of the object of

supply being processed with other objects not belonging to us, we shall acquire joint ownership in the new item in the proportion of the value of the object of supply to the other processed items at the time of the processing. The same conditions apply to the item created by the processing as to the goods subject to retention of ownership. In the event of the object of supply being inseparably connected or mixed with other objects not belonging to us, we shall acquire joint ownership in the new item in the proportion of the value of the object of supply to the other connected or mixed objects at the time of the connection or mixing. If the connecting or mixing takes place in such a manner that the item belonging to purchaser is to be regarded as the main item, then it shall be deemed to be agreed that purchaser assigns joint ownership to us in due proportion. Purchaser shall safeguard the right of full ownership or joint ownership on our behalf. In order to secure our claims against him, purchaser shall also assign to us the claims accruing to him from the connection of the object of supply to a piece of real estate property. We undertake to release the sureties accruing to us, at purchaser's request, when their value exceeds by 10% the amount of the claims thereby secured, inasmuch as these have not yet been settled.

## **8. PLACE OF PERFORMANCE**

The place of performance and jurisdiction for all disputes arising from the contractual relationship, and for procedures deciding claims arising from bills of exchange, shall be Praha. The parties agree that any and all disputes or claims shall be subject to the jurisdiction of the commercial Courts in Praha (Městský soud v Praze, Slezská 2000/9, 12000 Praha - Vinohrady). Czech law shall prevail for the contractual relationship only excluding its conflict of law rules. We shall be entitled to assert our claims also before the competent authorities and courts local and pertinent to the purchaser.

## **9. OBLIGATIONS DERIVING FROM THE CONTRACT**

In the event of individual provisions of these General Terms and Conditions of Sale being rendered invalid, in whole or in part, the validity of the remaining conditions shall not be thereby affected. The invalid provision shall be replaced by that which most closely resembles this provision, according to commercial law or commercial usage.

## **10. CONCLUDING PROVISIONS**

Ancillary agreements shall be required to be in writing in order to take effect; verbal ancillary agreements shall accordingly be deemed not to constitute valid agreements; this shall also apply to the waiving of the formal requirement for the use of the written form in such agreements.

Praha, 1st February 2019