

# General Terms and Conditions of Kummert GmbH, Gerolzhofen

Version: 01/2017

## Section 1 Scope of application

1.1 These General Terms and Conditions as amended shall apply to any and all business relationships between us and the Contractual Partner, with the exception of rental and loan agreements.

1.2 The contractual partners are entrepreneurs according to section 14 of the German Civil Code [BGB – *Bürgerliches Gesetzbuch*].

1.3 These General Terms and Conditions shall apply exclusively; we do not accept any conflicting or deviating terms and conditions issued by the Contractual Partner, unless we expressly agreed to them in writing. These General Terms and Conditions shall also apply if we perform the contract without reservation in spite of being aware of conflicting or deviating terms and conditions of the Contractual Partner.

1.4 Within the framework of current business relations, these General Terms and Conditions shall also apply to any and all future business transactions – irrespective of para. 1.1.

1.5 Deviations and ancillary agreements shall require the written form.

## Section 2 Offer, letter of confirmation, contract conclusion

2.1 Our offers shall be non-binding and subject to change. Presentation of goods, for example in advertising materials, the showroom and on the internet, shall not be regarded as an offer.

2.2 Orders from the Contractual Partner shall be binding for the duration of four weeks from the day of order placement.

2.3 The contract shall be only concluded by delivering of the ordered goods or by submitting a corresponding order confirmation.

## Section 3 Delivery, transfer of risk, default of acceptance

3.1 The delivery of the goods shall not be owed and will be exclusively made upon the Contractual Partner's request and expense, unless the Parties agreed otherwise.

3.2 We shall be entitled to perform partial delivery.

3.3 Delivery times and dates shall refer to the shipment of the goods from our factory, unless otherwise agreed upon in the individual case.

3.4 The Contractual Partner shall not be entitled to refuse acceptance of the delivery due to minor defects.

3.5 The risk of loss or accidental deterioration of the goods shall be transferred to the Contractual Partner when the goods are handed over to the person or establishment designated to perform the shipment.

3.6 If the hand-over or delivery is delayed for reasons attributable to the Contractual Partner or should the Contractual Partner be otherwise in default of acceptance, the risk in terms of section 3.3 shall be transferred to the Contractual Partner.

3.7 If the Contractual Partner is in default of acceptance, we shall store the goods on their behalf. The costs shall be €20.00 per week; the Contractual Partner may provide evidence showing that the damage incurred is smaller. Any further claims shall remain reserved.

## Section 4 Prices, payments

4.1 Our prices are net prices ex works, plus applicable value-added tax.

4.2 Packaging, transport costs and other ancillary costs will be charged separately insofar as they accrued.

4.3 Subsequent requests for changes or cancellation and returned goods shall be charged separately to the Contractual Partner.

4.4 We shall be entitled to invoice partial deliveries after hand-over or delivery.

4.5 If the Contractual Partner is in default of payment, we shall have the right to accelerate any outstanding claims against them which up to this point have not yet been due. Acceleration shall be made in writing towards the Contractual Partner.

4.6 The Contractual Partner shall only be allowed to offset claims which are undisputed or which are legally established. Only if their counter-claim is based on the same contractual relationship shall the Contractual Partner have a right to exercise a right of retention.

## Section 5 Defects and warranty

### 5.1 Material defects

5.1.1 The Contractual Partner shall immediately check the purchased goods for quality defects and quantity deviations. They shall inform us in writing about any material defect immediately after this has been detected.

5.1.2 Insofar as the purchased object has defects, we will rectify such defects or perform replacement deliveries at our discretion.

5.1.3 If subsequent performance is not successful, the Contractual Partner may, at their discretion, demand remuneration to be reduced (reduction of the purchase price) or the contract to be rescinded (withdrawal). Section 6 shall apply to claims for damages.

5.1.4 The period of limitation concerning claims for material defects shall be twelve months beginning at the time of risk transfer. This shall not apply if a longer period is prescribed by law, in particular those provided for under sec. 438 para. 1 no. 2 *BGB* (Buildings and Building Materials) and sec. 634a para. 1 no 2 *BGB* (Construction Defects). Furthermore, it shall not apply in the case of injury to life, body or health as well as in the cases of wilful intent and gross negligence. The regulations concerning the suspension and recommencement of the periods shall remain unaffected.

5.1.5 Claims for material defects shall not exist in the case of insignificant deviations from contractually agreed quality, non-reproducible software errors and natural wear and tear. Furthermore, they do not exist in the case of damage caused by improper or negligent treatment or storage, excessive use, use of unsuitable operating equipment or faulty structural requirements or technical specifications provided by the Contractual Partner. This shall also apply to damage caused by external factors. Warranty claims may not be asserted with regard to improper inspections, servicing, maintenance and repair works, modifications carried out by the Contractual Partner or third parties and the resulting consequences.

5.1.6 We shall not assume any liability for material defects in used goods, unless otherwise agreed.

5.1.7 Apart from the claims mentioned under para. 5.1, the Contractual Partner shall have no warranty claims due to a material defect; any further or deviating claims shall be expressly excluded.

### 5.2 Defects of title

5.2.1 No claims may be asserted against us which are based on deliveries to places outside the Federal Republic of Germany not complying with the relevant provisions in force in the country of import, on deliveries requiring an authorisation or on imports being subject to charges.

5.2.2 In case of other defects of title, para. 5.1 shall apply accordingly. This shall also apply to the exclusion of warranty according to sub-para. 5.1.7.

## Section 6 Claims for damages

6.1 In principle, we are liable according to the legal provisions insofar as the Contractual Partner asserts claims for damages caused by intent or gross negligence, including intent or gross negligence of our representatives or their vicarious agents. If we are not accused of wilfully breaching the contract, our liability for damages shall be limited to the foreseeable, typically occurring damage.

6.2 We shall be liable in accordance with the legal provision if we culpably violate essential contractual obligations; in this case, liability for damages shall be limited to the foreseeable, typical damage, insofar as we did not act with intent.

6.3 Liability for any loss or damage of data shall be limited to the costs for recovering data from back-up files.

6.4 Liability due to culpable injuries to life, limb or health shall remain unaffected; this shall also apply to statutory liability in terms of the *Produkthaftungsgesetz* [German Product Liability Act].

6.5 Liability shall be excluded, unless otherwise regulated in the provisions above. This shall also apply to indirect damage, consequential damage and loss of profit, unless we acted with intent.

## **Section 7 Withdrawal and termination**

7.1 If the Contractual Partner terminates a contract on the production or processing of goods without good cause before complete fulfilment, we shall be allowed to request payment of the contractual price. Saved expenses, proceeds realised by deploying the employees in any other way or proceeds which are maliciously forgone shall be deducted from this amount. In this case, we shall be entitled to request a lump sum of 20% of the contractual price instead of making an individual calculation, insofar as the contractual partner does not provide evidence showing that the damage is smaller.

7.2 Furthermore, we have a right of withdrawal

7.2.1 if our own suppliers failed to supply the goods on time and if we are not responsible for this;

7.2.2 if we become aware of circumstances giving reason to believe that the Contractual Partner is no longer creditworthy;

7.2.3 if the contractual partner acts contrary to the contract, in particular in the case of default of payment, whereby there is no need for a grace period and compliances with the provisions concerning a sale based on instalment payments;

7.2.4 if other obligations are violated for the reason of which we, after delivering warning letters to no avail, can no longer be reasonably expected to adhere to the contract, whereby no prior notice of warning is required in the case of particularly serious breaches.

7.3 As a general rule, the declaration of withdrawal and termination must be made in writing.

7.4 The statutory provisions concerning the consequences of the withdrawal shall remain unaffected.

## **Section 8 Reservation of title**

8.1 When selling the goods, we reserve title to the goods until the purchase price according to sec. 4 was paid in full. Furthermore, we reserve title to the goods until any and all claims arising from the current business relationship with the Contractual Partner were completely settled.

8.2 If the realisable value of the goods subject to reservation of title permanently exceeds the claims to be secured arising from the current business relation by 10%, we shall be obliged to release the goods subject to reservation of title upon the Contractual Partner's request. We shall have the right to choose the securities to be released. In doing so, we will take into account the Contractual Partner's justified interests.

8.3 For the duration of reservation of title, the Contractual Partner shall be obliged to treat the goods provided to them with care. The Contractual Partner shall protect the goods from damage and excessive use in any way, have the goods used by trained staff only and ensure their proper use in accordance with the operating instructions. The Contractual Partner shall be liable for any damage or loss which occurs.

8.4 They must inform us in writing about any damage which occurs during that period. If maintenance, inspection and update works are necessary, the Contractual Partner must order them separately from us or from any service centres designated by us. The Contractual Partner shall not be allowed to carry out maintenance, inspection or repair works themselves.

8.5 The Contractual Partner shall immediately inform us in writing if the goods subject to reservation of title are destroyed or damaged, if third parties have access to them (e.g. by means of forced execution), if possession changes or if their location is changed. The Contractual Partner shall compensate us for any damage and costs arising from a violation of these obligations and required intervention measures against access to the goods by third parties.

8.6 The Contractual Partner shall be entitled to resell purchased goods in the ordinary course of business. Apart from this, they shall not be entitled to dispose of them until ownership was completely transferred. Right from the beginning, the Contractual Partner shall assign to us all of their claims to the amount of the invoice amount which accrue to them against third parties due to reselling or subletting the goods; we shall accept the assignment. Following the assignment, the Contractual Partner shall be authorised to collect receivables until disclosure. We reserve the right to collect receivables ourselves if the Contractual Partner does not properly fulfil their payment obligations and is in default of payment. If we exercise our right to collect assigned claims, we may request disclosure of the Contractual Partner's debtors and related information and a hand-over of all the documents which are necessary to assert the claim.

8.7 Handling, processing and remodelling of the goods subject to reservation of title shall always occur on our behalf.

## **Section 9 Obligation to dispose**

The Contractual Partner shall accept their legal obligation to properly dispose of the purchased goods at their own expense and pursuant to the legal regulations after termination of use.

## **Section 10 Repair orders**

10.1 Repair orders shall be exclusively carried out at our premises or by service centres authorised by us. We will charge the Contractual Partner separately for the respective costs, with the exception of warranty cases.

10.2 For securing our claims resulting from repair orders, we shall be granted a lien with regard to the items which come into our possession for repair purposes. This lien shall also cover the securitisation of outstanding claims from earlier business transactions; para. 8.2 shall accordingly apply to a release.

10.3 The Contractual Partner shall be obliged to back up data stored on their devices prior to placing an order for repair. Within the framework of device repair works, we will delete any data which are still stored on the device.

## **Section 11 Terms of use for internet access**

11.1 Use of the internet connection and the data volume used via the internet connection shall be the responsibility of the equipment owner. Any services used and legal transactions concluded via the internet connection shall be the sole responsibility of the equipment owner.

11.2 If the equipment owner uses third-party services via the internet connection, the equipment owner must bear any and all costs resulting from this. The equipment owner undertakes to comply with the applicable laws.

11.3 In particular, the equipment owner

11.3.1 shall not reproduce, disseminate or make publicly available any works subject to copyright protection, particularly in connection with uploading and downloading file sharing programs or similar offers;

11.3.2 shall not use the internet connection for retrieving or disseminating immoral or illegal contents;

11.3.3 shall observe applicable provisions concerning protection of minors;

11.3.4 shall not send or disseminate derogatory, defamatory or threatening contents;

11.3.5 shall not use the internet connection for sending spam mails and/or other forms of inadmissible advertisements.

## **Section 12 Data protection, secrecy**

12.1 Any data collected from the Contractual Partner shall be kept confidential. We shall store the Contractual Partner's data only within the framework of business processing and will transfer them only to affiliated companies, delivery agents etc. in the context of contract execution and to financial institutions for the purpose of settlement.

12.2 Any and all documents or demonstration items which we provide to the Contractual Partner for the purpose of submitting an offer, executing an order or for any other reason shall remain in our ownership. Making them available to third parties without our express consent shall not be permitted. If confidentiality is not guaranteed, we shall be allowed to demand return of the documents and items. The Contractual Partner shall immediately fulfil this demand.

## **Section 13 Prohibition of assignment**

The Contractual Partner shall not be allowed to assign their claims against us from this contract; effectiveness of an assignment according to section 354a HGB [*Handelsgesetzbuch*; German Commercial Code] shall remain unaffected.

## **Section 14 Place of jurisdiction, place of performance, applicable law**

14.1 The place of performance and the exclusive place of jurisdiction shall be Gerolzhofen.

14.2 The laws of the Federal Republic of Germany shall exclusively apply under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

**Section 15 Severability clause**

If individual provisions of the contract concluded with the Contractual Partner, including these General Terms and Conditions, should be or become totally or partially invalid, this shall not affect validity of the remaining provisions.

# General Terms and Conditions of Equipment Rental of Kummert GmbH, Gerolzhofen

Version: 01/2017

## Section 1 Scope of application

1.1 These General Terms and Conditions shall apply any and all equipment rental and loan agreements concluded between us and the respective contractual partner as the lessee or borrower.

1.2 The contractual partners are entrepreneurs according to section 14 of the German Civil Code [BGB – *Bürgerliches Gesetzbuch*].

1.3 These General Terms and Conditions shall apply exclusively; we do not accept any conflicting or deviating terms and conditions issued by the Contractual Partner, unless we expressly agreed to them in writing. These General Terms and Conditions shall also apply if we perform the contract without reservation in spite of being aware of conflicting or deviating terms and conditions of the Contractual Partner.

1.4 Within the framework of current business relations, these General Terms and Conditions shall also apply to any and all future business transactions – irrespective of para. 1.1.

1.5 Deviations and ancillary agreements shall require the written form.

## Section 2 Rental and loan agreement

2.1 The Contractual Partner may place an informal order for rental or loan equipment with us. They shall be bound by this order for two weeks after we received the relevant order.

2.2 We shall not be obliged to accept such offers submitted by contractual partners. In the case of collection, the contract shall be concluded upon the equipment being handed over to the Contractual Partner or upon them being provided at our factory in the case of default of acceptance; in the case of delivery, it shall be concluded upon hand-over to a transport company, unless otherwise agreed upon.

2.3 Offers made by us shall be non-binding, unless we expressly confirm that they shall be binding.

## Section 3 Obligations of the contractual partner

3.1 The Contractual Partner shall be obliged to treat the equipment provided to them with care for the duration of the rental and loan period.

3.2 The Contractual Partner must protect the equipment from any damage and excessive strain in any way, only have trained staff using it and ensure its proper use in accordance with the operating instructions.

3.2.1 In particular, the use outside of channels/drainage systems shall only be permitted based on our prior consent.

3.2.2 It shall be prohibited to use the equipment during renovation works.

## Section 4 Rental charge

4.1 The rental charge will be determined in accordance with the prices which are applicable at the beginning of the rental agreement.

4.2 If the equipment is shipped, packaging and shipping costs must be borne, unless this was otherwise agreed in individual cases. In the case of express deliveries, shipping costs must always be borne. We shall check in the individual cases if express deliveries can be performed; this does not result in an obligation on our part to offer express deliveries.

4.3 The rental charge shall be invoiced to the Contractual Partner by means of a final invoice at the end of the rental agreement. This invoice shall immediately be due for payment without deduction. We reserve the right to issue a partial invoice for rental periods which have already expired.

## Section 5 Rental and loan period

5.1 The rental or loan period shall begin at the time specified under para. 2.2.

5.2 The rental or hire period shall be indefinite, unless otherwise agreed upon in the individual case. Should any repair works be required, the rental or loan period shall automatically end upon hand-over or delivery of repaired equipment.

5.3 In the case of indefinite rental or loan periods, the contract may be terminated by either contractual party by giving 3 months' notice prior to the end of a month.

5.4. This shall not affect the right of cancellation for cause without notice. Causes shall in particular exist if the Contractual Partner repeatedly breaches obligations arising from the rental or loan agreement in spite of a prior warning notice or if they do not eliminate the resulting effects.

## Section 6 Return after the end of the rental and loan agreement

6.1 After the end of the rental or loan agreement according to sec. 4, the Contractual Partner shall return the equipment, including any and all accessories and documents, without undue delay and without the need for solicitation.

6.2 The equipment may also be returned by handing it over to a transport company. The Contractual Partner shall bear the risk of transport and the costs.

6.3 The equipment shall be cleaned before it is returned. Equipment which is not properly cleaned will be cleaned by us, whereby we reserve the right to charge to the Contractual Partner any cleaning expenses resulting from this.

6.4 Any data which is stored on the equipment must be deleted before it is returned. After the return of the equipment, we will delete any data which remained on the equipment.

## Section 7 Warranty

7.1 The equipment are handed over to the Contractual Partner in an operational and maintained condition.

7.2 The Contractual Partner shall immediately inform us about any malfunctions or defects.

7.3 If maintenance, inspection, update or repair works due to damage caused by the Contractual Partner is necessary, they shall have these works performed on a regular basis and on time, at their own expense. This work – with the exception of updates – shall be exclusively carried out by us or by service centres authorised by us. The Contractual Partner shall not be allowed to carry out maintenance, inspection or repair works themselves.

7.4 We do not offer any warranty if the Contractual Partner

- does not fulfil their obligation to notification in terms of para. 7.2;
- does not grant us an opportunity to rectify defects or to exchange the equipment in spite of a request in this regard;
- treated the rental/loan items improperly or overstrained them (e.g. violations of the operating instructions),
- carried out maintenance or repair works without our authorisation.

## Section 8 Liability

8.1 The Contractual Partner shall be liable for destruction, loss or damage in accordance with statutory provisions.

8.2 Our liability shall be governed by the provisions under sec. 6 of our General Terms and Conditions.

## Section 9 Subletting and ownership

9.1 The Contractual Partner shall not be allowed to sublet the equipment.

9.2 The equipment shall remain in our ownership for the entire duration of the transfer of use.

## Section 10 Modifications

The Contractual Partner shall not be allowed to modify the equipment. In particular, signs, numbers or other writings which were affixed to the equipment must not be damaged, removed or made illegible.

## Section 11 Internet Access Use Conditions

11.1 Use of the internet connection and the data volume used via the internet connection shall be the responsibility of the Contractual Partner. Any services used and legal transactions concluded via the

internet connection shall be the sole responsibility of the Contractual Partner.

11.2 If the equipment owner uses third-party services via the internet connection, the Contractual Partner shall be obliged to bear the resulting costs. The Contractual Partner undertakes to comply with applicable laws.

11.3 In particular, the Contractual Partner

11.3.1 shall not reproduce, disseminate or make publicly available any works subject to copyright protection, particularly in connection with uploading and downloading file sharing programs or similar offers;

11.3.2 shall not use the internet connection for retrieving or disseminating immoral or illegal contents;

11.3.3 shall observe applicable provisions concerning protection of minors;

11.3.4 shall not send or disseminate derogatory, defamatory or threatening contents;

11.3.5 shall not use the internet connection for sending spam mails and/or other forms of inadmissible advertisements.

#### **Section 12 Warranty/goodwill repairs**

11.1 If we carry out repair works at customer equipment due to a granted warranty, we will provide our Contractual Partner with replacement equipment for the duration of the repair.

11.2 As a general rule, no rental charge in terms of sec. 4 shall be paid for this replacement equipment.

11.3 Sec. 4 shall apply without restrictions if we have delivered or handed over repaired and operational customer equipment to our Contractual Partner and if the Contractual Partner fails to immediately commission or carry out the return of the replacement equipment.

11.4 As a general rule, rental charge must be paid from the third day following hand-over or delivery of the repaired and operational replacement equipment subject to para. 4.3.

#### **Section 13 Final provisions**

12.1 The laws of the Federal Republic of Germany shall exclusively apply.

12.2 The exclusive place of jurisdiction shall be the courts of Gerolzhofen.

12.3 If individual provisions of the contract concluded with the Contractual Partner, including these General Terms and Conditions, should be or become totally or partially invalid, this shall not affect the validity of the remaining provisions.