

## 1. General; Validity of the GTC

**1.1** All deliveries and services of KULATEK (Supplier) take place exclusively on the basis of these General Terms and Conditions which also apply for all future business relationships, even if they are not explicitly agreed again. Any contradictory conditions on the part of the Customer shall only be valid to the extent that they have been explicitly accepted by the Supplier in writing.

**1.2** All agreements and legally relevant declarations of the parties to the contract have to be in written form in order to be valid.

## 2. Offers and conclusion of contract

**2.1** The contract shall be deemed to have been entered into upon receipt of the Supplier's written confirmation stating its acceptance of the order.

**2.2** Offers form the supplier which do not stipulate an acceptance period shall not be binding.

**2.3** Details shown on the web are not binding. The Supplier reserves the right to amend or withdraw its website details at any time.

**2.4** Side-agreements shall only be valid if they are confirmed by the Supplier in writing.

## 3. Scope of supplies

**3.1** The scope and type of supplies and services are specified in the order confirmation. Any material or services which are not included therein shall be additionally charged. The Supplier is entitled to provide partial deliveries and partial services.

**3.2** The Supplier shall be entitled to make any changes to what is specified in the order confirmation if they lead to improvements for the Customer.

## 4. Regulations in force in the country of destination

The Customer shall inform the Supplier, upon placing the order at the latest, about the standards and regulations in the country of destination (except Germany) applicable to the execution of the supplies and services, to the operation of the plant as well as to the health and safety of personnel.

## 5. Plans and technical documents

**5.1** Unless otherwise agreed, brochures and catalogues are not binding. Data provided in technical documents is only binding to the extent that it has been expressly stipulated as such.

**5.2** Each party to the contract retains all rights to plans and technical documents provided to the other. The party receiving such documents recognizes these rights and shall not - without previous written consent of the other party - make these documents available to any third party, either in whole or in part, nor use them for purposes other than those for which they were handed over.

**5.3** The Customer is responsible for the completeness and accuracy of the sample parts, technical documents, calculations or other details provided to the Supplier in order to execute the order.

## 6. Prices

**6.1** Unless otherwise agreed, the Supplier's prices shall be deemed to be net ex-works, in Euros and shall not include any packing, freight, assembly, insurance and sales taxes.

**6.2** If there is an increase in the costs which form the basis for the calculation between conclusion of the contract and acceptance of the supply, the Supplier shall be entitled, until final completion of the order, to adjust the prices shown in the order confirmation accordingly.

## 7. Terms of Payment

**7.1** Payment term 30 days net from invoice date.

**7.2** The payments are to be made by the Customer at the domicile of the supplier without deduction of cash discount, expenses, taxes and fees of any kind. Different terms of payment will be specially agreed upon.

**7.3** In case of delay in payment from the Customer or if the Supplier has serious reason to fear that payments from the

Customer will not be received fully or on time due to circumstances which have arisen after conclusion of the contract, the Supplier shall be entitled to suspend the scheduled supplies immediately until further notice and, from the point in time at which payment is due (i.e. after expiry of the payment period defined in Article 7.1), to charge late payment interest at 8 percentage points above the basic interest rate (p.a.).

## 8. Right of retention, payments in advance

The Supplier may withhold performance or make it dependent upon payments in advance by the Customer or demand collateral in respect of its claim for payment if the Customer defaults on payment or the Supplier has a suspicion justified by factual evidence that the creditworthiness of the Customer is in doubt, particularly if a cheque from the Customer cannot be cashed by the Supplier or the Customer ceases payments.

## 9. Retention of title and set-off

**9.1** The delivered goods shall remain the property of the Supplier until all claims to which we are entitled against the Customer now or in the future for any legal reason have been satisfied in full.

**9.2** The further processing or integration of the supplied goods always takes place for the Supplier as the manufacturer, but without obligation from the Supplier. If the Supplier's (joint) ownership lapses through integration of the goods supplied, it is already agreed now that the Customer's (joint) ownership of the item in question is passed on at proportional value (invoice value) to the Supplier. The Customer shall keep the Supplier's (joint) ownership without charge.

**9.3** The Customer is entitled to dispose of goods under title retention in the ordinary course of business as long as it is not late in paying for them. Pledges or transfers of ownership as collateral are not permitted. The Customer, already now and for the purposes of safety, cedes to the Supplier in full all claims arising from selling the goods onto a third party or any other legal reason with regard to the goods under title retention. The Customer is revocable entitled to collect the receivables ceded to the Supplier for its account in its own name. This authorization to collect can only be withdrawn if the Customer does not correctly meet its payment obligations.

**9.4** In the case of access to the goods under title retention by third parties, the Customer shall point out the ownership by the Supplier and notify the Supplier without delay. In the case of behaviour by the Customer which violates the contract - particularly late payment - the Supplier is entitled to take back the goods under title retention or, if applicable, to demand assignment of the claim of the Customer against third parties to hand out the goods.

**9.5** The Customer is only entitled to offset, if the counter-claim is undisputed or has been determined with legal validity.

## 10. Delivery time

The delivery time shall begin as soon as the order has been accepted by the Supplier and after full settlement of the technical matters associated with the goods to be supplied.

## 11. Delay in delivery

**11.1.** A delay in delivery shall be deemed to occur if a delivery is delayed by more than 30 days. The Customer is not entitled - unless expressly agreed - to claim compensation for delayed delivery even if the delay has been provably caused by a fault of the Supplier. Excluded from this are cases of gross negligence or intent. If substitute material can be supplied to accommodate the Customer, the latter shall not be entitled to any compensation for delay.

**11.2** Compensation for delayed delivery shall not exceed 0.5% of the part of supply in delay for every full week's delay and shall in no case whatsoever exceed 5% of the contract price for the part of the supplies in delay.

**11.3** Any delay of the supplies or services does not entitle the Customer to any rights and claims other than those expressly stipulated in Articles 11.1 and 11.2 above.

**11.4** Compliance with the delivery period shall be subject to the reserve that the Supplier itself receives supplies properly, in particular in good time, unless the Supplier is responsible for the reason for the failure to receive supplies properly. The Supplier shall be entitled to withdraw from the contract in the event of improper self-delivery. The Supplier shall inform the Customer immediately if the Supplier exercises its right to rescind the contract and shall reimburse any advance payments made by the Customer.

#### **12. Forwarding, transport and insurance**

**12.1** The products are carefully packed by the Supplier. The packing is charged separately to the Customer.

**12.2** Special requirements regarding forwarding and insurance shall be communicated to the Supplier in good time. Transport shall be at the Customer's expense and risk. Complaints in respect of transport shall be submitted immediately by the Customer to the last carrier on receipt of the products or the shipping documents.

**12.3** Insurance against risks of any kind (specifically in transport or during assembly) is the responsibility of the Customer and is taken out at the Customer's cost. The Supplier is not obliged to take out insurance cover in favour of the Customer. If, on the basis of a special agreement, the Supplier takes out insurance for the Customer, the relevant costs shall be borne by the Customer.

#### **13. Inspection and acceptance of supplies**

The customer shall inspect the supplied products for completeness and freedom from defects within 15 days of delivery. The Customer shall notify the Supplier in writing of any obvious defects in the delivered goods immediately after discovering them. Defects which are not immediately detected in a careful inspection shall be notified to the Supplier in writing and without delay after their becoming known. If the Customer fails to carry out an inspection in good time and/or fails to notify the Supplier of any defects, the supplies and services shall be deemed to have been approved.

#### **14. Defect claims and warranty**

**14.1** The Supplier guarantees that the products delivered by him are free from manufacturing and material defects.

**14.2** Guaranteed properties (quality specifications) are only those which are expressly designated as such in the order confirmation or instructions for use. The warranty is valid until the end of the warranty period at the latest.

**14.3** Should the products be defective, the Customer may demand improvement, supplementation or replacement to the exclusion of further claims for damages. An improvement shall only be deemed to have failed after the third unsuccessful attempt. The limitation period for the Customer's warranty claims is one year. If the defective products have been used for a building in accordance with their usual use and have caused its defectiveness or if the defect is in a building, the limitation period shall be five years. It shall also apply to claims arising from tort based on a defect in the products. The period of limitation begins with the delivery of the products. The shortening of the limitation period shall not apply to the Supplier's unlimited liability for damages resulting from the breach of a guarantee or from injury to life, limb or health, for intent and gross negligence and for product defects or insofar as the Supplier has assumed a procurement risk.

**14.4** If a defect within the meaning of point 14.3 is not remedied within a reasonable period of time by subsequent performance, the Customer may demand a reduction in the purchase price or withdraw from the contract.

**14.5** Any warranty obligation of the Supplier lapses if the Customer or third parties carry out improper changes or repairs or if the Customer fails to undertake all appropriate

measures to reduce damage if a defect has arisen and does not give the Supplier the opportunity to correct the defect.

**14.6** Excluded from the warranty and liability of the Supplier are defects which cannot be proven to have arisen as a result of poor material, faulty design, defective workmanship or other reasons for which the Supplier is not responsible.

**14.7** The customer has no rights and claims due to defects in material, design or workmanship or due to the absence of warranted characteristics other than those expressly mentioned in points 14.3 and 14.4.

#### **15. Governing law**

These General Terms and Conditions are subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

#### **16. Place of execution and place of jurisdiction**

The place of execution and place of jurisdiction shall be the registered office or branch office of the Supplier, unless mandatory statutory provisions to the contrary apply.

Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision which realises the economic purpose pursued by it as far as possible.

#### **KULATEK – Alexander Kühnel**

Weinbergstrasse 24 • D-71229 Leonberg

Tel. +49(0)7152 3394648

info@kulatek.de • www.kulatek.de