

# General Terms and Conditions of Sale and Delivery (Swiss Law)

Effective as of April 1<sup>st</sup> 2021



## § 1 Scope of application

The following Terms and Conditions of Sale and Delivery of Klingelberg GmbH, Peterstraße 45, 42499 Hückeswagen, Deutschland ("Klingelberg") apply, as far as not explicitly stipulated otherwise in writing, to all transactions and services undertaken between Klingelberg and the customer, and in particular in relation to offers, purchase and delivery contracts, orders, order confirmations and deliveries. They also apply to any future business relationships even if they have not been expressly agreed again. Any deviating general terms and conditions of the customer are not accepted, even if Klingelberg does not expressly object to them.

## § 2 Conclusion of contract

(1) Offers made by Klingelberg are non-binding provided they have not expressly been specified as binding in the wording of the offer. The contract only enters into force once it has been signed by both parties or once Klingelberg has confirmed the order to the customer in writing (by letter or fax).

(2) Side agreements and amendments require mutual written confirmation in order to be effective.

## § 3 Scope of delivery, shipment and transfer of risk

(1) The scope of delivery is determined by the order confirmation supplied by Klingelberg.

(2) Klingelberg expressly reserves the right to make technical changes compared to the features of the delivery item agreed at the time the contract is concluded. Any resulting price changes will be communicated to the customer for approval.

(3) Unless otherwise agreed the delivery item is shipped immediately after its completion. The customer bears all transport costs.

(4) Delivery is made "Free Carrier" (FCA, Incoterms 2020), unless otherwise agreed. The risk passes to the customer no later than upon provision of the delivery item at the specified location. If delivery is delayed due to any conduct of the customer or due to circumstances for which Klingelberg is not responsible, the risk passes to the customer once Klingelberg has communicated that it is ready to ship the item or for it to be collected.

## § 4 Delivery deadline and force majeure

(1) Delivery deadlines that are not expressly agreed in writing as binding shall be non-binding.

(2) Delivery deadlines start to run no earlier than after receipt of the documents required to determine the delivery item, after receipt of the advance payment by the customer and after the customer has complied with its cooperation obligations.

(3) A delivery deadline is deemed to have been met if the delivery item has been provided for delivery or if it has been made available for collection by the delivery deadline.

(4) Delivery deadlines do not begin to run or are extended - if not newly agreed upon - if circumstances occur for which Klingelberg is not responsible and which affect the production or delivery of the delivery item by such period for which the circumstances in question subsist in particular (i) force majeure events, natural disasters and labour disputes which affect Klingelberg or sub-contractors (disruptions to operations outside of a party's control), (ii) in the case of a valid contract amendment if Klingelberg does not receive the technical or commercial documents in time or if such documents have subsequently been changed by the customer with Klingelberg's consent or (iii) if the customer is in default in complying with its obligations.

(5) If, owing to the occurrence of such circumstances, it is impossible to amend the contract despite all reasonable efforts, Klingelberg is released from its performance obligations.

(6) If the delivery deadline is extended due to the aforementioned circumstances or if Klingelberg is released from its performance obligations, the customer does not have any liability claims whatsoever against Klingelberg. Klingelberg is not liable for any disruptions to operations outside of its control even if they occur during a delay in delivery. Klingelberg is obliged to notify the customer in the event that such circumstances occur.

(7) Before the expiry of the delivery deadline, Klingelberg is entitled to make part deliveries and issue part invoices.

(8) If the delivery of the delivery item is delayed either at the request of the customer or due to circumstances which originate in the customer's sphere of risk and responsibility, the customer shall reimburse Klingelberg for the costs incurred for storage and for any default interest. In the case of storage on the part of Klingelberg, the default interest is at least 0.5% of the outstanding amount invoiced for each month outstanding, starting one month after notification that Klingelberg is ready for shipment. Klingelberg is entitled, upon setting a reasonable grace period to no avail, to dispose of the delivery item in another way and to deliver replacement goods to the customer within a reasonably extended period.

## § 5 Delivery of software

(1) Insofar as software is included in the delivery scope, the customer is granted a non-exclusive right to use the delivered software including its documentation. The software is provided solely for use on the delivery item intended for such use or the item designated by the customer and approved by Klingelberg. A use of the software on more than one system is not permitted.

(2) All copyrights, intellectual property rights and other rights to the software and the documentation shall remain with Klingelberg or its software suppliers. The customer is under an obligation not to remove or change any manufacturer's information - in particular copyright notices. The customer may copy, revise or translate the software or convert it from the object code into the source code only in exceptional cases to the extent expressly permitted by law. Any other form of duplication, review, translation, dissemination or other use of the software or granting of sub-licenses by the customer is not permitted.

(3) The complete transfer of the software or the rights of use of the software is permitted only in exceptional cases if the customer has a legitimate interest in the transfer to a third party while renouncing its own use, e.g. in the event that the delivery item is sold on. In this case, the customer is obliged to place the purchaser under the contractual obligation to comply with any rights to which Klingelberg is entitled.

## § 6 Cooperation obligations, installation, assembly and commissioning

(1) If Delivery Items are delivered subject to prior machine testing and acceptance by the Customer at Klingelberg, then the installation, assembly and commissioning at the Customer shall be undertaken upon delivery by a Klingelberg technician or by a partner to be designated by Klingelberg.

(2) All the necessary preparations and measures, in particular access ways, surface space for machines and accessories as well as machine connections for the Delivery Items, shall be put in place by the Customer in good time prior to the technician's arrival in order to ensure that he can make an immediate start on installation, assembly and commissioning. If requested by Klingelberg, the Customer shall provide to the technician, at the Customer's expense, qualified personnel as well as all materials, devices, cranes, hoists and tools etc. necessary for the installation, assembly, commissioning and adjustment of the Delivery Item.

(3) The working time of the technician and all costs and expenses incurred in connection with the installation, assembly and commissioning during the time the technician is posted at the Customer shall be borne by the Customer. Any travel and waiting times shall count as working time.

(4) Should there be any delays in Klingelberg providing the goods or services because the Customer has failed to meet its cooperation obligations in a timely manner or fully, then all dates and deadlines that have been set for the provision of goods or services by Klingelberg shall be non-binding and shall require a review by Klingelberg and a new agreement between the contracting parties. The Customer shall be obliged to reimburse any additional costs incurred by Klingelberg due to a failure to fulfill its cooperation obligations in accordance with the Klingelberg's prices applicable at the time in question. Both contracting parties

shall be obliged to immediately notify one another about any delays in writing.

#### **§ 7 Prices and terms of payment**

(1) The price list effective on the date of the order confirmation issued by Klingelberg is decisive for the determination of prices for all deliveries and services.

(2) All prices are quoted ex works or place of dispatch. They are quoted in Euro (EUR) or in any other currency specified in the order confirmation plus any transport, packaging, insurance, installation and instruction costs as well as value-added tax, excise duties, withholding taxes, duties or taxes on import and export, customs duties or similar taxes applicable in law at the statutory rate from time to time in force. If training is included in the price or is offered by Klingelberg in return for an additional fee, this does not include any travel, accommodation or subsistence costs of the customer and the participants nominated by the customer. These costs shall be borne by the customer itself. The same applies to technicians' costs in accordance with § 6 (4) above.

(3) The prices can be increased accordingly by Klingelberg if, after conclusion of the contract, any cost increases occur, in particular as a result of collective agreements, rises in market price or cost of materials. Proof of these will be provided at the request of the customer.

(4) Klingelberg is entitled, in the case of payments in instalments, to declare the whole of the outstanding purchase price immediately due and payable if the customer is in arrears with two or more consecutive instalments and the sum owed amounts to more than 10% of the purchase price.

(5) An administration fee of EUR 50 is charged for any possible reminders.

(6) Any set-off or exercise of a right of retention by the customer is only permitted with regard to undisputed, acknowledged counterclaims or counterclaims that have been upheld and declared unappealable by a court of law.

#### **§ 8 Retention of title**

(1) Drawings, plans and system designs which Klingelberg produces in the context of contract initiation or implementation shall remain the property of Klingelberg. Any reproduction or transfer to third parties is prohibited; neither may these items be used by the Customer or by a third party for the production of the Delivery Items in question or misused in any other way.

(2) Klingelberg retains title to the respective Delivery Item until its complete payment. Klingelberg is entitled to enter the retention of title pursuant to article 715 of the Swiss Civil Code (Schweizerisches Zivilgesetzbuch) in the appropriate register.

(3) The customer may resell or process the delivery item in the ordinary course of business. The customer hereby assigns to Klingelberg all claims equivalent to the final invoice amount including value-added tax to which the customer becomes entitled vis-à-vis its customers or third parties due to the resale, regardless of whether the delivery item was resold before or after processing. The customer undertakes to carry out all necessary legal actions in this regard. Klingelberg hereby accepts such assignment.

(4) The customer shall ensure that the delivery item is kept in perfect condition and is treated responsibly. Furthermore, the customer shall insure the delivery item for the benefit of Klingelberg, at the Customer's expense at replacement value, against damage from mechanical breakdown, fire, storm, theft and water, and to provide proof of insurance and payment of insurance premiums to Klingelberg on request. Any claims for the provision of security that arise in the event of any event of damage shall be assigned to Klingelberg if they are not already due to Klingelberg because of substitution. If any maintenance and inspection works are required, the customer shall carry these out promptly and at its own cost.

(5) The customer undertakes, at the request of Klingelberg, to provide an exact list of claims due to Klingelberg together with names and addresses of the buyers, value of the individual claims, invoice dates etc., to provide to Klingelberg all information required for the assertion of the assigned claims, to permit the verification of the information and to disclose the assignment to the buyers.

(6) After prior notice and during usual business hours, the customer shall allow Klingelberg or its agents the right to inspect the delivery item and shall allow access to its premises for this purpose without claiming any payment in return.

#### **§ 9 Warranty (liability for defects)**

(1) Following delivery, the Customer shall immediately check and examine the Delivery Item and immediately notify Klingelberg in writing by letter or fax of any possible defects. If no such notification is made to Klingelberg within five working days from delivery or discovery of the defect, the Delivery Item is deemed to have been approved.

(2) If the Delivery Item is defective, the following shall apply:

a) Klingelberg shall be entitled to provide subsequent performance and shall provide this at its own choice either by taking action to remedy any defects or by delivering an item that is free of defects. The replaced parts shall become the property of Klingelberg. The same warranty as for the original item shall apply to the replaced parts, but not for longer than the warranty period applicable to the original item.

b) If subsequent performance fails and if further action to remedy any defects can no longer be reasonably expected, the Customer shall be entitled to a reduction of the purchase price. The Delivery Contract may not be rescinded.

c) The Customer shall grant the time and opportunity required for Klingelberg to undertake all actions to remedy any defects and supply any replacements that Klingelberg deems necessary. Otherwise, Klingelberg shall be released from liability for any resulting consequences.

(3) The Customer shall remain solely liable for damage suffered as a result of inevitable and regular wear and tear, faulty or negligent handling, excessive use, unsuitable operating materials, unsuitable installation site in particular installation surface, lack of stability or inadequate electricity supply, chemical, electrochemical or electric influences, weather and other natural factors.

(4) The limitation period for all claims in connection with defects shall be one year from delivery.

(5) Klingelberg only gives a guarantee if this has been expressly agreed in writing or if it has been promised in the order confirmation.

(6) Any warranty claims of the Customer beyond the above provisions are excluded to the extent permitted by law.

#### **§ 10 Liability for damages**

Any liability on the part of Klingelberg is excluded to the extent permitted by law. In particular, there is no liability for direct or indirect, consequential or immediate damage resulting from the use, incorrect delivery or performance failure of a Delivery Item supplied by Klingelberg.

#### **§ 11 Rescission of the contract**

(1) If the contract is rescinded after delivery (e.g. due to withdrawal by one of the contracting parties) the customer is obliged to surrender the delivery item to Klingelberg in advance, without prejudice to the rest of rescission provisions pursuant to the following paragraphs. Klingelberg is entitled to remove the delivery items from the customer's premises.

(2) Furthermore, Klingelberg may claim reasonable compensation from the customer for any deterioration, destruction or other reason why the delivery item cannot be surrendered, provided this lies in the customer's sphere of risk and responsibility.

(3) Moreover, Klingelberg may claim a fee for the use and enjoyment of the delivery item if the value of the delivery item has decreased in the period from its installation until Klingelberg has taken back full and direct possession of the item. This decrease in value is calculated from the difference of the total price according to the contract and the fair value as determined from its sales proceeds or, if a sale is not possible, by an estimate of a sworn expert.

(4) If Klingelberg legitimately withdraws from the contract, e.g. because the customer finally refuses to perform its contractual obligations or fails to obtain a funding commitment, the customer is obliged to compensate Klingelberg for all additional expenses incurred due to the withdrawal. Normally in these cases, Klingelberg will charge minimum expenses equivalent to any advance payment received for the delivery item; the customer retains the right to prove that Klingelberg has incurred lower expenses.

## **§ 12 Assignment**

The customer is not entitled to assign and / or transfer its rights and obligations under this contract without written consent of Klingelberg.

## **§ 13 Service**

If Klingelberg or Klingelberg's service company has taken on the provision of installation, instruction or other services as well as the delivery of service parts, Klingelberg's General Terms and Conditions of Service apply in addition to these Terms and Conditions of Delivery.

## **§ 14 Confidentiality**

(1) The contracting parties shall both keep confidential any facts, documents and knowledge which the other contracting party discloses to them during the performance of the contract, provided the relevant contracting party has classified the respective information as confidential or has an obvious interest in its confidentiality ("Confidential Information"). The conclusion of this contract, its subject and content shall also be kept confidential by the contracting parties, with the exception of Klingelberg's list of references. Any publications regarding the conclusion of the contract may be issued by the customer only with the prior written consent of Klingelberg. Furthermore, the contracting parties undertake to use Confidential Information only for the purposes of processing the contract and to only make Confidential Information available to those staff members and advisors who require it in order to implement the contract and who are subject to the confidentiality obligation in the same way. In particular, they will not base their own developments on Confidential Information received or use it for the further development of their own products, nor will they register any intellectual property rights in relation to the Confidential Information or use it to object to an intellectual property right registration of the disclosing party.

(2) The obligation to maintain confidentiality and the restrictions on usage do not apply insofar as the Confidential Information in question demonstrably

- constitutes state-of-the-art technology in the public domain or becomes part of state-of-the-art technology without any action on the part of the receiving party or
- was already known to the receiving party or is disclosed by a third party entitled to do so or
- is developed by the receiving party without an exploitation of the Confidential Information or
- must be revealed pursuant to mandatory statutory provisions or official orders.

(3) If the contractual relationship and the cooperation of the

contracting parties have come to an end, then each contracting party shall be under an obligation, at the other contracting party's request, to return the Confidential Information received to the other contracting party or to destroy it at its request. In this case, any data stored electronically shall be deleted in full.

(4) These obligations and restrictions on usage commence upon the first receipt of Confidential Information and end 10 years after the respective contract for whose implementation the Confidential Information was disclosed has been performed in full.

## **§ 15 Export control provisions**

The delivery items and software may be subject to export control provisions of Switzerland, the Federal Republic of Germany, the European Union, the United States of America or other countries. The deliveries and services are subject to the condition that there are no restrictions to fulfilment due to national or international regulations, in particular export control regulations as well as embargos or other sanctions.

## **§ 16 Place of jurisdiction and applicable law**

(1) All disputes arising from or in connection with this Delivery Contract or regarding its validity, invalidity, breach or termination shall be finally resolved by way of arbitration proceedings in accordance with the Swiss Rules of International Arbitration of the International Swiss Chambers' Arbitration Institution, to the exclusion of recourse to the ordinary courts of law. The Rules of Arbitration that are in effect at the time the request for mediation is served shall apply. The place of arbitration shall be Zurich, Switzerland. The language to be used in the arbitration proceedings shall be German. There shall be three arbitrators. All arbitrators must have command of the chosen procedural language.

(2) These General Terms and Conditions of Sale and Delivery and all contracts entered into while they are effective are subject to substantive Swiss law to the exclusion of the UN Sales Convention (CISG - United Nations Convention on contracts for the International Sale of Goods, entered into in Vienna on 11 April 1980).

## **§ 17 Severability clause**

If a provision in this contract is or becomes ineffective in whole or in part, this does not affect the validity of the remaining provisions. The contracting parties shall work together to agree a valid provision that reflects the invalid provision as closely as possible in commercial terms