

## **TERMS & CONDITIONS OF DELIVERY**

### **1. Applicability**

These Terms and Conditions of Delivery are valid for all contracts – including future ones – with companies and legal persons according to general law and public law relating to special assets (the "Buyer") concerning supplies and other services, including contracts for work, contract work, and the supply of acceptable and non-acceptable goods. The purchasing conditions of the Buyer shall in no case apply. In cases of doubt the German version of these Terms and Conditions is determinate.

### **2. Offers**

Our offers are not binding. Our catalogue and our price list are part of our offer. Illustrations, dimensions and indications of weight in our printed matter are approximate. We reserve the right to modify models and styles without separate notice. We reserve unrestricted rights of ownership and copyright exploitation with regard to cost estimates, drawings and other documents (referred to in the following as: documents). The documents may only be made accessible to third parties after our approval, and must be returned to us immediately on demand if the order is not placed with us.

### **3. Custom-made Products**

Order quantities of custom-made products may exceed or fall short by 10%. This applies also to mass-product articles which are specially marked according to Buyer's requirements. We can determine technical or design features that have not been explicitly ordered or specified according to the technical requirements

### **4. Prices / Order Quantities**

Unless something else has been agreed upon, our price list, valid when the contract is concluded, is determinate. Our quotations are not binding, Value Added Tax will be added to the price at the current legal level. Unless otherwise agreed, all prices apply EXW Wuppertal, Germany (INCOTERMS 2010). We may choose the mode of packaging and transport at our own discretion. We reserve the right to change the ordered numbers of items into packing units.

### **5. Delivery Times**

Statements on delivery or performance periods are approximate. Delivery or performance dates (delivery times) begin with the date of our order confirmation and are valid only on the condition of timely clarification of all details of the order and the timely fulfillment of all commitments of the Buyer, e. g. the presentation of all official certificates or presentation of letters of credit. Our obligation to supply is subject to the provision of correct and timely supplying to us unless we are to blame for the incorrect or delayed supplying. Delivery times have been met when the goods have left our plant by that time or have been reported as ready for delivery. We reserve the right to carry out partial deliveries. If liabilities result due to delayed shipments, paragraph 11 shall apply.

### **6. Transfer of Risk**

In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse.

### **7. Payment**

**7.1** Payment and discount periods shall begin with the invoice date specified on the invoices; payments shall otherwise be due immediately without deduction. The amount must be at our disposal on the due date.

**7.2** Payment is only possible by bank transfer or SEPA direct debit.

**7.3** In the event of payment default, we are entitled to charge the statutory default interest (currently 9 percentage points above the base rate), and reserve the right to assert further damages.

**7.4** Should it become evident after the conclusion of the contract, that payment is jeopardized by the Buyer's ability to perform, or should other circumstances arise which show a material deterioration in the Buyer's ability to perform we are entitled to refrain from any further performance and exercise the rights of Sec. 321 of the German Civil Code. This also applies in case the performance of our contractual obligation is not yet due. In such cases, we are also authorized to make due any and all of our accounts receivable resulting from the same legal relationship. Buyer's ability to perform shall be deemed jeopardized also if the Buyer is for at least three weeks in default with a considerable portion

of the amounts due; further, in case of a considerable downgrading of his existing credit limit by our credit insurance.

**7.5** The purchaser shall only have a right of retention and offset insofar as his counterclaims are undisputed or have been declared legally binding, or are in a reciprocal relationship to our claim according to Section 320 of the German Civil Code (BGB).

## **8. Retention of Title**

**8.1** Delivered goods shall remain our property (reserved goods) until full payment of the purchase price.

**8.2** The goods supplied (the “**Reserved Goods**”) shall remain our property until all outstanding accounts have been settled, in particular that which is due to us on account in connection with the business relationship (account retention). This shall apply to future and conditional accounts receivable and if payments are made onto specially designated outstanding accounts. This account retention shall finally cease when all of the accounts receivable that remain open and are encompassed by the account retention are settled at the time of payment. However, the account retention does not apply to advance payment or cash transactions within the meaning of Sec. 142 of the German Insolvency Act.

**8.3** Reserved Goods shall be worked and processed for us as manufacturer within the meaning of Section 950 German Civil Code (BGB) without obligating us. If the Buyer manufactures, combines or mixes the Reserved Goods with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Goods to the invoiced price of the other goods. If our ownership expires through combining or mixing, the Buyer shall transfer to us here and now the rights of ownership to the new goods or object to the extent of the invoice value of the Reserved Goods and shall keep such for us without charge. Our co-ownership rights shall be regarded as Reserved Goods within the meaning of paragraph 8.2 of these Conditions.

**8.4** The claims from the resale of the Reserved Goods together with all securities which the Buyer acquires for the claim shall here and now be transferred to us by way of security. The entitlement to collect claims from the resale shall expire in the event of our revocation which shall be possible at the latest on payment default of the Buyer. The Buyer may resell the Reserved Goods only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with this paragraph 8.4. The Buyer shall not be entitled to dispose of the Reserved Goods in any other way.

**8.5** The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Goods. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy.

**8.6** We shall release the Reserved Goods and the objects or claims taking their place on request as we so choose insofar as their value exceeds the amount of the secured claims by more than 50%. Taking back Reserved Goods shall not constitute a rescission of contract.

## **9. Industrial Property Rights**

KNIPEX reserves all rights of ownership and copyright to all of its patterns and models, illustrations, drawings, calculations and other documents and information as well as commercial and technical details provided to the customer.

## **10. Claims based on defects**

**10.1** Defects must be reported immediately in text form, at the latest seven days after delivery. Defects which cannot be discovered within this time in spite of the most careful inspection are to be reported in text form as soon as possible, at the latest within seven days after discovery. We may, upon our discretion, remedy the defect or deliver non-defective goods. In case of transport damages also the person in charge of the transport must be informed. In case of shortfall quantities, Buyer has to determine the gross and net weight and has to send us copies of the delivery bill and the transport documents, otherwise his complaint cannot be processed.

**10.2** The period of limitation for all claims based on defects including claims to damages shall be one year from delivery. This shall not apply if Section 438 (1) No. 2 German Civil Code (BGB), Sections 478, 479 BGB or Section 634 a (1) No. 2 BGB prescribe longer periods and in cases of injury to life,

body or health, in the case of wilful or grossly negligent breach of duty on our part or in the case of deceitful concealment of a defect.

## **11. Liability for Damages**

**11.1** We can be held responsible for damages incurred because of a violation of contractual and non-contractual obligations or requirements – also for our senior staff and other involved persons – only in the case of wilful intent and gross negligence, and in the case of gross negligence limited to the foreseeable typical contractual damages at the time the contract was concluded; our liability is otherwise also excluded for damages due to defects or their consequential damages.

**11.2** These restrictions do not apply to a culpable violation of essential contractual requirements, such as the correct and timely delivery and the duties to advise, protect and take due care for the purpose of enabling the Buyer to use the delivered goods in accordance with the contract. Furthermore, these restrictions do not apply to culpably caused damage to life, body and health and also not if and to the extent that we have assumed the guarantee for the quality of the goods delivered, as well as in cases of compelling liability according to the Product Liability Act.

**11.3** Should we default on delivery or on performance, Buyer may in accordance with Art. 11.1 and 11.2 hereunder request – in addition to the performance – compensation for damages incurred; however in case of slight negligence limited to 5% of the purchase price of the delivery in default. Buyer's right to claim damages in lieu of performance in accordance with Art. 11.1 and 11.2 hereunder remains unaffected.

**11.4** We only assume expenses associated with subsequent performance insofar as they are appropriate in the individual case, especially in relation to the purchase price of the goods, and under no account are more than 100% of the purchase price. We shall only assume further expenses, for example sorting costs, in accordance with Paragraphs 11.1 and 11.2 of these Terms and Conditions. Compelling statutory provisions shall not be affected by this.

## **12. Returned Goods**

Apart from our liability for defects, Buyer shall be credited for returned goods only if and insofar as we have previously agreed to such return in writing. Returned goods shall be credited with 80% of their original price, provided they are resalable and in their original packaging. Otherwise, costs for reconditioning and packaging shall be charged additionally. Any credit will be charged against new deliveries to Buyer only. For security reasons, insulated tools can not be returned.

## **13. Place of performance, jurisdiction and applicable law**

Place of performance, also for the duties of the Buyer, is Wuppertal. The place of jurisdiction for all disputes in connection with this agreement shall be Wuppertal. However, we may sue the Buyer also at his seat. German law shall govern all legal relationships between us and the Buyer, to the exclusion of the Convention on the International Sale of Goods (CISG).