

General Purchasing Terms and Conditions for Deliveries and Services
Walter Kraus GmbH and affiliated companies
(As of: [●] 2017)

1.0 Scope and general provisions

- 1.1 These General Purchasing Terms and Conditions (hereinafter referred to as "**conditions**") apply to all orders of supplies and services including ancillary services (hereinafter referred to as "**deliveries**") of Walter Kraus GmbH, Kraus Kunststofftechnik GmbH and EKR Elektro-Kontakt Radebeul GmbH. Any general terms or conditions issued by the contracting party which contradict or differ from our terms or statutory requirements will not be recognised by us without our express written approval. This applies even to deliveries we accept from the contracting party and any payments made unreservedly to the contracting party.
- 1.2 These conditions apply solely to business dealings with companies in the sense of §14 of the German Civil Code (BGB), legal entities under public law and public-law special funds ("**contracting parties**").
- 1.3 These conditions apply to any future business that forms part of a current business relationship with the contracting party, without our having to refer to these conditions again in each individual case.
- 1.4 Where reference is made in these conditions to the written form requirement, text form in the sense of §126 b of the German Civil Code (BGB) is sufficient for compliance with the written form rule.
- 1.5 We reserve the right to change these conditions even if they form part of a contract. Any change in the conditions becomes part of the contract concluded between us and the contracting party if (i) we notify the contracting party of any change and typographically highlight any change which disadvantages the contracting party; and (ii) the contracting party does not object in writing to the change within six weeks of receipt of notification, even though we refer to the legal consequences of failure to object in that change notification.
- 1.6 For the interpretation of trade terms, the current version of Incoterms at the time of conclusion of contract applies.

2.0 Conclusion of contract

- 2.1 A prerequisite for any contract concluded between us and the contracting party is our written order or written order confirmation. Should the contracting party's order confirmation differ in content from our original order, the contracting party must clearly highlight any such divergences in the order confirmation; such divergences will only form part of the eventual contract if we consent to them in writing.
- 2.2 Quotes, offers or tenders of the contracting party must be made to us free of charge. We can accept a quote from the contracting party within two weeks of it being issued. Until the end of that period, the contracting party is bound by the offer. Our silence is no reason to assume a contract will be concluded. Should our acceptance of an offer be delayed in reaching the contracting party, we must be informed immediately.
- 2.3 Any drawings or other documents referred to in relation to an offer or tender by the contracting party will form part of the order. They become part of the content of the contract, unless otherwise stipulated by the contracting party in the corresponding written confirmation of the order. Clause 2.1 sentence 2 applies accordingly.
- 2.4 Where an order involves an agreed delivery schedule for a volume contract or master agreement between us and the contracting party, (hereinafter referred to as a "**master**

agreement"), it becomes binding on the contracting party if no objection is raised within five days of receipt; there is no restriction on our ability to issue delivery schedules under a master agreement. In all other respects, the provisions contained in these conditions for orders also apply to delivery schedules.

3.0 Delivery, delivery times and delays

- 3.1 In every respect, deliveries must meet the contractually agreed conditions, relevant product and environmental laws, applicable safety regulations, rules and requirements of public authorities and trade associations. They must also meet the latest technical standards and be of a high quality in kind and condition, and suitable for the intended or normal use. In particular, any agreements reached about the chemical, physical or technical state, dimensions, modality and quality of the goods, as specified in the respective tolerances, must also be observed.
- 3.2 In the case of deliveries containing galvanised free-issue supplies in the sense of Clause 6.3, all galvanised free-issue supplies must also meet professional surface-finish standards at the time of formal acceptance, particularly in respect of the relevant materials and workmanship.
- 3.3 The intended deliveries must be made on a DDP basis (as per Incoterms 2010) to the destination specified in the order, unless otherwise expressly agreed. The contracting party is obliged to ensure secure packaging and insurance of deliveries for transportation purposes.
- 3.4 All delivery notes, shipping papers and invoices must include our order number, date of order, destination and, where applicable, item number in each case; the contracting party bears any costs arising from failure to provide these details unless the missing information is not the contracting party's responsibility.
- 3.5 Unless otherwise agreed, the contracting party is not authorised to make partial deliveries or partial services. If, in certain cases, a partial delivery or partial performance has been agreed, the words "partial delivery" or "partial performance" must appear on the delivery note and the invoice.
- 3.6 The specified delivery times for any order are binding (binding delivery times hereinafter referred to as "**delivery times**"). If an order does not include a delivery time, the deadline for delivery is two weeks from the date the order was placed. Once a contract has been concluded, delivery times may only be extended by the contracting party with our express agreement to any such extension.
- 3.7 The contracting party is deemed to have met the delivery times only if deliveries are made at the agreed delivery time or by the agreed deadline. The contracting party is not permitted to make premature deliveries.
- 3.8 As soon as the contracting party realises that an order cannot be delivered at the agreed time – in part or in full – we must be notified in writing immediately of the reasons for and estimated extent of the delay. The obligation of the contracting party to meet the agreed delivery deadlines continues to apply regardless.
- 3.9 We are entitled, in the case of delayed delivery on the part of the contracting party, to charge a penalty of 0.5% of the net price agreed with the contracting party for every week or partial week of delay, but no more than 5% of the net price, unless the contracting party is not responsible for the delay. We expressly reserve the right to claim compensation for any further losses that may be incurred. Any contractual penalties paid, however, will be set against

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any such further compensation claim. We are also entitled to enforce a contractual penalty even if no reservations are expressed at the time of acceptance of a delivery, but only beyond the extent of final payment of the delivery if we exercise our right to do so in relation to the final payment. In all other respects, we are entitled to the applicable statutory rights and claims relating to delivery delays.

- 3.10 The contracting party is entitled to offsetting and retention rights only in so far as any claims against us are uncontested, have been determined with legally binding effect, or the counter claim is synallagmatic to our claim.

4.0 Prices and payment conditions

- 4.1 The prices agreed between us and the contracting party are binding. The agreed prices are DDP (Incoterms 2010) plus any statutory VAT that may be applicable at the time of delivery, as well as packaging, insurance, freight and warehouse costs, customs duties, taxes, assembly costs and all other additional costs, unless otherwise expressly agreed.

- 4.2 Unless otherwise agreed, our payments are due within 30 days of receipt of delivery, or if formal acceptance is required, after formal acceptance and receipt of a proper, verifiable invoice; in cases where payment is made within 14 days, we are entitled to deduct a 3% discount.

- 4.3 Should the contracting partner, contrary to Clause 3.6, deliver earlier than agreed and we accept the delivery, without being obliged to do so, the due date and discount period as per Clause 4.2 does not begin until the agreed delivery time.

- 4.4 Our payments do not constitute approval of the delivery, nor acknowledgement of the invoice, nor acceptance of the delivery as faultless and/or punctual.

- 4.5 Where we are required to make pre-payments, the contracting party is obliged to lodge a contract performance guarantee or security in our favour (hereinafter referred to as "**security**") with a reputable German banking institution. Until such a security is in place, we are entitled to withhold payment.

- 4.6 Delayed payment on our part, irrespective of any other statutory requirements, presupposes a reminder notice was sent to us by the contracting party as soon as the payment deadline expired. In the event of any late payment, we will be liable for interest at a rate of five percentage points above the basic interest rate set by the European Central Bank.

- 4.7 Our offsetting and retention rights under the relevant statutory provisions are unlimited.

5.0 Formal acceptance and transfer of risk

- 5.1 Deliveries only require formal acceptance where this has been expressly agreed between us and the contracting party or is required by law.

- 5.2 Unless otherwise agreed, we may declare formal acceptance of a delivery up to two weeks after notification by the contracting party of completion of delivery.

- 5.3 Any formal acceptance requires an express declaration from us in each case. Checking of interim results and approval of partial payments, (e.g. in accordance with milestone planning), do not constitute formal acceptance. Equally our commissioning or use of goods from any consignment does not in itself constitute formal acceptance. Fictitious acceptances are out of the question.

- 5.4 Partial acceptances are fundamentally out of the question. Partial acceptance may only occur at our request if deliveries of the contracting party would otherwise be permanently excluded from subsequent technical controls due

to the advanced nature of work already completed.

- 5.5 We are entitled to refuse formal acceptance of a defective delivery. In all other respects, our obligations with regard to the formal acceptance process are defined by the legal requirements.

- 5.6 In cases of deliveries not involving installation and assembly, the risk of accidental loss and accidental deterioration of deliveries is transferred to us at the time of handover at the destination point. In the case of deliveries involving installation and assembly, the risk of accidental loss and accidental deterioration of deliveries is transferred upon our formal acceptance or, where no acceptance is required of us, upon handover following installation and assembly.

6.0 Ownership protection, free-issue supplies and handling and processing of free-issue supplies

- 6.1 Deliveries become our property upon handover, unless otherwise agreed. Retention of title in favour of the contracting party has the effect of a simple retention of title.

- 6.2 Should the contracting party retain ownership in breach of contract, we reserve the right to unconditional transfer of ownership, even if we have accepted the delivery.

- 6.3 Whenever we provide the contracting party with our products, materials, tools or other means of production to meet the contracting party's contractual obligations (hereinafter referred to as "**free-issue supplies**"), we retain ownership of these items. Free-issue supplies must be stored, labelled and kept safe separately and at no charge to us. They may only be used for our orders. In the event of a decrease in value or loss of goods, the contracting party must replace the items, unless the contracting party is not responsible for such a loss. Maintenance and repair work on free-issue supplies or other means of production is to be carried out at the contracting party's own expense.

- 6.4 The contracting party is obliged to insure free-issue supplies against theft, breakage, and fire and water damage at the contractor's own expense and to show evidence of this on request. The contracting party hereby authorises us to file claims with the insurer in relation to our property on the basis of such insurance policies.

- 6.5 The contracting party is otherwise only authorised to process, combine or mix free-issue supplies for an order of ours that involves the treatment or processing, combining and mixing of free-issue supplies – and galvanisation of our supplies in particular – with our prior written consent.

- 6.6 Any such treatment or processing, combining and mixing of free-issue supplies occurs without any obligation on our part as the manufacturer in the sense of §950 of the German Civil Code (BGG). Such processed goods are considered free-issue supplies in the sense of Clause 6.3. In the case of treatment or processing, combining or mixing of goods not owned by us, we acquire co-ownership in the newly created items. The extent of this co-ownership depends on the value of the free-issue supplies in relation to the value of the remaining goods. Should our ownership be extinguished by the combining or mixing process, the contracting party undertakes to transfer to us the ownership rights to the new goods, to the extent of the value of the free-issue supplies, and keep them safe on our behalf at no cost to us. Such co-ownership rights are considered free-issue supplies as per Clause 6.3.

- 6.7 The contracting party must inform us immediately of any seizure or other intervention by third parties in relation to free-issue supplies.

7.0 Material defects

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- 7.1 If the contracting party's delivery is defective, we have unlimited rights to statutory material-defect claims. In particular – irrespective of our other material-defect rights – we are at liberty to choose whether to demand rectification of the defect or redelivery/replacement.
- 7.2 Any approval by us of samples does not constitute relinquishment of our right to material-defect claims. Our entitlements and rights in respect of defects remain unaffected by any such approval.
- 7.3 Our legal obligation to notify the contracting party of any defects (§ 377 German Commercial Code - HGB) is limited to immediate inspection of deliveries in terms of volume, type, externally visible characteristics (e.g. transportation damage) and other obvious defects upon receipt of delivery. We are entitled to report obvious defects up to 10 days after delivery and hidden defects up to 10 days after detection. In cases where formal acceptance has been agreed, no inspection or defect notification duties apply to us. Furthermore, this Clause 7.3 does not apply to contracts to produce a work.
- 7.4 We have no further obligations other than the above inspection and defect notification duties. In particular, unless otherwise agreed, we are not obliged to undertake any laboratory examination measures such as material examination, x-ray or ultrasound procedures.
- 8.0 Industrial property rights, legal deficiencies**
- 8.1 The contracting party must ensure that third parties have no right to make claims against deliveries, and in particular no material rights or commercial property rights such as patents and trademarks, prototype or design rights or copyright (hereinafter referred to as “**property rights**”).
- 8.2 Should a third party make claims against us due to infringement of property rights in relation to a delivery made by the contracting party, the contracting party – irrespective of our other rights – must, at our discretion and at the contracting party's expense, either obtain the relevant usage right, change the delivery in such a way that any such property rights are not infringed or replace the consignment with a new one.
- 8.3 Our other statutory rights relating to legal deficiencies in respect of deliveries made by the contracting party remain unaffected by this provision.
- 9.0 Exemptions**
- The contracting party exempts us from claims for damages and claims for reimbursement of expenses by third parties that may be brought by third parties due to defective delivery or an infringement of property rights in relation to a delivery by the contracting party for which the contracting party is responsible. Other statutory rights available to us remain unaffected by this provision.
- 10.0 Quality assurance**
- 10.1 The contracting party must implement and maintain a quality assurance system which meets the latest standards of the relevant supply industry. The contracting party will conduct the quality assurance measures, including the required documentation, on its own account. On request, the contracting party will make that documentation available to us. The contracting party must retain such documentation in accordance with statutory regulations for a minimum of ten years.
- 10.2 We are entitled to have independent assessors check the degree of compliance with those quality assurance measures on the premises of the contracting party. This inspection does not absolve the contracting party from liability for any defects. We have a legitimate interest in being able to access any inspection or monitoring reports of the contracting party that relate to any delivery made to us. The contracting party is obliged to give consent to such access.
- 11.0 Limitation period**
- 11.1 The limitation period for claims relating to material and legal defects (hereinafter referred to as “deficiency claims”) is 36 months from the transfer of risk, unless otherwise agreed with the contracting party, or a longer statutory limitation period applies.
- 11.2 Any defect complaint made on our part within the limitation period suspends the existing limitation period between us and the contracting party until agreement is reached between us and the contracting party on rectification of the defect and any consequences; however such a suspension will end six months after final rejection of the defect complaint by the contracting party. The limitation period for deficiency claims will begin no sooner than three months after the end of the suspension period, but in no instance before the end of the limitation period as per Clause 11.1.
- 12.0 Replacement parts**
- 12.1 Where machinery, plant or components are involved, the contracting party is obliged to keep replacement parts in stock for any deliveries made to us for a period of at least five years after the delivery date.
- 12.2 If the contracting party intends to cease manufacturing replacement parts for deliveries made to us, notification must be given to us as soon as the decision is made to cease manufacturing.
- 13.0 Our liability**
- 13.1 We are not liable to the contracting party for damages and reimbursement of expenses, irrespective of the legal basis (contract, unlawful acts, breach of obligations arising from a contractual relationship, indemnity etc.).
- 13.2 The above exemption of liability does not apply to liability arising from the German Product Liability Act, or in cases of intent or gross negligence, culpable injury to life, limb or health or any breach of essential contractual rights, i.e. the kind of rights that must be met for proper performance of a contract and on which the ordering party relies or may be reasonably expected to rely.
- 13.3 However, liability stemming from a breach of essential contractual obligations is limited to compensation for typical, foreseeable contractual damage, unless we are liable due to intent or gross negligence, injury to life, limb or health or as under the German Product Liability Act.
- 13.4 Where our liability, as specified above, is excluded or limited, the same applies in respect of the personal liability of our designated or contracted agents, representatives and employees.
- 14.0 Ownership rights to documentation, confidentiality**
- 14.1 We retain all ownership and commercial property rights such as patents, trademarks, utility rights and registered designs and copyrights over all illustrations, forms, templates, samples, designs and draft designs, models, profiles, drawings, industrial standard sheets, printing templates, manuals, know-how, calculations, works documents and other documentation provided by us (hereinafter referred to as “**documents**”). These include in particular information about production methods, product formulas and plant configurations. Documents may only be used for the contractually intended purpose unless our prior written consent is obtained. The same applies to items manufactured in accordance with such documents.
- 14.2 The contracting party must treat our documents and all

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information obtained from us about our business or business operation (hereinafter referred to as “**information**”) as confidential. In particular, the contracting party is not permitted to pass on information or make it accessible to third parties without our prior written consent. The contracting party must also take responsibility for any breach of confidentiality by employees, advisors and agents of the contracting party. This confidentiality duty continues to apply for a period of five years following the end or execution of the contract. This does not apply to information (i) already known to the contracting party at the time the contract was signed or information the contracting party subsequently becomes aware of that is not based on any breach of confidentiality or (ii) information that was already public knowledge at the time the contract was signed or subsequently becomes public knowledge.

15.0 Foreign trade law

15.1 Our performance of a contract is subject to the proviso that our action is not contrary to any barriers arising from national or international regulations under foreign trade law, embargos and/or other sanctions.

15.2 The contracting party is obliged to inform us without prompting if the delivery is subject to foreign trade law restrictions in the Federal Republic of Germany or in the place of use of the consignment. Where required, the contracting party will submit the appropriate clearance declarations to the responsible authorities. The contracting party must comply with all requirements of the applicable national and international customs and foreign trade laws. No later than two weeks after receipt of our order or any amendments to that order, the contracting party must immediately advise us in writing of any information or data we may require in order to comply with foreign trade law on the exportation, importation or re-exportation of goods.

16.0 Force majeure

In the event of a force majeure event, we reserve the right to delay performance of our contractual duties, particularly that of accepting deliveries, for the duration of the impediment caused by the force majeure and for a reasonable start-up period after the event. The same applies to events equivalent to force majeure, for which we are not responsible and are beyond our control, particularly foreign exchange policy, trade policy and other measures taken by sovereign powers, strikes, lockouts, major industrial disturbances, (e.g. fire, machinery breakage, raw material or energy shortages), as well as obstruction of transport routes – not of a short-term duration in each case – which significantly impede performance of our duties or render it impossible. Should events of force majeure or equivalent last longer than three months, both parties have the right to withdraw from the contract. We undertake to inform the contracting party as soon as possible of the start and end of any such event.

17.0 Subcontractors; non-assignment clause

17.1 The contracting party is not entitled to have deliveries performed by subcontractors without our prior written consent. Transportation personnel are not considered subcontractors in this sense.

17.2 The contracting party is not entitled to assign claims arising from this contract to third parties without our prior written consent. This does not apply to monetary claims.

18.0 Data protection

18.1 The contracting party is obliged to make all employees dealing with our orders aware of the requirements of § 5 of the German Data Protection Act and to ensure compliance with those data protection provisions.

18.2 We acknowledge that personal details (e.g. name, occupational, sector or job title, phone number and email address) of the contracting party and/or its employees will be stored for the purpose of establishing, executing or terminating legal or contractual obligations with the contracting party.

19.0 General

19.1 The place of jurisdiction for disputes arising out of or in connection with these conditions or any contract is Augsburg. We are, however, entitled to take the contracting party to court in the customer’s usual place of jurisdiction or before any other responsible court. This also applies to disputes relating to summary proceedings based on documents and bills of exchange.

19.2 The place of performance for all deliveries is the location of the plant from which the order is made. The place of performance for any subsequent performance/restitution is the location of the deliveries in each case.

19.3 These conditions and all contracts between us and the contracting party are subject to German Federal Law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods. (UN Sales Law/CISG).

19.5 Should one or more provisions of these conditions be nullified or become invalid, this will not affect the validity of the other provisions.