

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

**1.0 Scope and general provisions**

- 1.1 All deliveries and work performances such as assembly and repair work and other services including ancillary services, (hereinafter collectively referred to as “**services**”), of Walter Kraus GmbH, Kraus Kunststofftechnik GmbH and EKR Elektro-Kontakt Radebeul GmbH will be made on the basis of these General Terms and Conditions of Deliveries and Services (“**conditions**”). Any general terms or conditions issued by the customer which contradict or differ from our terms or statutory requirements will not be recognised by us without our express written approval. This applies even in cases where we make deliveries unreservedly or accept payment from customers.
- 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 (“**customers**”). These conditions also apply as part of any ongoing business relationship to any future purchase, work and materials or service contract (“**contract**”) with the customer without our having to refer to this again in each individual case.
- 1.3 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.
- 2.0 Conclusion of contract, content, Incoterms**
- 2.1 Our contractual offers are always subject to change and non-binding. The details of measurements, weights, equipment and services shown on the internet, in brochures, catalogues, price lists, advertisements and other marketing materials serve as general information only and form the basis of negotiations for conclusion of contract with the customer. No liability is accepted for any misprints, alterations or errors.
- 2.2 We reserve the right to reach an agreement with the customer to charge a fee for tenders and drafting work.
- 2.3 We can accept a quote from the customer within two (2) weeks of it being issued. Until the end of that period, the customer is bound by the offer. Our silence is no reason to assume a contract will be concluded. The contract takes effect upon our written order confirmation. Should our order confirmation be delayed in reaching the customer, we must be informed immediately. Otherwise a contract comes into effect when we unreservedly perform the deliveries or services.
- 2.4 Should the customer’s written confirmation differ from our order confirmation, the customer must clearly highlight any such divergences; such divergences only form part of the content of the eventual contract if we consent to them in writing.
- 2.5 We reserve the right to make design alterations in the form of technical improvements to the item we deliver (“**delivery item**”), where such changes are deemed reasonable to the customer.
- 2.6 Whenever we manufacture the delivery item to specifications, measurements, technical drawings or other details provided by the customer, the customer is responsible for the accuracy and completeness of such details.
- 2.7 For the interpretation of trade terms, the current version of Incoterms at the time of conclusion of the contract applies.

- 2.8 Under the terms of a master agreement or volume contract, we are obliged to deliver the goods provided we accept the order or request of the customer.

**3.0 Prices and payment conditions**

- 3.1 For deliveries under a purchase agreement or contract for work and materials, the following applies:
- 3.1.1 Our prices are net “ex works” (EXW), unless otherwise agreed. The cost of packaging, freight, customs duties, import fees and any other additional charges, as well as the applicable VAT in each case, is the customer’s responsibility.
- 3.1.2 Unless otherwise agreed, payments under a contract are due for payment (in full) within 14 days.
- 3.2 For deliveries under a contract to produce a work, the following applies:
- 3.2.1 If deliveries have to do with services such as assembly and repair work under a contract (“**work performance**”), the work will be charged for on an hourly basis, in accordance with the hourly rates agreed in the contract, unless a fixed flat-rate price has been agreed with the customer.
- 3.2.2 A fixed flat-rate price for work performance does not include waiting times, delays and additional travel times for which we are not responsible, additional services or work performances that differ from the original work order.
- 3.2.3 The agreed charge is a net price. Any VAT is additional and must be paid by the customer.
- 3.2.4 Payment is due no later than upon formal acceptance of the work performance. We are, however, entitled to charge the customer an appropriate progress payment for work completed as part of a larger project.
- 3.3 The criterion for timely payment is the date on which the amount is credited to our account. We accept bank transfers as a payment method.
- 3.4 For late payment by the customer, we are entitled to charge default interest of nine (9) percentage points above the current basic interest rate set by the European Central Bank. Further rights and claims we may have as a result of late payment remain unaffected by this clause.
- 3.5 Should we become aware of circumstances following conclusion of contract that cast doubt on the customer’s ability to pay or credit worthiness and should this constitute a significant risk to our claim for payment, we may refuse to provide the contracted deliveries or services until consideration is made by the customer or adequate security has been furnished. We may set the customer an appropriate timeframe, within which such consideration or security must be provided. After expiry of that term, we are entitled to withdraw from the contract if the appropriate action has not been taken.
- 3.6 The customer 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 Delivery conditions and delivery times**
- 4.1 Where this is acceptable to the customer, we are entitled to provide partial deliveries or partial services.
- 4.2 Delivery and service times (“**delivery times**”) are only binding if agreed with the customer in writing.

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4.3 For deliveries under a purchase agreement or contract for work and materials, the following additional rules apply:

4.3.1 Delivery occurs ex works" (EXW), unless otherwise expressly agreed. Deliveries are sent uninsured. At the request and cost of the customer, the delivery item will be insured against the usual transportation risks.

4.3.2 Unless otherwise agreed in the contract, the criterion for timely delivery is the time when we advise the customer that the delivery item is ready for collection, even if, through no fault of our own, the delivery item cannot be collected in a timely manner.

4.3.3 Observance of delivery times is subject to timely self-delivery by our suppliers.

4.3.4 Should the customer delay acceptance of a consignment, we are entitled to store the delivery item at the customer's risk and expense on our premises or the premises of a third party.

4.4 In the case of work performances, delivery times are deemed to be timely if the services have been performed and accepted by the customer.

4.5 Observance of delivery times is subject to clarification of any technical questions, furnishing of the required consents and documentation plus timely performance of any cooperative duties or obligations on the part of the customer.

4.6 Should execution of the deliveries be delayed by the customer's culpable breach of any such cooperative duties, obligations or other contractual responsibility, we are entitled to demand penalty payment by the customer of 0.1% of the net order value of the order, but no more than 5% of the net order value in total. Our right to claim for further compensation under statutory provisions remains unaffected by this clause. Any contractual penalties paid, however, will be set against any such compensation claim.

4.7 In the event of a force majeure, strike, industrial disturbances or other unforeseeable, unavoidable or extraordinary events that are beyond our own control, the agreed delivery times will be extended by the duration of the relevant event. Should such an event last longer than three (3) months, both we and the customer have the right to withdraw from the contract.

## 5.0 Delays

5.1 Should we be delayed in delivering, any customer compensation claims against us in relation to or in connection with the delivery are limited, in addition to the actual delivery, to 0.5% of the net order value but no more than 5% of the net order value in total for every full week of the delay. This limitation does not apply to any case of intent or gross negligence on our part, or culpable injury to life, limb or health.

5.2 The customer may only withdraw from the delivery contract in accordance with the relevant statutory provisions if we are responsible for delayed deliveries. Statutory termination rights remain unaffected by this clause. At our request, the customer must declare within a reasonable period whether the customer intends to withdraw from the contract due to delayed delivery or continues to insist on delivery.

## 6.0 Transfer of risk

6.1 The risk of accidental loss and accidental deterioration of deliveries in the case of a purchase agreement or contract for work and materials is transferred to the customer as soon as we make the delivery item available for collection at the agreed delivery destination, but no later in each case than upon handover of the delivery item to the transport person. This also applies to partial deliveries.

6.2 The risk of accidental loss and accidental deterioration of deliveries in the case of work performance is transferred to the customer as soon as the customer has material control of the services, but no later in each case than acceptance of such services.

6.3 In all other instances, the risk of accidental loss and accidental deterioration of delivery under a contract is transferred to the customer as soon as the customer is found to be in delay accepting delivery or if the consignment, shipment, start, execution or takeover of the deliveries on the customer's premises, or contractually agreed test run of deliveries is delayed through the customer's own fault. The deliveries may be insured by us in accordance with the wishes of the customer and at the customer's expense.

## 7.0 Work performance and formal acceptance

7.1 The customer is obliged to take all necessary measures to ensure the safety of our personnel and equipment in the place where the plant services are to be performed ("**workplace**"). The customer must inform us of any particular risks or dangers that may apply.

7.2 Unless otherwise agreed, in particular, the customer must in provide the following at the workplace:

- the commodities and materials required for the relevant work performance, such as lifting gear, other devices or lubricants;
- energy and water at the workplace, including power points, heating and lighting in accordance with our installation instructions in each case
- sufficiently large, suitable, dry and closable rooms at the workplace for the purpose of storing machinery parts, apparatus, materials, tools etc., and appropriate work and break rooms for our assembly personnel including the appropriate sanitary facilities in each case.

7.3 Before work begins on work performance, the required free-issue parts and items for commencement of work must be located at the workplace and any required preliminary work must have already been completed. This may include clearing or preparation of any access routes to the workplace or assembly site.

7.4 The customer is responsible for ensuring that the work performance is able to begin in a timely manner. Should work performance be delayed by circumstances for which we are not responsible, the customer must bear the cost of any additional extra expenses such as travel and waiting time.

7.5 If formal acceptance is required by law or contractually agreed, it must occur no later than directly after notification of work completion, even if only partial performance or completion of self-contained parts is involved. The customer bears the cost of formal acceptance. If special performance indicators have been agreed and where we request acceptance, the customer must take the appropriate action within two (2) weeks. Should formal acceptance be delayed or incomplete through no fault of our own, acceptance is deemed to have occurred once our written request for acceptance is made and after a reasonable period, provided we have made reference to such a consequence. The customer is not entitled to refuse acceptance due to insignificant defects.

## 8.0 Retention of title

8.1 The objects of the delivery (e.g. delivery items, replacement parts related to performance) under a contract ("**conditional goods**") remain our property until settlement of all claims arising from the business relationship

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- that we may have against the customer.
- 8.2 The customer is obliged to treat all conditional goods with due care. Any required maintenance or inspection work on conditional goods is to be carried out at the customer's own risk and expense.
- 8.3 The customer is not authorised to pledge, pawn, reassign or use conditional goods as security. We must be advised immediately of any change in ownership of conditional goods or any change in the customer's business location.
- 8.4 The customer is obliged to inform us immediately of any access by third parties to conditional goods, in the event of, for instance, a seizure, confiscation or any other injunction over conditional goods by third parties. The customer must provide us with all the information and documentation necessary for us to protect our rights in relation to conditional goods
- 8.5 At the customer's own expense, the conditional goods must be insured at replacement value against burglary or damage caused by breakage, fire or water for the period immediately following the transfer of risk. Furthermore, the customer is obliged to insure conditional goods against the risk of destruction, loss or damage during transportation. Any damage or destruction of conditional goods must be reported to us immediately by the customer. On request, the customer must make available to us all relevant documentation relating to damage to the conditional goods and in particular, any damage assessments. The customer must also notify us of any existing insurance policies, and at our discretion provide us with either the policy document or the risk certificate issued by the insurer for the conditional goods.
- 8.6 The customer is entitled to resell the conditional goods as part of a proper business transaction. By way of security, the customer hereby assigns to us any claims that may arise from resold conditional goods in respect of third parties and we hereby accept that assignment. If the conditional goods are resold in conjunction with other goods that do not belong to us, the customer's claim against the purchaser to the extent of the amount agreed between us and the customer as the invoice value of the conditional goods will be assigned to us. In the case of resold goods in which we have shared ownership as per Clause 8.7, the assignment of the claim covers the extent of the relevant resell value of our share of the conditional goods. The customer retains the right to collect the receivables following such assignment. We reserve the right to withdraw that authority to resell and collect receivables and, in that case, collect the claim ourselves should the customer fall into payment arrears, face an insolvency petition, show signs of any other significant decline in financial circumstances, or if any other compelling grounds exist. In the event of withdrawal of the right to collect, the customer must at our request supply us with all the necessary documentation and information.
- 8.7 The customer is permitted to process the conditional goods or mix or combine them with other items. Such processing, mixing or combining will always be carried out by the customer at no cost to us as the manufacturer, in the sense of §950 of the German Civil Code (BGB). When conditional goods are combined by the customer with other items not belonging to us, we are entitled to co-ownership of the new item in proportion to the value of the conditional goods in relation to the value of the other combined/mixed items. In that case, the customer will preserve our co-ownership in the goods at no cost to us. As far as any goods created as a result of such processing, combining or mixing in which we have full or co-ownership are concerned, the same rules specified in these terms and conditions for conditional goods will apply.
- 8.8 We undertake to release the securities to which we are entitled (conditional goods plus items replacing them and/or receivables) at the discretion of the customer, provided their total value exceeds the amount of the secured receivables by more than 10%.
- 8.9 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 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.
- 9.0 Defects**
- 9.1 We are obliged to supply deliveries free of any material or legal defects ("**defects**"). The customer has no right to claim damages for defects if the alleged defect was detectable in any technical drawings supplied by us which the customer had accepted or approved.
- 9.2 In the event of a defect, the customer may demand rectification, which at our discretion may take the form of improvement or repair or replacement. As a matter of principle, rectification will be made by us as a gesture of good will, without acknowledging any legal obligation on our behalf. Any such acknowledgement leading to a restart of the limitation period will apply only following an express written declaration by us to the customer.
- 9.3 The right of self-remedy in the case of plant services is open to the customer only if we are responsible for the defect.
- 9.4 Should rectification fail, the customer may choose at the customer's own discretion to decrease the price or withdraw from the contract. At our request, the customer must declare within a reasonable period whether the customer intends to withdraw from the contract as a result of a defect or continue to insist on delivery.
- 9.5 Any defect notification by the customer must be made in written form.
- 9.6 The right of the customer to claim for defects expires within twelve (12) months from the statutory start of the limitation period; for rights in respect of defects, an appropriate exclusion period applies. Notwithstanding this, the statutory period of limitation applies a) in relation to all claims and rights of the customer in respect of § 438 (1) No. 1 BGB, § 438 (1) No. 2 and § 634a (1) No. 2 BGB, § 479 (1) BGB or where a defect is deliberately concealed and b) in the event of claims for damages from injury to life, limb or health, entitlements under the German Product Liability Law and any gross negligence or intentional breach of duty.
- 9.7 Apart from the claims and rights listed in Clause 9 ff., the customer has no further entitlement or rights in respect of defects, except for damages and reimbursement of expenditure. For damages and expenditure claims, see Clause 10 ff.
- 10.0 Compensation for damages and expenditure**
- 10.1 We are not liable to the customer for damages and reimbursement of expenditure irrespective of the legal grounds (contract, unlawful act, breach of duty arising from the contractual relationship, indemnity etc.).
- 10.2 The above exclusion of liability does not apply to liability under the German Product Liability Act, in cases of intent

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or gross negligence, culpable injury to life, limb or health, or a breach of essential contractual obligations. Essential contractual obligations are the kind of duties that must be fulfilled for proper performance of a contract and on which the customer relies or may be reasonably expected to rely.

10.3 Our liability for breach of essential contractual obligations is, however, 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 under the German Product Liability Act.

10.4 Where our liability, as specified in the above clauses, is excluded or limited, the same applies in respect of the personal liability of our designated or contracted agents, representatives and employees. Our liability for delayed delivery is governed primarily by Clause 5.1.

#### 11.0 Software use

Where software forms part of the delivery or service, the customer is granted a non-exclusive right to use the software provided, including the relevant documentation. This is granted for use with the relevant delivery item. The software may not be used on more than one system. The customer may only copy, edit, translate or convert the object code of the software into the source code within the legally permissible limits (§ 69 a ff. of the German Copyright Law - UrhG). The customer undertakes not to remove or change any of the manufacturer's markings – and any copyright markings in particular – without our prior written consent. All other rights to the software and documentation including any copies rest with us or the software supplier. No sub-licensing is permitted.

#### 12.0 Export control proviso

Fulfillment of a contract with the customer is subject to the absence of any barriers due to national or international regulations under foreign trade law, embargoes and/or other sanctions.

#### 13.0 Confidentiality

13.1 The customer is obliged to treat as confidential any know-how, trade secrets or other information received in the course of performance of this contract (“**information**”). In particular, the customer is not permitted to pass on or make accessible to third parties any such information received without our prior consent. The customer must also ensure that all employees and any other people who have access to the information are bound by the same degree of confidentiality.

13.2 The obligation in Clause 13.1 does not apply to information which a) was already demonstrably known to the customer at the time the contract was signed or was subsequently disclosed by a third party without any breach of a confidentiality agreement, statutory regulations or official decrees; (b) was already public knowledge at the time the contract was signed or subsequently becomes public knowledge, provided this is not based on any breach of this contract; c) as a result of statutory obligations or a court order or other public authority must be made public.

#### 14.0 Place of performance, jurisdiction and applicable law

14.1 The place of performance for all duties relating to these conditions or the contract, including any subsequent performance is our headquarters in Augsburg, unless otherwise stipulated in these conditions or the contract.

14.2 The sole place of jurisdiction for all legal disputes arising out of or in connection with these conditions or the contract is Augsburg; we are, however, entitled to take the customer to court in the customer's usual place of jurisdiction or before any other responsible court. This does

not apply where a sole place of jurisdiction is stipulated by law.

14.3 All legal relationships between us and the customer are subject solely to German Federal Law, to the exclusion of the United National Convention on Contracts for the International Sale of Goods (UN Sales Law/CISG).

#### 15.0 Closing provisions

15.1 Any additions, amendments or ancillary arrangements to these conditions must be contractually agreed between us and the customer to have any validity.

15.2 In the event of invalidity of any individual provisions of these conditions or other agreements between us and the customer, the validity of the remaining provisions of these conditions or other agreements will not be affected.