

# Terms and Conditions

## § 1

### Product-Specific Terms

These Terms and Conditions (“T&Cs”) apply to all products of KUNBUS GmbH (hereinafter referred to as KUNBUS) that are not covered by any separate Terms and Conditions of KUNBUS.

Separate Terms and Conditions shall apply to the following KUNBUS products:

- for orders placed in the KUNBUS online shop

## § 2

### General Provisions / Scope of Application

- (1) These T&Cs apply to all current business relationships between KUNBUS and the customer, and as a framework agreement, also to all future business relationships, without KUNBUS being required to refer to the T&Cs in each individual case, unless other terms and conditions of KUNBUS are incorporated into future contracts.
- (2) Quotations and declarations of acceptance, as well as all deliveries and services, are provided exclusively on the basis of the T&Cs stated below in their respective latest version the T&Cs are available at any time on the Internet at <https://www.kunbus.com/en/agb> and may be saved and printed by the customer in a reproducible form.
- (3) The customer’s terms and conditions of purchase are hereby expressly rejected. Any terms and conditions of the customer that differ from, conflict with, or supplement these T&Cs shall not become part of the contract, even if KUNBUS is aware of them, unless KUNBUS expressly agrees to their applicability in writing at the time the contract is concluded. This requirement of confirmation applies even if KUNBUS with knowledge of the customer’s terms and conditions that conflict with or deviate from these T&Cs, performs delivery to the customer without reservation. Any written consent given at the time of contract conclusion shall apply solely to the individual case expressly covered by such consent.
- (4) These T&Cs shall only apply if the customer is an entrepreneur within the meaning of Section 14 of the German Civil Code [hereinafter referred to as “BGB”], a legal entity under public law, or a special fund under public law.

## § 3

### Conclusion of contract

- (1) Quotations by KUNBUS are not binding. Orders can be placed offline and in the KUNBUS online shop at <https://revolutionpi.com/shop/>. Separate Terms and Conditions shall apply for orders placed in the KUNBUS online shop.
- (2) If the customer’s offline order qualifies as an offer within the meaning of Section 145 BGB, KUNBUS may accept such order within 4 weeks, unless the customer’s order provides otherwise. If the customer does not specify, or specifies only incompletely, the individual characteristics of the respective item to be delivered according to its intended use and considering all technically relevant factors, KUNBUS’s general product specifications shall apply in a supplementary manner.

- (3) The acceptance may be declared either in writing by means of KUNBUS's order confirmation (including by fax or e-mail) or by delivery of the goods to the customer. In such a case, the customer shall also receive a written order confirmation. Unless otherwise agreed in writing, KUNBUS's written order confirmation shall define the contractual scope of delivery and services.
- (4) At the time of conclusion of the contract, no oral side agreements exist. Any individual agreements expressly made between the customer and KUNBUS in a specific case (including side agreements, amendments, and supplements to these T&Cs), insofar as they were concluded after the contract was formed, shall in any event take precedence over these T&Cs. The content of such individual agreements shall be determined by a written contract or—if no such contract exists—by KUNBUS's written confirmation to the customer.
- (5) KUNBUS reserves the right to make technical modifications as well as changes in the design, shape, colour and/or weight of the goods, provided such changes are reasonable for the customer.
- (6) A guarantee shall only be granted if it has been expressly designated as such and has been declared in writing by the management of KUNBUS. The quality and characteristics of the goods to be delivered shall be determined by the respective product description of KUNBUS valid at the time of conclusion of the contract. Other information, such as technical data, descriptions, illustrations and drawings, as well as dimensions and weights—even if they refer to standards—shall be subject to ongoing changes. Such information shall only be binding upon KUNBUS if it has been expressly confirmed as binding by KUNBUS in advance.
- (7) KUNBUS reserves all ownership and copyright rights to illustrations, drawings, designs, models, samples, calculations, cost estimates and other documents or items; they must not be made accessible to third parties. Any disclosure to third parties requires the prior express written consent of KUNBUS.

## **§ 4 Delivery**

- (1) Partial deliveries shall be permitted where reasonable for the customer.
- (2) Unless otherwise agreed in the contract between KUNBUS and the customer, delivery shall be made "DAP (Delivered at Place, Incoterms 2020) to the place of delivery specified by the customer. The agreed place of delivery shall also constitute the place of performance for the delivery as well as for any subsequent performance.
- (3) The customer shall be responsible for carrying out all procedures relating to the export and import of the goods and shall bear all costs arising therefrom. KUNBUS shall support the customer in this regard as far as reasonable for KUNBUS. The goods may be subject to (re-)export restrictions, including but not limited to those of the United States of America or the European Union. The customer shall comply with such regulations in the event of any resale or other export of the goods.
- (4) Delivery dates and delivery periods shall always be deemed approximate and shall not be binding on KUNBUS unless a delivery date has been expressly agreed in writing as binding upon conclusion of the contract. A delivery period or delivery date shall be deemed met if the goods have left KUNBUS's premises before its expiry or if KUNBUS has notified the customer of readiness for dispatch before the expiry of the delivery period. The commencement of the delivery period indicated by KUNBUS requires clarification of all technical questions as well as the timely and proper fulfilment of the customer's obligations. This includes any documents to be procured or prepared by the customer, such as drawings, descriptions, approvals or releases to be submitted by the customer, and the crediting of any advance payments agreed with KUNBUS to KUNBUS's account. If any of these prerequisites are not met or if there are ambiguities attributable to the customer, the delivery period indicated by KUNBUS shall be suspended until the customer has remedied the obstacle and shall be extended by the duration of such suspension.
- (5) If, after conclusion of the contract, the customer requests amendments or additions to the contract—e.g., relating to customer-specific adaptations of the goods—that render compliance with the delivery date or

delivery period impossible, the delivery date shall be postponed or the delivery period extended in accordance with the requested amendments or additions.

- (6) KUNBUS's obligation to deliver is subject to proper and timely receipt of supplies from its own suppliers. KUNBUS shall be released from its delivery obligations if, through no fault of its own, it fails to receive such supplies despite having entered into a corresponding supply contract. In such an event, KUNBUS shall notify the customer without undue delay of the non-availability, exercise its right to withdraw from the contract, and promptly refund any consideration already received from the customer.
- (7) The customer shall be obliged to accept goods that deviate only insignificantly from the agreed quality, or that exhibits only an insignificant impairment of usability.
- (8) The costs of shipping shall be borne by the customer and will be invoiced to the customer unless otherwise expressly agreed in individual cases. The choice of shipping route and shipping method shall be at the discretion of KUNBUS. Transport insurance shall only be taken out upon the customer's express request and at customer expense.
- (9) We reserve the right to make design or shape changes during the delivery period that are due to technical improvements and/or legal requirements, provided that the delivery item or the agreed delivery is not significantly altered, and the changes are reasonable for the customer.

## **§ 5 Installment Supply Contract**

- (1) If the customer and KUNBUS agree that the customer shall, over a certain period of time, take delivery of a specified quantity of products ("Installment Supply Contract") the following additional provisions shall apply:
- (2) Under Installment Supply Contracts, deliveries in installments, specifying the respective quantity of goods, and the time of delivery shall be agreed in accordance with a delivery schedule mutually agreed between the parties.
- (3) The Customer shall notify any amendments to the delivery schedule in writing at least two (2) weeks prior to the scheduled delivery date. Timely acceptance shall be determined by the customer's physical receipt of the respective goods in accordance with the delivery and acceptance terms agreed pursuant to Section 4, or, in the absence of a specific agreement, "DAP" (Delivered at Place, Incoterms 2020) at the place of delivery specified by the customer. To ensure timely acceptance, the customer shall comply with the delivery periods specified by KUNBUS.
- (4) Unless otherwise agreed, the customer shall take delivery of the goods from KUNBUS within one year from the date of the underlying Installment Supply Contract. If the customer fails to accept the agreed installments within the specified delivery periods or does not accept them in due time at the agreed place of delivery, the provisions of Section 11 shall apply.

## **§ 6 Pricing and Payment Conditions**

- (1) Unless otherwise expressly agreed, and in the absence of any specific agreement, prices shall apply on a **"DAP (Delivered At Place, Incoterms 2020)** basis at the place of delivery specified by the Customer, excluding packaging, transportation and transport insurance, unless expressly agreed otherwise. All prices are stated net of the applicable statutory VAT.
- (2) Unless otherwise agreed, the prices for all goods to be delivered shall be the prices valid at KUNBUS on the date of the order confirmation.

- (3) KUNBUS may issue partial invoices for partial deliveries. Each partial invoice shall be subject to separate payment terms.
- (4) Any deduction of cash discount requires a separate written agreement.
- (5) Unless otherwise stated in the order confirmation or offer, the purchase price shall be payable net (without deduction) within 14 days from the invoice date. If the customer is in default of payment, KUNBUS shall be entitled to charge default interest at a rate of 9 percentage points above the base interest rate of the European Central Bank per annum, as well as the statutory default fee of EUR 40.00. KUNBUS reserves the right to claim further damages for default if such damages can be substantiated.
- (6) If, after conclusion of the contract, a material deterioration in the customer's financial circumstances occurs, or if KUNBUS becomes aware of a deterioration that occurred prior to contract conclusion but only became known afterwards and that gives rise to serious doubts regarding the customer's creditworthiness, KUNBUS shall be entitled, at its discretion, to demand advance payment or the provision of security. If the customer fails to comply with such demand, KUNBUS shall be entitled to withdraw from the individual contract and/or to terminate any existing Framework Supply Agreement.
- (7) In the event that, after conclusion of the contract, production costs (including, without limitation, labour costs and ancillary labour costs) or purchasing costs of a component essential to the product (including, without limitation, electronic components, semiconductors, processors or comparable key components) change significantly, and such cost change was neither foreseeable nor within the control of KUNBUS, KUNBUS shall be entitled to adjust the agreed prices accordingly.

A cost change shall be deemed significant in particular if the costs of the relevant component or the overall production costs deviate by more than 10% from the cost basis underlying the calculation at the time of the conclusion of the contract.

KUNBUS shall notify the customer of any price adjustment in text form at least 14 days prior to the agreed delivery date.

The customer shall be entitled to object to the price adjustment within 14 days of receipt of the notification.

In the event of a timely objection, either party shall be entitled to terminate the contract with respect to the affected delivery or performance with immediate effect by way of extraordinary termination. Such termination shall be declared within 14 days after expiry of the objection period. Services already rendered shall be remunerated on a pro rata basis.

## **§ 7 Set-Off and Right of Retention**

- (1) The withholding of payments by the customer on the basis of any claims against KUNBUS shall be excluded unless the right of retention is based on claims of the customer arising from the same contractual relationship which are undisputed or have been finally determined by a court of law.
- (2) The customer shall not be entitled to set off claims of KUNBUS against its own claims, unless the customer's right of retention is based on claims arising from the same contractual relationship with KUNBUS.

## **§ 8 Force Majeure**

- (1) The delivery date shall be postponed and the delivery period extended appropriately in the event of force majeure or other unforeseeable events (e.g., operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays including delays en route to the agreed place of delivery, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining

necessary governmental permits, governmental actions, or the failure, incorrect or delayed delivery by suppliers; epidemics, pandemics) for which KUNBUS is not responsible.

- (2) The aforementioned circumstances shall also not be deemed to be the responsibility of KUNBUS if they occur during an already existing delay on the part of KUNBUS or the customer. KUNBUS shall notify the customer of the beginning and end of such obstacles within a reasonable period of time.
- (3) If such events substantially impede or render impossible for the delivery by KUNBUS and the impediment is not merely temporary, KUNBUS shall be entitled to withdraw from the individual contract or to terminate any existing Framework Supply Agreement. In the case of temporary impediments, the delivery periods shall be extended, or the delivery dates postponed by the duration of the impediment plus a reasonable restart period. If, as a result of the delay, acceptance of the delivery becomes unreasonable for the customer, the customer may withdraw from the contract by giving prompt written notice to KUNBUS.

## **§ 9 Transfer of Risk**

- (1) Unless otherwise agreed, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer “DAP (Delivered at Place, Incoterms 2020) at the agreed place of delivery r as soon as the goods are made available to the Customer for unloading.
- (2) The handover of the goods shall be deemed equivalent if the customer is in default of acceptance.
- (3) If the dispatch of the contractual goods is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer upon the occurrence of the customer’s delay in acceptance.
- (4) Where KUNBUS has assumed shipping costs, delivery, or installation of the goods under these T&Cs or any other contractual agreement, the above provisions on the transfer of risk shall remain unaffected
- (5) The above provisions shall also apply to any agreed partial deliveries.

## **§ 10 Delay and Impossibility**

- (1) If KUNBUS is in default of its delivery obligations due to its own fault, the customer may claim compensation of 0.5% of the price of the portion of the goods that cannot be put into operation due to the delay for each commenced week of delay, up to a maximum of 5% of such price. The customer may prove higher damage caused by the delay; KUNBUS may prove that the actual damage is lower.
- (2) Without prejudice to the customer’s rights of withdrawal or termination in the event of defects (see Sections 13 – Warranty for Defects in Quality – and 14 – Warranty for Defects in Title – of these T&Cs), the customer may withdraw from the contract in the event of impossibility of performance by KUNBUS or delay only if the breach of duty is attributable to KUNBUS.
- (3) In the event of delay, withdrawal, termination or claims for damages in lieu of performance shall additionally require that the customer has previously granted KUNBUS a reasonable written grace period of at least two (2) weeks to perform the contractual obligations and has expressly stated that it will withdraw from the contract, terminate the contract and/or claim damages if such period expires without performance. After expiry of this period, the customer shall, upon request by KUNBUS, declare whether it still insists on delivery or, pursuant to Section 281 (4) BGB claims damages instead of performance or withdraws from or terminates the contract. If the customer fails to make such declaration within a reasonable period set by KUNBUS, the customer shall no longer be entitled to refuse acceptance of the delivery or to withdraw from or terminate the contract, nor to claim damages in lieu of performance, but shall only be entitled to accept the delivery.

- (4) A grace period with refusal warning is not required if KUNBUS seriously and definitively refuses performance, or if special circumstances exist which, after weighing the interests of both parties, justify immediate withdrawal or immediate termination.
- (5) The customer may not withdraw from or terminate the contract before the performance becomes due, nor in the case of only insignificant breaches of duty by KUNBUS. Withdrawal and termination are also excluded if the customer is solely or predominantly responsible for the circumstances that would entitle it to withdraw or terminate, or if a circumstance not attributable to KUNBUS occurs during the customer's default of acceptance.
- (6) For claims for damages or reimbursement of expenses arising from delay or impossibility, Section 16 of these T&Cs shall apply.

## **§ 11 Default of Acceptance**

- (1) If the customer is in default of acceptance or otherwise breaches its obligations to cooperate, KUNBUS shall be entitled to claim compensation for the damage incurred, including any additional expenses. In such case, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time the customer enters into default of acceptance.
- (2) In the event of default of acceptance, the customer shall be charged, starting from the beginning of the following month (generally the month following the notification of readiness for delivery or the month in which the agreed delivery would have taken place), the storage costs incurred, but at least 0.5% of the invoice amount of the affected delivery for each commenced month. KUNBUS reserves the right to prove and claim higher damages.
- (3) Furthermore, KUNBUS shall be entitled, after the expiry of a reasonable period notified to the customer, to withdraw from or terminate the contract, or, after expiry of such reasonable period notified to the customer, to otherwise dispose of the goods and supply the customer within an appropriately extended delivery period in accordance with the contract.

## **§ 12 Notice of defects**

- (1) The customer shall inspect the goods within ten (10) working days after delivery. Legal defects or material defects, the absence of any characteristics of the goods that may have been guaranteed by KUNBUS, as well as excess delivery, short delivery or incorrect delivery (collectively, "Defects"), shall—if apparent—be notified by the customer to KUNBUS without undue delay, but at the latest within five (5) additional working days after expiry of the inspection period referred to in sentence 1, in writing.
- (2) Defects that are not detectable during a customary incoming inspection pursuant to Section 12.1 of these T&Cs shall likewise be notified by the customer without undue delay, but no later than 14 days after discovery, and such notice shall be made in writing.
- (3) The customer's notice of defects must contain a detailed description of the respective defect, tailored to the specific circumstances of the case.
- (4) If defects are not notified within the periods set out in Sections 12.1 and 12.2 of these T&Cs, all warranty claims against KUNBUS shall be excluded.

**§ 13****Warranty for Defects in Newly Manufactured Products / Unjustified Requests for Subsequent Performance**

- (1) In the event of a defect in a newly manufactured KUNBUS product—excluding defects in title, which are governed by Section 14 (Defects in Title) of these T&Cs—KUNBUS’s warranty, provided the defect has been duly notified in accordance with Section 12 of these T&Cs, shall initially be limited, at KUNBUS’s discretion, to subsequent performance by remedying the defect (“repair”) or by delivering a replacement, provided the customer proves that the defect already existed at the time of the transfer of risk.
- (2) The customer shall, after consultation with KUNBUS, grant KUNBUS the necessary time and opportunity to carry out the repair or replacement delivery. In view of the complexity of the goods, KUNBUS shall generally be entitled to three repair attempts. The place of performance for subsequent performance shall be the place of delivery. This shall not apply if KUNBUS chooses repair as the form of subsequent performance, and the goods requiring repair cannot be transported to KUNBUS.
- (3) If subsequent performance by KUNBUS is carried out at a location other than the place of delivery and no repair/service agreement exists, the customer shall reimburse KUNBUS for the increased transport, travel and accommodation costs and any other additional expenses incurred due to performing subsequent performance at the actual place of use of the goods, unless relocation to another place corresponds to the intended use of the goods..
- (4) KUNBUS shall not be obliged to carry out subsequent performance if this is only possible at disproportionate costs. KUNBUS may refuse any form of subsequent performance if the expected costs exceed 100% of the purchase price of the contractual goods.
- (5) Parts replaced in the context of the warranty shall become the property of KUNBUS.
- (6) If subsequent performance fails—meaning that KUNBUS allows a reasonable deadline for subsequent performance to expire, performs three repair attempts or one replacement delivery without remedying the defect, unjustifiably refuses or unduly delays necessary subsequent performance, or if subsequent performance is unreasonable for the customer for other reasons, or if the conditions of Sections 281(2) or 323(2) BGB are met, or if KUNBUS rightfully refuses subsequent performance due to disproportionality—the customer may, instead of repair or replacement, assert the statutory remedies of withdrawal, reduction of the purchase price, or termination, as well as claims for damages or reimbursement of expenses, the latter in accordance with Section 16 of these T&Cs.
- (7) In the case of only minor breaches of contract, in particular minor defects, the customer shall have no right of withdrawal or termination.
- (8) If only a minor defect exists, damages pursuant to Section 281 BGB (damages in lieu of performance) shall be calculated based on the difference between the purchase price and the value of the defective Goods.
- (9) For third-party products, KUNBUS’s warranty shall be limited to the assignment of the claims KUNBUS has against the manufacturer of such third-party products. If the customer is unable to enforce its warranty rights against the manufacturer, KUNBUS shall provide warranty in accordance with these terms. Any manufacturer of warranties for third-party products shall remain unaffected.
- (10) If a notice of defect is unjustified, KUNBUS shall be entitled to demand reimbursement of the expenses incurred if the customer negligently failed to recognize that a circumstance within its own responsibility caused the alleged defect.
- (11) If the customer receives a defective installation manual, KUNBUS shall only be obliged to provide a defect-free assembly instruction, and only if the defect in the instruction prevents proper assembly.

- (12) KUNBUS shall in general not be liable for cases where, at the customer's request, parts not manufactured or specified by KUNBUS are installed in the goods. The customer shall bear the burden of proof that such deviation did not cause the alleged defect.
- (13) KUNBUS shall not be liable for installation work performed by the customer. The burden of proof for proper installation rests with the customer.
- (14) In the event of an unjustified request for remedy, the customer shall reimburse KUNBUS for expenses incurred in connection with examining the request and any alleged subsequent performance. An unjustified request for remedy exists if the customer knew or negligently did not know that no defect existed, the reported manifestation does not constitute a defect, or the cause of the reported manifestation lies within the customer's area of responsibility. With respect to fault, the parties apply the burden of proof rule of Section 280 (1) sentence 2 BGB.

## **§ 14**

### **Warranty for Defects in Used Products**

- (1) In the case of delivery of used products, the customer shall, contrary to the statutory provisions, neither be entitled to subsequent performance nor to exercise the statutory remedies of withdrawal, termination or reduction of the purchase price.
- (2) Notwithstanding the foregoing, the customer shall be entitled to claim subsequent performance and may exercise the remedies of withdrawal, termination or reduction of the purchase price if KUNBUS has fraudulently concealed the defect of the used products or has assumed a guarantee for the quality of the used products. In such case, the customer's rights shall be governed by Section 13 of these T&Cs.

## **§ 15**

### **Warranty for Defects of Title**

- (1) KUNBUS warrants that the contractual use of the goods by the customer in the country of the place of delivery does not infringe any third-party rights. In the event of defects of title, i.e. where third parties assert justified claims against the customer based on the infringement of intellectual property rights by goods supplied by KUNBUS and used in accordance with the contract, KUNBUS shall, provided that the customer has given timely notice pursuant to Section 12 of these T&Cs, at its discretion either grant the customer a legally unobjectionable right to use the goods or modify or replace the goods so that the intellectual property right is no longer infringed.
- (2) The customer shall notify KUNBUS without undue delay and in writing if third parties assert intellectual property rights (e.g., copyrights or patent rights) in relation to the goods. The customer authorizes KUNBUS to conduct the dispute with the third party exclusively. KUNBUS shall, at its discretion and in consultation with the customer, defend or settle the claims. As long as KUNBUS makes use of this authorization, the customer may not acknowledge any claims of the third party without KUNBUS's consent. KUNBUS shall defend the third party's claims at its own expense and indemnify the customer against all costs associated with such defense, unless such costs arise from the customer's breach of duty (e.g., improper use of the goods). If the customer discontinues use of the goods for reasons of damage mitigation or other important reasons, the customer shall inform the third party that discontinuation of use does not constitute an acknowledgment of an infringement.
- (3) KUNBUS may replace the affected Goods with equivalent Goods that comply with the contractual provisions if this is reasonable for the customer. If this is not possible for KUNBUS under reasonable conditions, the customer shall be entitled to the statutory remedies of withdrawal or reduction of the purchase price as well as claims for damages or reimbursement of expenses. KUNBUS's obligation to pay damages or reimburse expenses shall be governed by Section 16 – Damages – of these T&Cs.

- (4) The customer's claims are excluded if and to the extent that the customer is responsible for the infringement of intellectual property rights.
- (5) Any further claims arising from a defect of title shall be excluded.

## **§ 16 Damages**

- (1) Unless otherwise provided in these terms, all claims of the customer, to the extent permitted by law, for damages of any kind, including claims for reimbursement of expenses and claims for indirect damages such as loss of profit, shall be excluded. This shall apply in particular to claims arising from any breach of obligations under the contractual relationship as well as from tort. The exclusion of liability shall also apply if KUNBUS has used vicarious agents or assistants in the performance of its obligations.
- (2) Notwithstanding Section 16.1 of these T&Cs, KUNBUS shall be liable, irrespective of the legal grounds, only – and this shall also apply if KUNBUS has used executive employees or vicarious agents – in the following cases:
  - (a) in the event of intent or gross negligence on the part of KUNBUS.
  - (b) if KUNBUS has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods.
  - (c) in the event of culpable injury to life, body or health caused by KUNBUS; or
  - (d) in the event of a breach of so-called cardinal obligations, i.e.
    - (aa) material breaches of obligations which endanger the achievement of the purpose of the contract, or
    - (bb) breaches of obligations whose fulfilment is essential for the proper performance of the contract and on whose compliance the customer regularly relies on and may reasonably rely (cardinal obligations).
- (3) In the case of Section 16.2 (d) of these T&Cs – breach of cardinal obligations – the liability of KUNBUS shall, in cases of ordinary negligence, be limited in amount to compensation for the foreseeable damage typically occurring.
- (4) The exclusion of liability shall not apply to claims arising under the German Product Liability Act (Produkthaftungsgesetz). The above provisions shall not involve any reversal of the burden of proof to the detriment of the customer.

## **§ 17 Limitation Period for Claims Based on Material Defects and Defects of Title**

- (1) The limitation period pursuant to Section 438 (1) No. 3 BGB, Section 445b (1) BGB or Section 634a (1) No. 1 BGB for all claims for defects shall be twelve (12) months from the handover of the goods at the agreed place of delivery of the goods or—if acceptance has been agreed—from acceptance of the goods, unless otherwise agreed in individual cases. The suspension of the limitation period pursuant to Section 445b (2) BGB shall end after three (3) years.
- (2) Notwithstanding the above, the statutory limitation periods shall apply also within the scope of Section 438 (1) No. 3 BGB, Section 445b (1) and (2) BGB or Section 634a (1) No. 1 BGB:
- (3) for damages resulting from injury to life, body or health caused by a defect for which KUNBUS is responsible
- (4) where the defect is based on an intentional or grossly negligent breach of duty by KUNBUS
- (5) in the event of fraudulent concealment of a defect
- (6) in the case of guarantees (Secs. 444 and 639 BGB) and

- (7) where the last contract in the supply chain pursuant to Section 445a BGB is a consumer contract within the meaning of Section 474 BGB.
- (8) Claims under the German Product Liability Act (Produkthaftungsgesetz) as well as the statutory provisions on suspension, interruption and recommencement of limitation periods shall remain unaffected.
- (9) In the case of delivery of used products, only Section 17 (2) and (3) of these T&Cs shall apply.

## **§ 18 No Cancellations**

- (1) Unless otherwise provided in these T&Cs, the customer shall be entitled to the statutory rights of withdrawal or termination. Any further contractual rights of withdrawal or termination of the customer shall be excluded.
- (2) Without prejudice to any further rights of KUNBUS, in particular pursuant to Section 11 – Default of Acceptance / Delay in Acceptance, the customer shall compensate KUNBUS for any expenses and damages incurred by KUNBUS as a result of an ineffective withdrawal or ineffective termination declared by the customer, including those arising from the respective declaration itself (e.g. additional administrative, storage, transport or other logistics costs).
- (3) If the customer refuses to accept the products as contractually agreed, KUNBUS may, after having granted the customer a reasonable period for acceptance—generally seven (7) days, unless such additional period is not required by law (for example if the customer seriously and definitively refuses acceptance)—withdraw from the respective contract or terminate any existing framework supply agreement and claim damages from the customer. KUNBUS shall be entitled to damages in the amount of 10% of the net sales price of the products affected by the withdrawal or termination. KUNBUS reserves the right to prove and claim higher damages.

## **§ 19 Reservation of Title**

- (1) All products shall remain the property of KUNBUS until full payment of all claims of KUNBUS existing at the time of conclusion of the contract, irrespective of the legal grounds on which such claims are based. If KUNBUS has accepted cheques or bills of exchange in the interest of the customer as conditional payment, all products shall remain the property of KUNBUS until KUNBUS has been fully released from such liabilities. This shall also apply if payments have been made for specifically designated claims. The inclusion of individual claims in a current account as well as the balancing and acknowledgement of such balance shall not affect the retention of title.
- (2) The customer shall be entitled to process or transform the goods into the ordinary course of its business. Any processing or transformation of the goods shall be carried out by the customer on behalf of KUNBUS without creating any obligations for KUNBUS. In the event that the goods are processed, combined, mixed or blended with other goods not supplied by KUNBUS, KUNBUS shall acquire co-ownership of the new item in the proportion of the invoice value of the goods to the value of the other processed goods at the time of processing, combination, mixing or blending. If the customer acquires sole ownership of the new item by operation of law, the customer hereby grants KUNBUS co-ownership of the new item in the proportion described above and undertakes to hold such item in custody for KUNBUS free of charge.
- (3) If the customer resells goods or an item in which KUNBUS holds co-ownership pursuant to Section 18.2 of these T&Cs, either alone or together with goods not belonging to KUNBUS, the customer hereby assigns to KUNBUS, already at this time, all claims arising from such resale in the amount of the value of the goods together with all ancillary rights. KUNBUS hereby accepts such assignments. If the sold item is co-owned by KUNBUS, the assignment of the claim shall extend to the amount corresponding to the value of KUNBUS's share in the co-ownership. KUNBUS revocably authorizes the customer to collect the claims

assigned to KUNBUS. If the customer defaults on its obligations towards KUNBUS, the customer shall disclose to KUNBUS all debtors of the assigned claims and notify such debtors of the assignment. In such case, KUNBUS shall also be entitled to disclose the assignment to the respective debtors itself and to collect the assigned claims.

- (4) If the customer acts in breach of contract, in particular if it is in default with its payment obligations, KUNBUS shall be entitled, after issuing a reminder and setting a reasonable deadline, to repossess the delivered goods. In such a case, the customer shall be obliged to surrender the goods. Neither the assertion of retention of title nor the seizure of the software by KUNBUS shall be deemed a withdrawal from the contract. The customer already agrees that persons authorized by KUNBUS to collect the delivered goods may enter and access the customer's premises where the delivered goods are located for this purpose.
- (5) The customer shall only be entitled to resell the goods in the ordinary course of business and only on the condition that the claims assigned to KUNBUS pursuant to Section 18.3 of these T&Cs actually pass to KUNBUS. The customer shall not be entitled to make any other disposition of the goods. In particular, the customer may not pledge the goods or assign them by way of security.
- (6) The customer shall immediately notify KUNBUS of any enforcement measures taken by third parties against goods subject to retention of title and shall provide KUNBUS with all documents necessary to file an objection.
- (7) All goods subject to retention of title shall be insured by the customer at its own expense, in particular against fire and theft. All claims of the customer against the respective insurer relating to goods subject to retention of title are hereby assigned to KUNBUS. KUNBUS hereby accepts such assignments.
- (8) KUNBUS shall be obliged, upon request of the customer, to release the securities granted to KUNBUS insofar as their value exceeds the agreed coverage limit, if the total value of the securities granted to KUNBUS exceeds the claims of KUNBUS by more than 20%.
- (9) Any Customer not domiciled in Germany shall undertake all actions required by law or otherwise necessary to ensure that the retention of title of KUNBUS (including its extended and prolonged forms) as provided for in these Terms and Conditions becomes valid and enforceable in the country into which the delivery is made.

## **§ 20**

### **Transfer of Disposal Obligations pursuant to Section 19 of the German Electrical and Electronic Equipment Act (ElektroG)**

KUNBUS transfers its manufacturer obligations for the disposal of electrical and electronic equipment arising from Section 19 of the German Electrical and Electronic Equipment Act (ElektroG) to the customer. The customer shall indemnify and hold KUNBUS harmless from any obligations to take back and dispose of such equipment. The customer shall further indemnify and hold KUNBUS harmless from any claims for damages asserted by third parties to the extent that the customer culpably breaches the obligations assumed under this provision. If the customer transfers ownership or possession of the electrical and electronic equipment to a third party, the customer shall ensure that the take-back obligation is likewise transferred to the respective purchaser or transferee.

## **§ 21**

### **Cost Allocation for the Return of Packaging pursuant to Section 15 of the German Packaging Act (VerpackG)**

Notwithstanding Section 15 (1) sentence 1 of the German Packaging Act (VerpackG), the customer shall bear the costs for returning the packaging to KUNBUS.

## **§ 22 Confidentiality**

- (1) Unless a separate confidentiality agreement has been concluded between KUNBUS and the customer, the following provisions shall apply.
- (2) The customer shall keep confidential all confidential information, i.e. all data and information that become known to the customer in connection with the contractual relationship with KUNBUS (hereinafter “Confidential Information”), such as illustrations, drawings, designs, models, samples, calculations, cost estimates and other documents or objects. The customer undertakes to use the Confidential Information solely for the purposes of the contract concluded with KUNBUS and not to disclose or otherwise make it accessible to third parties without the prior express written consent of KUNBUS. The customer shall refrain from any reverse engineering beyond the scope permitted under Section 69e of the German Copyright Act (UrhG), i.e. the analysis by observing, examining, disassembling or testing the goods for the purpose of obtaining trade or business secrets embodied in such items.
- (3) The customer shall protect the Confidential Information from access by third parties. In doing so, the customer shall apply the same level of care as it applies to its own confidential information, but at least reasonable care. The customer shall impose the same confidentiality obligations on its employees. The customer shall immediately notify KUNBUS in writing if it becomes aware of an impending or actual breach of the confidentiality obligations or suspects such a breach.
- (4) The obligation to maintain confidentiality shall not apply if the customer proves that:
  - the Confidential Information was already known to the customer before it was disclosed by KUNBUS
  - the Confidential Information was lawfully obtained from a third party without any confidentiality obligation and without the customer being aware that such third party violated any confidentiality obligations owed to KUNBUS
  - the Confidential Information is publicly known or becomes publicly known without breach of this confidentiality obligation; or
  - the Confidential Information was independently developed by the customer without reference to the information disclosed by KUNBUS.
- (5) KUNBUS reserves all rights to the Confidential Information (including copyrights, the right to apply for industrial property rights such as patents, utility models, topography protection rights, design rights and trademarks) as well as ownership of all objects provided that contain Confidential Information (e.g. papers, disks, etc.). No ownership rights, licenses, reproduction rights, usage rights or other rights shall be granted to the customer in relation to the Confidential Information of KUNBUS, irrespective of whether such information is protected by intellectual property rights or not. For objects or documents protected by intellectual property rights in favor of KUNBUS and/or protected as trade or business secrets, the customer shall only be permitted to use them to the extent expressly authorized by KUNBUS, unless certain types of use are also permitted to third parties.
- (6) Upon request by KUNBUS, the customer shall immediately return all Confidential Information received to KUNBUS. Confidential Information shall be returned to KUNBUS free of charge without request as soon as it is no longer required. The customer shall have no right of retention with respect to such documents or objects. An exception shall only apply to copies that must be archived due to mandatory statutory requirements. Any Confidential Information stored on computers shall be deleted upon request.
- (7) The customer shall be liable for any loss or damage to Confidential Information insofar as the customer is responsible for such loss or damage.
- (8) The confidentiality of obligations shall remain in force for three (3) years after termination or expiration of the contract.

**§ 23**  
**Data Protection / Amendment of the T&Cs / Assignment / Applicable Law /  
Place of Performance / Jurisdiction**

- (1) The customer is hereby informed that KUNBUS collects, stores and processes the customer's data to the extent necessary for the performance of the contract and on the basis of the applicable data protection regulations and, where necessary for this purpose, transfers such data to third parties.
- (2) KUNBUS shall be entitled to amend the content of these T&Cs with the consent of the customer, provided that such amendments are reasonable for the customer considering the interests of KUNBUS. The customer's consent to such contractual amendments shall be deemed granted if the customer does not object to the amendment in writing within four (4) weeks after receipt of the notification of amendment. KUNBUS undertakes to inform the customer of the consequences of failing to object in the amendment notification.
- (3) KUNBUS may assign its rights under this contract to one or more third parties.
- (4) The law of the Federal Republic of Germany shall apply, excluding the conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
- (5) The place of performance for all obligations arising from the contractual relationship shall be the registered office of KUNBUS in 73760 Ostfildern, Germany.

If the customer is an entrepreneur within the meaning of Section 14 BGB, a legal entity under public law, or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract shall be the registered office of KUNBUS in 73760 Ostfildern, Germany.

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