

# GENERAL TERMS AND CONDITIONS FOR DELIVERY AND PAYMENT

## FRANZ KALDEWEI GMBH & CO. KG

### I. General Terms and Conditions

1. All Kaldewei deliveries and services, including consultancy services and future deliveries and services, are made solely on the basis of these Terms and Conditions for Delivery and Payment. The buyer's Terms of Business will not apply even if Kaldewei has not expressed explicit objection to these terms. Kaldewei's terms and conditions are deemed to have been acknowledged by the time the goods supplied by Kaldewei are accepted. The definitive document is Kaldewei's Terms and Conditions for Delivery and Payment in the valid version in each instance.

2. Offers from Kaldewei are made without obligation. Contractual and other agreements become binding when confirmed in writing by Kaldewei. The wording of the confirmation alone is decisive. Kaldewei will not be bound by any supplementary agreements made verbally.

3. The information on the subject matter of the delivery or performance as well as the representation of the same (e.g. drawings and illustrations) are only approximate. They do not represent any quality guarantee, but descriptions or identifications of the delivery or performance. Customary variations and those that are effected on the basis of statutory regulations or that represent technical improvements are admissible insofar as they do not impair use for the contractually intended purpose.

### II. Scope of delivery, delivery times

1. Delivery periods and dates are only ever approximate. They relate to the time of dispatch and are complied with once notification of readiness for dispatch has been given.

2. Delivery periods are extended without prejudice to Kaldewei's rights arising from delay in fulfilment by the buyer, by the period during which the buyer fails to fulfil his obligations towards Kaldewei. This applies accordingly to delivery dates.

3. Reasonable part deliveries are permitted.

4. In the event of Acts of God or other disruptive events which cannot be foreseen at the time of conclusion of the contract (e.g. stoppages of all kinds, transport delays, strikes, lawful lockouts, measures taken by authorities, difficulties in procuring materials or energy, unfavourable weather conditions, or the failure to supply, incorrect or delayed supply by Kaldewei's suppliers) for which Kaldewei is not responsible and which make it significantly more difficult or impossible to perform the delivery or service, Kaldewei will be entitled to withdraw from the contract provided the obstacle is permanent. For obstacles of a temporary nature, the delivery periods for goods or services will be extended or the delivery dates for goods or services put back by the period during which the obstacle is in place with the addition of an appropriate re-start period. Insofar as the buyer cannot be expected to accept the delivery or service as a result of the delay, the buyer will be entitled to withdraw from the contract by immediately informing Kaldewei in writing of the intent to do so. No claims for compensation for damages will be accepted in these instances.

### 5. Cancellation of orders at customers' request

The following cancellation fees are charged for an order cancellation: Unless otherwise stated in the order confirmation, an order can be cancelled free of charge within one week. After this time, a handling fee of 50 % of the order value is charged.

### III. Dispatch and transfer of risk

1. Risk passes to the buyer with the transfer of the goods to the haulier or freight carrier, even if carriage paid delivery has been agreed, and at the latest at the point where the goods leave Kaldewei's plant or warehouse. Where dispatch is delayed for reasons which are not Kaldewei's responsibility, then the transfer of risk occurs at the time when the notice of readiness for dispatch is issued. Warehousing costs following the transfer of risk are borne by the buyer.

2. The form of dispatch and choice of packaging is as Kaldewei sees fit. If the packaging is returned in perfect condition, with charges prepaid by the sender, this will be credited in full.

3. The shipment will be insured against damage in transit and other risks only at the express wish and at the expense of the buyer.

### IV. Prices and Terms and Conditions for Payment

1. Our prices apply for the scope of delivery and performance contained in our acknowledgements of order. Unless otherwise agreed, prices are in euro ex works or ex warehouse, packaging and incidental charges not included, plus value added tax.

2. Unless otherwise agreed, net payment is to be made within 30 days of the date of the invoice; a 3% cash discount will be given on payments made within 8 days of the date of the invoice. The sum to which the discount applies is calculated after deduction of freight and any other costs. This discount is not available to buyers who are in arrears with earlier invoices. Discountable bills of exchange will be accepted only if explicitly agreed, without guarantee for protest, and only in order to secure payment. Discount charges, bank charges and tax on drafts and bills of exchange will be borne by the buyer. Bills of exchange and cheques are deemed paid when cashed.

3. Retention of payments because of, or offsetting of payments by, counter-claims by the buyer will only be permitted if the counter-claims are uncontested or have been determined in law.

4. If after conclusion of the contract Kaldewei becomes aware of circumstances, irrespective of whether these circumstances were apparent at the time of concluding the contract or not, which serve to diminish the creditworthiness of the buyer, Kaldewei will be entitled to execute outstanding deliveries from this and other business only against advance payment or offer of security. If the buyer is unable to meet the request for advance pay-

ment or offer of security, then Kaldewei will, after an appropriate additional period, be entitled to withdraw from the contract or to demand compensation for damages for non-fulfilment.

### V. Reservation of ownership

1. Kaldewei reserves ownership of all goods supplied by the company (reserved goods) until the buyer has settled all obligations arising from the business relationship including any that arise at a future date. In the event of conduct on the part of the buyer that is in violation of the contract, specifically in respect of default in payment, Kaldewei will be entitled to take back the reserved goods. This does not constitute withdrawal from the contract unless Kaldewei expressly declares this to be the case. Kaldewei is entitled to realise the value of the goods once they have been taken back, in which case the proceeds will be credited against the obligations of the buyer, with the deduction of appropriate realisation costs.

2. a) The buyer is entitled to process the reserved goods in the normal course of business so long as the buyer is not in default in payment.

The processing or transformation of the reserved goods is carried out for Kaldewei as manufacturer in the sense of Article 950 of the German Civil Code (Bürgerliches Gesetzbuch or BGB) with no obligation on Kaldewei. The processed or transformed goods are deemed to be reserved goods in the sense of Figure 1.

b) Where the buyer processes, joins or mixes the reserved goods with other items which do not belong to Kaldewei, Kaldewei is entitled to joint ownership of the new item in the proportion of the invoiced value of the reserved goods to the sum of the invoiced values of the other items used.

c) For the new items produced in accordance with letter a) and for the share in joint ownership arising in accordance with letter b), the conditions relating to reserved goods apply accordingly.

3. The buyer is only entitled to resell the reserved goods in the context of normal conduct of business (e.g. not in a so-called check and bill of exchange procedure). Specifically, the following will apply:

a) Where the buyer allows deferred payment of the purchase price to his purchasers, the buyer reserves right of ownership on the sold goods in respect of his purchasers under the same conditions as Kaldewei has applied in reserving ownership when supplying the reserved goods. Unless this reservation of ownership is exercised, the buyer is not empowered to resell the reserved goods.

b) The buyer hereby transfers to Kaldewei the accounts receivable for the purchase price or other claims for payment to which he is entitled as a result of the resale or other retail transaction. They serve as security to the same extent as the reserved goods. The buyer is only entitled and empowered to resell or to make other use of the reserved goods if it has been ensured that the accounts receivable arising therefrom are transferred to Kaldewei.

c) If the reserved goods are sold on by the buyer together other goods not supplied by Kaldewei, then settlement of the account receivable arising from the sale will be restricted to the amount of the invoiced value of the reserved goods which have been sold in each instance. Where goods are sold to which Kaldewei has a share in joint rights of ownership in accordance with Figure 2. b), the account receivable will be settled to the amount of this share in joint rights of ownership.

d) If the transferred account receivable is absorbed into an open account, then the buyer hereby transfers a part of the account balance whose amount corresponds to this account receivable from the open account to Kaldewei. If interim account balances are drawn out and carry forward has been agreed, then the account receivable due to Kaldewei under the above regulation arising from the interim account balance will be treated as transferred to Kaldewei for the next account balance.

e) Until revoked by Kaldewei, the buyer is empowered to collect the accounts receivable which have been transferred to Kaldewei. Kaldewei may not exercise this right to revoke as long as the buyer fulfils his payment obligations under the business relationship with Kaldewei, does not default in payment, and Kaldewei is not made aware of any circumstances which serve to considerably diminish the creditworthiness of the buyer. If there are grounds for exercising revocation, then Kaldewei may insist that the buyer inform Kaldewei of the accounts receivable transferred and the debitores cessi, provides Kaldewei with all necessary information to collect these accounts receivable, passes on the relevant documentation and notifies the debtors of the transfer. In this case, Kaldewei will also be entitled to notify the debtors of the transfer itself.

4. If the realisable value of the securities which Kaldewei holds exceeds the secured accounts receivable in total by more than 20%, then Kaldewei is obliged, at the buyer's request, to release securities of Kaldewei's choosing to that extent.

5. The buyer must provide information as to the whereabouts of the reserved goods and of the accounts receivable arising from resale at any time requested by Kaldewei to do so.

6. The rights enjoyed by Kaldewei according to this Section V. will apply up to and including the complete release from contingent liabilities which Kaldewei has entered into in the interests of the buyer.

7. The buyer is obliged to insure the reserved goods, adequately and to the reinstatement value, against fire damage, water damage and theft, at his own expense, and to show proof of this to Kaldewei when requested, specifically by presentation of the insurance policies.

### VI. Technical advice

Insofar as Kaldewei provides technical information or acts to provide advice in the context of its business dealings, this is without legal consideration and excludes any liability.

### VII. Warranty

1. The product supplied by Kaldewei is to be carefully inspected on delivery to the buyer. Any visible defects are to be confirmed by the freight carrier. The goods are deemed to be accepted if no notification of defect has been received by Kaldewei in writing within 5 working days following delivery of the goods or, if the defects were not identifiable via an immediate and careful inspection, within 5 working days following dispanely of the defect.

2. In the event of defects in the goods supplied by us, we are obliged to subsequently perform our obligations, that is, to remedy the defect or to supply goods free of defects, at our discretion. If such subsequent performance should fail, i.e. in the event of impossibility of performance, unacceptability, refusal or unreasonable delay in rectification of the substitute delivery, the customer may demand a reduction in the purchase price or withdraw from the contract, at his discretion.

3. We are only liable for claims for damages due to or in connection with defects in accordance with Section VIII.

4. This does not affect claims by the customer insofar as we have provided a guarantee for the quality or durability of the goods supplied. The content of the guarantee undertaking is authoritative for the scope of liability.

5. Claims arising from the Product Liability Law and from personal injury are not affected either.

### VIII. Liability for compensation for damages on account of fault

1. Liability on our part for damages – for whatever legal reason, in particular for reasons of unlawful acts – cannot be accepted, or is restricted, insofar as it is based on fault, in accordance with the following provisions.

a) In the event of slight negligence on the part of Kaldewei's legal representatives, management staff and persons employed in performing an obligation, Kaldewei will not be liable insofar as the matter does not involve a breach of essential contractual obligations;

b) In the event of gross negligence on the part of Kaldewei's non-management staff or other persons employed in performing an obligation, Kaldewei will not be liable insofar as the matter does not involve the breach of essential contractual obligations;

c) In all other instances Kaldewei will be liable insofar as Kaldewei assumes liability for the fault.

2. Insofar as Kaldewei is fundamentally liable according to Figure 1 for compensation for damages, this liability is excluded

a) for damages which are remote in time;

b) for damages which are not foreseeable and not typical for the contract;

c) for damages which can be resolved by the buyer.

However, the exclusion of liability does not apply insofar as Kaldewei is liable for intent. In addition, Kaldewei's liability is limited to 10 times the consideration for the company's delivery and service.

3. Insofar as the risk giving cause for the damage which has occurred is usually insured by the buyer within his sector of activity, liability on the part of Kaldewei is excluded even in instances of gross fault, but not if there is intent on the part of officers or management staff.

4. The above exclusions to and restrictions on liability apply in the same scope to the advantage of Kaldewei's legal representatives, other organs, management and non-management staff and other persons employed in performing an obligation.

5. Insofar as Kaldewei negligently breaches an essential contractual obligation, the obligation upon Kaldewei to pay compensation for material or personal damages is limited to the sum insured under its product liability insurance or its third-party liability insurance. Kaldewei is prepared to allow the person placing the order or contract to view the relevant policy.

### IX. Final provisions

1. The place of fulfilment is Ahlen/Westphalia (Germany) unless otherwise agreed. The place of jurisdiction is Ahlen/Westphalia or the buyer's company headquarters, as Kaldewei sees fit. For actions against Kaldewei, Ahlen/Westphalia is the sole place of jurisdiction.

2. Relations between Kaldewei and the buyer are exclusively subject to the law of the Federal Republic of Germany. The UN Convention on the International Purchase of Goods dated 1.4.1980 does not apply.

3. If individual conditions of these Terms and Conditions for Delivery and Payment or of the delivery contract are or become invalid, this will not affect the validity of the other conditions.