

Sale and Supply Conditions of the Kendrion Group for transactions in Germany

1. General, Area of Application

- 1.1 These General Sales Conditions for Domestic Transactions ("AVBI") apply to all – including future – contracts for the supply of goods and other services to the persons described in clause 1.2
- 1.2 Our Sales Conditions for Domestic Transactions apply only vis-à-vis persons resident in the Federal Republic of Germany who act in the conclusion of the contract in the course of their business or independent professional occupation ("merchants") and vis-à-vis German legal persons of public law or a special fund under German Public Law ("Customer"). They do not apply to natural persons who conclude the contract for a purpose which cannot be attributed either to their business or their independent professional occupation ("consumers").
- 1.3 Vis-à-vis customers based abroad our sales and supply conditions for foreign transactions apply.
- 1.4 These AVBI apply exclusively. Additional, conflicting or deviating general conditions of the Customer only become part of the Contract if and to the extent that we expressly agree to their application. This requirement applies in all cases even if we with knowledge of the general conditions of the Customer conduct the supply to the Customer without reservation.
- 1.5 The Kendrion Group includes the following companies:
- Kendrion (Villingen) GmbH with registered office in Villingen-Schwenningen;
 - Kendrion (Donaueschingen/Engelswies) GmbH with registered office in Donaueschingen and Engelswies;
 - Kendrion LINNIG GmbH, with registered office in Markdorf;
 - Kendrion (Aerzen) GmbH, with registered office in Aerzen.

2. Conclusion of contract, reservation of amendment

- 2.1 Our offers are non-binding and freely changeable. This applies even if we send the Customer offer documents in particular drawings, models, samples, cost quotations.
- 2.2 The ordering of goods or other services by the Customer is deemed to be a binding offer to contract.
- 2.3 We are entitled to accept this offer to contract within three (3) weeks. The contract comes into existence (i) by order confirmation or (ii) by our direct performance of the order.
- 2.4 Descriptions of goods in catalogues, prospectuses etc. do not constitute guarantees of quality.
- 2.5 Design and material changes are reserved if the usual or contractually intended use of the object is not significantly affected and the change is reasonable for the Customer.
- 2.6 Excess or short deliveries unavoidable on technical grounds are admissible within usual practice in the industry and must be accepted by the Customer with corresponding change of price.

3. Offer documents and software

We reserve all ownership rights, copyright and intellectual property rights (including the right to register these rights) to our offer documents, in particular drawings, models, samples, cost quotations and possible software. The said documents may be made accessible to third parties only in the absence of evident need for confidentiality. They are to be returned to us without delay on request if our offer is not accepted.

4. Price, price amendment

- 4.1 The prices stated apply ex works plus freight, insurance and other transport costs and plus VAT at the statutory rate from time to time, if applicable.

- 4.2 We select the packaging and charge for it separately at cost price.

- 4.3 In the case of contracts with an agreed delivery period of more than three months, either party can demand a change in the agreed price to the extent that cost reductions or increases which are not avoidable arise after the conclusion of the Contract in particular due to collective bargaining agreements or changes to the price of material. The Parties can only demand price amendment if the relevant cost reductions or increases of the individual cost factors lead overall to a cost reduction or increase. The price amendment must be limited to the amount necessary to compensate for the cost reductions or increase which have occurred. A Party has such a right to adjust the price if an actual delivery date of more than three months arises due to delays for which the other Party is responsible.

5. Delivery time, reservation of supplies, lack of performance capacity of the Customer, delay in acceptance

- 5.1 Agreed delivery times begin at the earliest with the conclusion of the Contract, not however prior to the receipt of the documents, approvals, releases to be obtained by the Customer and the complete clarification of technical questions to be answered by the Customer. The time in which the Customer is in delay with the agreed payment is not included in the delivery period i.e. the delivery period is extended by the time during which the arrears exist. The compliance with the delivery period requires at all times the punctual and due performance of all obligations of the Customer. If the Customer demands an amendment to the Contract due to which compliance with the original delivery time is not possible, the delivery time shall be reasonably extended.
- 5.2 The delivery period is extended reasonably on the happening of force majeure and all unforeseeable obstacles arising after the conclusion of the Contract for which we are not responsible if such obstacles are proved to influence the provision of the performance due. This applies even if these circumstances arise with our suppliers. The beginning and the ending of such obstacles will be notified to the Customer as soon as possible. If the obstacle lasts for more than three months or it is clear that it will last for more than three months, both the Purchaser and we ourselves can rescind the Contract.
- 5.3 Clause 5.2 applies accordingly in the case that we do not receive punctual or proper supplies from our suppliers if we have concluded a congruent transaction for supplies.
- 5.4 If it is evident after the conclusion of the Contract that our right to payment is at risk due to the absence of payment capacity of our Customer, we are entitled to refuse our performance and preparatory acts. The right to refuse performance is lost if payment is affected or security for payment provided. For payment/security, we can set the Customer a reasonable period. After the expiry of this period without success we are entitled to rescind the Contract.
- 5.5 If the Customer falls into delay with acceptance with the delivered objects or with payment of the purchase price, we can, after the expiry without success of a reasonable period necessary according to statute or set by us, rescind the Contract and/or claim compensation instead of performance. When claiming compensation instead of performance we can demand liquidated damages
- of 20 % of the purchase price as compensation for lost profit if the goods are mass products or standard products or
 - 100 % of the purchase price if the goods constitute special production according to specific wishes of the Customer and we have incurred expense in order to be in a position to deliver.

The Parties may prove higher or significantly lower de facto loss. In addition, we are entitled in the case of delay of the Customer in acceptance to charge the additional expenses in

particular the warehouse costs incurred. In the case of storage in our own premises, the local warehouse costs will be charged.

- 5.6 The delivery period is complied with if within the period the circumstances affecting the passing of the risk according to clause 6.3 have occurred.
- 5.7 If we due to simple negligence are in delay with the supply or service, our liability for compensation due to the delay in the supply or service which can be demanded in addition to the supply/service is limited for each completed week of the delay to 0.5% of the value of the supply/service, maximum however 5% of the value of the supply/service. If the Customer in the said cases claims compensation instead of performance or delivery, this claim for compensation is limited to 15% of the value of the supply/service. The limitations of liability in accordance with the previous sentences 1 and 2 do not apply in the case of delay due to gross fault, and not in the case of injury to life, body or health and in the case of a fixed transaction i.e. a transaction in which the transaction stands or falls on compliance with the fixed delivery period.

6. Delivery, passing of risk, transport insurance

- 6.1 The delivery is ex works, which is also the place of performance.
- 6.2 At the request of the Customer, the goods will be sent to another place. Unless otherwise agreed, we are entitled to ourselves decide the manner of sending (in particular the carrier, the manner of sending, the packaging). The transport is for the account and at the costs of the Customer.
- 6.3 If the goods are collected by the Customer, the risk of accidental destruction and accidental deterioration of the goods passes to the Customer at the latest with their handover. If the goods are sent to the Customer at its request, the risk of accidental destruction and accidental deterioration of the goods passes with the handover of the goods to the carrier, the transporter or other persons specified to perform the transport.
- 6.4 Transport insurance will be concluded only on the separate instructions of the Customer and on its account and at its cost.
- 6.5 Partial deliveries and services are admissible to a reasonable extent.

7. Payment conditions

- 7.1 Our invoices are, unless otherwise agreed, payable ten (10) days after the date thereof in full. They payment is deemed to have been made only with the receipt of the money on our account.
- 7.2 Bills of exchange and cheques will be accepted as performance and apply only after payment has been credited without reservation. All costs thereby arising in particular bank, discount, bill of exchange and other expenses and VAT shall be borne by the Customer and are due immediately.
- 7.3 From the happening of delay, interest for delay of eight (8) percentage points per annum above the base rate in each case shall be due. Further claims and our rights under clause 5.5 remain unaffected thereby.

8. Defect complaints, rights in the case of material defects

- 8.1 If the delivery is a trading transaction for both Parties, the Customer must complain of defects of all kinds within eight (8) working days from delivery in writing, latent defects however only without delay after their discovery, at the latest however within eight (8) working days. Otherwise the goods are deemed to be accepted. Saturday is not deemed to be a working day.
- 8.2 If the goods delivered are defective, we can firstly choose whether to provide subsequent performance by remedying the defect (improvement) or by supplying goods free of defect (replacement delivery).

- 8.3 The Customer is obliged to give us time and opportunity for the necessary subsequent performance due in particular to return the goods complained of for examination. In the event of replacement delivery, the Customer is obliged to return to us the defective object in accordance with the statutory provisions.

- 8.4 The expenses, in particular transport, transit, labour and material costs, necessary for the purpose of examination and subsequent performance will be borne by us if in fact a defect exists. If the demand of the Customer to remedy a defect turns out to be unjustified, we can demand compensation from the Customer for the costs incurred by us as a result.

- 8.5 In the case of inappropriate or wrongful use or treatment of the goods or in the case of natural wear (in particular wearing parts) there is no claim for material damage.

We refer in particular to the instructions for use supplied in each case and their precise observance. Any inappropriate use deviating from the descriptions in the instructions for use or inappropriate in any other manner, excludes the rights due to defects in the goods.

- 8.6 If the object supplied is a third party product, we are entitled to assign our material defects claim against our supplier to the Customer and to refer the Customer to enforcing that claim (in court). Material defect claims can be made by the Customer only if the assigned claim against our supplier is not enforceable or the claim is unreasonable in a particular case.

- 8.7 Claims of the Customer for compensation or reimbursement for expenses in vain arise only in accordance with clause 9 and are otherwise excluded.

9. Limits on liability

- 9.1 Our liability for compensation, irrespective of the legal ground therefore, in particular due to impossibility, delay, defective or false delivery, breach of contract, breach of duty in contract negotiations and tort is to the extent that fault is crucial in each case, limited in accordance with this clause 9.

- 9.2 We are liable to the Customer without limit for intentional or gross negligently caused damage. In addition, we are also liable for simple negligence, however only

(a) without limit for damage due to injury to life, body and/or health

(b) for damage based on breach of a significant contractual obligation or the breach of an obligation the performance of which renders due performance of the Contract at all possible and on the performance of which the Customer can usually rely. In that case, our liability is however limited to compensation for foreseeable and typical damage. Clause 5.7 (Limitation of liability in the case of delay in supply) remains unaffected thereby.

Statutory liability according to the mandatory provisions of product liability is not restricted by this provision.

- 9.3 If our liability is excluded or limited by the above provisions, this also applies for personal liability of our employees, workers, staff, representatives and agents.

10. Limitation

- 10.1 In deviation from Sec. 438 ss. 1 No. 3 Civil Code, the general limitation period for claims arising from material defects and defects of title is one year from delivery. This does not apply if we have acted with intent.

- 10.2. Claims of the Customer for compensation or reimbursement of expenses in vain in the meaning of clause 9 shall however be limited only in accordance with the statutory provisions.

11. Retention of title and other security

- 11.1 We retain ownership of the supplied goods (Retention Goods) until complete performance of all – including future – obligations (including all ancillary claims such as for example bills of exchange costs, financing costs, interest) from the business with the Customer. If a current account agreement was made with the Customer, the retention of ownership continues until full payment of the acknowledged current account balance. The acceptance of a cheque or bill of exchange only constitutes performance if the cheque or bill of

exchange is honoured and we can dispose over the amount without regress risks. If payment by cheque-bill of exchange is agreed with the Customer, the retention of ownership also extends to the presentation of the bill of exchange issued to us by the Customer and is not extinguished by the crediting of the relevant cheque received by us.

- 11.2 The Customer is obliged to treat the Retention Goods with care. The Customer is obliged to carefully store the Retention Goods and to insure them against theft, flood, fire, water, transport and other damage.
- 11.3 The Customer may process and sell the Retention Goods in the normal course of business as long as it is not in delay with payment. It may not, however, pledge or assign the goods as security.
- 11.4 In the case of a pledge, seizure, damage or loss of the Retention Goods, the Customer is obliged to inform us without delay. The Customer bears all costs which need to be expended in particular in the course of a third party defence claim for the release of a pledge and possibly for the recovery of the goods supplied if they cannot be recovered from the third party.
- 11.5 In the case of delay in payment or if the Customer otherwise breaches significant contractual obligations, we are entitled to recover the Retention Goods after setting a reasonable period for performance. The exercise of the right of retention constitutes a rescission of the contract. The costs arising from the exercise of the right of recovery (in particular for transport and storage) shall be borne by the Customer. Likewise, pledging of the Retention Goods also constitutes a rescission of the Contract. Retention Goods recovered by us may be realised by us. The proceeds of the realisation will be credited against the amount due to us by the Customer after we have deducted a reasonable amount for the costs of the realisation.
- 11.6 The Customer assigns the purchase price, payment for work or other claims (including the acknowledged balance on the current account or in the event of insolvency of the business partner of the Customer, the existing "causal balance") arising from the resale or the processing or other legal grounds (e.g. in the case of an insurance claim or tort) relating to the Retention Goods up to the amount of the value of the invoice for the Retention Goods hereby to us. We accept the assignment.

We revocably authorise the Customer to collect the claims assigned to us for us in its own name. Our right to collect these claims ourselves is not thereby affected. However, we will not enforce these claims or revoke the authority to collect them as long as the Customer duly performs its payment obligations.

If the Customer does not duly perform its payment obligations it is obliged at our request to provide the data on the assigned claims and on the relevant debtors necessary for the enforcement of the claims, to provide the necessary documents and to notify the debtor of the assignment.

The Customer may not assign these claims for the purpose of having them collected by way of factoring unless it irrevocably obliges the factor to pay the consideration directly to us as long as our claims against the Customer exist.

- 11.7 The processing or alteration of the Retention Goods by the

Customer will always be performed for us. If the Retention Goods are processed with other goods not belonging to us, we acquire co-ownership to the new object in the proportion of the value of the Retention Goods (final amount of invoice including VAT) to the other processed goods at the time of the processing. For the goods arising from the processing, the same applies as for our Retention Goods.

If the Retention Goods are inseparably combined or mixed with other goods not belonging to us to become a single object, we acquire co-ownership in the new object in proportion of the value of the Retention Goods (final amount of invoice including VAT) to the other combined or mixed goods at the time of the combination or mixing. If the Retention Goods are combined or mixed so that our ownership is thereby extinguished, it is hereby agreed that the ownership of the Customer to the single object passes proportionately to us (i.e. in proportion to the value of the Retention Goods (final amount of invoice including VAT) to the other combined or mixed goods at the time of the combination or mixing). The Customer holds our co-ownership free of charge. For the goods arising by the combination, the same applies as in the case of Retention Goods.

- 11.8 If the realisable value of the security granted to us in accordance with the above provisions exceeds our claims against the Customer not only temporarily by more than 10%, we will release security at our own election to that extent at the request of the Customer. The above threshold of 110% cover shall increase if we are, in the course of the realisation of the security, charged VAT on the supply of the Customer to us subject to VAT, by this amount of VAT.

12. Set-off and Withholding Rights

The Customer may exercise set-off, performance refusal and withholding rights only to the extent that its rights and claims have been adjudicated with legal effect or are undisputed.

13. Third Party Rights

The Customer is obliged to indemnify us against all claims made against us in connection with infringements of third party rights due to its instructions – including all court and out of court costs of the legal pursuit including our own costs – on production of evidence.

14. Place of Performance, Place of Court Jurisdiction, Applicable Law

- 14.1 Unless otherwise agreed, the place of performance is the registered office of the relevant group company in accordance with clause 1.5 with which the contractual relationship or delivery to the Customer exists.
- 14.2 The contract is subject to the law of the Federal Republic of Germany excluding the CISG.
- 14.3 If the Customer is a merchant in the meaning of the Criminal Code, a legal person of public law or a public-law special fund, the place of court jurisdiction for all rights and obligations out of or in connection with this contract is Villingen-Schwenningen (Federal Republic of Germany). The same applies if the Customer has no general place of jurisdiction in Germany, transfers its residence or usual place of abode out of Germany at the conclusion of the contract or its residence or usual place of abode is unknown at the time of the filing of the claim. We are, however, also entitled to sue the Customer at its general place of jurisdiction.

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