

# General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

## **1. Scope, General**

1.1 These General Terms and Conditions of Sale and Delivery (**GTC**) of AKK Industrieservice & Handels GmbH (**AKK or we/us**) apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (GCC), i.e. natural or legal persons or partnerships with legal capacity who acquire goods or services for commercial or professional use.

1.2 The following terms and conditions, including disclosures and advice, shall apply exclusively to the business relationship with our Clients.

Deviating general terms and conditions of the Buyer and/or Purchaser - hereinafter referred to as "**Client(s)**" - shall only apply if and to the extent that AKK expressly has consented to these in writing; otherwise they shall be rejected. In particular, silence on our behalf with regard to such deviating general terms and conditions shall not be deemed to constitute acknowledgement or consent, even in the case of future contracts.

These GTC shall apply in place of any general terms and conditions of the Client, in particular the Client's Terms and Conditions of Purchase (**GTCP**), even, if according to these GTCP, acceptance of the order is provided for as unconditional acceptance of the Terms and Conditions of Purchase, or AKK delivers after the Client has pointed out the applicability of his General Terms and Conditions of Purchase unless AKK has expressly waived the applicability of these GTCP vis-à-vis the Client.

The aforementioned exclusion of the Client's General Terms and Conditions shall also apply if the General Terms and Conditions do not contain a separate provision on individual points of our GTC.

1.3 In the case that framework agreements or other contracts have been concluded with our Clients, these shall take precedence. In the absence of more specific provisions, these shall be supplemented by these GTC.

1.4 Insofar as the following refers to claims for damages, it shall also refer to claims for reimbursement of expenses within the meaning of § 284 GCC.

## **2. Disclosures - Advice - Characteristics of the products and services - Client's cooperation measures**

2.1 Information and explanations regarding AKK products and services by AKK or its employees shall be provided solely on the basis of our experience to date. These do not represent any property agreements or legal guarantees with regard to AKK products. Any values specified herein are to be regarded as average values of our products.

2.2 *Product specifications* agreed with the Client *conclusively* determined the owed properties of the products to be delivered ("Delivery item"). Further properties of the Delivery item or performance affected by this on the part of AKK, such as suitability for the purpose of use specified by the Client or usual properties of such products shall not be owed.

2.3. All information regarding our products and services, in particular those included in AKK offers and printed materials and on the Internet and the illustrations, drawings, dimensional, property or performance characteristics contained therein as well as other, in particular technical information or information regarding ingredients and/or shelf life are to be viewed as average values. Even data of AKK products which do not have tolerances, as contained in our internet presentation or our catalogs and/or brochures, are subject to deviations and changes customary in trade and/or industry, due to raw materials or production, in particular due to related materials.

2.4 Insofar as AKK provides application instructions, these are written with care customary within the industry, but do not release our Clients from the obligation to carefully examine the products with regard to their suitability for the purpose intended by them. The same shall apply to information from us regarding import, customs and/or licensing regulations.

Unless otherwise agreed, the Client shall in any case remain responsible for checking the usability of AKK's products and/or services for the purpose intended by the Client.

2.5 AKK shall only assume a consulting obligation by virtue of an express, separate consulting agreement.

2.6 A reference to standards, similar regulations as well as technical specifications, descriptions and illustrations of the Delivery item in offers and brochures or on the Internet and AKK advertising, as well as on a description of properties provided, shall only constitute a legal statement of properties of AKK products if AKK has expressly declared the property to be a "*Property of the product*"; otherwise, these shall be non-binding, general descriptions of performance. In the absence of any agreement to the contrary, this shall also apply to corresponding statements made by our employees.

2.7. Unless otherwise agreed, AKK shall not supply original manufacturer parts, but only parts of the same type.

2.8 A strict warranty shall only be deemed to have been assumed by AKK, if AKK has designated a property and/or a performance outcome as "*legally guaranteed*" in writing.

2.9 AKK shall not assume any liability for the usability and/or registrability and/or marketability of the AKK products or services for the purpose envisaged by the Client outside of the legally mandatory liability, unless AKK has expressly agreed otherwise with the Client or unless otherwise regulated below. The provisions of Article 11 shall remain unaffected..

2.10 The achievement of the values provided for in the contractual design data sheets or agreed specifications shall always be subject to the Client's full compliance with the manufacturer's operating,

# General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

maintenance and storage instructions for the Delivery item.

2.11 As an essential duty to cooperate, the Client shall be obliged to provide AKK with all information and data required for performance in accordance with the contract in a timely and complete manner, as well as to perform all acts which fall within his sphere of influence in a timely manner and free of charge so that AKK can perform its service in accordance with the contract.

### **3. Sample copies - provided Documentation Data Sample - cost estimates**

3.1 The properties of samples or sample copies shall only form part of the contract if this has been *expressly* agreed. The Client is *not* entitled to use or transfer samples.

If AKK sells to the Client on the basis of a sample, deviations therefrom in the delivered goods shall be permissible. Clients shall not be entitled to complaints and claims against us, unless otherwise agreed, if they do not have a lasting effect on the normally intended use of the delivered goods and any agreed specifications are met by the delivered goods.

3.2 AKK reserves all property rights and copyrights to samples, illustrations, pictures, photographs, drawings, data, cost estimates and other documents relating to AKK products and services disclosed or provided to the Client. The Client undertakes not to make the samples, data, photos and/or documents referred to in the preceding sentence available to third parties unless AKK gives its express consent. The Client shall return them to AKK immediately upon request, unless an order based thereon is placed with AKK. This shall also apply if the retention of the aforementioned items and/or data is not otherwise contractually regulated in favor of the Client.

The provisions of sentences 1 and 2 shall apply mutatis mutandis to documents, records or data of the Client; however, AKK shall make these accessible to third parties to whom AKK permissibly transfers deliveries and/or services that form the subject matter of the contract with the Client, or to whom AKK uses as vicarious agents or Suppliers.

3.3 Insofar as AKK is obligated to deliver items according to recipes, specifications or samples handed over to AKK by the Client, the Client warrants to AKK that the manufacture and delivery of the delivery items do not infringe third-party property rights. The Client shall indemnify AKK against claims by such third party rights holders in the event of culpable breach of the aforementioned obligation and all direct and indirect damages incurred by AKK as a result thereof. The indemnification shall also include reimbursement of AKK's reasonable and proven legal defense costs incurred in connection with the claim.

3.4 Our cost estimates shall only be binding if they are expressly designated as *binding* and the performance contained therein is executed on a contractual basis immediately following receipt of the cost estimate by the Client.

### **4. Conclusion of contract /- Scope of delivery and services**

#### **Warranty and procurement risk**

#### **Call-off or Framework agreements**

4.1 AKK offers are non-binding basis, unless they are expressly marked as binding or they expressly contain binding commitments or the binding nature has been expressly agreed with the Client otherwise. They constitute invitations to place orders by the Client and are not binding offers on part of AKK.

4.2 The Client shall be bound to his order placement for 14 calendar days - in the case of electronic orders for 5 working days (in each case at AKK's registered office) - after receipt of the order by AKK, unless the Client is also to regularly expect a later acceptance by us (§ 147 GCC). This also applies to repeat orders placed by the Client.

4.3 A contract shall only be concluded - also in accordance with current business transactions - if AKK confirms the Client's order in writing or in text form (i.e. also by fax or e-mail) by means of an order confirmation.

The order confirmation shall only be valid on the condition that any outstanding payments of the Client to AKK are settled and that a credit check of the Client carried out by us or on our behalf remains good, unless AKK nevertheless delivers the ordered goods.

In the event of delivery or performance within the binding period of the Client that is the subject of the offer, AKK's order confirmation may be replaced by its delivery or performance, whereby the dispatch of the delivery or provision of the performance shall be decisive.

4.4 In the event of call-off orders or contracts or acceptance delays caused by the Client, AKK shall be entitled to procure the material for the entire order and to manufacture the entire order quantity of agreed delivery items immediately or to cover the entire order quantity. Accordingly, any change requests made by the Client cannot be taken into account after the order has been placed, unless this has been expressly agreed. The Client shall be obliged to call off the quantities purchased on the basis of a framework agreement as evenly as possible over the period of the agreement, taking into account a corresponding delivery period.

**4.5 In the absence of any other express agreement, AKK shall only be obliged to deliver the ordered products and the results of the services owed as goods capable of being marketed and approved in the Federal Republic of Germany.**

4.6 AKK shall only be obliged to deliver from its own inventory of goods (**Inventory debt**). AKK shall only owe certificates of origin and/or material certificates if this has been expressly agreed between AKK and the Client as a supplement to the scope of delivery.

4.7 The assumption of a no-fault procurement risk equivalent to a guarantee within the meaning of § 276 of the GCC or a procurement guarantee is not solely

## **General terms and conditions of sale and delivery** for business transactions with business associates of AKK Industrieservice & Handels GmbH

AKK's obligation to deliver an item determined only by its type.

4.8 AKK shall only assume such a procurement risk within the meaning of § 276 GCC by virtue of an express, separate agreement using the phrase "*AKK assumes the procurement risk...*".

4.9 If the acceptance of the Products or their shipment by AKK is delayed for a reason for which the Client is responsible, AKK shall be entitled, after setting a, and the expiry of, a 14-calendar-day grace period, to demand immediate payment of remuneration or to withdraw from the contract or to refuse performance and to claim damages instead of the entire performance, at AKK's discretion. The deadline must be set in writing or in text form, without AKK having to refer to the rights arising from this Article again herein.

In the event of a claim for damages as described above, the damages to be paid shall amount to 25% of the net delivery price in the case of purchase contracts or 20% of the agreed net remuneration in the case of other service contracts. The Client reserves the right to prove that the damage is significantly lower (more than 10% lower). A reversal of the burden of proof shall not be associated with the above provisions.

4.10 If dispatch is delayed at the request of the Client or for reasons for which the Client is responsible, AKK shall be entitled, starting with the expiry of the reasonable period set in writing or in text form in the notification of readiness for dispatch, to store the goods at the risk of the Client for loss and deterioration of the goods and to invoice the costs incurred thereby at 0.5% of the agreed net remuneration for the stored goods for each week or part thereof. *AKK shall insure the stored goods only upon special request of the Client.* The assertion of further rights by AKK shall remain unaffected. The Client reserves the right to prove that significantly lower (more than 10% lower) costs were incurred.

In addition, AKK shall be entitled to otherwise dispose of the goods that are the subject matter of the contract following the aforementioned expiry of the deadline in accordance with Article 4.9, Sentence 1 and to resupply the Client within a reasonable period of time (= original delivery period plus 10 calendar days disposition period).

4.11 In the event of a delayed delivery order or call-off on the part of the Client, AKK shall be entitled to postpone the delivery by the same period of time as the delay on the part of the Client plus a disposition period of 5 working days at AKK's registered office.

4.12 Insofar as an on call purchase has been concluded, the total delivery quantity must be accepted in its entirety within 6 months after conclusion of the contract at the latest and, unless otherwise agreed, the individual calls of the Client must be received by AKK at least 6 weeks before the desired delivery date, unless a shorter call or delivery period has been expressly agreed. In the absence of express agreements to the contrary between AKK

and the Client, the Client shall be obliged to take delivery of the purchased goods in full and in equal installments within 6 months of receipt of AKK's order confirmation. Should a call-off not made in time, AKK shall be entitled to send a reminder for the call-off and its scheduling and to set a grace period for the call-off and scheduling of 14 calendar days, which must provide for the acceptance within 4 weeks after receipt of this request for acceptance. In the event of fruitless expiry of the deadline, AKK shall be entitled to withdraw from the contract or to claim damages instead of performance. AKK shall not be required to refer to the rights under this provision again in the acceptance request. Article 4.9 Section 2 shall similarly apply.

4.13 User information for AKK Products as well as a product label shall be owed by AKK only - unless expressly agreed otherwise in writing or text form or if AKK is subject to a deviating statutory regulation - in German or, at AKK's request, in English.

4.14 AKK reserves the right to modify the specification of the goods to the extent that legal requirements make this necessary. However, this shall only apply to the extent that this change does not cause any deterioration in terms of quality and usability for the usual purpose and, to the extent that suitability for a specific purpose was agreed, for this purpose as a result of the change. Should this not be possible, the contract must be adjusted accordingly. Should this not be possible or should this be unreasonable for one party, both parties shall have the right to withdraw from the part of the contract not yet fulfilled without compensation.

4.15 AKK shall be entitled to excess or short deliveries of up to 5% of the agreed delivery quantity. AKK shall be further entitled to deliver products with customary deviations in quality, dimension, weight, color and equipment. Such goods shall be deemed to be in conformity with the contract.

### **5. Delivery - place of performance / delivery time - delay in delivery / packing - pallets**

5.1 Binding delivery dates and deadlines must be expressly agreed. In the case of non-binding or approximate (approx., about, etc.) delivery dates and deadlines, AKK shall make every effort to comply with them.

5.2 Delivery and/or performance periods shall commence upon receipt of AKK's order confirmation by the Client, in the absence of which 3 working days at AKK's registered office after receipt of the Client's order by AKK and acceptance thereof by AKK, but not before all details of the execution of the order have been clarified and all other prerequisites to be fulfilled by the Client have been met, in particular agreed advance payments or securities and necessary cooperation services of the Client have been provided in full. The same shall apply to delivery dates and performance dates. If the Client has requested changes after the order has been placed, a new reasonable delivery and/or performance period shall commence upon AKK's confirmation of the change. "Reasonable" in this context shall mean a delivery period which corresponds to the original

# General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

remaining delivery period plus the period of change negotiations and a disposition period of 14 calendar days.

5.3 Deliveries and/or services by AKK prior to the expiry of the delivery/performance period shall be permissible. The day of delivery shall be deemed to be the day of notification of readiness for dispatch in the case of a debt to be collected, otherwise it shall be the day of dispatch of the products by AKK, and the day of delivery to the agreed place of delivery in the case of a debt to be brought.

AKK shall be entitled to make partial deliveries within the delivery period if the partial delivery is usable for the Client within the framework of the contractual purpose or, in the absence of such, the usual purpose and the delivery of the remaining ordered goods is ensured by AKK and the Client does not incur any significant additional expenses or costs as a result, unless AKK agrees to bear these costs at the request of the Client. The additional expense shall be considered substantial if it exceeds 6% of the net remuneration for the contractually owed service.

5.4 If AKK is in default of delivery, the Client must first set AKK a reasonable grace period for performance. This shall be at least 14 calendar days. If this period expires without result, claims for damages due to breach of duty - irrespective of the reason - shall only exist in accordance with Article 11.

5.5 AKK shall not be in default as long as the Client is in default with the performance of obligations towards AKK, including those arising from other contracts.

5.6 As long as means of transport and/or pallets to be provided by the Client are not available, AKK shall not be obliged to deliver, unless AKK has expressly undertaken to provide the means of transport and/or pallets. However, AKK shall be entitled to effect delivery by means of its own or hired means of transport in the event of an executable shipping or call-off order. In this case, the goods shall be shipped at the risk of the Client.

Upon receipt of AKK pallets, the Client shall immediately return pallets of equivalent technical and condition to AKK by way of exchange, failing which the Client shall reimburse AKK for their value.

5.7 If no acceptance date is specified in the order, which AKK confirms or must confirm in order for it to become binding, or if acceptance does not take place on the agreed acceptance date, AKK shall, at its discretion, dispatch the goods that are the subject of the contract with a carrier commissioned by AKK or store them at the expense of the Client. The packaging, transport and insurance costs incurred (the latter insofar as transport insurance has been agreed) shall then be additionally paid by the Client to AKK.

5.8 In case of storage, the Client shall pay to AKK a storage fee in the amount of 0.5% of the net remuneration of the stored goods to be paid by the Client per week for the stored goods. The Client

reserves the right to prove that significantly lower (more than 10% lower) costs were incurred.

5.9 The Client shall assist AKK personnel in unloading and retrieving the goods if this is necessary and reasonable for the Client from a technical and logistical point of view.

## **6. Force majeure / self-delivery**

6.1 If AKK, for reasons for which AKK is not responsible, receives deliveries or services from its sub-Suppliers for the performance of contractual deliveries or services owed by AKK, despite proper and sufficient coverage prior to the conclusion of the contract with the Client in accordance with the quantity and quality from the AKK delivery or service agreement with the Client, i.e. in such a way that AKK would be able to fulfil the contract with the Client according to the type of goods, quantity of goods and delivery time and/or performance (*congruent coverage*) upon fulfilment of the subcontractor's obligation towards AKK, or in case of force majeure events of a not insignificant duration (i.e. with a duration of longer than the duration of the force majeure events). i.e. with a duration longer than 14 calendar days), AKK shall inform the Client immediately. In this case, AKK shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part due to the part not yet fulfilled, insofar as AKK has complied with its aforementioned duty to inform and has not assumed the procurement risk within the meaning of § 276 GCC or a delivery guarantee.

Force majeure shall be deemed to include strikes, lockouts, official interventions, energy and raw material shortages, epidemics and/or pandemics, transport bottlenecks or obstacles for which AKK is not responsible, in particular general curfews and/or contact bans, as well as operational hindrances for which AKK is not responsible - e.g. due to fire, water and machine damage - and all other hindrances which, from an objective point of view, were not culpably caused by AKK. In this context, the Covid-19 pandemic constitutes a case of force majeure, even if it was known at the time the contract was concluded. In the event of exemption from performance under the above provisions, AKK shall not be liable for damages and/or reimbursement of expenses or penalties due to default.

6.2 If a delivery date or a delivery period has been bindingly agreed and if the agreed delivery date or the agreed delivery period is exceeded due to events pursuant to Article 6.1, the Client shall be entitled to withdraw from the contract due to the part not yet fulfilled after fruitless expiry of a grace period of 14 calendar days. Further claims of the Client, in particular claims for damages, shall be excluded in this case.

6.3 The above provision pursuant to Article 6.2 shall apply *mutatis mutandis* if, for the reasons stated in Article 6.1, it is objectively unreasonable for the Client to continue to adhere to the contract even without a contractual agreement on a fixed delivery date.

## **7. Shipping / Transfer of risk / Acceptance**

# General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

7.1 Unless otherwise agreed in writing, delivery shall be made Ex Works Incoterms 2020. In the case of acceptance and dispatch debt, the goods shall travel at the risk and expense of the Client. AKK shall insure goods and/or transport only as specified by the Client and at the Client's expense. The cost of transport insurance shall not be included in AKK's offer, unless otherwise expressly included with the Client. These costs are based on the replacement value of the goods to be transported and not on the order-specific remuneration.

7.2 In the absence of any other express agreement, AKK reserves the right to choose the transport route and the means of transport in case of agreed shipment. AKK shall, however, endeavor to take into account the Client's wishes with regard to the mode and route of shipment, without the Client having any claim to this. Any additional costs resulting from this - even in the case of agreed freight-free delivery - shall be borne by the Client, as are the transport and insurance costs.

If the shipment is delayed at the request or through the fault of the Client compared to the agreed time at the request of the Client, AKK shall store the goods at the expense and risk of the Client. Article 5.8 Section 2 shall similarly apply. In this case, the notification of readiness for shipment shall be equivalent to the shipment.

7.3 The risk of accidental loss or accidental deterioration shall pass to the Client in the case of an agreed debt to be discharged upon handover of the products to be delivered to the Client, in the case of an agreed debt to be discharged upon handover to the forwarding agent, the carrier, or the undertakings otherwise designated to carry out the shipment, but no later than upon leaving the AKK factory or AKK warehouse, or the AKK branch or the manufacturer's factory. The foregoing shall also apply if an agreed partial delivery is made.

In the case of an agreed obligation to deliver, the risk shall pass when the goods are made available for unloading at the agreed place of delivery. Article 7.2 Section 2, shall remain unaffected.

7.4 If the shipment is delayed due to AKK exercising our right of retention as a result of the Client's default in payment in whole or in part, or due to any other reason for which the Client is responsible, the risk shall pass to the Client at the latest as of the date of dispatch of the notification of readiness for shipment and/or performance to the Client.

## **8. Notice of defects - breach of duty in the form of defective performance due to material defects (warranty)**

8.1 The Client shall notify AKK in writing or in text form of any recognisable material defects immediately, but no later than 12 calendar days following acceptance in case of delivery ex works or storage location, otherwise after delivery, hidden material defects immediately after discovery, the latter, however, no later than within the warranty limitation period according to Article 8.6. An objection not made in due time or form shall exclude any claim of the Client for breach of duty due to material

defects. This shall not apply in case of intentional, grossly negligent or fraudulent actions on the part of AKK, in case of injury to body, life or health or assumption of a guarantee of freedom from defects, or of a procurement risk pursuant to § 276 GCC within the meaning of Article 4.6 or other legally mandatory liability provisions and in case of recourse in the supply chain (§ 478 GCC).

8.2 The Client must carry out a plausibility check when accepting AKK goods, i.e. check for type of goods, quantity/weight and condition. In addition, noticeable material defects, noticeable type defects and/or quantity/weight defects must be reported to the delivering transport company and the written or textual recording of the defects on the delivery papers/CMR must be arranged by the Client on site. Failure to initiate the notification of defects to the delivering transport company in due time or form shall exclude any claim of the Client for breach of duty due to material defects. This shall not apply in the event of fraudulent, intentional or grossly negligent actions on the part of AKK, in the event of injury to body, life or health, or assumption of a procurement risk pursuant to § 276 of the GCC within the meaning of Article 4.6, a guarantee of freedom from defects, or liability pursuant to a statutory mandatory liability provision and in the event of a recourse claim in the supply chain (§ 478 of the GCC).

8.3 Upon request, the Client shall hand over to AKK the rejected goods for inspection purposes with regard to the actual existence of a defect.

8.4 *Other breaches of duty on the part of AKK must be immediately notified by the Client in writing or in text form prior to the assertion of further rights, setting a reasonable remedy period as a prerequisite for effectiveness, insofar as a remedy by AKK is possible, otherwise the Client shall forfeit the rights resulting therefrom.* This shall not apply in the event of intentional, grossly negligent or fraudulent acts on the part of AKK or its vicarious agents, in the event of injury to body, life or health or assumption of a guarantee on the part of AKK or a procurement risk on the part of AKK pursuant to § 276 of the GCC within the meaning of Article 4.6 or in the event of a legally mandatory liability circumstance.

8.5 Upon commencement of processing, treatment, combination or mixing with other items, the delivered products shall be deemed approved by the Client in accordance with the contract.

8.6 Unless expressly agreed otherwise, the limitation period for claims arising from breach of duty due to poor performance in the form of material defects shall be 12 months, calculated from the date of transfer of risk (see Article 7.3), and in the event of refusal of acceptance by the Client from the date of notification of readiness for acceptance of the goods. This shall not apply to claims for damages arising from a guarantee, the assumption of a procurement risk within the meaning of § 276 GCC within the meaning of item 4.6, claims due to injury to body, life or health, fraudulent, intentional or grossly negligent actions on the part of AKK or its vicarious agents, or if in the cases of §§ 478 (recourse in the supply chain), § 438

# General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

Section 1 No. 2 (construction of structures and delivery of items for structures) and § 634a Section 1 No. 2 GCC (construction defects) or if a longer limitation period is otherwise mandatory by law. A reversal of the burden of proof is not subject to the above provision.

8.7 If the Client or a third party improperly repairs the products delivered by us and if the defect is based on this, we shall not be liable for the resulting consequences. The same shall apply to changes made to the delivery item without our prior consent.

8.8 Further claims of the Client due to or in connection with defects or consequential damage caused by defects, irrespective of the reason, shall only exist in accordance with the provisions of Article 11.

8.10 The warranty (claims arising from breach of duty due to poor performance in the case of material defects) and the liability resulting therefrom shall be excluded insofar as defects and related damage are not demonstrably due to defective material, defective construction, or defective execution, or defective manufacturing materials. In particular, the warranty and the liability resulting therefrom due to breach of duty due to poor performance shall be excluded for the consequences of incorrect use of the delivery item, in particular due to pressure surges during commissioning or operation of heat exchangers and/or non-compliance with the manufacturer's operating, maintenance and storage instructions for the delivery item, unsuitable storage conditions of the same, and the consequences of chemical, electromagnetic, mechanical or electrolytic influences on the delivery item which do not correspond to influences inherent in the contract, such as in particular corrosion. The foregoing shall not apply in the event of fraudulent, grossly negligent or intentional actions on the part of AKK or its vicarious agents, or injury to body, life or health, the assumption of a guarantee, a procurement risk pursuant to § 276 GCC within the meaning of Article 4.6 and or liability pursuant to a statutory mandatory liability.

Any warranty and liability shall be excluded if the Client fails to observe the customary storage instructions or customary instructions for use specified by us in accordance with the contract concluded or our customary storage instructions or customary instructions for use specified by us in this respect, insofar as the defect is based on this.

8.11 Claims for defects shall not exist in the event of mere insignificant (i.e. barely visible/perceptible) deviations from the agreed or usual quality or usability.

8.12 AKK shall not assume any warranty pursuant to § 478GCC (recourse in the supply chain - Supplier recourse) if the Client has processed or handled or otherwise modified the products supplied by AKK under the contract, insofar as this does not correspond to the contractually agreed intended purpose of the products.

## 9. Prices - terms of payment

### Defense of uncertainty

### Sales bonus and Advertising subsidies

9.1 Unless otherwise expressly agreed, all prices shall be quoted in EURO net cash (= without any deduction) excluding packaging, freight, postage and, if transport insurance has been agreed upon, insurance costs, plus value-added tax to be borne by the Client (if legally applicable) in the respective legally prescribed amount when payment is due, ex works or ex warehouse plus any country-specific duties in the case of delivery to countries other than the Federal Republic of Germany, plus customs duties and other fees and public charges for the delivery/service.

9.2 Payment methods other than cash or bank transfer require separate, express agreement between AKK and the Client; this applies in particular to the issuance of checks and bills of exchange.

9.3 Insofar as taxes or levies are incurred by the Client or AKK on the service provided by AKK (withholding tax), the Client shall indemnify us against such taxes and levies.

9.4 AKK is entitled to issue partial invoices in accordance with the progress of the order processing and / or to demand partial payments in accordance with the progress of the processing.

9.5 Unless otherwise agreed, 1/3 of the purchase price shall be due for payment within 7 calendar days following receipt of the order confirmation, 1/3 after notification of readiness for shipment and 1/3 after delivery.

9.6 If the Client pays in a currency other than EURO, as far as expressly agreed, fulfillment shall only occur if the foreign currency payment corresponds to the agreed EURO amount on the day of receipt of payment. In case of default of payment as well as in case of necessary collection or in case of suspension of payment, any discounts and/or price reductions granted for the respective payment shall cease to apply.

9.7 Services which are not part of the agreed scope of delivery shall, in the absence of any agreement to the contrary, be performed by AKK on the basis of our currently valid general price lists for such services.

9.8 AKK shall be entitled to unilaterally increase the remuneration accordingly in the event of an increase in raw material and/or product procurement costs, wage and ancillary wage costs, social security contributions as well as energy costs and costs due to environmental regulations, and/or currency regulations and/or changes in customs duties, and/or freight rates and/or public charges, if these directly or indirectly influence the goods manufacturing or procurement costs, or costs of AKK of the contractually agreed deliveries and/or services and if there are more than 4 months between conclusion of the contract and delivery. An increase in the aforementioned sense shall be excluded to the extent that the cost increase in any or all of the

**General terms and conditions of sale and delivery**  
**for business transactions with business associates**  
**of AKK Industrieservice & Handels GmbH**

forementioned factors is offset by a cost reduction in the other of the aforementioned factors in relation to AKK's total cost burden for the delivery (*Setting*). If the aforementioned cost factors are reduced without the cost reduction being offset by an increase in other of the aforementioned cost factors, the cost reduction shall be passed on to the Client as part of a price reduction.

If the new price is 20% or more above the original price due to the aforementioned AKK price adjustment right, the Client shall be entitled to withdraw from contracts not yet fully performed for the part not yet performed. However, he may assert this right only immediately following notification of the increased price.

9.9 If AKK exceptionally bears the freight costs in accordance with the contract, the Client shall bear the additional costs resulting from tariff increases in freight rates after the conclusion of the contract.

9.10 Unless otherwise agreed, agreed payment periods shall apply from the day of delivery.

9.11 Upon the occurrence of default, interest on arrears shall be charged at a rate of 9% above the base interest rate applicable at the time the payment claim is due (§247 GCC). We reserve the right to claim further damages.

9.12 In the event of an agreed transfer, the date of payment shall be the date on which the money is received by us or credited to the AKK account or to the account of the paying agent specified by AKK to the Client.

9.13 *Default of payment by the Client shall cause all payment claims arising from AKK's business relationship with the Client to become due immediately. Irrespective of deferment agreements, bill of exchange and installment payment agreements, all liabilities of the Client to AKK shall be due for payment immediately in this case.*

9.14 If payment terms are not complied with or circumstances become known or recognisable which, in AKK's due business judgement, give rise to justified doubts as to the creditworthiness of the Client, including such facts which already existed at the time of the conclusion of the contract but were not known or should not have been known to AKK, AKK shall be entitled, without prejudice to further statutory rights in such cases, to stop further work on current orders or deliveries to the Client and to demand advance payments or the provision of a bank guarantee from a German credit institution affiliated to the Deposit Protection Fund for deliveries still outstanding and, after unsuccessful expiry of a reasonable grace period for the provision of such securities - without prejudice to further statutory rights - to withdraw from the contract with regard to the part not yet fulfilled. The Client shall be obligated to compensate AKK for all damages resulting from the non-execution of the contract.

9.15 The Client shall only have a right of retention or right of set-off with regard to counterclaims that are

not disputed or have been finally determined by a court of law. This shall apply accordingly if the counterclaim submitted for a set-off is in mutual exchange (i.e. in the reciprocal relationship of two performances under the contract concluded with AKK) with the claim on the part of AKK.

9.16 A right of retention may only be exercised by the Client to the extent that its counterclaim is based on the same contractual relationship.

9.17 Incoming payments shall first be offset to repay the costs, and then the interest and finally the principal claims according to their maturity. Any contrary provision of the Client at the time of payment shall be inapplicable.

9.18 The timeliness of the payment, regardless of the means by which it is made, shall be determined exclusively by the transfer date to the AKK account. In the case of payments by check, the date of the value date shall be decisive. Payments by the Client must be made free of postage and expenses in favor of AKK.

9.19 If AKK has promised monetary benefits within the framework of the business relationship (e.g. subsequent sales bonuses or advertising cost subsidies), payment thereof shall be subject to the Client's proper invoice to AKK.

If the granting of such conditions is dependent on a counter performance, AKK shall be entitled to demand or withhold the granting of the conditions in whole or in part if the agreed Client performances have not been provided or have not been provided in full.

**10. Retention of title - Letter of credit - Attachments**

10.1 AKK shall retain title to all goods delivered by AKK (hereinafter collectively referred to as "**Retained Goods**") until all claims on the part of AKK arising from the business relationship with the Client, including future claims arising from contracts concluded at a later date, have been settled. This shall also apply to a balance in favour of AKK if individual or all claims of AKK are included in a current account and the balance is drawn.

10.2 The Client shall treat the Retained goods with care and insure them sufficiently, in particular against fire and theft. Claims against the insurance company arising from a case of damage affecting the Retained goods shall hereby already be assigned to AKK in the amount of the value of the Retained goods on account of performance, who accepts the assignment.

10.3 The Client shall be entitled to resell the delivered reserved goods in accordance with ordinary course of business. He is not permitted to make other dispositions, in particular pledges or the granting of ownership by way of security. If the goods subject to retention of title are not paid for immediately by the third party purchaser upon resale, the Client shall be obliged to resell only subject to retention of title. The right to resell the Retained goods shall lapse by

## **General terms and conditions of sale and delivery**

**for business transactions with business associates  
of AKK Industrieservice & Handels GmbH**

default if the Client suspends payment or defaults on payment to AKK.

10.4 The Client hereby assigns to AKK, who accepts this assignment, all claims, including securities and ancillary rights, accruing to him against the end buyer or against third parties from or in connection with the resale of Retained Goods. He shall not enter into any agreement with his buyers that excludes or impairs AKK's rights in any way, or nullifies the advance assignment of the claim. In the event of the sale of goods subject to retention of title with other items, the claim against the third party purchaser shall be deemed assigned in the amount of the net delivery price agreed between AKK and the Client, unless the amounts attributable to the individual goods can be determined from the invoice.

10.5 The Client shall remain entitled to include the claim assigned to AKK until revocation permitted by AKK at any time. Upon AKK's request, the Client shall be obliged to immediately provide AKK with all information and documents required for the collection of assigned claims and, if AKK does not do so himself, to immediately inform its Clients of the assignment to us.

10.6 If the Client includes claims from the resale of goods subject to retention of title in a current account relationship existing with its Clients, it shall already hereby assign to AKK a recognised closing balance in his favor in the amount corresponding to the total amount of the claim from the resale of our goods subject to retention of title subject to the current account relationship.

10.7 If the Client has already assigned claims from the resale of the Products delivered or to be delivered by AKK to third parties, in particular on the basis of real or unreal factoring, or has entered into other agreements on the basis of which AKK's current or future security rights pursuant to Article 10 may be impaired, the Client shall notify AKK thereof without undue delay. In the event of non-genuine factoring, AKK shall be entitled to withdraw from the contract and demand the return of products already delivered. The same applies in the case of genuine factoring if the Client cannot freely dispose of the purchase price of the receivable under the contract with the factor.

10.8 In the event of actions contrary to the contract for which the Client is responsible, in particular in the event of default in payment, AKK shall be entitled to take back all Retained Goods after withdrawing from the contract. In this case, the Client shall be obliged to surrender the goods immediately. AKK and its employees or agents may enter the Client's business premises at any time during normal business hours in order to assess the inventory of the goods delivered by AKK. Return of the reserved goods shall only constitute withdrawal from the contract if AKK expressly declares this in writing or if mandatory statutory provisions provide for this. The Client shall immediately notify AKK in writing or in text form of any access by third parties to goods subject to retention of title or claims assigned to us.

10.9 If the value of the securities existing for AKK in accordance with the above provisions exceeds the secured claims by more than 10% in total, AKK shall be obliged, at the Client's request, to release securities of AKK's choice until the security ratio of 10% is no longer exceeded.

10.10 Machining and processing of the Reserved Goods shall be carried out for AKK as manufacturer, without, however, obligating AKK. If the reserved goods are processed or inseparably combined with other items not belonging to AKK, AKK shall acquire co-ownership of the new item in the ratio of the net invoice amount of its goods to the net invoice amounts of the other processed or combined items. If goods subject to retention of title are combined with other movable items to form a single item that is to be regarded as the main item, the Client hereby assigns to AKK co-ownership thereof in the same proportion. In this case, the Client shall hold the property or co-property in safe custody for AKK free of charge. The co-ownership rights arising hereunder shall be deemed to be reserved goods. Upon AKK's request, the Client shall at any time provide AKK with the information necessary to pursue our ownership or co-ownership rights.

10.11 If, in the case of deliveries abroad, certain measures and/or declarations are required on the part of the Client in the importing country in order for the aforementioned retention of title or the other rights of AKK referred to therein to become effective, the Client shall notify AKK thereof in writing or in text form and shall carry out or submit such measures and/or declarations at his expense without delay. AKK shall cooperate in this to the extent necessary. If the law of the importing country does not permit the retention of title, but allows AKK to reserve other rights to the delivery item, AKK may exercise all rights of this kind at its reasonable discretion (§ 315 GCC). To the extent that an equivalent security of AKK's claims against the Client is not achieved thereby, the Client shall be obliged to promptly provide AKK with other customary securities in the delivered goods at its own expense in accordance with our reasonable discretion (§ 315 GCC). Article 10.13 shall remain unaffected.

10.12 In the event of seizures or other interventions by third parties, the Client shall immediately notify AKK in writing or in text form so that AKK can file an action pursuant to § 771 GCC. Insofar as the third party is not in a position to reimburse AKK for the judicial and extrajudicial costs of a lawsuit pursuant to § 771 ZPO (German Code of Civil Procedure), the Client shall be liable to AKK for the loss incurred by us.

10.13. If the place of delivery and/or the registered office of the Client is outside the Federal Republic of Germany, AKK shall alternatively be entitled, waiving any rights under the above reservation of title, to demand from the Client, prior to execution of the delivery, the handover of an irrevocable letter of credit for payment from a major international bank rated at least AA by Standard & Poor's under German law with jurisdiction in the Federal Republic of Germany, in which the latter undertakes to make



# General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

payment to AKK upon presentation of the delivery bill.

## **11. Disclaimer/Limitation**

11.1 Subject to the following exceptions, AKK shall not be liable, in particular for claims of the Client for damages or reimbursement of expenses - irrespective of the legal grounds - in the event of a breach of duties arising from the contractual obligation.

11.2 The above exclusion of liability pursuant to Section 11.1 shall not apply:

- for its own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- for the breach of essential contractual obligations; "*essential contractual obligations*" are those whose fulfillment characterizes the contract and on which the Client may rely.
- in case of injury to body, life and health also by legal representatives or vicarious agents;
- insofar as AKK has assumed a guarantee for the quality of the goods or the existence of a performance result, or a procurement risk pursuant to § 276 GCC within the meaning of Article 4.6;
- in the event of liability under the Product Liability Act or other mandatory statutory liability.

11.3 In the event that AKK or its vicarious agents are only guilty of slight negligence and any of the subsections 1, 3, 4, 5 of Article 11.2 does not apply, AKK shall only be liable for the contract-typical and foreseeable damage even in the event of a breach of essential contractual obligations. § Section 254 GCC (contributory negligence) shall remain unaffected.

11.4 The exclusions or limitations of liability pursuant to the above Articles 11.1 to 11.3 and Article 11.5 shall apply to the same extent in favor of AKK bodies, AKK executive and non-executive employees and other AKK vicarious agents as well as AKK subcontractors.

11.5 Claims of the Client for damages arising from this contractual relationship may only be asserted within a preclusion period of one year from the statutory commencement of the limitation period. This shall not apply if AKK is guilty of intent or gross negligence, in the case of slight negligence, if AKK has breached a material contractual obligation and in the case of claims for injury to body, life or health, as well as in the case of a claim based on a tortious act or an expressly assumed guarantee or the assumption of a procurement risk pursuant to § 276 of the German Civil Code (GCC) within the meaning of Section 4.6, or in the case that a longer limitation period is mandatorily applicable by law. 8 Article 6 shall remain unaffected.

11.6 A reversal of the burden of proof is not associated with the above provisions.

## **12. Place of performance - Place of jurisdiction - Applicable law**

12.1 The place of performance for all contractual obligations shall be our delivery facility or warehouse, with the exception of the case of the assumption of a debt to be discharged on delivery or otherwise agreed.

12.2 The exclusive place of jurisdiction for all disputes shall be - insofar as the Client is an entrepreneur within the meaning of the German Commercial Code - our place of business. For clarification purposes, this jurisdiction provision shall also apply to such circumstances between us and the Client which may lead to non-contractual claims within the meaning of EC Regulation No. 864 / 2007. However, AKK shall also be entitled to sue the Client at its general place of jurisdiction.

12.3 All legal relationships between the Client and us shall be governed exclusively by the laws of the Federal Republic of Germany, in particular excluding the UN Convention on Contracts for the International Sale of Goods (CISG). It is expressly clarified that this choice of law is also to be understood as such in the sense of Art. 14 Section 1 b) EC Regulation No. 864 / 2007 and shall thus also apply to non-contractual claims in the sense of this Regulation.

12.4 If foreign law applies on a mandatory basis in a particular case, our GTC shall be interpreted in such a way that the economic purpose pursued in accordance with them is safeguarded as far as possible.

## **13. Property rights - License**

**13.1 Unless otherwise agreed, AKK shall only be obliged to provide the delivery free of industrial property rights and copyrights of third parties in the Federal Republic of Germany.**

If a third party raises justified claims due to the infringement of property rights by products delivered by us to the Client, AKK shall be liable to the Client within the period specified in Article 8.6 as follows:

- AKK shall, at its discretion, first attempt to obtain, at AKK's expense, either a right of use for the delivery items concerned or modify the delivery item in such a way that the property right is not infringed, or replace it, while complying with the contractually agreed properties. If AKK is unable to do so, or if AKK refuses to do so, the Client shall be entitled to its statutory rights, which shall, however, be subject to modification by the contract and these GCS.
- The Client shall only be entitled to rights vis-à-vis us in the event of an infringement of property rights by our delivery items if he notifies us immediately in writing or in text form of the claims asserted by third parties, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for us.

## **General terms and conditions of sale and delivery**

**for business transactions with business associates  
of AKK Industrieservice & Handels GmbH**

- If the Client discontinues the use of the products supplied by AKK for reasons of mitigation of damages or other important reasons, the Client shall be obliged to point out to the third party that the discontinuation of use does not constitute any acknowledgement of an infringement of property rights.
- If, as a result of the use of the products supplied by AKK, the Client is injured by third parties for infringement of property rights, the Client undertakes to inform AKK thereof without delay and to give AKK the opportunity to participate in any legal dispute. The Client shall support AKK in the conduct of such litigation in every respect by providing the necessary information and documents at its disposal. The Client shall refrain from any actions that could impair AKK's legal position vis-à-vis the applicant.

13.2 Claims of the Client are excluded insofar as the Client is responsible for the infringement of property rights. Claims of the Client shall also be excluded insofar as the infringement of property rights is caused by special specifications of the Client, by an application not foreseeable by AKK, or by the fact that the products supplied by AKK are modified by the Client or used together with products not supplied by us, which do not correspond to the intended use, insofar as the infringement of property rights is based on this.

13.3 The Client shall receive the right to use the Services in accordance with the contract upon proper fulfillment of its contractual obligations.

All copyrights, patent rights or other industrial property rights shall remain with us unless expressly agreed otherwise.

Insofar as inventions capable of being protected by industrial property rights are invented by us within the scope of the performance of the contract, AKK shall grant the Customer a non-exclusive and non-transferable right of use thereto on customary commercial terms. The Customer's right to be entitled to all rights related to the invention in the event that bringing about the invention is a primary contractual obligation of AKK shall remain unaffected.

### **14. Export control - Product approval - Import regulations**

14.1 Unless otherwise contractually agreed with the Customer, the delivered goods are intended to be placed on the market for the first time within the Federal Republic of Germany or, in the case of delivery outside the Federal Republic of Germany, on the market in the agreed country of first delivery (First country of delivery).

14.2 AKK draws the Client's attention to the fact that European and German foreign trade law shall apply to the transfer/export of goods with cross-border relevance for the fulfillment of the contractual obligation and that the individual deliveries as well as services may be subject to export control restrictions

and prohibitions. This applies in particular to so-called armor and weapons. In addition, European and other global national embargo regulations exist against certain countries and individuals, companies and organisations that may prohibit or condition the supply, provision, transfer, export or sale of goods and the performance of services. For cross-border delivery or provision, AKK may therefore be required to obtain official permits or other certificates. More detailed rights and obligations in this connection are governed in each case by the following provisions. For certain transactions in connection with U.S. goods or other U.S. related matters, U.S. (re-)export law may also apply due to its extraterritorial effect and result in prohibitions or licensing requirements that AKK must observe and implement in order to avoid being sanctioned by U.S. authorities on our part.

14.3 The Customer himself shall be obliged to check the above facts and to strictly observe the export regulations and embargoes relevant for these goods, in particular those of the European Union (EU), Germany or other EU member states as well as, if applicable, the USA or Asian or Arab countries and all third countries concerned, insofar as it exports the products supplied by AKK or has them exported by it.

14.4 Compliance with the delivery obligation may require the release or issuance of export or shipment licenses or other certificates under foreign trade law by the competent authorities.

If AKK is prevented from timely delivery due to the duration of the necessary and proper execution of an application, approval or examination procedure under customs or foreign trade law through no fault of AKK, the delivery time shall be extended appropriately by the duration of the delay caused by this official procedure. A fixed duration of AKK cannot generally be specified or guaranteed for the aforementioned procedures on the part of the authorities. AKK shall inform the Client without delay of such procedures as well as circumstances and measures in individual cases. Claims for damages by the Customer for delays for which AKK is not responsible are excluded, unless AKK has contractually assumed a warranty liability towards the Customer.

14.5 The Client shall be obliged to provide AKK with timely and complete information on the end use and, if applicable, the deviating end user of the goods to be delivered or the service to be provided in writing or text form immediately following the conclusion of the contract. Any delivery period or performance period shall not commence early. This includes, in particular, issuing any required end-use documents (so-called EUCs) and transmitting them in the original to AKK. In order to verify the end-use and the intended purpose of the goods or services and to prove them to the competent authority for customs and export control purposes.

14.6 Any re-export requirements from AKK notified to the Customer in relation to permits issued by the competent authorities or courts shall be complied with by the Customer under all circumstances. The latter shall contractually obligate its customers accordingly and prove this to AKK upon its request.

## General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

AKK shall notify the Client of the scope and extent of such conditions imposed by AKK no later than upon delivery.

14.7 If AKK or its Suppliers are not granted, or have not been granted in due time, the possibly to obtain required export or shipment licenses or other necessary releases by the competent authorities through no fault of AKK, or if other obstacles due to the customs or embargo regulations to be observed by AKK as exporter or shipper or by AKK's Suppliers under the law applicable to them stand in the way in whole or in part through no fault of AKK. If, through no fault of AKK, other obstacles due to customs, foreign trade and embargo regulations to be observed by AKK as exporter or consignor or by AKK's Suppliers according to the law applicable to them wholly or partially prevent the performance of the contract or the delivery, AKK shall be entitled to withdraw from the contract or from the individual delivery or service obligation, unless AKK has expressly assumed a guarantee liability irrespective of fault for the provision thereof.

This shall also apply if, through no fault of AKK, corresponding obstacles under export control and embargo law - e.g. due to a change in the legal situation - arise only between the conclusion of the contract and the delivery or the performance of the service as well as during the assertion of warranty rights and make the performance of the delivery or service temporarily or permanently impossible. This may be the case, for example, because export or transfer licenses issued to AKK or its Suppliers or other foreign trade licenses or releases are revoked by the competent authorities through no fault of AKK or other legal obstacles due to customs, foreign trade and embargo regulations to be observed prevent the performance of the contract or the delivery or service through no fault of AKK. Claims for damages of the Buyer for this reason shall be excluded, unless AKK has expressly assumed a strict warranty liability for the provision of the aforementioned approvals or documents.

14.8 The Customer shall in particular verify and ensure, and provide evidence to AKK upon request, that no companies and persons

- named in the US Denied Persons List (DPL), are supplied with US origin goods, US software and US technology with the delivery items of AKK;
- no companies and persons named on the US Warning List, US Entity List or US Specially Designated Nationals List shall be supplied with US originating products without the relevant authorisation;
- no companies and persons are supplied who are named in the list of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorist or the terrorist list of the EU or other relevant negative lists for export control;
- no military recipients are supplied;

- no recipients are supplied who are in breach of other export control regulations, in particular those of the EU or the ASEAN states;
- all early warning notices of the competent German or national authorities of the respective country of origin of the delivery are observed.

14.9 The Client in turn undertakes to prove this obligation to its buyers for the goods delivered by AKK and to prove this to AKK.

14.10 Access to and use and/or export of goods delivered by AKK may only take place if the aforementioned checks and safeguards have been performed by the Client; otherwise the Client shall refrain from the intended export and AKK shall not be obliged to perform.

14.11 The Client undertakes, in the event of transfer of the goods delivered by AKK to third parties, to oblige such third parties in the same manner as the Client in Articles 14.1.- 14.10 and to inform them of the need to comply with such legal provisions.

14.12 In the event of agreed delivery outside the Federal Republic of Germany, the Customer shall furthermore guarantee at its own expense that, with regard to the goods to be delivered by AKK, all national import regulations of the country of first delivery have been fulfilled completely and in a timely manner without any cost burden for us.

14.13 The Client shall indemnify AKK against all damages and proven expenses resulting from the culpable breach of the aforementioned obligations pursuant to Articles 14.1 - 14.12. Excluded shall be the costs for AKK's own employees.

### **15. Opening of insolvency proceedings / Incoterms / Written form / Severability clause**

15.1 An application for the opening of insolvency proceedings by the Client or the Client's suspension of payments not based on rights of retention or other rights despite a reminder from us shall entitle AKK, in the event that the Client is in a state of breach of duty towards AKK at that time, to withdraw from the contract with the Client at any time, insofar as the Client commits a culpable breach of contractual duty at that time, or to make the performance of the contract dependent on the prior fulfillment of the payment obligation. In the case of continuing obligations, AKK shall be entitled to terminate the contract without notice instead of rescinding the contract. § 314 of the German Civil Code (termination in the case of continuing obligations) shall remain unaffected. If the delivery of the object of sale or our performance has already taken place, the consideration shall be due immediately in the aforementioned cases. AKK shall also be entitled to reclaim the purchased item in the aforementioned cases and to retain it until the purchase price has been paid in full.

## General terms and conditions of sale and delivery

for business transactions with business associates  
of AKK Industrieservice & Handels GmbH

15.2 Insofar as trade terms according to the International Commercial Terms (INCOTERMS) have been agreed, INCOTERMS 2020 shall apply.

15.3 All agreements, collateral agreements, assurances and amendments to the contract must be in writing. This shall also apply to the waiver of the written form agreement itself. The priority of the individual agreement in written, textual or oral form (§ 305b GCC) shall remain unaffected.

15.4 If any provision of this Agreement is or shall become invalid/void or unenforceable in whole or in part for reasons of the law of general terms and conditions pursuant to §§ 305 to 310 GCC, the statutory provisions shall apply.

Should any present or future provision of the contract be or become invalid/void or unenforceable in whole or in part for reasons other than the provisions concerning the law of general terms and conditions pursuant to Articles 305 to 310 of the GCC. This shall not affect the validity of the remaining provisions of this contract. The same shall apply if a gap requiring supplementation arises after conclusion of the contract.

Contrary to a possible principle according to which a severability preservation clause would, in principle, only be intended to reverse the burden of proof, the validity of the remaining contractual provisions shall

be upheld under all circumstances and thus Article 139 of the GCC is to be waived altogether.

The parties shall replace the invalid/void/unenforceable provision or gap needing to be filled for reasons other than the provisions concerning the law of general terms and conditions pursuant to Articles 305 to 310 of the GCC with a valid provision which corresponds, in terms of its legal and economic contents, to the invalid/void/unenforceable provision and to the overall purpose of the contract. § 139 GCC shall be expressly excluded. If the invalidity of a provision is based on a measure of performance or time (term or date) specified therein, the provision shall be reconciled with a legally permissible measure that comes closest to the original measure.

### 16.

#### **Note:**

**In accordance with the provisions of the GDPR and the Data Protection Act, AKK points out that the processing of contracts at AKK is carried out by means of a computer system and that, in this respect, AKK also stores the data received as a result of the business relationship with the Customer.**

Version January 2021