

**A. & E. Keller GmbH & Co. KG  
General Terms of Sale****§ 1  
General Terms, Scope**

1. Our terms of sale apply exclusively. Unless their acceptance is expressly confirmed in writing we do not accept customer terms & conditions opposing or deviating from our terms. The unconditional supply of product under existing purchase orders does not constitute the acceptance of the customer's terms & conditions or does it replace our terms & conditions as set forth herein.
2. Content and amount of deliveries and services are exclusively defined in our written offer or, if an order confirmation is issued, in our written order confirmation.
3. Our terms of sale apply only to businessmen/business- women, artificial persons of public law and public special property.
4. Our terms of sale also apply to all future business transactions with the customer. The following terms of sale have priority over the customer's terms when differing in content. The customer's renunciation of the applicability of his own terms of sale is not removed by our silence or our deliveries and services. Any exception from the following terms requires our written confirmation.
5. All technical data in our catalogues and in our other sales information, lists and drawings same as all weight-, measure- and compound- information have been carefully drawn up, they are subject to alterations in case of errors. In the event of an order, the physical and chemical properties of the materials and compounds may deviate from the base properties as states in the sales documents.
6. It lies within the customer's responsibility to test if our products and / or the material used for it are suitable for the intended purpose.  
The condition of the goods is determined exclusively by the agreed technical supply specifications. In the event that product is supplied in accordance with drawings, specifications, samples and the like provided by our costumer, the latter will assume all risks relating to the products meeting the requirements of the intended use. The condition of the goods in accordance with the contract is determined at the time of transfer of risk in accordance with Paragraph 5 of these terms.
7. Manufacturing costs for samples and Production Materials (tools, moulds, templates, jigs, fixtures; etc.) will, unless otherwise agreed, be invoiced separately from the goods to be supplied. This also applies to Production Materials which have to be replaced as a result of wear and tear.  
Where, during the period of manufacture of samples or Production Materials the costumer abandons or terminates the co-operation, all manufacturing costs incurred up to that time will be borne by that customer.  
The customer does not acquire a claim or a right to the Production Materials itself by partial or full payment; the rights of ownership and of copyright utilization are reserved without limitation. Should, for any reason, the ownership of the Production Materials be transferred to the customer, it is now agreed that the Production Materials remain our property at least until completion of the supply contract. The costumer is then entitled to reclaim the Production Materials, where a mutual agreement has been reached in respect of the time of delivery and the costumer has fully complied with his contractual obligations and the protection of our know- how is sufficiently ensured. For the protection of our know- how we reserve the right to regain the complete, unconditioned ownership of the Production Materials by refunding the partial book value of the initial Production Materials.  
Customer Production Materials may only be used for the supply of third parties upon receipt of written authorization from our costumer. We will treat Production Materials put at our disposal by a customer adequately, damages at these Production Materials caused by us will be removed free of charge.  
Production Materials will be stored without charge for a time period of twelve months after the final delivery to our costumer. We will then request our costumer in writing to make known his views on their further use within 6 weeks. Our duty of storage will end if, within these 6 weeks, no such statement has been made, or if no new order has been given.

**§ 2**  
**Offer, Materials**

1. If an order can be qualified as an offer according to § 145 BGB, we can accept it within 4 weeks.
2. The rights of ownership and copyright are reserved for any illustrations, drawings, calculations and other material; they must not be made available to third persons. This applies particularly to such written material labelled "confidential"; making these available to third persons requires our explicit written agreement. Offers are valid only in writing. Provided pricing remains valid as long as the order specifics remain unchanged.
3. Samples and sample test reports are provided only if agreed to in writing. The costs are charged.
4. The customer is responsible to verify that third party copyrights are not breached or infringed upon for products ordered based on customer prints or samples. If, in case of this obligation not being observed, our production is prohibited by a third person claiming his copyright or if the product cannot be used because of the infringement of copyrights, we are entitled - without having to verify the legal status and to the exclusion of any compensation for the customer, no matter what the legal status may be - to stop production and delivery until the facts have been clarified and to demand compensation from the customer, at least 15% of the total amount of the invoice of the product ordered. The customer exempts us from, and assumes all responsibilities relating to any claims for compensation by third persons, particularly of owners of copyrights - at first demand. Damages include but are not limited to any costs related to and resulting from the defence against such third party copyright claims.

**§ 3**  
**Prices, Terms of payment**

1. Delivery terms are 'ex works' and all prices are net prices excluding packaging plus applicable VAT tax on the day of delivery unless otherwise specified in the order confirmation. Desired packaging or small packages will be charged to the ordering party at our cost price.  
Prices are valid only for the quantity, product design and material specifications agreed to by contract. We reserve the right to appropriate price changes should the customer ask for changes, which cause a higher effort than assumed on the basis of the order or on the basis of the usual process of production  
We reserve the right to increase pricing if upon completion, and / or expiration of the contract manufacturing costs resulting from but not limited to higher labour rates, higher raw material prices or any other reason increase. If so requested, we will provide the applicable documentation justifying the increased prices.
2. Where a binding order quantity is not agreed, our calculation will be based on the non-binding order quantity expected by the customer for a specific period of time (target quantity).  
Where the customer purchases less than the target quantity, we are entitled to increase the unit price by an appropriate amount. Where the customer purchases more than the target quantity, we will reduce the unit price accordingly, provided that the customer has given notice of the surplus requirement not less than 6 months before delivery.  
If products are supplied on the basis of regular customer releases, binding order quantities are to be provided by release at least six months prior to the required date. The customer is responsible for any costs as a result of a late release/ order of product. Basis for determining these costs is our price calculation.
3. The VAT is not included in our prices; the valid rate is added on the invoice.
4. Cash discount is possible only where agreed to in writing in the order, the order confirmation or the invoice.
5. Unless otherwise stated in the written order confirmation, invoices are due in cash (without any deduction) at our account and are due as follows:

Payment in cash within 14 days allows the customer a cash discount of 2%.

Payment within 30 days from the date of the invoice the total amount of the invoice falls due.



Invoices up to a total amount of 50.00 Euro are due in cash upon receipt.

If cash in advance or a deposit is required, a deduction of a trade discount is excluded.

If the customer defaults in his payments, we are entitled to demand late charges of 8% above the legal basic interest rate p.a. If we incur greater financial damages resulting from later payments, we are entitled to assert these damages. The customer on his side is entitled to prove that as a consequence of his late payment no or much lesser damage was caused.

6. The customer is entitled to offset his claims against our invoices only if his claims are legally valid, undisputed and acknowledged by us. While the customer's claims are disputed, he does not have a right of retention. A right of retention is also excluded in instances where the claims are not based on the same contracts.  
Credit notes are issued only for the purpose of settlement. There is no claim for payment.
7. For small orders - samples excluded - below € 1.000,00 we reserve the right to determine a minimum order quantity or to charge additional fees.
8. If we doubt the solvency of a customer we reserve the right to demand payment in advance or collateral. If we come to know that the customer has been impounded unsuccessfully or if we receive indications towards a potential bankruptcy of the customer, we are entitled to rescind the contract and charge the efforts made so far.

#### **§ 4**

#### **Delivery time and conditions of supply**

1. The agreed upon lead time for any new order begins after the clarification of all technical questions, delivery of all necessary information from the customer, necessary licences and releases, especially drawings, as well as fulfilment of the agreed conditions of payment and any necessary cooperation from the customer.
2. The adherence to our delivery commitment furthermore requires the customer's timely and proper fulfilment of his obligations and our proper receipt of the raw materials which are required for the manufacturing of the product to be delivered. The plea of a non-fulfilment of contract remains reserved.
3. If the non-fulfilment of delivery times is due to force majeure, e.g. strike, lockout, etc., the delivery period will be extended appropriately. An appropriate extension of delivery times comes also in force when we are not supplied in time.
4. If the customer refuses deliveries or if he culpably violates other tasks of cooperation, we are entitled to demand compensation for damaged caused this way as well as any additional costs arising. Further claims remain reserved. If the delivery or shipment is postponed according to the customer's wish, we are entitled to invoice a fee for storing, beginning with the 10<sup>th</sup> day after the announcement of being ready for dispatch:  
0,5% of the total sum invoiced for every beginning month  
max 5% of the total sum invoiced.  
Both contracting parties reserve the right to prove higher or lesser expenses.
5. If the conditions of section 3 are fulfilled, the danger of accidental decline or accidental deterioration passes on to the client in the moment when he defaults on acceptance of deliveries or on payment.
6. We accept liability according to legal regulations, as far as the relevant bill of sale constitutes a transaction of short selling in the sense of § 286 Abs. 2 Nr. 4 BGB or of § 376 HGB. We also accept liability according to legal regulations, if, as consequence of a delay in deliveries caused by us, the client becomes entitled to Claim that his interest in the contract ceases to exist.
7. We furthermore accept liability according to legal regulations, if the delay in delivery is caused by a deliberate or culpably negligent breach of contract by us; faults of our representatives are to be blamed on us. As far as a delay in delivery is not due to a deliberate breach of contract by us, our liability for compensation is limited to the foreseeable, typically occurring damage.



8. We also accept liability according to legal regulations, as far as the delay in delivery is caused by a culpable breach of an essential duty of the contract by us; in this case, however, the liability to compensation is limited to the foreseeable, typically occurring damage.
9. We are entitled to partial deliveries in reasonable quantities. Production-related long or short deliveries are permitted within a tolerance of 5 per cent of the total order quantity. The total price will be adjusted accordingly.  
Deviations in measurement, weight, technical construction, production and in quantity are allowed within the customary, product-related tolerances. Furthermore, all alterations, which serve the technical improvement of our products are regarded as approved by the customer.

## § 5

### Transition of risks - costs of packaging

1. Unless otherwise noted in the order confirmation, delivery terms are ex works.
2. Return of packaging is subject to special agreements.
3. Subject to customer request, all deliveries will be covered by a transport insurance; the costs thus incurred are to be covered by the customer.
4. The customer is obliged, within an appropriate period prior to delivery, to name one or several persons, who are entitled by the customer to receive the goods and the accompanying documents and to sign the delivery note and the accompanying documents. This particularly applies in cases where the goods are to be delivered to another place than the customer's head Office. If such information is not provided, those persons who have in fact received the goods are regarded to be entitled to the reception of the goods and to be authorized to sign the accompanying documents (delivery note and other accompanying documents).
5. If at the agreed delivery date and delivery place none of the authorized persons are available, or if this or another person refuses to accept the goods, the customer falls into arrears with receipt, with the consequence that the risk passes to the customer. Furthermore, the customer has to cover the costs incurred by a new delivery.
6. The customer cannot refuse the acceptance of deliveries because of minor faults.

## § 6

### Liability for faulty goods

1. The customer's rights to complaint require that the customer has properly fulfilled his obligation to examination and reprimand according to § 377 HGB.  
Where it is agreed that the goods are to be accepted after completion or that initial samples are to be tested, notification of defects which could have been discovered by the customer under acceptance or testing of initial samples is excluded.  
The customer has statutory rights of recourse against us only in so far as the customer has not reached any agreements with its customer which go beyond the statutory claims for defects.
2. We must be given opportunity of assessing the notified defect. The goods in question must be returned to us immediately; we will assume responsibility for the transport costs where the notice of defect is justified. In the event of the customer failing to observe these obligations, or carrying out modifications of the goods which are complained of without our consent, he will lose any claims for material defects.
3. If the supplied goods are faulty, we are entitled to either after-fulfilment by eliminating the faults or to deliver new goods free of faults, according to our preference. In case of eliminations of faults, we cover the costs only up to the amount of the purchase price.
4. If the elimination of faults goes wrong, the customer is entitled to decide whether to claim a right of rescission or a reduced purchase price.



5. We accept liability according to legal regulations, as far as the customer raises claims to compensation, which are founded on intent or culpable negligence, including intent or culpable negligence by our representatives. As far as we are not accused of culpable breach of contract, the liability for faulty goods is limited to the foreseeable, typically occurring damage.
6. We accept liability according to legal regulations, if we culpably break an essential duty of the contract; in this case however, the liability for faulty goods is limited to the foreseeable, typically occurring damage. We are therefore not liable for any damage not deriving from the delivered goods themselves. We are in particular not liable for any loss of profit or other financial losses by the customer.
7. Liability for culpable injuring of life, body or health is unaffected; this applies also to the binding liability according to the law of product liability.
8. As far as nothing has been settled previously, liability is excluded.
9. The statutory limitation is 12 months, counted from the moment of transition of risks.

### **§ 7** **Joint liability**

1. Liability for compensation to a greater extent than provided for in § 6 is excluded -notwithstanding the legal basis of the claim raised. This is particularly valid for claims for compensation relating to faults at contracting, for other breaches of duty or for offence claims to compensation for damages to property according to § 823 BGB.
2. In case of claims for compensation the limitation according to section 1. is valid also for the demand of compensation for useless efforts.
3. As far as liability towards us is excluded or limited, this applies also to the personal liability for compensation of our employees and representatives

### **§ 8** **Proprietary rights**

1. We reserve the property of the goods until receipt of all payments owed by the customer. If it is agreed that payment shall be done by a bill of exchange, the reservation of proprietary rights also covers the customer's cashing of the bill accepted by us and does not expire by crediting the received bill on our account. In case of the customer's activities contrary to the contract, especially in case of default, we are entitled to take the goods back. Taking back the goods constitutes our rescinding the contract. After taking back the goods we are entitled to their utilization, the proceeds thereof are to be allowed on the customer's liabilities, minus appropriate costs of utilization.
2. The customer is obliged to treat the goods carefully, he is particularly obliged to insure the goods as new sufficiently against damages caused by fire, water or theft at his own costs. If any works of maintenance or inspection are necessary, the customer is obliged to conduct these timely and at his own costs.
3. In case of seizure or other interventions by a third person, the customer is obliged to immediately inform us in writing so that we can institute proceedings according to § 771 ZPO. If the third person is not able to refund our judicial and non-judicial costs according to § 771 ZPO, the customer is liable for the loss caused to us.
4. The customer is entitled to re-sell the goods in the usual course of business; however in advance he assigns all claims up to the amount of the final invoice (including VAT) *of our claims*, which result from his re-selling to his customers or third persons, independent of the goods being re-sold without or after processing. The customer remains entitled to collect the debt also after assignment. Our authorization to collect the debt ourselves remains thereby unaffected. However, we commit ourselves not to collect the debt as long as the customer fulfils his liability to pay from the proceeds realized, as long as he does not fall into arrears and particularly no application for the initiation of



insolvency proceedings are made or inability to pay is given. If any of this is the case, we are entitled to demand, that the customer discloses the assigned claims and their debtors, gives all information for collecting the debt, hands over all necessary documents and informs the debtors (third persons) about the assignment. The claims assigned by us in advance refer to the accepted balance, as well as in case of the customer's insolvency, to the then existing causal balance.

5. The processing or reconstruction of the goods by the customer is always done for us. If the goods are processed with other parts not belonging to us, we acquire property of the new goods relative of the value of the goods (invoice sum, including VAT) to the other parts processed at the time of processing. Incidentally, the article produced by processing is to be regarded as the goods delivered under reservation of proprietary rights. All regulations made apply accordingly.
6. If the goods are inseparably mixed with other parts not belonging to us, we acquire joint property of the new goods relative of the value of the goods (invoice sum, including VAT) to the other mixed goods at the time of blending. If the blending is done in a way that the goods of the customers are to be regarded as the main item, it is regarded as agreed that the customer confers proportional joint property to us. The customer keeps the sole or joint property thus produced for us.
7. The customer also assigns to us the claims for safeguarding the claims against him, which grow towards a third party from the connection of the goods with real estate.
8. We commit ourselves to release the legitimate collateral upon the customer's demand in so far as the realizable value of our collateral exceeds the claims to be safeguarded by more than 10%; the choice of the collateral to be released lies with us.

### **§ 9** **Court of jurisdiction**

1. As far as the customer is a businessman / - woman, our place of business is also relevant court of justice; however, we are entitled to sue the customers at the court of his domicile as well.
2. The law of the Federal Republic of Germany applies exclusively; UN-law or international agreements do not apply.
3. As far as the confirmation of order does not say any other, the court at the head office of A. & E. Keller shall have jurisdiction.
4. The German version of the General Terms of Sale is the original version. In terms of interpretation it has priority over the English translation with due regard of the German legal system.

Arnsberg, May 2009