

---

# General Terms and Conditions of Sale and Delivery

---

January 2017

## 1. Scope of Application

- 1.1 The following General Terms and Conditions of Sale and Delivery solely govern any offer, sale or delivery effected by Kronos International, Inc. and Kronos Titan GmbH, (hereinafter: “**Supplier**”) to business owners for business purposes, to legal entities or to special property entities under public law (hereinafter: “**Purchaser**”).
- 1.2 Any contradicting or diverging terms and conditions of purchaser shall be deemed accepted only and only insofar as expressly agreed in writing by Supplier.
- 1.3 In case of an ongoing business relationship, the current version of these General Terms and Conditions forms part of the agreement even if express reference has not been made anymore.
- 1.4 The following provisions shall apply to the contractual relationships of the parties in the following priority:
  - (a) individual contractual agreements entered into between the parties;
  - (b) these General Terms of Sale and Delivery;
  - (c) statutory law.

## 2. Offers and Acceptance

- 2.1 Our offers made are not binding. A contractual agreement shall only be constituted by virtue of an order confirmation issued by the Supplier or by virtue of performing a delivery by the Supplier.

## 3. Delivery Period, Delay, Impossibility of delivery

- 3.1 The supplier shall only be responsible for complying with delivery periods agreed if Purchaser has properly fulfilled its own contractual obligations. Otherwise, the delivery period shall be reasonably extended except where and insofar as the Supplier is responsible for the delay.

In this case the Supplier shall be entitled to postpone the agreed time of delivery for the foreseeable duration of the obstacle. The Supplier shall immediately inform the Purchaser accordingly. In case of an oral information, the Supplier shall confirm the Purchaser such notice

in writing as soon as reasonable under the circumstances. Supplier shall be obliged to fulfil its delivery obligations in reasonable time upon ending of such obstacle and inform Purchaser immediately about the respective new date of delivery.

- 3.2 If shipment is delayed for reasons which lie in the responsibility of Purchaser and if a reasonable deadline set by Supplier for taking off the goods has lapsed without effect, Supplier may dispose otherwise of the goods for delivery and may supply Purchaser within an appropriately extended delivery period with the ordered goods or with goods of the same generic group.

#### **4. Dispatch and Passing of Risk**

Delivery shall be effected ex works (EXW Incoterms 2010) unless otherwise expressly agreed.

#### **5. Warranty**

If the products delivered are defective, the statutory provisions shall apply according to the following modifications:

- 5.1 The Supplier shall perform supplementary performance by, at his discretion, either repairing the goods or delivering new goods.
- 5.2 The warranty shall not cover damages caused by incorrect or negligent use, faulty assembly and/or faulty installation or putting into operation, either by Purchaser or by third parties, natural wear, defective or negligent handling, inappropriate production equipment and facilities or inappropriate operating supply items, faulty construction work, inappropriate foundation soil, chemical, electrochemical or electrical influences, as long as Supplier is not responsible for such aforementioned cause or reason respectively.
- 5.3 If the Purchaser exerts its statutory right to rescind the contract due to the defects, the value of the possibility of use granted shall be calculated on the basis of a reducing balance method of depreciation over a utilization period of five years in the case of goods of a value per piece of more than EUR 1,000.00, otherwise of three years. The parties may prove that a longer or shorter utilization period is to be applied or that there was for particular reasons only a possibility of use of a different value.
- 5.4 The warranty period concerning repair work carried out and replacements delivered in connection with supplementary performance shall end no later than upon expiry of the initial warranty period applicable in relation to the original good delivered.
- 5.5 The warranty period shall be one year starting from the transfer of risk, except where the mandatory provisions of sections 478, 479 German Civil Code apply. This neither applies to loss or damage based on an intentional or grossly negligent breach of duty on the part of the Supplier or a legal representative or vicarious agent of the Supplier nor to loss or damage arising from

injury to life, limb or health based on an intentional or grossly negligent breach of duty on the part of the Supplier or a legal representative or vicarious agent of the Supplier. The statutory limitation period shall apply in this respect. If the Contractual Supply Products delivered are used for a structure in accordance with their customary manner of use, the warranty period shall be five years, beginning at the time of the transfer of risk.

5.6 The preceding provision 5.6 shall also apply to claims relating to the delivery of defective goods based on tort law.

## **6. Liability**

6.1 The Supplier's liability for damages and expenses shall be excluded, except for

- a) loss or damage based on the violation of a material contractual obligation. In such a case, the Supplier's liability shall be limited to compensation of the foreseeable, typically occurring loss or damage. A material contractual obligation shall in particular be an obligation that is such that the Agreement or an individual purchase agreement can only be duly and properly executed if it is fulfilled and the Purchaser generally can and does rely on compliance therewith;
- b) loss or damage resulting from a violation of a guarantee issued by the Supplier;
- c) loss or damage based on an intentional or grossly negligent breach of duty on the part of the Supplier or a legal representative or vicarious agent of the Supplier;
- d) loss or damage arising from injury to life, limb or health based on an intentional or grossly negligent breach of duty on the part of the Supplier or a legal representative or vicarious agent of the Supplier;
- e) claims based on strict liability pursuant to strictly applicable law, in particular pursuant to the Product Liability Act.

The preceding provisions do not change the allocation of burden of proof provided for in statutory law.

6.2 If the Supplier's liability is limited or excluded pursuant to the preceding provisions, the Supplier shall assign its claims arising out of a product liability insurance, if such insurance exists, to the Purchaser, provided that the insurance provides coverage for the damages incurred. The Purchaser shall indemnify the Supplier insofar as the insurance provides coverage.

## **7. Prices and Payment**

- 7.1 Unless otherwise agreed, prices shall be ex works (EXW Incoterms 2010) plus the statutory value added tax payable at the time of the respective individual purchase order. Additional costs such as packaging, freight, insurance, customs duties or installation costs shall be charged separately.
- 7.2 Unless otherwise agreed, payments shall be made in cash within ten calendar days of the date of invoice without any deductions, free at Supplier's payment office. The statutory provisions concerning interest on maturity shall apply.
- 7.3 Purchaser is neither entitled to offset counterclaims against claims of the Supplier nor allowed to invoke the right of retention, unless those claims are either uncontested by the Supplier, are ready for final judgment or have been finally decided by a court ruling or if the claims are based on the delivery of defective goods, provided that the delivery is divisible. In the latter case, the latter exception only relates to the part of the partial delivery affected. This exception shall not apply in the case of a minor impairment to the part of the payment that exceeds the amount representing the loss of value of the goods delivered.
- 7.4 Supplier may suspend performance of delivery and service if after formation of the contract it becomes apparent that Purchaser will not be able to fulfil a considerable part of its obligations under the contract due to its considerably impaired creditworthiness. Supplier must immediately notify the Purchase if Supplier intends to suspend its contractual obligations and Supplier must grant the Purchaser the opportunity to provide adequate security for the proper performance of its obligations. Supplier must continue the performance of its contractual obligations if the Purchaser has provided an adequate security.

## **8. Retention of Title**

- 8.1 The Supplier reserves title to the delivered products (hereinafter: "**ROT Goods**") until such time as all claims arising from the supply contracts are settled in full. The legal basis for the Supplier's claims against the Purchaser is irrelevant. For the purposes hereof, the term "claims" shall also include amounts outstanding based on a negative current account balance. The Purchaser shall store the ROT Goods for the Supplier free of charge.
- 8.2 Where the ROT Goods are processed or reconfigured by the Purchaser, this shall always be done on behalf of the Supplier as the manufacturer. The Supplier shall acquire title directly without incurring any obligations as a result. If the ROT Goods are combined with other objects that do not belong to the Supplier, the Supplier shall become co-owner of the resulting goods in proportion to the value of the ROT Goods relative to the value of the other objects at the time of processing. The same provisions that apply to the ROT Goods shall apply to the goods resulting from processing. If the Supplier's title lapses owing to processing, combining or mixing, the

Purchaser shall transfer a share of its (co-)title to the Supplier in proportion to the invoice value of the ROT Goods without undue delay after the processing, combining or mixing takes place

8.3 The Purchaser may sell ROT Goods only within its normal course of business. The Purchaser is entitled and authorised to resell ROT Goods only on condition that all claims it may have against its customers or third parties out of the resale shall pass to the Supplier. As at the date hereof the Purchaser hereby assigns to the Supplier its claims from the resale of ROT Goods in the amount of the invoice value of the ROT Goods - on a pro rata basis in the event that the Supplier is co-owner of processed goods. The Supplier hereby accepts this assignment. The Purchaser has no right to dispose of the ROT Goods in any other manner; in particular, the Purchaser may not pledge the ROT Goods or transfer title to them by way of security. The Supplier can revoke the Purchaser's right to sell the ROT Goods if the Supplier's interests are adversely affected. The Supplier is entitled to revoke the right to sell in particular if

- a) the Purchaser's financial position deteriorates substantially (especially if one of the grounds for insolvency pursuant to sections 17-19 German Insolvency Code applies or if insolvency proceedings are applied for or opened),
- b) the Purchaser ceases to perform its payment obligations from the collected proceeds, or
- c) defaults on payment.

In these cases the Supplier also has the right to rescind this Agreement as well as any purchase agreements not yet performed and to require the Purchaser to surrender the ROT Goods.

8.4 The Purchaser is authorised to collect the claims assigned by the Supplier. The Supplier can revoke or amend the Purchaser's authority to collect the assigned claims (in particular, the Supplier can require the Purchaser to transfer the proceeds from the assigned claims to a separate fiduciary/trust account). The Supplier shall only avail itself of the above right to revoke or amend if

- a) the Purchaser's financial position deteriorates substantially (especially if one of the grounds for insolvency pursuant to sections 17-19 German Insolvency Code applies or if insolvency proceedings are applied for or opened),
- b) the Purchaser ceases to perform its payment obligations from the collected proceeds, or
- c) defaults on payment.

The Purchaser has no right to assign the claims to third parties. At the Supplier's request, the Purchaser shall inform its customers about the assignment of the claims to the Supplier and provide the Supplier with the information/documentation necessary to collect the claims.

8.5 At the Purchaser's request the Supplier agrees to release the collateral it is entitled to in accordance with the above insofar as its realisable value exceeds the secured claims by more than 10%. The Supplier can choose which collateral to release.

- 8.6 If the Purchaser asks for the ROT Goods to be delivered to a country that does not recognise the above retention of title or where it does not have the same effect as in Germany, the Purchaser must take all measures and/or make all declarations necessary to create comparable security rights. The same shall apply if the Purchaser introduces the ROT Goods into such a country.

## **9. Intellectual Property and Industrial Property Rights**

The Supplier reserves its right to, title in, ownership of, copyright and other industrial rights in any document accompanying an offer, any documents and information Purchaser receives in the context of the sale and delivery process as well as its know-how.

## **10. Final provisions**

- 10.1 Place of performance regarding both payment and delivery is at the registered office of the Supplier.
- 10.2 These General Terms and Conditions of Sale and Delivery and the entire legal relationships between the Supplier and the Purchaser shall be governed solely by German law with the application of the UN Convention on the International Sale of Goods (CISG) excluded.
- 10.3 Any dispute arising out of or relating to these General Terms and Conditions or the supply relationship of the Parties shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The place of arbitration is Cologne, Germany. The number of arbitrators is one (1). The language of the arbitral proceedings is English.
- 10.3 The Purchaser is advised in accordance with section 33 of the German Federal Data Protection Act (BDSG) that the Supplier saves the contractual data in machine-readable form and processes these data as required according to the purpose of the contractual relationship. All data shall be kept confidential.
- 10.4 Amendments and supplements to the agreements entered into must be made in writing. This shall also apply to the amendment or waiver of this written form requirement. There are no verbal subsidiary agreements. Additional agreements, provisos, amendments and supplements entered into and made by our employees shall be valid only after written confirmation of the Supplier.
- 10.5 Should individual provisions of these General Terms and Conditions of Sale be wholly or partially invalid or unenforceable, this shall not affect the validity of the other provisions. The respective provision shall be replaced by a valid and enforceable provision which comes closest to the economic intention of the Parties as expressed in the original provision. Any omission shall be remedied by such a provision which the Parties would have agreed on had they recognized the need for such a provision when the Agreement was concluded.

