

**General Terms of Delivery  
of  
Horst Kürvers GmbH**

02<sup>nd</sup> January 2012

**§ 1 Application**

(1)  
These general terms and conditions of delivery and payment apply to all - including future - supplies, services or offers in which Horst Kürvers GmbH or any of its subsidiaries (hereinafter Kürvers) is the vendor and contractor, even if they are not specifically agreed upon. All supplies, services and offers from Kürvers are subject to these Terms and Conditions. These are part of all contracts, which Kürvers closes with its contractors (hereinafter referred to as "customer") relating to the goods or services offered by Kürvers. By placing an order the customer agrees to the following Terms and Conditions. With the receipt of the goods or the giving of a shipping permit, these conditions are at latest considered accepted.

(2)  
We contradict the Terms of the customer or a third party. They do not apply, even if Kürvers does not object to their validity in an individual case. Even if Kürvers receives a letter containing the terms of the customer or a third party or refers to such, we shall not agree with the application of these terms and conditions.

**§ 2 Offer and closing of contract**

(1)  
All offers of Kürvers are non-binding, unless they are expressly marked as binding or contain a specific deadline for acceptance. Kürvers may accept orders or assignments within four weeks of receipt. Only with the acceptance of the offer is the contract closed (order confirmation). The order confirmation may be in the form of an invoice or delivery note.

(2)  
All that matters for the legal relations between Kürvers and the customer is the sales contract in its written form, including these Conditions. The contract completely reflects all the agreements between the parties to contract. Employees of Kürvers are not authorized to make binding declarations for Kürvers unless they are the managing directors, officers or assistant managers. Oral commitments by Kürvers before entering into this agreement are not legally binding and oral agreements of the parties are replaced by the written contract, except where it is explicitly ruled that they remain in force.

(3)  
Additions and amendments to agreements made, including these General Conditions are only effective if made in writing. With the exception of directors and authorized officers employees of Kürvers are not authorized to enter into any deviant verbal agreements. For the written form it is sufficient to have facsimile transmission or email.

(4)  
Kürvers retains ownership or copyright on all its issuing of offers and quotations, as well as drawings, diagrams, calculations, information, catalogues, models, tools and other documents and devices provided for the customer. The customer may not hand this property or contents of it to third parties, publish them or have them published by third parties, use or reproduce them without the express consent of Kürvers. The customer shall completely return these objects at the request of Kürvers and destroy any copies when they are no longer required of him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

(5)  
In case Kürvers uses tele-or media services for the purpose of concluding the contract, Kürvers is not obliged to

- make technical resources available to the customer to help the customer identify input errors and correct them;
- communicate the specific information mentioned in the Regulation under Article 241 of the Introductory Act to the German Civil Code (EGBGB) before the order;
- confirm the receipt of the order.

Furthermore orders and assignments placed by the customer are not already considered as validly received, when Kürvers could have obtained them under ordinary circumstances.

### **§ 3 Prices and payment**

- (1)  
The rates apply to the performance- and delivery volume listed in the order confirmation. Additional or special services are charged separately. Prices are in Euros unless otherwise agreed, ex works, plus packaging, VAT, customs and charges for export shipments, and other public charges.
- (2)  
Offsetting by the customer or the withholding of payments due to claims are only permitted where the claims are uncontested or bindingly ascertained and due.
- (3)  
As far as the agreed prices are based on the list prices of Kürvers and the delivery shall take place four months after the contract, the list prices of Kürvers valid at the day of the delivery shall apply (minus an agreed percentage or fixed discount).
- (4)  
Invoices are payable within thirty days without any deduction, unless otherwise agreed in writing. For the date of the payment the date of receipt at Kürvers is decisive. Checks are valid after being cashed. In case the customer does not pay when due, an interest of 5% percentage points above the base interest rate will be added to the amounts outstanding from the date of maturity; the right to claiming higher interest rates and further damages in the event of default remains unaffected.
- (5)  
Kürvers is entitled to perform outstanding deliveries or services only against advance payment or security, if it takes notice of circumstances after completion of the contract, which would notably reduce the creditworthiness of the customer and which would put at risk the payment of the outstanding debts from the respective contract to Kürvers by the customer (including other individual orders for the same general conditions).
- (6)  
The customer is not entitled to transfer rights under this contract to another party except payment claims.

### **§ 4 Quality and quantity**

- (1)  
The character, in particular the quality and material properties of the supplied goods is determined first by the applicable technical specifications used by Kürvers, if they are missing, according to the internationally applicable material norms in the contract. If no norms exist, commercial practice shall apply.
- (2)  
Information of Kürvers concerning the subject goods or services (e.g. weights, measurements, values in use, handling, tolerances and technical data) and our representations of it (e.g. drawings and figures) are only approximate, unless the use for the contractually intended purpose requires an exact match. They are not guaranteed characteristics, but descriptions or identifications of goods or services. Usual variations and deviations, stipulated by legal regulations or technical improvements and the replacement of components with equal parts are permissible if they do not affect the suitability for the contractually intended purpose.
- (3)  
Declarations made by Kürvers to the customer on the nature and durability of the goods on top of the legal warranty rights are only a "quality and durability guarantee" within the meaning of § 443 BGB (German Civil Code) if Kürvers has expressly designated it a "guarantee".

### **§ 5 Right of withdrawal in case of impossibility of performance**

- (1)  
Kürvers is entitled to cancel the contract if we are not or not timely being provided, despite the timely completion of recovery operations and other covering purchases are undue or have failed, or we or our suppliers cannot deliver on time for reasons, which occurred after the contract or have not been known and not been in our sphere of influence, such as strikes, lockouts, breakdowns without fault, government intervention, political turbulences, war, war-like conditions, force majeure. Kürvers does not take the supply risk.
- (2)  
Kürvers obliges itself to inform the customer immediately about the non-availability and to reimburse considerations of the customer immediately.

## § 6 Delivery and delivery time

(1)

The terms and dates for deliveries and services, which Kürvers announces, are only approximate, unless expressly agreed that a fixed period or a fixed date apply. Deliveries are to be understood ex works (EXW acc. Incoterms 2010) unless otherwise agreed. Should delivery have been agreed, the delivery times and dates refer to the time of delivery to the shipper, carrier or other third parties responsible for the transport.

(2)

Kürvers may - without prejudice to its rights arising from default of the customer – request from the customer an extension of the delivery and performance times, or a postponement of the delivery and service dates for the required period, in which the customer does not meet its contractual obligations towards Kürvers. If the customer changes the specifications or is delayed, the delivery period is extended by the time of the subsequent delay.

(3)

Kürvers shall not be liable for inability to deliver or for delays in delivery caused by force majeure or other, not at the time of conclusion of predictable events (e.g. breakdowns of any kind, difficulties in material or energy procurement, transport delays, strikes, lawful lockouts, lack of laborers, energy or raw materials, difficulties in obtaining necessary regulatory approvals, regulatory actions or lack of, incorrect or late delivery by suppliers, political turbulences, war, war-like conditions). For obstacles of temporary duration the delivery or performance dates are postponed in the extent of the time of the impediment plus a reasonable start date. In case the customer's acceptance of the delivery or performance cannot be expected due to the delay, he can resign from the contract by immediate written notice to Kürvers.

(4)

Kürvers is entitled to partial deliveries if

- The partial delivery is suitable for the customer as part of the contractual provision to which it should be used,
- The delivery of the remaining ordered goods is ensured and
- No significant additional efforts or costs incur to the customer (unless Kürvers agrees to assume these costs).

(5)

In case Kürvers is in default with a delivery or performance or a delivery or service, for whatever reason, becomes impossible for Kürvers, then the liability of Kürvers to compensation is limited pursuant to § 8 of these General Conditions.

(6)

Kürvers is entitled to increase or decrease the amount delivered according to the industry-standard. The price for these shall correspond to the prices agreed to be made.

## § 7 Place of performance, shipping, packaging, transfer of risk, acceptance

(1)

Place of performance for all obligations under the contract is the office of Kürvers, unless otherwise specified.

(2)

The delivery and the packaging are subject to the reasonable discretion of Kürvers. The goods are, unless otherwise expressly agreed, delivered unpacked and not protected against rust.

(3)

The risk shall at the latest pass to the shipper when the goods have been handed to the shipper, carrier or other third party to carry out the dispatch to the customer (the beginning of the loading is relevant). This applies even if partial deliveries are made or Kürvers has taken over other services (eg shipping or installation). In case there is a default in delivery due to a circumstance, for which the customer is responsible, the risk passes to the customer from the day the delivery item is ready and Kürvers has shown this to the customer.

(4)

Storage costs after the risk has passed to the customer are carried by the customer. If stored by Kürvers storage cost amounts to 0.5% of the invoice amount plus the VAT of the delivered items to be stored per begun week. Kürvers keeps the right to claim and prove additional or lesser storage costs.

(5)

The shipment will be insured by Kürvers only at the express request of the customer and at his own expense against theft, breakage, transport, fire and water damage or other insurable risks.

(6)

If acceptance is required, the goods shall be deemed accepted if

- the delivery and, provided Kürvers promised the installation, the installation is complete,
- Kürvers has communicated this to the customer with regards to the acceptance fiction under this § 7 (6) and urged him to accept,
- ten working days have passed since the delivery or installation or the customer has started with the use of the purchased item (eg. has taken the delivered system in operation) and in this case six working days have passed,
- the customer has failed to make the acceptance within this period for any other reason than because of a lack shown to Kürvers, which made the use of the goods impossible or significantly impaired.

(7)

Incoming goods are to be accepted by the purchaser, even if they have minor defects, regardless of the rights under § 8.

(8)

The customer undertakes to dispose the packaging at its own responsibility and at its own expense.

#### **§ 8 Warranty, defects**

(1)

The warranty period is one year from delivery or, if acceptance is required upon acceptance. In case of the delivery of building works the legal statute of limitations shall apply.

(2)

The delivered goods must be examined carefully after delivery to the customer or to the specific third party. They are considered approved if Kürvers does not receive a written complaint in terms of obvious deficiencies or other defects that were seen on an immediate and thorough investigation within three working days after delivery or otherwise within three working days after the discovery of the defect or any earlier date, in which the defect for the customer in normal use of the delivery item could be seen without closer examination. At the request of Kürvers the alleged delivery item is returned to Kürvers freight prepaid. In case of a justified complaint Kürvers pays the cost of the cheapest shipping route; this does not apply if the costs increase because the delivery item is at a place other than the point of intended use.

(3)

If goods are defective Kürvers is required and entitled to decide within a reasonable time between repairing or replacement of the good. In case of failure, i.e. impossibility, unreasonableness, denial or unreasonable delay in the repair or replacement the customer may rescind the contract or may reduce the purchase price accordingly.

(4)

In case the defect is the fault of Kürvers, the customer may ask for damages only under the conditions specified in § 10.

(5)

In case of defects in components of other manufacturers, which Kürvers may not replace for licensing or factual reasons, it is up to Kürvers to decide whether it will raise warranty claims against the manufacturers and suppliers for the customer's account or assign them to the customer. Warranty claims against Kürvers for such defects under the preconditions and these terms exist only when the legal enforcement of the aforementioned claims against the manufacturers and suppliers has been unsuccessful or, for example due to insolvency, is hopeless. During the duration of the dispute the limitation of warranty claims against Kürvers are stopped.

(6)

The warranty does not apply if the customer changes the product without the consent of Kürvers or has it modified by third parties and the removal of defects therefore is made impossible or unreasonable. In any case, the customer has to bear the additional costs incurred by the elimination of defects.

(7)

We assume no responsibility for damages, which fall within the responsibility of the customer, especially due to the following reasons:

- Incorrect assembly or commissioning by the customer or a third party,
- Incorrect order details and standards in relation to the proposed use,
- Natural wear and tear,

- Faulty or negligent treatment, unsuitable operating materials, replacement materials, chemical, electrochemical or electrical influences, provided they are not caused by us.

- Assembly and commissioning with knowledge of the defectiveness of the products.

(8)  
A delivery of used goods, which has been agreed with the customer in an individual case is carried out without any warranty for defects.

## **§ 9 Industrial property rights**

(1)  
Unless otherwise agreed, Kürvers is obligated to deliver the products unencumbered by intellectual property rights and copyrights of third parties only in the country of the place of use. Each party will notify the other party immediately in writing if they face any claims of infringement of such rights. Any claims for compensation by the customer are subject to the restrictions of § 10 of the General Conditions.

(2)  
In case of legal violations through products of other suppliers delivered by Kürvers, Kürvers will at its choice either raise claims against the manufacturers and suppliers for the customer's account or assign them to the customer. In these cases claims against Kürvers exist in accordance with § 9 only if the legal enforcement of the aforementioned claims against the manufacturers and suppliers was unsuccessful or, for example due to insolvency, is hopeless.

## **§ 10 Liability for damages**

(1)  
The liability of Kürvers for damages, for whatever reason, in particular impossibility, delay, defective or incorrect goods, breach of contract, breach of duty in contract negotiations and an unlawful act, as far as it is in matters of fault, is limited in accordance with this § 10 .

(2)  
Kürvers is not liable in cases of ordinary negligence of its institutions, legal representatives, employees or other agents where they do not constitute a breach of contractual obligations. Essential to the contract is the requirement for timely delivery of the product free from material defects and the duties for protection of life or health of personnel of the customer or the protection of the property from significant damage. Kürvers is not liable for fitness for purpose.

(3)  
Unless Kürvers is liable under § 10 (2) for damages, such liability is limited to damages, which Kürvers has foreseen as a possible consequence of a breach of contract or could have foreseen sing due diligence. Indirect or consequential damages, that result from defects in the delivered goods, are only reimbursable to the extent such damages are to be expected under normal conditions and the typical use of the good.

(4)  
In the case of liability for simple negligence the liability of Kürvers in terms of damage to property and resulting further economic loss is limited to an amount of EUR 1,000,000.00 for each claim, even if it is a case of breach of contractual obligations.

(5)  
The above exclusions and limitations apply to the same extent in favor of the institutions, legal representatives, employees and other agents of Kürvers.

(6)  
The limitations of § 10 shall not apply to the liability of Kürvers for deliberate conduct, injury to life, limb or health or to the product liability law.

## **§ 11 Retention of title**

(1)  
Kürvers reserves the ownership of the goods delivered until full payment of all claims from the contract.

(2)  
Kürvers is entitled to repossess the goods if the customer breaches the contract.

(3)  
The customer may not without prior written consent of Kürvers sell the goods that have been supplied under reserved commodity. The customer now assigns in the event of any resale the claims from the resale to the extent of the purchase price to be paid to us plus a premium of

20%. Kürvers hereby authorizes the customer to collect the assigned claims in the ordinary course of business and we may revoke this authorization in the event of default by the customer at any time.

(4)

In case the the buyer of the customer pays by check, the ownership of the check is transferred to Kürvers when it goes to the customer. If payment is executed by draft, the customer hereby assigns the rights granted to him to Kürvers in advance. The transfer of these documents will be replaced with the customer keeping them for Kürvers, or if he does not obtain immediate possession of them, assigning his claim against a third party hereby in advance. He will deliver these papers, provided with its endorsement, immediately to Kürvers.

(5)

If Kürvers claims the retention of title, this shall only be considered as a withdrawal from the contract, if Kürvers declares this expressly in writing. The customer's right to possess the subject goods expires if he does not fulfill its obligations under this or any other contract.

(6)

As long as the ownership has not passed to him, the customer is obliged to treat the goods with care. In particular, he is obliged to insure them at replacement value against theft, fire and water damage at his own expense. If maintenance and inspection work is carried out, the purchaser has to run them at his own expense. As long as the ownership has not been transferred to Kürvers, the customer must notify Kürvers immediately in writing if the delivered goods are seized or if there is any other interference by third parties. If the third party is not able to reimburse Kürvers for the judicial and extrajudicial costs of a claim under § 771 ZPO (German Civil Procedure Code), the customer is responsible for the loss of Kürvers.

(7)

Handling and processing of the goods delivered under retention of title take place for Kürvers as a manufacturer within the meaning of § 950 BGB, without obliging Kürvers. The processed goods are considered reserved property for the purposes of paragraph (1). In case of processing, and combination of goods with other goods by the customer Kürvers remains the owner of the new object in proportion of the invoiced value of reserved property goods to the invoiced value of other used goods. In case the property of Kürvers shall lapse by combining or mixing, the customer transfers to us now his ownership rights in the new stock or item to the extent of the value of the goods and shall keep them free of charge. The resulting co-ownership shall be considered as subject goods as defined in section 1.

(8)

Kürvers shall immediately be informed by the customer about a seizure or other interference by third parties.

(9)

If the value of existing securities exceeds the secured claims by more than 20 per cent, Kürvers is obliged to release securities of its choice at the request of the customer.

(10)

The customer may neither pledge the delivery item nor assign it to security.

(11)

If this property is not valid or not executable because of the prevailing legal system abroad, the customer commits himself to granting Kürvers security rights (mortgages, credit assignments, etc.) which come as close as possible to the purpose of retention of title.

## § 12 Final provisions

(1)

Jurisdiction for any disputes arising from the business relationship between Kürvers and the customer is at the discretion of Kürvers either Dusseldorf or the office of the customer. For complaints against Kürvers, Dusseldorf is the exclusive jurisdiction. Mandatory legal provisions on exclusive jurisdiction remain unaffected by this regulation.

(2)

The relationship between Kürvers and the customer is subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3)

Should the contract or these general terms contain loopholes, such regulations shall apply that the parties would have agreed on according to the economic objectives of the contract and the purpose of these General Conditions, if they had been aware of the omission.

Note:

The Customer takes note and agrees that Kürvers stores data from the contract pursuant to § 28 Bundesdatenschutzgesetz (German Federal Data Protection Act) for the purposes of data processing and reserves the right to transmit the data if necessary to fulfill the contract, (eg insurance companies).