

General Terms of Delivery and Payment

Version: February 2011

§ 1 Scope of these General Terms of Delivery and Payment

1. All business transactions of KARWEG GmbH & Co. KG, in the following referred to as KARWEG, and the purchaser, customer or orderer, in the following referred to as the Customer, shall be governed exclusively by these General Terms of Delivery and Payment, complementary to the other contractual arrangements.

KARWEG does not accept any other terms and conditions, even in case of unconditional service provision or acceptance of payment, unless their validity is expressly agreed to by KARWEG in writing.

2. These General Terms of Delivery and Payment shall also apply for all future business transactions without another inclusion, until KARWEG provides new General Terms of Delivery and Payment.

§ 2 Consulting

KARWEG will provide consultation to the Customer only at the Customer's express request. The failure to make any statements does not constitute consultation.

KARWEG's consultation services are based exclusively on empirical values from KARWEG's own company, and include the current state of science and technology without any commitment.

Consultation provided by KARWEG exclusively extends to the quality of their own products, but not to their use at the Customer or the Customer's other customers; any consulting that has nevertheless been provided on the application at the Customer is non-binding.

Consultation provided by KARWEG as product and service-related consultation exclusively extends to the products and services provided by KARWEG: Contract-dependent consulting.

It does not extend to consulting independent from the contract, meaning such statements that are given without any services being provided by KARWEG.

§ 3 Contract Conclusion

1. Offers of KARWEG are subject to change and non-binding, they are considered to be an invitation to submit an offer. Specifications in brochures, catalogues and other documents belonging to the offers are without obligation; they do not release the Customer from carrying out own checks.

2. As a basic principle, the order placed by the Customer constitutes the offer to conclude the contract.

All information on execution of the order must be provided in the order. This shall apply for all deliveries, services and work performances of KARWEG.

Missing, faulty or incomplete information are expressly considered as not agreed, and do not give reasons for any obligations of KARWEG, neither within the meaning of claims to performance and warranty, nor within the meaning of claims for damages.

If the order placed by the Customer should deviate from KARWEG's offer, the Customer shall separately indicate the deviations.

3. KARWEG is authorised to obtain further information serving for proper performance of the order.

4. Orders shall be placed in writing; orders submitted by telephone or other electronic means will be executed at the Customer's risk.

5. If the Customer withdraws a placed order, KARWEG may, without prejudice to the possibility of asserting an actually higher damage, charge 10% of the delivery or service price for the costs incurred by order processing and for the lost profit. The Customer has the right to provide evidence of lower losses.

Prior to release of the samples, the Customer shall bear the costs for the initial set of tools, and after release of the samples – depending on the planned monthly requirement – the costs for serial tools, special equipment and gauges.

The processed tools will be retained for up to four weeks after they have been invoiced to the Customer. After this deadline, KARWEG may freely dispose of such tools.

6. The order shall be accepted within 10 working days after receipt of the order, unless an extended acceptance period has been scheduled.

7. The services of KARWEG are indicated in the order acknowledgment.

8. Samples will be provided to the Customer against additional charge of the applicable prices.

9. KARWEG reserves the right to perform or have performed the processing of the delivery or service items in another enterprise, without extra costs for the Customer.

§ 4 Changes to Orders

1. If after conclusion of a contract the Customer wishes to make changes to the delivery or service item, this shall require a separate contractual agreement.

2. In case of missing or faulty information, KARWEG reserves the right to make reasonable changes to the delivery or service item. Detriments due to missing or faulty information, in particular additional costs or damages, shall be borne by the Customer.

3. Technical changes of the delivery or service item that do not jeopardise the contractual purpose are reserved.

§ 5 Delivery Time and Scope of Delivery

1. If a delivery time or performance period has been agreed, it shall start upon dispatch of the order acknowledgment, however not prior to full clarification of all order details and proper performance of all cooperation duties of the Customer; the same shall apply for delivery or performance deadlines.

If the object of the order has been amicably changed, delivery times or performance periods and delivery or performance deadlines must be re-agreed.

This shall also apply if new negotiations have been made on the object of the order after conclusion of the contract, without any changes made to the object of the order.

2. Delivery times or performance periods and delivery or performance deadlines are subject to faultless and timely previous delivery and unforeseeable production failures.

3. The delivery time or performance period is met if the delivery or service item has left the KARWEG plant or KARWEG has announced its completion ready for collection until expiry of the delivery time or performance period.

4. If the delivery or service is delayed by the Customer, KARWEG may charge storage costs for each started month, in the amount of 0.5% but not more than a total of 5% of the price for the delivery or service.

The contractual parties have the right to prove higher or lower storage costs.

KARWEG is entitled to determine a suitable storage location at the Customer's expense and risk, and to insure the delivery or service items.

5. KARWEG is entitled to perform the agreed delivery or service already prior to the agreed deadline.

6. Partial deliveries or services are admissible and can be invoiced separately.

7. Deliveries with 10% more or less of the ordered quantity are admissible.

8. Call orders must be called with in 6 months and will be charged according to the applicable prices of KARWEG.

9. Tools manufactured for the Customer will be retained for up to one year after the last delivery to the Customer. After this time, KARWEG may freely dispose of the tools.

§ 6 Force Majeure

In cases of force majeure, the delivery times and performance periods of KARWEG will be extended by the duration of the occurred interruption.

This includes but is not limited to business interruptions, strikes, lockout, traffic congestions, instructions of higher authorities to KARWEG or the upstream suppliers.

This shall also apply if KARWEG was already in default when these circumstances occurred.

KARWEG shall immediately inform the Customer on the beginning and end of such obstacles.

If the delivery or service are delayed by more than six weeks, both the Customer and KARWEG are entitled to withdraw from the contract with regard to the scope of services affected by the impairment of performance.

§ 7 Prices and Payment

1. Unless agreed otherwise, the agreed prices shall be in Euro ex works, including loading at the factory, plus VAT, freight, packaging and transport insurance costs as well as other shipping costs.

KARWEG will insure the goods to be dispatched only at the Customer's express written request and at the Customer's expense.

2. KARWEG is entitled to reasonably modify the agreed price if cost increases should occur after conclusion of the contract, in particular due to collective agreements, material or energy price changes.

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3. KARWEG is entitled to reasonably modify the agreed price if changes occur before or during performance of the order because the information and documents made available by the Customer were faulty, or because the Customer requests any other changes.

4. KARWEG is entitled to demand a reasonable advance upon contract conclusion. No interest will be paid.

5. Invoices shall be due for payment immediately upon their receipt by the Customer. They shall be paid into KARWEG's designated accounts no later than 30 days after the invoice date, also in case of partial deliveries. In case of payment within 10 days after the invoice date, a discount of 2% is granted.

6. KARWEG expressly reserves the right to accept bills or cheques. Subject to KARWEG's approval, bills and cheques are accepted only on account of performance, and shall be considered as payment only after unconditional crediting.

7. If KARWEG has several unsettled claims the Customer and if payments of the Customer are not made for a certain claim, KARWEG is entitled to define for which unsettled claim the payment has been made.

8. In case of delay in payment, respite or partial payment, KARWEG is entitled to request default interest in the amount of 8 percentage points p.a. above the respective base interest rate, and to withhold further performances until settlement of all due invoices. The proof of higher losses is reserved.

9. In case of justified doubts about the Customer's solvency or creditworthiness, KARWEG is entitled to claim advance payment or a suitable guarantee for the service to be provided by the Customer.

If the Customer is not willing to pay in advance or provide the guarantee, KARWEG is entitled after expiry of a reasonable grace period to withdraw from these contracts and claim damages for non-performance.

10. Payment targets will be cancelled and accounts receivable will be immediately due for payment if the opening of insolvency proceedings on the Customer's assets are requested, or if the Customer has given incorrect information on its creditworthiness, or if any other justified doubts have occurred about the Customer's solvency or creditworthiness.

11. The Customer is only entitled to set off its claims with the claims of KARWEG if the counterclaim has been acknowledged or legally established.

The assignment of claims against KARWEG requires KARWEG's approval.

12. The Customer only has a right of retention if the counterclaim is based on the same contractual relationship and has been acknowledged or legally established. If any performance of KARWEG is indisputably defective, the Customer has a right of retention only to the extent that the retained amount is in a reasonable proportion to the defects and the anticipated costs for correction of the defect.

13. The payment deadlines will also remain effective if the delivery is delayed without the fault of KARWEG.

14. Tool costs will be charged separately.

15. In case of first orders, KARWEG is entitled in addition to the contractually agreed prices for the delivery item to charge reasonable and customary non-recurring programming and scaffolding costs.

§ 8 Place of Performance, Acceptance, Passage of Risk, Packaging

1. Place of performance for the ordered services shall be the factory of KARWEG. Unless agreed otherwise in writing, the Customer shall collect the goods there after completion has been announced.

2. The Customer is obligated to accept the goods as soon as it has been informed by KARWEG on the completion of the ordered services.

If the Customer does not accept the service within 2 weeks after notification, the acceptance shall be considered as performed.

3. The risk of destruction, loss or damage of the goods passes to the Customer upon the notification of completion of the goods.

If shipment has been agreed, the risk shall pass upon dispatch of the goods or their handover to the engaged carrier.

4. Unless agreed otherwise, KARWEG shall determine the type and extent of the packaging. Disposable packagings will be disposed of by the Customer.

5. If the goods are shipped in returnable packagings, they shall be returned carriage paid within 30 days after receipt of the delivery. The Customer will be responsible for any loss and damage of the returnable packagings.

Returnable packagings must not be used for any other purposes or as a receptacle for other objects. They are intended only for transport of the delivered goods. Labels must not be removed.

6. If the goods are lost or damaged during transport, an inventory must be taken immediately and KARWEG must be informed. Claims arising from transport damages must be immediately asserted to the carrier by the Customer.

§ 9 Duty to Examine and Notify Defects

1. Deliveries and services of KARWEG must be immediately inspected, and in case of a defect a notice of defect must be immediately given. The provisions of § 377 German Commercial Code as well as comparable foreign provisions shall apply. Services and work performances shall be governed by the provisions of § 377 German Commercial Code correspondingly. Notices of defects must be made in writing.

2. The use of faulty deliveries or services is inadmissible. If a defect could not be identified at receipt of the goods or service performance, any further use of the delivery or service item must be discontinued immediately after identification.

3. The Customer shall make the reprimanded goods available to KARWEG and will grant the time required to inspect the notified defect. In case of unjustified complaints, KARWEG reserves the right to charge the Customer with the incurred examination expenses.

4. The notice of defects does not release the Customer from performing its payment obligations.

5. If part of the delivered goods is defective, this does not entitle the Customer to complain about the entire delivery, unless the partial delivery is without interest for the Customer.

§ 10 Warranty

1. If any delivery or service items of KARWEG are defective, KARWEG is entitled at its own choice to remove the defect, deliver a substitute or credit the account. Substituted delivery or service items will become the property of KARWEG.

2. After agreement with KARWEG, the defect may also be rectified by the Customer. Claims of the Customer due to the expenses required for supplementary performance, in particular transport, infrastructure, labour costs and costs of material, are excluded to the extent that the expenses increase because the goods have subsequently been brought to another place than the Customer's place of business.

§ 11 Defects of Title, Proprietary Rights

1. Orders according to drawings, sketches or other information submitted to KARWEG will be performed at the Customer's risk. If KARWEG should infringe any third-party proprietary rights as a result of the performance of such orders, the Customer shall indemnify KARWEG against claims of these holders of the right. Any further damages shall be borne by the Customer.

2. KARWEG's liability for the violation of any proprietary rights in connection with the application of the delivery or service items or with the connection or use of the delivery or service items with other items shall be excluded.

3. In case of defects of title, KARWEG shall be entitled at its option:

- to obtain the required licences with regard to the infringed proprietary rights;
- or remove the defects of the delivery or service item by making available a delivery or service item that has been modified to an extent acceptable for the Customer.

If this is not possible for KARWEG at reasonable and acceptable conditions, both the Customer and KARWEG are entitled to withdraw from the contract.

4. KARWEG's liability for the violation of third-party proprietary rights shall only extend to those proprietary rights that are registered and published in Germany.

§ 12 Liability

1. In case of simple negligence, KARWEG shall only be liable if a material contractual obligation has been infringed. In case of grossly negligent behaviour, KARWEG shall be liable also if non-material contractual obligations have been infringed.

Liability is limited in the cases mentioned above to the damage that is foreseeable for this type of contract.

2. Claims for damages due to intentional violation of contractual obligations by KARWEG, claims due to personal injuries and claims under the Product Liability Act shall be governed by the statutory provisions.

3. For tortious claims KARWEG shall be liable in accordance with the contractual liability.

4. Any further liability for damages exceeding the regulations above is excluded.

In particular no liability is assumed for damages resulting from unsuitable and/or improper use, faulty assembly by the Customer or third parties, natural wear and tear, faulty or negligent treatment or chemical or electric influences being within the Customer's responsibility.

No liability is assumed also for the consequences of modifications or repairs performed by the Customer in an inappropriate manner or without the approval of KARWEG.

5. Recourse claims of the Customer to KARWEG shall exist only to the extent that it has not made any arrangement with its customer exceeding the statutory claims based on defects and claims for damages.

6. KARWEG's liability is excluded if the Customer on its part has effectively limited its liability to its customer.

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7. To the extent that KARWEG's liability is excluded or limited, this shall also apply for the personal liability of KARWEG's wage earners, employees, staff, representatives, vicarious agents and assistants.

8. To the extent that liability is excluded or limited according to the provisions above, the Customer is obligated to indemnify KARWEG also against claims of third parties upon first request.

9. Apart from that the statutory provisions shall apply.

10. The Customer is obligated to immediately inform KARWEG in writing on any claims asserted by third parties, and reserve all defensive measures and settlement negotiations to KARWEG.

§ 13 Used Goods

The disposal of used parts shall be the Customer's responsibility. If statutory provisions are adopted that stipulate something else, the Customer undertakes to make a suitable agreement with KARWEG with regard to the disposal. For this purpose, it shall be assumed that the contracting partners will use the recycling obligation of third parties for performance.

§ 14 Statute of Limitations

1. The statute of limitations for claims and titles due to defects of the products, services and works of KARWEG as well as the resulting losses shall be 12 months. The start of the limitation period shall depend on the statutory provisions.

This shall not apply if the law prescribes longer periods in case of §§ 438 par. 1 no. 2, 479 and 634 a par. 1 no. 2 German Civil Code.

2. The limitation period according to the previous section 1 shall not apply in case of intent, if KARWEG has fraudulently concealed the defect, in case of claims for damages due to personal injuries or freedom of a person, for claims under the Product Liability Act and in case of grossly negligent violation of duty.

3. Measures for supplementary performance shall not suspend the limitation period applicable for the original service performance, nor let the limitation period start anew.

§ 15 Acquisition of Title, Retention of Title, Lien

1. KARWEG retains ownership in all contract items until full settlement of all accounts receivable of KARWEG from the business relationship with the Customer. KARWEG reserves all property and copyrights in the submitted illustrations, drawings, calculations and other (technical) documents.

2. If any property of KARWEG is processed, connected or amalgamated with third-party property, KARWEG will acquire the ownership of the new item in accordance with § 947 German Civil Code.

3. If processing, connection or amalgamation are done so that the third-party performance is to be considered as principal item, KARWEG shall acquire the ownership in proportion of the value of the KARWEG performance to the third-party performance at the time of processing, connection or amalgamation.

4. To the extent that KARWEG acquires (joint) ownership in any item, KARWEG reserves ownership of this item until settlement of all existing accounts receivable from the business relationship with the Customer.

5. The Customer is obligated to carefully store the goods which are subject to retention of title, and perform maintenance and repair works at its own expense in due time, if necessary. The Customer shall insure the goods which are subject to retention of title at its own expense against loss and damage. Security claims arising in case of damage shall be assigned to KARWEG.

6. The Customer is entitled to sell the item which is (jointly) owned by KARWEG, in its proper course of business, provided that the Customer meets its obligations from the business relationship with KARWEG. In this case, the account receivable from the sale shall be considered as assigned to KARWEG to the extent of the KARWEG performance secured by the retention of title. The Customer remains entitled to collect this account receivable even after the assignment. KARWEG's right to collect this account receivable shall remain unaffected.

7. The Customer's right to dispose of the goods which are under reservation of KARWEG's ownership and to collect the accounts receivable assigned to KARWEG shall cease to apply as soon as the Customer does no longer meet its payment obligations and/or the opening of insolvency procedures is requested. In these aforementioned cases and in case of any other behaviour of the Customer which is contrary to the contract, KARWEG is entitled to take back the goods delivered under reservation of title without any warning.

8. The Customer shall immediately inform KARWEG if the goods of the latter which are under reservation of ownership are at risk, in particular in case of insolvency, inability to pay and enforcement measures. At KARWEG's request, the Customer shall provide KARWEG with all necessary information and documents on the inventory of goods being (jointly) owned by KARWEG and on the accounts receivable assigned to KARWEG, and inform its customers on the assignment. The Customer shall assist KARWEG in all measures required to protect the (joint) ownership of KARWEG, and

shall bear the resulting costs.

9. For all receivables from the contract KARWEG shall have a right of pledge for the items of the Customer that came into the possession of KARWEG on account of the contract. The right of pledge may also be asserted for accounts receivable from previous deliveries or services, provided that they are associated with the delivery or service item.

Other claims from the business relationship shall be subjected to the right of pledge to the extent that this has been recognised or legally established. §§ 1204 contd. German Civil Code and § 50 par. 1 of the Insolvency Act shall apply accordingly.

10. If the realisable value of the securities exceeds the accounts receivable of KARWEG by more than 20%, KARWEG shall insofar at the Customer's request release securities at its own choice.

§ 16 Secrecy

1. The Customer undertakes to keep all aspects of the business relationship secret that are worthy of protection. In particular it shall treat as business secret all not obviously commercial and technical details made available under the business relationship. The obligation of secrecy shall not apply to information or aspects of the business relationship that have already been publicly known at the time of their disclosure, as well as such information or aspects of the business relationship that were demonstrably known to the contracting partner already prior to their disclosure by KARWEG.

The Customer shall ensure that also its staff will maintain the justified secrecy interests of KARWEG.

The Customer will not be granted access to sequence of operations drawings and design drawings of the tools.

2. Duplication of the documents made available to the Customer is admissible only within the framework of the operational requirements and copyright regulations.

3. All documents must not be made fully or partly available to third parties without the written approval of KARWEG, and must not be used outside the purpose for which they have been made available to the Customer.

4. The business relationship with KARWEG or parts thereof must not be disclosed to third parties unless this has been previously approved by KARWEG in writing; the Customer shall commit such third parties to secrecy within the framework of a similar agreement.

The Customer must advertise the business relationship with KARWEG only after previous written approval.

5. Even after the end of the business relationship, the Customer is bound by the obligation of secrecy.

6. The Customer undertakes not to carry out business transactions directly or indirectly with customers of KARWEG corresponding to the object of delivery and service.

§ 17 Applicable law

1. Legal venue shall be at KARWEG's choice either the court having jurisdiction for the registered office of KARWEG or the Customer's place of jurisdiction.

2. Place of performance for the payments from the business relationship to be effected to KARWEG shall be the registered office of KARWEG.

3. The business relationships with the Customer shall be exclusively governed by the laws of the Federal Republic of Germany. The applicability of the CISG ("Vienna Convention") is excluded.

4. If individual parts of these General Terms of Delivery and Payment should be invalid, this shall not affect the validity of the remaining provisions. The contracting partners shall endeavour to replace the invalid provision with another provision that comes as close as possible to the economic purpose and legal meaning of the original wording.

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