

**KEWES FLORISTIK
GmbH & Co. KG**

GENERAL TERMS AND CONDITIONS October 2012

**§ 1
Applicability**

(1) These terms and conditions of KEWES Floristik GmbH & Co. KG (hereinafter referred to as the "Vendor", "we" or "us") apply to all contracts, deliveries and other services in commercial intercourse with entrepreneurs and legal persons under private or public law (hereinafter referred to as "Buyer" or "it"). They also apply to all suggestions, advice and ancillary services made or provided by us.

Any terms or conditions of the Buyer that may be contrary to or diverge from these terms and conditions are hereby expressly opposed.

Any divergences from the present terms and conditions shall only be effective where they are confirmed in writing by us. Counter-confirmations by the Buyer citing its terms of business and/or purchase conditions shall not be valid, even where we have not expressly taken exception to them.

(2) The terms and conditions shall also govern all future business relationships including where this has not been expressly agreed again.

**§ 2
Offer and conclusion of contract**

(1) All offers of the Vendor are subject to change, except where they have been expressly specified as binding.

(2) The sale is always made via the field staff. The field staff shall provide the Buyer with an offer without engagement which is non-binding. By placing the order vis-à-vis the field staff, the Buyer places a binding order vis-à-vis us.

A contract shall be created only in conjunction with a written order confirmation from the Vendor. This shall also apply to additions, amendments or supplementary agreements. The issuance of an invoice and the delivery of the goods to the Buyer is considered as order confirmation.

(3) The scope of delivery is subject to the specifications made in the order confirmation. Drawings, pictures, dimensions, weights or other service data shall not have any binding force unless they are expressly agreed in writing. Any reference to material and the German Industrial Standards (DIN) as well as to other data does not constitute any warranty as to quality. Should any product specification or product illustration contain any decoration items these constitute only examples of articles. We reserve the right to replace the shown decoration items by equivalent decoration items which are equal in value.

(4) The Buyer shall examine if the statements made in our catalogues, brochures and other written records are suitable for its planned application prior to takeover and application. This shall also apply to the selection of suitable materials.

**§ 3
Provided records**

We reserve any property rights, copyrights and other intellectual property rights in the documents made available to the Buyer in connection with the order, in particular calculations, brochures, pictures etc. which were not produced by the Buyer, and in all proposals prepared by us with respect to the design and manufacture of the goods. These documents must not be made available to any third party unless we have given the Buyer our express written consent. If we do not accept the Buyer's offer, these documents including any written and/or electronic copies shall immediately be returned to us, upon our request.

**§ 4
Prices**

(1) Unless expressly agreed in writing, our prices are quoted ex warehouse including the customary packaging plus VAT. The cost of transport shall be borne by the Buyer, unless expressly agreed otherwise in writing.

(2) Should any order-related costs change materially after the conclusion of the contract, the parties shall reach agreement on an adjustment.

(3) Unless a fixed price has been agreed in writing, we reserve the right to reasonable price changes due to changed wage, material and distribution costs for services which are provided 3 months or later after conclusion of the contract. We shall provide evidence of the changed costs upon the Buyer's request.

**§ 5
Terms of payment**

(1) The price shall only be paid into the account set out in the order confirmation or the invoice. Any discount shall only be allowed if expressly agreed in writing.

We are entitled to assign our present and future claims from our business relation to VR FACTOREM GmbH, Ludwig-Erhard-Straße 30 - 34, 65760 Eschborn. In such case we will request you to make payment with indemnifying effect to VR FACTOREM GmbH and you will be obligated to effect payment to VR FACTOREM GmbH. Simultaneously with the assignment of our claims we also transfer our retained title to VR FACTOREM GmbH.

(2) Unless otherwise agreed, payment shall be made immediately after receipt of the invoice without any deductions. If the Buyer falls into arrears with its payments, default interest in the amount of at least 8 percentage points p.a. above the respective base interest rate shall be charged. The Vendor reserves the right to assert any higher damage caused by default, in particular in connection with changes in and the hedging of the exchange rate.

(3) Discountable and properly taxed bills of exchange will only be accepted on account of performance and where this has previously expressly been agreed in writing. Credit notes against bills of exchange and cheques are issued subject to receipt and minus disbursements at the value on the day on which we are able to dispose of the exchange value.

**§ 6
Withdrawal in case of unworthiness of credit**

(1) Where after conclusion of the contract it becomes apparent that our claim to the purchase price is endangered through the Buyer's inability to perform (e.g. due to an application for the opening of insolvency proceedings being filed or any negative information being provided by the credit insurer), all our claims, including those in respect of which we have accepted bills of exchange, shall become due and payable immediately.

In such cases we shall be entitled to provide outstanding deliveries and services only against advance payment or provision of security. This shall apply, in particular, with regard to cost incurred, services to be provided and goods in process as well as completely manufactured goods which have not been delivered yet.

(2) In addition, on the basis of the agreed retention of title in accordance with Clause 14 we can prohibit any resale of the delivered goods and may demand their return or the transfer of indirect possession of the delivered goods at the Buyer's expense and may revoke the Buyer's direct debit authorization towards the reseller. Hereby and as of now, the Buyer authorizes us to enter its premises and collect the delivered

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goods during its usual business hours. Any withdrawal of the goods shall only constitute a rescission if we expressly declare such rescission.

(3) In addition, in accordance with the statutory provisions we are entitled to refuse the provision of services and - if necessary, after having set a time limit - are entitled to withdraw from the contract. In the event of contracts about the manufacture of specific items (*unvertretbare Sachen*) (manufacture to customer's specification) we shall be entitled to withdraw immediately; the statutory provisions on the dispensability of setting a time limit shall remain unaffected.

**§ 7
Off-setting of claims and rights of retention**

The Buyer shall only be entitled to set off if its counterclaims awarded under a final court decision or which have not been contested. The Buyer may only exercise a right of retention if its counterclaim is based on the same contractual relationship and was awarded under a final court decision or has not been contested.

**§ 8
Delivery time, default**

(1) Delivery dates and time limits are non-binding and are only considered as expected date of delivery unless we have expressly declared a date or time limit as binding by written statement.

The delivery term starts upon issuance of our order confirmation, however, not before receipt of an agreed advance payment; a prerequisite of the delivery term is the proper clarification of all technical and commercial issues and all other obligations to be fulfilled by the Buyer in due time. The defence of lack of performance of the contract remains reserved. This shall apply analogously to delivery deadlines. Delivery dates before the expiry of the delivery term and reasonable partial deliveries are admissible. The day on which readiness to dispatch is declared is considered as date of delivery, otherwise the dispatch date.

(2) The Buyer shall ensure that at the delivery date staff will be available to accept the goods and to countersign the delivery note. Otherwise, the Buyer may not claim that the delivery note was not signed and the goods were not delivered properly.

(3) If the Buyer is in default of acceptance or violates other obligations to cooperate culpably we shall be entitled to demand the Buyer to make good the damage caused including any additional expenditures. If the above requirements are met, the risk of accidental loss or deterioration of the ordered item shall pass to the Buyer at the point of time at which the Buyer has been in default of acceptance or payment. Further claims remain reserved.

(4) Notwithstanding our rights in case of the Buyer's default, agreed delivery terms and dates shall be extended or postponed by the period the Buyer is behind schedule with its obligations. If we do not perform in time, the Buyer may give a suitable deadline and may withdraw from the contract according to the statutory provisions after expiry of that deadline.

(5) In case of delivery contracts on call which are not called or divided by the Buyer in due time we shall be entitled to assign the goods ourselves and deliver them or withdraw from that part of the delivery contract which is in arrears.

**§ 9
Force majeure and other disturbances**

(1) In the event of force majeure and unforeseen events for which we are not responsible we shall be entitled to postpone delivery by the duration of the disturbance and a reasonable starting period or to withdraw from the contract, in whole or in part, due to the portion of the contract which has not been fulfilled. Events of force majeure are events like strikes, lockouts or unforeseeable circumstances, e.g. business disruptions, which make it impossible for us to deliver in due time despite reasonable efforts. We shall be obliged to provide evidence for this. This shall also apply if the above disturbances occur at our suppliers or sub-suppliers or during transport until the agreed handover of the goods or during default.

(2) The Buyer may demand to be provided with a statement as to whether we will withdraw or wish to deliver within a reasonable grace period, such statement to be provided within 2 weeks. Failing such statement, the Buyer may withdraw from that part of the contract which has not been fulfilled.

**§ 10
Indemnification against liability**

The specimens, marks, models, drawings, descriptions, documentation and other items made available to us by the Buyer shall be free of any third party rights. The Buyer guarantees that no industrial property rights are violated. Additionally, the Buyer guarantees that the ordered goods are in accordance with the statutory and government regulations and requirements to the extent that they meet the requirements of the Buyer. The Buyer indemnifies the Vendor against any damage claims of third parties in this respect.

**§ 11
Samples, weights, quantities**

(1) Articles which are made available as samples are only illustrative material which serves to illustrate the service. Such articles do not create any warranty as to quality.

(2) Deviations in dimensions, weights and quantities are admissible within the scope of customary tolerances set out in the relevant German Industrial Standards and requirements in terms of production technology.

(3) Our delivery weights and quantities are decisive for calculation.

**§ 12
Safekeeping**

We shall keep the goods made available to us by the Buyer with the necessary diligence. Subject to Clause 17, no liability is accepted for damage to the goods made available which is caused by natural deterioration or which is caused at the goods to be processed despite having used the necessary diligence.

**§ 13
Packaging, dispatch, transport risk**

(1) Unless otherwise agreed, the goods shall be packed in customary packaging and sent to the customer at our discretion. The Vendor shall determine the dispatch route and means. The Buyer shall take out insurance for the goods at its expense.

(2) Goods reported ready for takeover shall be taken over immediately if they are not intended for dispatch to the Customer. If no takeover occurs we shall be entitled to forward the goods or to store them at

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the Buyer's expense and risk. The latter shall also apply if any dispatch we have taken over cannot be carried out without our fault. The goods are deemed delivered one week after the commencement of the storage.

(3) The Buyer shall assume the risk of transport. Any risk shall pass to the Buyer - even in cases in which we have taken over delivery - upon handover to train, forwarding agent or carrier or one week after commencement of storage, however no later than upon departure from the warehouse. This shall apply irrespective of whether the dispatch of the goods is made from the place of performance and/or of who will bear the freight costs.

(4) The transport containers in which the goods are stored upon delivery (e.g. CC-trucks, Euro-CC-trucks, euro pallets, mesh boxes etc.) shall be returned immediately after delivery.

**§ 14
Retention of title**

(1) We reserve title to all delivered goods (goods subject to reservation) until all claims are settled, in particular any outstanding balance claims to which we are entitled in connection with the contractual relationship. This shall also apply, if payments are made in respect of outstanding balances which are described specifically. In addition, this shall also apply to all future deliveries, even in cases in which we do not expressly refer thereto.

(2) The Buyer shall be obligated to treat the purchase object carefully, in particular in respect of the perishable nature of the goods, and to protect it against adverse weather conditions. As long as the ownership has not passed, the Buyer shall notify us immediately in writing if the delivered item was seized or is exposed to other third party interventions. Inasmuch as the third party is not able to reimburse us for any court and extrajudicial costs incurred for any action according to 771 German Code of Civil Procedure (*Zivilprozessordnung* - "ZPO"), the Buyer shall be liable for any loss we have incurred.

(3) If the Buyer is not in default, it shall be entitled to resell the goods subject to reservation in the ordinary course of business at its usual terms and conditions if any claims resulting from resale will pass to us in accordance with para (4) and (5).

(4) Hereby and as of now, the Buyer assigns all claims against the purchaser or any third party resulting from the resale of the goods subject to reservation in the amount of the final invoice amount agreed with us (including VAT) plus a security surcharge in the amount of 10%. This assignment shall be effective, irrespective of whether the object of purchase was resold without or after processing or blending. The Buyer shall remain authorised to collect the claim also after assignment. Our right to collect the claim ourselves shall remain unaffected. However, we will not collect the debt as long as the Buyer meets its payment obligations resulting from the collected proceeds, if it is not in default of payment and, in particular, if no application for the introduction of insolvency proceedings was filed or if suspension of payments occurred. The Buyer shall at no rate be entitled to assign any claims to third parties.

(5) If the Buyer fails to meet its payment obligations, defaults in payment, suspends payment or in case an application for the introduction of insolvency proceedings is filed, the Buyer shall immediately notify us. We may demand the Buyer to advise us of the assigned claims and their debtors, to furnish all information required for collection, to provide us with the relevant records and advise the debtors (third party) of the assignment. If the Buyer has failed to meet its payment obligations vis-à-vis us all existing claims shall become immediately due.

(6) We undertake, at our choice, to release securities owed to us at the Buyer's request insofar as the realisable value of our securities does exceed the value of its claims by more than 20%.

(7) It shall not be required to withdraw from the Contract in case rights in connection with retention of title are asserted.

**§ 15
Factoring**

(1) We explicitly reserve the right vis-à-vis the Buyer to sell claims we are entitled to under the contractual relationship with the Buyer, for any legal ground whatsoever they may exist, within the scope of factoring to persons acting commercially or privately, i.e. we shall be entitled to assign the claims from our business relations.

(2) After notification of the assignment of the claim, the Buyer shall only be released from its debt by making payment to the assignee.

**§ 16
Warranty and notification obligation (*Rügeflicht*)**

(1) The statutory regulations shall apply to the Buyer's rights in the event of defects of quality and title, unless otherwise provided for below.

(2) Our liability for defects shall primarily be based on the agreement concluded in respect of the quality of the goods.

(3) Where such quality has not been agreed, it has to be judged in accordance with the statutory provisions as to whether any defect exists or not (section 434 para 1 sentence 2 and 3 German Civil Code (*Bürgerliches Gesetzbuch* - "BGB")). We do not assume any liability for statements of the manufacturer or other third parties (e.g. advertising messages).

(4) The Buyer shall only have the right to claim for defects where it has fulfilled its inspection and notification obligations (§§ 377, 381 of the German Commercial Code (*Handelsgesetzbuch* - "HGB")). If upon inspection or at a later time a defect occurs, it shall immediately be notified hereof in writing. Irrespective of this inspection and notification obligation, the Buyer shall notify in writing any obvious defects (including false or short delivery) within 12 hours from delivery; whereby the pertinent date for the timeliness of the payment will be the timely forwarding of the notification. If the Buyer fails to carry out the proper inspection and/or to notify of the defects we do not assume any liability for the defect not notified.

(5) If the goods supplied are defective we may, at our discretion, choose whether we make supplementary performance by replacing the defective goods (subsequent improvement) or by delivery of goods which are free of defects (compensation delivery). Our right to refuse supplementary performance under the statutory provisions shall remain unaffected.

(6) We are entitled to make the subsequent performance dependant on whether the Buyer has paid the owed purchase price. The Buyer shall however be entitled to retain a portion of the purchase price which is reasonable in proportion to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods about which complaints were received for inspection purposes. If a compensation delivery is made, the Buyer shall return the defective item in accordance with the statutory provisions.

(8) We shall bear all expenses incurred for inspection and subsequent performance, in particular all transport, travel, labour and material costs, if a defect does actually exist. If any request to remove defects

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of the Buyer turns out to be unjustified we may demand the Buyer to be reimbursed for any costs incurred in this respect.

(9) Should any subsequent performance have failed or any reasonable time limit set by the Buyer for subsequent performance has expired without success or is dispensable under the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. §§ 281 para 1 sentence 2 and 3, 323 para 5 BGB shall remain unaffected.

(10) The Buyer shall only have damage claims or claims for the reimbursement of unjustified expenses in accordance with Clause 17; otherwise, such claims shall be excluded.

(11) The Buyer may only withdraw from or terminate the contract due to a breach of duty which does not constitute a defect if we are responsible for such breach of duty. Any free right of termination of the Buyer (in particular in accordance with sections 651, 649 BGB) shall be ruled out.

**§ 17
Liability and damages**

(1) The Vendor shall only be liable if it or any of its vicarious agents has caused the damage by intent or gross negligence.

(2) The Vendor shall only be liable for simple negligence if a material contractual obligation has been violated. Material contractual obligations are those the violation of which endangers the object of the contract because those rights of the Buyer are thus taken or restricted which the Vendor is meant to be granting it under the terms of the contract. The amount of any liability for the violation of such material contractual obligation shall be limited to the damage which may reasonably be foreseen at the time the contract is concluded.

(3) Any claims in relation to warranty, injury to life, limb or health and under the German Product Liability Act (*Produkthaftungsgesetz* - "ProdHaftG") or other liability legislation shall remain unaffected.

**§ 18
Limitation**

(1) In derogation of § 438 para 1 no 3 BGB, the general limitation period for claims resulting from defects of quality and title shall be one year from delivery. If formal acceptance is agreed, the limitation period shall start upon formal acceptance.

(2) Clause 18 para 1 shall not apply, where longer periods are mandatory under legislation.

(3) The above limitation periods of purchase law shall also apply to contractual and extra-contractual damage claims of the Buyer which are based on a defect of the goods unless the application of the regular statutory limitation (§§ 195, 199 BGB) would lead to a shorter limitation period in any specific case. The limitation periods of the Product Liability Act shall always remain unaffected. Buyer's damage claims shall otherwise exclusively be governed by the statutory limitation periods in accordance with Clause 17.

**§ 19
Miscellaneous**

(1) These terms and conditions shall be governed by the law of the Federal Republic of Germany, the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

(2) Exclusive place of jurisdiction for any disputes shall be the Regional Court of Cologne, unless another exclusive place of jurisdiction applies and unless otherwise agreed in the order confirmation. We are however entitled to take action against the Buyer at its general place of jurisdiction.

(3) If any provision in these terms and conditions is or becomes invalid, or should contain a gap, this shall not affect the validity of any other provisions hereof. Any contractual gap shall be filled by such provisions the parties would have agreed in accordance with the economic purpose of the contract and these terms and conditions had they recognised the gap in the first instance.

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