

# AKG Thermotechnik GmbH & Co. KG · 34369 Hofgeismar

## General Terms and Conditions of Sale

### 1. General – Scope of Application – Conclusion of contract

- (1) Our Conditions of Sale shall apply exclusively. We shall not accept any terms or conditions of the Buyer that conflict with or differ from our Conditions of Sale unless we have expressly agreed in writing to their application. Our Conditions of Sale shall also apply to all future transactions with the Buyer even if we deliver unconditionally in the knowledge that terms and conditions of the Buyer conflict with or differ from our Conditions of Sale.
- (2) All agreements between us and the Buyer for purposes of executing the Contract shall be mutually agreed in writing. Individual agreements shall have priority in case of conflict.
- (3) Our offers are basically subject to change. To this extent, we are committed only on the basis of our written order confirmation. If our offers are binding they must be accepted by the Buyer within 30 days of receipt.

### 2. Prices – Terms of payment – Invoicing

- (1) Unless otherwise stated on our offer, our prices are "EXW" (in accordance with Incoterms 2020) excluding packaging; this will be invoiced separately. Insofar as price validities are stated in our offers, these refer to the respective time of delivery and not to the time of conclusion of the contract. If the delivery is made within a continuing obligation, the price list valid at the time of delivery shall apply. We reserve the right to adjust our price lists regularly. In particular, any labour cost adjustments, material price changes, surcharges and reworking costs, energy cost adjustments and other cost changes shall be considered appropriately. We also reserve the right to adjust the price lists or individual supply contracts before the end of the price validity in the event of the discontinuation of the basis of the contract or in the event of other extraordinary events that could not be foreseen when the contract was concluded.
- (2) Our prices do not include statutory value added tax; this will be shown separately on the invoice at the statutory rate applicable on the date of invoicing.
- (3) Unless otherwise stated on the order confirmation, the purchase price is due for payment net (without discount) within 30 days of date of invoice. Discounts require a separate written agreement. The timeliness of the payments shall be determined by the date on which we receive payment. The legal regulations covering the consequences of default shall apply. In the event of delayed or deferred payment, we are entitled to charge the respective applicable statutory interest rate on default. We reserve the right to assert further damages on default. In addition, we are entitled to hold back all deliveries or services until payment is received in full.
- (4) The Buyer shall only be entitled to offset counterclaims or withhold payments to the extent that his counterclaims (i) are undisputed or have been established with legally binding effect, or (ii) are ready for decision after his pendens, or (iii) are in a reciprocal relationship to our claim. The Buyer and shall only be entitled to exercise a lien if its counterclaim is based on the same contractual relation.
- (5) In the event that, prior to or upon conclusion of the contract, we become aware of circumstances which raise questions about the Buyer's creditworthiness, or in the event of a substantial risk to our claim for payment due to a deterioration in the Buyer's assets, or if the Buyer is in default with the payment of the purchase price, then we may demand advance payment or security with a reasonable deadline and refuse performance until its request or the payment entitlement have been fulfilled. In case of a refusal of the Buyer or unsuccessful expiry of the deadline, we are entitled to cancel the contract in whole or in part and to demand compensation in place of performance.

### 3. Delivery

- (1) The delivery period advised by us does not start until all technical and commercial questions have been clarified (for example, the final coordination of the technical specification and/or a drawing release on the part of the Buyer). Furthermore, it is necessary that any agreed down payments, advance payments, or other obligations of the Buyer are available or have been fulfilled in due time; agreed delivery and service deadlines shall only apply under these prerequisites. If this does not take place, the delivery deadline shall be extended adequately. This shall not apply insofar as we are responsible for the delay.
- (2) Any delivery of goods (inclusive the associated technology) is subject to the provision that performance does not conflict with any national or international export control regulations (including any applicable trade or economic sanctions and embargoes especially but without limit those of the European Union, Germany, the USA and the United Nations). Delays due to export examinations or permission procedures shall set aside any time limits and delivery periods. If necessary permissions are not granted, or if the delivery and service is not capable of being permitted, the contract with regard to the concerned parts shall be deemed as not concluded.
- (3) Compliance with our obligation to deliver is also dependent on due and prompt fulfilment of the Buyer's obligation. We reserve the right to invoke failure to fulfil the contract.
- (4) Should the Buyer be in default of acceptance or in breach of other obligations to cooperate or should the original delivery date be postponed at the request of the Buyer, we are entitled to demand compensation for the losses incurred, including any additional expenses. We reserve the right to assert further claims.
- (5) Provided that one of the conditions of paragraph (4) is fulfilled, the risk of accidental destruction or deterioration of the goods shall pass to the Buyer

on the date when the delivery date is due or the Buyer is in default of acceptance or payment.

- (6) The delivery period shall be extended in case of force majeure or other events, which are beyond our scope of influence, e.g., fire, explosion, landslide, earthquake, storm or other adverse weather conditions, war (whether declared or not), revolution, civil or military action, riot, blockade, embargo, trade sanctions, terrorism, sabotage or civil disturbance, epidemic, pandemic or quarantine restrictions, labour disputes (incl. strikes and lockouts), delays in the delivery of essential raw materials, difficulties with energy supply. We shall inform the Buyer of the start and the end of such circumstances as soon as possible. If the aforementioned events last longer than six months, both contractual parties are entitled to cancel the contract with regard to the part, which has not yet been fulfilled. We are not obliged to substitute procurement. Claims for damages of the Buyer against us due to the previously mentioned impediments are excluded.
- (7) We are liable under the legal provisions if the underlying contract of sale is a firm transaction within the meaning of § 286, Para.2, No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB). We are also liable under the legal provisions if the Buyer, as a result of default of delivery on our part, is entitled to claim that it is no longer interested in the continued performance of the contract.

### 4. Transfer of risk – Packaging

- (1) Unless otherwise stated in the order confirmation, the goods shall be delivered EXW (in accordance with Incoterms 2020). In this case, dispatch shall be at the Buyer's risk and expense. If dispatch is delayed for reasons for which the Buyer is responsible, the risk passes to the Buyer on the date on which the goods are made available; we are entitled to charge for the storage costs incurred, which, for storage at our works, are at least 1.5% of the invoice value per month.
- (2) Our packaging is classified as not system-relevant packaging within the meaning of the German Packaging Act ("Verpackungsgesetz"). If the Buyer requests us to take back transport, sales and outer packaging, the return transport shall be at the Buyer's expense and risk. If we are not able to reuse the returned packaging, the Buyer shall bear all disposal or recycling costs incurred by us. If the above packaging remains with the Buyer, the Buyer shall be obliged to dispose or recycle it in accordance with the statutory regulations at its own expense. Reusable packaging shall be returned to us by the Buyer free of charge. We will invoice reusable packaging if not returned to us in due time. Our claim to demand return or invoicing of reusable packaging shall not become time-barred before the expiry of the regular limitation period pursuant to the German Civil Code (BGB).

### 5. Liability for defects

- (1) Claims for defects raised by the Buyer require the Buyer to have duly complied with its obligations to examine and object to defects pursuant to § 377 of the German Commercial Code (HGB). Any defect discovered during examination or later shall be notified to us without delay. The notification shall be deemed immediate if it is made within two weeks; to meet the deadline, the timely dispatch of the notification is sufficient. The notification shall be made in writing. Irrespective of the above obligation pertaining to inspection and notification of defects, the Buyer has to report obvious defects (including wrong delivery or shortfall in delivery) within two weeks from the delivery; to meet the deadline, the timely dispatch of the notification is sufficient. The notification shall be made in writing. Should the Buyer fail to provide the notifications of defect specified above, any liability for such unreported defects shall be excluded.
- (2) Decisive for the design, measurements, weight, and suitability is solely the agreement on condition reached concerning the goods. This can result in particular from a mutually agreed specification, our technical drawing released by the Buyer or an initial sample made available. Further documents regulating the condition of the goods shall be expressly agreed in writing in order to be incorporated.
- (3) Should the goods be defective, we are entitled to subsequent performance at our discretion either by repair or supply of a defect-free replacement. Our right to reject subsequent performance under the statutory conditions remains unaffected. Our liability requires the defect to be not inconsiderable. Should either or both means of remediation be impossible or disproportionate, we are entitled to refuse it or them. We may also refuse remediation if the Buyer fails to meet its payment obligations up to a level equivalent to the defect-free part of the performance provided. If the defect is repaired, we undertake to pay all the necessary expenses, particularly transport, travel, labour and material costs, provided that they are not increased because the goods have been taken to a location other than the place of performance. § 439, Para.3 of the German Civil Code (BGB) is not unaffected.
- (4) If the defect cannot be made good, the Buyer is entitled to demand either withdrawal or reduction at its discretion.
- (5) Only in urgent cases where an operational safety risk exists or to prevent disproportionately large damages may the Buyer, after prior notification to us, remedy the defect itself or have it remedied by third parties and demand reimbursement of the necessary expenses from us. The Buyer's right to rectify defects itself or have it remedied by third party shall not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

- (6) Claims based on defects shall in particular not arise if the defect is a result of stipulations of the Buyer, violation of operating, service, and installation regulations, unsuitable or improper use or storage, faulty or negligent handling, and regular wear and tear, as well as interventions in the goods carried out by the Buyer or by third parties, e.g., improper remedial work of the Buyer or a third party as well as changes to the goods without our prior written consent. This also applies in the event of a use of the goods beyond the requested and tested purposes as well as insufficient validation or testing of the goods by the Buyer. After successful testing and validation, the purchaser shall issue a release for series delivery. The instruction manuals are a separate part of the technical documentation.
- (7) The instruction manuals are intended to provide the operator of the goods with necessary information for a safe and efficient use. The Buyer must therefore hand over the instruction manuals to the operators of the goods and obligate them to comply with its contents. In the event of loss, the instruction manual for the cooler can be downloaded from our website <http://www.akg-group.com> at any time or alternatively requested digitally or as hardcopy from the sales contact.
- (8) The liability period for defects (warranty period) is 12 months from the date of transfer of risk. The statutory limitation period shall, however, apply with respect to our liability for damages arising from injury to life, body or health which are based on a wilful misconduct or gross negligence on our part or on the part of a legal representative or a vicarious agent as well as to the liability for other damages which is based on a wilful misconduct or gross negligence on our part or on the part of a legal representative or a vicarious agent.
- (9) We do not assume any guarantees, in particular no quality or durability guarantees, unless otherwise agreed in writing in individual cases. Insofar as guarantees are referred to in agreed specifications of the Buyer, these are to be understood as warranties in the meaning of §§ 434, 435 of the German Civil Code (BGB).

## 6. Liability

- (1) We shall be liable in accordance with the statutory provisions insofar as the Buyer asserts claims for damages, which are based on wilful misconduct or gross negligence on our part; fault on the part of our legal representatives or vicarious agents shall be attributed to us. Insofar as the claim for damages is not based on wilful breach of contract, our liability for damages shall be limited to the damage which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen by exercising due care.
- (2) We shall also be liable in accordance with the statutory provisions if we culpably breach an essential contractual obligation; in such a case, however, our liability for damages shall be limited to the damage which we foresaw as a possible consequence of a breach of contract at the time the contract was concluded or which we should have foreseen if we had exercised due care. Essential contractual obligations are the obligations for provide delivery on time and installation of the good free from significant defects as well as to provide advice and protection and the duty of care which are intended to enable the Buyer to use the goods delivered in accordance with the contract or which are intended to protect the life or limb of the Buyer's employees or to protect the Buyer's property from significant damage.
- (3) When determining the amount of the claims according to Clause 6, paragraphs 2 and 3, our economic circumstances, the type, scope and duration of the business relationship, any contributions to causation and/or fault on the part of the Buyer in accordance with section 254 of the German Civil Code (BGB) and a particularly unfavourable installation situation of the goods must be taken into account appropriately. In particular, the compensation, costs and expenses to be borne by us must be in reasonable proportion to the value of the goods.
- (4) Liability arising from culpable injury to life, body or health shall remain unaffected; this shall also apply for our mandatory liability for defects which we have maliciously concealed or the absence of which we have guaranteed, as well as for our liability under the Product Liability Act.
- (5) Liability for compensation other than as stated in Clause 6 is excluded – regardless of the legal nature of the asserted claim. This applies in particular to claims for compensation due to default on contract signature, breach of other obligations or false claims for reparation of material damage in accordance with § 823 of the German Civil Code (BGB).
- (6) As far as our liability is excluded or limited, this shall also apply in relation to the personal liability for compensation of our official bodies, staff, employees, colleagues, legal representatives and other agents.

## 7. Retention of title

- (1) We retain title to the goods until we have received all payments arising from the business relationship, including any existing credit drawing. Should the Buyer act in breach of the contract, in particular in the event of non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory regulations and/or demand that the goods be returned on the basis of the retention of title and to resell them. Any demand to return the goods shall not be deemed to include a simultaneous declaration of withdrawal; unless we expressly notify this in writing. Our pledging of the goods always constitutes withdrawal from the contract. After taking back the goods, we are entitled to sell them and offset the proceeds of the sale against the Buyer's liabilities – less reasonable selling costs.
- (2) An application to commence insolvency proceedings concerning the assets of the Buyer shall entitle us to withdraw from the contract and to demand the immediate return of the goods.
- (3) The Buyer shall be entitled to resell the goods within the ordinary course of business; the Buyer hereby assigns to us all claims incurred by the Buyer from the resale in the amount of the purchase price agreed be-

tween us and the Buyer (including VAT). The Buyer is authorized to collect such claims after they have been assigned. This shall not affect our authorization to collect the claims itself; however, we undertake not to collect such claims provided the Buyer properly fulfils its payment obligations and is not in default of payment. In the event, however, that this is not the case, we are entitled to demand that the Buyer discloses the assigned claims and their debtors, provides all information required for collection, surrenders the related documents, and informs the debtors (third parties) of the assignment.

- (4) The processing or conversion of the goods by the Buyer shall be carried out for us. If the goods are processed or inseparably mixed with other items, which do not belong to us, then we shall acquire the joint title to the new items in the proportion of the value of the goods to the other processed items at the time of processing.
- (5) We undertake to release the securities provided if so requested by the Buyer, if the realisable value of our securities exceeds the claims to be secured by more than 10%; we may select the securities to be released.

## 8. Export control

- (1) The Buyer undertakes to inform us about a military end use, nuclear use or use in connection with weapons of mass destruction or for missiles capable of delivering such weapons (substantive evidence is sufficient). If we are exporting or transferring the goods the Buyer has to provide all information and documents required for the export or transfer.
- (2) We shall have the right at any time to terminate/ withdraw from the contract if a possibly illegal or unlicensed export or an infringement of sanctions or embargo rules cannot be doubtlessly excluded.
- (3) In the event of termination/ withdrawal according to paragraph (2), the assertion of any claim for damages or the assertion of other rights by the Buyer based on the termination shall be excluded.
- (4) Buyer's sale, resale or provision of the goods may be subject to national and/or international export control regulations (see clause 3, paragraph 2 above).
- (5) This applies, in particular, to the direct or indirect sale of merchandise for purposes referred to in paragraph (1) above and to merchandise delivered to embargo countries and/or "listed" individuals.
- (6) With the submission of its order, the Buyer confirms that he will comply with such export control regulations in the event that he exports and/or resells the goods.
- (7) The Buyer shall release us from any claims for damages asserted against us as the result of any culpable breach of the aforementioned obligations.

## 9. Confidentiality – Data protection

- (1) "Confidential Information" shall mean all trade secrets and business or technical information (including features, which can be inferred from any goods, specifications, drawings or other documents handed over, as well as other knowledge or experience) made accessible by us, irrespective of whether it is marked as confidential or not. With regard to the protection of trade secrets in accordance with the German Trade Secrets Act, the Buyer acknowledges that our secrecy measures are appropriate.
- (2) Confidential Information shall be kept secret from third parties as long as and to the extent, it is not proven to be public knowledge or has not been designated by us for disclosure by the Buyer. It may only be made available in the Buyer's own business to those persons who necessarily have to be involved in their use and who are also obliged to maintain confidentiality; the information shall remain our exclusive property. Confidential Information may not be duplicated or used commercially without our written consent; the Buyer is also not entitled to reverse engineer the goods without our explicit consent.
- (3) The Buyer shall inform us immediately, if he becomes aware that Confidential Information has been disclosed in violation of these Conditions of Sale. In this case, the Buyer must use his best efforts to ensure that this disclosed Confidential Information is not passed on/used by the unauthorized receiver and is deleted. At our request, all Confidential Information (including any copies or records made, if applicable) and loaned items must be returned to us immediately and completely, destroyed or deleted. We reserve all rights to the Confidential Information (including copyrights and the right to apply for industrial property rights, such as patents and utility models). Insofar as Confidential Information has been made available to us by third parties, this reservation of rights also applies in favor of these third parties.
- (4) If personal data is processed, we observe the legal regulations for data protection. In this case, the details of the data collected and their respective processing are set out in a data protection declaration available at our website (<https://www.akg-group.com/de/datenschutz>) or in a separate agreement on data processing.

## 10. Governing Law – Legal venue – Place of performance

- (1) If the Buyer is a merchant, legal entity under public law or holder of special funds under public law, the place of jurisdiction is Hofgeismar. However, we are also entitled to sue the Buyer (i) at the location of our business premises executing the order, (ii) at the Buyer's registered office, or (iii) at the place of performance of the delivery obligation. Mandatory exclusive places of jurisdiction remain unaffected.
- (2) The contract is exclusively governed by German law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- (3) Unless otherwise stated on the order confirmation, the place of performance is the location of our delivery plant.

Issued: 7/2022