

**KITZ EUROPE GMBH / PERRIN GMBH**  
**General Terms of Sale (GTS, as of May 2020)**

**§ 1 – Application of GTS**

- 1.1 These **General Terms of Sale** ("GTS") apply to all contracts, **KITZ Europe GmbH** and/or **PERRIN GmbH** as seller (hereinafter jointly or severally "**Seller**") enter into with and an entrepreneur in the sense of § 14 of the German Civil Code ("**BGB**"), a legal entity under public law or a public-law special fund as buyer ("**Buyer**") on the sale and delivery of ball valves, accessory and spare parts (jointly "**Goods**") and/or the performance of related services (advice, assembly, replacement, maintenance, training and other services, jointly "**Services**"), unless Seller has explicitly excluded the application of these GTS.
- 1.2 Individual agreements take precedence over these GTS.
- 1.3 General terms and conditions of Buyer shall only apply, if and to the extent Seller has explicitly accepted them or consented to them. Apart from that, Seller does not accept general terms and conditions of Buyer.
- 1.4 *This English translation of Seller's German Allgemeine Verkaufsbedingungen ("AVB") is made for convenience only. In case of contradictions between this English translation and the German AVB, the latter shall take precedence.*

**§ 2 – Conclusion and Subject Matter of Contract**

- 2.1 Seller's offers are made on the basis of these GTS. In case an offer submitted by Seller is explicitly limited in time, Seller is bound by that offer only until the last day of the time limit has lapsed or an indicated date has passed. If Seller has excluded to be bound by the offer by designating the offer as "non-binding", the offer shall not be a binding offer but an invitation to Buyer to submit a binding offer to Seller. The order of Goods or Services by Buyer also constitutes a binding offer to Seller on the basis of these GTS.
- 2.2 A contract is concluded, when (1) Buyer accepts an offer made by Seller and, if the offer is limited in time, the notice of acceptance is received by Seller within the time limit or (2) Seller accepts an offer made by Buyer by written order acknowledgement, which may also be made by email, or if Seller delivers the ordered Goods. Seller does not accept general terms and conditions of Buyer to which an offer made by Buyer may refer, unless this is explicitly confirmed by Seller's order acknowledgement. In case Buyer's notice of acceptance or Seller's order acknowledgement deviate from the underlying offer of the respective other party, they are deemed to be new offers.
- 2.3 The agreed quality of goods arises exclusively from Seller's offer or Seller's order acknowledgement. Descriptions, prices, technical data and other information on Goods and Services in sales brochures or on Seller's website are non-binding and do not form part of the contract, unless explicitly agreed. The same applies to characteristics of samples Buyer has been provided with.
- 2.4 The delivery of Goods and the performance of Services may be subject to approvals (e.g. according to German export control regulations). Seller will timely advise Buyer accordingly (if applicable). In these cases, delivery and performance by Seller are subject to the granting of the required approval.

**§ 3 – Delivery and Risk of Loss**

- 3.1 The delivery of Goods and the performance of Services is carried out according to the terms of Seller's offer or Seller's order acknowledgement. Delivery dates are only binding if this explicitly results from the agreement. If, in order to comply with binding delivery dates, a contribution of Buyer is necessary (e.g. with regard to the clarification of technical issues, obtaining the required approvals or Buyer's preparation measures), Seller is not responsible for non-compliance with delivery dates, if Buyer refrains from or delays in making such contribution.
- 3.2 Unless a different agreement has been reached in a particular case, the delivery of Goods is made FCA (Free Carrier) according to ICC INCOTERMS at the place of delivery designated by Seller. Any reference to ICC INCOTERMS shall (unless explicitly indicated otherwise) be deemed as reference to the current version of the ICC INCOTERMS at the time the reference is made. In case of doubt, individual agreements and provisions in these GTS take precedence over provision of the ICC INCOTERMS.
- 3.3 Partial deliveries by Seller shall be permitted, unless agreed otherwise.
- 3.4 In case a delivery by Seller is delayed, Buyer shall grant to Seller an adequate grace period to carry out the delivery. After expiration of such grace period, Buyer may withdraw from the contract or assert other statutory rights according to the provisions of these GTS.

- 3.5 The risk of accidental loss or damage of the Goods is transferred to Buyer according to the agreed ICC INCOTERMS, unless explicitly agreed otherwise. In case FCA (Free Carrier) delivery is agreed, the following applies: (i) If the agreed place of delivery is Seller's premises in Nidderau or Prenzlau, Seller will load the Goods onto the transport vehicle made available by Buyer at the agreed time; (ii) If the agreed place of delivery is outside of Seller's premises, Seller will make available the Goods at the agreed time on Seller's transport vehicle and Buyer shall be responsible for unloading the Goods and loading them onto its own transport vehicle.

#### **§ 4 – Services**

- 4.1 If the parties agreed that Seller shall perform Services at Buyer's premises, Buyer will grant Seller's employees access to all premises, facilities and plants at the agreed time so as to enable Seller to carry out the agreed Services. Upon Seller's request, Buyer will provide tools and equipment required by Seller's employees for the performance of the Services free of charge. In case Seller uses its own tools, equipment and spare parts, Buyer provides a lockable storage space for the duration of the performance of the Services. In case preparatory measures of Buyer are required (e.g. obtaining the approval of local authorities, Visa, working permits) before Seller can begin with the performance of the Services, Buyer has to take such measures in due time so as to enable Seller's employees to begin with the performance of the Services at the agreed time.
- 4.2 Buyer will inform Seller's personnel about the security regulations in place at Buyer's premises and will, for the duration of the performance of the Services, provide Seller's personnel with the required security equipment (protective clothing, helmet, eye protection, shoes, gloves and respiratory masks). In case of unforeseen incidents that lead to physical injuries or injuries to health of Seller's personnel (accident), Buyer will arrange for the necessary medical treatment and will immediately take all appropriate measures at its own costs and expenses. Seller will reimburse such costs and expenses against presentation of the respective receipts, if the accident was not imputable to Buyer.
- 4.3 The Services performed by Seller's personnel and, if a remuneration on the basis of hourly or daily fees has been agreed, the amount of time required for their performance, will be entered into a report drawn up by Seller's personnel on site. The report shall also contain information on any material provided or used by Seller. After conclusion of the performance of Services, Buyer shall examine whether the Services were carried out as agreed. By signature of the report, Buyer confirms acceptance of the Services as well as the amount of time spent for their performance as laid down in the report.
- 4.4 Buyer will inform Seller about any taxes, duties, social security contributions, fees or other costs and expenses that incur in connection with the performance of the Services according to the applicable law. Unless agreed otherwise, these costs have to be borne by Buyer. If such costs are claimed from Seller, Buyer will hold Seller harmless and release Seller from such costs or reimburse them to Seller.
- 4.5 In case Buyer does not or does not timely comply with its obligations under this § 4, or if the information provided by Buyer to Seller with regard to the circumstances of the performance of the Services are incorrect or incomplete, Buyer is responsible for any delay in performance resulting therefrom and will compensate Seller for any damages or costs caused (e.g. costs for lodging, additional travelling etc.).

#### **§ 5 – Prices and Conditions of Payment**

- 5.1 The prices laid down in Seller's offer or Seller's order acknowledgement shall apply. In case the delivery of Goods and/or the performance of Services are carried out without an order acknowledgement of Seller, the prices in Buyer's offer or (in the absence of prices in Buyer's offer) the prices usually applied by Seller at the time of delivery or performance shall apply.
- 5.2 In case taxes, customs duties or other duties incur for the delivery of Goods or the performance of Services, that were not listed in Seller's offer or order acknowledgement, such taxes or duties have to be borne by Buyer and will be invoiced to Buyer separately (if applicable). Unless agreed otherwise, Buyer will reimburse to Seller adequate travelling costs and other expenses necessary for the execution of the contract against presentation of receipts. This also applies if such costs and expenses were not specified in Seller's offer or order acknowledgement. Seller will invoice them separately (if applicable).
- 5.3 Seller reserves the right to adjust its prices for Goods and Services to changing market conditions (increasing salaries, increasing prices for raw materials etc.). Thus, in repeated orders for the same Goods and/or Services, prices may differ. A one-sided adjustment of already agreed prices will not take place.
- 5.4 The minimum order value for Goods and Service is EUR 500.00 (net). In case the order value of any single order is below EUR 500.00 (net), Seller reserves the right to charge Buyer with a minimum quantity surcharge of EUR 100.00 (net).
- 5.5 Unless expressly agreed otherwise or specified otherwise in Seller's invoice, the invoice amount is due for payment within 30 days from the date of invoice (credit to Seller's account designated in the invoice). In case of late payment, Seller is entitled to claim the statutory late payment interest.

#### **§ 6 – Warranty**

- 6.1** Buyer is obliged to examine the Goods and their packaging immediately after delivery. Obvious defects and defects that are detectable in the course of a proper examination have to be reported to Seller by Buyer in writing within one week from delivery. Defects that are not detectable in the course of a proper examination (hidden defects) have to be reported in writing within one week after their detection. In case the written report as provided for in the preceding sentences is not filed or not filed in time, the Goods are deemed to be accepted even in consideration of these defects.
- 6.2** Unless otherwise agreed, the warranty period is twelve months and begins with the delivery of the Goods or the acceptance of the Services. Contrary to the preceding sentence, the following claims of Buyer become time-barred within the statutory limitation periods: (i) claims for damages resulting from harm to life, body or health, (ii) claims based on wilful misconduct and gross negligence of Seller or Seller's vicarious agents, (iii) claims under the German Product Liability Act or claims based on other mandatory statutory liability provisions, (iv) claims based on guarantees given and procurement risks assumed, on the absence of promised characteristics or on non-compliance with binding delivery dates, and (v) claims based on fraudulently concealed defects.
- 6.3** Buyer has to comply with the assembly and operation instructions, maintenance instructions and any other instructions given by Seller. Seller's warranty is excluded (i) when the lifetime of the Goods has expired due to usual depreciation, wear and tear and corrosion, (ii) if the Goods are assembled, used or maintained incorrectly by Buyer or any third party, (iii) if the Goods are exposed to higher levels of strain than contractually provided for or (iv) if the defect is not imputable to Seller for other reasons.
- 6.4** Warranty claims of Buyer are also excluded in case of minor defects that do not or do only insignificantly affect the contractually agreed use of the Goods. This does not apply to claims of Buyer (i) for damages resulting from harm to life, body or health, (ii) based on wilful misconduct and gross negligence of Seller or Seller's vicarious agents, (iii) under the German Product Liability Act or based on other mandatory statutory liability provisions, (iv) based on guarantees given and procurement risks assumed or on the absence of promised characteristics, and (v) based on fraudulently concealed defects.
- 6.5** If the Goods are defective and Buyer has complied with its obligations under § 6.1, Seller has the right, at its own choice, to either remedy the defect free of charge (rectification) or to deliver defect-free goods free of charge and shipping costs (supplementary performance). Buyer has to hand over the defective Goods to Seller for testing purposes and has to grant to Seller a period of time reasonable under the circumstances for the rectification or supplementary performance. In case the Seller chooses supplementary performance, Seller is entitled to deliver Goods of the same kind and quality equally suitable for the contractually agreed use instead of the originally delivered Goods. Buyer may withdraw from the contract or reduce the price if rectification and supplementary performance are impossible, if rectification fails or if Seller refuses rectification and supplementary performance or fails to begin with them within a reasonable period of time given by Buyer. In case the claimed defect proves to be not imputable to Seller, Seller may claim from Buyer compensation of the costs and expenses already incurred for the fulfilment of Seller's obligations under § 6.1.

#### **§ 7 – Limitation of Liability**

- 7.1** Seller's liability for damages of Buyer caused by simple negligence of Seller's corporate bodies, legal representatives, employees or vicarious agents shall be excluded, irrespective of the legal basis of liability.
- 7.2** Contrary to § 7.1, Seller shall be liable for the simply negligent violation of material contractual obligations, the fulfilment of which is essential for proper contract implementation and in the fulfilment of which Buyer may usually trust (cardinal obligations). In these cases, Seller's liability shall be limited to the amount foreseeable at contract conclusion and typically associated with Seller's contractual obligations.
- 7.3** The exclusions and limitations of liability in these GTS do not apply to claims of Buyer (i) for damages resulting from harm to life, body or health, (ii) based on wilful misconduct and gross negligence of Seller or Seller's vicarious agents, (iii) under the German Product Liability Act or based on other mandatory statutory liability provisions, (iv) based on guarantees given and procurement risks assumed or on the absence of promised characteristics, and (v) based on fraudulently concealed defects.
- 7.4** The exclusions and limitations of liability under this § 7 also apply in favour of Seller's employees and vicarious agents.

#### **§ 8 – Retention of Title**

- 8.1** Seller retains title over the Goods until payment of the price has been made in full (credit to Seller's account). In case Seller's Goods are combined with other materials in a way that they are deemed to be essential components of a uniform object, Seller acquires co-ownership over that uniform object in proportion of the invoice value of the Goods delivered by Seller under retention of title to the invoice value of the other materials the uniform object is made of, and the value of the combination.

- 8.2 Buyer shall take all actions necessary under the law applicable at the place where the Goods are located according to the contract to create and maintain the retention of title in favour of Seller as provided for in § 8.1 or, if a retention of title cannot be validly agreed or enforced under that law, a comparable security interest.

#### § 9 – Confidentiality

- 9.1 Seller's trade and business secrets and all technical and commercial information on Seller's business, goods and services that Buyer has learned about in the framework or at the occasion of the business relationship with Seller and which are either marked as confidential or have to be deemed confidential from their nature or from the circumstances under which they were disclosed to Buyer (hereinafter "**Confidential Information**") shall be kept strictly confidential by Buyer and shall not be made available to third parties and shall be protected from unlawful access with the same care and diligence that Buyer applies to protect comparable information of its own, but at least with due care and diligence. Especially, Buyer will not surrender the Goods to third parties for examination, demonstrate the Goods, their design and operating principles or reverse engineer them, copy them or have them copied.
- 9.2 Buyer will disclose Confidential Information only to employees or vicarious agents, who need to know Confidential Information for the intended use of the Goods. Before disclosing Confidential Information to them, Buyer will instruct those employees or vicarious agents and impose on them the confidentiality obligations according to the provisions of this § 9.
- 9.3 The obligations under this § 9 will prevail beyond the termination of the business relationship.
- 9.4 Buyer acknowledges that the obligation to pay damages would only inadequately compensate for a violation of the confidentiality obligation of this § 9, because such violation may cause Seller irreparable damage. Apart from any other rights resulting from a violation of confidentiality, Seller shall therefore be entitled to obtain an interim injunction against the existing, impending or continued violation of confidentiality obligations. In order to do so, it shall be sufficient that Seller can demonstrate that the violation may result in damage without being required to prove actual damage.

#### § 10 – Contaminated Goods

- 10.1 The Goods or parts of the Goods may come into contact with dangerous substances and may thus be contaminated. Exposure to contaminated Goods, especially at their removal or maintenance, may therefore be harmful to the health of individuals. It is Buyer's sole responsibility to take and maintain the appropriate precautions when using the Goods and to ensure that individuals are not exposed to any health risks due to their contact with the Goods. Buyer has to comply with any security instructions given by Seller.
- 10.2 In case Goods are examined, removed, repaired or returned to Seller according to the second sentence of § 6.5 under warranty, and these Goods are or may be contaminated, Buyer will agree on the further procedure with Seller and will not take any steps without consulting Seller, by which individuals may be exposed to health risks. In case of a warranty claim, Seller will decide how to proceed with the rectification of defects or supplementary performance regarding removal, storage, packaging and decontamination of such Goods. Apart from that, the fifth sentence of § 6.5 shall apply accordingly.
- 10.3 Seller is not liable for damages that occur due to a violation of Buyer's obligations under § 10. Buyer will release and hold Seller harmless from any claims raised by third parties that are based on the violation of such obligations.

#### § 11 – Force Majeure

- 11.1 Buyer and Seller will be released from their contractual obligations if and to the extent the fulfilment of these obligations becomes impossible or unacceptable due to circumstances of Force Majeure. Circumstances of Force Majeure are circumstances which are beyond the affected party's influence and which render the fulfilment of contractual obligations permanently or temporarily impossible. This includes natural catastrophes, war or warlike events, riots, terror, government measures, labour disputes and comparable circumstances. It is also considered Force Majeure if the circumstances described above befall the contractors/suppliers of Seller and Seller therefore cannot fulfil its contractual obligations.
- 11.2 Buyer and Seller are obliged to inform each other about the beginning, the probable duration and the cessation of the circumstances described in § 11.1 and about the extent to which the fulfilment of their contractual obligations is made impossible. The affected party has to provide evidence of such circumstances upon request.

**§ 12 – General Provisions**

- 12.1 Set-Off and Right of Retention.** Buyer may only offset claims of Seller with undisputed counterclaims, with counterclaims that have been legally established as final and absolute or with counterclaims that result from the same contractual relationship. Likewise, Buyer is only entitled to a right of retention if this right arises from the same contractual relationship or if it is based on undisputed claims or on claims that have been legally established as final and absolute.
- 12.2 Assignment.** Buyer may assign rights and obligations from the contractual relationship with Seller to third parties only with the prior approval of Seller.
- 12.3 Applicable Law.** German law shall apply to the legal relationship and agreements of the parties. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 12.4 Jurisdiction.** The courts at Seller's registered place of business (Amtsgericht Hanau, Landgericht Hanau, Oberlandesgericht Frankfurt am Main) shall have jurisdiction for all disputes arising out of the contractual relationship. For suits filed by Seller as a claimant, at Seller's choice, the courts at Buyer's registered place of business shall also have jurisdiction.
- 12.5 Arbitration Proceedings.** For suits filed by Seller as a claimant, at Seller's choice, an arbitration court of the German Institution for Arbitration (DIS) according to the DIS Arbitration Rules shall also be competent. The arbitration court shall consist of one arbitrator. The arbitration venue shall be Frankfurt/Main. The language used in the arbitration proceedings shall be English. If, at Seller's choice, arbitration proceedings have been initiated, Buyer and Seller will accept the decision of the arbitration court as final and binding. The initiation of arbitration proceedings under § 12.5 shall not prevent the parties from obtaining an interim injunction or garnishment before a competent court or from invoking other forms of interim legal protection.