

## **General Terms and Conditions of Delivery and Payment**

### **1. General – Scope**

The following General Terms and Conditions of Delivery and Payment (hereinafter “these Conditions”) shall apply to all our quotations, contracts, deliveries and other services, including, in particular, supply and sales contracts (hereinafter “Deliveries”) concluded by Klüber Lubrication (hereinafter “we/our/us”) with any entrepreneurs and public law entities (hereinafter “Customers”). These Conditions shall not apply to contracts concluded with consumers as construed in the Civil Code Act of 23 April 1964 (Journal of Laws No. 16, item 93, as amended), hereinafter also referred to as “the Civil Code”. These Conditions shall be deemed to have been accepted at the time an order or the goods are accepted, at the latest. General terms and conditions of business of our Customers shall not apply unless we have agreed to such terms and conditions in writing. Any provision of these Conditions that is found invalid shall not affect the enforceability of the other Conditions herein. If any provision is found unenforceable, it shall be replaced by the most similar provision which will be enforceable. These Conditions are part of all our quotations and, together with orders, are part of contracts, Deliveries and other services between us and our Customers. The provisions herein also apply to the future business relations (orders and contracts) of the parties hereof, which does not require the Customer to make any additional declarations of intent in this respect. Customers agree that they said provisions are binding as part of the business relationship between the parties. All rights that we have under general law and that exceed these Conditions shall remain unaffected.

### **2. Conclusion of Contract, Documents, Protection Rights**

1. All service quotations made by us are non-binding and shall not constitute a service offer, as interpreted by the Civil Code. Contracts shall become binding only after we have confirmed the Customer's purchase order in writing (acknowledgement by e-mail or fax shall be treated as the written form). Only our written Order Confirmation shall be conclusive for the type and scope of our Delivery. If we do not confirm the order in writing, the contract shall come into effect only after our performance of the order, at the latest, whereby such performance shall be deemed equivalent to the confirmation of the order. All declarations made by us by telephone or verbally shall require written confirmation to be legally effective.
2. Our performance of the contract is subject to the condition that its performance is not impeded by any Polish or international legal regulations, including but not limited to the laws on environmental protection or chemical substances and their mixtures, or embargoes and/or other sanctions.
3. We shall retain title and all intellectual property rights to all materials provided by us to our Customer or made according to our guidelines for the purpose of preparing a service quotation or

performing a contractual order, such as, for example, designs, drawings, forms, sketches, tools, samples, models, other documentation, calculations, cost calculations, etc. Our Customer is obliged to return to us all materials received from us without delay, at our first request, and in all cases if the order is not awarded to us. Our Customers shall not retain any copies or additional copies and shall destroy all copies, including digital copies, they store. Our Customers may not use the materials, as interpreted in this clause, for purposes other than the performance of the order/contract, or make them available to third parties without our consent. If the Customer fails to observe the above obligation, it is obliged to repair the damage. If we produce a subject matter of the order according to drawings, models, samples or other documentation provided by the Customer, the Customer shall assume responsibility for ensuring that no third party rights, including, without limitation, patents, licences, utility designs, ornamental designs, trademarks, copyrights or other third-party rights are infringed by us. If any third party invokes any protection right to prohibit, in particular, our production and/or supplying, we shall, under no obligation to clarify the legal position, be entitled to cease our further activities and to demand compensation from the Customer. Furthermore, the Customer undertakes to release us immediately from any third-party claims related to the afore-mentioned documents that it has provided to us.

4. We reserve the right to charge the Customer the cost of the samples and test parts, as well as the tools necessary to make them. We shall charge the manufacturing costs of tools required for mass production unless otherwise agreed in writing. All tools shall remain our property in any all cases, even if the Customer has borne the costs of their manufacture in full or in part.
5. In the case of orders with on-demand delivery, we are entitled to purchase the material for the entire order and to perform the entire quantity of purchase order immediately. Following this, the Customer's requests for variations, if any, may no longer be taken into account, unless expressly agreed in writing.

### **3. Service Description; Supplier**

1. The quality of the delivery and service item shall be conclusively determined by the features expressly outlined in the product information and safety data sheet of the product; other or different performance characteristics of the deliveries and services are not agreed. Any warranty going beyond this express agreement on properties, e.g. for a specific purpose or particular suitability, duration of use, durability, functionality, compatibility, other subjective or objective requirements or compliance with samples, is only assumed if and to the extent that this has been expressly agreed in writing. Otherwise, the risk of suitability and use shall exclusively be on the part of the customer. We shall reserve any customary or technically unavoidable deviations from physical and chemical quantities, including colors, formula, recipes, processes and the use of raw materials as well as order sizes, as far as this may not be accepted as unreasonable by the customer.

Assembly and other instructions as well as specifications or recommendations for storage, installation, tests, operation or maintenance (hereinafter referred to as "instructions") going beyond the information contained in the product information and safety data sheets are only part of the delivery item and must only be handed over if this has been expressly agreed. We are entitled to hand over these instructions with the delivery, or to refer to them in delivery documents (e.g. by referring to corresponding websites). The customer is obliged to follow the instructions and to observe the relevant regulations such as (e.g. DIN standards) or other industry standards. This warranty and all rights arising therefrom under this contract are exclusive. There are no further warranty rights, neither explicitly nor implicitly, neither based on advertising claims, implied actions nor commercial usage. As far as this is permissible according to the relevant legal provisions, all further statutory warranty rights are hereby excluded, in particular those that relate to an average subjectively or objectively expected quality, suitability for a certain purpose, a certain type of use or freedom from third party rights.

2. The data on the delivery item and service performance, as set out in e.g. catalogues, product brochures, electronic media or labels, are based on our general experience and knowledge, and represent approximate values or marking only. Neither said product data nor the performance characteristics nor purposes of use, as explicitly agreed, release the Customer from its obligation to test the product.
3. The details of the properties and applicability of our products are not covered by any warranties unless expressly stated in writing as such.
4. As a rule, Klüber Lubrication purchases raw materials and primary packaging materials from suppliers certified at least to ISO 9001. If, in exceptional cases, we buy from non-certified suppliers or suppliers certified to other standards, we monitor and guide them on their quality management system through other appropriate methods, like supplier audit, supplier assessment, development talks, etc.
- 4. Deliveries and Delivery Dates**
  1. All details pertaining to delivery dates shall, even if a delivery date has been agreed with the Customer, be only approximate and non-binding, unless the delivery date has been expressly agreed as fixed in writing. A delivery date as confirmed is subject to correct, complete and timely Delivery by our supplier. The delivery date shall be deemed to have been observed if, before its expiry, the delivery item has left our works or we have informed the Customer that it is ready for dispatch. Delivery schedules shall not commence until the Customer has duly fulfilled its obligations, including, to provide technical data and documentation, approvals as well as to make a down payment or provide a payment guarantee.
  2. We are entitled to partial Deliveries.
  3. In the event that we are prevented from making a Delivery or meeting a delivery date due to force majeure or fortuitous events, we shall be relieved of our obligation to perform the Delivery for the

duration thereof or to rescind the contract for this reason with immediate effect, and the Customer shall not be entitled to claim any compensation in such case. Fortuitous events shall, within the meaning of these Conditions, be construed as all future events whose occurrence is not ascertained or influenced by our employees.

4. In the event of the Customer's bankruptcy or de facto insolvency or in the event of payment difficulties, or if other circumstances arise due to which the fulfilment of the Customer's consideration is in doubt, we shall be entitled to suspend Deliveries and to rescind the contract, retaining the right to claim damages, provided that the Customer fails to pay the consideration or fails to submit an appropriate guarantee upon our request. If the Customer fails to pay the entire consideration or fails to provide appropriate security within one week of being requested to do so, we shall be entitled to rescind the contract.
  5. We shall also be entitled to terminate the contract in the event of other substantiated issues that give the impression that the continuation of a reliable business relationship is seriously jeopardised.
- 5. Security**
1. All our Deliveries and services are made subject to property rights. The title to the delivered goods shall only pass to the Customer when it has settled all payments due to us under the business relationship which binds us with both the Customer and its corporate group companies, including peripheral costs incurred in connection with the subject matter of Deliveries. This applies to all outstanding debts, irrespective of their legal basis, including conditional or future debts, as well as the case where the Customer, when making the payment, indicates against which debt the payment is to be recognised. For on-going settlements, the retention of title shall be deemed to be a security against the balance of the debt.
  2. Processing and modification of the goods subject to retention of title shall be deemed to be carried out for our benefit. If the goods subject to retention of title are converted, processed or mixed with other items, we reserve the title to such converted, processed or mixed items.
  3. In the event that the goods subject to retention of title are combined or mixed with objects that are not our property, we shall acquire joint title to the newly-created object proportionately to the value of the goods subject to retention of title bears to the value of the object at the time of the combination or mixing with said object. In this case, the joint title shall be the goods subject to retention of title within the meaning of these provisions. If our goods are mixed or combined with other movable goods in such a manner that they become a component part of another principal object owned by the Customer, we shall receive joint title to that object proportionately. In the afore-mentioned cases, the Customer hereby assigns to us the joint title to the combined, mixed or processed objects and undertakes to take custody of them free of charge. The provisions herein concerning goods subject to retention of title shall apply to mixed or processed items.
  4. The Customer shall be entitled to process, combine and resell the goods subject to retention of title, however, only in the ordinary course of business and under conditions which do not deviate from

market conditions. In the event of a resale of the goods subject to retention of title, the Customer shall then assign as security the debts arising from the resale of the goods in full amount including all rights to us, and we hereby accept the assignment. If the Customer resells the goods subject to retention of title, after combining/processing them, together with objects which do not belong to the Customer, the Customer hereby assigns all debts and ancillary rights arising from the sale to us up to the value of the goods subject to retention of title, and we hereby accept the assignment. In spite of the assignment of the claims in accordance with the above provisions, the Customer shall be entitled and obliged to recover the debts. This does not affect our rights to recover the debts. The use of the goods by the Customer for the performance of a contract for work or a supply contract shall be deemed to be equivalent to resale. Upon our request, the Customer is obliged to inform us of all debts assigned to us and of the debtors, to transmit all data necessary for the recovery of the debt, to issue the necessary documents and to inform the debtors of the assignment of debts.

5. We are entitled to revoke the Customer's entitlement to resale under Clause 5.4 with immediate effect and to collect the debts assigned to us if the Customer is in arrears with payment, has a material deterioration in his financial circumstances or does not fulfil duly its obligations towards us. In the event of the Customer's bankruptcy or de facto insolvency or if all payments have been suspended or the ownership of Customer's business enterprise has changed due to payment difficulties, the resale right and the authority to collect the debts assigned to us shall expire automatically.
6. The Customer shall store the goods owned by us or jointly by us and the Customer with due diligence at no charge and shall insure them against fire, burglary and other ordinary risks.
7. With respect to goods delivered under retention of title, the Customer shall not be entitled to pledge or create or transfer any other security by way of security for its obligations. The Customer is obliged to notify us immediately of any pledge or any infringement of our title caused by third parties, and to submit its confirmation of our title both to third parties and us in writing. All costs arising from the resulting legal dispute shall be borne by the Customer.
8. We shall be entitled to demand the return of goods collected and not paid for in all cases of delay in payment of the price due for goods supplied under a contract to which these Conditions apply. In such cases, the Customer shall, at its own expense and risk, return any unpaid goods within the dates specified in our written request. Re-shipment of returned goods can only be requested after the purchase price and all costs have been paid in full.
9. Upon payment of all debts, the title to the goods subject to retention of title shall pass to the Customer.

#### **6. Prices and Payment Terms**

1. Our prices are listed in EURO exclusive of goods and services tax (VAT).
2. Any changes to the costs of raw materials, wages, energy and other changes in costs unforeseeable and not caused by us shall entitle us to modify

prices accordingly. In the case of partial Deliveries, each Delivery may be invoiced separately. If no prices are agreed upon on the conclusion of a contract, our prices on the day of Delivery shall apply.

3. The Customer is not entitled to make deductions.
  4. We are not obliged to accept bills of exchange, cheques or other promises to pay.
  5. The payment receipt date shall be the day on which the amount is credited to our bank account. If the Customer is in arrears with payment, we shall be entitled to charge statutory interest for the duration of the delay. This shall not limit the right to pursue claims for higher damages.
  6. In the event of a delay in payment of two or more instalments, if the total amount of the outstanding instalments exceeds one fifth of the agreed price, we may, at our discretion, declare the unpaid price or our other claims against the Customer to be due immediately or make further Deliveries under that or other contracts conditional upon the provision of a guarantee or payment upon delivery.
  7. We do not charge interest on down payments or instalments.
  8. The Customer is only entitled to withhold payment to the extent that its counterclaim against us is uncontested or has been legally acknowledged.
- 7. Warranty for Defects; Claims based on Defects**
1. We shall be liable for defects in the goods delivered by us in accordance with the following provisions, whereas to the extent not regulated, the provisions of the Civil Code shall apply.
  2. The Customer shall duly fulfil its obligations to immediately examine and notify us of any defect in the goods or of their non-conformity with the purchase order. The return of sold, defect-free goods shall be excluded unless we consent to it.
  3. If we supply defective or non-conforming goods, before its production (processing or assembly) commences, the Customer shall first give us the opportunity to sort out or make supplementary Deliveries of defect-free goods, unless this would entail unreasonable difficulties for the Customer. If we are unable to do so or fail to do so immediately, the Customer may demand a reduction in price or rescind the contract, or send the goods back to us at our expense. In urgent cases, the Customer may, having consulted us, either carry out the rectification itself or have it carried out by a third party. We shall incur the resulting costs in accordance with Clause 8.
  4. If, despite compliance with the obligation under Clause 7.2, a defect is discovered only after production has commenced, the Customer may demand subsequent performance (replacement delivery).
  5. In the event of a replacement delivery, the Customer shall return the defective item.
  6. The Customer's right to rescind the contract or to reduce the purchase price shall only exist if the Delivery of defect-free goods is associated with disproportionate costs or the defective goods cannot be replaced. The Customer has the right to rescind the contract only after material defects are found.
  7. Claims based on defects shall be subject to the Customer's obligation to give us access to inspect the goods in question immediately; in particular, the goods shall be made available to us on request and at our expense. In the event of unauthorised claims,

we reserve the right to charge the Customer the transport expenses and the inspection costs.

8. The Customer shall not have the right to claim for defects of the goods if the defects are attributed to failure to follow the operating, maintenance and assembly manuals, incorrect or improper use or storage, incorrect or negligent handling or assembly, natural wear and tear or tampering with the delivered item by the Customer or a third party.
9. Compensation and return of expenses may only be claimed under Clause 8.
10. The Customer shall not be entitled to the aforementioned claims for products which we do not deliver as new goods, as previously agreed.

#### **8. Liability**

1. We shall be liable in respect of claims for damages of any kind, in particular those arising from the faulty conclusion of a contract, breach of duty and tort, insofar as we, our employees or our vicarious agents are shown to have acted with wilful intent or gross negligence.
2. We are only liable for gross negligence in the event of damage resulting from injuries to life, body or health under guarantees or the violation of obligations whose performance only permits the proper execution of the contract, and which the Customer can always expect (essential contractual obligations). In the event of a breach of essential contractual obligations, our liability shall be limited to the foreseeable, depending on the type of goods, direct and average damage typical of the contract. This shall also apply to breaches of duty by our employees and vicarious agents.
3. Subject to the proper use of our goods, we shall be liable for infringements of protection rights under the above provisions insofar as and to the extent that we infringe protection rights that are in force in Poland and were published at the time of delivery. This shall not apply to the extent to which we manufacture the delivered goods according to drawings, models or other descriptions or data provided by the Customer, and we do not know or need not know in relation to products developed by us that protection rights are thereby infringed. In such cases, the Customer shall be liable for already existing or future infringements of protection rights. It shall be obliged to inform us without delay of any possible or already existing infringements of protection rights which it is aware of and to release us from any third-party claims and all costs and expenses to be borne.
4. Claims based on defects in the goods delivered shall lapse 1 year after the delivery of the goods.
5. The exercise of the right to demand a price reduction and to cancel the contract shall be excluded if the right to demand the replacement of the item with a defect-free item or to rectify the defect becomes barred by limitation.
6. These provisions do not affect our liability for damage caused by dangerous products pursuant to the provisions of Articles 4491-44911 of the Civil Code and the liability set out in the provisions of Articles 5761-5764 thereof.
7. Our liability in other areas is excluded.

#### **9. Compliance with Statutory Provisions; Exclusion**

1. Unless otherwise agreed in writing, the Customer shall be responsible for compliance with the applicable statutory and administrative provisions,

including without limitation, those relating to import, transport, storage, export, resale, use and handling of the goods. The Customer is obliged to acquire information on its own about its obligations of registration, information or notification, and to ensure compliance with these obligations, including without limitation, those with relating to import, transport, storage, export, resale, use and handling of the goods. The Customer warrants that, in the context of its business relationship with us, it will comply with the applicable statutory and administrative provisions at all times, and that, in the event of any breach of this obligation, it will hold us harmless against any resulting damage.

2. The Customer agrees not to enter into the transactions
  - with persons, organisations or institutions listed as persons, organisations or institutions which have incurred sanctions under European Union or US export control regulations
  - with any embargoed countries and thus prohibited
  - in absence of the necessary approvals, in particular as regards exports
  - that could be related to ABC weapons or military use, and for which the necessary approvals are not available
3. We limit ourselves to data in the field of international economic relations, such as the origin of goods according to international business relations law and the statistical number of goods on our commercial invoices. As a general rule, we do not issue long-term supplier's declarations with preferential origin status. The importation of goods is dependent on non-preferential origin. Such proof of origin shall not, in principle, confer any benefits arising from customs legislation.

#### **10. Place of Service Performance; Jurisdiction; Other**

1. The Customer is only entitled to assign its debts from its contractual relationship with us upon our prior consent.
2. For all claims based on business relationship, and in particular pertaining to our Deliveries, the parties shall submit to the jurisdiction of the court in Poznań. This court shall also have jurisdiction over all disputes concerning the formation and effectiveness of the contractual relationship.
3. However, we also have the right to bring a case to the court having jurisdiction over the Customer's registered office.
4. Polish law shall apply to the exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980. Poznań, 24 July 2018