

General Terms and Conditions

§ 1

General Terms and Conditions

These General Terms and Conditions apply to all products of KUNBUS GmbH (hereinafter referred to as KUNBUS) that are not covered by any separate General Terms and Conditions of KUNBUS. Separate General Terms and Conditions apply to the following KUNBUS products:

- Standard software products: These are covered by the General Terms and Conditions for the sale and licensing of software products.

In addition, KUNBUS applies separate General Terms and Conditions

- for the provision of services (General Terms and Conditions for Services)
- for orders placed in the KUNBUS online shop for companies
- for orders placed in the KUNBUS online shop for consumers

§ 2

General/Scope

- (1) These General Terms and Conditions shall apply to all current and, by way of a blanket agreement, also to all future business relationships between KUNBUS and the customer, without KUNBUS needing to refer to the General Terms and Conditions in each specific case, unless other General Terms and Conditions of KUNBUS have been incorporated into future contracts.
- (2) The quotations and declarations of acceptance, as well as all services and goods, are provided exclusively on the basis of the General Terms and Conditions stated below, in each case in their latest version. These General Terms and Conditions are freely accessible at any time on the Internet at <https://www.kunbus.com/gtc.html> and may be saved and printed out by the customer in a reproducible form.
- (3) Terms of purchasing of the customer are hereby expressly rejected. Where the customer has his own different, conflicting or additional General Terms and Conditions, these shall not form part of the contract, regardless of KUNBUS's knowledge of such conditions, unless expressly agreed in writing by KUNBUS at the time the contract is concluded. This confirmation requirement shall still apply if KUNBUS supplies goods to the customer without reservation, in full knowledge of the customer's General Terms and Conditions, which conflict with or differ from the present terms. The written consent given at the time the contract is concluded shall in each case apply only to the individual instance regulated therein.
- (4) The General Terms and Conditions of KUNBUS shall only apply if the customer is an entrepreneur (§ 14 of the German Civil Code [BGB]), a corporate body under public law or a public fund.

§ 3

Formation of contract

- (1) Quotations by KUNBUS are not binding. Orders can be placed offline and in the KUNBUS online shop at <https://shop.kunbus.de/> or <https://revolution.kunbus.de/shop/>. Separate General Terms and Conditions shall apply for orders placed in the KUNBUS online shop.
- (2) If the customer's order placed offline qualifies as a quotation pursuant to § 145 of the German Civil Code, KUNBUS may accept this order within 4 weeks unless otherwise indicated in the customer's order. Unless the customer indicates individual specifications of the delivery items in his order, in accordance with the individual form of use envisaged and taking account of all technically relevant factors, or provides them only in incomplete form, the general product details of KUNBUS shall apply additionally.

- (3) Acceptance by KUNBUS may be declared either in writing through confirmation of the order (including by telefax and e-mail) or by shipping of the goods to the customer. In this case, too, the customer shall receive a written order confirmation. In the absence of any other written agreements, the written order confirmation of KUNBUS shall set out the contractually due performance.
- (4) There are no verbal ancillary agreements at the time of conclusion of the contract. Individual agreements (including ancillary agreements, supplements and amendments to these General Terms and Conditions) expressly reached between the customer and KUNBUS on an ad hoc basis shall always take precedence over these General Terms and Conditions, to the extent that they have been reached after the conclusion of the contract. A written contract or – in its absence – written confirmation to the customer by KUNBUS shall be decisive with regard to the content of such individual agreements.
- (5) We reserve the right to make technical changes as well as changes to form, colour and/or weight of the delivery items within the scope of what is reasonable for the customer.
- (6) A warranty shall only be granted if it has been expressly designated as such and has been declared in writing by the KUNBUS management. The properties of the goods to be delivered shall be as indicated in the KUNBUS product description at the time of conclusion of the respective contract. Other information such as technical data, descriptions, illustrations and drawings, specified measurements and weights are subject to constant change, even where these refer to standards. KUNBUS shall only be bound by such information where it has been confirmed in advance by KUNBUS as binding.
- (7) KUNBUS reserves intellectual property rights and copyright on illustrations, drawings, drafts, models, samples, calculations, estimates and any other documents and objects; they shall not be made available to third parties. Such information shall not be disclosed to third parties without express prior written agreement from KUNBUS.

§ 4 Delivery

- (1) Part shipments shall be permissible to the extent that is reasonable for the customer.
- (2) Unless otherwise indicated in the contract between KUNBUS and the customer, delivery “ex works” in accordance with Incoterms 2020 is agreed. This place of delivery shall be the place of performance for the delivery and for any subsequent performance.
- (3) The customer is responsible for conducting all processes in respect of export and import of the delivery items and shall bear all costs incurred for these processes. KUNBUS shall support the customer in this regard. The delivery items may be subject to (re-)export restrictions, e.g. of the United States of America or the European Union. The customer shall observe such stipulations if the items are resold or otherwise exported.
- (4) Delivery dates and delivery deadlines shall always only be approximate and shall not be binding for KUNBUS, unless a delivery date was expressly agreed in writing as binding upon conclusion of the contract. The delivery deadline or delivery date has been met if the delivery items have left the KUNBUS plant within these, or the customer has been notified by KUNBUS that the goods to be delivered are ready for shipping within the delivery deadline. At the beginning of the delivery period specified by KUNBUS it shall be assumed that all technical queries have been clarified and the customer’s obligations have been met in a timely and proper manner. In particular this shall include any documents to be obtained or produced by the customer, such as drawings, descriptions, any permits or approvals to be submitted by the customer and any agreed prepayments credited to KUNBUS’s account as agreed with KUNBUS. If any of these conditions is not met or if there are matters for which the customer is responsible that await clarification, the delivery period quoted by KUNBUS shall be postponed until the impediment is remedied or removed by the customer, and the deadline shall consequently be extended by the period of the delay.
- (5) If the customer demands amendments or supplements to the contract after its conclusion, e.g. customer-specific amendments to the delivery items that render it impossible to meet the delivery deadline or delivery period, the delivery date shall be delayed or the delivery deadline extended in accordance with the amendments and supplements demanded.
- (6) The performance shall be subject to correct and punctual delivery by the suppliers, with the consequence that KUNBUS shall be released from the delivery obligation if, through no fault of its own, KUNBUS does not receive supplies from its own suppliers even though KUNBUS has previously concluded a corresponding supply agreement with the supplier. KUNBUS shall notify the customer without delay that the supplier has failed to supply KUNBUS, that KUNBUS therefore withdraws from the contract and that the consideration – where already paid by the customer – will be refunded without delay.

- (7) The customer shall be obliged to accept a delivery item that exhibits only negligible differences compared to the agreed properties or negligible impairment of use.
- (8) The costs of shipping shall be met by the customer, with the choice of shipment route and method at the discretion of KUNBUS. Transport insurance shall only be concluded at the express wish and for the account of the customer.
- (9) During the delivery period, KUNBUS reserves the right to amend the design or form based on technical improvements and/or statutory requirements, provided these do not significantly change the delivery item or the agreed delivery and the amendments are acceptable to the customer.

§ 5 Call-off orders

Delivery of call-off orders shall be taken within the agreed time scales or on the agreed dates. If the goods have not been called off within the specified periods and the customer is therefore in default of acceptance with regard to fulfilling his call-off obligation pursuant to §§ 293 ff of the German Civil Code, the risk of accidental loss and accidental deterioration of the delivery item shall pass to the customer. From the time of expiry of the deadline, the customer shall moreover meet the costs incurred for storage of the goods at KUNBUS, but at least 0.5 % of the invoice total per month. KUNBUS shall furthermore enjoy the rights pursuant to § 375 of the German Commercial Code.

§ 6 Price and terms of payment

- (1) In the absence of any specific agreement, prices shall apply "ex works" in accordance with Incoterms 2020; prices include loading inside the factory but exclude packaging, transport and transport insurance, plus the statutory rate of VAT. Prices shall apply exclusively to delivery and performance within the Federal Republic of Germany.
- (2) Unless agreed otherwise, prices for all goods to be supplied shall be the list prices valid at KUNBUS on the date of order confirmation.
- (3) KUNBUS may issue part invoices for part shipments. Payment terms shall run separately for each part invoice.
- (4) Discount shall only be offered by specific written agreement.
- (5) Unless stated otherwise in the order confirmation/quotation, the net sales price (before deductions) shall be payable within 14 days of the invoice date. If the customer defaults on payment, KUNBUS shall be entitled to charge interest on the money owed at a rate of 8 % p.a. above the base interest rate of the European Central Bank. KUNBUS reserves the right to provide evidence of and claim for greater losses resulting from default. For his part the customer shall have the right to prove a lower level of loss.
- (6) Should there be a significant deterioration in the customer's financial situation after the contract is concluded, or should KUNBUS become aware of an earlier deterioration of the financial situation after the contract is concluded, and this gives rise to serious doubts concerning the customer's creditworthiness, KUNBUS shall be entitled to request either payment in advance or a payment bond, at its own choosing. KUNBUS shall be entitled to withdraw from the contract if the customer fails to comply with this request.

§ 7 Right of retention/offsetting

- (1) The right to retain payments on the grounds of any claims of the customer against KUNBUS is excluded, unless the right of retention rests on undisputed or final and absolute claims of the customer.
- (2) Offsetting of the customer's own receivables against receivables of KUNBUS shall not be permitted, unless the right of retention rests on claims of the customer from the same contractual relationship with KUNBUS.

§ 8

Force majeure

- (1) The delivery date shall be postponed and the delivery period extended appropriately in the event of force majeure or other unforeseeable occurrences (e.g. operational disruptions of any type, difficulties in procuring materials or energy, transport delays, strikes, legal lockouts, shortages of workforce, energy or raw materials, difficulties in procuring the necessary official permits, official measures, or incomplete, incorrect, or late delivery by suppliers), where KUNBUS is not responsible.
- (2) The aforementioned circumstances shall not be the responsibility of KUNBUS even if they arise during an existing delay. KUNBUS shall notify the customer of the start and end of such impediments within an appropriate period.
- (3) If such occurrences make delivery extremely difficult or impossible for KUNBUS and the impediment is not merely temporary in nature, KUNBUS reserves the right to withdraw from the contract. Where impediments are temporary in nature, the delivery periods shall be extended or the delivery dates shall be postponed for as long as the impediment shall last, plus a reasonable start-up period. If it is unreasonable for the customer to accept delivery due to the delay, the customer may withdraw from the contract by notifying KUNBUS immediately in writing.

§ 9

Passage of risk

- (1) The risk of accidental loss or accidental deterioration of the delivery items shall pass to the customer as soon as the delivery items have left the premises of KUNBUS or KUNBUS has given notice of readiness to ship.
- (2) If the customer is in default of acceptance of delivery, this is equivalent to delivery of the items.
- (3) If shipment of the subject matter of the contract is delayed as a result of circumstances that are the responsibility of the customer, the risk passes to the customer from the day that notification of readiness to ship is issued.
- (4) To the extent that KUNBUS has contractually agreed to assume the shipping, delivery or installation costs of delivery items, this shall not affect the above clauses regarding the passage of risk.
- (5) The above clauses shall also apply where part shipments are agreed.

§ 10

Default and impossibility

- (1) If KUNBUS should default on its obligation to deliver through simple negligence, the customer may for each week or part of week of default demand compensation amounting to 0.5 % of the price of the portion of the deliveries that cannot be commissioned due to default, but to no more than 5 % in total. The customer shall have the option of demonstrating higher losses due to default; KUNBUS may demonstrate lower losses.
- (2) Notwithstanding a right of withdrawal of the customer in the event of defects (see Item 13 Guarantee and Item 14 Defects of Title in these General Terms and Conditions), the customer may only withdraw from the contract due to the impossibility of performance by KUNBUS or due to default if KUNBUS is responsible for dereliction of duty.
- (3) In the event of default, withdrawal or compensation in place of performance shall moreover require the customer to have first given KUNBUS in writing a suitable deadline of at least 2 weeks to fulfil the contractually due performance, stating expressly that he withdraws from the contract and/or claims compensation if that deadline is not met (setting of deadline with warning of rejection of performance). After this deadline has passed, the customer shall be obliged to declare, at the request of KUNBUS, whether he still insists on performance or claims compensation pursuant to § 281 (4) of the German Civil Code or withdraws from the contract. If the customer does not make any such declaration within a suitable period set by KUNBUS, the customer shall no longer be entitled to decline performance or withdraw, nor may he claim compensation in lieu of performance; he may merely accept performance.

- (4) Setting of a deadline with warning of rejection of performance may only be dispensed with if KUNBUS seriously and definitively refuses the contractually due performance or in the event of special circumstances that justify immediate withdrawal, after weighing up the interests of both parties.
- (5) The customer may not withdraw before the due date of performance, nor in the event of merely immaterial dereliction of duty by KUNBUS. Finally, withdrawal is excluded if the customer is solely or overwhelmingly responsible for the circumstances that would entitle him to withdraw, or if circumstances for which KUNBUS is not responsible arise during the customer's default of acceptance.
- (6) The entitlement to compensation or reimbursement of expenses from default or impossibility shall be subject to Item 16 of these General Terms and Conditions.

§ 11 Default/delay in acceptance

- (1) If the customer should default on acceptance or breach any other cooperation obligation, KUNBUS shall be entitled to claim for any loss incurred, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the customer at the point at which acceptance was delayed.
- (2) If delivery or dispatch of the delivery item is delayed at the request of the customer, the customer shall be charged for the resulting storage costs, from the beginning of the month after the date on which the item was notified as ready for delivery or dispatch and for each subsequent month or part of month, at a rate of at least 0.5 % of the invoice total. The customer reserves the right to prove a lower level of loss, and KUNBUS a higher level.
- (3) After an appropriate period of time, as notified to the customer, KUNBUS shall also be entitled to withdraw from the contract or to supply the delivery item elsewhere and to supply the customer in keeping with the contract, after an appropriately extended deadline.

§ 12 Notice of defect

- (1) The customer shall inspect the delivery items within 10 working days of delivery. Notice of defects of title or of material defects, the absence of a property possibly guaranteed by KUNBUS in the delivery items as well as delivery of excess amounts, short amounts or wrong deliveries (defects) shall – to the extent that they are obvious – be given by the customer without delay in writing, but no later than a further 5 working days after the end of the inspection period stated in sentence 1.
- (2) Notice of defects not identifiable in a customary receiving inspection pursuant to Item 12.1 of these General Terms and Conditions shall equally be given without delay by the customer, but no later than 14 days after detection.
- (3) Notice of defect by the customer must contain a detailed description of the specific defect with the specifics of the individual case.
- (4) If notice of defects is not given within the periods set forth above in Items 12.1 and 12.2 of these General Terms and Conditions, all warranty claims against KUNBUS shall be excluded.

§ 13 Guarantee against material defects on newly manufactured products

- (1) In the event of a defect on a newly manufactured KUNBUS product – except for defects of title, which are covered by Item 14 – Defects of Title – of these General Terms and Conditions – the guarantee provided by KUNBUS for defects notified within the proper periods pursuant to Item 12 of these General Terms and Conditions shall be limited initially to subsequent performance through elimination of the defect (rectification) or replacement, at the discretion of KUNBUS, provided the customer proves that the defect was already present upon the passage of risk.

- (2) The customer shall, in consultation with KUNBUS, grant the latter the necessary time and opportunity to rectify or replace the delivery items. Bearing in mind the complexity of the delivery items, KUNBUS shall be granted up to three attempts at rectification. The place of performance for the subsequent performance shall be at the place of delivery. This shall not apply if KUNBUS selects improvement as subsequent performance and the delivery item to be improved cannot be transported to KUNBUS. If KUNBUS is to undertake the subsequent performance at a site other than the place of delivery and no repair/service agreement is in place, the customer shall reimburse KUNBUS the increased transport, travel and accommodation costs that result from carrying out the subsequent performance at the actual place of use of the delivery items, plus any increased costs arising from the subsequent performance, unless transfer to another place reflects the intended use of the delivery items.
- (3) KUNBUS shall moreover not be obliged to rectify or replace delivery items if this is only possible at disproportionate cost. KUNBUS shall be able to refuse any form of subsequent performance if the expected costs for improvement or subsequent delivery exceed the purchase price of the contractually agreed delivery item by 100%.
- (4) Any parts replaced under guarantee shall become the property of KUNBUS.
- (5) In the event that the subsequent performance fails – i.e. if KUNBUS allows an appropriate deadline issued to KUNBUS for subsequent performance to pass, has attempted rectification twice or made one replacement delivery and the notified defect is nevertheless not remedied, if KUNBUS unjustifiably refuses or unduly delays a necessary subsequent performance or replacement delivery or if rectification is deemed unreasonable for the customer for other reasons, and also if the conditions of §§ 281 (2) or 323 (2) of the German Civil Code are met or KUNBUS justifiably refuses subsequent performance as undue – the customer may invoke the statutory legal redress of withdrawal and price reduction in lieu of subsequent performance or replacement delivery, as well as compensation or the entitlement to reimbursement of expenses, the latter within the framework of Item 16 of these General Terms and Conditions.
- (6) Where the breach of contract is slight, particularly in the case of minor defects, the customer shall have no right of withdrawal.
- (7) In the event of merely a minor defect, the compensation pursuant to § 281 of the German Civil Code – compensation in lieu of performance – shall be calculated based on the difference between the purchase price and the value of the defective delivery items.
- (8) For third-party products, the guarantee provided by KUNBUS shall be limited to the assignment of the entitlements which KUNBUS has in respect of the manufacturer of the third-party products. In the event that the customer is unable to assert his guarantee rights against the manufacturer of the third-party products, KUNBUS shall furnish the guarantee within the framework of these terms and conditions. Any warranties furnished by manufacturers of third-party products shall not be affected.
- (9) If notice of defect was issued unjustifiably, KUNBUS shall be entitled to demand reimbursement of expenses incurred by KUNBUS from the customer if the customer has culpably misjudged circumstances lying within the scope of responsibility of the customer as having caused the supposed defect.
- (10) Should the customer receive defective installation instructions, KUNBUS's sole obligation shall be to supply fault-free installation instructions, and in that case only if the fault in the installation instructions can lead to improper installation.
- (11) The liability of KUNBUS is generally excluded where components other than those manufactured or specified by KUNBUS have been built into the delivery item, at the customer's request. The customer shall be responsible for proving that such a modification did not cause the defect on the delivery item.
- (12) KUNBUS shall not be liable for any installation work carried out by the customer himself. The burden of proof that the installation is free from defects shall lie with the customer.

§ 14

Guarantee against material defects on used products

- (1) Upon delivery of used products, in a departure from the statutory provisions, the customer shall have neither a right to subsequent performance nor can he invoke the legal redress of withdrawal and reduction.

- (2) By way of derogation, the customer shall have a right to subsequent performance and can invoke the legal redress of withdrawal and reduction, insofar as KUNBUS has fraudulently concealed the defectiveness of the used products or has assumed a warranty for the property of the used products. In this case, the rights of the customer shall be in accordance with Item 13 of these General Terms and Conditions.

§ 15

Guarantee against defects of title

- (1) KUNBUS shall guarantee that the contractually agreed use of the delivery items by the customer in the country of the place of delivery does not conflict with third-party rights. In the event of defects of title, i.e. if third parties make justified claims against the customer on the grounds of a breach of protective rights by items delivered by KUNBUS and used in the contractually agreed manner, if notice of defect is given pursuant to Item 12 of these General Terms and Conditions KUNBUS provides a guarantee that KUNBUS shall, at its own discretion, obtain a lawful way to use the delivery items for the customer or modify or exchange the delivery items in such a way that the protective right is not breached. KUNBUS may exchange the relevant delivery items for equivalent delivery items that meet the contractual provisions, provided this is reasonable for the customer. If KUNBUS is unable to do so on appropriate terms, the customer shall have the statutory rights of withdrawal or reduction, as well as entitlements to compensation or reimbursement of expenses. The obligation of KUNBUS to pay compensation or reimburse expenses shall be in accordance with Item 16 – Compensation – of these General Terms and Conditions.
- (2) The customer shall notify KUNBUS without delay in writing if third parties assert protective rights (e.g. copyrights or patent rights) over the delivery items. The customer shall authorise KUNBUS to conduct the dispute with the third party on its own. KUNBUS shall dismiss or satisfy the claims at its discretion and in consultation with the customer. Provided KUNBUS exercises this authorisation, the customer may not of his own accord recognise the claims of the third party without the consent of KUNBUS; KUNBUS shall contest the claims of the third party at its own expense and release the customer from all costs associated with contesting these claims, provided these do not arise as a result of behaviour of the customer in breach of his duty (e.g. contractually non-compliant use of the delivery items). If the customer should cease to use the delivery items in order to mitigate the damage or for other good reasons, he is obliged to inform the third party that no acknowledgement of a breach of protective rights is associated with the cessation of use.
- (3) Claims of the customer are excluded if and insofar as he is responsible for the breach of protective rights. They are furthermore excluded insofar as the breach of protective rights is caused by special stipulations of the customer, by use in a manner not foreseeable by KUNBUS or caused, for example, by the delivery items being modified by the customer or used in conjunction with products not supplied by KUNBUS.
- (4) All further claims based on a defect of title are excluded.

§ 16

Compensation

- (1) Unless otherwise agreed in these provisions, all compensation claims of the customer for losses of any kind, including for reimbursement of expenses and indirect losses, such as loss of profit, shall be excluded. This shall apply in particular to claims for all breaches of obligations resulting from the law of obligations and tort. The exclusion of liability shall also apply if KUNBUS has used subcontractors or vicarious agents.
- (2) In a departure from Item 16.1 of these General Terms and Conditions, KUNBUS shall be liable, whatever the legal basis, only – including if KUNBUS has used senior employees or subcontractors and vicarious agents – if:
- (a) there is gross negligence or intent on the part of KUNBUS,
 - (b) KUNBUS has fraudulently concealed a defect or has assumed a warranty for the property of the delivery items,
 - (c) injury to life, limb or health has been culpably caused by KUNBUS, and
 - (d) KUNBUS is in breach of material contractual obligations, i.e.
 - (aa) in the event of material dereliction of duty that jeopardises the achievement of the purpose of the contract, or
 - (bb) in the event of breaches of obligations, the fulfilment of which makes the proper fulfilment of the contract possible in the first place, and on the compliance with which the customer regularly relies or is entitled to rely (material contractual obligations).
- (3) In the event of Item 16.2 (d) of these General Terms and Conditions – Breach of Material Contractual Obligations – in the case of merely simple negligence the liability of KUNBUS shall however be limited in its amount to reimbursement of the foreseeable, typically incurred loss.

- (4) The exclusion of liability shall not be applicable in respect of claims under product liability law. The aforementioned provisions do not entail a change in the burden of proof to the disadvantage of the customer.

§ 17

Time-barring of claims due to material defects and defects of title

- (1) The limitation period in accordance with § 438 (1) No. 3, § 445b (1) or § 634a (1) No. 1 of the German Civil Code for all claims for defects shall be 12 months from handover of the delivery items or – if formal acceptance has been agreed – from acceptance of the delivery item, unless different arrangements have been made in an individual case. The suspension of expiry in accordance with § 445b (2) shall end after three years.
- (2) By way of derogation, the statutory limitation periods within the scope of § 438 (1) No. 3, § 445b (1) and (2) or § 634 a (1) No. 1 of the German Civil Code shall also apply:
- for claims for injury to life, limb or health caused by a defect for which KUNBUS is responsible,
 - if the defect arises from intentional or grossly negligent dereliction of duty by KUNBUS,
 - for fraudulent concealment of a defect,
 - for warranties (§§ 444 and 639 of the German Civil Code), and
 - when the last contract in the supply chain in accordance with § 445a of the German Civil Code is a consumer contract (in accordance with § 474 of the German Civil Code).
- (3) Claims under the Product Liability Act and statutory provisions relating to the expiry suspension, interruption and restart of the limitation period shall remain unaffected.
- (4) Upon delivery of used products, only Item 17 (2 and 3) shall apply.

§ 18

Cancellation costs

Should the customer withdraw from an order he has placed without the customer having a contractual or statutory right of withdrawal, KUNBUS may – once the customer has been given an appropriate period to remedy the situation – claim 10 % of the sales price for the costs incurred in processing the order and for loss of profit, without prejudice to any subsequent claim for greater actual loss. The customer shall reserve the right to prove a lower level of loss.

§ 19

Retention of title

- (1) All deliveries shall remain the property of KUNBUS until the payment in full of all receivables of KUNBUS existing at the time of conclusion of the contract, whatever the legal basis. If KUNBUS has accepted cheques or bills of exchange on account of performance in the interests of the customer, all deliveries shall remain the property of KUNBUS until such liabilities are fully discharged. The same shall apply if payments have been made for specially designated receivables. The addition of individual receivables to an open account as well as the striking and acceptance of such a balance shall not affect retention of title.
- (2) The customer shall be entitled to work and process the delivery items within the course of his normal business activities. The customer shall perform the working and processing of the delivery items on behalf of KUNBUS without obligations on the part of KUNBUS. Where the delivery items are processed, combined, mixed or blended with other goods not supplied by KUNBUS, KUNBUS shall have a co-ownership share of the new article in proportion to the invoice value of the delivery items compared with the other processed goods at the time of processing, combining, mixing or blending. To the extent that the customer acquires sole ownership of the new article by operation of law, he shall as of now grant KUNBUS co-ownership of the new article in the proportion described above and undertakes to keep this article free of charge on behalf of KUNBUS.

- (3) If the customer disposes of the delivery item or the article under co-ownership pursuant to Item 18.2 of these General Terms and Conditions on his own or together with goods not belonging to KUNBUS, the customer shall as of now assign to KUNBUS the receivables arising from the resale up to the value of the delivery items, along with all ancillary rights. KUNBUS shall accept assignment. If the disposed article is co-owned by KUNBUS, assignment of the receivable shall extend to the amount that corresponds to the KUNBUS portion of co-ownership. Reserving the right of revocation, KUNBUS shall authorise the customer to collect the receivables assigned to KUNBUS. If the customer falls in arrears with his obligations towards KUNBUS, the customer shall name all debtors of the assigned receivables to KUNBUS. The customer must furthermore notify the debtors of assignment. In this case KUNBUS, too, shall itself be entitled to disclose the assignment to the debtors in question and to exercise KUNBUS's authority to collect payment.
- (4) If the customer does not behave in accordance with the contract, and if he falls in arrears particularly with his payment obligations, KUNBUS shall be entitled to take back the delivered goods after issuing a reminder and setting a period of grace. In this case the customer shall be obliged to surrender them. Neither the assertion of retention of title nor the pledging of the software by KUNBUS as such constitutes withdrawal from the contract. The customer declares his consent as of now to allow the persons appointed by KUNBUS to enter and drive onto the premises on which the delivered goods are situated for that purpose.
- (5) The customer shall be entitled and authorised to resell the delivery item only within the ordinary course of business and only subject to the proviso that the receivables assigned to KUNBUS under the aforementioned Item 18.3 of these General Terms and Conditions genuinely pass to KUNBUS. The customer shall not be entitled to dispose otherwise of the delivery items. In particular, he may not pledge the delivery item or transfer it by way of security.
- (6) The customer shall notify KUNBUS without delay of enforcement measures by third parties for goods subject to retention of title, handing over the necessary documents for contending such action.
- (7) All goods subject to retention of title shall be insured by the customer at his own expense, in particular against fire and theft. All claims by the customer against the respective insurers shall be assigned to KUNBUS as of now with regard to the goods that are subject to retention of title. KUNBUS hereby accepts this assignment.
- (8) KUNBUS shall be obliged and prepared to return or release to the customer the security granted to KUNBUS to the extent that it exceeds the agreed cover limit if the value of the overall security granted to KUNBUS exceeds the receivables of KUNBUS by more than 20 %.
- (9) If not located in Germany, the customer shall take any action required in law or otherwise to make retention of title (including its forms of enhancement and extension) by KUNBUS, as envisaged in these terms and conditions of sale and delivery, effective in the country to which delivery is made.

§ 20

Transfer of obligation of disposal in accordance with § 19 of the Electrical and Electronic Equipment Act

KUNBUS shall transfer to the customer its duty as a manufacturer to dispose of electrical and electronic equipment, which arises from § 19 of the Electrical and Electronic Equipment Act dated 20.10.2015. The customer shall release KUNBUS from its take-back obligation and obligation of disposal. The customer shall release KUNBUS from compensation claims from third parties, insofar as the customer culpably violates the assumed obligations. Should the customer transfer possession or ownership of the electrical and electronic equipment to a third party, the customer shall likewise transfer the take-back obligation to the purchaser.

§ 21

Settlement of costs when taking back packaging in accordance with § 15 of the Packaging Act

In a departure from § 15 paragraph 1 sentence 1 of the German Packaging Act (VerpackG), the customer shall bear the costs for returning the packaging to KUNBUS.

§ 22 Confidentiality

- (1) Provided there is no separate confidentiality agreement between KUNBUS and the customer, the following provisions shall apply.
- (2) The customer shall protect confidential information, i.e. all data and information of which he receives knowledge in connection with the contractual relationship with KUNBUS (hereinafter: "Confidential Information"), such as illustrations, drawings, drafts, models, samples, calculations, cost estimates and other documents or items. The customer shall undertake to use Confidential Information only for the purposes of the contract concluded with KUNBUS and not to circulate it among or otherwise disclose it to third parties without the prior express written consent of KUNBUS. The customer shall refrain from any reverse engineering outside of § 69e of the German Copyright Act (UrhG), i.e. reverse analysis through monitoring, examination, dismantling or testing of the delivery items for the purpose of acquiring the business and trade secrets embodied within these items.
- (3) The customer shall be obliged to protect Confidential Information against access by third parties. The customer shall exercise the same care in this respect that he would take in handling his own confidential information, but at least due care. The customer shall be obliged to secure from his employees the same obligations to protect Confidential Information. The customer shall notify KUNBUS without delay in writing if he acquires knowledge of an impending or existing breach of the confidentiality agreement or has suspicions to that effect.
- (4) The obligation to protect Confidential Information shall cease to apply if the customer can prove that
 - this Confidential Information was already known to him prior to the disclosure of this information by KUNBUS;
 - he has legitimately received this Confidential Information from third parties without imposition of a confidentiality obligation and without him having any evidence that the third parties are in breach of confidentiality obligations imposed on these third parties;
 - the Confidential Information is generally known or has become generally known without breaching this confidentiality obligation;
 - this Confidential Information was or is developed by the customer independently of its disclosure by KUNBUS.
- (5) KUNBUS reserves all rights to the Confidential Information (including copyrights, the right to register industrial property rights and patents, utility models, topography rights, designs, brands) and rights of ownership to the items made available and containing the Confidential Information (papers, disks etc.). In no case shall rights of ownership, licence, reproduction, use or other rights be granted to the customer for Confidential Information belonging to KUNBUS, regardless of whether or not such information is covered by protective rights. In the case of items or documents on which KUNBUS has protective rights and/or which are protected as commercial/company secrets, the customer shall only be permitted to use the item in accordance with KUNBUS's express conditions, unless specific usage methods are permitted to a third party.
- (6) At the request of KUNBUS, the customer shall without delay return all Confidential Information received from KUNBUS. Confidential information shall be returned unprompted to KUNBUS free of charge once it is no longer needed. The customer shall have no right of retention to these documents or items. An exception merely applies for copies that must be archived in fulfilment of binding statutory requirements. All Confidential Information present on computers shall be deleted upon request.
- (7) The customer shall be liable for loss and damage where he is responsible for these.
- (8) The confidentiality agreement shall apply for three years after the end of the contract.

§ 23 Concluding provisions

- (1) The customer is hereby informed that KUNBUS shall collect, store and process its data to the extent that is necessary to complete the contract and on the basis of data protection regulations, and that this data will be passed to third parties where required for that purpose.
- (2) KUNBUS shall be entitled to amend the contents of these General Terms and Conditions with the customer's consent, provided the changes, while taking KUNBUS's interests into account, are reasonable for the customer. Agreement for the contract change shall be deemed to be given if the customer has not objected to the change within four weeks of receipt of the change notice. KUNBUS shall be obliged to inform the customer via the change notice of the consequences of a failure to object.
- (3) KUNBUS may transfer its rights from this contract to one or more third parties.

- (4) The law of the Federal Republic of Germany shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980 (CISG).
- (5) The place of performance for the obligations under this contractual relationship is the domicile of KUNBUS in Denkendorf, Germany.
- (6) If the customer is a businessman, a public body or a separate estate under public law, KUNBUS's place of business shall be the exclusive court of jurisdiction for all disputes arising from this contract. This shall also apply if the customer has no general court of jurisdiction in Germany, or if a permanent/habitual place of residence is unknown at the time the claim is raised. The plaintiff shall furthermore be entitled to lodge a claim at the domicile of the defendant.

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August 2020