

## General Terms and Conditions

For business-to-business transactions

### 1. General provisions

- 1.1 The legal relations between Kwapil & Co Gesmbh (hereinafter „Kwapil“) and the Purchaser in connection with supplies and/or services of Kwapil (hereinafter referred to as “Supply” or “Supplies”) shall exclusively be governed by these “General Terms and Conditions”. Purchaser’s general terms and conditions only shall apply to the extent that Kwapil expressly consents to them in writing.
- 1.2 Any information contained in advertising brochures and/or advertising catalogues as well as illustrations are nonbinding. Data contained in technical documents shall only be binding to the extent that these documents are attached to the order confirmation as an annex and in addition are explicitly stated to be of guaranteed quality. Such guarantee shall be valid only until the end of the warranty period.
- 1.3 The contract shall be deemed concluded upon acceptance of an order by Kwapil (“order confirmation”), which has to be declared by mail, fax or electronically and which shall also be valid without signature. The scope of any Supply owed by Kwapil shall result exclusively from the order confirmation and its annexes.
- 1.4 Kwapil shall be entitled to transfer rights and duties under the contract to third parties.
- 1.5 Tools and equipment shall be the sole property of Kwapil. This shall also apply if the Purchaser pays for the tools. After the last Supply made, Kwapil shall be entitled to deal with the tools at Kwapil’s discretion.

### 2. Warranty / undertakings

- 2.1 Kwapil shall warrant exclusively that Supplies are new and unused at the time of passing of the risk, correspond to Kwapil’s standards and to agreed technical specifications, if any, and that during the warranty period the Supplies are free from defects which are due to defective components or defective and/or inferior processing by Kwapil.
- 2.2 The warranty period is 12 (twelve) months from passing of the risk. Repair or replacement shall not prolong the original warranty period.
- 2.3 Kwapil shall make no representations of warranties or remedies whatsoever (a) for software supplied by Kwapil; (b) for Supplies which are delivered by Kwapil but manufactured by third parties; (c) for defects not solely caused by Kwapil; (d) if (i) deviations from the agreed specifications of the Supplies are unsubstantial or if a defect impairs the usability of the respective Supply only insignificantly; or (ii) defects are due to natural wear and tear, unforeseeable events or damage occurring after the passing of the risk, faulty or negligent treatment, unusual physical strain or electronic load, excessive use, misuse, incorrect use, neglect, use with unsuitable accessories, improper installation or packaging, installation not carried out by Kwapil, inappropriate building ground or particular external influences which are not explicitly stated in the contract as having an impact on Supplies or if they are due to repairs or alterations being carried out by any party other than Kwapil; or (iii) Supplies are modified by the Purchaser, the Purchaser’s customers or end users after the delivery by Kwapil or if possible seals of warranty were removed or altered by the Purchaser, the Purchaser’s customers or end users; or (iv) any defect or damage is attributable to Purchaser’s faulty design of the Supplies and/or any parts thereof or attributable to work which has been carried out in compliance with the requirements and specifications of the Purchaser; (e) with respect to prototypes, pre-production parts or test samples as well as (f) in the case of any defect or damage which is attributable to supply parts, tools or test provided or made available by the Purchaser or manufactured or procured by Kwapil in accordance with the instructions of the Purchaser; the responsibility for the dimensional accuracy and the functionality of supply parts shall exclusively be borne by the Purchaser. Any defects recognised by Kwapil will be notified to the Purchaser.
- 2.4 Provided that a defect of a Supply is solely caused by Kwapil, Kwapil shall provide warranty in its sole discretion and sole remedy by repairing or replacing the Supply or by crediting or refunding its price. Kwapil’s liability and warranty with respect to any defect arising from any component shall be limited to the compensation and warranty received by Kwapil from the respective component supplier. Purchaser’s rights of cancellation, rescission and termination shall be excluded.
- 2.5 In the event of an epidemic failure, the Parties shall cooperate in order to identify its cause, the number of Supplies affected and the required measures. Epidemic failure in this meaning are defects with an identical root cause and which occur in more than 5% (five per cent) of the Supplies of the past 6 (six) months, provided that the delivered minimum quantity of defective Supplies affected by the same epidemic failure exceeds 300 (three hundred) pieces within the warranty period. The total aggregate liability of Kwapil for epidemic failures shall not

exceed the following: In the case of an epidemic failure, defective Supplies shall, in Kwapil’s sole discretion, cost and expense, and sole remedy, be repaired, replaced, credited or refunded. In the case of an epidemic failure, the liability of Kwapil shall in all cases be limited to 3% (three per cent) of the last 6 (six) months’ turnover realised by Kwapil for the respective Supply.

- 2.6 Delivery items complained about must be sent to Kwapil on request. As Supplies are replaced, replaced Supplies shall become the property of Kwapil unless Kwapil renounces the transfer of ownership.

### 3. Liability

- 3.1 Subject to the mandatory legal provisions and the ones expressly stated under clause 2 above, all rights and claims of the Purchaser against Kwapil, its bodies, shareholders, employees, affiliates, agents or any persons with whom it performs its obligations, its subcontractors, suppliers and designees for whatever legal ground shall be excluded to the maximum extent permitted by applicable law, especially, but not limited to, claims based on loss of production, damage caused by delays, loss of use, loss of or damage to data or data storage media, costs for recovery of lost or damaged data, lost profit and other direct, indirect or consequential damage even if the possibility of such damage has been expressly pointed out to Kwapil.
- 3.2 Enforceable Purchaser claims shall be limited to 5% (five per cent) of the Purchaser’s payments to Kwapil during the preceding 6 (six) months for the specific Supply under the respective individual contract. Parties are free to furnish proof of lower damage.
- 3.3 Subject to the warranty provisions as per clause 2.2 above, any possible Purchaser’s claim for damages shall become time-barred within 12 (twelve) months after arising. The same shall apply to Purchaser’s claims in connection with damage control (e.g. product recalls).

### 4. Third-party claims

The Parties shall inform each other immediately if they become aware that claims have been raised against any or both of them, proceedings have been instituted or actions brought which relate to both Parties. The Parties undertake to reasonably support each other in defending against such claims, proceedings or actions. In the case of direct claims of third parties against Kwapil, the Purchaser has to indemnify Kwapil to the extent that the claim exceeds the agreed maximum thresholds for warranty or liability.

### 5. Prices, modification of contract, terms of payment

- 5.1 Prices are ex works, excluding packaging and VAT in the respective legal amount owed. All costs not expressly included in the price (e.g. for customs, export, transit, import and other approvals and certifications) shall be at the expense of the Purchaser; on request of Kwapil, the Purchaser shall make available a freely clearable advance in the corresponding amount.
- 5.2 All prices are stated subject to the prerequisite that no general terms and conditions other than these “General Terms and Conditions” apply in the relationship between the Parties. If this is not the case, Kwapil shall be entitled to adjust the prices.
- 5.3 Kwapil shall be entitled to adjust the prices and conditions to changed circumstances, in particular if (a) the Purchaser requests changes or additions subsequently; (b) (i) the documents and information made available by the Purchaser are incomplete or (ii) do not correspond to the actual conditions; (c) the underlying conditions for the pricing (in particular monetary parties or material prices) significantly change between the time of the offer and the agreed date of performance.
- 5.4 Unless otherwise agreed, invoices of Kwapil shall be due for payment immediately. Payments are to be made to the bank account named by Kwapil, without deduction of out-of-pocket expenses, taxes, charges, fees, customs and the like and any cash discount which has not been agreed upon. Payments shall only be deemed as effected when Kwapil can dispose of the amount without restrictions.
- 5.5 If the Purchaser has not effected payment by the due date, the Purchaser shall be in default without warning and Kwapil shall be entitled, without prejudice to further claims, (a) from the time of maturity, to charge default interest amounting to 8 (eight) percentage points above the respective rate of discount of the Swiss National Bank, but not more than the maximum amount permitted by law or (b) to rescind the contract and claim damages.

5.6 In the case of discontinuation of payments by or application for opening of insolvency proceedings against the Purchaser, all claims of Kwapil vis-à-vis the Purchaser under the business relation, including claims for damages, shall become due for payment immediately. In addition, the Purchaser shall already now irrevocably waive any possible defence of limitation for such a case and Kwapil shall accept such waiver. Furthermore, Kwapil shall be entitled at its own discretion to terminate the business relationship completely or in parts without notice and to claim damages.

5.7 The Purchaser may claim offsetting, liens and rights of retention only in respect of uncontested or legally ascertained counterclaims.

5.8 Kwapil shall be entitled to claim from the Purchaser compensation for all costs in connection with the tracking of any defects and malfunctions notified by the Purchaser if they cannot be found or reproduced by Kwapil.

## 6. Period of delivery; default

6.1 An agreed period of delivery shall start only when a written order has been received by Kwapil and is available for reference with regard to which all technical and commercial aspects have been clarified, all significant technical matters have been finally clarified, supply parts have been made available in an impeccable and timely manner and all official formalities such as, for example, import, export, transit and payment permits have been obtained and/or met. Kwapil shall be entitled to effect partial Supplies and to make excess or short Supplies within a scope of up to 10%, but at least three pieces.

6.2 If a delay is not exclusively at the fault of Kwapil, the periods shall be extended reasonably but at least by the duration of the delay. This shall apply in particular, but not exhaustively, if (a) Kwapil does not receive information, approvals and releases which are needed for fulfilling the contract in good time; (b) the Purchaser or third parties involved by the Purchaser is/are in arrears with the work to be performed by them or with the performance of contractual duties, in particular if the Purchaser does not comply with the terms of payment; (c) if Kwapil itself is not supplied by its suppliers in good time or is supplied improperly.

6.3 Exceeding a date of delivery shall not entitle the Purchaser to annul its order. Any liability in connection with an excess of the period of delivery shall be excluded.

## 7. Passing of the risk

7.1 The risk shall pass to the Purchaser when the Supply is set aside and made available. On request of the Purchaser, Kwapil shall arrange for the transport. The transport (including loading) shall take place at the risk and expense of the Purchaser. Type, route and carrier may be chosen by Kwapil at its own discretion unless the Purchaser expresses special requests in good time. Complaints in connection with the transport must be addressed by the Purchaser to the most recent freight carrier immediately upon receipt of the Supply. Kwapil shall insure the Supplies against the usual transport risks on request and at the expense of the Purchaser in accordance with the Purchaser's instructions.

7.2 If due to a separate differing agreement the risk passes in a manner other than the one described in [clause 7.1 sentence 1](#) above and if the passing of the risk is delayed for reasons not exclusively the fault of Kwapil or if the Purchaser is in default of acceptance, the risk shall pass to the Purchaser in accordance with [clause 7.1 sentence 1](#) above. Starting with the occurrence of the delay, the Supply shall be stored for account and at the risk of the Purchaser. Kwapil shall be entitled, but not obliged, to insure the Supply stored at the expense of the Purchaser. The Purchaser shall only have a claim to the Supply when the Purchaser has reimbursed all expenditures, costs and fees in connection with its storage and possible insurances to Kwapil and has paid a reasonable compensation for the associated expenses.

7.3 If events within the meaning of [clause 7.2](#) above significantly change the economic meaning or the content of a delivery or negatively affect the operations of Kwapil, Kwapil shall be entitled to withdraw from the contract and to claim damages.

## 8. Inspection

The Purchaser has to inspect Supplies within a reasonable period commencing on receipt and to notify possible defects, if any, to Kwapil immediately in writing. If the Purchaser fails to do so, the Supply shall be deemed to be approved as being free from defects, subject to the proviso of possible hidden defects.

## 9. Industrial property rights and copyrights, defects in title

9.1 All intellectual property rights ("property rights") of Kwapil and/or third parties shall remain reserved. On request, documents including all copies on whatever medium must be returned to Kwapil immediately.

9.2 Deliveries carried out by Kwapil in compliance with information, sketches, drawings, samples, matrices or other documents of the Purchaser shall be carried out at the sole risk of the Purchaser with regard to possible property rights (such as for example patent, design, trade mark, semiconductor topography rights and copyrights). If property rights of third parties are infringed because of the execution of such Supplies, Kwapil shall not be liable for the infringement and the resulting claims of third parties and shall be authorised to discontinue the execution of the Supply without further ado. The Purchaser shall bear any damage resulting from the infringement of property rights of third parties and shall indemnify Kwapil completely and on first request.

## 10. Force majeure

In cases of force majeure, the force majeure clause of the International Chamber of Commerce (ICC), Paris (INCOTERMS) in the version applicable upon conclusion of the contract shall apply.

## 11. Compliance with legal provisions

The Purchaser undertakes to comply with the wording and intention of all legal provisions and regulations in all countries where its company operates. In addition, Kwapil expects upright and socially responsible business conduct on the part of the Purchaser.

## 12. Changes and additions

Changes of these "General Terms and Conditions" including this [clause 12](#) and all side agreements must be made in writing.

## 13. Severability clause

If individual provisions of these "General Terms and Conditions" finally prove to be legally void or unenforceable for legal reasons, the validity of the rest of these "General Terms and Conditions" shall not be affected. In such a case the Parties shall reach an agreement which replaces the provision in question by such effective provision which in economic terms is equivalent to the original provision as far as possible and they shall submit to such provision.

## 14. INCOTERMS

Unless otherwise expressly agreed by the Parties, all commercial terms in connection with the agreements between the Parties shall be interpreted in accordance with the International Commercial Terms defined by the International Chamber of Commerce (ICC), Paris (INCOTERMS) in the version applicable upon conclusion of the contract.

## 15. Applicable laws

All agreements between the Parties shall be governed by Austrian law, without any reference to the conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

## 16. Place of jurisdiction

For the resolution of all disputes under or relating to this contract, the Parties shall submit to the jurisdiction of the courts having jurisdiction for Vienna / Austria.