

General Terms and Conditions



1. SCOPE

The following general terms and Conditions form the basis of all deliveries and services from KAHLES GmbH, Danfoss-Straße 5, 2353 Guntramsdorf, Austria to the natural or legal person ("CUSTOMER") ordering or purchasing a product offered by KAHLES ("OBJECT OF PURCHASE"), even where no separate reference is made to them in a particular case. In terms of the business relationship to KAHLES the application of CUSTOMER's and/or third parties' other general and/or specific terms and conditions and/or other terms of whatever kind is explicitly excluded, KAHLES hereby explicitly rejects applicability of such other terms and actions of fulfilment or silence on the part of KAHLES shall not result in CUSTOMER's and/or third parties' other terms being applicable neither. Any agreements, supplements, representations and/or amendments which are supplementary to or different from this general terms and conditions, such as in particular contradictory terms and conditions of the CUSTOMER and/or third parties, shall not be legally valid or binding unless expressly acknowledged by KAHLES by means of a written acknowledgement signed by the authorized signatories in each particular case.

2. OBJECTS OF PURCHASE, ORDERS

All orders shall become legally valid only upon written (letter, facsimile or e-mail) order confirmation by KAHLES or, in the absence thereof, on performance of the delivery at the latest, in any case exclusively within the scope of the corresponding order confirmation or delivery. With respect to undeliverable OBJECTS OF PURCHASE, CUSTOMER shall not have any claims except for a corresponding refund of purchasing price.

OBJECTS OF PURCHASE will correspond to the general and usually expected properties; any information in catalogues, brochures, etc. or properties of samples (e.g. colour, composition, dimensions), are binding only insofar as KAHLES has made express reference to them in the order confirmation. Orders shall explicitly and clearly indicate the OBJECTS OF PURCHASE and the quantity; unclear indications contained in the order must not be construed at the expense of KAHLES.

3. PRICES

Unless agreed otherwise, all prices and net in euros ex works (EXW), in accordance with INCOTERMS 2010. Unless agreed otherwise, the respective prices of KAHLES valid at the time of delivery shall be deemed to be agreed.

4. PAYMENT TERMS

4.1. Unless agreed otherwise in a particular case, payments will be made in euros in advance, either by effective bank transfer or – upon KAHLES's prior written approval – by means of irrevocable letter of credit. KAHLES reserves the right to give its approval only after the offered letter of credit has been confirmed by a bank acceptable to KAHLES. Payment shall be due on the non-binding delivery date defined in the order confirmation or on the day the OBJECT OF PURCHASE is delivered to the CUSTOMER (EXW Incoterms 2010) at the latest.

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Should the CUSTOMER pay in a freely convertible currency other than the currency of the invoice, the CUSTOMER shall bear the exchange rate risk and all exchange differences arising from his payment obligation. Bank charges shall be borne by the CUSTOMER.

4.2. KAHLES shall be entitled to withhold the delivery of the OBJECT OF PURCHASE until the due purchasing price has been paid completely. Payment shall be deemed to be effected when the amount agreed is at the full disposal of KAHLES at the latter's premises.

CUSTOMER acknowledges his obligation to pay interest at 12 % per annum from the due date onwards. Any demands for payment, counter demands or claims for compensation on the part of the CUSTOMER do neither provide any entitlement to offset nor to delay payments beyond their due dates. If payment is delayed more than twice, KAHLES reserves the right to suspend deliveries without any claims on the part of the CUSTOMER against KAHLES arising therefrom.

KAHLES reserves the right to change the terms of payment or to suspend any agreement with the client if it appears to be necessary as a result of the CUSTOMER's financial situation or payment history.

5. DELIVERY

5.1. Unless otherwise agreed in writing in advance, all deliveries will be made in accordance with the Incoterms 2010 ex works Guntramsdorf (EXW). Deliveries will be made by KAHLES in accordance with the operational capabilities. The delivery period begins at the date of order confirmation. Proposed delivery dates are without obligation and are stated in the order confirmation. No claim for damages or other claims resulting from non-fulfilment or late fulfilment will be considered; in case of non-fulfilment, the CUSTOMER shall be entitled to receive a corresponding refund of the purchasing price. Part-deliveries are permissible, shall be paid in accordance with the terms of payment according to Article 4 above and the CUSTOMER obligates himself to accept them correspondingly.

5.2. KAHLES's fulfilment of the contract excludes liability due to circumstances that are unforeseen or are not within the control of the parties, for example all cases of force majeure, armed conflicts, government actions and prohibitions, delays in transport and at customs, transport damage, energy shortages and labour conflicts. These circumstances give the right to extend delivery date even if they occur on the part of the supplier.

5.3. Where without negligence on the part of KAHLES, the sending of OBJECTS OF PURCHASE, in particular part-deliveries, ready for dispatch is not possible or is not wanted by the CUSTOMER, the CUSTOMER refuses to accept the delivery or the complete purchasing price is not available to KAHLES in due time, KAHLES is entitled to store the goods at the risk and expense of the CUSTOMER, and the delivery will be deemed to have been carried out. Any additional costs arising therefrom will be charged. The agreed terms of payment (see Article 4) will not be changed as a result of this.



5.4. OBJECTS OF PURCHASE may differ from the specifications (see Article 2) defined for them, whereas the CUSTOMER shall not have any claims arising from insignificant deviations. The burden of proof with respect to a significant change rests with the CUSTOMER. KAHLES furthermore reserves the right to modify the OBJECTS OF PURCHASE and/ or their specifications at any time. Unless explicitly agreed in each individual case, KAHLES does not grant any guarantee of delivery.

6. COMPLAINTS AND WARRANTY

Obvious defects that are evident from proper examination upon receipt of the goods must be notified by CUSTOMER within 8 days of the arrival of the goods at the point of delivery, by e-mail or registered letter giving full details of the defect, otherwise the goods will be deemed to have been accepted and further warranty claims against KAHLES will be deemed to be excluded. In the case of hidden defects which cannot be found within this period even after careful examination by a proper entrepreneur, KAHLES will give a guarantee of 6 months from the date of delivery (EXW, INCOTERMS 2010) against material or manufacturing faults.

Any claims beyond warranty claims, in particular any claims for damages, are explicitly excluded. Warranty claims and claims for damages are also excluded if the CUSTOMER has modified the OBJECT OF PURCHASE in any way by processing or manufacturing.

Where KAHLES confirms that there is a faulty OBJECT OF PURCHASE, it will – at KAHLES's option – be rectified by repair, replacement with non-defective goods or, where agreed, by an appropriate reduction in price. All claims under the warranty must be notified by registered letter immediately after discovery and by giving full details of the defect. Goods may only be returned with KAHLES's approval of and in accordance with its instructions, otherwise in particular the CUSTOMER shall bear the shipping costs himself.

7. LIABILITY

KAHLES's liability is limited to damages affecting the OBJECT OF PURCHASE itself. Except for liability for personal injuries, as well as in the case of fault or of blatant gross negligence on the part of KAHLES, any other compensation for damage is excluded. Where the law permits, total liability is limited to the purchasing price, up to a maximum of EUR 8,000. The burden of proof for both the amount of damages and KAHLES's fault rests with the CUSTOMER.

In terms of product liability KAHLES is liable only for personal injuries and for any material damage suffered by the end-user. Any modifications of the goods supplied, non-compliance with instructions for use, non-observance of product information, the use of non-KAHLES components, or any use of the product not for the intended purpose discharges KAHLES from liability. KAHLES is not liable for damage to third parties, consequential losses, loss of profits or failure to achieve an expected saving. The CUSTOMER undertakes to transfer the limitations on liability to subsequent CUSTOMERS if the product is sold on.



8. INDUSTRIAL PROPERTY RIGHTS

8.1. Any and all rights to intellectual property in connection with the OBJECTS OF PURCHASE as well as any other products, components, processes, plans, outlines and any other documents of technical nature, as well as designs and patterns, catalogues, brochures, images and the like (“KAHLES Material”) (including patents, trademarks, utility models, designs, copyright, know-how and commercial, technical and process/work-flow related information) shall vest in KAHLES, whereas CUSTOMER shall not be granted any rights (particularly no further license rights) beyond the right of use as intended. KAHLES shall have the exclusive right to use and exploit these rights, to apply for protection under available protective rights or otherwise preserve these rights. KAHLES reserves any rights, including copyright and rights to use, to the KAHLES Material. CUSTOMER shall not use, copy, reproduce, store or distribute, neither for his own nor for third party purposes, including in particular not as a direct or indirect pattern/template or supporting tools, without having obtained KAHLES prior written express approval in each individual case.

At the latest upon receipt of such Material CUSTOMER acknowledges KAHLES’s respective rights and his obligation to maintain secrecy. CUSTOMER shall not pass the KAHLES Material on to any third party or use it beyond the purpose that he had obtained the Material for, neither in parts nor in their entirety, without having obtained KAHLES prior written express approval in each individual case.

The prohibition to pass Material on shall not extent to such KAHLES advertising material that CUSTOMER is provided with for the purpose of distributing the same to the end consumers, such as product brochures, catalogues or promotion flyers.

8.2. KAHLES shall not be liable for any infringement of third party intellectual/industrial property rights where KAHLES has manufactured or distributed a product for the CUSTOMER that is based on drawings, patterns/ templates, models, specifications or other production information. In such cases, CUSTOMER shall indemnify and hold KAHLES harmless with regard to any liability or asserted claims.

KAHLES Material shall not extend to possible operating instructions and/or manual that may come with a certain OBJECT OF PURCHASE. Property and rights to and in the content shall remain with KAHLES, the CUSTOMER however undertakes to add such material to the relevant OBJECTS OF PURCHASE to be provided to his CUSTOMERS.

Where KAHLES Material has been approved to be forwarded to third parties, CUSTOMER shall notify his clients of the above mentioned rights of KAHLES and oblige the latter to comply with the above provisions as well as to pass this obligation on to their CUSTOMERS. This includes in particular the duty to oblige each further CUSTOMER to comply with the above provisions accordingly. KAHLES advertising material that CUSTOMER is provided with for the purposes of distributing the same to the end consumers, such as product brochures, catalogues or promotion flyers, shall not be subject to this obligation.

8.3. KAHLES trademarks or any other signs shall neither be amended, nor removed from the OBJECTS OF PURCHASE or its packaging nor used in any manner whatsoever in a form detached from the OBJECTS OF PURCHASE or the packaging. CUSTOMER has the right

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and obligation to use KAHLES trademarks and signs depicted on the OBJECTS OF PURCHASE or its packaging – without any alteration and as depicted on the OBJECT OF PURCHASE or the packaging – for identification of the unaltered OBJECTS OF PURCHASE and in their original packaging in a manner, form and extent as depicted on the OBJECT OF PURCHASE or the packaging at the moment of delivery to CUSTOMER. Any further use of KAHLES trademarks, names, logos or other signs shall only be allowed after KAHLES prior written approval in each individual case and exclusively in the form as explicitly approved.

9. CONFIDENTIALITY

The CUSTOMER undertakes to use all KAHLES documents as well as commercial, technical and/or other information that he is provided with or become known to him in the course of the business relationship to KAHLES exclusively for the proper and usual usage of the service to be delivered. The CUSTOMER shall treat them at least with the same care and attention as his own company and trade secrets, in any case, however, with the appropriate care, to make them only accessible to those employees requiring them in order to allow a proper and usual use, not to make them accessible to third parties and protect them against theft.

Upon termination of this agreement or cooperation, CUSTOMER shall return all documents containing confidential information of/about KAHLES and to permanently delete electronic confidential information; the CUSTOMER does not possess the right of retention.

Without KAHLES's prior written approval in each individual case, the CUSTOMER is not allowed to refer to KAHLES in advertisements, external communication and other announcements. This prohibition does not include the use of marks permitted by KAHLES unless the impression is given that the particular reference is made by KAHLES itself.

10. RETENTION OF TITLE

KAHLES will retain ownership of the OBJECT OF PURCHASE until the due purchasing price has been paid in full by the CUSTOMER. Where the OBJECT OF PURCHASE is subject to further processing or is integrated into one item to form an integral part of it, KAHLES will have joint ownership of the new complete product in proportion to the value of the components. The CUSTOMER is entitled until further notice to sell the OBJECT OF PURCHASE or the products resulting from processing as part of his normal business operations subject to retention of title. Until the purchasing price has been paid in full, the CUSTOMER will assign to KAHLES all payments receivable by him as a result of reselling the OBJECT OF PURCHASE as an individual part or as an integral part of a complete product, up to the value of the OBJECT OF PURCHASE. Until further notice the CUSTOMER is entitled and obligated to collect the assigned receivable amounts from his CUSTOMERS. KAHLES can inform the CUSTOMER's costumers of such assignment at any time and KAHLES is entitled to take possession of the OBJECT OF PURCHASE or the complete product or to request the payment of the appropriate amount directly to KAHLES if the CUSTOMER fails to meet his obligations under the contract, and in particular if he deals improperly with the OBJECT OF PURCHASE, or is in default of payment of the purchasing price. The return of the goods, or the taking possession of them,

does not constitute the cancellation of the contract and does not terminate the CUSTOMER's obligations, in particular with respect to the payment of the purchasing price.

11. SUPPLEMENTARY CONDITIONS – REPAIRS

11.1. KAHLES is generally willing to accept OBJECTS OF PURCHASE in order to repair them in accordance with the following conditions, and a commitment to repair becomes binding with respect to the conditions contained therein (cost estimate), in particular the repair period or costs, only after it has been confirmed in writing.

11.2. Cost estimates will be prepared on the basis of a specific enquiry; neither the placing of an order, nor the preparation of an order confirmation and/ or the delivery, provide KAHLES with any obligation to carry out a repair or to repair the respective OBJECT OF PURCHASE. Cost estimates are made only in writing and are binding only in written form. Verbal advice on expected repair costs and/or promises on package prices are without obligation.

11.3. When the repair is complete or the inspection has been carried out, KAHLES will deliver the OBJECT OF PURCHASE to the CUSTOMER immediately. The repair periods defined in a cost estimate are reference values; no guarantee is given for a specific finish date.

11.4. Both the delivery and the return of the OBJECT OF PURCHASE to be repaired will be carried out at the risk and expense of the CUSTOMER.

11.5. Scrap parts that are replaced will become, automatically and at no charge, the property of KAHLES having sole power of disposal.

11.6. No warranty will be given for temporary repairs, in particular the replacement of wearing parts, carried out by express order. Wearing parts have a working life in accordance with the current state of technology.

11.7. KAHLES guarantees the repair work carried out and the components installed for the period provided by law from the date of delivery (dispatch to CUSTOMER; EXW Incoterms 2010). The guarantee will consist in principle of rectifying the established defects of the repair within a reasonable period of time. If such rectification is not possible or would incur excessive costs, a suitable replacement will be provided, which however must not exceed the amount paid to KAHLES for repairing the OBJECT OF PURCHASE. In order for the warranty services to be carried out, the CUSTOMER must hand over the respective OBJECT OF PURCHASE to KAHLES at the premises of the latter, at CUSTOMER's own risk and expense. Materials provided by the CUSTOMER are not covered by the guarantee. Claims under the guarantee become invalid if

- a.** any obvious defects are not notified in writing (by e-mail or registered letter) within 8 days of delivery
- b.** the components affected by the defect have been modified or repaired in any way by a third party or by the CUSTOMER himself.



12. DATA PROTECTION

The CUSTOMER agrees that his data made available to KAHLES in the course of the business relationship – including any personal-related data of the CUSTOMER himself, his employees, or the CUSTOMERS and business partners of the CUSTOMER

– may be stored by KAHLES and processed for bookkeeping and CUSTOMER evidence purpose including as references for advertising purposes. The data will be used by KAHLES in order to comply with statutory regulations, for dealing with its payment procedures and for advertising and reference purposes. The CUSTOMER gives the assurance that he has the permission of his own CUSTOMERS for this use of data, and that he indemnifies KAHLES against any claims in this respect.

13. ASSIGNMENT OF RIGHTS AND DUTIES

The CUSTOMER must not assign rights and duties from this GTC and/or the order to any third party without the written consent of KAHLES in each individual case. KAHLES shall be entitled at any time to assign its rights and duties from this GTC and the order to a company affiliated to KAHLES or a third party without the consent or approval of the CUSTOMER being required.

14. GENERAL

14.1. If any one or more of the provisions of this GTC should be found to be invalid, illegal or unenforceable for whatever reason, then all other provisions should not be affected thereby, and this GTC shall be considered as not containing invalid, illegal or unenforceable provisions. The contracting parties are independent contracting parties and are furthermore not associated on the basis of this business relationship and they have no legal relationships on the basis of employment contracts or representation.

14.2. With respect to relationship to consumers, the regulations of this agreement shall only apply insofar as they do not conflict with relevant obligatory legal requirements, and in particular the Consumer Protection Act.

14.3. Neither failure nor delay to exercise any right laid down for the business relationship of the contracting parties shall be deemed to be a respective party's waiver thereof in the present and future cases. No waiver shall be effective unless the same has been agreed in writing between the contracting parties.

14.4. Articles 6, 7, 8 and 9 shall permanently remain in force following termination of this agreement or any cooperation between the CUSTOMER and KAHLES, regardless of the reason for termination. With respect to these obligations, the CUSTOMER must ensure that they are assigned to any additional CUSTOMER.

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15. VENUE, APPLICABLE LAW

This agreement shall be subject to Austrian Law. United Nations Convention on the International Sale of Goods (CISG) and the provisions of the law on conflict of laws under international private law are excluded.

If the CUSTOMER's permanent registered office is in an EU Member State, Iceland, Norway or Switzerland, any legal dispute arising from and/or in connection with the business relationship between CUSTOMER and KAHLES shall exclusively be settled by the competent court in Vienna, Austria. If CUSTOMER's permanent registered office is in another State, any dispute arising from and/or in connection with the business relationship between CUSTOMER and KAHLES shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by an arbitrator appointed in accordance with said Rules. The arbitration shall be held in Zurich, Switzerland. The language of arbitration will be German.

Where CUSTOMER is a consumer in the sense of REGULATION (EC) No 1215/2012 of 12 December 2012 of the EUROPEAN PARLIAMENT AND OF THE

COUNCIL on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the venue shall be the place where the consumer is domiciled.