

Karl Heitz Industrievertretungen GmbH

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| Address: | Senner Str. 151 33659 Bielefeld |
| Telephone: | +49 (521) 9 50 05 -02 |
| Fax: | +49 (521) 9 50 05 -33 |
| Email: | info@karl-heitz.de |
| Homepage: | www.karl-heitz.de |
| Commercial register: | Bielefeld District Court, HRB 32208 |
| Managing Director: | Thorsten Kott |
| VAT ID no.: | DE 151697598 |

General Terms and Conditions

(Updated: February 2018)

A. Applicability of the General Terms and Conditions of KARL HEITZ

B. General Purchasing and Contract Terms

C. General Terms of Delivery and Service

D. Special Terms for Renting

A. Applicability of the General Terms and Conditions of KARL HEITZ

A.1

These Terms and Conditions shall apply to all business relationships between **KARL HEITZ** and its contracting parties, even if specific reference to the Terms and Conditions is no longer made in individual transactions, provided that the contracting party is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law, or a special fund under public law.

In these Terms and Conditions, the term “contracting parties” refers to parties who conduct business with **KARL HEITZ** as providers and/or customers.

A.2

These Terms and Conditions shall apply exclusively and in all cases. Deviating, conflicting or supplementary general terms and conditions of the contracting party shall become part of the contract only if and insofar as **KARL HEITZ** has expressly approved their applicability in writing.

Individual agreements concluded with the contracting party in individual cases (including collateral agreements, supplements and amendments) shall always have priority over these Terms and Conditions. In the absence of evidence to the contrary, a written contract or the written confirmation of **KARL HEITZ** shall be authoritative as far as the content of such agreements is concerned.

A.3

References to the applicability of statutory regulations are for clarification purposes only. Statutory regulations thus apply even without such clarification, provided they are not directly modified or expressly excluded in these Terms and Conditions.

A.4

The same words can have different meanings in different legal systems. The German legal meaning of the respective words shall be decisive in foreign-language, i.e. non-German, versions of these Terms and Conditions.

B. General Purchasing and Contract Terms

B.1

The engagement and purchase orders placed by **KARL HEITZ** are governed exclusively by the Purchasing and Contract Terms of **KARL HEITZ**.

B.2

All orders issued and purchases made by **KARL HEITZ** are – insofar as these conditions do not settle the matter – settled solely on the basis of the statutory provisions.

B.3

KARL HEITZ is entitled to transfer its rights and claims against the contracting party arising from business relationship in whole or in part to third parties or assign or pledge them to third parties.

B.4

The contracting party is not permitted to transfer the rights and obligations – with the exception of monetary claims – from the purchase order to third parties without the written approval of **KARL HEITZ**.

B.5

Subject to the condition that the invoice will be reviewed later on, **KARL HEITZ** shall pay

- within 14 days of the receipt of the invoice less 3% cash discount
- or within 30 days without a discount.

B.6

If goods arrive prematurely, the invoice shall be valued as of the delivery date contractually requested by **KARL HEITZ**. The valuation date shall be regarded as the effective date of receipt of the invoice.

B.7

In the case of defective goods or performance or partial delivery in breach of contract, the invoice shall be valued as of the date of flawless or complete delivery. The valuation date shall be regarded as the effective date of receipt of the invoice.

B.8

The contractual partner of **KARL HEITZ** shall provide warranty and compensation for damages in the statutory scope and for the statutory period.

In particular, the contracting party is liable to **KARL HEITZ** regardless of fault for expenses incurred for removal and installation or affixing of the (defective) object, according to the statutory provisions (in particular Sections 439 (3), 445a BGB).

B.9

The place of performance for all deliveries and services is the destination specified by **KARL HEITZ**.

B.10

The courts of Bielefeld, Germany, shall have jurisdiction over all disputes arising from or in connection with the contractual relationship between the contracting party and **KARL HEITZ**. **In the aforesaid case, KARL HEITZ** may also bring action against the contracting party at its domicile. Priority statutory provisions, in particular regarding exclusive legal jurisdiction, remain unaffected.

B.11

The laws of the Federal Republic of Germany shall apply, to the exclusion of international uniform law, including but not limited to the UN Convention on Contracts for the International Sale of Goods (CISG).

C. General Terms of Delivery and Service

C.1. Conclusion of the Contract / Content of the Contract / Specifications / Duty of Cooperation / Prohibition of Assignment

C.1.01

KARL HEITZ provides its services and deliveries exclusively on the basis of these General Terms of Delivery and Service and any relevant special terms for renting in accordance with **Part D** by which these General Terms of Delivery and Service are supplemented.

C.1.02

The offers of **KARL HEITZ** are non-binding and subject to confirmation. No contract shall come into being as the result of the customer placing an order, even if the order refers specifically to an order. This shall only take place at the discretion of **KARL HEITZ** within two weeks of receipt of the order by written order confirmation from **KARL HEITZ** or by the provision of the ordered deliveries or services.

C.1.03

The documents included in the offer, such as illustrations, drawings, weights and dimensions, performance and consumption data as well as the technical data and descriptions in the respective product information or advertising materials are not binding. They do not represent any quality or durability guarantees of the goods to be delivered by **KARL HEITZ**.

C.1.04

In the case of sales by sample or specimen, these only guarantee that the sample has been professionally constructed, but do not guarantee the quality or durability of the goods to be delivered by **KARL HEITZ**.

C.1.05

Only the written confirmation of an order from **KARL HEITZ** – if necessary in connection with the specifications and/or design drawings – shall be authoritative for the content of the respective contract. Oral agreements made in connection with a conclusion of contract with employees of **KARL HEITZ** who are not authorised to represent the company also require written confirmation by **KARL HEITZ** in order to be valid.

C.1.06

Information on characteristics of the products and services of **KARL HEITZ** shall only be attributable to **KARL HEITZ** if this information

- originates from **KARL HEITZ** or is provided at the express order of **KARL HEITZ**
- Or is expressly authorised by **KARL HEITZ**
- or are public statements and **KARL HEITZ** was aware or must have been aware of said statements and did not distance itself from them within a reasonable period.

KARL HEITZ's assistants in terms of Section 434 (1) of the German Civil Code (BGB) shall not include authorised dealers and customers of **KARL HEITZ** who act as resellers. Adequate correction of information on characteristics in terms of Section 434 (1) of the German Civil Code (BGB) may in any case be made on the website of **KARL HEITZ** at www.karl-heitz.de.

C.1.07

The customer must provide **KARL HEITZ** with all information and documents required or useful for the provision of the contractually agreed services. If specifications are prepared and presented to the customer for examination and approval, these specifications shall bindingly establish the scope of services for both sides.

C.1.08

The customer is not entitled to assign or pledge claims – with the exception of monetary claims – arising from the business relationship wholly or in part to third parties without the written consent of **KARL HEITZ**.

C.2. Permanent Rights / Trademarks / Disclaimer

C.2.01

The cost estimates, designs, models, installation plans, disposition and other drawings, text templates etc. created by **KARL HEITZ** remain the intellectual property of **KARL HEITZ**. The right to exploit these items and the intellectual achievements embodied in them is exclusively reserved for **KARL HEITZ**.

C.2.02

KARL HEITZ is entitled to affix its own logos and trademarks. The customer is prohibited from removing such marks affixed by **KARL HEITZ**.

C.2.03

The customer is liable for ensuring that any templates, designs, plans, texts, trademarks, etc. provided by him may be legally utilised.

C.2.04

The customer shall release and indemnify **KARL HEITZ** against any and all third-party claims due to the breach of such intangible property rights arising from templates, designs, plans, texts, trademarks, etc. provided by the customer.

C.3. Shipment / Risk / Insurance / Packaging

C.3.01

Delivery is ex works/warehouse by **KARL HEITZ**. At the customer's request and expense, the goods shall be sent to a different destination ["**Versendungskauf**"]. Unless otherwise agreed, **KARL HEITZ** is entitled to determine the means of shipping (in particular, the forwarder, shipping method and the packaging).

C.3.02

The place of performance for deliveries and any supplementary performance is the plant of **KARL HEITZ**.

C.3.03

The risk of accidental loss and accidental deterioration of goods shall pass to the customer at the latest upon delivery of the goods to the customer, or in the case of "**Versendungskauf**" upon handover of the goods to the forwarder or other person charged with performing the shipment.

Where acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects likewise the statutory provisions of the law applicable to contracts for works and services apply to any agreed acceptance procedure. The date of delivery or acceptance shall be the same, if the customer is in default of acceptance.

C.3.04

Insurance will only be taken out on the delivery at the request and at the expense of the customer.

C.3.05

If packaging is required, **KARL HEITZ** shall package the goods according to the existing regulations and proceed according to Section 4 of the German Packaging Ordinance (VerpackV). Disposable packaging will not be collected by **KARL HEITZ**. Instead, **KARL HEITZ** shall name to the customer a third party who will accept the packaging in accordance with the German Packaging Ordinance (VerpackV).

C.4. Delivery Time/ Fixed-Date Purchases / Default of Delivery

C.4.01

Delivery **dates** refer to a point in time, e.g. a specific day or a calendar week on which the delivery or service must occur.

Delivery **periods** refer to the period within which a delivery or service must occur.

Delivery **time** is the generic term for delivery dates and delivery periods.

C.4.02

All delivery **times** are subject to the proviso that service is available on the part of **KARL HEITZ**. If the service is not available ["Nichtverfügbarkeit der Leistung"], **KARL HEITZ** will immediately inform the customer of this, notifying him of the anticipated new delivery **time**. If the service is not available within the new delivery **time** either, **KARL HEITZ** is entitled to withdraw from the contract in whole or in part; any consideration already paid by the customer shall be refunded without undue delay. Cases of "Nichtverfügbarkeit der Leistung" of this provision include in particular any late supply of **KARL HEITZ** by its suppliers where **KARL HEITZ** has concluded a congruent covering transaction agreement, neither **KARL HEITZ** nor its supplier is at fault or **KARL HEITZ** is, in the individual case, not under obligation to procure.

C.4.03

Any agreed delivery **periods** apply ex works unless an express agreement to the contrary is in place. Such delivery **periods** shall commence at the time specified in the order, however at the earliest once the documents, permits, call-offs and shipping addresses to be provided by the customer have been received, all details of the order have been clarified and the customer has made any agreed down-payments or furnished any agreed collateral.

C.4.04

As such, fixed-date purchases ["Fixgeschäfte"] must be expressly agreed in writing.

C.4.05

If a delivery **period** is agreed, this shall be extended appropriately if the customer is delayed in providing the documents, permits, shipping address notifications, down payments or collaterals due.

C.4.06

If a delivery **date** is agreed, this shall be postponed appropriately if the customer is delayed in providing the documents, permits, shipping address notifications, down payments or collaterals due.

C.4.07

A corresponding postponement of delivery **dates** or extension of delivery **periods** also takes place if the preconditions for the services to be provided by **KARL HEITZ**, which are to be ensured by the customer or a third party, are not in place in due time.

C.4.08

If the customer requests changes to the order after its confirmation, the delivery **period** only begins upon confirmation of the change by **KARL HEITZ**. Any agreed delivery **date** is delayed accordingly.

C.4.09

The delivery **time** shall be duly extended in the event of unforeseen hindrances that **KARL HEITZ** cannot avert despite exercising the diligence that can reasonably be expected under the circumstances, e.g. natural disasters, blockades, war, terrorist attacks, strike, lockout and other industrial unrest, confiscation, embargo, total or partial failure of subcontractors or other circumstances for which **KARL HEITZ** is not responsible, unless **KARL HEITZ** has exceptionally assumed the procurement risk or a delivery guarantee. In the aforementioned case, **KARL HEITZ** also has the right to withdraw from the contract, provided that the impediment to performance is not just temporary.

C.4.10

The time of occurrence of default of delivery by **KARL HEITZ** is governed by the statutory provisions. However, in any case the customer must send a reminder.

C.4.11

In the event of default of delivery on the part of **KARL HEITZ**, the customer may demand lump-sum compensation for damage caused by default in the case of slight negligence on the part of **KARL HEITZ**. The lump-sum compensation amounts to 0.5% of the net price (delivery value) for each full calendar week of delay, however a maximum of 5% of the delivery value of the delayed goods. **KARL HEITZ** reserves the right to furnish proof that the customer did not incur any damage, or significantly less damage than the aforementioned lump sum.

C.4.12

The customer's rights pursuant to Section C.10.02 and the statutory rights of **KARL HEITZ**, in particular in the case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

C.4.13

Where permits to be procured by **KARL HEITZ**, which are a precondition for lawful delivery, are delayed or fail to be granted at all for reasons for which **KARL HEITZ** does not bear responsibility, **KARL HEITZ** shall not be liable in this respect.

C.5. Partial Deliveries

C.5.01

Partial deliveries and partial performance are permissible to the extent that the customer can reasonably be expected to accept.

C.5.02

If **KARL HEITZ** makes use of its right to partial delivery or partial performance, payments for goods which have already been delivered or services which have already been performed cannot be withheld on these grounds.

C.5.03

If **KARL HEITZ** indisputably delivers partially defective goods, the customer is obliged to pay for the defect-free portion, unless the customer is able to demonstrate that the partial delivery or partial performance is useless.

C.6. Prices

C.6.01

Unless otherwise agreed, the prices are quoted ex works/warehouse, exclusive of packaging.

All other (incidental) costs (freight, customs duties, initial sample test report, tools and the like) will be charged separately.

C.6.02

In the case of "Versendungskauf", the customer bears the transport costs ex works or warehouse and the costs of any transport insurance that may be required.

C.6.03

The prices and costs are subject to the applicable value-added tax.

C.7. Terms of Payment / Asset Deterioration / Prohibition of Offsetting

C.7.01

Down-payments are subject to the provisions of the German Value-Added Tax Act (UStG).

C.7.02

Unless otherwise agreed, payments shall be due immediately and without deduction.

C.7.03

KARL HEITZ shall also be entitled to make the delivery of the goods dependent on contemporaneous performance ["Zug-um-Zug"].

C.7.04

However, **KARL HEITZ** is also entitled at any time, even within the framework of an ongoing business relationship, to only carry out delivery, in whole or in part, against advance payment. **KARL HEITZ** shall issue a corresponding reservation at the latest with the order confirmation.

C.7.05

Not later than fourteen days after receipt of the invoice, the debtor shall automatically fall into arrears without a separate reminder being required.

C.7.06

If the customer defaults on more than one payment, all unsettled claims against the customer shall be due for immediate payment.

C.7.07

In case of default on the part of the customer, the valid statutory interest rate shall apply.

KARL HEITZ reserves the right to assert claims for higher damages.

C.7.08

The place of performance for payments is the registered office of **KARL HEITZ**.

C.7.09

Should the customer's financial situation deteriorate significantly after the conclusion of the contract or – if the customer's declaration of intent is required for the conclusion of the contract – after the last declaration of intent of **KARL HEITZ** with a view to the conclusion of the contract, **KARL HEITZ** may, at its own discretion, demand advance payment or collateral for all deliveries and services still to be performed under the same legal relationship (Section 273 BGB). If the customer does not comply with this demand, **KARL HEITZ** may rescind the said contracts or, after setting a deadline, claim damages in lieu of performance in the amount of 25% of the order total not executed, unless the customer furnishes evidence of lesser damage.

KARL HEITZ is only entitled to claim compensation for damages exceeding the lump sum only if exceptionally high damage is incurred in the respective individual case, whereby the above lump sum is to be deducted from this claim.

C.7.10

The customer may only offset undisputed or legally established claims.

C.7.11

Except in cases under **C.7.10**, the customer does not have any right of retention.

The customer's rights pursuant to Section 320 of the German Civil Code (BGB) shall remain unaffected if and to the extent that **KARL HEITZ** has not complied with its warranty obligations.

C.8. Inspection and Reporting Obligations

C.8.01

The customer may only assert claims for defects if he has duly complied with statutory inspection and reporting obligations (§§ 377, 381 of the German Commercial Code, HGB) and Section C.8. of these provisions.

C.8.02

The goods and services of **KARL HEITZ**, including drawings, implementation plans, etc., must be inspected by the customer for their usability and correctness immediately following delivery.

C.8.03

If a defect is discovered at the time of delivery, service provision, inspection or at any subsequent time, **KARL HEITZ** must be notified immediately in writing of the exact objections. In all instances, obvious defects must be reported to **KARL HEITZ** by the customer in writing at the latest within 10 calendar days from the date of delivery and, in the case of defects that were not evident at the time of inspection, within the same period from the date of discovery, specifying the exact complaints.

C.9. Claims of the Customer for Defects (Warranty)

C.9.01

Warranty [**“Gewährleistung”**] in the context of these Terms and Conditions means: Claims for improper performance due to delivery of defective goods or manufacture of a defective product.

C.9.02

Notwithstanding the limitations of liability in this Section **C.9.**, the special statutory regulations for the final delivery of the goods to a consumer remain unaffected (supplier recourse pursuant to Sections 478, 479 BGB) with the exception of section C. 9.18.

C.9.03

If the customer does not comply with the inspection and reporting obligations according to Section C.8., **KARL HEITZ** is not liable for any defects not reported.

C.9.04

The general limitation period for claims due to defects in quality and title is **12 months** from the delivery or, if an acceptance has been agreed, from the acceptance. The special statute of limitation remains unaffected (in particular, Section 438 (1) no. 1 and no. 2, (3), Sections 444 and 479 or Section 634a (1) nos. 2 and 3, (3) of the German Civil Code (BGB).

C.9.05

The general limitation period of 12 months shall also apply to contractual and extracontractual claims for damages based on a defect of the goods or work product.

However, this shortened period of limitation shall not apply

- if the damage was caused by intent or gross negligence of **KARL HEITZ** or its representatives or vicarious agents [**“Erfüllungsgehilfen”**];

- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 BGB has been assumed by **KARL HEITZ**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (Produkthaftungsgesetz).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the customer.

C.9.06

If the warranty period is suspended or interrupted due to work performed or replacement deliveries by **KARL HEITZ**, such a suspension or interruption shall only apply to the functional unit affected by the replacement delivery or rectification.

C.9.07

In case the customer has a right to supplementary performance, **KARL HEITZ** shall initially decide whether the supplementary performance is to take place through elimination of the defect (rectification) or through delivery of flawless goods (replacement delivery). The right to refuse supplementary performance under the statutory conditions remains unaffected.

C.9.08

KARL HEITZ provides no warranty for components provided by the customer. Unless expressly agreed otherwise, the customer alone shall be responsible for the suitability and properties of such components.

C.9.09

In the event of the customer's non-compliance with the operating and maintenance instructions, it shall be assumed that any damage incurred is the result of this. In this case, the burden of establishing the facts and the burden of proof to the contrary shall be on the customer.

C.9.10

KARL HEITZ may make supplementary performance conditional upon the payment of the due purchase price by the customer. However, the customer may withhold a portion of the purchase price that is reasonable in proportion to the defect.

C.9.11

Work on items delivered by **KARL HEITZ** or services otherwise provided by **KARL HEITZ** shall only be considered defect elimination or rectification work,

- insofar as the deficiency has been explicitly acknowledged by **KARL HEITZ**
- or if defect reports have verifiably been submitted
- and if these verifiable defect reports are justified.

If these conditions are not met, such work shall be considered as extra performance.

C.9.12

Apart from this, rectification work or replacement deliveries by **KARL HEITZ** will be rendered as extra performance, unless such expressly takes place in recognition of a legal obligation.

C.9.13

The customer must grant **KARL HEITZ** the required time and opportunity to perform the rectifications and replacement deliveries owed under the warranty. The customer only has the right to remedy the defect itself or through third parties, and subsequently demand reimbursement of the corresponding costs from

KARL HEITZ, in urgent cases endangering operational safety and to avoid disproportionately large damage – in which case **KARL HEITZ** must be informed immediately and if possible beforehand – or if **KARL HEITZ** is delayed in the rectification of a defect.

C.9.14

Expenses required for inspection or rectification, in particular for transport, weighing, labour and material costs (Section 439 (2) BGB) will fundamentally be borne by **KARL HEITZ**, if a defect in fact exists. Otherwise, **KARL HEITZ** may demand reimbursement of the costs incurred from the unjustified defect elimination request (including but not limited to inspection and transport costs), unless the non-existence of the defect was not obviously detectable by the customer.

C.9.15

The liability for reimbursement of expenses of **KARL HEITZ** is in principle governed by the statutory provisions (in particular, Section 439 (3) BGB) for the costs of removal, installation or affixing of the defective item.

C.9.16

Where supplementary performance has failed, or a period of grace for supplementary performance to be set by the customer has expired unsuccessfully (Section 323 (1) and/or Section 281 (1) BGB), or is unnecessary according to statute (Section 323 (2) and/or Section 281 (2) BGB), or may be refused by **KARL HEITZ** pursuant to Section 439 (3) BGB and/or Section 635 (3) BGB, or the customer may not reasonably be expected to accept subsequent performance, the customer may withdraw from the contract. However, no right of rescission shall apply in the case of a minor defect.

C.9.17

The customer is only entitled to a reduction of the price (reduction) if **KARL HEITZ** agrees to this.

C.9.18

Claims of the customer for damages or compensation of expenses made in vain are excluded even in the case of defects according to Section C.10.01 and shall only exist in the case of Section C.10.02.

C.10. Other Liability

C.10.01

Unless provided otherwise in these General Terms and Conditions and subject to Section C.10.02 below, any claims of the customer against KARL HEITZ for damages and compensation of expenses are excluded, regardless of what the legal basis may be. In particular, this also applies to tort claims (e.g. Section 823 BGB).

Insofar as liability is excluded or limited, this also applies to the personal liability of the employees, staff members, representatives and vicarious agents of KARL HEITZ.

10.02

The limitation of liability according to Section 10.01 above shall not apply

- if the damage was caused by intent or gross negligence of **KARL HEITZ** or its representatives or vicarious agents;
- in the case of culpable breach of material contractual obligations, in which case damage payments are limited to damage which is typical for the type of contract and foreseeable at the conclusion of the contract. Material contractual obligations are obligations that protect legal positions of the contracting party that are material to the contract, which the contract must grant the respective contracting party under consideration of its content and purpose, as well as contractual obligations whose fulfilment is essential to the due performance of the contract, compliance with which the customer has regularly relied on and may rely on;

- in the case of damage from injury to life, body and health;
- in the event of a delay, if a fixed delivery date has been agreed;
- if a defect is maliciously concealed;
- if a guarantee has been provided and/or the risk of procurement or manufacturing in the meaning of Section 276 of the German Civil Code (BGB) has been assumed by **KARL HEITZ**;
- in cases of mandatory statutory liability, especially according to the German Product Liability Act (Produkthaftungsgesetz).

The aforesaid regulations do not involve any change of the burden of proof to the disadvantage of the customer.

C.10.03

In the case of a breach of an obligation that does not consist of a defect, the customer may only rescind or terminate the contract if **KARL HEITZ** is responsible for the breach of the obligation.

An unlimited right of termination of the customer (especially pursuant to Sections 651, 649 BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

C.11. Call-Off Orders

C.11.01

Where call-off orders are not called off within four weeks of expiry of the agreed call-off period, **KARL HEITZ** may demand payment.

C.11.02

The same applies to call-off orders without any specifically agreed call-off period if four months pass without any call-off after the notice of readiness for dispatch by **KARL HEITZ**.

C.12. Storage / Default of Acceptance

C.12.01

If temporary storage of finished goods by **KARL HEITZ** becomes necessary due to a default in acceptance, this does not give rise to a contract to provide storage.

KARL HEITZ is not obliged to insure stored goods.

C.12.02

In the case of a default in acceptance [“**Annahmeverzug**”], **KARL HEITZ** is entitled to store the goods in a commercial warehouse at the customer’s risk and expense.

C.12.03

In the case of storage at **KARL HEITZ** **KARL HEITZ** may bill 0.5% of the invoice amount per month, but at least €30.00–, and another €25.00 for every second full cubic metre of goods per month, up to a maximum of 20% of the invoice amount. The customer is free to furnish evidence that the claim did not accrue or is lower.

C.12.04

The two preceding sections also apply if shipping, at the request of the customer, is delayed for more than two weeks beyond the notice of readiness for dispatch.

C.12.05

If the customer does not accept the ordered goods within a specified period, **KARL HEITZ** may – without furnishing evidence of the actual damage – demand 20% of the agreed price as lump-sum compensation, unless the customer furnishes evidence that no or less damage was incurred.

C.13. Retention of Title

C.13.01

All deliveries by **KARL HEITZ** are subject to a retention of title.

C.13.02

This reservation and the following extension shall apply until all claims from the business relationship with the client are paid and until full release from any contingent liabilities that **KARL HEITZ** has assumed on behalf of the customer in connection with the delivery.

C.13.03

The delivered objects may not be pledged.

C.13.04

KARL HEITZ may request surrender of its goods subject to retention of title for good cause, especially in the case of default of payment, subject to deduction of the sales proceeds. This request for surrender does not represent the rescission of the contract. The prerequisite for this is that **KARL HEITZ** has threatened to reclaim possession and has set the customer a performance period of seven days. This notice period may occur at the same time as the warning.

C.13.05

If and to the extent that the recovered goods may be sold as new by **KARL HEITZ** to another purchaser in the course of normal operations, the customer owes, without the need for detailed evidence, 10% of the invoice value of the goods as a return fee. If the goods cannot be sold as new in the course of the normal operations, the customer shall – without the need for detailed evidence – owe an additional 25% of the goods invoice value for the loss in value. In every case, the customer may furnish proof of a lower percentage.

C.13.06

KARL HEITZ reserves the right to assert other, further damage.

C.13.07

The handling and processing of goods delivered by **KARL HEITZ** always takes place on behalf of **KARL HEITZ**, meaning that goods remain the property of **KARL HEITZ** in any state of handling and processing and as a finished good, to the exclusion of the consequences of Section

950 BGB. If the goods subject to retention of title are processed in combination with other items which are also supplied to the exclusion of the legal consequences of Section 950 BGB, **KARL HEITZ** acquires at least co-ownership of the new item on the basis of the ratio of the invoice value of **KARL HEITZ's** goods to the invoice value of the other processed items.

C.13.08

The customer hereby assigns in advance all claims from the resale, processing, installation and other utilisation of the goods to **KARL HEITZ**. If the products sold, processed or installed by the customer include items which are not the property of the customer and for which other suppliers have also agreed a retention of title with sales clause and advance assignment, the assignment takes place in the amount of the co-ownership percentage of **KARL HEITZ** corresponding to the appropriate fraction of the claim, otherwise in the total amount.

C.13.09

The authorisation of recovery which the customer retains despite the cession shall in any case expire by cancellation at any time.

C.13.10

If the value of the collateral that **KARL HEITZ** is entitled to exceeds the claim of **KARL HEITZ** against the customer by more than 10%, **KARL HEITZ** shall, at the request of the customer, release collateral as selected by **KARL HEITZ** to the corresponding amount.

C.14. Place of Performance and Fulfilment

C.14.01

The place of performance and fulfilment of the services to be provided by **KARL HEITZ** is always the plant of **KARL HEITZ**.

C.14.02

The place of performance and fulfilment for the services to be provided by the customer is the registered office of **KARL HEITZ**.

C.15. Place of Jurisdiction / Applicable Law

C.15.01

If the customer is a merchant in terms of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the registered domicile of **KARL HEITZ** in Bielefeld.

However, **KARL HEITZ** is in any case also entitled to bring legal action at the place of performance of the supply obligation pursuant to these General Terms of Service or an overriding individual agreement, or at the customer's general place of jurisdiction.

Priority statutory provisions, in particular regarding exclusive legal jurisdictions, remain unaffected.

C.15.02

The laws of the Federal Republic of Germany shall apply, to the exclusion of international uniform law, including but not limited to the UN Convention on Contracts for the International Sale of Goods (CISG).

If the choice of German law is not permissible or invalid according to the law at the respective location of the goods the conditions and effects of the retention of title pursuant to **Section C.13** shall be governed by same law.

C.16. Headings / Definitions

C.16.01

All headings in these General Terms and Conditions are solely intended for improved legibility and have no bearing on the meaning and interpretation of the individual provisions.

C.16.02

Written declarations of intent and knowledge in the sense of these General Terms and Conditions also include declarations transmitted by fax or e-mail.

C.17. Miscellaneous

Should any provision of these Terms and Conditions or a provision included in them later on be or become fully or partially invalid, void or unenforceable or should these Terms and Conditions or any amendments thereto turn out to have a gap, this shall not affect the validity of the other provisions. Sections 306 (2) and (3) BGB remain unaffected.

D. Special Terms for Renting

D.1. Subject Matter/ Time of Performance and Fixed-Date Purchase/ Subletting etc.

D.1.01

KARL HEITZ offers the customer the rent of movable items in the form of machines, tools etc. The details of the rented property, the renting purpose, the place of collection and return, the rental period, the rent etc. are governed by a separate agreement between **KARL HEITZ** and the customer. In addition, the regulations in the General Terms and Conditions of **KARL HEITZ** apply.

D.1.02

KARL HEITZ shall transfer the rented property to the customer for the agreed rental period. If a specific model/ device/ tool is mentioned in the separate agreement as rented property, **KARL HEITZ** is entitled to also provide another model/ device/ tool, provided that it is equivalent, which is to be assumed if this meets the technical requirements of the model/ device/ tool and does not conflict with legitimate interests of the customer.

D.1.03

The estimated rental date stated in the separate rental agreement is non-binding. It does not establish an (absolute or relative) fixed-date purchase or a calendar-specific service date. Deviating arrangements are only valid if expressly agreed in writing.

D.1.04

The customer is not permitted to sublet or transfer the rented property to third parties without the prior written consent of **KARL HEITZ**.

The same applies to the pledging or granting of rights of any kind to the rented property.

D.2. Handover and Risk / Rental Period / Termination / Return Obligation / Delayed Return

D.2.01

The transfer of the rented property to the customer shall take place at the agreed place of transfer. If no place of transfer has been agreed, it shall be the plant of **KARL HEITZ**. A delivery and collection of the rented property is not owed by **KARL HEITZ**, unless otherwise agreed.

The transport of the rented property to the place of use and the place of return is at the cost and risk of the customer.

D.2.02

The rental period begins at the agreed time at which the rented property is provided for collection for the customer or leaves the plant of **KARL HEITZ** for the purpose of delivery. The rental period ends automatically at the agreed time.

D.2.03

If a certain rental period has been agreed, the contract shall be irrevocable during that term. Termination for good [“**Wichtiger Grund**”] cause remains unaffected.

If no specific rental period has been agreed, the provisions of Section 580a (3) BGB shall apply to the notice periods. Termination for good cause remains unaffected.

Good cause for the termination by **KARL HEITZ** shall be deemed present in particular if the customer

- has not made an advance payment owed according to Section D.3.05 by the agreed start of the rental;
- fails to provide rental collateral demanded under section D.3.06 even within a reasonable grace period;

- breaches one of its essential obligations under Section D.4.04 despite warning;
- contrary to Section D.4.07, moves or allows the rented property to be moved to another location without the consent of **KARL HEITZ**.

The termination of the contract must always be in written form (see definition, Section C.16.02).

The right of **KARL HEITZ** to bring injunctive relief in accordance with Section 541 BGB remains unaffected.

D.2.04

After cessation of the contract, the customer is obliged to return the rented property to the agreed place of return. If a place of return has not been agreed, the return must be made to the plant of **KARL HEITZ**.

D.2.05

If the customer continues to use the rented property after the end of the rental period, the rental contract shall not be extended. If the customer does not return the rented property after the end of the rental period, the customer shall owe the contractually agreed rent or the usual rent for similar rented property for the duration of withholding at the discretion of **KARL HEITZ**.

Further claims for damages against the customer remain reserved.

D.3. Rent / Calculation of Rent / Additional Costs / Due Date / Rental Collateral / Offsetting

D.3.01

The rent shall be based on the separate agreement or on the price list of **KARL HEITZ** valid at the time of conclusion of the contract.

Specified prices are always additionally subject to the current rate of value added tax.

D.3.02

The rent is calculated based on a daily shift of up to 8 hours, with a weekly lease of 5 working days within a period of 7 calendar days.

Longer daily or weekly use must be reported to **KARL HEITZ** and paid separately according to the price list valid at the time of the conclusion of the contract.

KARL HEITZ is entitled to use suitable recording devices for the use of the leased property at any time.

D.3.03

The rent does not include supplies, consumables, operating materials or indirect accessories. In that regard, a separate calculation takes place.

D.3.04

If, contrary to Section D.4.04, the customer does not return the rented property in a clean, complete or orderly condition, it shall owe the necessary costs incurred for the cleaning, completion or repair of the leased property.

D.3.05

Rent and additional costs are due immediately upon invoicing.

Payments must, unless otherwise agreed, be paid in advance by the customer.

D.3.06

KARL HEITZ is entitled to demand appropriate rental collateral from the customer at any time. In particular, a deposit or (bank) guarantee up to the value of the rented property shall be deemed appropriate in this sense. No interest shall accrue on the deposit.

D.3.07

KARL HEITZ is entitled to offset due claims against the customer at any time with the deposit.

D.4. Obligations of the customer

D.4.01

The customer itself is responsible for ensuring that the rented property is suitable for its intended use. Upon request, **KARL HEITZ** shall provide the customer with technical data and information for the rented property.

Any necessary regulatory approvals required for the operation of the rented property must be procured by the customer at its own expense and any conditions associated with this must be fulfilled at its own expense.

D.4.02

Upon delivery, the customer shall check if the rented property is suitable for use and in an orderly condition. Any recognisable defects must be reported to **KARL HEITZ** immediately, but no later than within 5 working days, in written form with precise details about the specific complaints. The same applies to hidden defects that are to be reported immediately after their discovery in the aforementioned form and deadline.

If a defect occurs during the lease period, the customer must also immediately notify the latter in the aforementioned form and deadline.

D.4.03

The operationalisation and use of rented machines and tools may only be carried out by suitably trained personnel and in compliance with all legal regulations, in particular relevant accident prevention and health and safety regulations, as well as the respective operating instructions.

D.4.04

In particular, the customer undertakes

- to use the rented property only in accordance with the intended purpose and in accordance with the provisions of Section D.4.03 above;

- to always treat the rented property properly;
- not to manipulate or alter the rented property;
- to maintain and to care for the rented property properly and professionally;
- to perform necessary work required to preserve of the usability of the rented property or have it performed at its own expense;
- to pay the agreed rent;
- upon request, to provide the rental collateral without delay;
- at the end of the rental period, to return the rented property at the agreed place of return in a clean, complete and orderly condition.

D.4.05

If damage to the rented property occurs while it is in the care of the customer (loss, damage, theft), the customer must inform **KARL HEITZ** immediately about the extent, course of events and parties involved in the damage.

D.4.06

Any property notices on the rented property may neither be removed nor covered.

If a seizure, confiscation or other measure is asserted against the rented property by a third party, the customer shall inform the third party of the inadmissibility of the enforcement and inform **KARL HEITZ** immediately.

D.4.07

A transfer of the rented property to a place other than that contractually agreed upon, is only permitted with the prior written consent of **KARL HEITZ**.

D.4.08

KARL HEITZ or a third party commissioned by it may inspect and examine the rented property at any time during the normal operating hours of the customer.

D.4.09

The customer is obliged to notify **KARL HEITZ** of the return of the rented property in good time, at least 24 hours in advance, in writing (notification of availability).

D.5 Liability of the Customer / Operational Risk and Exemption

D.5.01

In the event of loss, theft or damage to the rented property, the customer is liable to **KARL HEITZ** in accordance with the statutory liability regulations.

D.5.02

The customer is solely responsible for the operating risk arising from the rented property, insofar as it is not related to a defect of the rented property.

The customer shall exempt **KARL HEITZ** from any claims for compensation of third parties asserted against **KARL HEITZ** insofar as the claims are not based on a defect of the rented property or otherwise on the fault of **KARL HEITZ**.

D.6 Guarantee Liability / Damages Caused by Delay / Warranty / Other Liability of KARL HEITZ

D.6.01

The no-fault warranty ["verschuldensunabhängige Garantiehafung"] of **KARL HEITZ** due to initial defects of the rented property is excluded.

D.6.02

If **KARL HEITZ** is in default of handing over the rented property to the customer, the customer may demand a lump-sum replacement of its damage caused by the delay. The lump sum for

each completed day of the delay shall be the (converted) amount of the daily rent for the rented property.

KARL HEITZ reserves the right to furnish proof that the customer did not incur any damage, or significantly less damage than the aforementioned lump sum.

D.6.03

If the customer does not comply with its inspection and complaint obligations according to Section D.4.02, the liability of **KARL HEITZ** for the defect not properly indicated is excluded.

D.6.04

KARL HEITZ must at its own expense remedy defects in the rented property which have been duly reported by the customer and are not the responsibility of the customer.

The customer must give **KARL HEITZ** the opportunity to remedy the defects indicated. After written confirmation from **KARL HEITZ**, the customer may carry out the repair of defects itself or have them carried out. The required costs are borne by **KARL HEITZ**.

The right of the customer to claim reduction under the statutory requirements remains unaffected.

D.6.05

In addition, claims of the customer for damages or compensation of expenses made in vain are excluded even in the case of defects according to Section C.10.01 of the General Terms of Delivery and Service of **KARL HEITZ** and shall only exist in the case of Section C.10.02.

D.7. General Terms of Service

In addition, the General Terms of Delivery and Service of **KARL HEITZ** according to **Part C** shall apply to the contractual relationship between the parties as well as to rental contracts for moveable objects.