

# General Terms of Sales & Delivery of J.T. Kalmar GmbH

Bennogasse 8, Vienna, 1080, Austria

T: +43-01 409 0880-0, F: +43-01 409 0880-80, E: office@kalmarlighting.com, www.kalmarlighting.com

## 1. Scope of application

- 1.1 These General Terms of Delivery shall govern the delivery of goods as well as the rendering of services.
- 1.2 For the rendering of services, the contractor shall hereinafter be referred to as the Seller, the client shall be referred to as the Buyer and, insofar as it is applicable, the term service shall be referred to as delivery.
- 1.3 Any deviation from these General Terms of Delivery shall be valid only if expressly agreed in writing by the Seller.

## 2. Submission of offers

- 2.1 The Seller's offers are made non-binding, unless otherwise agreed.
- 2.2 No tender documents or project documentation may be duplicated nor made available to third parties without the permission of the Seller. They may be reclaimed at any time and shall be returned to the Seller immediately if no agreement is concluded.

## 3. Conclusion of Agreement

- 3.1 The Agreement with the Buyer shall be deemed concluded upon issue by the Seller of a written order confirmation or upon dispatch of a delivery.
- 3.2 No modification or amendments to the concluded Agreement shall be valid unless made in writing and signed at least signed by the party against whom the modifications or amendments shall be enforced.
- 3.3 Faxes shall be binding (considered as written agreements).
- 3.4 Should any provision of this Agreement be or become illegal or unenforceable, the remainder of this Agreement shall not be affected.
- 3.5 Authentic contractual languages shall be German and English, unless otherwise agreed.

## 4. Prices

- 4.1 Unless otherwise agreed, prices shall be quoted ex works or ex Seller's warehouse excluding packaging, loading, lamps and bulbs, spare parts, installation and assembly. The Buyer shall be liable for all fees, taxes or other charges levied in respect of delivery.
- 4.2 The Seller reserves the right to adjust prices if the order placed is not in accordance with the offer submitted.

## 5. Delivery

- 5.1 The period allowed for delivery shall start on the latest of the following dates:
  - a) Date of order confirmation;
  - b) Date on which the Buyer fulfils all his contractual technical, commercial or other obligations;
  - c) Date on which the Seller receives the advance payment or security due before delivery of the goods in question.
- 5.2 The Buyer shall obtain whatever licences or approvals may be required from authorities or third parties for performance. If the granting of such licences or approvals is delayed for any reason, the delivery period shall be extended accordingly.
- 5.3 The Seller is entitled to carry out and charge the Buyer for partial or advance delivery.
- 5.4 Compliance with the agreed delivery dates shall be subject to any unforeseeable circumstances beyond the parties' control, such as all cases of force majeure. Such circumstances shall also include armed conflicts, governmental interferences and interdictions, delays in transport or customs clearance, as well as labour unrest. The aforementioned circumstances shall also suspend the delivery period when they affect subcontractors. The delivery period shall be resumed once the unforeseeable circumstances no longer constitute a hindrance.

## 6. Performance and passage of risk

- 6.1 Unless agreed in special clauses, benefit and risk shall pass to the Buyer on departure of the goods ex works or ex warehouse. This provision shall also apply when the delivery is performed as part of installation works or when the transport is effected or organized and supervised by the Seller. The INCOTERMS 2100 with subsequent amendments shall be deemed as agreed.
- 6.2 In the event of delivery ex works being delayed by circumstances for which the Buyer is responsible, the risk shall pass to the Buyer on the date at which the goods are ready for dispatch.

## 7. Payment

- 7.1 Unless otherwise agreed, one third of the purchase price shall fall due upon receipt of the order confirmation by the Buyer, with the balance falling due prior to delivery. Irrespective thereof the value added tax comprised in the amount of the invoice shall be payable within 30 days of the invoice date.
- 7.2 In case of part settlements, the respective part payments shall fall due upon receipt of the invoice in question. The same shall apply to amounts invoiced for additional deliveries or resulting from additional agreements above and beyond the scope of the original contract, irrespective of the terms of payment agreed upon for original delivery.
- 7.3 Unless otherwise agreed, payment shall be made in cash without any discount free Seller's domicile in the agreed currency.
- 7.4 The Buyer shall not be entitled to withhold or offset payment on the grounds of any warranty claims or other counterclaims.
- 7.5 If the Buyer fails to meet the terms of payment or to fulfil any other obligations, the Seller may:
  - a) Suspend the performance of his own obligations until such time as the outstanding payments have been made or other obligations fulfilled;
  - b) Exercise his right to reasonably extend the delivery period;
  - c) From the due date onwards charge interest on arrears amounting to 8 percentage points in excess of the base interest rate published by the Austrian Central Bank per month (plus value added tax) unless the Seller can prove additional costs have been incurred; or
  - d) Withdraw from the contract after a reasonable period of grace has elapsed;
  - e) Charge extra-judicial and pre-trial costs, especially dunning and lawyers' costs.

## 8. Reservation of title (ECE clause)

If the delivery item in question is supplied before all amounts due have been paid by the Buyer in accordance with the Agreement, then it shall remain the property of the Seller until full payment has been effected, insofar as this is statutorily permissible in the territory where the item in question is situated. In the event of this reservation of title being impermissible, then the Seller shall be entitled to exercise all rights of this kind. The Buyer is obliged to co-operate with measures undertaken by the Seller in order to protect his reservation of title or to exercise another right to the delivery item in lieu.

## 9. Warranty

- 9.1 If the agreed terms of payment have been complied with, and subject to the conditions hereunder, the Seller shall remedy any defect affecting function of the delivery item at the time of acceptance, insofar as the defect is attributable to faulty design, material or manufacture.
- 9.2 Unless otherwise agreed, the warranty period shall be six months. The warranty period shall commence at the time of passage of risk as defined in the provisions of paragraph 6.1.

# General Terms of Sales & Delivery of J.T. Kalmar GmbH

Bennogasse 8, Vienna, 1080, Austria

T: +43-01 409 0880-0, F: +43-01 409 0880-80, E: office@kalmarlighting.com, www.kalmarlighting.com

- 9.3 The Seller's warranty shall be limited to the replacement of faulty goods or the faulty part as elected by the Seller, either in situ or at the premises of the Seller to which the Buyer is required to forward the faulty goods. All other warranty claims whatever are excluded.  
The warranty claim shall lapse if the detected defect is not reported in writing within seven days of receipt of the goods.
- 9.4 The warranty is immediately deemed invalid if the Buyer himself or a third party not expressly authorized undertakes modifications or repairs to any items delivered without written consent of the Seller.
- 9.5 The remedying of defects covered by warranty shall not give rise to an extension of the original warranty period. Any parts replaced shall become the property of the Seller.

## 10. Withdrawal from the Agreement

- 10.1 The Buyer may withdraw from the Agreement only in the event of delays caused by gross negligence on the part of the Seller and only after a defined, reasonable period of grace has elapsed. Withdrawal from Agreement shall be notified in writing by registered mail.
- 10.2 In addition to cases covered by paragraph 7.5 above, the Seller shall have the right to withdraw from the Agreement
- a) if the execution of delivery or commencement or continuation of service to be rendered under the Agreement is impossible for reasons for which the Buyer is responsible, or is further delayed beyond a reasonable period of grace;
  - b) if reasonable doubts have arisen as to the Buyer's creditworthiness and if the same fails, on the Seller's request, to make an advance payment or to provide adequate security prior to delivery; or
  - c) if insolvency proceedings are instituted against a party to the Agreement or an application for insolvency proceedings against one party is dismissed due to lack of assets.
- 10.3 For the reasons stated above, withdrawal from the Agreement shall also be possible in respect of any outstanding part of the agreed delivery or service.
- 10.4 Without prejudice to the Seller's right to claim damage, upon withdrawal from the Agreement any unsettled accounts in respect of deliveries made or services rendered in whole or in part shall be invoiced and settled in accordance with the Agreement. This provision also applies to deliveries not yet accepted by the Buyer as well as any preparatory works performed by the Seller.

## 11. Liability

- 11.1 The Seller shall be liable only if the damage in question is proved to be due to intentional acts or acts of gross negligence. The Seller shall not be liable for damage due to acts of ordinary negligence nor for consequential damage, economic losses, loss of savings or interest or damage resulting from third-party claims against the Buyer.
- 11.2 The Seller shall not be liable for damage arising from non-compliance with instructions for assembly, commissioning and operation (such as are contained in instructions for use) or non-compliance with licensing requirements.

## 12. Industrial property rights and copy right

- 12.1 The Buyer shall indemnify the Seller and hold him harmless against any claims for any infringement of industrial property rights brought against him if the Seller manufactures an article pursuant to any design data, design drawings, models or other specifications made available to him by the Buyer.
- 12.2 Design documents such as plans and drawings and other technical specifications as well as samples, catalogues, prospectuses, pictures and the like shall remain the intellectual property of the Seller and are subject to the relevant statutory provisions governing reproduction, imitation and competition. The provisions of paragraph 2.2 above shall also cover design documents.

## 13 Choice of law and place of jurisdiction

- 13.1 This Agreement including its valid conclusion and its pre- and post-contractual effects is governed by the Austrian law.

### 13.2 Abroad

All disputes arising from this contract shall be dealt with before the responsible court of jurisdiction at the principle place of business of the Seller. However the Seller may also choose to bring an action against a buyer resident abroad before the International Court of Arbitration of the Austrian Federal Economic Chamber which shall act according to applicable procedural rules, and there exercise the right of choice of having the case decided either before a judge sitting alone or a judiciary senate.

### Austria

All disputes arising out of this contract shall be dealt with before the responsible court of jurisdiction at the principle place of business of the Seller. However, the Seller may also choose to bring an action against a Buyer resident in Austria before the permanent court of arbitration of the Economic Chamber of Vienna, which is responsible for applying valid arbitration rules before either a judge sitting alone or a council of judges.

**Valid from 03.03.2016**