General Terms and Conditions of KTS Hengstberger GmbH (KTS)

1. General provisions, scope

1.1. Our General Terms and Conditions apply to all our business relations with our CUSTOMERS. They apply only if the CUSTOMER is an trader as per Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.

1.2. Our General Terms and Conditions apply exclusively. Any deviating, conflicting or supplementary general terms and conditions issued by the CUSTOMER shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement for consent applies in all cases, e.g. even if the CUSTOMER refers to its terms and conditions in the context of the order and we do not expressly object to this.

1.3. Our General Terms and Conditions apply in particular to contracts for the sale and/or delivery of movable property (“goods”, “equipment”, “products” or “systems”), regardless of whether we manufacture the products ourselves or procure them from suppliers (Sections 433 and 650, BGB). Unless otherwise agreed, the General Terms and Conditions in force at the time the CUSTOMER places its order or, failing this, the version of which the CUSTOMER was most recently made aware in text form shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

1.4. Relevant declarations and notifications on the part of the CUSTOMER in relation to the contract (e.g. setting of deadlines, notification of defects, rescission or reduction of the purchase price) must be submitted in writing. Within the meaning of these General Terms and Conditions, the requirement for written form includes declarations and notifications both in writing and in text form (e.g. letters, emails). This does not affect applicable statutory requirements in terms of form or additional proof, especially in the event of doubts regarding the legitimacy of the declarant.

1.5. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and the specifications in our order confirmation take precedence over these General Terms and Conditions. In case of doubt, trade clauses must be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

1.6. References to the validity of legal provisions are merely intended as clarifications. Even where such clarification is not provided, the statutory provisions shall apply unless they are directly amended or expressly excluded in these General Terms and Conditions.

2. Conclusion of a contract

2.1. Our offers are non-binding and subject to change. This also applies if we have provided the CUSTOMER with catalogues, technical documentation (e.g. drawings, plans,

calculations, references to DIN standards), other product descriptions or documents – including those provided in electronic form – to which we reserve property rights and copyrights.

2.2. The CUSTOMER’s order shall be deemed to be a binding contract offer, and shall be accepted by us by means of a written order confirmation, unconditional delivery or invoicing. Unless otherwise stated in the order, we are entitled to accept the offer within 21 days of its receipt. Confirmation of receipt of the CUSTOMER's order does not constitute acceptance of the offer.

3. Delivery deadline and delay

3.1. The delivery deadline is agreed individually or specified by us when accepting the order. Deadlines and dates for deliveries and services promised by us are always only approximate, unless a fixed deadline or a fixed date is expressly promised or agreed. If shipping has been agreed, all delivery deadlines and dates refer to the time of handover to the forwarder, carrier or other third party commissioned with the transport.

3.2. If we are unable to comply with mandatory delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will notify the CUSTOMER immediately while at the same time providing notification of the new expected delivery deadline. Should the service also prove unavailable by new delivery deadline, we are entitled to rescind the contract in whole or in part; we will reimburse without delay any remuneration already paid by the CUSTOMER. The service shall be deemed unavailable if, for example, our supplier fails to deliver to us on time, we have concluded a congruent hedging transaction, customs processing is delayed, other disruptions occur in the supply chain (e.g. force majeure (see Section 10)), or if we are not obliged to procure materials in individual cases.

3.3. The point at which our delivery defaults shall be determined based on the statutory provisions. In all cases, however, a demand for payment from the CUSTOMER is required. If we are in default of delivery, the CUSTOMER may demand lump-sum compensation for damage incurred due to the default. The lump sum for damages amounts to 0.5% of the net price (delivery value) for each completed calendar week of the default, but in total shall not exceed 5% of the delivery value of the goods delivered late. We reserve the right to prove that the CUSTOMER has suffered no loss at all or only a much smaller loss than the aforementioned lump sum.

3.4. The CUSTOMER’s rights according to Section 7 of these General Terms and Conditions (Other liability) and our rights, in particular in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent performance), remain unaffected.

4. Delivery, transfer of risk, default of acceptance, partial delivery, acceptance

4.1. Delivery shall be ex-warehouse, which also acts as the place of fulfilment for delivery and any subsequent performance. At the request and expense of the CUSTOMER, the goods can also be shipped to another destination (purchase to destination). Unless agreed otherwise, we are entitled to determine the type of shipment ourselves (in particular the transport company, shipping route and packaging).

4.2. The risk of accidental loss and accidental deterioration of the goods shall pass to the CUSTOMER at the latest upon handover. However, in case of purchase to destination, the risk of accidental loss, accidental deterioration of the goods, or delay shall pass to the forwarding agent, carrier or the person or institution otherwise designated to carry out the shipment upon delivery of the goods to same. If acceptance is agreed upon, this shall be decisive for the transfer of risk. The statutory provisions of the law governing contracts for work and services shall also apply accordingly for an agreed acceptance. If the CUSTOMER is in default of acceptance, handover and acceptance shall be treated as equivalents.

4.3. If the CUSTOMER is in default of acceptance, fails to cooperate or to perform, or if our delivery is delayed for other reasons for which the CUSTOMER is responsible, we are entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). For this purpose, we charge a lump sum of 0.5% per calendar week up to a maximum of 5% of the net delivery value, starting from the delivery deadline date or – in the absence of a delivery deadline – with the notification that the goods are ready for dispatch. Proof of higher damage and our statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be offset against further claims for money. The CUSTOMER shall be permitted to prove that we have suffered no loss at all, or only a much smaller loss than the aforementioned lump sum.

4.4. We are entitled to make partial deliveries if:

- The partial delivery can be used for the CUSTOMER in line with the purpose of the contract
- Delivery of the remaining ordered goods is ensured
- The CUSTOMER will not incur any significant additional expenses or costs as a result of this, unless we agree to bear said costs

5. Prices and payment terms, calculation of VAT

5.1. Unless otherwise agreed, our prices shall be understood as net prices in euros ex works, excluding packaging, storage, insurance, value-added tax, and also any other taxes and duties owed in the case of export delivery customs.

5.2. VAT will be calculated and invoiced in all cases, unless the conditions for exemption are met. In the case of deliveries to EU Member States (intra-Community deliveries), the CUSTOMER shall cooperate promptly and in an appropriate manner by providing proof of intra-Community delivery in accordance with the requirements of the respective local legislation. In particular, we may require a signed and dated acknowledgement of receipt of the intra-Community delivery. Confirmation shall include the following information as a bare minimum: the name and address of the consignee, the quantity and commercial description of the goods, the place and date of receipt of the goods. In addition, the CUSTOMER must provide its valid VAT ID number. Unless we are provided with the relevant evidence, tax exemption shall be waived for intra-Community deliveries; in addition, the CUSTOMER shall reimburse us for any administrative surcharges.

5.3. In case of the purchase to destination (Section 4.1), the CUSTOMER shall bear the costs of packaging and transport ex warehouse and the costs of transport insurance. Any customs, charges, taxes and other public charges shall be borne by the CUSTOMER.

5.4. The purchase price is due and payable within 14 days from the invoice and delivery or acceptance dates of the goods. However, we are entitled at any time, even in the context of an ongoing business relationship, to carry out a delivery or partial delivery only in return for advance payment.

5.5. The CUSTOMER shall enter into default upon expiry of the aforementioned payment period. During the default, the purchase price shall be subject to interest at the applicable statutory default interest rate. We reserve the right to claim for further damages due to default. Our claim to the commercial due date interest (Section 353 of the German Commercial Code/HGB) remains unaffected in relation to merchants.

5.6. The CUSTOMER shall be entitled to set-off rights or rights of retention only if and insofar as the CUSTOMER’s claim has been legally established or is undisputed. In the event of defects to the delivery, the CUSTOMER's counter-rights, including but not limited to those specified in Section 6, Para. 6(2) of these General Terms and Conditions, shall remain unaffected.

5.7. If it becomes apparent after the conclusion of the contract (e.g. through application for insolvency proceedings) that our claim to the purchase price is jeopardised by a lack of performance on the part of the CUSTOMER, we are entitled to refuse performance and – if necessary after setting a deadline – to rescission from the contract (Section 321 BGB). In the case of contracts for the production of non-fungible items (custom products), we can declare rescission immediately; the statutory provisions on the dispensability of the deadline remain unaffected.

5.8. If the agreed prices are based on our list prices and the delivery takes place more than 4 months after conclusion of the contract, the list prices valid at the time of delivery shall apply (minus an agreed percentage or fixed discount in each case).

6. Warranty, liability for defects

6.1. Unless otherwise specified below, the CUSTOMER's rights in the event of material defects and defects in title (including incorrect and incomplete deliveries as well as improper commissioning or faulty instructions) shall be governed by the statutory provisions. In all cases, the statutory provisions on the sale of consumer goods (Sections 474 et seq., BGB) and the rights of the CUSTOMER arising from separately submitted warranties, in particular those issued by the manufacturer, remain unaffected.

6.2. Our liability for defects is primarily based on the agreement made regarding the condition and intended use of the goods (including accessories and instructions). For the purposes of these General Terms and Conditions, all product descriptions and manufacturer specifications that are the subject of the individual contract or that had been made public by us (in particular in catalogues or on our Internet homepage) by the conclusion of the contract shall be deemed to be a agreements regarding the condition of the goods. Insofar as no agreements have been made regarding the condition of the goods, a judgement must be made in accordance with the statutory provisions as to whether a defect exists or not (Section 434, Para. 3, BGB). Public statements made by or on behalf of the manufacturer, in particular in advertising or on the label of the goods, shall take precedence over statements made by other third parties.

6.3. In the case of goods with digital elements or other digital content, we owe provision and, if necessary, an update of the digital content only to the extent that this expressly results from an agreement on condition in accordance with Section 6.2. We assume no liability for public statements made on this matter by the manufacturer or other third parties.

6.4. As a general principle, we accept no liability for defects of which the CUSTOMER is aware at the time of conclusion of the contract, or is only unaware due to gross negligence (Section 442, BGB). Furthermore, the CUSTOMER's claims for defects presuppose that the CUSTOMER has fulfilled its statutory inspection and notification obligations (Sections 377 and 381, HGB). In the case of building materials and other products intended for incorporation or further processing, an examination shall must always be carried out immediately before processing or incorporation. If a defect becomes apparent at the time of delivery, inspection or at any time thereafter, we must be notified of this immediately in writing. In all cases, obvious defects must be reported in writing within ten calendar days of delivery, and defects not noticeable during the investigation must be reported within the same period of time starting from the moment at which they are discovered. In accordance with the statutory provisions, should the CUSTOMER fail to carry out a proper investigation and/or to notify us of defects, we cannot be held liable for any defect that is not reported properly and in good time. In the case of goods intended to be installed, attached or installed, this shall also apply if the defect became apparent as a result of the breach of one of these obligations only after the corresponding processing; in such cases, in particular, there shall be no claims by the CUSTOMER for reimbursement of the associated costs (“removal and installation costs”).

6.5. If the delivered goods are defective, we can first choose whether we will carry out supplementary performance by removing the defect (repair) or by delivering a defect-free item (replacement delivery). If the type of supplementary performance chosen by us is unreasonable for the CUSTOMER, the CUSTOMER can refuse it on a case-by-case basis. Our right to refuse supplementary performance under the legal conditions remains unaffected.

6.6. We are entitled to make the owed supplementary performance contingent on the CUSTOMER paying the due purchase price. However, the CUSTOMER is entitled to retain an appropriate portion of the purchase price in relation to the defect.

6.7. The CUSTOMER shall give us the time and opportunity required for the supplementary performance owed, in particular the time required to hand over the goods in question for inspection purposes. In the event of replacement delivery, the CUSTOMER shall return the defective goods to us at our request in accordance with the statutory provisions; however, the CUSTOMER shall not have a claim for return.

If we were not originally obliged to provide these services, supplementary performance does not involve the removal, detachment or uninstallation of the defective goods nor the incorporation, fitting or installation of defect-free goods, claims for compensation for corresponding costs (“removal and installation costs”) brought by the CUSTOMER remain unaffected.

6.8. Where a default is determined to actually exist, the expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs as well as any removal or installation costs, shall be borne or reimbursed in accordance with the statutory regulations and these General Terms and Conditions. Otherwise, we may demand reimbursement from the CUSTOMER for the costs incurred as a result of the unjustified demand for the rectification of defects, providing the CUSTOMER knew or could have realised that there was no defect.

6.9. In urgent cases, e.g. when operational safety is endangered or in order to prevent disproportionate damage, the CUSTOMER has the right to remedy the defect itself and demand compensation from us for the expenses objectively necessary for this purpose. We must be notified of such independent performance immediately, if possible beforehand. The right to independent performance does not exist in cases where we would be entitled to refuse supplementary performance in accordance with the statutory provisions.

6.10. If a reasonable deadline for subsequent performance set by the CUSTOMER has expired unsuccessfully or is dispensable under the statutory provisions, the CUSTOMER may rescind the contract or the purchase price in accordance with the statutory provisions. However, the right to rescission does not apply in the event of an insignificant defect.

6.11. Claims brought by the CUSTOMER for reimbursement of expenses according to Section 445a, Para. 1 of the BGB shall not be accepted unless the last contract in the supply

chain is for the sale of consumer goods (Sections 478 and 474, BGB) or a consumer contract for the provision of digital products (Sections 445c p. 2, 327, para. 5 and 327u, BGB). Even in the case of defects in the goods, claims brought by the CUSTOMER for damages or compensation of futile expenses (Section 284, BGB) shall only stand in accordance with the following Sections 7 and 8 of these General Terms and Conditions, below.

7. Other liability

7.1. Unless otherwise stated in these General Terms and Conditions, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

7.2. Irrespective of the legal basis, we are liable for damages in the context of fault-based liability in the event of intentional misconduct and gross negligence. In the case of ordinary negligence, and subject to the legal limitations of liability (e.g. due care in our own affairs; negligible breach of duty), we shall only be liable for:

(a) Damages resulting from injury to life, body or health

b) damages resulting from a breach of a material contractual obligation (an obligation whose fulfilment is essential to the proper performance of the contract and on whose observance the CUSTOMER regularly relies and may rely); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damages.

7.3. The limitations of liability arising from 7.2 shall also apply to third parties and in the case of breaches of obligations by persons whose fault we are responsible for in accordance with statutory provisions, including cases where the breach benefits said persons. The limitations of liability arising from 7.2 shall not apply if a defect has been fraudulently concealed or a guarantee for the condition of the goods has been assumed, nor for claims brought by the CUSTOMER in accordance with the German Product Liability Act.

7.4. In case of breaches of duty that do not constitute a defect, the CUSTOMER can only rescind or terminate if we are responsible for said breach of duty. There exists no free right of termination on the part of the CUSTOMER (this includes, but is not limited to, Sections 650 and 648, BGB). In all other cases, the legally established requirements and consequences apply.

8. Limitation period

8.1. By way of derogation from Section 438, Para. 1(3) of the BGB, the general limitation period for claims arising from material defects and defects of title is one year starting from the date of delivery. If acceptance has been agreed upon, the limitation period begins with the acceptance.

8.2. If the goods are a building or an object that has been used for a building in accordance with its usual mode of use and has caused its defectiveness (building material), the limitation period according to the statutory regulation is 5 years starting from the date of delivery (Section 438, Para. 1(2), BGB). Other special statutory provisions regarding limitation (in particular Section 438, Para. 1(1), Para. 3 and Sections 444 and 445b, BGB) remain unaffected.

8.3. The above limitation periods derived from German sales law also apply to contractual and non-contractual claims for damages brought by the CUSTOMER that are based on a defect of the goods, except in individual cases where the application of the regular statutory limitation period (Sections 195 and 199, BGB) would lead to a shorter limitation period. Claims for damages brought by the CUSTOMER in accordance with Section 7.2. p. 1 and p. 2(a) and the German Product Liability Act (Produkthaftungsgesetz) are limited exclusively according to the statutory limitation periods.

9. Reservation of title

9.1. We reserve ownership of the goods until all our current and future outstanding claims under the contract and an ongoing business relationship (secured outstanding claims) have been paid in full.

9.2. The goods subject to retention of title must not be pledged to third parties or transferred for collateral before the secured outstanding claims have been paid in full. The CUSTOMER must notify us in writing without delay if an application for insolvency proceedings is submitted or if third parties access the goods belonging to us (e.g. in case of seizures).

9.3. In the event of the CUSTOMER acting in breach of the contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to rescind the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not constitute a simultaneous declaration of rescission; rather, we are entitled to simply demand the goods owed and reserve the right to rescission for a later date. Should the CUSTOMER fail to pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set a reasonable period of time for the CUSTOMER to pay, or if such a period of time is not required in accordance with the statutory provisions.

9.4. The CUSTOMER is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business, subject to revocation in accordance with (c) below. In this case, the following provisions shall apply in addition:

a) The retention of title extends to the products resulting from the processing, mixing or combining of our goods for their full value, whereby we are considered to be the manufacturer. In the event of processing, mixing or combination with goods provided by third parties, where said third parties retain the title to their own goods, we will acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods.

Otherwise, the resulting product shall be subject to the same provisions as the goods delivered under retention of title.

b) The CUSTOMER hereby assigns to us, with immediate effect and for use as collateral, the outstanding claims against third parties arising from the resale of the goods or the product, either in full or at the amount arising from any co-ownership share we hold in accordance with the preceding paragraph. We hereby accept this assignment. The obligations of the CUSTOMER referred to in Paragraph 2 shall also apply in the light of the outstanding claims assigned.

c) Both ourselves and the CUSTOMER shall remain authorised to collect the outstanding claim. We undertake not to collect the outstanding claim as long as the CUSTOMER meets its payment obligations to us, there is no defect in its performance and we do not assert the retention of title by exercising a right in accordance with 9.3. If this is the case, however, we can demand that the CUSTOMER inform us of the outstanding claims assigned and their debtors, provide us with all the necessary information for collection, hand over the associated documents, and inform the debtors (third parties) of the assignment. Furthermore, we are entitled in such cases to revoke the CUSTOMER's authority to sell and process the goods subject to retention of title.

d) If the realisable value of the collaterals exceeds our outstanding claims by more than 10%, we will release collaterals of our choice at the request of the CUSTOMER.

10. Force majeure

10.1. “Force majeure” is defined as the occurrence of an event or circumstance that prevents us or the CUSTOMER from performing one or more of our contractual obligations under the contract, if and to the extent that the party (we or the CUSTOMER) affected by the obstacle demonstrates that:
(a) said obstacle is beyond the party’s reasonable control; and
(b) the obstacle was not reasonably foreseeable at the time the contract was concluded; and
(c) the effects of the obstacle could not reasonably have been avoided or overcome by the party concerned.
10.2. Unless proven otherwise, the following events affecting a party are presumed to fulfil the conditions under Paragraph 1(a) and (b) in accordance with Paragraph 1 of this clause: (i) war (declared or not declared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation; (ii) civil war, civil unrest, rebellion and revolution, military or other seizure of power, insurgency, acts of terrorism, sabotage or piracy; (iii) currency and trade restrictions, embargoes, sanctions; (iv) lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalisation; (v) plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged failure of means of transport, telecommunications, information systems or energy; (vii) general industrial unrest such as boycotts, strikes and lock-outs,

slowdown strikes, occupation of factories and buildings; (viii) blocking of transport routes, e.g. Panama or Suez Canal, e.g. due to accident.

10.3. Any party that successfully invokes this clause shall be released from its duty to fulfil its contractual obligations and from any obligation to pay damages or any other contractual remedy for breach of contract starting from the time the obstacle begins preventing said party from providing its services, provided the obstacle is reported without delay. If the obstacle is not reported immediately, the exemption shall take effect from the date on which the notification reaches the other party. If the effect of the alleged obstacle or event is temporary, the consequences described immediately above shall apply only for as long as the alleged obstacle prevents the performance of the contract by the party concerned. If the duration of the alleged obstacle results in the parties being deprived to a significant extent of what they could reasonably expect under the contract, each party shall have the right to terminate the contract by notifying the other party within a reasonable period of time. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the obstacle exceeds 120 days.

11. Rights to the software

If software is included in the scope of delivery, this is legally protected. The CUSTOMER is granted a non-exclusive, simple right of use to the supplied software, including its documentation. The software shall be made available for use on the item to be supplied for this purpose. Further use of the software is prohibited.

The CUSTOMER may only reproduce, revise, translate or convert the software from the object code into the source code only to the extent permitted by law (Sections 69 et. seq., German Copyright Act/UrhG). The CUSTOMER undertakes not to delete or change any information provided by the manufacturer, in particular copyright notices, without our prior explicit consent.

All other rights to the software and documentation, including copies, remain with us or the software supplier. Sublicensing is not allowed.

12. Final provisions, choice of law and jurisdiction

12.1. These General Terms and Conditions and the contractual relationship between us and the CUSTOMER are governed by the law of the Federal Republic of Germany to the exclusion of uniform international law, in particular the United Nations Convention on Contracts for the International Sale of Goods.

12.2. If the CUSTOMER is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship, including international disputes, is our place of business, currently 83064 Raubling, Germany. The same applies if the CUSTOMER is a trader within the meaning of Section 14 of the BGB. In all cases, however, we are also entitled to file a complaint at the place of fulfilment of the delivery obligation in accordance with these General Terms and Conditions or a priority individual agreement, or at the CUSTOMER’s general place of

jurisdiction. Priority statutory provisions, in particular those relating to exclusive competences, remain unaffected.

12.3. If and insofar as the contract or these General Terms and Conditions contain loopholes, the legally effective provisions that the parties would have agreed according to the economic objectives of the contract and the purpose of these General Terms and Conditions, had they been aware of the loophole, shall be deemed to be agreed to close these loopholes.

Last updated: July 2024

The English version of the terms and conditions should only be used for information purposes. The German version is legally binding.