

## **GENERAL TERMS AND CONDITIONS OF SALE OF: KÜHNE + HEITZ HOLLAND B.V. AT DORDRECHT**

### **Article 1: Scope of the general terms and conditions**

1. These general terms and conditions of sale are applicable in all cases in which **Kühne + Heitz Holland B.V.**, based at Dordrecht -hereinafter: "**Kühne + Heitz**"-, concludes agreements with its customers – hereinafter "buyer" – irrespective of the nature of the service or delivery to be performed by **Kühne + Heitz** and to any statements (including quotations and requests for quotations) made by parties in this connection.
2. The provisions in these general terms and conditions are applicable without prejudice to the right of **Kühne + Heitz** to exercise any further rights that are not described here but that are assigned to it by law or treaty.
3. These general terms and conditions may be invoked by any party whose services are enlisted by **Kühne + Heitz** in connection with the fulfilment of the agreement.

### **Article 2: The creation of an agreement**

1. Unless stated otherwise all quotations of **Kühne + Heitz** are without obligation. **Kühne + Heitz** has the right to withdraw a no-obligation quotation during three working days after receipt of acceptance.
2. Unless the buyer notifies **Kühne + Heitz** in writing and within 48 hours of receipt of the order confirmation that it does not accept the order and/or these general terms and conditions, the order and these general terms and conditions are deemed to have been accepted.
3. The (prospective) buyer bears the risk of any incorrect transfer of data if said transfer takes place orally.

### **Article 3: Prices**

The agreed prices are exclusive of turnover tax. Unless provisions to the contrary are agreed upon, the buyer is liable to pay any import duties, taxes and levies, including levies imposed by the European Union.

### **Article 4: The content of the agreement**

1. Any documentation, illustrations, samples or models presented or provided by **Kühne + Heitz** to the buyer are presented or provided for indicative purposes only and need not correspond with the deliverable item, unless and only to the extent that parties have expressly agreed to the contrary.
2. The deliverable item meets the terms of the agreement if it corresponds with the specifications that **Kühne + Heitz** has agreed upon with its buyer. Where no

specifications have been agreed upon, the deliverable item must meet the norms that are customary in the trade in relation to said item; this is always the case if said item meets the statutory quality requirements applicable in the country of production at the time of concluding the agreement. **Kühne + Heitz** has the right to supply an item with a different origin if its quality is equal to or better than the agreed quality.

3. Weight loss due to refrigeration or freezing is not deemed to be a shortcoming if the weight loss amounts to no more than one (1) per cent. Unless agreed otherwise, weight loss can exclusively be demonstrated by buyer by means of an official weight slip indicating that weighing took place on a properly functioning, public weighbridge on or immediately after delivery.

#### **Article 5: Delivery**

1. Unless the contrary has been expressly agreed, delivery always takes place FCA (Free Carrier) at the agreed place of transfer. The version of Incoterms applicable at the time of the transaction is applicable in all cases.
2. The buyer is obliged vis-à-vis **Kühne + Heitz** to take immediate delivery of the purchased item as soon as said item is delivered to him. If buyer does not take delivery, the item will be considered to have been delivered at the time that the item was offered by **Kühne + Heitz** who will keep said item from that moment in its custody for buyer's account and risk. In this case **Kühne + Heitz** also has the right to invoice the buyer.
3. Agreed terms of delivery apply by approximation—even if a specific end date or term has been agreed upon- and are not binding unless the contrary is expressly agreed. In the case of non-timely delivery, **Kühne + Heitz** must be sent a written declaration of default in which **Kühne + Heitz** is granted a reasonable term, to be determined after consultation, during which it has a further opportunity to fulfil the agreement.
4. **Kühne + Heitz** has the right to deliver the purchased items in partial consignments.

#### **Article 6: Retention of title and pledge**

1. All deliveries take place subject to retention of title. **Kühne + Heitz** retains the title to the items delivered and to be delivered to the buyer pursuant to the agreement until the buyer:
  - a. has paid the price of all these items plus any payable interest and costs in full and,
  - b. has paid all receivables relating to any work that **Kühne + Heitz** has performed or shall perform on its behalf in connection with the agreements in question, and,
  - c. has paid any claims that **Kühne + Heitz** shall obtain vis-à-vis buyer should the latter fail to fulfil any of the obligations mentioned above.
2. Buyer may not provide any item that is subject to retention of title as security for any receivables other than those of **Kühne + Heitz**.
3. Buyer shall separately store and/or clearly mark the item that is subject to retention of title.

4. If **Kühne + Heitz** wishes to demand the return of the item, buyer shall fully co-operate and grant **Kühne + Heitz** access to its storage place at all times.
5. Parties agree that a right of pledge will be established on behalf of **Kühne + Heitz** on moveable –non-registered- property that **Kühne + Heitz** may receive in its possession by way of security for the payment of any receivables that **Kühne + Heitz** may have on whatever grounds vis-à-vis the buyer. The right of pledge also applies as security for any sufficiently determinable receivables that **Kühne + Heitz** may obtain in the future vis-à-vis the buyer. The right of pledge shall be created without further formalities at the time that **Kühne + Heitz** receives possession of the item in question.
6. If any third party claims any entitlement to or in relation to an item subject to retention of title or to a right of pledge as referred to in the preceding paragraph, the buyer is obliged to notify that third party of the right of **Kühne + Heitz**, and to inform **Kühne + Heitz** without delay.
7. If a third party holds possession on the buyer's behalf of an item subject to retention of title, then the buyer is obliged, in the event of any failure to meet its obligations to **Kühne + Heitz**, to inform **Kühne + Heitz** on request of said third party's name and address and **Kühne + Heitz** has the right to notify said party that the item in question must henceforth be held on its behalf.

#### **Article 7: Inspection and complaints**

1. If the purchased item is collected by or on behalf of the buyer, the latter is obliged to have the quantity and external condition of the purchased items inspected at the place of collection.
2. The purchased items must be fully inspected by the buyer within 48 hours of delivery. If however delivery takes place on the basis of CIF, CFR, CIP or CPT (Incoterms), then the buyer is only required to have the purchased items fully inspected within 48 hours of arrival at the agreed place of destination.
3. If the inspection leads the buyer to the opinion that the purchased items fail to meet the agreement it must inform **Kühne + Heitz** of the substance of the complaint in writing within 48 hours of the end of the term mentioned in paragraph 2. In addition, the buyer is obliged to report the complaint by telephone or fax to **Kühne + Heitz** as soon as possible but no later than 24 hours after the end of the term mentioned in paragraph 2. The buyer is obliged to fully co-operate with **Kühne + Heitz** so that the items being complained about can be inspected by it or on its behalf at any time that it may require. **Kühne + Heitz** also has the right, in the event of a complaint, to require the buyer to have an inspection report drawn up without delay by an independent expert and, in addition, to demand that the buyer returns the purchased items to it without delay, at the expense of the party who is found to be in the wrong, in which case the buyer is entitled to retain a representative sample.
4. Buyer may only return items to **Kühne + Heitz** with the prior permission of **Kühne + Heitz**. Unless agreed otherwise, items are returned at the buyer's cost and are transported at the latter's risk.
5. In relation to the demonstration of weight loss due to refrigeration or freezing, reference is made to the provisions in Art. 4 paragraph 3.

6. The burden of proving that the alleged faults were already present at the time of the transfer of the risk rests in all cases with the buyer.
7. Complaints expressed after the terms mentioned in this Article need not be taken into consideration by **Kühne + Heitz** and do not lead to any liability on the part of the company. If **Kühne + Heitz** decides of its own volition to take these complaints into consideration, its efforts in this respect must, unless agreed otherwise, be regarded as leniency without entailing any acceptance of liability.

#### **Article 8: Liability**

1. Only if buyer has observed the provisions laid down in the preceding article can **Kühne + Heitz** be held legally liable, with due regard to the provisions in these conditions, during a maximum of three months after the date of delivery on account of an attributable failure to meet its obligations.
2. If **Kühne + Heitz** acknowledges attributable failure on its part or if this is established by any other means, then it has the right to inform buyer within a reasonable term that it shall, at its own option and without prejudice to any of its other rights pursuant to these general terms and conditions,:
  - repay the price paid by the buyer,
  - redeliver the items at no cost,
  - deliver the missing items,
  - make reparations.

If **Kühne + Heitz** thus manages to perform its agreed obligations in the short term, the agreement will be deemed to have been correctly fulfilled or -in the case of repayment of the price- will be deemed to have been dissolved without the buyer having any right to compensation.

3. If **Kühne + Heitz** is judged to be liable to pay monetary compensation on whatever grounds, said liability is limited to a maximum of the price agreed for the items in question (exclusive of turnover tax). Buyer indemnifies **Kühne + Heitz** against all claims of third parties insofar as these claims exceed the maximum mentioned in the preceding paragraph. **Kühne + Heitz** is never liable for any damage resulting from the incorrect use and/or unsound application of the delivered items.
4. Contrary to the preceding provision **Kühne + Heitz** stipulates that – should it transpire that it belongs to a sector where standardisation of agreements by means of general terms and conditions with limitations/exclusions of liability is a common phenomenon and **Kühne + Heitz** concludes the agreement within that sector or if **Kühne + Heitz** concludes the agreement with a company from another sector that has regular dealings with the sector in which **Kühne + Heitz** is active, and in which such standardisation also occurs-, then **Kühne + Heitz** is never liable for (serious) errors committed by people seconded to it who do not belong to the company management.
5. In this Article attributable failure also includes wrongful and unlawful acts.

## **Article 9: Non-attributable failure (force majeure)**

In addition to what the Law considers to be force majeure, this term shall also include strike action and/or sickness of the employees of **Kühne + Heitz**, non-performance and/or force majeure and/or wrongful and unlawful acts on the part of its suppliers, transporters or other third parties involved in the agreement, traffic stagnation, natural disasters, war or mobilisation, obstructive measures imposed by any governmental authority, fire and other accidents that may occur in the conduct of its business as well as any other circumstances as a result of which **Kühne + Heitz** cannot be reasonably required to fulfil (the remainder) of the agreement either in part or in full. If **Kühne + Heitz** invokes force majeure, each of the parties has the right to dissolve the agreement either wholly – at least insofar as the force majeure is sufficiently substantial– or partly, namely the part that could not be fulfilled on account of force majeure. In the case of partial dissolution, parties are obliged to fulfil the part of the agreement that has not been dissolved. In the event of dissolution on the grounds of this provision, neither party is liable to pay compensation to the other party in respect of the dissolved part of the agreement.

## **Article 10: Dissolution, right to claim, suspension and security**

1. In the event that the buyer is guilty of attributable failure, **Kühne + Heitz** has the right, in addition to the right to dissolve the agreement, to dissolve or suspend by means of a written statement any other agreements between **Kühne + Heitz** that have not yet been fulfilled in full. In this case **Kühne + Heitz** also has the right to demand that the buyer pay all outstanding amounts immediately and in a single sum and/or to make future deliveries exclusively against advance payment.
2. During the fulfilment of the agreement **Kühne + Heitz** has the right to require (additional) security if it receives any indications that the buyer's creditworthiness has been impaired to such an extent that there are good reasons to doubt the correct fulfilment of its obligations. This is always deemed to be the case if buyer fails to meet any of its payment obligations despite being served a notice of default.

## **Article 11: Payment**

1. Unless the contrary has been agreed, **Kühne + Heitz** always has the right to deliver exclusively against advance payment.
2. Payment must take place within the specific terms that are agreed between **Kühne + Heitz** and the buyer and that are stated by **Kühne + Heitz** on the order confirmation. If no such specific arrangements are made, payment must take place within fourteen days of invoice date. Unless agreed otherwise, the buyer can never claim any right to settlement or suspension. If **Kühne + Heitz** sends buyer an itemised statement of what it owes **Kühne + Heitz** and of what **Kühne + Heitz** owes it, then this document also serves as a statement of settlement. As soon as the payment term expires, buyer is in default without notice and, starting from the due date, is liable to pay interest at a rate of 7% above the ECB refinancing rate over the total invoice amount. At the end of each year, the amount over which interest is calculated is increased by the amount of interest payable over that year.

3. The payments to be made by buyer or third parties are always first deducted from those receivables in respect of which **Kühne + Heitz** is not able to invoke the retention of title provided for in Article 5. With due regard to this provision, payments are first deducted from all payable costs and then from all payable interest and, finally, from the (oldest) principal sum.

#### **Article 12: Intellectual property**

**Kühne + Heitz** exclusively retains all intellectual property rights to price statements, drawings and other documents that it produces.

#### **Article 13: Costs of legal assistance**

If the buyer, despite receiving a reminder, fails to settle a due and payable sum, it is liable to pay **Kühne + Heitz** all out-of-court and court costs. Both the out-of-court and the court costs are calculated on the basis of the rate per time unit that the legal adviser of **Kühne + Heitz** charges for such cases plus any reasonable expenses paid by that legal adviser to third parties.

#### **Article 14: Applicable law and competent court**

1. All agreements concluded by **Kühne + Heitz** are governed by Dutch law with the exclusion of the Treaty of the United Nations on international contracts of sale relating to movable property.
2. All disputes that arise between **Kühne + Heitz** and that are governed by these general terms and conditions shall, unless imperative law impedes this, be settled by the competent court within the jurisdiction of the Court of Rotterdam, the Netherlands, without prejudice to the right of **Kühne + Heitz** to take the buyer to another competent court.