



## **GENERAL TERMS AND CONDITIONS OF KDG OPTICOMP**

### **1 Scope of Application**

1.1 These General Terms and Conditions apply to all deliveries and services of kdg opticomp GmbH, hereinafter also referred to as "kdg OC", to a contractual partner, hereinafter referred to as "customer".

1.2 They also apply to all future transactions between the contracting parties, without the need for a renewed reference to these general terms and conditions.

1.3 They apply in full, unless individual clauses have been agreed otherwise in a particular case on the basis of an order confirmation and have been confirmed in writing by kdg OC. Unless particular clauses are expressly recognised, the customer's terms and conditions, if any, are hereby expressly rejected in their entirety and their application is excluded.

### **2 Warranty and liability**

2.1. kdg OC is liable for all products and services only with regard to those properties which were expressly guaranteed in the order confirmation. kdg OC does not assume any warranty or liability for properties, qualities or characteristics going beyond this and in particular not for any suitability of the product or service for a specific purpose, even if this purpose could be assumed on the basis of the design.

2.2. kdg OC is only liable for damages, in particular if they result of any lack of conformity, in the event of gross negligence or intent. This limitation of liability, however, does not apply to personal injury.

### **3. Licences, rights, patents, order rejection of manufacturing orders**

3.1 The customer guarantees that he owns all necessary copyrights and rights of use and/or all other necessary licence rights for the materials handed over for production and for the products to be produced on his behalf or that he has obtained the necessary permission from the rights holders.

3.2. kdg OC is not responsible for examining whether any rights of third parties could be infringed by the product and design, but reserves the right to examine the products on a case-by-case basis. At the request of kdg OC, the customer will therefore provide evidence of the necessary permissions.

3.3 The customer agrees that kdg OC may pass on order-related information, insofar as it concerns the protection of copyrights and related intellectual property rights, to the organisations concerned, which have the protection of these rights as their object, for the necessary verification.

3.4 If the customer is unable or unwilling to provide substantive evidence of the rights to a product/production within a 14-day period at the request of kdg OC, kdg OC is entitled, at its own discretion, either to withhold or refuse delivery until clarification has been provided and to withdraw from the order.

3.5 If the order is held back by kdg OC due to the previous provision and is delivered late or not executed and rejected in its entirety, all adverse consequences shall be borne by the customer, in particular the customer shall be responsible for any delivery dates not met as a result and all associated costs or any financial losses shall be borne by the customer.

3.6 Despite refusal of production and non-delivery of the same in accordance with the provisions above, the production costs incurred by kdg OC up to that point are to be borne by the customer.

3.7 The client is fully liable for all claims and other entitlements arising from any infringements of third party rights and shall indemnify and hold kdg OC harmless to the full extent, including the expenses incurred by kdg OC to clarify and defend against these claims.

### **4. Liability for intellectual property rights in development orders**

**kdg opticomp GmbH**, Am kdg campus, Dorf 91, 6652 Elbigentalp, Austria

T +43 (0) 5634 500 700, [opticomp@kdg.at](mailto:opticomp@kdg.at), [www.kdg.at](http://www.kdg.at)

Geschäftsführung: Michael Hosp, UID ATU 715 75 057, FBG IBK Nr. 324169w



4.1. kdg OC expressly points out that no patent investigations are carried out by kdg OC when accepting development orders.

4.2. kdg OC shall not be liable for any intellectual property rights, a specific scope of protection or commercial usability of the contractual products, nor for claims or other entitlements of third parties which relate to an alleged infringement of trademark rights and copyrights, patents, designs or other intellectual property rights.

4.3. kdg OC furthermore assumes no liability for a possible obligation to obtain approval from authorities, investigation offices or similar institutions.

## **5. Terms of use and rights to work results in development orders**

5.1 In case of development orders, the customer shall receive the non-exclusive, transferable, sub-licensable, temporally, territorially and objectively unrestricted right of use to the agreed work results.

5.2 This agreement of use covers and refers exclusively to the individual development ordered by the customer, fundamental development principles are explicitly excluded.

5.3 The legal ownership of the entire underlying know-how, including all inventions and information (such as illustrations, drawings, calculations or other confidential documents), which are passed on to the client during the creation of the contractual products, remains with kdg OC, unless expressly agreed otherwise in writing between the contracting parties.

5.4 The customer is only permitted to register intellectual property rights to the work results received from kdg OC in Austria and abroad with the prior written consent of kdg OC. The conditions and costs of such an application for intellectual property rights must be negotiated separately and in advance in each case.

5.5 It is expressly stated that both the intellectual performance and intellectual property rights contributed by the customer and by kdg OC remain with the party that contributed them. The contracting parties grant each other a reciprocal irrevocable right of use to jointly developed results and findings.

## **6 Offers, prices, order confirmation, delivery dates, order delays**

6.1 All offers are subject to change and non-binding. The prices quoted therein are always exclusive of VAT.

6.2 The contract is based on the order confirmation of kdg OC. Subsequent requests for changes involving additional costs will be invoiced separately. Estimated delivery dates are approximate ex-works and depend in particular on the timely delivery of required documents and primary materials, as well as the receipt of agreed advance payments or securities from the customer or third parties.

6.3. kdg OC reserves the right to make changes to the construction, choice of materials, specification and design at any time, provided that these do not contradict either the order confirmation or the customer's specification. Should substantial deviations become apparent and should kdg OC be unable to execute the order in accordance with the specification, kdg OC shall inform the customer thereof without delay. In this case, the customer has the choice of changing the specification in order to enable the execution, accepting any additional costs associated with this, or cancelling the order in return for compensation to kdg OC for the expenses incurred up to that point. No restitution shall be made for services already rendered.

6.4 Delivery periods and delivery dates are always subject to change. The expected delivery period shall in any case only commence after kdg OC has received all information and documents necessary for the execution of the order in accordance with the specifications or as agreed. The delivery period shall be extended appropriately in the event of industrial disputes, in particular strikes and lockouts, as well as in the event of the occurrence of unforeseeable obstacles which are beyond the control and influence of kdg OC (force majeure).

6.5 Delay is only deemed to have occurred if a delivery for which a delivery deadline has been agreed in an individual case is not made even within a reasonable period of grace. Claims for damages arising from delay in delivery exist only in the case of gross negligence or intent.

**kdg optiomp GmbH**, Am kdg campus, Dorf 91, 6652 Elbigentalp, Austria

T +43 (0) 5634 500 700, optiomp@kdg.at, www.kdg.at

Geschäftsführung: Michael Hosp, UID ATU 715 75 057, FBG IBK Nr. 324169w



6.6 Should the financial conditions of the customer deteriorate after conclusion of the contract in such a way that kdg OC's claim for payment could be at risk, kdg OC is entitled to refuse the execution of the order until a corresponding consideration or security is provided.

6.7. kdg OC reserves the right at any time, in the event of significant price increases or significant increases in other production costs or as a result of an indispensable change of supplier for which kdg OC is not responsible, to revise the prices for the products and/or services offered in each case after giving notice to the customer to the extent that the increase(s) in question affect(s) the cost price.

## **7. Deliveries and quantity deviations**

7.1 Unless otherwise agreed, deliveries shall be made "ex works" Elbigenalp, against advance payment. The costs for packaging and transport shall be borne by the customer. The responsibility for risk is transferred to the customer with the dispatch of the products. Transport insurance shall only be arranged at the express request and expense of the customer.

7.2 Partial deliveries are permissible and may be invoiced separately.

7.3 If, in the context of his order, a customer wishes the delivery to be made and invoiced to a third party, the customer shall nevertheless continue to be liable as a contractual partner. Any additional costs resulting from this, also with regard to packaging and transport, shall be borne by the customer and shall therefore be invoiced to him separately.

7.4 In the manufacture of the products ordered, an over- or under-delivery of 10% of the total order quantity per article is permissible and must be acknowledged without the customer being able to deduce any claims from this. Over-deliveries shall be invoiced according to the quantity delivered.

## **8 Acceptance deadlines, creditor default**

8.1 Unless other deadlines have been agreed in advance, the customer must accept the ordered delivery or service within 8 days of transmission.

8.2 If the customer does not comply with this acceptance obligation, kdg OC is entitled, without prejudice to further legal options, to invoice the ordered delivery or service immediately, to store any delivery items at the customer's expense and risk, to dispose of them otherwise or to deliver to the customer at the next possible time. In this case, the risk shall immediately pass to the customer.

## **9. Retention of title**

9.1 All services and products supplied remain the full property of kdg OC until all outstanding primary and secondary debts have been paid in full.

9.2 The customer is entitled to dispose of the goods in the ordinary course of business up until revocation. The customer assigns any claims arising from a resale to kdg OC as security. kdg OC accepts this assignment. The customer shall notify kdg OC of any such resale by simultaneously sending a copy of the invoice and shall make this assignment by way of security visible in its books. At the request of kdg OC, the customer is obliged to notify the third party debtor.

9.3 In the event of default in payment, kdg OC is entitled to take back and dispose of the goods without this constituting a withdrawal from the contract. The revenue generated by the disposal will be credited to the customer after deduction of the costs of disposal and all outstanding claims of kdg OC.

## **10. Use of tools**

10.1. kdg OC expressly declares and guarantees that the tools supplied by or manufactured for the customer will only be used for the customer's orders.

10.2 Tools developed and/or manufactured by kdg OC for the client always remain the property of kdg OC and may only be used for product manufacture by kdg OC. The customer has no claim to the handover or transfer of ownership of such tools.

**kdg opticomp GmbH**, Am kdg campus, Dorf 91, 6652 Elbigenalp, Austria

T +43 (0) 5634 500 700, opticomp@kdg.at, www.kdg.at

Geschäftsführung: Michael Hosp, UID ATU 715 75 057, FBG IBK Nr. 324169w



10.3 Use of the tools and the associated know-how for product manufacture by third parties is inadmissible in any case and entitles kdg OC to claim injunctive relief and damages from the client in the event of an infringement and to assert all other statutory or contractual claims.

## **11. Notice of defects**

11.1 Deliveries are to be examined for compliance immediately upon receipt. Non-receipt of a shipment must be reported to kdg OC in writing within 8 days of receipt at the latest. Visible defects and deviations in quantity exceeding the permissible extent must be brought to the attention of kdg OC in writing within 8 days at the latest after receipt of the goods at the place of destination, stating the exact nature of the defect and referring to the delivery note or invoice number.

11.2 Hidden defects must be reported immediately upon discovery, whereby a preclusion period of 6 months after receipt of the goods applies.

11.3 All claims for warranty and/or damages shall be forfeited for defects that have not been reported in due time.

11.4 Notices of defects can only refer to expressly warranted properties or impermissible deviations in quantity, all other notices of defects cannot be recognised as no liability exists in this respect.

11.5 In the case of recognised defects, kdg OC can, at its own discretion, either offer to take back the goods and replace them with equivalent goods or offer a price reduction in the form of a credit note.

11.6 The customer is obliged to return incorrect or defective goods to kdg OC immediately, but no later than 8 days after notification of the defect. If the customer does not comply with this obligation in due time, the liability under the warranty shall lapse.

11.7 Defects in a part of the delivery do not entitle the customer to return the entire shipment, but only the part affected by the defect.

11.8 Notices of defects do not release the customer from fulfilling his payment obligations towards kdg OC. Any warranty claims expire after one year.

## **12 Payment and set-off**

12.1 Outstanding invoices are due immediately upon receipt or within an agreed payment period from the invoice date. Any fees or bank charges for payments or transfers from abroad shall be borne by the customer.

12.2 Payments shall always be credited first to costs and interest, then to whichever claim is longest outstanding.

12.3. kdg OC is entitled to offset the customer's claims against all claims to which kdg OC, sister companies, subsidiaries, or other companies in which kdg holds a majority interest are entitled. Offsetting by the customer against claims of kdg OC with claims of the customer is precluded.

## **13. Consequences of default in payment**

13.1 In the event of delayed payment, kdg OC is entitled to charge interest on overdue payments of 12% p.a., expenses per each reminder, and all collecting costs, subject to the assertion of further damages.

13.2 In the event of default in payment, kdg OC is entitled to withhold all deliveries, including those already confirmed, until all outstanding primary and secondary debts have been paid in full. In the event of or after default in payment, deliveries will only be made against advance payment. Any other special conditions agreed with the client also become obsolete in the event of default in payment.

13.3 In the event of default in payment, kdg OC may also assert its retention of title at any time and retrieve goods manufactured by kdg OC and dispose of them itself to the extent that all outstanding primary and secondary debts are covered by such disposal.

**kdg opticomp GmbH**, Am kdg campus, Dorf 91, 6652 Elbigenalp, Austria

T +43 (0) 5634 500 700, [opticomp@kdg.at](mailto:opticomp@kdg.at), [www.kdg.at](http://www.kdg.at)

Geschäftsführung: Michael Hosp, UID ATU 715 75 057, FBG IBK Nr. 324169w



13.4 If the invoicing to the customer is made in a currency other than Euro, then kdg OC is free, in the event of default of payment, to recalculate the claim to the value in Euro at the exchange rate of the due date. Settlement of the claims will then be made on the basis of the Euro value, and payments on these claims will be converted at the respective daily rate of the payment.

#### **14. Archiving and storage of production materials**

14.1 kdg OC points out that any production material provided by the customer (this also includes repackaging and transport packaging) will be stored and archived at kdg OC for six months after the order in question has been placed at the expense, risk and peril of the customer.

14.2 The delivery guidelines of kdg mediatech GmbH in the currently valid version shall apply. The customer is responsible for creating recommended backup copies (e.g. for step files).

14.3 Any liability and compensation arising from the loss of production materials is excluded, unless kdg OC has caused the loss intentionally or through gross negligence. kdg OC's liability shall in any case be limited to the value of the material.

14.4 After the expiry of the six months, depending on the customer's instructions, the goods will be returned at the customer's expense, destroyed or stored at a further charge. This applies in particular to tools delivered by the customer. If the customer does not provide any instructions even after being asked twice, kdg OC reserves the right to destroy the production materials provided.

#### **15 Place of performance, jurisdiction and law**

15.1 The place of performance for all services of the contracting parties shall be Elbigenalp. The exclusive place of jurisdiction is the competent court for Elbigenalp, although kdg OC shall also be entitled to bring an action at a statutory place of jurisdiction of the customer.

15.2 Austrian law shall apply with the exception of the conflict of laws and the UN Convention on Contracts for the International Sale of Goods.

Version: 13.10.2022

**kdg opticomp GmbH**, Am kdg campus, Dorf 91, 6652 Elbigenalp, Austria

T +43 (0) 5634 500 700, [opticomp@kdg.at](mailto:opticomp@kdg.at), [www.kdg.at](http://www.kdg.at)

Geschäftsführung: Michael Hosp, UID ATU 715 75 057, FBG IBK Nr. 324169w