

# General Terms and Conditions for Kraft & Bauer Brandschutzsysteme GmbH

## § 1 Validity

You are entitled to fair treatment and clear regulation in the business relationship: all deliveries and services are on the basis of these general terms and conditions. They shall be considered as accepted by the placing of an order or acceptance of delivery. If you are not aware of the current version you may request it from us. Even if you are aware of differing, contrary or supplementary general terms and conditions, they shall not become part of the contract unless its validity is expressly consented in writing. Subsidiary agreements shall be ineffective; this shall also apply to the revocation of the written form.

## § 2 Offer and conclusion of contract

**2.1** Our offers are subject to change without notice. The documentation attached to the offer and order confirmation, such as brochures, advertisements, drawings, illustrations, weights and measurement specifications or other technical data, shall be considered as not binding unless its validity is expressly consented to in writing. Technical alterations to the form, colour and/or weight shall remain reserved within the scope of reasonableness, just as performance alterations, if they are conditional on technical further development, or the function of the subject matter of the contract, is thereby not significantly changed. Qualities shall be considered as guaranteed only if confirmed by us in writing. Our order confirmation shall be exclusively authoritative for the nature and extent of our liabilities. This shall also apply when referring to the commission. Sales of samples shall be considered as standard, at which customary deviations shall not entitle the customer to make a claim in respect of a defect. Our specifications as to the object of delivery and subject matter (e.g. measurements, tolerances, technical specifications, etc.), as well as our presentation of these, shall be considered only approximately authoritative. There shall be no warranted characteristics other than descriptions or designations of the goods.

**2.2** With the commission the customer validates the acquisition of the commissioned goods. We shall be entitled to accept the commission based on the offer within a period of 4 (four) weeks after its receipt. The acceptance may be declared either in writing or, in the event of an order of goods, by delivery to the customer. The parties agree that an automated receipt of an order through electronic channels does not represent acceptance with any binding force.

**2.3** We reserve the right of property and copyright of cost predictions, drawings and other documents provided by third parties or ourselves. They shall be disclosed only with our expressed authority and with notice of origin to third parties, and shall not be diverted by the contractor for his own competitive purposes. The objects cited in this first sentence shall be completely returned to us on request without retention of copies or duplicates. It is agreed that the duty of secrecy and prohibition of exploitation shall also continue after the contractual process until the possibly obtained knowledge has moved into the open. In the event that we have to deliver drawings, prototypes or patterns by using attached parts from the customer, the customer shall be liable not to contravene any protective rights of third parties. The customer shall indemnify us against any liabilities of third parties and to compensate us in the event of any possibly occurring damages caused by the infringement of protective rights. In the event that any third party refrains from the production or delivery in reference to a protective right we shall be entitled to suspend work without verifying the legal position. Any expenses occurred until then shall be borne by the customer. The customer shall himself take care or contribute to any possible customs or other formalities involved in the delivery or order performance.

**2.4** Any determined delivery/performance times shall only be binding if they are expressly indicated or confirmed by us. The parties agree that a deadline shall not commence prior to the procurement of documentation, authorisations or releases to be provided by the customer, or prior to the receipt of any possibly agreed payment on account. In the event that technical ambiguities or errors in the ordering documents or drawings of the customer emerge later, or the non-compliance of deadlines are due to force majeure, labour disputes or other events which are beyond our control, it is agreed that the delivery time will be reasonably extended. We shall inform the customer as soon as possible of the foreseeable end of such circumstances. The conclusion of the contract shall occur under the proviso of correct and due delivery to us. This shall not apply if non-delivery has to be justified by us. If the contract cannot be performed for reasons to be attributed by us the customer shall be reimbursed of any advance payments. Increased or short deliveries of up to 20% of the quantity ordered shall be permitted with fabrication or topping-up goods. With off-the-shelf orders we shall be entitled to procure the material for the entire order and to produce the complete quantity order immediately. Possible requests for changes may only be considered if a surcharge is accepted. Due calls shall be despatched to us in due course at the conclusion of a contract with consecutive shipments or basic orders. If the customer fails to call in due course we shall be entitled to size and deliver the goods, or to refrain from delivering the remaining part of the conclusion and to claim compensation. With basic orders we must insist upon taking the fully agreed quantity within the stipulated period of acceptance. Our written

delivery offer shall suffice for maturity of our claim for the parts taken so far. If payment is not forthcoming for the remaining quantity within a deadline fixed by us we shall be entitled to further utilise the parts by crediting possible realisation proceeds to our claims. Even in the event of absorption of expenses, portions of tools and other production aids, the customer shall not take title or common ownership of these objects.

### **§ 3 Prices/Remuneration**

**3.1** Provided the parties did not agree otherwise our prices shall apply ex-works in Euros, excluding packing, freight, postage and insurance, and including Value Added Tax. It is agreed that our prices, valid on the day of delivery or service, shall apply to all deliveries and services if the user is not a contractual partner. Increased or special performances shall be invoiced separately. Other means of payment are only accepted in fulfilment as may be agreed.

**3.2** Invoices will be issued only by us and are exclusively paid to us. They are due immediately. Unless the parties agree otherwise, we shall grant a cash discount if payment for goods delivered is received within 14 days. This shall also apply for direct debit. Services shall be due immediately after receipt of invoice. Banking costs shall be borne by the customer. Requests for advance or instalment payments can be made.

**3.3** We wish to point out that a customer who is also the user falls automatically into arrears without notification upon default of due invoice amounts 30 (thirty) days after the receipt of goods or invoice. Notwithstanding any rights the parties agree a figure of 8 (eight) per cent – 5 (five) per cent for customers – statutory interest in arrears beyond the base lending rate during the period of default.

**3.4** The breach of agreed payment conditions, as well as the circumstances becoming known to us that the customer will make default in payment, shall entitle us to demand immediately the lodging of security for all claims notwithstanding of their maturity, to suspend the delivery or service until the lodging of security, and to immediately fix a due date for the outstanding debts.

**3.5** The customer shall not be entitled to enforce rights of retention from previous or other business connexions towards our payable pecuniary claims. He shall be entitled to set off our claims only with undisputed or legally declared claims.

**3.6** Any alteration in prices shall be permitted unless a period of more than 6 (six) weeks - 4 (four) months for consumers – has elapsed between the conclusion of the contract and the agreed delivery date (this also applies to partial performances and issued instalment invoices). In the event that wages, material costs or market delivery prices increase, we shall be entitled to proportionately increase the price in compliance with the price advance. The customer shall be entitled to withdraw if the price advance significantly exceeds the general cost of living.

### **§ 4 Packing/Shipment**

**4.1** Packing material is the property of the customer and is charged for by us. The best available mode of despatch is chosen. In the event of transport losses, the customer shall inform the forwarder/exporter and us without undue delay.

**4.2** With the delivery of goods to the forwarder/haulage contractor or the chosen person or institution, the danger of accidental loss and deterioration of the goods shall pass over to the customer. At the time of delivery it doesn't matter whether the customer is in default of acceptance. Transportation insurance may be demanded at the expense of the customer. Our site is considered to be the place of performance even if we perform additional services. With the announcement of readiness for despatch the danger shall pass over to the customer if the shipping department expects a special instruction from the customer.

**4.3** The customer shall accept our performance immediately upon being informed of the readiness of delivery. After appointment of a deadline we shall be entitled to otherwise dispose of the delivery item and to claim for damages for non-fulfilment.

### **§ 5 Guarantee**

**5.1** For consumers, the guarantee for delivery of new products or performances shall extend to the legal period of warranty; the guarantee period shall amount to 1 (one) year for other customers. It shall commence on the day of delivery or with the acceptance of performance. Guaranteed services shall provide neither an extension of the period of guarantee nor the actuation of new deadlines. The guarantee period for installed spare parts shall terminate with the guarantee period of the complete equipment.

**5.2** We shall not guarantee quality defects caused by inappropriate or improper handling, poor assembly or initial operation by the customer or third parties, customary wear, poor or negligent treatment, as well as the consequences of improper modifications or repair work by the customer or third parties without expressed consent. The same shall apply for deficiencies that only insignificantly depreciate the value or functionality of the goods.

**5.3** If the contract is considered to be a commercial transaction for both parties it is agreed that complaints must reach us not later than 8 (eight) days after the receipt of goods or acceptance of the performance, and in the event of latent deficiencies, not later than 8 (eight) days after the discovery of the deficiency. The consumer shall notify us in writing of apparent deficiencies that are noticed by the average consumer without any effort within a period of 2 (two) weeks after the performance or delivery. Such a deadline shall only be met upon receipt of the complaint by us but not by possible agencies. If the customer fails to inform us of such complaint it is agreed that the goods or the performance are considered to be accepted and no claims can be asserted.

**5.4** We shall be afforded the opportunity to establish the reprimanded defect. Objected to goods shall, therefore, be sent immediately to us upon request in order for the goods manufactured by us to be inspected. If the customer fails to meet these obligations, or undertakes modifications on the reprimanded equipment or production without our consent he shall forfeit any possible recompense for the defects in quality.

**5.5** For industrial customers requiring immediate goods or performance we shall undertake interim re-touching or replacement delivery. We shall assume an expressed guarantee for used articles only if it has been mutually agreed in writing with the industrial customer. If the customer is a consumer he may select whether we should provide interim re-touching or replacement delivery. We may refuse the mode of re-performance if we consider it disproportionate, particularly if only possible with disproportionate costs. The limitation period for consumers for breach of guarantee for used articles amounts to 12 (twelve) months ex-delivery. In the event that re-touching proves abortive, the customer shall be entitled to demand compensation or cancellation of order. Further claims by the customer, in particular for consequential damage caused by a defect, shall be excluded. The customer shall not be entitled to right of cancellation for a minor violation of contract, particularly for minor defects. If an acquisition has been agreed with the customer the goods or performance with occurred acceptance shall be deemed as approved. The customer shall be excluded from further guarantee claims unless it concerns a defect that has not been perceptible at acceptance, even with careful examination. In the event that a customer demands termination of the contract due to lack of a title or quality defect after a failed re-performance, he shall not be entitled to compensation for the defect. If the customer demands compensation after a failed re-performance, the goods shall remain with the customer, if reasonable. The claim for compensation shall be restricted to a figure between the purchase price and the value of the defective object. This shall not apply if we have maliciously created the breach of contract. The parties agree that, as a condition of the goods, only the product description of the manufacturer shall be considered as agreed. Public commentaries, recommendations or advertisements by the manufacturer (of the product or individual parts of it) do not represent contractual quality descriptions. If the customer is provided with insufficient assembly instructions we shall merely be committed to provide an accurate assembly instruction, but only in the event that the existing assembly instruction is insufficient to enable proper assembly. Replaced parts shall become our property. Beyond reparation and replacement we shall also be entitled to perform technical modifications in order to adapt the equipment to state-of-the-art. It is agreed that there shall be no legal entitlement. We reserve the right to replace a defective unit against a follow-up product, or to reimburse the customer the original purchase price against the return of the defective unit. Handbooks and possible software shall be excluded from the guarantee. After prior consultation, the customer shall grant us the time deemed necessary to undertake all repairs and/or spares deliveries, otherwise we shall be free from an expressed guarantee. Only in urgent cases where operational safety is endangered, or to avert disproportionate extensive damage, which we must urgently be informed about, or where we delay remedying the defects, the customer shall be entitled to eliminate the defects himself or by using third parties. Any guarantee claims shall be excluded, in particular:

**a)** if the equipment has been damaged or destroyed by influences of force majeure or environmental influences (e.g. humidity, electric shock, dust, etc.); **b)** if the equipment has been stored or operated under conditions which are beyond the technical specifications; **c)** if the damages were caused by improper handling, in particular by disregarding the system description and/or operating manual; **d)** if the equipment has been opened, repaired or modified by third parties not authorised by us; **e)** if the equipment shows mechanical damage of any kind; **f)** if the entitlement guarantee has not been reported to us in due course. Should it turn out that the reported malfunction of the equipment was caused by defective foreign hardware, defective foreign software, installation or operation, we shall reserve the right to invoice the purchaser for any performed test efforts. In the event of slight and medium negligence we shall not be liable for data loss and/or the repossession of data. In cases in which we have intentionally or through gross negligence caused loss of data we shall be liable for restitution. The customer shall only indirectly be entitled to a guarantee claim against us; these guarantee claims shall not be transferable.

## **§ 6 Liability**

**6.1** Our liability shall be limited to the foreseeable, contractual, indirect average damage for negligent breach of duty, not to exceed the coverage of our comprehensive general liability and product liability insurance (currently 50.000.000,00 € Euros on personal and/or property damage. pecuniary damages is excluded). This shall not apply to gross breach of duty by our legal representatives or various agents. We shall not be liable for slight negligent breach of insignificant contractual obligations. Other claims by the customer against us shall be excluded. This shall particularly apply to claims for compensation because of breach of duties from the contractual obligation or from tortious acts. We shall not be liable for damages that have occurred after delivery of the goods. Above all, we shall not be liable for loss of sales or other pecuniary losses of the customer. The exemption clause shall not apply to intentional or gross negligent breach of duty by us or our legal representatives or various agents. Claims for compensation by the customer because of a defect shall become statute-barred 1 (one) year after delivery of the goods. This shall not apply if we are accused of fraudulent intent. The legal periods of limitation shall apply for consumers.

**6.2** The aforementioned limitations on liability shall not concern claims from product liability by the customer. It is agreed that the limitations on liability shall not apply to non-attributable personal damage and damage to health, or the loss of a customer's life.

## **§ 7 Title retention**

**7.1** The goods shall remain our sole and exclusive property until full payment of all claims arising out of the business relationship, no matter for which course of action they have accrued. This shall also apply for future claims. The retention of title shall apply for current accounts as security for the respective remainder. This shall also apply if payments by the customer are made to particular debts.

**7.2** The customer shall be committed to treat the goods carefully. Should maintenance and inspection work become necessary the customer shall perform it regularly at his own expense. It is agreed that goods shall neither be pledged nor transferred by way of security without our written consent. The customer shall immediately inform us of any possible seizures of property and to provide the necessary assistance to safeguard our interests.

**7.3** The processing or transforming of the conditional commodity shall always be undertaken on our behalf as the manufacturer, without any further commitment to us. When processing or transforming the conditional commodity with other goods not provided by us, ownership of the new object resides with us in relation to the value of the conditional commodity in relation to the value of other processed or transformed commodities at the time of processing or transforming. In the event that our ownership of the conditional commodity expires by connexion or commitment, the customer shall transfer his rights or (common) ownership of the new object or the committed balance to the amount of the invoice value of the conditional commodity; he shall secure it on our behalf. The new object, formed by processing, transforming, connexion or commitment (hereinafter referred to as the "Corporeal thing"), or the common ownerships of the new corporeal thing held by us or to be transferred, serves to secure our claim in the same way as the conditional commodity pursuant to sub-paragraph 1.

**7.4** The customer shall be entitled to sell conditional commodities in his ordinary course of business at normal trading conditions, but only if he maintains his due financial responsibilities towards us. The customer shall assign all debts from the re-sale to us and we accept this assignment. The customer shall be entitled and committed to collect all outstanding debts assigned to us, as long as this authorisation has been revoked by us. Such direct debit authorisation shall terminate, even without our expressed revoking, if or as soon as the customer fails to meet his obligations towards us, or if the customer suffers financial collapse. Provided the liquidity value of our guarantees exceeds our guaranteed debts by more than 20% we will, upon request, release guarantees at our convenience.

**7.5** We shall be entitled to foreclose the assignment, withdraw from the contract, demand the return of, or collect, goods if a customer's behaviour does not conform to the contract, particularly any delay in payment or failure to comply with this contract. In the event of a foreclosed assignment involving securities, it shall be left to our own discretion to obtain information about the customer's financial circumstances through third parties. The customer shall declare his consent to this procedure. In the event the customer shall be committed to immediately inform his purchasers of the assignment to us and to provide all information and documents necessary for the immobilisation. The customer shall also be committed to release or transfer any guarantees that are due to him, and to insure the conditional commodities adequately against fire and theft. He agrees to assign his claims from insurance contracts to us immediately. The customer shall be committed to allow

access to us or other authorised persons to accomplish these measures and to generally inspect the conditional commodities or new objects at any time. The customer shall, upon request, inform us of the whereabouts of conditional commodities and about the debts accrued from the resale at any time. If the retention of title as provided for under this agreement, should not be legally valid under the law of the country in which the reserved goods are located, the security which shall be deemed to apply shall instead be that which comes closest to the law of that country.

## **§ 8 Service and Maintenance**

According to the fire insurers General Safety Regulations, fire protective systems must be available and kept in utilisable condition in each factory and, pursuant to the legal requirements, regularly inspected and maintained by an expert. We can provide such a customer service that will take care of it. We sell, install, inspect and maintain all makes and types of extinguishing systems, pressure release and fire protection flaps and further peripheral equipment such as hand fire extinguishers, mobile fire extinguishing gears, smoke and heat extraction systems, hydrants and hoses, as well as giving advice on general fire protection. Our inspection and maintenance services comply with all legal requirements. The commitment to inspect only comes into effect if a written inspection agreement has been concluded. This will take place when both contractual parties have signed the agreement and we have subsequently received two duplicates, whereupon we shall send at least a confirmation by fax or Email to the customer. The inspection contract shall include either one single service or an inspection agreement, both which shall be designated accordingly. Unless otherwise agreed by a revision/inspection contract, the parties agree that at each inspection performed by our service technicians within the scope of the maintenance agreement the following shall apply:

**8.1** An experienced employee carrying a valid inspection identity card will undertake the maintenance inspection. The identity card shall bear our address and signature. The inspector shall confirm the condition and readiness for use of the maintained fire extinguishing system with an inspection voucher, maintenance report and the service invoice. The inspection fees are separately agreed in the maintenance agreement. Necessary spare parts and filling material shall be additionally invoiced at the respective list price.

**8.2** The inspection fees are agreed separately in the maintenance agreement and shall relate to the rotational maintenance of the equipment existing at the time of the conclusion of the contract. Unscheduled necessary inspection work, e.g. after the event of a fire, are charged extra according to the expenses incurred. With on-going contracts, we shall be entitled to increase the inspection fees towards the system owner if labour and/or material costs make this necessary. In the event of a fee increase we shall grant the consumer a right to terminate the agreement without notice. Additionally, we shall invoice proportionate travel expenses.

**8.3** We shall replace those parts or carry out refurbishment free of charge if, after the inspection documents have been signed, the equipment designated in the inspection voucher becomes defective or does not function properly, and it is evident that this is due to a culpable overlooked condition by the inspector. If such refurbishment is practically impossible or cannot be performed by us within a reasonable period of time the contractor shall be entitled to withdraw from the inspection agreement. All further contractual or non-contractual claims of performed or failed refurbishment, including contractual accessory obligations, and in particular any claims for compensation for direct or indirect damage, shall be excluded within the limitations of sub-paragraph 6. The guarantee period shall be 1 (one) year, and the legal guarantee period shall apply to consumers. The guarantee period shall commence from the day of the maintenance work/acceptance. Guarantees shall affect neither an extension of the guarantee term nor actuate new guarantee terms. The parties agree that the guarantee for installed spare parts will commence at the same time as the guarantee period for the entire equipment.

**8.4** The maintenance agreement shall be concluded for a period of 2 (two) years. Unless a contractual party terminates this agreement in writing 3 (three) months prior to expiry, it shall automatically be extended for 1 (one) year. We shall be entitled to terminate the contractual relationship immediately if good reasons arise. Good reasons shall include the institution of bankruptcy proceedings over the customer's assets, making a statutory declaration/inventory of property about the financial condition of the customer, and the unjustified failure of the customer to pay the fees invoiced to him. In the event of a premature termination of the contract, for which the customer shall be liable, we shall be entitled to assert compensation claims for non-performance.

**8.5** In the event that a necessary (annual) inspection is not performed, the parties agree that if damage or improper function occurs no causes of action can be asserted against us. In such cases the guarantee and product liability shall extend to the full extent. All liabilities shall be excluded if discovered defects are not immediately reported to us in writing, or if the operating/maintenance instructions for the equipment, filling or accessories have not been met.

## **§ 9 Returns**

The parties agree that basically goods cannot be returned. Any discrepancies shall require our written consent. The value of goods, as well as our administrative overheads, shall be individually agreed.

## **§ 10 Secrecy**

Each contractual partner shall utilise all documents and knowledge obtained through the business relationship only for commonly intended purposes, and shall not disclose them to third parties if the other party designates the information as confidential or has an evident interest in its secrecy.

## **§ 11 Concluding provisions**

**11.1** The parties agree that the place of performance shall be our commercial domicile. In the event of any disputes arising out of this contractual relationship, and also within our own discretion the commercial domicile of the customer, our commercial domicile shall be the place of jurisdiction for which these general terms and conditions apply, if the customer is a merchant, legal entity of public law, or public fund. The same shall apply if customer has no domestic general jurisdiction, or has changed his domicile or usual place of residence abroad after the completion of the contract. In the event of claims against us our commercial domicile shall be the exclusive place of jurisdiction. The laws of the Federal Republic of Germany shall govern the contractual relationship.

**11.2** The parties agree that any transfer of customer rights and obligations from the contract concluded with us shall require our written consent for it to be effective.

**11.3** In recognition of German export control legislation the customer shall, at his own expense, be committed to procure all necessary export licenses or other documentation that is required prior to the export of products or technical information provided by us. The customer shall be committed not to sell, export, re-export, deliver or otherwise transfer such products or technical information, neither directly nor indirectly to persons, business firms or countries, unless this contravenes German export laws or regulations. The customer shall be committed to inform all recipients of the products or technical information about the necessity to comply with these laws and regulations. The customer shall procure all necessary export and/or import licenses at his own expense. It is agreed that the denial of an export licence shall not entitle the customer to withdraw from this contract or to any claims for compensation.

**11.4** It is agreed that these general terms and conditions shall become effective following final examination and completion approval of the contract.