



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

### **1. Validity**

These general terms and conditions shall be applicable to all deliveries of goods and all provisions of services of kdg opticomp GmbH, hereinafter also referred to as "kdg OC", to customers or other contractual partners, hereinafter referred to as "Customer". They shall also apply to all future transactions between the contracting parties without a repeated reference to the general terms and conditions being required. They shall be applicable in their entirety, except those points which have been otherwise agreed upon and confirmed in writing by kdg OC in individual cases on the basis of the confirmation of an order. Unless expressly accepted in individual points, we hereby object expressly to the general terms and conditions of the Customer, these shall not be accepted.

### **2. Warranted Characteristics**

In the case of delivered goods and services provided, kdg OC shall only warrant those characteristics that were expressly guaranteed in the order confirmation. kdg OC shall not warrant any characteristics, qualities or features which go above and beyond or the suitability of the product for a particular purpose, even if this could be assumed on the basis of the design.

### **3. Licenses, Rights, Patents, Refusal of Orders in Case of Production Orders**

The Customer guarantees that he is in possession of all required copyrights and rights of use and/or all required license rights or has obtained the necessary approvals of third parties. kdg OC is not responsible for checking whether possible rights of third parties may be infringed by product or performance, but reserves the right to conduct such examinations from time to time. On request of kdg OC, the Customer will submit proof for the required approvals. The Customer also agrees to kdg OC passing on order-related information, insofar as is required in order to protect copyright and related property rights, to the relevant organisations the object of which is the protection of these rights, so that these rights can be clarified as necessary. If kdg OC submits a specific enquiry concerning a product/production or if kdg OC requests specific proof of the rights required for this product/production and the Customer is unable or unwilling to provide this proof, kdg OC has the right to refuse delivery and to withdraw from the order. If, on the basis of this provision, the order is retained and delivered late by kdg OC or not delivered and refused entirely, the Customer will bear any adverse consequences. In particular, the Customer will bear the consequences of failure to adhere with delivery dates as a result of such a situation, and will bear all associated costs. kdg OC will also not be responsible for financial losses the Customer incurs as a result of non-compliance with delivery deadlines. Despite refusal of the order and non-delivery of it, production costs already incurred by kdg OC must also be borne by the Customer. The Customer shall be fully liable for all claims and other entitlements of third parties resulting from possible infringements and shall fully indemnify kdg OC, including kdg OC's expenses for clarification and avoidance of such claims.

### **4. Liability for Intellectual Property Rights in Case of Optical Design Orders**

kdg OC expressly declares that no patent search shall be carried out with regard to acceptance of optical design orders. In particular, kdg OC shall not be liable for a possible patentability, a certain scope of protection, or a commercial usability of the contract products. Also, kdg OC shall not be liable for requirements or other claims of a third party which refer to an alleged infringement of trademark rights, copyrights, patents, models, or any other registered intellectual property rights. Furthermore, kdg OC shall not assume any liability for a possible requirement of authorization by authorities, investigation offices, or similar institutions.

### **5. Terms of Use and Rights to Work Results in Case of Optical Design Orders**

The Customer shall be granted the exclusive, transferable, sublicensable, and temporally, spatially, and factually unrestricted right to use the work results agreed upon in the optical design offer. For this purpose, kdg OC shall provide the Customer with a complete set of the agreed documents upon completion of their services at the latest. This usage agreement shall include and exclusively refer to the individual optical design commissioned by the Customer; basic optical design principles are explicitly exempted therefrom. The proprietorship of the complete underlying know-how, including all inventions and information (images, drawings, calculations and other confidential documents) which are passed on to the Customer during the creation of the contract products, shall remain with kdg OC, unless the



contracting parties expressly agreed otherwise in writing. Should the Customer intend to apply for intellectual property rights on national and international level for the work results received from kdg OC, this is permissible, in principle, if prior written consent of kdg OC has been obtained. In any case, the parties shall previously and separately negotiate the conditions and costs of such an application for intellectual property rights and both parties shall strive to reach an agreement which is acceptable for both of them. It is explicitly recorded that intellectual achievement and intellectual property rights that are contributed by the Customer and kdg OC shall remain with the respective party. In cases of jointly developed results and knowledge, the contracting parties shall find a use regulation acceptable to both parties.

## **6. Offers, Prices, Confirmation of Orders, Delivery Dates, Delayed Deliveries**

Offers shall be subject to confirmation and are not binding. The prices stated in the offer are, on principle, stated excluding VAT. The basis of the transaction shall be the confirmation of the order by kdg OC. Subsequent change requests that result in an increased price will be invoiced separately. Guaranteed delivery dates shall be target dates ex-works and depend on the due delivery of required documents and start materials, as well as receipt of agreed advance payments or securities on the part of the Customer or third parties. At any time, kdg OC reserves the right to change construction, choice of material, specifications and design, if these do not contradict the order confirmation or the specifications provided by the Customer. If it becomes apparent that extensive changes are required and if kdg OC is not able to execute the contract in accordance with the specifications, kdg OC will inform the Customer immediately. Delivery periods and delivery dates are always subject to confirmation. The agreed delivery period begins only when kdg OC has received all information and documentation required for production as specified or set out in the contract. The delivery period shall be extended by a reasonable time in cases of industrial actions, especially strikes and lockouts as well as in cases of occurrence of unforeseeable events that kdg OC cannot influence (force majeure). In cases of culpable overstepping of an agreed delivery period, performance shall only be deemed delayed after granting an additional period of reasonable length. Moreover, claims for damages resulting from a delay in delivery shall be excluded, as far as permitted by law, or restricted to the invoice value of the undelivered or belatedly delivered goods. If the financial circumstances of the Customer change so drastically after the contract has been concluded that the payment claim of kdg OC may be at risk, kdg OC has the right to refuse execution of the order until an appropriate consideration or security is provided. In cases of unforeseeable increases of prices for raw and starting materials as well as in cases of inevitable change of supplier, kdg OC always reserves the right to adjust the prices for the service offered accordingly following notification of the Customer.

## **7. Deliveries and Quantity Deviations**

Unless agreed otherwise, all deliveries will be made "ex-works" Elbigenalp against advance payment. The Customer will bear the costs for packaging and transport. The risk shall be transferred to the Customer upon dispatch. Transport insurance shall only be taken out if expressly requested by the Customer, who shall also bear the costs. Partial deliveries on our part are permissible and may be invoiced separately. If, when placing an order, a Customer wishes the delivery to be made to a third party, and the latter to be invoiced for this order, the Customer will nonetheless continue to be liable as contracting partner. Any resulting additional costs as regards packaging and transport must be borne by the Customer, who will consequently be invoiced for these separately.

When manufacturing the ordered products, an excess or shortfall in delivery of up to 10 % of total order quantity per article is permissible and has to be accepted.

## **8. Acceptance Periods**

On principle, if no other periods have been agreed beforehand, the Customer shall have the obligation to accept the ordered service within 8 eight days after delivery. If the Customer fails to fulfil his obligation, kdg OC shall have the right, without prejudice to all other legal options, to invoice the ordered service immediately, to store possible delivery goods of the Customer at his expense and risk, to make use of them in any other way or to deliver them to the Customer at the next possible date. In this case, the risk shall pass to the Customer immediately.

## **9. Retention of Title**

Until payment is received in full for all hitherto outstanding principal and subsidiary claims, kdg OC shall retain full title to all delivered services and products. Until revoked, the Customer shall be entitled to dispose of the goods in the proper course of business. The Customer shall assign as security to kdg OC any claims resulting from a possible resale. kdg OC



accepts such assignment. The Customer has to notify kdg OC of such resale beforehand by simultaneous sending a copy of the respective invoice to kdg OC and has to enter such security assignment in his accounts. Upon kdg OC's request, the Customer is obligated to inform the third party debtor. kdg OC is entitled to take back and utilise the goods; this shall not be construed as withdrawal from the contract. The Customer's account shall be credited with the proceeds generated by such utilisation after deduction of utilisation costs and all outstanding claims of kdg OC.

## **10. Utilisation of Tools**

kdg OC expressly confirms and guarantees that tools, which will be supplied by the Customer or manufactured for him, shall only be used for orders placed by the Customer.

## **11. Notification of Defects**

Deliveries must be inspected as to conformity immediately after receipt. kdg OC must be given written notification of non-receipt of a consignment no later than 8 days after receipt of the invoice. The Seller must be informed in writing of visible defects and variations in quantity no later than 8 days after receipt of the goods at the destination, stating the exact details of the defects and quoting the number of the delivery note or invoice. Late notifications of defects cannot be accepted. Hidden defects must also be reported in the same manner immediately after being ascertained; in this case, a preclusion term of six months after receipt of the goods shall be applicable. Notifications of defects can only apply to guaranteed characteristics or deviations in quantity, no other notifications of defects shall be accepted. In the case of accepted defects, kdg OC offers at its own choice either a taking back of the goods and replacement with goods of equal value, or a price reduction by way of credit. The Customer is obligated to return wrong or defective goods to kdg OC immediately, but no later than 8 days after notification of defect or within set statutory periods. If the Customer fails to honour his obligation within the set period, the warranty obligation shall cease automatically. Defects in part of the delivery do not entitle the Customer to return the whole consignment, but only the part affected by the defect. Notifications of defects do not release the Customer from meeting his payment obligations towards kdg OC. Claims for damages shall be – as far as permitted by law – excluded. Compensation for consequential damages and loss of profits, savings not realised, loss of interest and claims from third parties against the Customer shall be excluded in any case. The liability of kdg OC is limited to the value of the order of the defective delivery. Possible warranty claims shall fall under the statutes of limitation within one year after transfer of risk.

## **12. Payment and Offset**

Outstanding invoices shall be due immediately upon receipt, otherwise within the agreed period allowed for payment, starting on the invoice date. Payments shall always be credited against costs expenses and interest first, then against the oldest claim. Assignment prohibitions contained in orders, terms of purchase or general terms and conditions of our clients shall be deemed not agreed towards credit institutes. kdg OC shall be entitled to offset all claims due to kdg OC, affiliated companies, subsidiaries and other companies in which kdg holds a majority interest, against the claims of the party to the contract. Any offset of the Customer against claims of kdg OC with claims of the Customer shall be excluded.

## **13. Consequences of Delays in Payment**

In case of a delay in payment, kdg OC is entitled, with the proviso of the assertion of further damages, to invoice interest on payment in arrears of 12 % per year, expenses for each reminder and all recovery costs. On principle, the Customer shall bear possible fees or bank charges applicable for payments and money transfers from abroad. In the case of a delay in payment, kdg OC shall be entitled to withhold all promised deliveries until full payment of all outstanding primary and subsidiary accounts receivable. In the case of or following a delay in payment, deliveries shall only be effected against advance payment. Other special conditions agreed with the Customer shall also become irrelevant in case of a delay in payment. Where payment is delayed, kdg OC may also assert its right to retention of title at any time, and recollect goods produced by kdg OC and realise them itself to such extent that all outstanding primary and subsidiary accounts receivable are met by this realisation. If the settlement with the Customer is effected in a currency other than Euro, kdg OC shall be at liberty in case of a delay in payment to calculate the account receivable at the value in Euro at the exchange rate of the due date. The settlement of the accounts receivable shall then be effected on the basis of the Euro value, and payments of these accounts receivable shall be converted at the respective rate of the day of the payment. The introduction of the Euro shall have no effect on the rights and obligations of the Customer.



#### **14. Archiving and Storage of Production Materials**

kdg OC points out that any production material which has been provided by the Customer (including secondary and transport packaging) shall be stored and archived by kdg OC at the cost, hazard and risk of the Customer, for 6 months after placement of the particular order. The delivery guidelines of kdg mediatech GmbH as amended shall apply. The Customer shall be responsible for making recommended backup copies (e.g. for step files). All liabilities and claims for damages for the loss of production materials shall be excluded to the extent permitted by law. In any case, the amount for which kdg OC is liable shall not exceed the value of the materials. Upon expiry of this period, the Customer shall issue instructions as to whether the above material is to be returned at his own costs, destroyed for free or stored at his costs. This applies in particular to tools that were either provided by the Customer or ordered from us. In case of the Customer not issuing instructions despite repeated request, kdg OC reserves the right to destroy the production materials provided.

#### **15. Place of Performance, Venue and Law**

The place of performance for all services delivered by the contracting parties is Elbigenalp. Exclusive place of jurisdiction is the relevant competent court for Elbigenalp; however, kdg OC is also entitled to file a complaint or lawsuit with a legal place of jurisdiction for the Customer. Austrian law applies with exclusion of application of private international law and the UN Convention on Contracts for the International Sale of Good (CISG).