

General Terms and Conditions of Kaesler Nutrition GmbH

1. **Scope**
- 1.1 Sales, deliveries (including deliveries under a contract for several call-off orders) and other services (in particular work services) by Kaesler Nutrition GmbH (hereafter referred to as "we" or "Kaesler") are made exclusively in accordance with the following general terms and conditions of sale ("GTCS"). The customer recognises these GTCS by the placement of the order or the receipt of the delivery.
- 1.2 The terms and conditions also apply to all future business with the supplier and to all general terms and conditions of sale of the customer which deviate from or supplement these GTCS will not apply, unless Kaesler has expressly agreed in writing that they apply. This will also be the case if Kaesler makes the delivery or provides the services without a separate reservation in the knowledge of such general terms and conditions of sale of the customer. These GTCS only apply to legal transactions with companies within the meaning of Section 14 of the German Civil Code (BGB) and not to legal transactions with consumers within the meaning of Section 13 BGB.
- 1.4 Any individual contractual agreements that deviate from or supplement these GTCS take precedence over these GTCS. Such agreements are to be made or confirmed in writing for evidence purposes. For the conclusion and content of such agreements, the written contract, confirmation from Kaesler is relevant, unless evidence of the contrary is provided. With the exception of managing directors and authorised signatories, our employees are not authorised to make agreements that deviate from these terms and conditions.
- 1.5 Wherever the use of the written form is required in these GTCS, the use of the text form within the meaning of Section 126b will also suffice.
- 1.6 Wherever these GTCS state statutory regulations apply in addition, this is stated for clarification purposes only. The statutory regulations also apply without any such statement, unless they are expressly and permissibly amended or excluded in these terms and conditions.
2. **Offer and conclusion of contract**
- 2.1 Unless they are expressly marked as binding or contain a definite deadline for acceptance, cost estimates, price and delivery information and other offers provided by Kaesler are not legally-binding offers, but are to be understood as an invitation to the customer to make an offer. Orders placed by the customer are binding offers to us to which the customer is bound in case of doubt for 14 days, unless the customer specifies a different deadline for acceptance. A contract will only enter into effect upon receipt of the written confirmation of order by Kaesler.
- 2.2 If we make a legally-binding offer to the customer, we have the right to withdraw our offer at any time until it has been accepted by the customer, unless otherwise is expressly stated in the offer. Offers by Kaesler which relate to "trading" can only be accepted on the same working day. Otherwise, offers by Kaesler can be accepted, unless a different deadline for acceptance is specified, within 14 working days of the date on which the offer was sent. When the deadline for acceptance has passed, the offer will expire.
- 2.3 Kaesler's field staff are not authorised to represent the company. In particular, they cannot conclude any contracts and make any binding commitments concerning the goods to be delivered ("delivery items"), the services to be performed ("services") or any other conditions.
- 2.4 If work services are performed, the contract will state the necessary result of the services to be performed, e.g. written recommendations, reports, models, research results, substances, semi-finished products, vaccines, cell material etc. (hereafter referred to individually and jointly as "work").
- 2.5 Kaesler reserves all rights to the sales documents (in particular illustrations, drawings and weights and dimensions information) and the samples. They must not be made available to third parties and are to be returned to Kaesler immediately upon request.
3. **Prices**
- 3.1 All prices of Kaesler are, unless otherwise has been agreed, ex works Kaesler (EXW Incoterms 2020), exclusive of packaging, loading, shipment, insurance, customs duties and other charges and statutory VAT. The VAT is shown separately in the invoice.
- 3.2 Kaesler has the right to invoice the customer separately the costs for special packaging, transport and insurance. If the customer is loaned the packaging (temporarily), the customer has to ensure at its own cost and risk that the packaging is returned undamaged and without delay to Kaesler.
- 3.3 Unless a price is stated in an individual contract, the price will be based on the Kaesler price list valid at the time of the conclusion of the contract.
- 3.4 The agreed price is final at the time of the conclusion of the contract. If the price between the conclusion of the contract and the agreed due date is more than one month and significant cost increases relating to the delivery items (for example due to a change in the purchase or material prices, taxes, customs or transport costs) are incurred by Kaesler after the conclusion of the contract due to external circumstances beyond its control which Kaesler could not have foreseen at the time of the conclusion of the contract, Kaesler will have the right to adjust the prices at its reasonable discretion to the change in costs. In the reverse case of a significant cost reduction, Kaesler will have to make a corresponding price reduction. A change in costs is significant if the net costs for the delivery items increases or reduces by more than 5 % compared to the situation at the time of the conclusion of the contract. A cost increase in one area may only be offset by a price increase to the extent that it is not offset by any reduction in costs in other areas. In the case of reductions, the prices are to be reduced to the extent that these cost reductions are not offset in whole or in part by increases in other areas. A cost adjustment may only be made in order to adjust to the changed cost situation and not in order to increase Kaesler's profit. If the price increase is more than 10 % of the originally agreed price, the customer will have the right to withdraw from contract within one week of notification of the price increase.
4. **Payment**
- 4.1 Invoices from Kaesler are due for payment immediately. Deductions such as early-payment discounts are not allowed, unless expressly agreed with the customer.
- 4.2 Kaesler has the right to issue partial invoices for partial deliveries in accordance with No. 5.5.
- 4.3 Unless otherwise has been expressly agreed, the customer will be in default of payment if the invoice amount is not paid by the payment deadline stated in the invoice or, if no payment deadline is stated in the invoice, within 14 days of receipt of the invoice. The date upon which the payment is received by us is relevant. An earlier occurrence of default in accordance with the statutory regulations, in particular by way of a reminder, remains unaffected.
- 4.4 If the customer is in default of payment, Kaesler has the right to charge default interest and damages in the statutory amount as minimum compensation. The assertion of a claim for further damages due to default remains unaffected.
- 4.5 Cheques and bills of exchange are only accepted as conditional payment by special agreement and free of costs and fees for the customer.
- 4.6 The customer will only have the right to exercise offsetting or retention rights if its counterclaim is undisputed or established in law.
- 4.7 If Kaesler becomes aware of the risk of the customer being unable to pay after the conclusion of the contract, Kaesler will have the right to make outstanding deliveries only against advance payment or the provision of security. If the advance payments have not been made or the security has not been provided by a reasonable extended deadline, Kaesler can withdraw from individual or all contracts concerned in each case in whole or in part. Kaesler's right to exercise further rights remains unaffected.
- 4.8 Kaesler has at all times the right to offset receivables owed by Kaesler or an affiliated company of Kaesler within the meaning of Section 15 of the German Stock Corporation Act (AktG) to the customer or an affiliated company of the customer (within the meaning of Section 15 AktG) with receivables owed by the customer or an affiliated company of the customer (within the meaning of Section 15 AktG) to Kaesler or an affiliated company of Kaesler (within the meaning of Section 15 AktG).
5. **Delivery dates and deadlines**
- 5.1 Unless otherwise has been agreed in writing, the delivery is ex works Kaesler (see No. 3.1).
- 5.2 The delivery is subject to Kaesler being supplied correctly and on time by its own suppliers. We are under no obligation to procure the goods or raw materials necessary for the manufacture of the goods from another source if we, despite a covering transaction having been concluded accordingly, are not supplied by our supplier for reasons for which we are not responsible. In this case we will have the right to withdraw from the contract without any liability for such circumstances.
- 5.3 Delivery dates and deadlines are only binding if they are expressly referred to as binding and have been agreed in writing or confirmed in writing by us. An agreed delivery period will start at the earliest at the time of the conclusion of the contract, but not before the technical and commercial details of the contract performance have been clarified in full. For any delivery period applicable for us to start, all necessary cooperative acts also need to have been performed by the customer, in particular the forwarding of all necessary information and compliance with the agreed payment terms by the customer. In the case of subsequent additional or supplementary agreements, the delivery dates and deadlines will be extended or moved accordingly taking into account the additional time needed by Kaesler.
- 5.4 In the case of contracts for delivery on call, the customer has to make the call-off by the agreed deadline, in the case of contracts for delivery of partial quantities on call, by the deadlines of the call-off plan. If, in the case of contracts for delivery of partial quantities, no call-off plan has been agreed, the customer has to call off equal partial quantities on a monthly basis. Deviations from the call-off plan are only allowed with Kaesler's express agreement in writing.
- 5.5 Kaesler has the right to make partial deliveries of delivery items or provide parts of the services, if and to the extent which this is reasonable for the customer. These will be invoiced separately.
- 5.6 If the customer is in default of acceptance of the delivery items, if it for example does not make a call-off as agreed or does not perform cooperative acts, or if the delivery items are sent later than the scheduled delivery date at the request of the customer or due to circumstances for which the customer is responsible, the customer has to pay the purchase price for the delivery items. We also have the right to demand compensation for the damages and additional costs incurred as a result. While the customer is in default of acceptance, we have the right to charge damages in the amount of 0.5 % of the invoice amount for every month, but no more than 5 % of the invoice value. The customer has the right to prove to us that the damages were of a significantly lower amount. We reserve the right to prove that the damages were of a higher amount. We have the right to store the delivery items in an appropriate manner at the risk and costs of the customer. Further rights, in particular the right to withdraw from the contract and to demand compensation instead of performance remain unaffected.
- 5.7 We will not be liable in the case of non-delivery or late delivery if this is due to force majeure or any other obstacle beyond our control and it could not reasonably be expected of us to take into account the hindrance or to avoid or overcome the hindrance or its consequences. This will apply in particular in the case of war-like events, acts of terrorism, natural events, business, transport and traffic disruptions, non-delivery of supplies, strikes, lawful lockouts, official orders, mass diseases, epidemics and pandemics, shortage of labour. We will inform the customer in such cases of the hindrance and its impact. If such an event makes it much more difficult or impossible for us to make the delivery or to perform the service and the hindrance is not of a temporary nature, both parties will have the right to withdraw from the contract. In the event of any hindrance of a temporary nature, our deadlines for delivery or performance will be extended, or the dates for delivery or performance will be put back by the length of the hindrance plus any appropriate start-up time. Each party will have the right to withdraw from the contract if the resulting delay is longer than six weeks or if it is no longer reasonable due to the delay for the party to continue to adhere to the contract until the end of this period.
- 5.8 If the deliveries from Kaesler are delayed, the customer will only have the right to withdraw from the contract if (i) Kaesler is responsible for the delay and (ii) a reasonable extended deadline for delivery set by the customer has passed without success. As a rule, the deadline has to be extended by at least two weeks.
6. **Shipment, transfer of risk, transport insurance**
- 6.1 Unless otherwise is agreed, delivery will be ex works (EXW Incoterms 2020).
- 6.2 The risk of performance and price is transferred to the customer as soon as the delivery items are available for collection or shipment at the place designated for the acceptance of the delivery items in the delivery warehouse. This will also be the case if we are instructed to perform the delivery of the delivery items or have agreed to perform other services following the delivery such as the installation or assembly of the delivery items.
- 6.3 If we take care of the delivery, we will also have the rights and obligations of a forwarder with regard to the delivery items. We will take out transport insurance at customary conditions for the account of the customer if we are instructed to do so by the customer or if a corresponding interest of the customer is to be assumed under the circumstances.
- 6.4 Partial deliveries are allowed if these are reasonable for the customer. Invoices issued for partial deliveries are due for payment separately from the payment for the complete delivery.
- 6.5 If our employees or other third parties working for us assist the customer in the loading and/or securing of the transport, this will be done gratuitously and at the risk of the customer. The persons will act as vicarious agents of the customer. We accept no responsibility in this respect. The customer has to indemnify us against any claims by third parties.
7. **Obligations and responsibilities of the customer**
- 7.1 The customer has to comply with all applicable laws and regulations relating to the import and the subsequent distribution and sale of the delivery items; it must in particular ensure that it possesses all necessary permits, approvals, licences and registrations. Upon request by Kaesler, the customer has to provide proof that it possesses these. The customer will indemnify Kaesler against all claims by third parties against Kaesler in connection with the negligent or deliberate non-compliance with the applicable laws and regulations by the customer.
- 7.2 The customer must not infringe the intellectual property rights and industrial property rights of Kaesler (including patents and patent applications). For each case of culpable breach of this obligation, the customer will have to pay an appropriate contract penalty. The amount will be decided by Kaesler at its reasonable discretion, whereby the extent and seriousness of the breach are to be taken into account. The contract penalty will be at least EUR 15,000.00 per breach. The customer has the right to have the appropriateness reviewed in the case of dispute by the competent national courts. The objection of continuance of non-compliance is excluded. In the case of continuing infringements, each week of infringement started will count as a separate breach. All other rights of Kaesler, in particular Kaesler's right to make claims for injunctive relief and compensation, remain unaffected. Any contract penalty paid is to be deducted from any claims for compensation.
- 7.3 The customer has to perform in good time all cooperative acts that are contractually agreed, necessary or due in good faith. It will provide Kaesler with all information, data, requirements and materials as agreed by the parties. All requirements and materials provided by the customer have to be completely suitable for the purpose for which Kaesler uses these under the contract. The customer is itself responsible for the correctness and suitability. Kaesler is under no obligation to check the information, materials or requirements provided by the customer for their appropriateness for correctness and suitability, unless otherwise has been expressly agreed in writing.
- 7.4 If employees of the customer or a third party specified or used by the customer enter Kaesler's premises, the customer will ensure that these persons comply fully with the rules and regulations specified by Kaesler in this connection. The customer will indemnify Kaesler against all claims by third parties (including the employees of the customer) which are based on injury to persons or other losses of these third parties in connection with their presence on Kaesler's premises, insofar as the customer is responsible for the respective injury to persons or other losses. No. 7.4 remains unaffected by this.
- 7.5 The customer has to ensure that all data, information, documents, records (in the broadest sense of the word), computer software, know-how etc., which it makes available to Kaesler does not infringe currently or in future any rights of third parties. The customer has to defend Kaesler against all claims in connection with such a loan and indemnify Kaesler against any claims by third parties.
- 7.7 If the contract (also) covers the checking of samples, the customer is responsible for the appropriate selection of the sample, its exemplary quality, the specification of codes and the brand and product names.
8. **Instructions concerning storage and use, resale**
- 8.1 The customer has to strictly observe and comply with all statutory regulations and contractual agreements and instructions by Kaesler concerning the storage and use, in particular the specifications in the package inserts and the information on shelf life.
- 8.2 The responsibility for the storage and use of the delivery items, including the further processing or resale of the delivery items, lies exclusively with the customer. It has to ensure compliance with all statutory and contractual requirements, including by its employees and any other third parties acting on its behalf. In the case of resale, the customer has to communicate to its customer all of the relevant requirements, in particular all information concerning storage and use, and place them under obligation to comply with all of the requirements. The customer is liable to Kaesler for all damages resulting from breaches and has to indemnify us against all claims by third parties.
- 8.3 If the customer resells the delivery items, it must ensure that these delivery items comply with the applicable laws and regulations in the country of destination; it has to indemnify Kaesler against all claims by third parties due to breaches of this obligation.
- 8.4 Any destruction of delivery items has to take place with the appropriate and necessary care and in compliance with all applicable regulations.
9. **Reservation of ownership**
- 9.1 Our deliveries are made subject to reservation of ownership. We reserve the ownership of the delivery items until full payment of the purchase price and all other existing receivables against the customer from the business relationship (including those that did not yet exist at the time of the conclusion of the contract). The ownership of the delivery items will therefore be transferred automatically to the customer as soon as the purchase price has been paid and no other receivables from the business relationship exist (reservation of ownership in the form of a current account reservation).
- 9.2 Any transformation or processing (hereafter jointly referred to as "processing") of our delivery items that are still under reservation of ownership (hereafter referred to as "goods under reservation of ownership") by the customer will always be made on our behalf as the manufacturer within the meaning of Section 950 BGB. In event of any processing we will acquire immediately ownership of the newly-created object. If the goods under reservation of ownership are processed together with other objects which are not our property, we will acquire joint ownership of the new object in proportion to the value of the goods under reservation of ownership (invoice value including VAT) to the other objects processed at the time of processing. If the goods subject to reservation of ownership are combined, mixed or blended inseparably, we will acquire joint ownership of the new object in proportion to the value of the goods under reservation of ownership (invoice value including VAT) to the other objects combined or mixed at the time of combining, mixing or blending. If the goods subject to reservation of ownership are combined, mixed or blended in such a way that the object of the customer is considered to be the main object, the customer and we agree now that the customer will assign to us proportionate joint ownership of this object (based on the proportion of the value of the source materials). We accept this assignment. For the products created by the processing, combining, mixing or blending, insofar as they are our property, the provisions for goods subject to reservation of ownership apply accordingly. The customer will no longer have the right to process, combine, mix or blend the goods subject to reservation of ownership (hereafter referred to as "authorisation to process") if it is in default of payment, if an application to open insolvency proceedings against its assets is made or if it is required to make an application for insolvency proceedings against its assets.
- 9.3 The customer has to treat the goods subject to reservation of ownership with care and at its own cost, to store them for us with care and to insure them adequately against the usual risks (e.g. theft, breakage, fire, water) on a new-for-old basis and to provide proof upon request that the insurance has been taken out and exists. We have the right to ensure the goods subject to reservation of ownership at its cost. We can demand at any time that the customer raises an inventory of the goods delivered by us at their respective storage location and marks the goods as our property. The customer assigns to us now as security insurance claims and claims against third parties due to damage, destruction, theft or loss of the goods. We hereby accept this assignment.
- 9.4 The customer has the right to sell the goods subject to reservation of ownership, but only in the normal course of business. The customer does not have the right to other dispositions of the goods subject to reservation of ownership, for example transfer of ownership as security lien or pledging. All authorisations to dispose of goods subject to reservation of ownership are made subject to the customer's full payment, if an application to open insolvency proceedings against its assets is made or if it is required to make an application for insolvency proceedings against its assets. In the case of any resale of the goods subject to reservation of ownership on credit, the customer must sell the goods only against the provision of adequate security (e.g. agreement on its own reservation of ownership etc.).
- 9.5 The customer assigns now as security the claims from the resale of the goods subject to reservation of ownership against third parties in the amount that equates to our share of the ownership. The maximum limit of the assignment is the amount of the invoice value of the receivables (including VAT) owed to us by the customer from the business relationship at the time of the resale, plus a security surcharge of 20 %. The term "receivables" also includes claims of the customer against insurers in connection with the resale of the delivery items and, insofar as delivery items are exported to third countries, claims of the customer against financial institutions in connection with the export of the delivery items.
- 9.6 The customer is authorised to collect the receivables from the resale assigned to us. The proceeds owed to us are to be forwarded in each case immediately upon receipt. Upon our request, the customer has to inform us of the names of the debtors of the assigned receivable and advise the debtors of the assignment. We are authorised to inform the buyers of the assignment in its name. The authorisation to collect will expire automatically if the customer is in default of payment, if an application to open insolvency proceedings against its assets is made or if it is required to make an application for insolvency proceedings against its assets. Notwithstanding any automatic expiry, we have the right to revoke the authorisation to resell and/or process and/or the authorisation to collect if the customer is in breach of its obligations towards us, in particular it does not duly meet its payment obligations from the business relationship, in particular if it is in default of payment, or is in breach of its obligations as a buyer of goods subject to reservation of ownership or if we become aware after the conclusion of the contract that our payment claims from the business relationship with the customer are at risk due to being unable to pay. In the event of the expiry of the authorisation to collect, the customer has to provide us with the information about the receivable necessary for the collection and to assist us in the recovery, if necessary.

- 9.8 Furthermore, in the event of a breach of the contract by the customer, we will have the right to withdraw from the contract in accordance with the statutory regulations. Alternatively, we will also have the right if the conditions for withdrawal exist, to simply demand the return of the goods. Any such demand to return will not constitute a notice of withdrawal. However, we reserve the right to withdraw. The same will apply if we seize the goods subject to reservation of ownership. The transport costs incurred for the goods taken back will be borne by the customer. We may sell the goods subject to reservation of ownership that are taken back by us. The proceeds of the sale will be offset against those amounts owed to us by the customer after we have deducted a reasonable amount for the costs of the sale.
- 9.9 The customer will provide us at any time with all of the information requested about the delivery items owned by Kaesler or about claims which accordingly have been assigned to Kaesler (e.g. names and addresses of its customers and the amount of the respective claims). The customer has to inform us immediately if the goods are subject to reservation of ownership as soon as it becomes aware and provide us with all of the information and documents necessary for any intervention. The customer will advise the respective third party of Kaesler's reservation of ownership. The customer is liable for the costs incurred for the lifting of the seizure, in particular due to the commencement of third-party proceedings, insofar as they cannot be obtained from the petitioning creditor.
- 9.10 We undertake to release securities upon request by the customer, if the value of our securities is greater than the receivables to be secured by more than 20 %. We will choose the securities to be released.
- 9.11 If deliveries are made to areas of jurisdiction where this reservation of ownership does not have the same security effect as in Germany, the customer will do everything in order to assign appropriate security rights to Kaesler without delay. The customer will cooperate in all measures such as registration, publication etc., which are necessary for and conducive to the effectiveness and enforceability of such security rights.
- 10. Defects**
- 10.1 We only guarantee the freedom of the respective delivery item from defects at the time of the delivery. The customer is itself solely responsible for the suitability of our products for the use intended by the customer.
- 10.2 The customer alone is responsible for materials provided by the customer and contractual requirements of the customer, such as specifications, formulations etc. We do not accept any obligation to check or any responsibility in this respect. We provide no guarantee for and do not accept any liability for defects or reduced quality of the delivery items due to materials provided by or requirements of the customer.
- 10.3 The agreed quality of the delivery items is measured exclusively on the basis of specific agreements in writing on the properties and features of the delivery items. Information on quality does not constitute any guarantee. A guarantee is only given if it has been expressly referred to as such in writing using this term. The illustrations, drawings, and quality, volume, weights, dimensions and performance information included in our offers and printed material are only approximations.
- 10.4 For all services performed by us, the customer has to inspect the delivery or service immediately and carefully for defects including wrong deliveries and deviations in quantity and to notify us immediately in writing whenever a defect is found. In any event the inspection has to take place before any resale, processing, mixing or blending of the delivery items. Defects which are obvious at the time of delivery are to be notified in writing preferably at the time of delivery, but within no more than two working days of the delivery. Defects which would have been identifiable in a proper inspection within the meaning of Section 377 of the German Commercial Code (HGB) (obvious defects) are to be notified in writing within two weeks of the delivery. Defects which were not identifiable in a proper inspection (hidden defects) are to be notified in writing within two working days of their discovery. If a hidden defect was obvious at an earlier point in time in normal use, the deadline for notification will be two working days after the defect became obvious. If defects are not notified in accordance with the preceding provisions, the goods will be deemed to be approved as in accordance with the contract. Comments on delivery notes are not considered to be notification of defects. Transport personnel are not authorised to receive any notification of defects. The preceding obligations concerning notification of defects also apply to work services with the proviso that, instead of the delivery, the acceptance of the work is relevant.
- 10.5 The customer has to inspect the delivery items in particular for the following defects: i) shelf life, ii) legibility of the markings or labels attached to the delivery items, iii) consistency of the content information on the outer packaging with the information on the containers, iv) conformity of the markings or labels on the delivery items with the agreed specifications (in respect of the composition) and with the statutory regulations applicable for the delivery items, v) conformity of the delivery items (in respect of the composition) with the agreed specifications and with the applicable statutory regulations and vi) damage, contamination or other defects of the delivery items caused by the transport.
- 10.6 In each and every case of notification of defects, Kaesler has the right to view and inspect the delivery items that are the subject of the notification of defects. The customer will grant Kaesler the necessary time and opportunity so that it can exercise this right. Kaesler can also demand that the delivery items that are the subject of the notification of defects are returned to Kaesler by the customer. If the customer returns samples of the delivery items, it will ensure that their quality serves as an example. If the notification of defects is justified, the transport costs necessary for the return of the goods will be borne by Kaesler. If the notification of defects by the customer proves to be unjustified, and the customer recognised this or did not recognise this due to negligence before raising the notification of defects, it will have to compensate Kaesler for all of the losses incurred in this connection, e.g. travel expenses and shipping costs.
- 10.7 If the defects are proven, we will provide supplementary performance free of charge with rework or new delivery, as we choose.
- 10.8 The customer will grant Kaesler the reasonable time and opportunity necessary for the supplementary performance.
- 10.9 Parts replaced by Kaesler are to be returned to Kaesler upon request.
- 10.10 If the supplementary performance fails finally, if the supplementary performance is unreasonable for the customer or if Kaesler refuses to provide the supplementary performance, the customer can withdraw from the contract or reduce the purchase price in accordance with the statutory regulations, as it chooses. In cases of doubt, it is to be assumed after the third failed attempt at supplementary performance that the supplementary performance has failed. For compensation for defects, the provisions in No. 11 apply in addition.
- 10.11 Claims by the customer against Kaesler for the costs and expenses incurred for the supplementary performance, in particular transport, labour and material costs, are excluded insofar as these costs and expenses are increased because the delivery items were delivered at the request of the customer to a location other than the customer's premises or services were performed at the request of the customer at a location other than the customer's premises, unless this was a consequence of the intended use of the delivery items or services.
- 10.12 The customer may only withhold payments due to defects to an extent that is reasonable in relation to the defects that have occurred.
- 10.13 The limitation period for claims by the customer due to defects is twelve (12) months starting from the delivery of the delivery items to the customer. In deviation to the preceding provision, the statutory limitation periods apply for the following claims by the customer:
- claims for compensation on the grounds of product liability, due to damages due to injury to life, limb or health, or due to a breach of an obligation whose fulfillment enables the contract to be performed properly at all and which the contract partner may regularly trust is adhered to (cardinal obligation) and due to any other damages which are based on a deliberate or grossly negligent breach of an obligation by us or one of our vicarious agents,
 - recourse claims pursuant to Sections 445a, 445b BGB,
 - and claims and rights due to fraudulent concealment of a defect.
- 10.14 The statutory regulations concerning the recourse of the customer pursuant to Sections 445a, 445b BGB apply with the following provisos: Before any supplementary performance, the customer has to inform us without delay and give us the opportunity to make the new delivery or perform the rework. The customer can only make recourse claims against Kaesler if it has not concluded any agreements beyond the statutory warranty claims and rights with its own customers.
- 10.15 In addition, No. 10.11 applies accordingly with regard to the scope of the customer's recourse claim. The preceding provisions do not change the burden of proof to the detriment of the customer.
- 11. Rights of withdrawal of and claims for compensation by the customer**
- 11.1 Unless otherwise is stated in these provisions, for the right of withdrawal from the contract the statutory regulations apply with the proviso that the customer can only withdraw due to a breach of obligation by Kaesler which does not lie in a defect if Kaesler is responsible for the breach of obligation.
- 11.2 Kaesler's obligation to pay compensation is limited as follows:
- (i) For the breach of material contract obligations, the amount of Kaesler's liability is limited to the typically foreseeable damages at the time of the conclusion of the contract;
 - (ii) Kaesler is not liable for damages which are due to the breach of non-material contract obligations;
 - (iii) For damage due to delayed performance, Kaesler's liability is limited to 5 % of the value of the delayed performance.
 - (iv) The aforementioned limitations of liability do not apply in the case of damage that has been caused deliberately or due to gross negligence, if and to the extent that Kaesler has provided a guarantee, for damages that are to be compensated in accordance with the Product Liability Act (Produkthaftungsgesetz), for injury to life, limb or health and if there are further mandatory liability cases.
- 11.3 The above limitations of liability also apply to our vicarious agents.
- 12. Liability of the customer, product liability**
- 12.1 The customer is liable to Kaesler in accordance with the statutory regulations, unless otherwise is stated in these GTCS.
- 12.2 If the customer owes compensation instead of performance, we have the right to demand compensation in the amount of 10 % of the performance, unless the customer provides proof that the damages were lower. The right to claim for higher damages in accordance with the statutory regulations is reserved.
- 12.3 If the customer is liable to Kaesler, this will include the customer's obligation to indemnify Kaesler against all actual or alleged claims made by third parties against Kaesler in connection with the breach of obligation by the customer. This includes the obligation to defend Kaesler against any claims made by third parties.
- 12.4 If the customer sells delivery items, whether modified or unmodified, whether after being combined, mixed or blended with other goods, it will indemnify Kaesler in the internal relationship against product liability claims by third parties, if and to the extent which it is responsible for the error causing the liability including in the internal relationship between the parties.
- 13. General provisions**
- 13.1 The customer may only assign claims and rights to third parties after Kaesler has given its consent in writing. Section 354a HGB remains unaffected by this.
- 13.2 Amendments and additions to the contract and/or these GTCS and side agreements need to be made in writing. This also applies to any amendment of this requirement of written form.
- 13.3 If a provision in the contract and/or these GTCS is ineffective in whole or in part, the effectiveness of the remaining provisions will not be affected by this.
- 13.4 These GTCS and the contractual relationship between the parties are subject to the law of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- 13.5 For any disputes arising in connection with the contractual relationship between the parties, the following provisions apply:
- (a) If the customer's registered office is in the territory of a member state of the European Economic Area ("EEA") or in Switzerland, the sole place for jurisdiction for all disputes arising from or relating to the contractual relationship between the parties is Cuxhaven. However, Kaesler has the right to bring an action against the customer at any other legal place of jurisdiction.
 - (b) If the customer's registered office is neither in the EEA nor in Switzerland, the final decision on all disputes will be made in accordance with the arbitration rules of the International Chamber of Commerce (ICC) applicable at the time of these proceedings by one or more arbitrators appointed in accordance with these rules. The place of arbitration is Cuxhaven, Germany. The arbitration proceedings will be in German.
- 13.6 In the event of any conflict between the German and English version of these GTCS, the German version will prevail. The English version has been produced for information purposes only.