

GENERAL SALES CONDITIONS

KBM Master Alloys B.V.
Which has its registered office in Delfzijl,
Chamber of Commerce 02325066

1. Definitions

In these general conditions the following words have the following meaning:

Supplier

The private company with limited liability KBM Master Alloys B.V. which has its registered office at Kloosterlaan 2, 9936 TE Delfzijl, The Netherlands and its successors-in-title by general or special succession.

Customer

Every natural person or legal entity buying Products from Supplier or entering into negotiations with Supplier to that end.

Parties

Supplier and Customer.

Contract

The Contract concluded between the Parties for the sale of Products, including the papers relating thereto and customs which form an integral part thereof.

Products

All goods and services which are the subject of a Contract.

Order

Every instruction of any kind whatsoever given by the Customer in writing (letter, fax or e-mail).

Affiliate(s)

Affiliate(s) shall mean a company or any other corporate entity which, directly or indirectly, controls, is controlled by, or is under common control with a party, where "control" shall mean the ownership of more than 50 % (fifty percent) of the capital or of the voting shares of the company or entity concerned.

2. Applicability

- 2.1 These conditions shall form part of all Contracts and apply to all (legal) acts and/or omissions of the Supplier and the Customer.
- 2.2 When concluding a Contract the Parties shall be free to derogate (fully or partly) from these general conditions, subject to the reservation that the derogating conditions are confirmed in writing by the Supplier.
- 2.3 In so far as the Parties have previously concluded a Contract on the basis of these general conditions, they declare that they agree that these general conditions will also apply to future Contracts between them. This provision does not apply to any agreed derogative conditions, which will always be deemed to apply to a single Contract.

3. Offer and acceptance

- 3.1 All offers by the Supplier shall be entirely without obligation and shall not be binding on the Supplier.
- 3.2 The Supplier shall not be bound to his offer if the credit insurer of the Supplier will not issue a credit limit for the Customer or if a credit limit is withdrawn or becomes for whatever reason insufficient.
- 3.3 A Contract shall not come into effect until an Order has been confirmed in writing by the Supplier to the Customer.
- 3.4 Any alterations and additions to an existing Contract shall be binding on the Supplier only if and in so far as they have been confirmed in writing by the Supplier.
- 3.5 All recommendations, numbers, measurements etc. given or quoted by the Supplier shall be binding only if and in so far as the Supplier has expressly confirmed them in writing. If this is not the case, the Supplier shall not be liable for any damage arising as a result of derogations from the information supplied by Supplier.

- 3.6 The Supplier is entitled to terminate the Contract with immediate effect, without prior notice, without indemnity and without judicial intervention if the credit insurer of the Supplier will not issue a credit limit for the Customer or if a credit limit is withdrawn or becomes for whatever reason insufficient to cover the Customer's Order.

4. Partial deliveries

- 4.1 In so far as the Parties agree that the sold Products will be delivered in parts, each partial delivery shall be deemed to be a separate Contract to which these general conditions apply in full.

5. Delivery periods

- 5.1 The Supplier shall as far as possible comply with the delivery periods quoted by it. The quoted delivery periods, which are based on the circumstances applying to the Supplier at the time of the conclusion of this Contract, are entirely without obligation.
- 5.2 The delivery period shall start on the date on which the Contract is confirmed in writing by the Supplier. If and in so far as the Supplier is dependent when performing the Contract on information to be supplied by the Customer, the delivery period shall start at the moment that the Customer has provided all relevant information, this being a matter to be assessed by the Supplier.
- 5.3 If the delivery period is exceeded, the Customer shall not be entitled to compensation or to termination of the Contract.

6. Delivery and transport

- 6.1 Unless expressly agreed otherwise all deliveries will take place according to Incoterms® 2020 (Ex Works) and/or any amendment or replacement thereof.
- 6.2 The delivery shall occur at the moment when the Products leave the warehouse of the Supplier or, in so far as forwarding is not possible owing to factors beyond the control of the Supplier, at the moment at which the Customer is informed that the Products are ready to be forwarded.
- 6.3 If the Supplier arranges the transport, the Customer shall communicate the forwarding instructions to the Supplier at least 8 days before the projected delivery date.
- 6.4 If the Customer arranges the transport, he shall be obliged to collect the Products (or have them collected) within 8 days of the date on which the Supplier has given notice that the Products are "ready for collection".
- 6.5 In so far as the Customer does not take possession of the Products in good time or does not provide the Supplier in good time with the forwarding instructions as referred to in article 6.3 or if delivery on call has been agreed and the Products are not called for in time, the Supplier shall be entitled, without further notice, to store the Products (or have them stored) at the expense and risk of the Customer or to sell the said Products to third parties, without prejudice to the right of the Supplier to recover any damage suffered by it from the Customer.
- 6.6 The Supplier shall be entitled to have the Products intended for the Customer sent from a place other than where the Supplier's warehouse is situated. The warehouse from which delivery is made shall then be deemed to be the warehouse of the Supplier and the provisions of these general conditions shall remain fully in force.

7. Risk

- 7.1 Unless expressly agreed otherwise, the Products shall be at the risk of the Customer from the moment of delivery.

8. Force majeure

- 8.1 If the Supplier is not able to comply with his obligations due to force majeure, these obligations shall be suspended for as long as the force majeure continues.
- 8.2 If the force majeure situation lasts for longer than 3 months, each of the Parties shall be entitled to terminate the Contract

by means of written notice. In the event of force majeure, the Customer shall not be entitled to any form of compensation.

- 8.3 Force majeure exists if the performance of all or part of the Contract is prevented, temporarily or otherwise, by circumstances beyond the control and/or influence of the Supplier, irrespective of whether those circumstances could have been foreseen at the time of the conclusion of the Contract. These circumstances shall include but are not limited to: strikes and sit-ins, sickness of personnel, pandemics, disruptions at work, delayed delivery or non-delivery by Suppliers, transport disruptions, measures taken by (supra)national authorities.

9. Prices

- 9.1 Unless expressly agreed otherwise, all prices quoted by the Supplier are exclusive of value-added tax, taxes and duties and exclusive of any other costs such as -but not limited to- transport costs and packaging costs.
- 9.2 Changes to factors which can influence the price of the Supplier such as -but not limited to- the purchase price of amongst others raw materials, exchange rate differences, government measures, import and export duties, insurance premiums etc. may be charged by the Supplier to the Customer, without the Customer thereby deriving any right to terminate the Contract.

10. Payment

- 10.1 Payment shall be made within 30 days of the date of the invoice, unless expressly agreed otherwise in writing. Unpaid amounts shall, as of right and without formal notice, carry an interest at the applicable Dutch statutory rate.
- 10.2 The Supplier shall not be obliged to accept cheques or bills of exchange in payment. If these are nonetheless accepted all costs attached to them shall be borne by the Customer and a payment shall be deemed to have been received only if and in so far as the bank account of the Supplier has been unconditionally credited with the amount in question.
- 10.3 From the moment that the Customer is in default the Supplier shall be entitled to recover directly all other claims which it has against the Customer and shall be entitled to suspend all further deliveries until the outstanding invoices have been paid in full by the Customer, together with interest and costs.
- 10.4 If the Supplier considers that the Customer will be unable to perform his obligations or to perform them in time, the Supplier shall be entitled to require payment in advance or the provision of security.
- 10.5 All recovery costs (including legal assistance) that the Supplier must incur in order to collect its claim against the Customer shall be borne by the Customer. The recovery costs shall at least be equal to 10% of the unpaid amount with a fixed minimum of EUR 250,00.
- 10.6 Each payment by the Customer shall be deemed to be payment of the oldest unpaid invoice, plus any interest and costs, irrespective of whether or not this is expressly stated in the payment.

11. Reservation of title (see last page)

Réserve de propriété (voyez la dernière page)
Eigentumsvorbehalt (siehe letzte Seite)
Riserva del diritto di proprietà (vedere la ultima pagina)
Reserva de dominio (vea pasada la paginación)
Eigendomsvoorbehoud (zie laatste pagina)
Reserva de título (veja a última página)

12. Termination

- 12.1 Unless otherwise provided by law, the Customer is not entitled to unilaterally terminate the agreement. If the Customer in spite of this completely or partially terminates the agreement he will be obliged to reimburse all costs incurred by the Supplier in connection with the execution of the agreement (including but not limited to costs of preparation, storage costs and amounts paid and/or owed to third parties, such as costs of hedging currencies and/or metal prices)

notwithstanding the right of the Supplier to claim any other damages.

13. Quality and quantity

- 13.1 Unless expressly agreed otherwise, the Supplier shall always be deemed to have complied with his obligations by delivering normal trade quality and a difference of approximately 10% from the agreed quantity shall be permissible.
- 13.2 The determination of the weight or the number of Products delivered and, in so far as agreed, the method of packaging, shall be carried out by the Supplier or the subcontractor immediately before the handing over of the Products to the carrier and shall be binding on the Parties.
- 13.3 The Customer shall be entitled at his own expense to be present or represented at the weighing and/or counting. If the Customer wishes to exercise this right, he shall give notice hereof to the Supplier in good time, i.e. at least 8 days before the projected delivery date. If the Customer allows the said period to pass, he shall be deemed to have accepted the weight and/or number determined by the Supplier or the subcontractor and the method of packaging used.

14. Claims

- 14.1 Any claims by the Customer in respect of visible quality and/or delivery defects or otherwise shall be reported, properly described, by the Customer in writing to the office of KBM Master Alloys B.V. in Oss or by e-mail to info@kbmaffilips.com within two (2) business days in The Netherlands of receipt of the delivered Products, failing which the Customer will lose his rights.
- 14.2 Other defects shall also be reported, properly described, by the Customer in writing to the office of KBM Master Alloys B.V. in Oss or by e-mail to info@kbmaffilips.com immediately after their discovery but not later than 14 days after receipt of the delivered Products, failing which the Customer will lose his rights.
- 14.3 The Customer shall not have a right of claim if the delivered Products are in accordance with a sample accepted beforehand or if the delivered Products are in accordance with the information about the composition and/or properties supplied by the Customer before the conclusion of the Contract.
- 14.4 If it has been agreed that the Products will be inspected upon or after delivery, this inspection shall be carried out at the place of delivery, in the manner customary in the trade, by one or more persons designated by the Parties in mutual agreement. Unless agreed otherwise, the costs for the inspection are to be taken care of by the Customer. If the Customer fails to designate an inspector or fails to co-operate in an inspection, he shall be deemed to have accepted the Products.
- 14.5 Complaints about the lack of and/or damage to the Products delivered by the Supplier, the cause of which is manifestly one or more events connected with the transport of the Products, shall be reported in writing by the Customer to the office of KBM Master Alloys B.V. in Oss or by e-mail to info@kbmaffilips.com within 7 days of delivery. The complaints shall always be communicated directly to the carrier at the same time.
- 14.6 Every liability for defects in the Products sold by the Supplier shall lapse if the Customer, in the judgement of the Supplier, has not taken the measures relating to the Products which he could reasonably have been expected to take, including mitigation of the damage, or if -after delivery- the Products:
- have been transported by the Customer;
 - have not been correctly stored;
 - have been mixed with other Products;
 - have been treated or processed by the Customer or third parties.
- 14.7 Complaints may be refused by the Supplier if the Customer does not co-operate fully with the Supplier in the efforts to establish (or have established) the well-foundedness of the claim.

- 14.8 Unless the Supplier has given his written consent, return shipments are not accepted. The return costs are the responsibility of the Customer and the Products delivered remain at the Customer's risk.
- 14.9 In the event of a well-founded complaint, the Supplier can either replace the Products supplied or provide a discount on the invoice amount that is reasonable in view of the complaint and in the opinion of the Supplier.
- 14.10 The Supplier shall not be obliged to reimburse any damage caused by a Product delivered by it, other than damage to the Product itself on the basis of these general conditions.
- 14.11 Claims shall not entitle the Customer to suspend payment (or part of the payment), and any right of set-off is expressly excluded.

15. Liability

- 15.1 Except where there has been intent or gross negligence on the part of the Supplier and without prejudice to the provisions of these general conditions, the total liability of the Supplier to the Customer under the Contract or otherwise shall in any event be limited to the direct damage suffered by the Customer and shall not exceed the invoiced and paid amount of the Contract.
- 15.2 Except where there has been intent or gross negligence by the Supplier, the Customer shall indemnify the Supplier for and against all claims by third parties, by whatever name they may be called, which are in respect of damage, costs or interest and are connected with the Products or result from the use of the Products.
- 15.3 The Supplier cannot be held responsible if the use of the Products infringes patents belonging to third parties. The Supplier will not indemnify the Customer regarding any claim for compensation that may occur in this respect.
- 15.4 Each claim against the Supplier shall lapse simply as a result of the expiry of one year after the claim arises.

16. Default by the Customer

- 16.1 If the Customer fails to fulfil his obligations in any way, the Supplier shall be entitled to suspend the performance of the current Contracts. If the Customer fails to remediate the breach within 15 days as from the notice of default requesting to do so, the Supplier shall be entitled to terminate with immediate effect -without further notice and without judicial intervention- all or part of concluded Contracts. This shall be without prejudice to the right to claim compensation of damage, costs and interest.
- 16.2 If the Customer is declared bankrupt, requests additional payment terms, proceeds to liquidate his business, or if his business ceases to function for some other reason, his assets or part of his assets are seized or there is any other indication of his insolvency, all Contracts between the Supplier and the Customer shall be dissolved by law unless the Supplier indicates within a reasonable period that it wishes to perform the concluded Contracts (or part of them).
- 16.3 In the case of an event as referred to in article 16.2, all claims of the Supplier against the Customer shall be immediately recoverable in their entirety and the Supplier shall be entitled to retake possession of the relevant Products. In that case the Supplier and his authorised representative shall be entitled to gain access to the sites and buildings of the Customer in order to take possession of the Products. The Customer shall be obliged to take the requisite measures to enable the Supplier to enforce its right.

17. Fixation

- 17.1 Parties can agree that -and under which conditions- the Customer is obliged to fix the price of the raw materials included in the purchased Products.
- 17.2 If the Customer has not met his obligations resulting from article 17.1 within 7 days after he has been summoned by the Supplier, he will be considered to have fixed the entire quantity of Products (which he has failed to fix) as if he did meet his

obligations, namely on the eighth day after he has been summoned or, if the London Metal Exchange (LME) is closed, on the first next day it is open.

18. Set-off

- 18.1 The Supplier shall at all times be entitled to set off its claims and/or those of Affiliates with it against the Customer.
- 18.2 If a circumstance as described in article 16 of these general conditions occur, all claims of Affiliates shall be directly recoverable against the Customer.

19. Amendments

- 19.1 The Supplier reserves the right to alter or to amend these general conditions at any time and will notify the Customer of such changes in writing or using another suitable medium two (2) months before the change enters into effect. After that two-month period has elapsed, the Customer is legally bound to abide by the change unless the Customer decides, before the two-month period elapses, to terminate the Contract in writing with a notice period of at least two months, it being understood that any accepted Order shall have to be duly performed by the Customer, unless decided otherwise by the Supplier.

20. Privacy

- 20.1 Supplier handles personal data with the utmost care. Personal data is processed and secured by the Supplier.
- 20.2 The Supplier will process the personal data of the Customer's staff members within the scope of this Contract and for its performance
- 20.3 The Supplier's privacy statement can be found on <https://www.kbmaffiliips.com/privacy>.

21. Sanctions

- 21.1 The Customer represents and warrants that it will comply with all relevant rules and regulations regarding (international) sanctions, as well as exports of dual-use items, especially, but not limited to rules and regulations imposed by EU, UN, UK and US regulations.
- 21.2 Supplier reserves the right to carry out screening and background checks on the Customer prior to the supply of the Goods and/or Services and at any time during the performance of the Contract. The Customer shall provide all assistance to the Supplier that the Supplier reasonably requires in relation to such checks. Supplier reserves the right to terminate the Contract(s) with immediate effect -without prior notice of default and without judicial intervention- in case of breach by the Customer of this article.
- 21.3 In case of such breach, the Customer shall indemnify the Supplier from any damage resulting from it.

22. Divisibility

If one or more provisions of these general conditions is found to be invalid, illegal or unenforceable, in whole or in part, the remainder of any such provision and of these general conditions shall not be affected and shall continue in full force and effect. In that case, such provision shall be modified to reflect the Parties intention.

23. Applicable law and disputes

- 23.1 Contracts concluded or yet to be concluded under these general conditions shall be governed by Dutch law.
- 23.2 All disputes between the Supplier and the Customer that cannot be settled amicably shall either be heard by the competent court in Amsterdam or by arbitration in accordance with the Rules of the Netherlands Arbitration Institute (NAI), such at the sole discretion of the Supplier.

11. Reservation of title

(English)

- 11.1 Ownership of the delivered Products shall pass from the Supplier to the Customer only when the Customer has paid in full everything that is or will be owed in respect of the said Products, including any interest, damage and costs. During the period between the delivery and the integral payment, only the custody and responsibility for the Products are transferred to the Customer, not the property.
- 11.2 The Customer shall be obliged to keep Products of which the ownership has not yet passed separate from other Products and clearly identifiable as the property of the Supplier.
- 11.3 Before the ownership of the Products passes to the Customer, the latter shall not be entitled to hire them out, part with possession of them, pledge them or otherwise encumber them. The Customer shall be entitled to sell, deliver or process the Products only in so far as this is necessary in the normal course of his business.
- 11.4 If any one or more provisions related to the reservation of title as described in this article, or parts thereof, are invalid on account of their contravention of the law applicable, such shall bear no influence on the validity of any other provision of this article. Should the occasion arise, the Customer is obliged to replace the invalid provision(s) or the invalid part thereof with a valid provision that comes as close as possible to the object and port of the reservation of title.

11. Réserve de propriété

(Français)

- 11.1 La propriété des Produits livrés ne sera transférée du Fournisseur au Client que si le Client a payé intégralement tout ce qui est ou sera dû à l'égard des Produits mentionnés, en ce compris les intérêts, dommages et frais éventuels. Entre la livraison par le Fournisseur et le paiement intégral, seules la garde et la responsabilité des Produits sont transférées au Client, et non la propriété.
- 11.2 Le Client s'engage à stocker les Produits dont la propriété n'a pas encore été transférée séparément des autres Produits et à les identifier clairement comme propriété du Fournisseur.
- 11.3 Avant que la propriété des Produits soit transférée au Client, celui-ci n'est pas autorisé à les louer, prêter ou mettre en gage aux tiers ou à les grever autrement. Le Client est uniquement autorisé à vendre, livrer ou traiter les produits dans la mesure où cela est nécessaire dans le cadre de son activité normale.
- 11.4 Si une ou plusieurs conditions relatives à la réserve de propriété comme décrite dans cette clause, ou dans une partie de cette clause, sont non valables, du fait qu'elles sont contraires à la loi applicable, ceci n'aura pas d'influence sur la validité de toute autre condition de cette clause. Le cas échéant, le Client est dans l'obligation de remplacer la condition ou les conditions non valables ou la partie non valable de ces conditions par une condition valable qui sera la plus proche possible de l'objet et de la portée de la présente clause de réserve de propriété.

11. Eigendomsvoorbehoud (N.B. Deze Nederlandse vertaling is alleen binnen Nederland van toepassing.)

(Nederlands)

- 11.1 Alle geleverde Producten blijven eigendom van de Leverancier tot aan het moment waarop de Afnemer aan alle verplichtingen –voortvloeiend uit of samenhangend met Contracten waarbij de Leverancier zich aan levering heeft verplicht- voldaan heeft.
- 11.2 Tot dat tijdstip is de Afnemer gehouden de door de Leverancier geleverde Producten gescheiden van de andere Producten en duidelijk identificeerbaar als Leveranciers eigendom te bewaren.
- 11.3 Voordat de eigendom van de Producten op de Afnemer is overgegaan, is deze niet gerechtigd de Producten aan derden te verhuren, in gebruik te geven, te verpanden of anderszins te bezwaren. De Afnemer is slechts gerechtigd de Producten te verkopen, af te leveren of te verwerken, voor zover dit in het kader van de normale bedrijfsuitoefening van de afnemer noodzakelijk is.
- 11.4 Indien een of meer voorwaarden met betrekking tot het eigendomsvoorbehoud zoals beschreven in dit artikel, of in een onderdeel van deze clause, ongeldig zijn omdat zij in strijd zijn met het toepasselijke recht, laat dit de geldigheid van enige andere voorwaarde in deze clause onverlet. In een dergelijk geval is de Afnemer verplicht de ongeldige voorwaarde(n) of het ongeldige deel van deze voorwaarden te vervangen door een geldige voorwaarde die het doel en de strekking van dit beding van eigendomsvoorbehoud zo dicht mogelijk benadert.

11. Riserva della proprietà

(Italiano)

- 11.1 La proprietà dei Prodotti consegnati passa dal Fornitore al Cliente soltanto quando quest'ultimo ha saldato le somme dallo stesso dovute rispetto a detti Prodotti, compresi interessi, danni e spese eventuali. Nel periodo tra la consegna e il pagamento a saldo, sono trasferiti al Cliente solo la custodia e la responsabilità dei Prodotti, ma non la proprietà.
- 11.2 Il Cliente si obbliga a mantenere i Prodotti della cui proprietà non è ancora titolare separati da altri Prodotti, identificandoli chiaramente come proprietà del Fornitore.
- 11.3 Prima che la proprietà dei Prodotti passi al Cliente, questi non ha titolo per concederli a noleggio, abbandonarne il possesso, impegnarli, né di imporre alcun altro gravame sugli stessi. Il Cliente ha diritto di vendita, fornitura o trattamento dei Prodotti solo per quanto strettamente necessario nel normale svolgimento delle proprie attività commerciali.
- 11.4 Qualora una o più clausole inerenti alla riserva della proprietà descritta in questo articolo, o parti di esse, risultino non valide in quanto in contrasto con la legislazione vigente, esse non inficiano minimamente la validità di altre clausole del presente articolo. In tale circostanza, il Cliente è tenuto a sostituire la/e clausola/e non valida/e o la parte non valida della/e stessa/e con un'altra/altra che sia/siano, per quanto possibile, vicina/e all'oggetto e al contenuto della riserva della proprietà.

11. Reserva de dominio

(Español)

- 11.1 La titularidad de los Productos suministrados solo se transferirá del Proveedor al Cliente cuando este haya pagado íntegramente todo lo que se adeude o adeudará con respecto a los Productos mencionados, incluidos cualesquiera intereses, daños y gastos.
- 11.2 El Cliente se obliga a mantener los Productos cuya titularidad no se haya transferido separados de otros Productos y a identificarlos claramente como propiedad del Proveedor.
- 11.3 Antes de que la titularidad de los Productos se haya transferido al Cliente, este no podrá alquilarlos, ceder su posesión, pignorarlos o gravarlos de otro modo. El Cliente solo estará autorizado a vender, suministrar o tratar los Productos en la medida que sea necesario en el transcurso normal de su actividad.
- 11.4 Si una o varias disposiciones relativas a la reserva de dominio descrita en el presente artículo, o partes de la misma, fueran inválidas por vulnerar la ley aplicable, no influirá en la validez de las demás disposiciones del presente artículo. Si se diera el caso, el Cliente estará obligado a sustituir la disposición o disposiciones inválidas o la parte inválida de la misma o de las mismas por una disposición válida que sea lo más próxima posible al objeto y al alcance de esta reserva de dominio.

11. Eigentumsvorbehalt (N.B. In Deutschland, Österreich und der Schweiz trifft auf diesen Artikel Deutsches Recht zu.)

(Deutsch)

- 11.1 Wir behalten uns das Eigentum an der Kaufsache bis zum Eingang aller Zahlungen aus dem Liefervertrag vor. Bei vertragswidrigem Verhalten des Kunden, insbesondere bei Zahlungsverzug, sind wir berechtigt, die Kaufsache zurückzunehmen. In der Zurücknahme der Kaufsache durch uns liegt ein Rücktritt vom Vertrag vor. Wir sind nach Rücknahme der Kaufsache zu deren Verwertung befugt, der Verwertungserlös ist auf die Verbindlichkeiten des Kunden – abzüglich angemessener Verwertungskosten – anzurechnen.
- 11.2 Der Kunde ist verpflichtet, die Kaufsache pfleglich zu behandeln; insbesondere ist er verpflichtet, diese auf eigene Kosten gegen Feuer-, Wasser- und Diebstahlschäden ausreichend zum Neuwert zu versichern. Sofern Wartungs- und Inspektionsarbeiten erforderlich sind, muss der Kunde diese auf eigene Kosten rechtzeitig durchführen.
- 11.3 Bei Pfändungen oder sonstigen Eingriffen Dritter hat uns der Kunde unverzüglich schriftlich zu benachrichtigen, damit wir Klage gemäß § 771 ZPO erheben können. Soweit der Dritte nicht in der Lage ist, uns die gerichtlichen und außergerichtlichen Kosten einer Klage gemäß § 771 ZPO zu erstatten, haftet der Kunde für den uns entstandenen Ausfall.
- 11.4 Der Kunde ist berechtigt, die Kaufsache im ordentlichen Geschäftsgang weiter zu verkaufen; er tritt uns jedoch bereits jetzt alle Forderungen in Höhe des Faktura-Endbetrages (einschließlich MwSt.) unserer Forderung ab, die ihm aus der Weiterveräußerung gegen seine Abnehmer oder Dritte erwachsen, und zwar unabhängig davon, ob die Kaufsache ohne oder nach Verarbeitung weiter verkauft worden ist. Zur Einziehung dieser Forderung bleibt der Kunde auch nach der Abtretung ermächtigt. Unsere Befugnis, die Forderung selbst einzuziehen, bleibt hiervon unberührt. Wir verpflichten uns jedoch, die Forderung nicht einzuziehen, solange der Kunde seinen Zahlungsverpflichtungen aus den vernehmten Erlösen nachkommt, nicht in Zahlungsverzug gerät und insbesondere kein Antrag auf Eröffnung eines Vergleichs- oder Insolvenzverfahrens gestellt ist oder Zahlungseinstellung vorliegt. Ist aber dies der Fall, so können wir verlangen, dass der Kunde uns die abgetretenen Forderungen und deren Schuldner bekannt gibt, alle zum Einzug erforderlichen Angaben macht, die dazugehörigen Unterlagen aushändigt und den Schuldnern (Dritten) die Abtretung mitteilt.
- 11.5 Die Verarbeitung oder Umbildung der Kaufsache durch den Kunden wird stets für uns vorgenommen. Wird die Kaufsache mit anderen, uns nicht gehörenden Gegenständen verarbeitet, so erwerben wir das Miteigentum an der neuen Sache im Verhältnis des Wertes der Kaufsache (Fakturaendbetrag, einschließlich MwSt.) zu den anderen verarbeiteten Gegenständen zur Zeit der Verarbeitung. Für die durch Verarbeitung entstehende Sache gilt im Übrigen das Gleiche wie für die unter Vorbehalt gelieferte Kaufsache.
- 11.6 Wird die Kaufsache mit anderen, uns nicht gehörenden Gegenständen untrennbar vermischt, so erwerben wir das Miteigentum an der neuen Sache im Verhältnis des Wertes der Kaufsache (Fakturaendbetrag, einschließlich MwSt.) zu den anderen vermischten Gegenständen zum Zeitpunkt der Vermischung. Erfolgt die Vermischung in der Weise, dass die Sache des Kunden als Hauptsache anzusehen ist, so gilt als vereinbart, dass der Kunde uns anteilmäßig Miteigentum überträgt. Der Kunde verwahrt das so entstandene Alleineigentum oder Miteigentum für uns.
- 11.7 Wir verpflichten uns, die uns zustehenden Sicherheiten auf Verlangen des Kunden insoweit freizugeben, als der realisierbare Wert unserer Sicherheiten die zu sichernden Forderungen um mehr als 10% übersteigt; die Auswahl der freizugebenden Sicherheiten obliegt uns.

11. Reserva de propriedade

(Portuguesa)

- 11.1 A propriedade dos Produtos entregues só será transferida do Fornecedor para o Cliente quando o Cliente tiver pago integralmente tudo o que seja ou venha a ser devido relativamente aos referidos Produtos, incluindo quaisquer juros, indemnização por danos e custos. Durante o período entre a entrega e o pagamento integral só são transferidas para o Cliente a guarda e a responsabilidade pelos Produtos e não a propriedade.
- 11.2 O Cliente será obrigado a manter os Produtos, cuja propriedade ainda não tenha sido transferida, separados dos outros Produtos e claramente identificáveis como sendo propriedade do Fornecedor.
- 11.3 Antes de a propriedade dos Produtos ser transferida para o Cliente, este último não poderá alugá-los, partilhar a sua posse, penhorá-los ou onerá-los de outra forma. O Cliente só poderá vender, fornecer ou transformar os Produtos na medida em que tal seja necessário no exercício da atividade normal da sua empresa.
- 11.4 Quando uma ou mais disposições relacionadas com a reserva de propriedade conforme descrito neste artigo, ou partes dessas disposições, forem inválidas por violarem a lei aplicável, a validade de qualquer outra disposição deste artigo não será afetada e manter-se-á em pleno vigor e eficácia. Se for caso disso, o Cliente é obrigado a substituir a(s) disposição(ões) inválida(s) ou a respetiva parte inválida por uma disposição válida que se aproxime o mais possível do objeto e alcance da reserva de propriedade.