

**GENERAL TERMS AND CONDITIONS FOR SALE AND SUPPLY  
OF KIMETEC GMBH,  
Gerlinger Str. 36 – 38, 71254 Ditzingen, Germany**

**1. Scope of the Terms and Conditions**

- (a) These GENERAL TERMS AND CONDITIONS FOR SALE AND SUPPLY OF KIMETEC GMBH, (hereinafter: The Terms and Conditions) shall only apply vis-à-vis merchants in accordance with Sec. 14 BGB [Bürgerliches Gesetzbuch (German Civil Code)], governmental entities, or special governmental estates within the meaning of Sec. 310 (1) BGB.
- (b) The Terms and Conditions hereinafter set out apply exclusively to all offline offers, sales and deliveries with the Customer. The Terms and Conditions apply in their latest version in force at the time when the offer is made. A copy of the Terms and Conditions is available for download and printing at [www.kimetec.de](http://www.kimetec.de).
- (c) The Terms and Conditions hereinafter set out also apply to all future business transactions with the Customer regardless of whether reference to the Terms and Conditions has been made or not.
- (d) We hereby expressly reject any conflicting Conditions of the Customer. These conflicting Conditions are only binding upon us if – and then only for the respective single case - we accept such Conditions in writing. Furthermore, our execution of Customer's order shall not be deemed an acceptance of such conflicting Conditions of the Customer.

**2. Offer**

- (a) Until we have accepted the order, none of our quotations or offers shall be binding.
- (b) Subject to any specific agreement the contract between us and the Customer will be concluded at the moment we accept Customer's offer in writing, but at the latest at the moment we effect delivery or render the services. At the moment the contract is concluded, there are no oral agreements.
- (c) Terms and conditions being individually negotiated between us and the Customer shall prevail in case they have been agreed on after the conclusion of the Contract. The written confirmation or contract (if any) shall be decisive on the content of such individually negotiated terms and conditions.
- (d) Any information contained in quotations, offers, catalogues etc. as well as data relating to measures, weights and performances, DIN standards (standards of the German Institute for Standardisation), are only provisional, unless we expressly denominate such information or data as legally binding, and cannot be considered as a particular agreement as to the condition, the quality, the long lastingness or as to the fitness of the delivered Goods for a specific purpose.

We reserve title and any copyright with respect to estimate of costs, drawings or other documents that we have provided to the Customer. Any such document may not be disclosed to any third party without our prior consent in writing.

### **3. Orders of the Customer, Conclusion of Contract and Scope of Delivery**

- (a) If Customer's orders shall be deemed to be an offer according to § 145 BGB, we shall have the right to accept the said offer within two weeks upon receipt of the order. If the acceptance has to be made abroad, the binding period is four weeks upon receipt of the order.
- (b) The contract for delivery shall be deemed to be concluded upon our written confirmation of the order or upon our execution of the order within the binding period according to clause (3) (a) of these Terms and Conditions.
- (c) The scope of delivery is exclusively determined by our written confirmation of order. If no confirmation of order has been issued, but if we have submitted an offer, which has been accepted by the Customer in due time, the scope of delivery shall be determined by our offer.
- (d) We reserve the right to technically change and to modify the delivered Goods provided that the technical functioning of the delivered Goods is not impaired in a way which is unacceptable for the Customer.

### **4. Prices and Terms of Payment**

- (a) Subject to any specific agreement in writing, prices are in Euro “ex works” plus all packing charges and the statutory value-added tax in the amount as from time to time in force.
- (b) Unless expressly agreed otherwise, our list prices currently at place at the date of the order shall apply.
- (c) Subject to any other agreement in writing, our invoices must be paid in cash without deduction upon receipt.
- (d) We shall accept bills of exchange or cheques only upon prior written agreement and provided that where payment is made by means of bill of exchange, cheque or any other negotiable or not negotiable instrument, we shall not be deemed to have received payment until the bill of exchange, cheque or other negotiable or not negotiable instrument has been honoured notwithstanding that we may have negotiated such instrument and received values therefore. Any cost of any kind in respect of the negotiation of any instrument as aforesaid including eventual financing cost or taxes shall be borne by the Customer. Payments shall only be deemed to have been made after we are finally entitled to dispose of the amount paid. We are, however, not obliged to present the bill of exchange or cheque in due time for payment. The Customer has to arrange for the immediate payment of the outstanding amounts if a cheque is not cashed in due time or if a bill of exchange is not discounted or not honoured in due time. If we become aware of adverse circumstances with respect to the creditworthiness of the Customer or if reasonable doubts as to the Customer's solvency arise after the conclusion of the contract, we

are entitled to withhold our own performance, irrespective of any bills of exchange or cheques we might have received from the Customer. We may in this case specify a reasonable period in which the Customer shall, at his choice, render consideration or provide security reciprocally and simultaneously against performance. If this period ends without result, we may repudiate the contract.

- (e) The Customer shall be in default in payment after having received our reminder. A reminder is not required in case there is a contractual date for payment or the parties have agreed on payment within a certain period of time after an event specified in the contract has occurred. In any case the Customer will be in default in payment 30 days after the receipt of the invoice or, at the latest, if the date of receipt of the invoice cannot be determined, 30 days after receipt of the delivered Goods.
- (f) Should the Customer be in default in payment, we shall be entitled to claim interest amounting to 8 % above the respective base rate mentioned in sect. 288 BGB. Any of our rights to claim for further damages caused by the Customer's default in payment hereby remains unaffected.
- (g) Payments shall only be deemed to have made after we are finally entitled to dispose of the amount paid.
- (h) Only those of our employees shall be authorized to accept payment for and on behalf ourselves which have an authority to collect in written form.
- (i) In case of a Customer not resident in the Federal Republic of Germany, we shall be entitled to request that payment shall be made by an irrevocable confirmed letter of credit without charges for the account of the beneficiary, which shall be opened through a German bank in our favour, allowing partial shipments, and one third (1/3) of which shall be immediately payable after the opening of the letter of credit upon first demand against receipt and the remaining two thirds (2/3) upon presentation of the documents.
- (j) We are, in our sole discretion, entitled to request an advance payment from new Customers, with which we have not concluded a business transaction so far.

## **5. Right of Retention/Set-Off**

- (a) Any right of retention of payment based on alleged remedies of the Customer against ourselves, which does not arise under the same contractual relationship as agreed upon, is expressly excluded.
- (b) Any set-off of the Customer with his claims against our claims is not allowed, unless such claims of the Customer are undisputed or the subject-matter of a final and conclusive judgement of a competent court.

## **6. Delivery**

- (a) We are entitled to partial deliveries. Delivery is only effected as long as stock lasts. We are under no obligation in case of delayed or unexecuted deliveries due to negligence of our

suppliers. With regard to products and raw materials, which we do not produce ourselves, our correct and timely supply by our own suppliers shall be reserved. We are under no duty to effect delivery in case our suppliers do not effect delivery even though we have concluded the respective necessary contracts with our suppliers and have selected them with due care and in a business-like manner. We will inform the Customer immediately in case our suppliers delay or do not effect any deliveries and we therefore repudiate the contract and we will pay back any consideration immediately – in case we have already received such consideration.

- (b) In case of special designs we reserve our right to an over- or underdelivery of +/- 10 %.
- (c) In case of delivery at call, the Customer has to call the Goods within a period of time of one year from the order unless otherwise agreed in writing. In case the Goods have not been called during this period and the Customer therefore is in default of acceptance according to sect. 293 ff BGB the risk of accidental loss and deterioration of any Goods to be delivered shall pass to the Customer. Furthermore, after this period has elapsed the stocking costs have to be borne by the Customer; if the Goods are stocked at our premises, such stocking costs shall amount to at least 0,5 % of the invoice amount for each month. In addition we may exercise all our rights following from sect. 375 HGB (German Commercial Code).
- (d) Subject to any other agreement in writing at the moment the contract was concluded or any other express – but also oral - agreement after the conclusion of the contract, dates and periods of delivery are only provisional and are not binding upon us.
- (e) A delivery date or delivery period shall be met if upon its expiry the Goods to be delivered have left our works. Furthermore, delivery dates or periods are met if at their expiry a notification of readiness for dispatch of the Goods has been sent to the Customer.
- (f) A period or date of delivery shall be deemed reasonably prolonged in the event of industrial disputes, especially in case of strike or lock-out as well as in case of any other unforeseeable event, provided that such event has an impact on the completion or delivery of the Goods and to the extent that we cannot be held liable for such event. We can also not be held liable for the aforementioned events, if they arrive during an existing default. We shall immediately notify the Customer about the beginning and end of such events within a period of 3 working days after such event started.
- (g) If the delivery has become impossible due to later modifications or additions of the order by the Customer, the delivery dates and the period of delivery shall be deemed prolonged appropriately according to the claimed modifications and additions. The delivery date or the period of delivery defers appropriately if the Customer does not deliver in good time all documents such as authorisations, releases or plans to be provided by the Customer.
- (h) We shall have a retention right in regard to further deliveries until all previous deliveries have been fully paid except in case the Customer may also withhold his payments for due cause.
- (i) If we become aware of adverse circumstances with respect to the creditworthiness of the Customer or if reasonable doubts as to the Customer's solvency arise after the conclusion of the

contract, we are entitled to refuse our own performance as far as it has not already taken place. We may in this case specify a reasonable period in which the Customer shall, at his choice, render consideration or provide security reciprocally and simultaneously against performance. If the Customer does not effect any advance payment or does not provide a security within a reasonable period of time set by us, we are entitled to repudiate the contract.

## **7. Terms of Shipping and Passing of Risk**

- (a) All costs of shipment and transport insurance have to be borne by the Customer. We can choose the mode of dispatch and the dispatch type sequence at our discretion. Tolls, fees and taxes accrued by dispatch abroad have to be borne by the Customer.
- (b) The risk of accidental loss and deterioration of any Goods delivered shall pass at the latest to the Customer after the Goods have left our premises or after we have informed the Customer that the goods are ready for dispatch.
- (c) The risk of accidental loss and deterioration of any Goods delivered shall pass to the Customer as well, if the Goods which are ready for dispatch are not dispatched by request of the Customer or for reasons which belong to the Customer's sphere of influence.
- (d) If the dispatch of the Goods is delayed by request of the Customer, the stocking costs have to be borne by the Customer, commencing one month after our notification of readiness for dispatch; if the Goods are stocked at our premises, such stocking costs shall amount to at least 0,5 % of the invoice amount for each month. After having set an appropriate time limit for the acceptance of the Goods and after fruitless expiry of this time limit, we are entitled to dispose otherwise of the Goods and to deliver the Customer within an appropriately extended delivery period.
- (e) In the event of irrelevant deviation from the agreed quality of the Goods and in the event of irrelevant impairment of the fitness of the Goods for a specific purpose, the Customer has to accept the delivered Goods.

## **8. Retention of Title**

- (a) The title to the Goods shall remain with us until full payment of the price has been effected including all of our claims against the Customer, no matter for what legal ground, existing at the date of the conclusion of the contract between the Customer and us, but always provided that where payment is made by means of bill of exchange, cheque or other negotiable or not negotiable instrument, the Customer shall not be deemed to have received payment for the purpose of this provision until the bill of exchange, cheque or other negotiable or not negotiable instrument has been honoured. In case of current account, the retention of title shall be deemed a collateral for the balance of account in our favour and if a balance is struck and confirmed, this shall not effect the retention of title.
- (b) The Customer is entitled to treat and process the delivered Goods in the course of his ordinary business. If the delivered Goods are treated or processed by the Customer, such treatment or

processing will be done on behalf of ourselves, but without creating any obligation or liability whatsoever of ourselves. If the delivered goods are processed, mixed or modelled with Goods not belonging to us, we acquire co-ownership of the new Goods manufactured by utilisation of the delivered Goods in proportion to the invoice value of the delivered Goods and the other Goods at the time of the processing, mixing or modelling. If the Customer acquires title of the new Goods according to the statutory provisions of the applicable law, he hereby transfers a co-ownership share of the new Goods to us corresponding to the aforementioned proportion; moreover, the Customer commits himself to store these Goods without any cost for and on behalf of us.

- (c) If the Customer sells the delivered Goods or the new Goods in our co-ownership according to clause (8) (b) of these Terms and Conditions alone or together with Goods not belonging to us, the Customer hereby assigns to us all claims arising from such resale in the amount of the value of the delivered Goods including all of our ancillary rights. We hereby accept such assignment. If we are co-owners of the resold Goods, the aforementioned assignment of claims shall cover the amount which corresponds to the value of our co-ownership share. As regards the claims which Customer has assigned to us, the Customer shall be authorised, subject to our revocation, to collect any receivables. If the Customer is in delay with his obligations vis-à-vis us, the Customer shall be obliged to inform us about all debtors of the claims assigned to us. Moreover, the Customer has to notify the assignment to each debtor. We are as well entitled to disclose the assignment vis-à-vis the respective debtors and to make use of our authority to collect any receivables.
- (d) When the Customer has breached his obligations arising from this contract, more especially in the event of delay in payment or violation of his obligation to handle the Goods carefully, we are, after having sent a reminder to the Customer and after fruitless expiry of a deadline, entitled to take repossession of the Goods and to repudiate the contract. In such case, the Customer is obliged to return the Goods. Neither the assertion of the retention of title, especially any repossession, nor any enforcement proceedings with regard to the delivered Goods shall be regarded as a repudiation of the contract unless we have expressly declared such repudiation. The Customer hereby grants to our people instructed to take repossession of the Goods access to his premises, on which the delivered Goods are stored.
- (e) The Customer is only entitled and authorised to resale the delivered Goods in the course of his ordinary business and provided that we become owner of the claims assigned to us according the aforementioned. The Customer shall not be entitled to dispose otherwise of the delivered Goods. The Customer shall not mortgage the delivered Goods or transfer them by way of security.
- (f) In the event of any third party action or execution proceedings against the delivered Goods under retention of title – also in case of our co-ownership – or any claims assigned to us, the

Customer shall inform us immediately and provide us with any document or information necessary to defend ourselves and appeal against such action or execution proceeding.

- (g) The Customer has to insure all delivered Goods under retention of title at his own cost, especially against fire and theft. The Customer hereby assigns all of his claims against the respective insurance company regarding the delivered Goods under retention of title to us. We hereby accept such assignment.
- (h) The Customer resident abroad shall do any act required by law or otherwise to make our retention of title (including the extended retention of title) as provided for in these Terms and Conditions valid and effective in the country to which the Goods are delivered.
- (i) We are obliged to release securities in the event that our claims are secured by securities adding up to 150 % or more of our secured claims.

## **9. Delay in Delivery and Impossibility**

- (a) As far as, according to the law, our delay is subject to a reminder, any such reminder shall only be effective in written form.
- (b) The Customer is entitled to compensation should we be in default in delivery because we acted slightly negligent and should a damage been caused thereby. Such compensation as aforesaid shall amount to 0,5 % for each week in which we are in default in delivery but overall not more than 5 % of the price of the part of the delivered Goods which cannot be used as a result of our delay in delivery. The compensation shall be lower if we prove a lower damage or higher if the Customer proves a higher damage.
- (c) Notwithstanding the right to repudiate the contract in case of defects according to clause (11) ("warranty") and clause (12) ("defects of title") of these Terms and Conditions, the Customer shall only be entitled to repudiate the contract in case of our default in delivery or our impossibility to deliver if we have negligently or wilfully caused such delay in delivery or impossibility.
- (d) Should we fail to deliver within the delivery period, the Customer shall have the right to set a written final deadline of at least two weeks indicating expressly that he will repudiate the contract and/or claim for damages. Upon expiry of the aforementioned final deadline, the Customer is, upon our request, obliged to declare whether he insists to claim delivery or whether he claims for damages according to sect. 281 sub-sec. 4 BGB or whether he repudiates the contract. The Customer is not entitled to repudiate the contract or to claim for damages instead of delivery or to reject delivery of the Goods in case the Customer does not notify us his intention within a reasonable deadline set by us.
- (e) Should we seriously and definitely refuse the delivery of the Goods or in case of specific circumstances that – after considering both parties interests – justify an immediate repudiation of the contract, the Customer is not obliged to set a final written deadline according to clause (9) (d) Sentence 1 of these Terms and Conditions.

- (f) The Customer is not entitled to repudiate the contract before the delivery is due or in case of an irrelevant breach of an obligation from our side. Moreover, the Customer is not allowed to repudiate the contract in case of circumstances that would allow such repudiation have wholly or partly been caused by the Customer or in case such circumstances occur during a delay in acceptance of the Customer.
- (g) As regards claims for damages or claims for reimbursement of expenses caused by our delay in delivery or impossibility to deliver, clause (14) of these Terms and Conditions shall apply.

#### **10. Notice of Defect**

- (a) Written notice of apparent defects or any other complaints, including defects as to the quality, defects of title, failure to comply with any particular agreement or guarantee as to the fitness of the Goods for a specific purpose or the durability, failure as to the quantity of the Goods, delivery of completely different Goods (aliud-delivery) (hereinafter: defect or defects) must be given without delay at the latest 14 days from the receipt of the Goods. Written notice of hidden defects or any other complaints as aforementioned that may not be disclosed within a usual examination at the receipt of the Goods must be given without delay at the latest 14 days from the discovery.
- (b) Should we not have been notified of any defects or any other complaints as aforementioned within the time limit set out in clause (10) (a) of these Terms and Conditions, we shall be discharged from any and all liability arising from any defect of the Goods or any other complaint and all rights of the Customer – of whatsoever legal nature – are excluded.

#### **11. Warranty**

- (a) Should the Customer notify to us in accordance with clause (10) of these Terms and Conditions of an existing defect or any other complaint as mentioned in clause (10) of these Terms and Conditions – save for defects of title; these are subject of clause (12) of these Terms and Conditions –, our liability shall, according to our choice, be limited to either replace or repair such defective Goods, provided that the Customer proves, that the defect or any other complaint was already existent at the point in time of the passing of the risk.
- (b) The Customer has to give us, after prior consultation, the necessary time and opportunity to make a repair or a replacement delivery. Any Goods or parts thereof which we have replaced in consequence of our liability for defects shall be our property.
- (c) In case the Customer has set us a time limit to remedy the defect, a time limit of one month is considered appropriate, unless under special circumstances of an individual case, a longer or shorter time limit seems appropriate. The Customer's setting of an appropriate time limit to remedy the defect shall only be valid in written form.
- (d) Should we fail to remedy the defect either by two attempts to repair the Goods or one replacement delivery, the Customer shall be entitled to request a reduction of the price agreed



upon instead of repair or replacement delivery or to repudiate the contract as well as to claim for damages or reimbursement of expenses according to clause (14) of these Terms and Conditions. The same shall apply *mutatis mutandis* if we refuse a repair or replacement delivery without justification, if we delay such repair or replacement delivery in an undue manner or if such repair or replacement delivery is, for any other reason whatsoever, unacceptable for the Customer or if the conditions of sect. 281 sub-sec. 2 or sect. 323 sub-sec. 2 BGB are met.

- (e) We are under no obligation to repair or to replace the delivered Goods provided that the costs for such repair or replacement delivery are unreasonably high. The costs shall be deemed as unreasonably high if they exceed 25 % of the purchase price of the Goods, without taking into consideration the value of the Goods within a replacement delivery. In this case the Customer may make use of his legal remedies.
- (f) Should the Customer's notice of defects be unjustified, we shall be entitled to claim for all costs that arise from such unjustified notice of defects.
- (g) In the event that the delivered Goods were, after delivery, transferred to another place than the place of delivery and should the costs for repair or replacement delivery, including but not limited to cost for transport, labour and material, therefore increase, the Customer shall only be entitled to claim for the costs that would have arisen in case the Goods still had been at the place to which they were delivered first, unless the transfer of the Goods corresponds to the Goods' normal use.
- (h) We expressly exclude any liability arising in particular on the following grounds: irrelevant deviation from the agreed quality of the Goods and irrelevant impairment of the fitness of the Goods for a specific purpose, usual wear and tear, damages due to inappropriate or improper use of the Goods after the passing of the risk or due to excessive workload or the use of inappropriate working and substitute materials, inappropriate modifications or reconditioning by the Customer or any third party.

## **12. Defect of Title**

- (a) Subject to any other agreement, we are obliged to effect the delivery free from industrial property rights and copyrights (in the following: property rights) only in the country of the place of delivery. In case of any rightful claim of any third party against the Customer for infringement of property rights due to Goods delivered to the Customer and used by the Customer as agreed upon, we shall be liable vis-à-vis the Customer, as follows:
- (b) We shall, in our sole discretion and at our own account, either arrange for the granting of a right to use the Goods in favour of the Customer, or modify the Goods so that the property right is not infringed or replace the Goods. Should we be unable to do this under appropriate conditions, the Customer is entitled to repudiate the contract or to lower the purchase price as provided by law. As regards our liability for damages in such case, clause (14) of these Terms and Conditions shall apply.

- (c) We shall only be obliged to take the aforesaid steps if we are, without undue delay, informed in writing by the Customer about the third parties' claims made against the Customer, if the Customer does not acknowledge such claims and if any legal defence whatsoever and settlement negotiations are reserved to ourselves. In the event the Customer ceases the use of the Goods for reasons of damage minimisation or for any other important reason, he shall be obliged to inform the third party about the fact that such cessation of the use does in no way constitute any acknowledgement of an infringement of property rights.
- (d) Any claims of the Customer shall be excluded if and as far as the Customer can be held liable for the infringement of the property rights. As far as an infringement of property rights was caused by instructions of the Customer, by the Customer's use of the Goods unpredictable for us, or by the Customer's modification of the Goods or the use of the Goods along with other Goods not delivered by us, the claims of the Customer shall be excluded as well.
- (e) Any other claims for defect of title shall be excluded.

### **13. Limitation Period for Claims based on Warranty or Defects of Title**

The limitation period shall be 12 months commencing upon delivery of the Goods. In the event of death or personal injury and provided that we can be held liable for such event, in case the defect has been caused by our willfull or gross negligent violation of contractual duties, in case we fraudulently concealed the defect of the Goods or in case of defects of title according to sect. 438 sub-sect. 1 No. 1 lit. a) BGB as well as in case we have given a respective guarantee (see sect. 444 BGB) the limitation periods provided by law shall apply. The same applies to all claims arising out of the German Product Liability Code. We shall not be liable for defects of used or second hand Goods.

### **14. Damages**

- (a) Unless otherwise agreed in these Terms and Conditions, any of the Customer's claims for damages whatsoever including claims for reimbursement of expenses and/or the liability for consequential loss or damages of whatsoever nature shall be excluded. This shall especially apply to claims for damages arising from a breach of contractual obligations or tort. The same applies to any liability of any kind of our duly authorised agents.
- (b) Notwithstanding clause 14 (a) of these Terms and Conditions we shall be liable if and to the extent - and this shall also apply if we employed executive personnel or other persons in performing our obligations - in the event that we, our legal representatives or duly authorised agents, employed executive personnel or other persons performing our obligations.
  - (aa) are attributed gross negligence or intent;
  - (bb) fraudulently concealed the defect or warranted the quality or long lastingness of the Product;

- (cc) willfully or negligently have caused damage to life, bodily injury or damage to health; and/or
- (dd) violate substantial contractual obligations endangering the purpose of the agreement as a whole, that is
  - i. in the event of material violations of duties which endanger the achievement of the contractual purpose, or
  - ii. in the event of the violation of duties – the fulfilment of which enables the proper performance of the Contract in the first - place and on the observance of which the Customers may regularly rely ("cardinal duties").

In case of only minor breach of our obligations, we shall not be obliged to pay damages instead of performance.

- (c) The claim to damages compensation for the violation of cardinal duties in the case of clause 14 (b) (dd) of the Terms and Conditions is – in terms of its amount – limited to the typically foreseeable damage.
- (d) The exclusion of liability shall not be applicable to claims arising out of the German Product Liability Code. No change in the legally codified distribution of the burden-of-proof to the Customer's disadvantage is associated with the aforementioned rules.

## **15. Confidentiality**

- (a) The Customer agrees to keep strictly confidential from third parties all information, the Customer had access to in the course of the business cooperation with us. Moreover, the Customer commits not to pass on business documents to third parties, which we have given to the Customer for or on the occasion of the performance of the contract or on the occasion of the submittal of an offer. After the termination of the contract for whatever reason or in the event that the Customer has not accepted our offer, the Customer shall return any document whatsoever to us provided that such document is not the subject matter of the contract.
- (b) The obligation according to clause (15) (a) of these Terms and Conditions shall not apply in case the Customer may show that
  - the information was in Customer's possession without an obligation of confidentiality prior to the receipt of such information from us;
  - the Confidential Information is lawfully obtained by Customer from a third party without an obligation of confidentiality, provided that such third party is not, to Customer's best knowledge, in breach of any obligation of confidentiality to us relating to that information;
  - this Confidential Information at the time of disclosure, or subsequently becomes generally available to the public through no breach of this Agreement;
  - the Confidential Information is or will be developed by Customer independent of this disclosure by us.

## **16. Regulatory provisions**

- (a) Kimetec shall ensure, that contractual products falling within the scope of Regulation (EU) 2017/745 on medical devices (EU-MDR) have undergone the necessary conformity assessment and fulfill the applicable requirements.
- (b) The Customer is obliged to verify the applicable regulations for making the contractual products available on the market in the planned distribution area and to provide Kimetec with comprehensive information on the regulatory requirements.
- (c) Pursuant to Article 14 of the EU-MDR, the Customer in its role as distributor of medical devices is obliged to verify that the following requirements are met:
  - the device has been CE marked and the EU declaration of conformity of the device has been drawn up;
  - the device is accompanied by the information to be supplied by the manufacturer in accordance with Article 10(11), EU-MDR;
  - for imported devices, the importer has complied with the requirements set out in Article 13(3), EU-MDR;
  - an UDI has been assigned by the manufacturer.
- (d) Where the Customer considers or has reason to believe that a product falling within the scope of the EU-MDR is not in conformity with the requirements of this Regulation, it shall not make the respective product available on the European market, until it has been brought into conformity. In such a case, the Customer shall immediately inform Kimetec. Where the Customer considers or has reason to believe that the product presents a serious risk or is a falsified product, it shall also inform the competent authority of the EU Member State in which it is established.
- (e) The Customer shall ensure that, while the device is under its responsibility, storage and transport conditions comply with the conditions set by Kimetec.
- (f) In its role as distributor of medical devices, the Customer shall immediately forward to Kimetec any complaints or reports from healthcare professionals, patients or users about suspected incidents related to a device it has made available. Furthermore, the Customer shall keep a register of complaints, of non-conforming devices and of recalls and withdrawals, and keep Kimetec informed of such monitoring and provide Kimetec with any necessary related information.
- (g) The Customer shall co-operate with Kimetec and, where applicable, with competent authorities to ensure that necessary corrective actions to bring a medical device into conformity, to withdraw or to recall it, as appropriate, are taken.
- (h) The Customer shall, upon request by a competent authority, provide it with all the information and documentation that is at its disposal and is necessary to demonstrate the conformity of a medical device. The Customer is obliged to co-operate with competent authorities, at their request, on any action taken to eliminate the risks posed by devices, which it has made

available on the market. The Customer, upon request by a competent authority, shall provide free samples of the device or, where that is impracticable, grant access to the device.

- (i) The Customer shall co-operate with Kimetec to achieve the traceability of medical devices. If required, the Customer shall therefore be able to identify
  - any economic operator to whom it has directly supplied a medical device;
  - any economic operator who has directly supplied him with a medical device;
  - any health institution or healthcare professional to which it has directly supplied a device.
- (j) If the Customer intends to change the labeling or packaging of the device and thus to carry out activities in accordance with Article 16(2), EU-MDR, the Customer is obliged to notify Kimetec and the competent authority of the respective EU member state of this intention at least 28 days before making the changed product available on the market, and to provide a sample of the changed labeling or packaging upon request. Within the same period, the customer shall provide the competent authority with a certificate of a quality management system that meets the requirements set forth in Article 16(3).

#### **17. Place of Performance, Jurisdiction, applicable Law**

- (a) Place of performance of all mutual obligations, especially of the Customer's payment obligation or our obligation to deliver the Goods, shall be our business seat in 71254 Ditzingen, Germany, subject to any other provision in our confirmation of order.
- (b) The parties, who are both merchants, agree on the exclusive jurisdiction and venue of the court having jurisdiction at our business seat, without prejudice to our right to take action also against the Customer at the Customer's business seat.
- (c) These Terms and Conditions and any contract concluded hereunder between the Customer and us shall exclusively be governed and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

As of April 2022