General Terms and Conditions of Sale and Delivery

of SGD Kipfenberg GmbH, Altmühlstrasse 2, 85110 Kipfenberg, Germany

As at: 01. April 2017

I. General information

For all deliveries of goods by SGD Kipfenberg GmbH (hereinafter referred to as "Supplier") to entrepreneurs, legal entities under public law or special funds under public law (hereinafter referred to as "Orderer") the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") shall apply exclusively. Upon conclusion of the initial contract, the Supplier shall reach an agreement with the Orderer whereby these GTC shall also apply for all subsequent orders, even if this is not expressly agreed each time. These GTC shall be considered to have been accepted upon receipt of the goods at the latest. The General Terms and Conditions of the Purchaser, as well as any regulations deviating from these in enquiries, offers, order confirmations, order forms or other documents of the Orderer shall apply only if they have been expressly acknowleged by the Supplier in writing.

II. Offers

Offers submitted by the Supplier are always subject to change and non-binding. Only contracts concluded in written form are valid.

III. Deliveries

(1) The scope of the delivery shall be determined on the basis of the Supplier's written order confirmation. If no such confirmation is available, the delivery note shall serve as the confirmation of order. Orders, amendments to orders and other agreements are not valid unless confirmed (order confirmation) in writing.

(2) The Supplier shall be at liberty to select the production site from which it shall fill the order. The Orderer has the right to audit the production site according to the ISO norm 15378, after appropriate prior announcement. It shall also be at liberty to specify the place of dispatch in the event of the delivery of stock items.

(3) Samples, specimens and illustrations shall only be applicable on an approximate basis. All specifications concerning weight, content, dimensions and similar are to be regarded as average values. Insofar as no upper limit has been specified with regard to permissible deviations, those deviations resulting from the manufacturing process and/or serving technical progress within the scope of such that is usual in this line of business shall be deemed to be permitted. No guarantee can be made that the colours will be identical.

(4) In view of the specific manufacturing process required for customised orders, it cannot be guaranteed that the order quantity is absolutely consistent with the production quantity. The obligation of the customer to accept and pay for the goods shall apply up to the following margins:
+ - 30 % from 0 to 50,000 units
+ - 20 % from 50,000 to 100,000 units
+ - 15 % from 100,000 to 250,000 units
+ - 10 % from 250,000 to 500,000 units
+ - 5 % above 500,000 units
The delivered quantity shall be invoiced; partial deliveries shall be permitted, unless doing so would place the Orderer at an unreasonable disadvantage.

IV. Prices

(1) All prices quoted are net prices in the specified currency, not including statutory VAT in the relevant amount, customs duties and other taxes. In the case of list prices or where no specific price has been agreed, the Supplier's price list shall apply in its currently valid version. If delivery is made as per agreement later than four months after acceptance of the order, the Supplier shall be entitled to adjust the prices if and insofar as the costs of material, labour or energy have substantially increased in the interim.

(2) All prices quoted are ex factory, unless any other delivery condition has been expressly agreed. Unless otherwise agreed, the prices shall also include the costs of standard industrial packaging; they shall, however, not include insurance premiums, other additional expenses, pallets or reusable packaging material (CPL layer pads).

(3) Price quotes, drafts, drawings, models and similar preliminary work provided at the instigation of the Orderer shall be invoiced. The Supplier shall reserve all property rights and copyrights to the above-mentioned items. Such items must not be made available to third parties.

V. Conditions of payment

(1) Place of fulfilment for payment claims asserted by the Supplier shall be the seller's registered place of business. Incoming payments shall first be credited against expenses and interest, then against unsecured receivables and finally against the longest-due debts, even if the Orderer makes other arrangements.

(2) The Orderer shall only be entitled to withhold or offset payment on account of any counterclaims whatsoever, including warranty claims, in the event that there are any due payment claims that are undisputed or have been established with legally binding effect.

(3) With effect from the due date (= expiry of the agreed term of payment commencing from date of invoice) until the occurrence of default of payment on the part of the Orderer at the latest, the Supplier shall be entitled to charge interest on arrears in the amount of 5 % of the due total, insofar as no payment is made up until the occurrence of default. Invoices issued by the Supplier shall be deemed to be acknowledged if the Orderer does not object to such within 10 calendar days after receipt of invoice. Following default, interest in the amount of the credit costs charged by the banks shall be imposed; this interest shall, however, amount to at least 8 percentage points above the base interest rate. This shall not affect any other claims for damages on the part of the Supplier. Price discounts or other special allowances shall not be granted.

(4) If payment terms are not complied with or if there is any justified doubt about the creditworthiness of the Orderer, the Supplier may demand prepayment and immediate payment of all open invoices, even those that are not yet due for payment; it may also withhold any goods that have not yet been delivered, retrieve at the Orderer's expense deliveries that have not yet been paid for or withdraw from the contract without notice insofar as goods have not yet been delivered and/or delivered goods have not yet been paid for, and it may also demand compensation for any damages arising as a result of the withdrawal.

VI. Delivery dates and deadlines

(1) Dates and deadlines for deliveries shall only be binding if they have been agreed in writing. In order to comply with such dates and deadlines, the Orderer must first fulfil its contractual obligations, in particular make agreed prepayments and/or meet all other obligations to pay in advance and to cooperate. A further requirement for compliance with the above is that the upstream supplier supplies the Supplier correctly and in due time, provided that the Supplier has chosen such upstream suppliers with the diligence that is customary in commercial business.

(2) If a final date for delivery has been specified in the order confirmation, the Supplier shall deliver by this date. If several final dates for delivery have been specified, the delivery obligation shall relate to the part of the order to which the respective final date for delivery refers.

(3) With regard to information on approximate delivery deadlines in the order confirmation, the admissibility of a 50 percent failure to meet the deadline shall be deemed to have been agreed. Any notices to this effect on the part of the Supplier shall not be deemed to be contractual covenants.

(4) If the Supplier fails to honour the delivery date and has allowed a reasonable period of grace (to be set by the Orderer in writing) to expire fruitlessly, the Orderer shall be entitled to withdraw from the contract insofar as delivery has not yet been made. Any claims for damages due to non-fulfilment or delay in excess of this may only be asserted within the context of Section X.

(5) The delivery deadline shall be appropriately extended if the Supplier suffers any unforeseeable system malfunctions of any kind whatsoever that have not been caused by it due to wilful misconduct or gross negligence, or any other impediments, e.g. official intervention, armed conflict, natural disasters, delays in the supply of raw materials and energy, labour disputes, in particular strikes and lockouts. The Supplier shall also not be held responsible for the above-mentioned circumstances if such circumstances occur when delivery has already been delayed.

(6) Partial deliveries from call-off orders shall be delivered in each case upon written confirmation of the call-off date by the Orderer. If the goods are not called off within a reasonable period of time, the Supplier may choose to either fulfil the order or withdraw from the contract after giving prior notice. Any claims for damages that may be asserted shall remain hereby unaffected.

(7) The Orderer shall immediately accept any goods that are made available or delivered on schedule. In addition, it shall create in good time all the preconditions that are necessary on its part to enable the order to be executed on schedule. If goods ready for delivery are held at the Orderer's disposal at its own request, the invoice may be issued immediately and payment may be demanded 6 months at the latest after production. The goods shall then be stored at the expense and risk of the Orderer. After a further deadline of 6 months has expired, the Supplier shall be entitled to destroy the goods after giving simple written notice. The same shall apply in the event that the Orderer is in default of acceptance.

VII. Packaging, dispatch

(1) In the absence of any other agreements, the Supplier shall select type of packaging, mode of dispatch, dispatch route and transport company.

(2) Any transportation aids provided by the Supplier (e.g. flat pallets, CPL layer pads) shall be invoiced to the Orderer at replacement value.

VIII. Retention of title

(1) The delivered goods shall remain the property of the Supplier until such time as all claims against the Orderer arising from the business relationship with the Supplier, including future claims, have been settled in full. The Orderer shall be entitled to resell the goods subject to retention of title (retained goods) in the regular course of business, unless the Orderer's claim from the resale has already been assigned to others; the Orderer shall not be permitted to resell the retained goods if it is in default of payment or illiquid. In the event of a resale on a credit basis, the Orderer shall safeguard the Supplier's rights. The Orderer shall not be permitted to pledge or assign the retained goods by way of security without the express consent of the Supplier.

(2) The Orderer shall assign to the Supplier at this point any and all claims against third parties arising from the resale of the retained goods to the sum of the claims of the Supplier without need for a separate declaration of assignment in each individual case; the Supplier shall accept the assignment. Irrespective of the assignment and the Supplier's right to collect receivables, the Orderer shall be entitled to collect receivables as long as it fulfils its obligations to the Supplier and does not fall into financial difficulties. At the Supplier's request the Orderer shall provide the former at any time with any information on the assigned receivables necessary for collection and shall inform the debtors of the assignment. In the event of delayed payment or illiquidity on the part of the Orderer, the Supplier shall be entitled to inform the garnishees that the claims have been assigned and to collect the receivables itself or to take back the retained goods.

(3) Should the retained goods be used in any way (handled, processed, mixed or combined), this shall be done by the Orderer on our authority without incurring any liabilities; the Orderer shall then transfer to us – if no other arrangements have been made below – the complete property rights to the new item. If the Orderer acquires sole ownership of the new item due to combining, mixing or blending the retained goods with other goods, the contracting partners agree that the Orderer shall grant the Supplier co-ownership of the new item commensurate with the value of the retained goods. In all events the Orderer shall store the new item free of charge for the Supplier. The regulations on resale under the terms of paragraph 1 shall apply accordingly in the amount of the value of the retained goods.

(4) The Orderer shall inform the Supplier without delay of any compulsory enforcement measures by third parties with regard to the retained goods or previously assigned claims; the Orderer shall also allow the Supplier or its representative access to the area where the goods are stored and shall bear the costs of any necessary intervention.

(5) The Supplier shall release any securities it is entitled to under these regulations at its own discretion and at the Orderer's request, if the value of the claims to be secured exceeds 20%.

(6) The Orderer shall store the retained goods properly and insure these at its own expense against theft, breakage, water damage and other damage. Insurance claims in the amount of the value of the retained goods shall be deemed to be assigned to the Supplier.

(7) If a reservation of title cannot be agreed with the same effect as under German law in cases of delivery abroad, yet other rights to the delivery item may be reserved, the Supplier shall be entitled to these rights. The Orderer shall cooperate in all respects in this matter.

IX. Liability
(1) The Supplier shall be liable for defects for one year after delivery of the goods or upon default of acceptance by the Orderer. The Supplier shall only assume liability for the suitability of the delivered goods for the particular purposes which the Orderer has in mind if these purposes have been explicitly stipulated in writing in the contract. The delivery of a particular quantity of bottles and glasses does not constitute an aggregate of items.

(2) The Orderer shall inspect the delivered goods immediately upon receipt. In the course of this inspection a dynamic incoming goods check is to be performed. Prior to and during processing and filling, appropriate checks should be carried out continuously and at short notice, and suitable devices installed, to ensure that defective delivery items are rejected. Obvious defects are to be reported in writing within 10 days of receipt of the delivery at the latest. Defects that are not obvious are to be reported in writing immediately upon discovery, however within one year of delivery at the latest. In all other cases the delivery shall be deemed to have been performed duly and correctly. Any other statutory obligations to inspect and report shall remain unaffected.

(3) In the case of notices of defects that are justified and within the time limit, the Supplier shall, at its own discretion, either replace or repair the defective goods. Any items that have been replaced shall become the property of the Supplier. If the Supplier allows a reasonable period of grace (to be set by the Orderer) to expire without repairing the defect, or if it fails to repair or replace the defective goods, the Orderer may then, at its own discretion, either withdraw from the contract or demand a reduction of the purchase price. If, in the case of delivery within Germany, the properties and condition of the delivered goods differ only slightly from the agreed properties and condition, or, in international trade, do not differ significantly, the Orderer shall not be entitled to claim supplementary performance or withdrawal.

(4) Any claims for damages on the part of the Orderer against the Supplier may only be asserted within the context of Section X.

(5) Any return of goods must be agreed by both parties. The Orderer shall be liable for loss of or damage to the goods during transport.

(6) These regulations shall apply accordingly in the case of defects which have occurred on the basis of a consultation or within the context of other secondary contractual obligations.

(7) The Supplier may refuse to settle claims asserted by the Orderer in cases of warranty as long as the Orderer has not fulfilled its contractual obligations. In the absence of a specific written agreement, the Supplier shall not be responsible for ensuring that the goods delivered by it comply with foreign statutory provisions.

X. Claims for damages
Under Section 378 HGB (German Commercial Code) the Orderer must inspect incoming goods using a suitable procedure (e.g. DIN ISO 2859-1). The statistical results of sample tests in accordance with DIN ISO 2859-1, including supplier's and customer's risk, shall apply. Liability is generally limited to the value of the unprocessed goods. Defects that only occur sporadically and lie within the agreed specification are not reimbursable. There shall be no liability for consequential damages or damages caused by third parties.

(1) Claims for damages asserted by the Orderer against the Supplier, irrespective of the legal grounds, shall be limited to cases of intent and gross negligence, insofar as such claims are legally permissible. The limitation shall not apply in cases where a particular contractual warranty or procurement risk has been assumed. This limitation shall also not apply in case of death, injury or impaired health, or in the event of breach of contractual obligations that are of considerable importance in terms of the BGB (German Civil Code) for achieving the contractual purpose.

(2) The liability of the Supplier for all kinds of claims for damages asserted by the Orderer shall be limited in each case to the amount of damage, the possible occurrence of which was apparent to the Supplier upon signing the contract based on the circumstances (e.g. high-risk purpose of the contract) of which it was expressly informed by the Orderer.

(3) These regulations shall not exclude any further claims under the German Product Liability Act.

XI. Moulds, tools, sales documents
(1) The costs for the production, procurement and alteration of special moulds and tools shall be borne by the Orderer. Such moulds and tools, as well as all copyrights pertaining to them, shall remain the property of the Supplier even after payment has been made. This shall not apply if the Orderer provides its own production moulds or tools for executing the order without the Supplier having made significant alterations to such.

(2) To execute its orders, the Supplier shall use solely production moulds and tools provided by the Orderer, insofar as the Supplier has made no significant alterations to these.

(3) The Supplier shall hold available the production moulds and tools purchased by the Orderer until such time as these have naturally deteriorated, however for one year after the final delivery at the latest.

XII. Breach of property rights
With regard to the execution of the order that the Orderer places, based on its own instructions, requests or guidelines for shapes, colours, dimensions and weights, the Orderer shall be liable for ensuring that such execution does not encroach upon copyrights, industrial property rights or other rights of third parties. If claims are asserted against the Supplier with regard to the breach of above-mentioned rights or with regard to competition law, the Orderer shall indemnify the Supplier from all costs and liabilities arising herefrom and shall also make reasonable prepayments and provide appropriate securities at the request of the Supplier.

XIII. Data collection
The Supplier shall store in its electronic data processing system personal, business-relevant information about the Orderer.

XIV. Place of jurisdiction, applicable law
(1) Place of jurisdiction for all and any disputes arising from the contractual relationship shall be Ingolstadt. The Supplier shall also be entitled to file a suit with the competent court for the head office of the Orderer.

(2) German law shall apply.

XV. Partial invalidity
Should a provision of the General Terms and Conditions of Sale and Delivery be or become void or invalid, the validity of the remaining provisions shall remain hereby unaffected. The void or invalid provision shall be replaced by the valid regulation that corresponds as closely as possible to the commercial purpose of the invalid provision.