

## **General Terms and Conditions for Distributors**

As of January 2017

### **CHAPTER I Duties of the Distributor**

#### **Article 1 - Legal situation of the Distributor**

1.1 The Distributor shall buy and sell in his own name and for his own account. He shall act as an independent trader towards both the Supplier as well as the Customers. He shall effectively promote the sale of the Contract Products in the Contract Territory, without being authorised to act in the name of the Supplier. Furthermore, he shall safeguard the interests of the Supplier with the due diligence of a responsible businessman and shall always keep the Supplier informed of his activities as well as of the market conditions within the Territory.

#### **Article 2 - Prices and conditions of sale and resale**

2.1. In the absence of a different agreement, the Distributor is in principal free to set his resale prices. However, the Supplier shall be free to agree on a certain resale price with the Distributor before the respective conclusion of the contract with an end customer. If no agreement can be reached on the resale price, the Distributor is not entitled to sell the goods to an end customer.

2.2. The Distributor shall sell the Contract Products with the trademark and/or appearance prescribed by the Supplier.

2.3. All transactions between the Supplier and the Distributor are based on the Supplier`s General Terms of Delivery as an integral component. Depending on the territory, the respective Terms of Delivery for Austria or abroad apply. The full text of the General Terms of Delivery can be accessed as a pdf file and printed for documentation purposes at <http://krasser.at/en/0115/gtc>. The payments due to the Supplier shall be paid in Euros to the account that he has stated.

#### **Article 3 - Obligation to buy a minimum quantity**

3.1. At the beginning of their cooperation, the respective Distributor and the Supplier shall agree in writing on the Contract Territory in which the Distributor operates and the extent to which the Distributor`s activities in the Contract Territory are concluded exclusively (without further Distributors) or not exclusively (with other Distributors).

3.2. In the absence of a written agreement, the respective federal state or country in which the Distributor is headquartered shall be deemed to be the contract territory. In the absence of any deviating written agreement, it shall be understood as agreed that the Distributor`s activity in the Contract Territory is not exclusive.

#### **Article 4 - Marketing**

4.1. The Distributor shall advertise the contract products in the contract territory. The costs of this advertising shall be borne by the Distributor.

4.2. The Distributor shall inform the Supplier in good time of any contemplated participation in fairs and exhibitions and is obliged to give the Supplier the opportunity to participate in these fairs and exhibitions at his own request. The Distributor is obligated to refrain from participating in fairs and exhibitions if the Supplier is thereby excluded from other international fairs and exhibitions in which he wishes to participate, due to trade fair and exhibition regulations.

#### **Article 5 - Prohibition of competition**

5.1. During the cooperation and for a period of five years after the termination of the cooperation between the Supplier and the Distributor, the Distributor shall not manufacture or commission the manufacturing of products, which compete with the Contract Products of the Supplier.

Within this timeframe, the Distributor shall not in any capacity, directly or indirectly, within or outside the Territory, engage in trade with competing products; this also applies to second-hand products.

5.2. However, the Distributor shall be entitled to distribute competing products. If the Distributor wishes to do so or, on the date of the signing of the Contract, he already does so, he shall inform the Supplier in writing before the commencement of this activity. If he undertakes such an activity, the fulfilment of his obligations towards the Supplier must not be impaired.

After the expiration of this period, the Supplier has the right to terminate the exclusivity of the Distributor in the Territory and appoint further persons or firms for the sale or the representation of the Products within the Territory.

#### **Article 6 - Trade secrets**

6.1. The Distributor shall not, even after the expiration of the Contract, use or communicate to third parties know-how that has not entered the public domain or trade secrets of the Supplier, which he may have learnt in any way through his activity in connection with the Contract.

#### **Article 7 - Appointment of sub-distributors and / or agents**

7.1. The Distributor is entitled to appoint sub-distributors or commercial agents for the sale of the Contract Products in the Contract Territory. He shall immediately inform the Supplier of such appointments. Without the prior consent of the Supplier, the Distributor is not entitled to appoint sub-distributors or commercial agents for the sale of the Contract Products in the Contract Territory.

7.2. The Distributor shall continuously keep the Supplier informed of the activities of those sub-distributors and commercial agents in the Contract Territory.

#### **Article 8 - Sales prohibition outside of the Contract Territory**

8.1. The Distributor shall refrain from active sales outside the Contract Territory in accordance with the agreements with the Supplier specified in Article 3 of this Contract. The Supplier reserves all other territories for himself or for other distributors to whom he has allocated or will allocate such territories. Thus, the Distributor shall refrain from seeking customers for the Contract Products, from establishing any branch and from maintaining any distribution depot outside the Contract Territory.

8.2. The Distributor shall not sell the Products to customers having their place of business or - in default of such place - their place of residence outside the Contract Territory. All inquiries from customers residing outside the Contract Territory shall be forwarded to the Supplier by the Distributor. In this case, the Distributor will receive a procurement commission from the Supplier, if this has previously been agreed upon with the Supplier.

8.3. The Distributor shall not sell to customers or sub-distributors of whom he knows, or should know, that they intend or plan to resell outside the Contract Territory.

#### **Article 9 - Supplier's trademarks and symbols**

9.1. The Distributor shall use the Supplier's trademarks, trade names or any other symbols, but only for the purpose of identifying and advertising the Contract Products within the scope of the Contract and in the Supplier's sole interest.

9.2. The Distributor shall neither register, nor have registered, any of the trademarks, trade names or symbols of the Supplier (or any which are similar to those of the Supplier) in the Contract Territory or elsewhere.

9.3. Except for the purposes of Article 28, the right of the Distributor to use the Supplier's trademarks, trade names or symbols, as provided for in the first paragraph of this article, shall cease immediately when this Contract expires or is terminated for any reason.

### **Article 10 - Assistance against unfair competition and infringement of industrial property rights**

10.1. The Distributor shall inform the Supplier of all acts of unfair competition affecting the latter and of all infringements of industrial property rights of the Supplier which come to his notice. The Supplier shall have the right to decide how to protect himself against such acts and infringements at his own discretion. At the Supplier's request, the Distributor shall provide such assistance at his own expense.

### **Article 11 - Minimum stocks**

11.1. The Distributor may, at his own expense, maintain a stock of the Products, as well as a stock of corresponding spare parts.

### **Article 12 - Repair and after-sales service**

12.1. The Distributor shall provide simple repairs and customer service (small repairs). This shall apply to all Contract Products in the Contract Territory, irrespective of when and by whom the Contract Products were delivered. Complex repairs and customer services are provided by the Supplier. The remuneration for repairs and customer service shall be payable to the party who performed the respective repair work. In case of doubt, the Supplier decides whether the repair or the customer service shall be provided by the Supplier or the Distributor.

## **CHAPTER II Duties of the Supplier**

### **Article 13 - Documents and advertising material**

13.1. The Supplier shall provide the Distributor with all necessary documents, prospectuses and any other information, which remain the property of the Supplier, unless the Contract provides for their transmittal to customers.

### **Article 14 - Obligation to supply a minimum quantity**

14.1. In the absence of a different written agreement, the Supplier shall not be obliged to supply a minimum quantity. The Supplier constructs and supplies the Contract Products as required and at the request of the Distributor.

14.2. The delivery periods agreed on by the Distributor and the end customer shall be coordinated and agreed on in writing, beforehand, with the Supplier.

14.3. Delivery times are non-binding, but the Supplier shall make an effort, to his best knowledge and in good conscience, to keep to the deadlines. The Distributor acknowledges that delivery delays may be a result of temporary overloads or other events, and will not make any legal claims (e.g. compensation) due to delivery delays by the Supplier.

### **Article 15 - Direct sales of the supplier in the Contract Territory**

15.1. If exclusivity has been agreed upon with the Distributor in accordance with Article 3, the Supplier shall not appoint another person or another firm for the sale or the representation of the Contract Products in the Contract Territory of the Distributor.

15.2. However, the Supplier reserves the right to sell products directly to customers in the Contract Territory. The Distributor shall receive commission for each direct sale concluded by the Supplier with customers residing in the Contract Territory.

15.3. The Supplier shall inform the Distributor of all direct sales without delay. The Distributor's contractual right to commission for such transactions does not apply if the Supplier has reserved the exclusive supply of certain customers in a separate, written agreement.

### **Article 16 – Direct sales by third parties in the Contract Territory**

16.1. The Supplier shall not sell the Contract Products to customers outside the Contract Territory of whom he knows or should know that they intend to resell in the Contract Territory.

16.2. The Supplier shall impose on his other Distributors obligations to not sell actively or passively in the Contract Territory, if the respective Contract Territory has been exclusively assigned to the respective Distributor.

### **Article 17 - Consignment warehouse**

17.1. The Supplier shall only be obliged to supply products to a consignment warehouse (warehouse near the Distributor) or temporary storage facility of the Distributor, if this has been agreed upon in writing. The relevant written agreements shall then apply to the warehouse.

## **CHAPTER III Discounts granted to the Distributor**

### **Article 18 - Discounts**

18.1. The Distributor shall receive a discount on the Supplier's respective sales prices for all purchases of Contract Products and for all purchases of spare parts. The discount amount shall be individually agreed upon in writing in advance.

## **CHAPTER IV Commission of the Distributor for direct contracts concluded by the Supplier**

### **Article 19 - Commission for direct contracts**

19.1. The Distributor is entitled to commission for all direct contracts the Supplier concludes with customers residing in the Contract Territory during the term of the Contract under the terms of Article 15 and in accordance with the written agreement, irrespective of whether or not he has mediated the transaction.

19.2. Exceptions to this are sales to customers for whom the Supplier has reserved the exclusive right to sell in accordance with Article 15.

### **Article 20 - Spare parts and products of another make**

20.1. The Distributor is entitled to a commission as stipulated in Article 19 and in accordance with the written agreement, for all direct contracts for the supply of spare parts for the Contract Products, including those of another make.

### **Article 21 - Calculation of commission**

21.1. All commissions shall be calculated on the basis of the invoiced net sales price.

21.2. The costs for installation, initial set up and similar ancillary services, which are essentially work and labour, shall be deducted insofar as they are included in the invoiced sales price.

### **Article 22 - Arising of the commission claim**

22.1. The Distributor is entitled to commission after the Supplier has received the customer's payment; however, the amount of accrued commission shall solely be determined by the sum actually paid by the customer.

### **Article 23 - Maturity and payment**

23.1. In the absence of a deviating written agreement, the Supplier shall determine the commission claim of the Distributor for each fiscal year and indicate all contracts for which the Distributor is entitled to receive a commission.

23.2. Payment of the commission shall be made no later than at the end of the third month following the past fiscal year.

#### **Article 24 – Taxes**

24.1. The commission payments are to be net commission, plus the respective applicable value-added tax.

### **CHAPTER V Duration of the Contract**

#### **Article 25 - Expiration of the Contract**

25.1. These general Terms and Conditions apply to Distributors until the effective termination of the cooperation. Each party, the Supplier and the Distributors, may terminate the cooperation by unilateral declaration by giving a six-month notice by registered letter, which becomes effective in the middle of the year or at the end of the year.

#### **Article 26 - Early termination**

26.1. Without prejudice to any cases expressly provided for in the Contract, the Contract may be terminated immediately by registered letter in the case of any fundamental breach of Contract. Such a termination may also take place in the event of a serious change in the legal structure or ownership of one of the parties, which leads to an impairment of the result that the other party could reasonably expect from the Contract.

#### **Article 27 - Return of information and advertising material**

27.1. On expiration or termination of the Contract, the Distributor shall, without being asked, return to the Supplier all information and advertising material, as well as documents specified in Article 13, which have been made available to him by the Supplier.

#### **Article 28 - Disposal of stock and settlement of ongoing orders on the expiration or termination of the Contract**

28.1. On the expiration or termination of the Contract, the provisions of the Contract shall continue to govern the disposal of stock and settlement of ongoing orders.

#### **Article 29 - Indemnity and compensation**

29.1. No indemnity or compensation shall be claimed on the grounds of the expiry or termination of the Contract, unless one of the parties fails to fulfil their contractual obligations.

### **CHAPTER VI Other Provisions**

#### **Article 30 - Dispute settlement**

30.1. Any dispute arising out of or in connection with this Contract shall be settled by the court having jurisdiction at the Supplier's place of business or where the Distributor has his registered office if the Supplier acts as plaintiff or the disputes are settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.

#### **Article 31 – Precedence of the Distributor`s Contract**

31.1. The General Terms and Conditions for Distributors apply whenever no written, bilateral Distributor`s Contract has been concluded between the Supplier and the Distributor.

31.2. If a written, bilateral Distributor`s Contract has been concluded, this shall take precedence over the General Terms and Conditions for Distributors. The General Terms and Conditions for Distributors shall supplement the Distributor`s Contract only where the Distributor`s Contract contains no or inaccurate or misleading terms in comparison to the General Terms and Conditions for Distributors.

### **Article 32 - Legal succession**

32.1. All rights and obligations shall be transferred to the respective legal successors (individual or universal successor). The transfer of rights and obligations to third parties by the Distributor is not allowed without the express prior written consent of the Supplier.

### **Article 33 - Written form**

33.1. Verbal ancillary agreements are deemed not to exist. Any changes and supplements to these General Terms and Conditions for Distributors must be made in writing. This also applies to ancillary agreements and assurances, subsequent amendments to the Contract as well as the renouncement of the written form requirement.

33.2. The written form shall be complied with and an agreement is deemed to have been reached if an e-mail with the respective content is answered by a representative of the contracting party and it is explicitly stated in the e-mail that the content of the received e-mail is accepted.

33.3. If e-mails remain unanswered or their content does not unambiguously state acceptance they shall not be considered binding, neither for the sender nor for the recipient.

### **Article 34 - Severability clause**

34.1. The invalidity of individual provisions of these General Terms and Conditions shall not affect the validity of the remaining provisions, and the ineffective provision shall be replaced by an effective provision, which is as close as possible to the economical and legal meaning and purpose of the former one. This also applies in the case of a lack in the provisions.

### **Article 35 - Assignment of the Contract**

35.1. Neither party shall assign the Contract without the agreement of the other.

### **Article 36 - Pledge or lien**

36.1. The Distributor shall have no pledge or lien on the property of the Supplier

### **Article 37 - Applicable law - Governing version**

37.1. These General Terms and Conditions shall be governed by the law of the country where the Supplier has his registered office. The German version of the Contract shall be the governing version. Austrian law shall be applied exclusively to all legal relationships with the exclusion of the reference provisions of the conflict of laws provisions and of the UN Convention on Contracts for the International Sale of Goods

APPENDIX 1: The General Terms and Conditions of Delivery of the Supplier may be found on <http://krasser.at/en/0115/gtc>