

## **General terms and conditions**

**[17th December 2018]**

### **Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH (K.I.M.W.)\***

[\*hereafter named also "KIMW GmbH" or "K.I.M.W." or "KIMW" if applies]

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## **A. Services/Test reports/ Analysis**

### **I. Scope and Contract**

These general terms and conditions govern the rules between the customer/orderer of services, testing reports, failure analysis reports as far as other problem analysis reports and the Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH (K.I.M.W.), Karolinenstr. 8, 58507 Lüdenscheid, commercial register: HRB 5014 AG Iserlohn, lawfully represented by the directors Dipl.-Ing Stefan Schmidt and Dipl.-Ing. Thomas Eulenstein [hereafter referred to as "institute" or "K.I.M.W."].

The general terms and conditions remain valid as having been approved at its full content by the orderer if a claim is not filed within 7 calendar days - counted from the date stamp - the order is placed or an objection is filed. Any terms and conditions of the other contracting party contrary to or deviating from our own are not accepted.

The execution of an order according to the terms of payment and delivery requires a written notification of K.I.M.W. in advance. Silence of the contractor with regard to Sales and delivery conditions oversent is not to be considered as acknowledgement.

The object of the Company is, as entered in the Commercial Register, research and developments in the area of plastics engineering and mould-making, the promotion of new technologies and innovation, technology transfer and personnel qualification. This includes the operation of the business of the K.I.M.W. as far as the to offer consulting and service and the production of prototypes, samples and small batches. The business is registered as an institute of the technical college Fachhochschule Südwestfalen according to the law, §29 Abs. 5 Hochschulgesetz NRW.

### **Formal demands**

The acceptance of an order must be confirmed by K.I.M.W. in written form. Contract additions unfold their effectiveness only if they are confirmed also in written form by K.I.M.W.. Force majeure, industrial disputes, operational interruptions that are not the fault of the operator, disturbances, official measures and other unavoidable events entitle the contractor regardless of his other rights to withdraw from the contract.

Modifications of this agreement have to be made in accordance with persons in charge and authorised to represent the company and have to be made in written form. Test data and results must be put in writing and become binding not before they are signed by a person in charge and authorised to represent the company.

Offers will be specified to the individual order and consider information available at the time of the order. In case of new information, changes of the offer is possible, but in case of changes of the offer before, the parties must agree to in written form. Testing of specific components as far as joint projects or projects, not included in the offer, will be made by the orderer. The same applies in case of outsourcing of the specific testing to a third party.

### **Oversending of samples/ drawings/ test materials / costs**

Test material has to be sent to K.I.M.W. free of delivery charges. Material not used in the execution of an order passes into the ownership of K.I.M.W. if it is not reclaimed within 4 weeks – data of the post stamp- after the announcement of test results. If material shall be reclaimed, a short message with the order is necessary.

Test material used by a test passes into the ownership of K.I.M.W. automatically when it is used or partially consumed, as far as no other agreement was made in advance.

The orderer is obliged to release K.I.M.W. from all third-party claims on account of a legal offence. The orderer has to bear the return expenses of test material.

### **Exception for courts and prosecution**

Preceding conditions shall not apply to test material sent by any court or prosecution.

### **Liability disclaimer in transport**

K.I.M.W. assumes no liability for the transport of test material.

During the period of retention, test material will be handled and stored by us with the same level of care and attention as we would give to our own property.

### **Exceeding the recommended scope of examination**

K.I.M.W. can extend or reduce the scope of examination if it appears essential for the appropriate performance of an order. In case an order exceeds the size of the agreed level, the orderer can expect that K.I.M.W. informs the orderer about the deviant scope and the price of essential work for approval.

### **Test result / cost for repetition of a test / warranty**

In research of the contractor it is possible, that other further testing methods or other methods and similar materials exist, which could meet the same requirements of the orderer. The specification does not free the orderer to verify the testing results of the contractor, to prove testing results and parameters of testing and material, especially as far as the use of results and with regard to the purpose of material use. K.I.M.W. assumes no liability for the results. §675 Abs.2 BGB will be applicable.

With regard to the long theoretical and practical experience of the specialists of the K.I.M.W. in different fields of plastics engineering, there are good prospects for the success of a project, while similar projects have been successfully completed, but there will be no liability and guarantee in legal sense that a project succeeds.

The test result is communicated in written form. If the orderer objects against the reported test results, K.I.M.W. verifies these to the results, the used testing equipment and, if applicable, the corresponding testing procedure. In case test results are confirmed, the orderer bears costs of the repeated test, otherwise test results will be adjusted complimentary.

If test results are not improved in an appropriate period of time or improvement fails, the orderer can claim reduction of the purchase price or has the right to terminate the contract.

Apparent lack in test results or other defects and deficiencies must be indicated to K.I.M.W. immediately in written form to obtain guarantee; otherwise, warranty shall be voided.

## **II. Conditions of payment**

The conditions of payment depend on the order and to whom the offer was made. (see under I.)

### **Costs**

#### **Staggering**

For offers of K.I.M.W. with a net amount under 3.000 €, the amount is payable 14 days net from receipt of invoice plus 19% VAT.

For offers with a net amount of over 3000 € up to 10.000 €, 30 % of the invoice amount is payable immediately before an invoice is issued and 70% after the invoice is issued, each including 19% VAT.

#### **Calculation by hour pool / establishment of pool of hours**

If a pool of hours is established, the conditions of payment depend on the individual order. In this case, the conditions of payment valid are mentioned in the offer.

Normally, 30% of the net amount of the invoice, plus 19% VAT – in some individual cases 50% plus 19% VAT - is payable before an invoice is issued, and 50% to 70% i.e. the rest of the amount of the invoice is payable, if the last position of the invoice is done and the invoice is issued. K.I.M.W. reserves the right to pose invoices at other stages of progress of work.

The payments depend on the progress of the project in case of testing, which continues to the end of a year or that will last over a year or more. In these cases, there will be a monthly invoice, that considers the progress of the project.

#### **For all invoices applies:**

The issued amount of the invoice is payable 14 days net, with indication of the invoice number from receipt of the invoice to account Sparkasse Lüdenscheid, Kto.-Nr. 570, BLZ 458 500 05 or to account Volksbank im Märkischen Kreis e.G., Kto.-Nr. 231 039 500, BLZ 447 616 34, without any deductions.

IBAN Sparkasse Lüdenscheid DE92458500050000000570 ; SWIFT-BIC WELADED1 LSD

IBAN Volksbank im Märkischen Kreis eG DE41447615340231039500;  
SWIFT-BIC GENODEM1 NRD

All prices are exclusive 19 % value-added tax (exclusive 19% VAT).

### **Incidental expenses/costs in case of establishing a pool of hours**

All incidental expenses (for example hotel costs, and so on) will be charged on time and material and will be calculated at cost when there is no other agreement – grounded on written consent- between the parties.

Travel costs of a K.I.M.W.-employee will be calculated additional with 80,00 € per hour and 0,60 € per KM or will be billed at cost and at expense.

In case of meetings, being appointed by the orderer in the premises of the orderer, K.I.M.W. calculates a flat-rate, which is individually negotiated and which is mentioned in the offer.

Notwithstanding the service, deviating from an offer, K.I.M.W. reserves to consider the expenses at cost and take the receipts to issue an invoice.

In case of a calculation through a pool of hours, only the actual costs will be calculated upon request against proof. Pool-Hours which were considered to be necessary before in the offer, but which are not used, will naturally not be settled.

In case of an establishment of a pool of hours, not the price for an individual service is fully calculated, but the individual prices of the individual services and incidental expenses will be netted off against the established pool of hours – normally in advantage of the orderer- and will be mentioned in the offer.

Costs of outsourcing to third parties will be ordered directly by the orderer, if nothing else is agreed to in the offer.

### **III. Handling expenses**

#### **Testing costs**

Testing costs are calculated on the "Overview of prices of K.I.M.W." ( see [www.KIMW.de/preise](http://www.KIMW.de/preise)), as long as there are no other special costs defined for special tests.

#### **Validity of ZSEG for courts and prosecution**

Testing prices are calculated on the ZSEG for courts and prosecution if no other agreement is made.

#### **Cancel of the test**

If test or examination is cancelled prematurely for reasons attributable to the orderer expenses incurred up to that point of time shall be invoiced.

### **IV. Liability**

K.I.M.W. is not liable for any damage caused by its employees except for damages based on a premeditated or grossly negligent breach of obligation on our part.

### **Exclusion of claims to damages**

All claims of damages going beyond are excluded. This limitation of liability is also valid for damage caused by later improvement. The warranty – presented below I.- remains unaffected.

If there is an infringement of an obligation essential to the contract due to negligence, our obligation to compensate for damages to person and property and financial loss is limited to the amount covered by manufacturer´s liability insurance. K.I.M.W. allows full inspection of the documents concerning the manufacturer´s liability on demand of the orderer.

### **Limitation of claims**

Claims of damage not underlying §634a BGB are time-barred within 3 years. Time limit of limitation shall begin to run with the receipt of the test report in the sphere of the orderer.

### **V. Copyright and related rights**

#### **Copyright**

As far as the services rendered are protected under copyright law, K.I.M.W. reserves its copyright. The orderer is allowed to only use the test expert result with all its documentation in accordance with the agreement. Another way beyond the intended use, a change of text of documented test expert results or an abbreviation of the text shall not be allowed to the orderer without written consent of K.I.M.W.. This also remains valid in case of a hand over of test expert documentation to third parties.

#### **Consent in advance in case of a hand over of expert documentation**

The publication or reproduction of text, pictures, drawings and statistics of test expert documentation requires the previous written approval of a person or organ authorized by K.I.M.W.. Copies shall not be allowed except for the use and the purpose intended under the agreement with respect to the purpose of usage of the test expert documentation and test results.

#### **Limit of time of publication / consent**

Testing expert assessment, testing expert documentation and testing reports published without consent in advance of K.I.M.W. shall only be copied or published within 2 years after submission and shall remain unchanged as far as form and content of expert assessment is concerned. In case of change of standards or other technical rules, the orderer shall call for written consent of K.I.M.W. in advance.

## **Other copyrights**

The orderer has to check, if a third party is owner of any copyrights or other related rights in the patent literature.

As far as no other agreement is made in written, inventions belong to the party, who has made the invention. Inventions, which are made by both parties in common in a joint project belong to both partners. If patents result out of inventions, the parties will make a new suitable agreement.

## **VI. Applicable law**

German law is the sole law applicable between the two parties, i.e. the governing law is that of the Federal Republic of Germany.

## **VII. Place of destination**

The place of destination of piece goods is Lüdenscheid, main station.

## **VIII. Place of jurisdiction**

Lüdenscheid, Germany, is agreed as venue for all disputes arising out of this agreement in cases in which the orderer is a merchant, a legal entity of public law, a public special fund or has no general legal venue in Germany. The same applies if the customer does not have a general jurisdiction in the EU or if the general residence is unknown at the time of commencement of an action.

## **B. Project agreements in joint projects**

### **I. General information**

Before a joint project (Verbundprojekt=VP) starts, the scope of project will be defined by the project partners of the cooperation. After the projects has begun, changes on the content and the strategic objective of a project can only made by agreement of all partners. There is no liability for the technical success of a project.

### **II. Contract**

The contract enters into legal force after the partner signed the agreement to take part in the joint cooperation before the project starts. It ends after the time of the project as far as it is not terminated before ending for good cause or because of other reasons.

Individual agreements of the partners and the K.I.M.W. are still possible before and also when the project has yet started, in which individual services for a partner can be rendered.

### **III. Termination for good cause**

Each party can terminate the project contract but only for good cause. Otherwise in case of an exit before the end of the project the leaving party is still obliged to pay the whole amount for the project. A good cause in legal sense is the exit of several partners of the project, so that there will be no financial base to reach the aims set with the remaining partners or the fact, that the results of the project show, that the aims cannot be reached anymore or can only be reached with a disproportionate effort.

In case of a termination of the project contract, the project coordinator has to be informed about the good cause in written form. On demand of another project partner, the leaving party has to hand out all the documents from other partners, data sheets and data carrier and all the objects, that were handed out to him by another partner and is obliged to delete any secret information, secret copies of information, not to be disclosed due to the non-disclosure agreement. The project agreements of the other parties is not affected by a termination of the project agreement of the leaving party.

The project will start with the kick-off meeting in the runtime of the project, agreed to in the project contract, and will end with the final meeting. KIMW is in charge of the tasks, listed in the project flyer and the contents of the kick-off meeting the partners coordinated together as far as for the scope of work and schedules being updated after the kick-off meeting.

During the runtime of the project interested parties can join the project also after the kick-off meeting took place. In such a case, the full amount of the project fee has to be paid.

If specific services were offered during a joint project, for example as a pool of hours, they won't be allocated with the project fee and will be invoiced at cost. In case of additional expenses for specific services in a joint project, which exceed the scope stipulated between the parties, the additional expenses will be invoiced by KIMW. In such a case, the joint project partner will be informed in advance with a brief information or a new offer.

KIMW defines a minimum attendance for the project that will be realised if reached. If the minimum attendance cannot be reached, KIMW has the right to cancel the project. All the obligations that were caused heretofore expire if the project is cancelled. In case of the project is cancelled, the joint partner will be informed.

### **IV. project results**

KIMW is obliged to make the project results available to the joint project partners exclusively during the runtime of the project. KIMW reserves the right to make the results available to a third party after the runtime of the project.

As far as project results are generally known in public domain after the disclosure or were already known at the time of disclosure or have been made accessible by a third party and as far as individual agreements stipulate no other regulations, KIMW can make the project results accessible to third parties.

This does not apply to project results, which were found out by partners in a specific individual project for a project partner having an additional contract stipulating the specific project. These are treated confidential and will not be made accessible to third parties. More details must be stipulated in an individual non-disclosure agreement and in an individual contract between the project partner and KIMW.

The project results being deposited on a secret part of the internet homepage of the KIMW are made accessible only to the joint project partners. These are not made accessible to third parties. More details or individual non-disclosure agreements and other can be stipulated in separated individual contracts on demand of a party.

## **V. Copyright and related rights**

The joint project partners and the KIMW have equal rights on inventions made in the joint project.

KIMW reserves the right to register property rights on its inventions, found out in the joint project, as follows: protectable ideas, technical solutions, property rights, patents and trade marks, utility models and so on.

There is no license free use of project results, invented by KIMW, after the runtime of the project.

KIMW assures that property rights, which relate to a project partner due to its contribution of invention, will not be registered and also ideas, which are disclosed to KIMW by a partner in the joint project, will not be registered. That applies especially on possible patents.

## **C. Terms and conditions for e-commerce/ internet online-shop**

The Kunststoff-Institut provides for an internet online-shop for its products on [www.kunststoff-institut.de](http://www.kunststoff-institut.de) under the registry "SHOP".

In case of an order the following terms and conditions are valid if they are special to the foregoing ones (lex specialis).

The terms and conditions valid are shown shortly after the client selects the suitable client group as an entrepreneur or as a private person/ consumer. If the client chooses the wrong selection, he has to bear the legal consequences.

The Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH is responsible for the terms and conditions. The scope of application of the terms and conditions is the

order of an entrepreneur or a private person in the online-shop, i.e. the worldwide order of a product or digital content.

## **I. Kunststoff-Institut to Entrepreneurs (B2B)**

The Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH offers products and digital contents to entrepreneurs and private persons in its online-shop. Several helpful tools are offered for the everyday-business of entrepreneurs like a Guide to surface defects of moulding tools, reference products, data and CO<sub>2</sub>-components.

### **1. Products**

#### **a. Conclusion of contract**

The contract comes to a conclusion under the following cumulative conditions:

- 1) The client group, to which the orderer belongs, has to be confirmed by choosing the correct client group like entrepreneur or private person/consumer. The correct terms and conditions for one of those client groups are shown and have to be confirmed before the order by choosing a selection.
- 2) A product group has to be selected out of six (6) categories by clicking a button.
- 3) The prices are shown – containing VAT tax- after the german Preisangabenverordnung (PAngV), a german law concerning correct pricing conditions.
- 4) A product is chosen out of the listed products in the shop by clicking the button “In den Warenkorb” (send-button) regarding the products in your shopping basket.
- 5) The requested quantity of the chosen products/ product are/is confirmed by selecting an amount by choosing an arabic numeral out of the available numerals 0 or/ and 1-9.
- 6) In case of other selection opportunities in the online-shop, like for example the button “Sprache” (Language) of the “Guide to surface defects for moulding tools”, the requested language has to be chosen out of a selection of several languages, being available.
- 7) The client has confirmed the selection in the shopping basket, in which all the selected products are listed and confirms clicking the send-button “Proceed to Checkout”.
- 8) The client has confirmed data like address, VAT-ID (if entrepreneur), contact data, and delivery address. Regulations by law apply for abuse.
- 9) The client accepts the terms and conditions and –in case of private persons/consumer as clients- the “Widerrufsbelehrung” (revocation instruction for clients as private persons/consumers).
- 10) The client completes the order by clicking the send-button “Buy now”.

The requirements 1)-10) are preconditions for the conclusion of the contract.

#### **b. No revocation; withdrawal**

If the client is entrepreneur, there is no right to withdraw the contract after completing the order. Withdrawal is excluded.

#### **c. Payment**

The payment is made after invoice 14 days.

**d. Default of payment or acceptance**

The legal regulations apply.

**e. Retention of title**

The KIMW GmbH reserves title to the goods until the invoiced price has been paid in full.

**f. Delivery; Limitation of delivery**

The KIMW GmbH only delivers clients outside Germany upon receipt of the invoiced payment

**g. Warranty**

Warranty is excluded to the fullest extent permitted by law.

**h. Guarantee**

No guarantees are made.

**i. Liability**

Liability is limited to gross negligence and wilful intent.

**2. Digital contents (B2B)**

KIMW GmbH offers digital contents in the online-shop, for example the K-Advisor, for download. For digital contents, regulations above of C.I.1.a. to h. fully apply analogously.

**Rights of use of digital contents**

The rights of use of a digital content as nonexclusive right is acquired by the purchaser/orderer with receipt of the payment by KIMW. The right to use software as digital content is valid for the purchaser/order who paid the invoice as a licence. Further transfer of a acquired right to a third person or firm is not allowed. Non-compliance may result in claims for damages by KIMW GmbH.

**II. Private client/ consumer (B2C)**

The Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH offers products and digital contents also to private persons/ consumers in its online-shop, worldwide. Several helpful tools are offered for the everyday-business of entrepreneurs like a Guide to surface defects of moulding tools, reference products, data and CO2-components.

The Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH will not support a dispute regulation as an extrajudicial resolution. All disputes shall be settled to general jurisdiction courts.

**1. Products (B2C)**

KIMW GmbH offers products, named under C.II. also to private persons/ consumers.

### **Revocation instruction of private persons/ consumers**

If a client, who is a private person/ consumer- selects the shopping basket, in which all the requested products or digital contents are listed, which are chosen out of all the available products, the client selects the send-button "Weiter zur Kasse" (further to payment). Here, the client can select the client group private person/consumer.

Furthermore, the client can confirm by clicking the button "Verbraucher" (consumer) and a revocation instruction legally has to be placed at the disposal, in which the client is instructed about the right to revoke the order.

If the client has made wrong selections, legally it will be treated as an apparent mandate by german law and the contract comes to a conclusion.

The revocation instruction shows the following content:

#### **Right to revoke the order**

You are permitted, but at least within 14 days, to revoke your order without giving any reasons.

The right to revoke is 14 days from the day of conclusion of the contract. (see the subsequent conditions under "Vertragsschluss" (conclusion of the contract), as shown under C.I.1.a. and C.I.1.c. to i., analogously.

To exercise your right to revoke, you have to send a message to Kunststoff-Institut für die mittelständische Wirtschaft NRW GmbH, Karolinenstraße 8, 598507 Lüdenscheid, Abteilung Produkte (Products), phone: 0049-(0)2351-1064-119, email: [dormann@kunststoff-institut.de](mailto:dormann@kunststoff-institut.de), telefax: 0049-(0)-1064-190, by sending a message ( for example via post letter, telefax or email), in which you inform us about your decision, to revoke the order/contract.

You can use the sample "Revocation of the order", which is not statutory/ prescribed by law on our homepage [www.kunststoff-institut.de/widerrufsformular/Verbraucher](http://www.kunststoff-institut.de/widerrufsformular/Verbraucher) or send us another clear message in the ways, described above, in which you inform us about your decision to revoke.

If you choose the electronic way to revoke by the sample "Revocation of the order" in the link above, KIMW GmbH confirms your revocation as soon as possible. To keep the term of 14 days after the order/ conclusion of the contract, it will be sufficient, to inform us about your decision to revoke within the term.

#### **Consequences of a revocation**

If you revoke the order/contract after receipt of the product, we have to refund all your payments, which we have received, delivery costs included (apart from the costs, which occur from your selection of a delivery, divergent to our delivery costs as most economical solution from an objective and legal point of view as our offered delivery solution) as soon as possible and within 14 days from the day, KIMW GmbH received your message of revocation. For refunding, we use the same means of payment, you used in the transaction, after you paid due to our invoice and your order, apart from the fact, that another deviating agreement has been made about the payment between KIMW GmbH and the client before; there will be in no case remunerations for payments due to a revocation.

In case of an advanced payment of the client, KIMW GmbH keeps the products after a revocation and there will be no dispatch.

In case of dispatch and revocation, the client has to redeliver the products as soon as possible at own expenses within 14 days from the day we received a revocation message from a client about the revocation of the order or the client has to transfer the product to the product department at our registered office (address see above). The term is kept, if the client has re-sent the product/-s within 14 days from the day of the receipt of the message of revocation at KIMW GmbH.

### **Conclusion of contract B2C-products**

The contract about products and digital contents in case of a consumer (B2C-liason) comes to a conclusion under the conditions of C.I.1.a.1. to 11. analogously, as shown above.

## **2. Digital contents (B2C)**

KIMW GmbH offers digital contents in the online-shop to consumers, for example the K-Advisor, for download. For digital contents, regulations above of C.I.1.a. to i. apply analogously.

### **Revocation of contract of a digital product**

If the client as a consumer selects the shopping bag button, in which all the selected products are listed, the client confirms the order with the send-button "Weiter zur Kasse" (To payment). At this point, the client can choose a client group each entrepreneur or consumer.

Furthermore, a revocation instruction is shown, which instructs the client about his right as a consumer to revoke the order/ contract.

The revocation instruction under C.II.1. is valid and applies with the following limitation:

Digital data content have to be deleted in the sphere of the consumer if they have been downloaded as soon as possible.

The consumer loses the right to possess and use the digital content with the receipt of the revocation of the client at KIMW GmbH.

In case of a revocation of digital contents KIMW GmbH has a claim for damages equal to the price of the software/ digital content, because no adequate compulsion can be determined for the digital content downloaded.

### **Conclusion of contract B2c digital contents**

The contract about digital contents in case of a consumer (B2C-liason) comes to a conclusion under the cumulative conditions of C.I.1.a.1. to 11. analogously, as shown above, provided that the client had the revocation instruction under C.II.1.a. at the disposal, which only applies to consumers, but not to entrepreneurs.

### **3. Online-Dispute-Regulation (ODR)**

A dispute resolution shall be settled i.e. by the ODR (online dispute regulation); see the following link:

<http://ec.europa.eu/consumers/odr>

The KIMW GmbH will not support a dispute regulation as an extrajudicial resolution. All disputes shall be settled to general jurisdiction courts.

**Lüdenscheid, 17<sup>th</sup> December 2018**