General Terms and Conditions of Günther Karl GmbH

§ 1 Scope and Basis of the Contract

(1) These General Terms and Conditions (hereinafter "GTC") apply to all contracts entered into by **Günther Karl GmbH (hereinafter** "the Seller"**)** for the supply of refrigerated lubricants and related products to businesses (Section 14 of the German Civil Code (BGB)), legal entities under public law and special funds under public law **(hereinafter "the Customer").**
(2) These GTC apply exclusively. Any terms and conditions of the Customer that conflict with or deviate from these GTC shall not be recognised, unless the Seller has expressly agreed to their validity in writing or in text form. The unconditional execution of the delivery does not constitute such agreement.
(3) These General Terms and Conditions, in their current version, shall also apply to all future contracts for the supply of goods to the same Customer, without the need to refer to them again in each individual case.
(4) Delivery only: The subject matter of the contract is exclusively the delivery of the goods ordered. The filling of the Customer's machines, plant, tanks or other containers, as well as their cleaning, maintenance or technical inspection, are expressly **not** part of the Seller's delivery service and require a separate, express agreement.

§ 2 Offer, Quality and Copyright

(1) The Seller's offers are subject to change and non-binding, unless they are expressly designated as binding. A contract is only concluded upon the Seller's written order confirmation or upon fulfilment of the order.
(2) The required quality of the goods is determined exclusively by the individual agreements, the order confirmation and the product information expressly incorporated therein. General descriptions, samples or recommendations for use are only binding if this has been expressly agreed.
(3) Instructions for use and statements regarding suitability for the customer's specific plant or specific processing procedures require express confirmation in writing.
(4) The seller reserves all ownership rights and copyright in illustrations, drawings, calculations and other documents. Their disclosure to third parties requires the seller's prior consent.
(5) Verbal side agreements and representations made by the Seller's sales partners shall only become binding upon the Seller's confirmation in writing.

§ 3 Prices and Terms of Payment

(1) The agreed prices apply ex works/from the Seller's warehouse (EXW in accordance with Incoterms 2020), plus the statutory value-added tax applicable on the date of invoicing, as well as packaging and delivery costs, unless otherwise agreed. In the case of cross-border deliveries, additional customs duties, taxes or other public levies may apply, which the customer must bear.
(2) Unless otherwise agreed, invoices are due for payment without deduction in the agreed currency within **7 calendar days** of the invoice date and delivery of the goods. Upon expiry of this period, the customer shall automatically be in default of payment. The statutory provisions on default of payment (§ 288 BGB) shall apply.
(3) A cash discount is only permitted if expressly agreed.
(4) The customer shall only be entitled to set-off rights if their counter-claims have been legally established, are undisputed, have been acknowledged by the seller, or arise from the same contractual relationship. The customer may only assert a right of retention if their counter-claim is based on the same contractual relationship.

§ 4 Delivery, delivery times and default of acceptance

(1) Delivery dates and delivery periods are only binding if they have been expressly confirmed in writing by the seller as binding. The commencement of specified delivery periods is subject to all technical issues having been clarified and the customer having fulfilled their obligations to cooperate in good time.
(2) Reasonable partial deliveries are permitted, provided that they are usable by the customer and do not result in any significant additional expense for them. The seller shall bear any additional delivery costs arising therefrom.

(3) In the event of force majeure or unforeseeable operational disruptions for which the seller is not responsible (e.g. e.g. shortages of raw materials, strikes, official orders, supply bottlenecks from upstream suppliers or delays in cross-border transport/customs clearance), the delivery period shall be extended by the duration of the hindrance plus a reasonable start-up period. The seller shall inform the customer immediately of any such delays. If performance of the contract becomes unreasonable for either party, that party shall be entitled to withdraw from the contract; any consideration already provided shall be refunded immediately.
(4) If the customer is in default of acceptance or culpably breaches other obligations to cooperate, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time at which the customer falls into default. The seller is entitled to claim compensation for the damage incurred in this respect, including any additional expenses (e.g. storage costs).

§ 5 Dispatch, Transfer of Risk and Returnable Containers

(1) Unless otherwise stated in the order confirmation, delivery is agreed on an 'ex works/warehouse' (EXW) basis, which is also the place of performance for the delivery.
(2) Where a sale by delivery has been agreed, transport shall be arranged, at the seller's discretion, either by a haulage contractor (general cargo/tanker) or by a postal or parcel service provider. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handover of the goods to the relevant carrier (freight forwarder, carrier or postal/parcel service). This also applies to cross-border deliveries.
(3) The disposal of transport and sales packaging shall be carried out in accordance with statutory regulations (at the place of performance) at the customer's expense, unless otherwise agreed.
(4) Containers provided by the seller (e.g. IBC containers, drums, pallets) must be disposed of by the customer, unless otherwise agreed.

§ 6 Customer's Obligations Regarding Use and Inspection

(1) As the handling, preparation and operation of cooling lubricants depend to a large extent on the conditions at the customer's premises, the customer bears sole responsibility for checking the suitability, cleanliness and technical integrity of their filling equipment, machinery, pipework and storage tanks prior to filling.
(2) The customer is obliged, prior to preparing, mixing or using the cooling lubricant, to check the technical data sheets, product information and specifications provided by the manufacturer/seller (in particular regarding water quality, such as water hardness, chloride content, pH value and mixing ratio) on their own responsibility and to comply strictly with them.

Insofar as TRGS 611 applies to the respective application, the customer shall carry out and document the tests required under that regulation. In the event of a complaint, the customer shall, upon reasoned request, provide us with the test results and operational records relevant to determining the cause.

We shall not be held liable for damage demonstrably caused by unsuitable water or system conditions on the customer's premises or by handling that deviates from the instructions for use. The customer's rights arising from a defect in the delivered product that was already present at the time of transfer of risk remain unaffected.

Any use or mixing under unsuitable system or water conditions is at the customer's own risk.

§ 7 Liability for Defects (Warranty)

(1) Claims for defects by the customer are subject to the customer having duly fulfilled their statutory obligations to inspect the goods and give notice of defects (in Germany in accordance with § 377 of the German Commercial Code (HGB), and abroad in accordance with the relevant country-specific commercial law provisions). Insofar as is reasonable given the nature of the goods, the cooling lubricant concentrate must be inspected for obvious defects (e.g. colour variations, transport damage) before being mixed with water or introduced into the machine system. Hidden defects must be reported in writing immediately upon their discovery.
(2) Liability for defects under the law of sale relates exclusively to the agreed quality of the goods in their unopened, original condition at the time of the passing of risk. If a defect exists at the time of the passing of risk, the seller shall, at its discretion, remedy the defect by rectifying it or by delivering goods free from defects.
(3) Mixing, diluting or introducing the product into a circulation system does not automatically exclude claims for defects arising from a defect already present at the time of the transfer of risk. However, from the time of mixing or contact with foreign substances typical of the application (e.g. leaked oils, system cleaners, metal shavings, bacteria), the customer bears the burden of proof that the defect was already present in the unmixed original concentrate at the time of the transfer of risk.

(4) In the event of a complaint regarding a cooling lubricant that has already been mixed or introduced into the system, both parties shall cooperate in a proper investigation of the cause. Upon request, the customer must provide the seller with samples of the original concentrate from the batch in question (if still available), the mixing water used, and the current operating fluid for laboratory analysis.
(5) The limitation period for claims for defects is **12 months** from the date of delivery or the transfer of risk, insofar as such a reduction is permitted by law. This does not apply to claims for damages arising from injury to life, limb or health; in cases of wilful misconduct or gross negligence; in the case of defects fraudulently concealed; in the event of a guarantee having been given; or in the case of statutory rights of recourse (e.g. pursuant to Sections 445a, 445b of the German Civil Code (BGB)).

§ 8 Total Liability

(1) The Seller shall be liable without limitation for damage resulting from injury to life, limb or health arising from a negligent or intentional breach of duty by the Seller, its legal representatives or vicarious agents. The same shall apply to other damage arising from wilful misconduct or gross negligence, as well as to claims under the Product Liability Act or where a guarantee has been given.
(2) In the event of a breach of a material contractual obligation through slight negligence (a so-called 'cardinal obligation' – an obligation the fulfilment of which is essential for the proper performance of the contract and on the observance of which the contracting party regularly relies and is entitled to rely), the Seller's liability shall be limited to the damage typical of the contract and foreseeable at the time the contract was concluded.
(3) In all other respects, liability for damages – regardless of the legal basis (in particular in the event of a breach of obligations arising from the contractual relationship and from tort) – is excluded to the extent permitted by law.
(4) In particular, the seller shall not be liable for damage which can be proven to be attributable exclusively to unsuitable operating conditions on the customer's part, incorrect handling by the customer, unsuitable mixing water or unforeseeable external contaminants, provided that the seller has not breached any duty in this respect. Statutory contributory causation (Section 254 of the German Civil Code (BGB)) remains unaffected.

§ G Retention of Title

(1) The Seller retains title to the goods delivered until all claims arising from the ongoing business relationship with the Customer have been settled in full (simple and extended retention of title).
(2) The customer is entitled to resell the goods in the ordinary course of business. The customer hereby assigns to the seller all claims amounting to the final invoice amount (including VAT or foreign sales tax) arising from the resale against its customers or third parties. The seller accepts the assignment. The customer remains authorised to collect the claim even after the assignment.
(3) If the goods subject to retention of title are mixed with or processed by the customer using other materials (e.g. water, oils) in such a way that the original goods cease to exist as a separate item, the parties hereby agree that the seller shall acquire co-ownership of the new item in the proportion of the value of the goods subject to retention of title to the value of the other mixed or processed materials at the time of mixing.
(4) In the event of third-party claims against the goods subject to retention of title (e.g. foreign attachments or enforcement measures), the customer must notify the seller immediately in writing.
(5) The Seller undertakes to release the security to which it is entitled at the Customer's request to the extent that the realisable value of the security exceeds the claims to be secured by more than 10 per cent.

§ 10 Applicable Law, Jurisdiction and Severability Clause

(1) These General Terms and Conditions and the entire legal relationship between the Seller and the Customer shall be governed exclusively by the law of the Federal Republic of Germany, with the UN Convention on Contracts for the International Sale of Goods (CISG) expressly excluded.
(2) If the Customer is a trader within the meaning of the German Commercial Code, a legal person governed by public law or a special fund under public law, or if the Customer has its registered office outside the Federal Republic of Germany, the Seller's place of business shall be the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. However, the Seller is also entitled to bring an action at the Customer's general place of jurisdiction.
(3) Should any provision of these terms and conditions be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by the relevant statutory provisions of German law.