KEES VAN DER WESTEN
ESPRESSONISTIC WORKS B.V.

GENERAL TERMS AND CONDITIONS OF KEES VAN DER WESTEN ESPRESSONISTIC WORKS B.V.

Article 1 Definitions

The following definitions are used in these T&Cs (if the singular is used, this also means the plural).

Agreement: any agreement between KvdW and Buyer on the purchase of the Products, including agreed upon changes and additions and any attachment.

Buyer: the legal entity who enters into negotiations with KvdW regarding the purchase of the Products and / or who concludes an Agreement with KvdW regarding the purchase of Products.

KvdW: Kees van der Westen Espressonistic Works B.V, a private company with limited liability (“besloten vennootschap met beperkte aansprakelijkheid”) incorporated under the laws of the Netherlands, with its registered seat at Veldhoven, The Netherlands, and its office address at Van Elderenlaan 6, 5581WJ Waalre, the Netherlands, registered at the Chamber of Commerce under number 17082369.

Offer: any written or electronic proposal made by KvdW to a Buyer regarding the sale and delivery of specific Products.

Order: any order from Buyer to KvdW for the purchase of the Products.

Parties: KvdW and Buyer together.

Products: all espresso machines and parts offered and/or delivered by KvdW.

T&Cs: the most recent version of the General Terms and Conditions of KvdW.

Written: message sent by registered post or electronically by e-mail.

Article 2 Applicability

2.1 These T&Cs are applicable to all negotiations, Offers, Orders, and Agreements of and concluded with KvdW.

2.2 Any applicability of Buyer’s general terms and conditions is hereby explicitly excluded, unless otherwise explicitly agreed in Writing. In that case, the applicability of any such other terms and conditions will apply only to the relevant Agreement and/or Order.

2.3 Deviation from the provisions set forth in these T&Cs is only possible after Written notice or Written consent by KvdW, in which instance the other provisions shall remain in full force and effect.

2.4 If a dispute arises between KvdW and Buyer, and this dispute is not regulated by these T&Cs, the situation should be judged in line with these T&Cs.

2.5 If, at any time, KvdW does not (immediately) exercise its rights under the Agreement and/or the T&Cs, it shall not affects its rights and possibility to do so in the future.

2.6 KvdW reserves the right to amend the text of these T&Cs at any time.

Article 3 Offers

3.1. All Offers made by KvdW are made without any obligation (non-binding) and may always be revoked by it, even if they contain a deadline for acceptance. An Offer is based on the prices, rates and specifications, applicable at the time of the Offer. Offers are based on the delivery/performance of the work under normal circumstances and during normal working hours.

3.2. KvdW reserves the right to make changes in the Products that are displayed on the website, in the catalogue, brochures, and other promotional material, and to remove the concerning Products from its assortment.

Article 4 Agreement

4.1. An Agreement between KvdW and Buyer shall be concludedwhen the Order has been confirmed in writing by KvdW or when KvdW has started executing the Order at the Buyer's request. The Buyer is not entitled to revoke an Order, even if it has not yet been accepted by KvdW. KvdW is at all times entitled to refuse to accept such an Order.

4.2. KvdW may, at any time, break off negotiations regarding an Agreement yet to be concluded. In that case, the Buyer can never demand further negotiations or that KvdW pay compensation for any costs incurred and/or any damage or loss suffered or to be suffered.

4.3. Any agreements, oral or otherwise, made between KvdW and Buyer after the Agreement has been concluded shall only become effective after they have been confirmed in Writing by KvdW.

4.4. By concluding the Agreement, Buyer guarantees that it is sufficiently creditworthy.

Article 5 Models

5.1. If Buyer has been shown a model, a demo or an illustration, this should be presumed to have been shown as an indication only.

5.2. Any models, illustrations, numbers, measurements, weights or descriptions contained in catalogues, Offers, advertisements, price lists are shown as indications only.

Article 6 Prices

6.1. All prices used by KvdW are expressed in Euros excluding sales tax (VAT), possible other taxes and/or other duties.

6.2. KvdW reserves the right to correct the mentioned prices, in case of errors (including printing and typing errors) or the correction of omissions. KvdW cannot be held to its Offer if the Buyer can or should reasonably understand that the Offer, or any part thereof, contains an obvious mistake or clerical error.

In the event that after the moment of Order or after the Agreement has been entered into, but before the moment of actual delivery, price increases occur, on the basis of any circumstances whatsoever, KvdW shall be entitled to adjust the agreed price accordingly. Prices are subject to change without prior notice.

Article 7 Payment

7.1. All payments must be made in Euros, without any deduction or reconciliation through a bank transfer to the account number as stated on the (pro forma) invoice.

7.2. The amount payable must be paid in full before the final payment due date. Negligence by Buyer in respect of collecting the Products or complaints shall not affect its payment obligation.

7.3. The expected completion date and the final payment due date will be stated on the (pro forma) invoice of the ordered Products.

7.4. Unless otherwise agreed in Writing, production without (pre)payment will not occur. If payment is not received in time, the production will be postponed. The Order will be cancelled if the production is postponed twice.

7.5. In the event that there are deliveries in consignments, KvdW is allowed to separately invoice these deliveries in consignments.

Article 8 Deliveries

8.1. The specified delivery times are approximate only, unless explicitly agreed otherwise. KvdW shall honour the delivery time as much as possible, although the delivery time shall never be regarded as a final deadline.

8.2. Failure to meet the delivery time shall not result in default or liability of KvdW. In the event of non-timely delivery, KvdW must be given notice of default, and shall be given an additional reasonable term to procure delivery at a later date.

8.3. Delivery of the Products shall take place Ex Works (Incoterms), (5581 WJ) Waalre, Van Elderenlaan 6, or another location indicated by KvdW. The Products are considered to have been delivered by KvdW and to have been accepted by Buyer as soon as the Products are offered to Buyer in accordance with this clause.

8.4. The time at which the Products are made available to Buyer Ex Works (Incoterms), is considered the time of delivery and the moment at which the risk with respect to the Products passes from KvdW to Buyer. Buyer shall be responsible, at Buyer’s expense, for loading, transporting and (if applicable) exporting the Products. Any assistance or cooperation provided by KvdW in connection with any such activities shall not have the effect of shifting any cost or responsibility from Buyer to KvdW. If Buyer fails to take possession of the Products from KvdW indicated location on or before the date that is 30 days after the completion date, KvdW may, but shall not be obligated to, unilaterally terminate the Agreement and resell or otherwise dispose of the Products at Buyer’s loss and expense. This applies in full in case Buyer refuses to receive the delivery.

8.5. If agreed upon by Parties and confirmed in Writing by KvdW, KvdW shall arrange transport of the Products to Buyer, at Buyer's risk and expense.

8.6. KvdW is allowed to deliver the Products that are part of the Agreement in consignments (delivery in consignments).

8.7. A pick up note, delivery note or suchlike, provided by the delivery of the Products, serves as evidence of the delivery and the mentioned Products.

8.8. The Buyer shall not sell, resell, transfer, export, or otherwise dispose of the Products, directly or indirectly, to any customer or third party located in, or established under the laws of, a country or territory subject to European Union sanctions, as listed and updated from time to time on the official EU sanctions website: https://sanctionsmap.eu/#/main. The Buyer shall ensure that its own customers and affiliates comply with this restriction. Any breach of this clause shall constitute a material breach of the Agreement.

Article 9 Reservation of title

9.1 Regardless of actual delivery dates, all Products, materials and other goods supplied by KvdW will remain KvdW's property until Buyer has fulfilled all its obligations under the Agreements concluded with KvdW and made payment in full to KvdW for all delivered or to be delivered Products including the sales price, any possible arising associated costs, interest, expenses and any costs for other agreed activities undertaken.

9.2. If the destination of the Products is outside the Netherlands and the law of the country of destination of the delivered Products, at the time of import of the Products, provides for more extensive possibilities for retention of title than Article 9.1, the Parties agree that they (but only insofar as this concerns the property-law consequences of the retention of title to the Products) be deemed to have made a choice of law in favour of the law of the country of import of the Products (within the meaning of Section 10:128(2) of the Dutch Civil Code), on the understanding that if it cannot be objectively determined which country has more extensive possibilities for retention of title at the time of import of the Products, the provisions of Article 9.1 and the rest of this article will continue to apply.

9.3. The Buyer is obliged to: (i) insure the Products delivered but not (yet) (fully) paid, (ii) inform third parties that the Products delivered by KvdW to the Buyer have been delivered by KvdW under retention of title.

9.4. If the Buyer does not comply with its obligations or if there is a reasonable fear that the Buyer will not comply with its obligations, KvdW is entitled to immediately remove the delivered Products that are subject to retention of title from the Buyer's premises or from the premises of third parties who hold these Products for the Buyer. The Buyer is obliged to cooperate fully in this regard, on pain of an immediately payable penalty of 10% per day or part of a day that the Buyer fails to comply with this obligation, of all that the Buyer owes KvdW, without prejudice to the right to demand specific performance of the obligations referred to in the previous sentence and/or to claim compensation.

9.5. Buyer may not sell, rent, pledge or encumber in any other way any Products covered by the retention of title.

9.6. If third parties levy attachment on the Products supplied subject to the retention of title or wish to create or enforce rights in same, Buyer will be obliged to inform KvdW thereof as soon as possible.

Article 10 Warranty and Complaints

10.1. KvdW warrants the soundness of the delivered Products in conformity with the Agreement.

10.2. The warranty period is 12 months for wearing parts and 24 months for non-wearing parts. The warranty period starts at the completion date.

10.3. In order to appeal to a claim under the warranty, it is required that the Products are purchased from KvdW itself.

10.4. Buyer is obliged to inspect the Products coming from KvdW immediately at the time of delivery, at the risk of forfeiting all right of complaint or warranty. A possible complaint with regard to the amount of the delivered Products and transport damage needs to be immediately entered in the consignment note or delivery note, in the absence of which the mentioned amounts in the consignment note or delivery note are conclusive proof against Buyer of the fact that the right amount of the Products is received and that the Products are free from transport damage.

10.5. Complaints of Buyer with regard to the non-compliance of the Agreement of the by KvdW delivered Products and the resulting claims under a warranty are only handled in case Buyer submits to KvdW the guarantee certificate (invoice) and as far as these complaints or guarantee claims are submitted in Writing and within due time (maximum 14 days after the delivery) to KvdW, stating an as far as possible detailed description of the nature of the defect or failure.

10.6. The warranty does not cover or include defects or failures caused by:

- incorrect positioning or installation, for example by not taking into account the applicable safety regulations or instruction in the user, installation and/or any other kind of manual;
- deviations that are subordinate in nature, which do not prevent the use of the Products and are commonly acceptable within the sector, and technically not avoidable;
- consumable Products with accessories and parts that dependent on the nature and intensity of the use wear out (like rubbers, and such-like);
- incorrect and/or improper and/or other than normal use, and incorrect operation or load;
- external influences, like transport damage, damage caused by bumping or hitting, damage caused by weather influences of other natural phenomenon's;
- transport damage caused by not taking into account the transport instructions given by KvdW;
- not performing maintenance and cleaning activities in accordance with the instructions for use;
- use of non-original KvdW parts and accessories that are not released by KvdW;
- maintenance, repairs and adjustments carried out by parties who are not trained, qualified and/or authorized to carry out these activities (no professional coffee/espresso machine engineers); and/or
- power and voltage fluctuations, beyond the mentioned scope of toleration.

10.7. After receiving the guarantee claim, KvdW shall as soon as possible contact Buyer, after which Buyer shall give KvdW the opportunity to inspect the Products, if desired and KvdW shall give a definite answer about the applicability of the warranty in the concerning case.

10.8. In case KvdW comes to the conclusion that the warranty cannot be invoked, it shall inform Buyer as soon as possible thereof.

10.9. In case the warranty claim meets the relevant conditions, Buyer must notify KvdW in Writing of the claim within 30 days of becoming aware of the defects or failures. Upon receipt of this notice, KvdW will investigate the claim. If this investigation confirms a valid claim KvdW provides, at its own discretion, a reasonable solution towards Buyer.

Article 11 Communication

11.1. Buyer is responsible for the correctness, completeness and reliability of the information and data provided by or on behalf of Buyer to KvdW.

11.2. KvdW shall not be liable for misunderstandings, delays or improper transmissions of order data and communications as a result of the use of the internet or any other means of communication in the traffic between Buyer and KvdW or between KvdW and third parties, to the extent related to the relationship between Buyer and KvdW.

11.3. The final responsibility for the inspection of the correctness of numbers, Products, delivery address and delivery instructions of the Order is borne by Buyer.

11.4. The additional costs possibly incurred by KvdW due to incomplete or incorrect delivery instructions on the Order are at Buyer's expense.

Article 12 Cancellation

12.1. Buyer is not allowed to cancel a given Order and/or Agreement. In case Buyer nevertheless decides to cancel a given Order or Agreement in whole or in parts, Buyer is bound to compensate all reasonably made costs by KvdW with respect to the performance of the Agreement, the activities of KvdW and the loss of profits by KvdW, plus VAT.

Article 13 Liability

13.1. In case of an attributable failure to perform on the part of KvdW, its liability is limited to the net worth of the invoice amount (exclusive of VAT) of the concerning Agreement or, in case deliveries in consignments are agreed upon, the net worth of the invoice amount (exclusive of VAT) of the partial delivery related to the damage-causing event. The liability of KvdW is in all cases limited to the coverage of the liability insurance.

13.2. KvdW is not liable for indirect damage, including, but not confined to: trading loss, loss of profits, resulting loss, loss caused by business interruption, immaterial damage, financial loss and personal injury, including all possible claims of third parties, in the broadest sense of the word.

13.3. KvdW will under no circumstances be liable for any deterioration of the Product due to improper use or storage, processing, use or maintenance by Buyer or a third party and/or any other situation mentioned in Article 10.6 of these T&Cs.

13.4. Buyer shall indemnify KvdW against any claims of third parties that may incur damage in connection with the performance of the Agreement, which damage is attributable to Buyer.

13.5. KvdW shall deliver the Products ex works at the manufacturing facility of KvdW. KvdW warrants that the Products supplied shall comply with all applicable European Union laws and regulations at the time of delivery. The Buyer shall be responsible for ensuring that the Products ordered and the accompanying packaging, manuals and other information comply with all requirements set by the authorities of the country of destination, to the extent that such laws and regulations differ from the applicable European Union legislation. The use of the Products in conformity with the requirements set by these authorities is for Buyer's risk.

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Article 14 Confidentiality and intellectual property rights

14.1. All information, including but not limited to business information, which is focused on specific characteristics of the Products or business of KvdW (work process and pricing), which is provided by KvdW to Buyer in the context of the negotiations or the Agreement is strictly personal and confidential and may not be given to third parties, unless KvdW has given its Written consent and as far as it is necessary with regard to the performance of the Agreement.

14.2. All intellectual property rights regarding the Products and documents provided by KvdW (i.e. photos, prototypes, models, files, websites, brochures, et cetera used by KvdW) shall remain the physical and intellectual property of KvdW.

14.3. The exercise of the aforesaid intellectual property rights - including publication, transfer, reproduction, distribution of data, everything in the broadest sense of the word - both during and after the performance of the Agreement - is explicitly and exclusively reserved for KvdW.

14.4. Buyer is not allowed to remove or adjust any indication on the Products, referring to the intellectual property rights of KvdW.

Article 15 Force Majeure

15.1. KvdW will not be liable for any failure to perform or delay in performance of any of its obligations where such failure or delay is due to any cause or circumstance beyond KvdW reasonable control, including but not limited to strikes, labour disputes, fires, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government or semi−government authorities, severe weather events or any other event beyond the Buyer’s reasonable control wherever occurring.

15.2. Without prejudice to the other rights vested in KvdW, in case of force majeure KvdW shall, at its own discretion, be entitled to suspend the implementation of Buyer’s Order or to dissolve the Agreement without judicial intervention, such by informing Buyer accordingly in Writing.

Article 16 Applicable law and competent court

16.1. Dutch law is exclusively applicable to all rights, obligations, Offers, Orders and Agreements to which these T&Cs are applicable as also to these T&Cs. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is explicitly excluded.

16.2. All disputes arising out of or in connection with the Orders, Agreements, and these T&Cs and all other agreements that are concluded between KvdW and Buyer in the performance of or in connection with it shall be submitted exclusively to the competent court of Oost-Brabant (the Netherlands).