

## **General Delivery Conditions (ALB)**

### **1. Scope of validity**

1.1 These General Terms and Conditions concerning the rendering of services (hereinafter: General Delivery Conditions, **ALB**) are intended to clearly regulate the legal relationship between the purchaser (hereinafter: **purchaser**) and the supplier (W. Kunz Drytec AG, Dintikon AG, Switzerland, hereinafter: **W. Kunz dryTec AG**).

1.2 These ALB shall apply to all services rendered in connection with the planning as well as the production, delivery, assembly, commissioning, and the trial operation of machines, installations, products and accessories supplied by W. Kunz dryTec AG (hereinafter: **Services** and **service items**, respectively). Any deviating mandatory legal provisions or individual written agreements between the contractual parties as well as the General Installation Conditions of W. Kunz dryTec AG (AMB) shall remain in effect.

1.3 These ALB shall replace all previously applicable General Terms and Conditions or General Delivery Conditions between the parties or of W. Kunz dryTec AG.

1.4 Unless otherwise agreed upon in writing, the purchaser accepts these ALB without limitation or reservation by placing the order.

1.5 Any conditions of the purchaser deviating from these ALB shall be rejected and considered invalid unless W. Kunz dryTec AG has explicitly agreed to them in writing.

1.6 W. Kunz dryTec AG may modify these ALB at any time.

### **2. Conclusion of contract, orders**

2.1 As far as installation projects are concerned, the contractual relationship between the purchaser and W. Kunz dryTec AG shall be established exclusively by the mutual signing of a written contract.

2.2 Orders of additional services offered by W. Kunz dryTec AG in connection with an existing installation project shall also be placed in writing. However, an e-mail sent by the purchaser shall suffice for this purpose unless W. Kunz dryTec AG requires the submission of a written order. The acceptance of an order requires a written order confirmation by W. Kunz dryTec AG, which may be submitted in a letter, fax, or e-mail.

2.3 Order of spare parts must be received by W. Kunz dryTec AG in writing (letter, fax, or e-mail). The acceptance of such orders shall also require a written order confirmation by W. Kunz dryTec AG.

2.4 W. Kunz dryTec AG may reject an order without giving any reasons.

2.5 W. Kunz dryTec AG may subject their acceptance or execution of an order to payment in advance.

### **3. Scope and content of the services**

3.1 The services to be rendered by W. Kunz dryTec AG shall be specified exclusively in a written contract or, for lack of such a contract, in an order confirmation.

3.2 W. Kunz dryTec AG shall be authorized, but not obliged, to make changes to their services at any time in an effort to improve their quality and insofar as such changes do not result in increases in price. However, W. Kunz dryTec AG shall not be obliged to modify any services already rendered or new services according to previous specifications.

3.3 An additional charge shall apply for services rendered by W. Kunz dryTec AG that are not included in the scope of services.

3.4 If W. Kunz dryTec AG conducts the assembly or monitors the assembly on site, the AMB of W. Kunz dryTec AG shall apply in addition to these ALB.

### **4. Brochures, catalogs, homepage, and technical documents**

4.1 Any information provided in brochures, catalogs, or on the homepage of W. Kunz dryTec AG as well as of companies in which W. Kunz dryTec AG holds a share shall not be considered binding. Information provided in the technical documents included in the contractual documents shall only be considered binding if such information represents a property guaranteed in writing (in particular, any guaranteed value).

4.2 Each contracting party shall reserve all rights in the technical documents it surrenders to the respective other party.

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### **5. Protective regulations in the country of destination**

5.1 Prior to the conclusion of contract, the purchaser shall advise W. Kunz dryTec AG about the protective regulations applicable in the country of destination to the services to be rendered, e.g. the safety regulations at the site of installation.. Excluded from this provision are the standards applicable in Switzerland, which are known to W. Kunz dryTec AG.

5.2 The services to be rendered by W. Kunz dryTec AG shall comply with the protective regulations about which the purchaser has advised W. Kunz dryTec AG in accordance with number 5.1.

### **6. Prices and surcharges**

6.1 The prices applicable shall be those listed by W. Kunz dryTec AG in its price lists or AMB valid on the first day of dispatch or installation.

6.2 All prices shall be net, ex works, payable in freely available Swiss Francs, and without any deductions.

6.3 W. Kunz dryTec Ag may introduce a reasonable adjust in price if:

- a) the rates for wages as well as goods and material have changed since the conclusion of contract;
- b) the delivery period has been extended due to any of the reasons specified in number 9.2;
- c) the type and scope of the services to be rendered have changed in an unfavorable way for W. Kunz dryTec AG;
- d) the material or the execution has changed in an unfavorable way for W. Kunz dryTec AG due to the fact that the documents supplied by the purchaser did not match the actual conditions or were incomplete.

6.4 Any additional costs of, for example, packaging, transport, insurance, export, transit, import and other authorizations as well as certificates shall be borne by the purchaser. In addition, the purchaser shall be responsible for all taxes, duties, fees, customs and other costs incurred in connection with the contract. If such costs have already been covered by W. Kunz dryTec AG, W. Kunz dryTec AG shall be reimbursed if proof of such cost coverage can be provided.

6.5 Should the order volume per order be lower than a net amount of CHF 250,- (e.g. without additional costs, taxes, duties, etc., and after the deduction of all applicable discounts), W. Kunz dryTec AG shall charge a small quantity surcharge of CHF 50.- per order.

### **7. Terms of payment**

7.1 The purchaser shall make all payments in accordance with the agreed terms of payment to the bank account specified by W. Kunz dryTec AG.

7.2 No deductions of any kind (e.g. cash discounts, allowable expenses, etc.) shall be permitted. Any possible bank charges shall be borne by the purchaser.

7.3 W. Kunz dryTec AG shall not accept any checks (except for cashier's checks), bills of exchange, WIR credits or any other unusual method of payment.

7.4 Unless otherwise specified, all invoices must be settled within 30 days of date of invoice. W. Kunz dryTec AG may demand payment in advance, in part or in total, or payment by irrevocable letter of credit.

7.5 The purchaser shall be bound to these dates of payment and issue payment accordingly even if the services rendered by W. Kunz dryTec AG (e.g. delivery, installation, commissioning, trial operation) have been delayed, made impossible or lacking minor parts for reasons beyond the control of W. Kunz dryTec AG or if rework or warranty operations become necessary that do not render the use of the services impossible.

7.6 The purchaser may not retain or reduce payments due to complaints or alleged or actual claims or counterclaims.

7.7 If, for any reason, the purchases become in arrears with payments, W. Kunz dryTec AG shall, without prejudice of its other legal rights, be entitled to the following accumulative rights, which it can exercise immediately and without prior notice or warning:

- a) The seller shall have to pay a default interest of 5% from the date of maturity;
- b) the seller shall reimburse W. Kunz dryTec AG for any costs incurred in connection with the purchaser's default, in particular costs of collection and attorney fees;
- c) W. Kunz dryTec AG may suspend its services until the payment has been made in full or new terms

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of payment and delivery have been agreed upon and W. Kunz dryTec AG has received sufficient collaterals. W. Kunz dryTec AG shall also be entitled to such right if the payments made by the purchaser are likely to be received late or incomplete by W. Kunz dryTec AG;

d) W. Kunz dryTec AG may reclaim or, after prior written notification, cancel any services already rendered and suspend the completion of other contracts concluded with the purchaser or (at the discretion of W. Kunz dryTec AG) withdraw from such contracts without any further formalities;

e) W. Kunz dryTec AG may withdraw from or maintain the contract;

f) W. Kunz dryTec AG shall be entitled to claim damages.

7.8 W. Kunz dryTec AG shall be entitled submit information in connection with the contract to credit information services and offices for the enforcement of payments, and may collect information about the purchaser.

### **8. Retention of title**

8.1 W. Kunz dryTec AG shall remain the owner of all service items rendered directly or indirectly until payments have been received in full as agreed upon.

8.2 The purchaser shall be obliged to participate in any measures intended to protect the property of W. Kunz dryTec AG when prompted to do so for the first time. In particular, the purchaser shall authorize W. Kunz dryTec AG, at the expense of the purchaser, to have the retention of title registered or reserved with any applicable public registries or similar institutions as specified by applicable state law.

8.3 The purchaser shall, at its own expense, maintain the service items supplied and insure them for the benefit of W. Kunz dryTec AG against theft, damage or other risks for the duration of the retention of title. Furthermore, the purchaser shall take steps to prevent the claim of ownership of W. Kunz dryTec AG from becoming affected.

8.4 W. Kunz dryTec AG may reclaim or cancel any service items for which the purchaser has failed to pay as agreed. Should W. Kunz dryTec AG claim retention of title and reclaim or cancel the service items, any payments already made in part shall be forfeited and considered a partial payment of a penalty for non-performance.

### **9. Delivery period**

9.1 The delivery period (usually specified in calendar weeks) for the services to be rendered by W. Kunz dryTec AG shall be determined by contract. If no such information is given in a corresponding contract, the delivery period shall be determined by W. Kunz dryTec AG.

9.2 No delay of W. Kunz dryTec AG shall be considered as such or shall be abolished, and the delivery period (including any possible installation period) shall be extended appropriately (even if a delay has already occurred) if:

a) the purchaser demands modifications to the services to be rendered by W. Kunz dryTec AG after the conclusion of contract which make it impossible for W. Kunz dryTec AG to keep the delivery deadline;

b) if the purchaser failed to make the necessary preparations mentioned above (including transport) in time or properly;

c) if the purchaser has become in arrears with meeting its obligations, in particular, meeting its obligation to make payment or provide any possible collaterals;

d) there are any difficulties which W. Kunz dryTec AG is unable to overcome despite taking the appropriate care and regardless of whether these obstacles have occurred at W. Kunz dryTec AG or at any consulted third party. Such difficulties may include transport difficulties and delays, labor disputes (including strikes), delayed or incorrect delivery of the required materials, finished or semi-finished products, official procedures or omissions as well as acts of God, epidemics, pandemics, mobilization, war, insurgency, sabotage, considerable business disruption, accidents, fire, explosion, etc.

9.3 In case of default, the purchaser may claim reimbursement insofar as the purchaser can provide proof that such default was culpably caused by W. Kunz dryTec AG alone and if, thereby, the purchaser can prove a damage was caused as a result of such default. W. Kunz dryTec AG may provide compensation deliveries for spare part orders. Should W. Kunz dryTec AG provide such a spare part delivery, the purchaser's claim for compensation in case of default shall not apply.

9.4 The compensation in case of default shall amount to no more than ½ % for each full week of default, and no more than 5% in total of the contract price for the part of the service in default. The first 20

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days of default shall not establish entitlement to compensation in case of default.

9.5 In case of default by W. Kunz dryTec AG, the purchaser shall not be entitled to any rights other than those defined in numbers 9.3 and 9.4. Such restriction shall not apply if W. Kunz dryTec AG acted out of intent or gross negligence.

### **10. Packaging**

10.1 The packaging used by W. Kunz dryTec AG for spare part deliveries shall be charged on a time and material basis. No packaging shall be taken back, but must be properly disposed of by the purchaser.

10.2 If the packaging is labeled property of W. Kunz dryTec AG, the purchaser must return it to W. Kunz dryTec AG at its own expense.

### **11. Benefit, risk, and liability**

11.1 Benefit and risk shall be transferred to the purchaser at the time of shipment of the services (loading at the factory). This shall also apply to agreed FOB delivery. As a consequence, the risk of theft and damage after shipment, in particular during transport or on site, shall, in any event, be borne by the purchaser.

11.2 If, by request of the purchaser or for any other reasons beyond the control of W. Kunz dryTec AG, shipment has been delayed, the risk shall still be transferred to the purchaser at the time originally intended for shipment. From such point in time forward, the service items shall be stored on the purchaser's premises at the risk and cost of the purchaser. The risk shall remain with the purchaser even if, for any reasons, the service items are returned to W. Kunz dryTec AG.

11.3 In any event, the purchaser shall bear the risk for the material it supplies as well as for the tools, equipment, and materials it provides.

11.4 W. Kunz dryTec AG shall remain entitled to the agreed compensation even if the services can only be rendered in part or not at all due to the partly or total destruction of the service items.

11.5 The same provisions shall apply for liability and the assumption of risk.

### **12. Transport, insurance, and delivery in part**

12.1 The choice of transport mode shall be made by mutual agreement between the parties, ideally, at the time of order placement or conclusion of contract.

Any special requests the purchaser may have concerning the transport and insurance of the services must be announced in good time. If no mode of transportation has been agreed upon by the parties, W. Kunz dryTec AG shall select the mode of transportation in consideration of the delivery period.

12.2 Any insurance against damages of any kind during transport and until the time of installation shall be responsibility of the purchaser. However, W. Kunz dryTec AG shall be free to take out proper insurance itself, in which case the purchaser shall be responsible for the costs of such insurance as well.

12.3 W. Kunz dryTec AG shall not be liable for any damages suffered by the purchaser that were caused during transport and, in particular, due to delays in delivery, transport damages or loss.

12.4 Immediately upon the receipt of the services, the purchaser shall submit in writing any complaints in connection with the transport to the last freight carrier or forwarder and, additionally, to W. Kunz dryTec AG.

12.5 The purchaser shall be responsible for the compliance with all export, transit, import, inspection, and customs regulations, etc.

12.6 W. Kunz dryTec AG shall be allowed to deliveries in part of its services.

### **13. Delivery, inspection, notice of defect, and approval of services**

13.1 The purchaser shall inspect the services rendered by W. Kunz dryTec AG within an appropriate period of time after receipt of delivery. If installation by W. Kunz dryTec AG is intended, such an inspection shall usually (for installation projects, always) be conducted in the form of an acceptance test (as required by number 13.6).

13.2 The purchaser shall immediately claim any detectable defects in detail and in writing.

13.3 The purchaser shall immediately claim any hidden defects in detail and in writing as soon as they have been detected.

13.4 If the purchaser fails to submit such a proper notice of defect, all services rendered by W. Kunz dryTec AG (i.e. including proper installation and function, etc.) shall be considered approved without reservations, and no guarantee granted by W. Kunz dryTec AG shall apply.

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13.5 Should such notice of defect prove to be unjustified, the purchaser shall have to bear any costs resulting from such unjustified notice.

13.6 The following shall apply to the execution of the acceptance test:

a) The parties shall mutually agree on the time of cold and warm commissioning and the conduction of the performance test. Each of these procedures shall take place within an appropriate time limit after the completion of installation.

b) The acceptance test may be conducted after the completion of installation (i.e. when the final installation report is available), after cold commissioning (i.e. when the cold commissioning report is available) or, at the latest, after warm commissioning (i.e. when the warm commissioning report is available). Unless otherwise specified in the contract, W. Kunz dryTec AG shall decide on such point in time after consulting the purchaser.

c) During the acceptance test, the service item shall be under the supervision of W. Kunz dryTec AG.

d) An acceptance test report (acceptance test protocol) shall be created, which has to be signed by the purchaser and W. Kunz dryTec AG. Such protocol shall indicate whether approval was granted with or without reservations or whether the purchaser has refused to grant such approval. In the two latter cases, the protocol shall include details about any claimed defect, and the parties shall agree on the steps to be taken.

13.7 The acceptance test shall be regarded as conducted and the services rendered by W. Kunz dryTec AG as approved even if:

a) the acceptance test cannot be properly performed on the designated date for reasons beyond the control of W. Kunz dryTec AG;

b) the purchaser refuses to sign an acceptance test protocol drafted in accordance with number 13.6;

c) the purchaser uses or employs the service items provided by W. Kunz dryTec AG.

### **14. Warranty in case of defect**

14.1 The warranty period (guarantee period) for services rendered by W. Kunz dryTec AG shall be 12 months. The warranty period shall begin with warm commissioning or, provided an acceptance test protocol was created, with the date of such acceptance test

protocol, in which W. Kunz dryTec AG basically states that the requirements for approval have been met (see recitals 14.3.5 and 14.3.10).

14.2 Every warranty shall require the purchaser to have met its contractual duties and obligations, in particular its obligations to make payments and submit notices of defects.

14.3 Scope of warranty:

14.3.1 W. Kunz dryTec AG shall guarantee compliance with all mandatory requirements of the EU Machine Directive 98/37/EC, all resulting orders prescribed by national law as well as the Swiss regulation on the safety of technical installations and equipment (STEV, SR 819.11), and any corresponding succeeding regulations. W. Kunz dryTec AG shall guarantee that the technical documentation in the terms of section 8, paragraph 1 of the STEV be available for a duration of 10 years from the date of production of the installation and that the fundamental safety and health requirements in the terms of section 4b of the federal law on the safety of technical installations and equipment (SR 819.1) be met.

14.3.2 W. Kunz dryTec AG shall guarantee that the operation, setup, and maintenance of the supplied service items be possible if conducted in accordance with their intended use and without endangering any persons.

14.3.3 Furthermore, W. Kunz dryTec AG shall guarantee that its services have the properties guaranteed in writing (in particular, any guaranteed values) and may be used for the intended purpose specified in the operating manual.

14.3.4 No further warranties shall be given for defects of any kind.

14.3.5 Has an acceptance test been agreed upon, the guaranteed properties shall be regarded as present and the intended purpose described in the operating manual as met if proof can be provided of such properties or purpose of use by means of this acceptance test.

14.3.6 In case the guaranteed properties or the purpose of use described in the operating manual have not (or only in part) been provided or met, the purchaser shall be entitled to rectification of defects. No other rights to rectification of defects or other rights and claims shall apply, in particular, no redhibition or reduction.

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14.3.7 While providing rectification of defects, W. Kunz dryTec AG shall oblige to repair, improve or replace all parts included in its services responsible for the failure to provide the guaranteed properties or the purpose of use described in the operating manual within an appropriate time limit of its own choice. The purchaser shall grant W. Kunz dryTec AG sufficient time and opportunity (including access, power, etc.) to complete these measures.

14.3.8 Should the repair, rectification or replacement of one or several parts of the supplied service items be more than twice as expensive as the part(s) itself/themselves, the warranty given by W. Kunz dryTec AG shall be limited to the compensation delivery of the faultless part(s) as well as to the bearing of the costs for the part(s) to be replaced. Any expenses in excess of such costs incurred by W. Kunz dryTec AG shall be borne by the purchaser.

14.3.9 Any replaced parts shall become property of W. Kunz dryTec AG.

14.3.10 If W. Kunz dryTec AG had to rectify any serious deviations from the guaranteed properties or the purpose of use described in the operating manual, another acceptance test shall be conducted. Such acceptance test shall basically be subject to numbers 13.6 lit. c) - d), while W. Kunz dryTec AG shall determine the time for such acceptance test to take place after consulting the purchaser.

14.3.11 The warranty given by W. Kunz dryTec AG on any rectification work shall extend to the same scope, but not exceed the same period, of warranty granted for its original services.

14.4 No warranty shall apply:

- a) if the purchaser provided incomplete or wrong specifications or information that are necessary for the services to be rendered;
- b) if the tools, equipment, and materials, the parts or elements (e.g. steel constructions, foundations, controls, insulation, wiring, etc.), or the construction or installation work provided directly or indirectly by the purchaser were faulty or did not comply with the agreed specifications or guidelines;
- c) if defects or damages were caused by the purchaser, its auxiliary persons or any consulted or mandatory third parties. This shall also apply in case such persons acted under the supervision or direction of W. Kunz dryTec AG, provided the latter did not neglect its supervisory obligations out of intent or gross negligence and gave no wrong instructions;

d) if the actual operating conditions do not match the agreed operating conditions or the information provided by the purchaser;

e) if the purchaser or any third party performs any improper repairs or if the purchaser, in case a defect has occurred, does not immediately take the all necessary steps to remove such defect and reduce damages;

f) if defects or damages can be attributed to operational or natural wear, regular wear and tear, missing or insufficient maintenance, disregard of operating regulations, improper use, operating errors, excess use, inappropriate resources, chemical or electrolytic influences, the operation outside of the range specified for the power supply or other specifications, fire, lightning, explosion, moisture or other influences;

g) if defects or damages were caused by other reasons beyond the control of W. Kunz dryTec AG.

### **15. Liability of W. Kunz dryTec AG**

15.1 W. Kunz dryTec AG shall be liable for any property damages caused to the purchaser during the provision of services (including any rectification of possible defects). Such liability shall be limited to a total of CHF 1.000.000.- (one million Swiss francs).

15.2 Legal liability shall apply in the event of personal damage.

15.3 Unless W. Kunz dryTec AG acted out of intent or gross negligence, W. Kunz shall not be liable in case its auxiliary persons or any third parties it consulted acted out of intent or gross negligence.

15.4 W. Kunz dryTec AG shall not be liable for any damages caused by the purchaser, its auxiliary persons, any third parties or force majeure. This shall also apply in case such persons acted under the supervision or direction of W. Kunz dryTec AG, provided the latter did not neglect its supervisory obligations out of intent or gross negligence and gave no wrong instructions.

15.5 Any additional liability for direct or indirect damages (e.g. for lost output, loss of profit, downtime, property or consequential damages, claims by third parties against the purchaser, etc.) of any kind shall be denied.

15.6 Finally, all other rights and claims shall be denied.

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### **16. Liability of the purchaser and right of recourse of W. Kunz dryTec AG**

16.1 The purchaser shall be responsible for any damages caused by itself, its auxiliary persons or any third party it consulted.

16.2 Furthermore, the purchaser shall be liable for any damages caused to W. Kunz dryTec AG by a behavior specified in number 14.4.

16.3 Such liability shall also apply in both cases if the purchaser, its auxiliary persons or any consulted third parties acted under the supervision or direction of W. Kunz dryTec AG, provided the latter did not neglect its supervisory obligations out of intent or gross negligence and gave no wrong instructions.

16.4 If W. Kunz dryTec AG is held liable due to acts or omissions of the purchaser, its auxiliary persons or any third parties it consulted, W. Kunz dryTec AG shall be entitled to comprehensive rights of recourse.

### **17. W. Kunz dryTec AG's withdrawal from contract**

17.1 In case unforeseeable events considerably alter the economic significance of the services rendered by W. Kunz dryTec or seriously affect the ability of W. Kunz dryTec AG to render its services as well as in case it turned out, ex post, that such services could not be provided, the parties shall amend the contract accordingly. Should such an amendment of contract not come to pass within a reasonable time limit, W. Kunz dryTec AG may withdraw from the contract with immediate effect.

17.2 W. Kunz dryTec AG may also withdraw from the contract with immediate effect if it is convinced that the financial situation of the purchaser has changed for the worse after the conclusion of contract and the purchaser denies to provide the requested collateral or payment in advance after being prompted to do so for the first time.

17.3 If W. Kunz dryTec AG intends to withdraw from the contract, it shall grant the purchaser a short time limit and notify the purchaser in writing of its withdrawal after such time limit has expired to no avail.

17.4 If W. Kunz dryTec AG withdraws from the contract, it shall be entitled to compensation for the services already rendered as well as damages. Any claims for damages to which the purchaser may be

entitled shall be denied in the event of such a withdrawal of contract.

### **18. Intellectual property rights**

18.1 The purchaser shall not acquire any intellectual property rights (such as rights to patents or trademarks or copyrights or design rights) owned by W. Kunz dryTec AG or any third party. The rights to which the purchaser shall be entitled with regard to intellectual property shall be limited to a non-transferable (neither in use not as a right) and non-exclusive right to use the services rendered. This right may only be used insofar as is necessary for the purposes of the proper implementation of the contract. Registering the same or similar intellectual property rights shall be prohibited.

18.2 Should any third party claim that its intellectual property rights have been infringed by the services rendered by W. Kunz dryTec AG, the purchaser shall notify W. Kunz dryTec AG about such a claim without delay. The same shall apply if the purchaser detects any possible impairment of the intellectual property rights of any third party.

18.3 The purchaser shall, at its own expense, have to support W. Kunz dryTec AG in its efforts to defend itself against such claims to the best of its ability and following the instructions it receives from W. Kunz dryTec AG. W. Kunz dryTec AG shall also be free to change or replace any part of its services that may potentially or actually infringe the intellectual property rights of any third party without entitling the purchaser to claim damages or any other kind of compensation.

18.4 W. Kunz dryTec AG shall be liable for any damages that may be caused to the purchaser by the services rendered by W. Kunz dryTec AG due to actual infringements of intellectual property rights, provided the purchaser has met its contractual obligations.

18.5 Should the purchaser detect a possible impairment of the intellectual property rights of W. Kunz dryTec AG or companies close to W. Kunz dryTec AG, the purchaser shall notify W. Kunz dryTec AG immediately in writing and must support W. Kunz dryTec AG in exercising its rights at its own expense, to the best of its ability, and following the instructions it receives from W. Kunz dryTec AG.

18.6 The purchaser shall guarantee that W. Kunz dryTec AG does not infringe any intellectual property rights by producing the service items in accordance with its drafts, technical specifications or instructions.

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It shall also be responsible for any consequences resulting from such an alleged or actual infringement.

### **19. Nondisclosure**

19.1 The parties shall be obliged to observe secrecy about the business secret of the respective other contracting party and other companies close to such party as well as to maintain confidentiality about all information concerning products, processes, services and any other generally confidential matters of the respective other contracting party. Facts shall be considered confidential if they are neither evident nor accessible to the general public. In case of doubt, facts must be kept confidential. This duty to observe secrecy shall also apply to facts exchanged prior to the conclusion of contract and shall remain in effect after the termination of the contractual relationship. Any legal duties of disclosure shall remain in full effect.

19.2 Any mutually surrendered physical or electronic documents of any kind (including software) may only be used to fulfill the purposes of the contract. Such documents shall remain property of the submitter.

19.3 Any advertisements and publications of the purchaser concerning the contract-specific services rendered by W. Kunz dryTec AG shall be subject to the prior written approval of W. Kunz dryTec AG.

19.4 The parties shall also subject their auxiliary persons and any consulted third parties to the same duties to observe secrecy.

19.5 Should any party, auxiliary person or consulted third party violate their duties to observe secrecy, it shall be obliged to pay a penalty for non-performance unless it can provide proof that such violation was caused by no fault of this party, auxiliary person or consulted third party. Such penalty for non-performance shall amount to 10% of the turnover achieved between the parties during the year preceding the immediate discovery of such violation, however, no more than to CHF 100,000.00. The payment of such a penalty for non-performance shall not release the violator from its duties to observe secrecy and its obligation to pay compensation for damages caused.

### **20. Miscellaneous provisions**

20.1 To meet its obligations, W. Kunz dryTec AG may seek assistance from auxiliary persons or third parties (e.g. subcontractors or subsuppliers). Such assistance shall result in a contractual relationship be-

tween the purchaser and such auxiliary person or third party.

20.2 The purchaser may not set off claims it may have against W. Kunz dryTec AG against claims that W. Kunz dryTec AG may have against it.

20.3 The purchaser may not assign or pledge any claim it may have against W. Kunz dryTec AG.

20.4 In the event of discrepancies between different language versions of these ALB, the German version shall apply and prevail.

20.5 Any notifications shall be addressed to W. Kunz dryTec AG, Taubenlochweg 1, CH-5606 Dintikon.

20.6 Should a provision of these ALB, in part or as a whole, be declared void or ineffective, such declaration shall have no effect on the validity, effectiveness, and enforceability of the remaining provisions. Any ineffective provision shall be replaced by a valid provision, which is as similar as possible in economic and business objectives as was intended by the unenforceable provision.

### **21. Court of jurisdiction and applicable law**

**21.1 The ordinary courts at the registered office of W. Kunz dryTec AG shall have exclusive jurisdiction to settle any disputes arising between the contractual parties. However, W. Kunz dryTec AG shall have the right to sue the purchaser before any other responsible court.**

21.2 All legal relations between the parties shall be subject to the material laws of Switzerland excluding the "United Nation agreement on Contracts for the International Sale of Goods (CISG) from April 11, 1980 (Vienna or UN purchasing right)."

Dintikon, in October 2006