

## **General Terms and Conditions of Business and Sale**

of Joma Kunststofftechnik GmbH (FN 151978y), Wolfholzgasse 14-16, 2345 Brunn am Gebirge, Austria; and  
of Joma Service GmbH (FN 457895a), Weilburgstraße 16a, 2500 Baden, Austria; and  
of Joma Packaging Doo, Crkvenjak 33, 71260 Kresevo, Bosnia and Herzegovina  
(all three of them together, „JOMA“)

### **1. General/Applicability**

Deliveries by JOMA to customers shall be based solely on these General Terms and Conditions of Business and Sale, subsidiary to any other written agreements. In the absence of any written agreement to the contrary, these General Terms and Conditions of Business and Sale shall apply exclusively. The validity of general terms and conditions as well as other contract forms of the customer is expressly excluded.

Orders placed by the customer are irrevocable on the part of the customer and shall be deemed to have been accepted by JOMA unless JOMA objects in writing (e-mail being sufficient in this case) within 4 weeks of receipt of the order.

### **2. Offer**

Projects, offers, cost estimates, technical drawings, dimensional drawings, descriptions and other documents are the intellectual property of JOMA; they may not be made available to others, in particular to competing companies, and shall be returned immediately upon request by JOMA and if the order is not placed. All offers made by JOMA are non-binding; JOMA expressly reserves the right to make technical changes. In the case of goods in stock, JOMA reserves the right to sell off the goods offered for delivery in the meantime.

### **3. Scope of Delivery - Order Placement**

Deliveries by JOMA are subject to timely and correct deliveries by JOMA's suppliers. The customer acknowledges and agrees that, depending on the contractual product, purchased parts from subcontractors may be installed. The scope of the delivery as well as the delivery date are to be taken from JOMA's order confirmation. Deliveries exceeding the order shall be invoiced separately; in the absence of other agreements, the same terms and conditions shall apply to such deliveries as to the main delivery. In the case of call-off orders, JOMA shall be entitled to demand acceptance and payment of the ordered goods after expiry of the call-off period, granting a grace period of 2 weeks. If the customer is in default of payment of JOMA's invoices, JOMA shall be entitled to suspend deliveries for a certain period of time (at JOMA's discretion) or to withdraw from the contract (the provision in the next section regarding withdrawal shall apply mutatis mutandis).

### **4. Transfer of Risk/Default of Acceptance**

a. The risk, including the risk of confiscation of the goods, shall pass to the customer when the goods are handed over to the forwarding agent or carrier.

b. If the customer fails to collect/take delivery of the goods provided or delivered by JOMA, JOMA's order shall be fulfilled and the customer shall be obliged to pay the full remuneration. In this case, JOMA shall be entitled to store the goods with third parties at the customer's expense and risk. Any further rights of JOMA, in particular the right to withdraw from the contract, shall remain unaffected. In the event of withdrawal from the contract, JOMA shall be entitled to demand a withdrawal fee from the customer in the amount of 25% of the agreed outstanding total price; in the case of custom-made products, JOMA shall be entitled to send the processed parts to the customer (at the customer's expense) and to demand compensation for its previous expenses plus the withdrawal fee of 25%.

### **5. Prices and Payment Terms/Prohibition of Set-Off**

a. Prices are calculated on the basis of the material and labor costs applicable at the time of contract conclusion. Should these change by more than 5% up to or during production, JOMA shall be entitled to make a respective price adjustment.

b. Unless otherwise agreed, prices shall apply ex warehouse JOMA or ex warehouse of the supplier or its subcontractors without any deduction, excluding packaging, transport insurance and other possible costs.

c. Invoices from JOMA are payable within 14 days of the invoice date, free of charges and without deductions. In the event of default in payment, JOMA shall be entitled to charge interest in accordance with § 456 of the Austrian Commercial Code (*Unternehmensgesetzbuch; UGB*), but at least 12% p.a.. JOMA shall be entitled to make delivery only against advance payment; in this case, the ordered goods shall be shipped only after the amount has been credited to JOMA's account. Furthermore, JOMA shall be entitled to suspend deliveries to the customer in case of default of payment by the customer.

d. The retention of payments due to alleged claims of the customer is excluded. In particular, offsetting against counterclaims of customer or exercising the right of retention against claims of JOMA shall only be permitted if the counterclaim or the right of retention has been acknowledged by JOMA in writing or has been legally established by a court of law.

### **6. Retention of Title**

All goods delivered shall remain the property of JOMA until full payment has been made (retained goods). The resale of the retained goods (prior to their full payment) is only permitted with reference to this retention of property and with advance assignment of the resale price to JOMA. In order to prevent seizure or other impairment by third parties, the customer is obliged to take all reasonable measures to prevent this (marking, separate storage, etc.). However, JOMA shall be entitled at any time to inspect the customer's warehouse in order to demand the return of the goods owned by JOMA in exchange for the realization

amount and to prohibit the sale of the goods still subject to retention of ownership. In the event of seizure or any other claim to the goods by third parties, the customer shall be obliged to point out the retention of title and to notify JOMA immediately. The customer may only resell the retained goods in the ordinary course of business, under his normal terms and conditions of business and as long as he is not in default, but provided that he agrees to a retention of title with his customer. The customer's claims arising from the resale of the retained goods are hereby assigned to JOMA as security for its claims. The customer shall be obliged to demonstrably inform his customers of the assignment of claims and to make a book entry.

## **7. Delivery Period**

In the absence of other agreements, the stated delivery period shall apply from the warehouse of JOMA or from the warehouse of the supplying company (forwarder) and shall be deemed to commence at the time when there is complete agreement on all technical and commercial points of the purchase contract between the customer and JOMA, but not before the advance payment agreed under the terms of payment and to be made at the time of the order. JOMA shall be released from compliance with the delivery deadline if unforeseen events (especially force majeure) at JOMA's own plant or at JOMA's suppliers affect the completion of the goods to be delivered, assembly and the like. JOMA shall not be liable for any damages, loss of earnings, etc. incurred in this context. The customer shall not be entitled to withdraw from the contract due to delayed delivery.

## **8. Shipment**

Delivery of goods is made from the factory in Kresevo, Bosnia and Herzegovina. Transport is always at the customer's risk. Transport insurance shall only be taken out upon request and at the expense of the customer. Any customs duties and other taxes shall also be borne by the customer. The customer's liability does not expire even if freight-free delivery and any type of shipment has been agreed upon. If the order confirmation of JOMA does not confirm specific instructions of the customer for the shipment, JOMA shall ship according to its best judgment without any liability for the mode of shipment. The customer shall assert any claims arising from loss or damage in transit without delay with the transport company. The execution of special loading and shipping instructions issued by the customer shall be at the risk and expense of the customer.

## **9. Warranty**

a. A warranty period of 6 months from delivery shall apply to all delivered goods. As a reasonable period in the sense of § 377 UGB is considered to be five calendar days. In case of hidden defects, the notification according to § 377 UGB has to be made immediately after their discovery.

b. Decisive for the contractual condition of the goods is the time of leaving the factory. The applicability of § 924 second sentence of the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*; ABGB) is excluded.

c. JOMA's liability for defects shall in all cases only cover the remedy of the defect for which it is responsible (this shall be - at JOMA's option - replacement, improvement or price reduction) and shall exclude any further claims of the customer. The warranty shall expire prematurely if the customer fails to comply with the contractual obligations or if third parties not authorized by JOMA make interventions in the shipped goods. JOMA does not assume any further obligation. The customer waives any claim for damages for lost earnings and loss suffered.

d. A claim against JOMA by the customer according to § 933b ABGB is expressly excluded.

e. Claims for defects shall become time-barred at the latest one month after written rejection of the notice of defect by JOMA.

## **10. Liability**

a. Any liability of JOMA for indirect damages, consequential damages (in particular from loss of production), loss of profit and mere financial losses is excluded. Furthermore, any liability of JOMA for slight negligence - with the exception of personal injury - shall be excluded.

b. JOMA's liability shall be limited in total to coverage under its business liability insurance, and in addition, in the event of breach of contractual obligations, in any event to the order value of the delivery that caused the damage.

c. If deliveries are made according to drawings or other specifications provided by the customer and if third party rights, in particular industrial property rights, are thereby infringed, the customer shall fully indemnify JOMA and hold JOMA completely free and without complaints.

## **11. Choice of Law, Jurisdiction, Place of Performance and General Provisions**

a. The exclusive place of jurisdiction shall be the competent court for Baden, Austria (Baden, Österreich).

b. The legal relationship between the customer and JOMA shall be governed exclusively by the laws of the Republic of Austria, excluding the conflict-of-law rules. The provisions of the UN Convention on Contracts for the International Sale of Goods are expressly excluded.

c. The place of performance shall be the final destination specified in the order. If no final destination is stated in the order, the place of performance shall be Baden, Austria (*Baden, Österreich*).

d. Should any provision of this agreement be void or ineffective, the validity of the remaining provisions shall not be affected thereby. It is agreed that the void or ineffective provision shall be reinterpreted or supplemented in such a way that the economic purpose intended by the void or ineffective provision is achieved in the best possible way. This shall also apply to any loopholes.

e. Amendments to these General Terms and Conditions of Business and Sale and other agreements shall require the written confirmation of JOMA and the customer.