

KTR Kupplungstechnik GmbH
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Terms of delivery and payment (Version of 24th April, 2003)

I. Validity of the conditions

To be used with regard to:

1. A person who concludes the contract acting in his/her commercial or autonomous professional capacity (business person).
2. A legal public law person/body or public law fund.
3. The deliveries, services and offers made by the supplier are exclusively subject to these business conditions. These conditions thus apply to all future business relations, also where this is not expressly agreed.

At the latest on acceptance of the goods or service, these conditions are deemed accepted. Any counter-confirmation on the part of the client referring to his own business or purchase conditions are hereby contradicted.

4. Deviations from these conditions are only valid with the written confirmation of the supplier.

II. Offer, scope of delivery, engineering changes

1. The supplier's quotations are non-binding and subject to change without notice. Declaration of acceptance and all orders require the written or fax confirmation of the supplier in order to be legally valid.
2. The supplier's written order confirmation is decisive in determining the scope of the delivery. In case of a quotation by the supplier with a binding time limit which is accepted within the period stated, if no order confirmation is given in time, the quotation is decisive.
3. Documents relating to the quotation, such as diagrams, drawings, weights and measurements and other performance data, are approximates, unless they are expressly designated as binding.

The supplier retains all copy and ownership rights to the cost estimates, drawings, and other documents – also in electronic form. They may not be made assessable to third parties. The supplier undertakes to only make plans designated by the client as confidential assessable to third parties with the client's agreement.

4. The client takes on the responsibility for the data and documents and other materials to be provided by him.
5. The supplier reserves the right to undertake engineering changes at any time. However, he is not obliged to undertake such changes to products already

delivered.

III. Prices

1. **Orders**

The prices are valid ex works without packaging. Orders where fixed prices are not expressly agreed will be charged at the list prices valid on the day of delivery. If a substantial change in the prices for materials, wages or energy costs occurs, either contracting party can demand a resettlement of the price by negotiation. The prices are subject to V.A.T. at the respective statutory level. This is charged in accordance with the tax law regulations.

2. Where transportation costs are charged, the delivery is free destination. Further costs at the destination are taken on by the client.

Packaging materials are charged at cost and are not taken back.

3. For small orders, we charge a lower-quantity surcharge in accordance with the price lists.

IV. Payment

1. Where not otherwise agreed, the supplier's invoices are to be paid within thirty days of the invoice date net terms only, or within eight days of the invoice date with 2 % discount. Part deliveries are charged proportionately.

Regardless of any contradictory terms of the client, the supplier is entitled to first set off payments against the client's older debts. If costs and interest have already accrued, the supplier is entitled to first set the payment off against the costs, then against interest, and lastly against the primary obligation.

2. A payment is not deemed effected until the amount is at the supplier's disposal. In case of cheques and bills, the payment is not deemed effected until the cheque or bill is cleared.
3. If a payment deadline is not kept, the supplier is entitled to charge interest from this date on at the rate of 8% above the base rate plus the statutory V.A.T. without any particular reminder being required. The supplier reserves the right to claim further damages caused by default.
4. If the client fails to fulfil his payment obligations, in particular if a cheque is not cleared, or if he ceases his payments, or if the supplier becomes aware of other circumstances which call into question the client's creditworthiness, the supplier is entitled to demand payment of the entire amount remaining, also when he has accepted the cheque. In this case, the supplier is also entitled to demand advance payments or the provision of security.
5. The client is only entitled to set-off, retain, or deduct, even in cases where defects or counter claims are asserted, if the counter claims are determined by law or are indisputable.

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Geschäftsführer

Prof. Dr. h. c. Josef Gerstner
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V. Delivery and delivery period

1. The dates and deadlines stated by the supplier are non-binding provided they are not expressly agreed otherwise in writing. The observation of the delivery period is absolutely dependent on the provision of all documents, authorisations and clearances to be procured by the client, as well as the receipt of any advance payments agreed.
2. The delivery period is deemed observed if the delivery object has left the works before its expiry, or if the client has been informed that it is ready for dispatch.
3. The supplier is not responsible for delays in delivery and performance due to acts of God and due to events which make the delivery considerably more difficult or impossible for the supplier – this also includes subsequent material procurement difficulties, stoppages, strike, lockout, personnel shortages, transportation difficulties, official orders etc. – even where periods and dates have been bindingly agreed.

They entitle the supplier to postpone the delivery or service for the term of the impediment plus an appropriate run-up, or to withdraw from the contract fully or partially for the part not yet fulfilled.

The supplier is also not responsible for the circumstances described above if they occur during an existing delay. The supplier is to inform the client as soon as possible as to the start and end of such impediments.

4. If the supplier is responsible for the non-observation of bindingly agreed periods and dates, or is in default, and if this results in damages for the client, the client is entitled to claim default damages at 1/2 % for each completed calendar week, however, at a total of 5% of the invoice value for the services and deliveries affected by the default. With the exception of the client's right to withdraw from the contract in accordance with XI. no. 2, any further claims are excluded, unless the default results from at least gross negligence on the part of the supplier.
5. If, after the due date, the client sets the supplier an appropriate period for the performance taking into account the statutory exceptions, and if this period is not observed, the client is entitled to withdraw from the contract within the framework of the statutory provisions.
6. If the despatch and/or the acceptance of the delivery object is delayed for reasons for which the client is responsible, starting one month after the notification of the despatch or readiness for acceptance, the costs accruing as a result of the delay will be charged to him.

VI. Technical acceptance inspection by the client or by his representative

1. If, prior to acceptance of the goods, the client demands that inspections be carried out (e.g. the testing of materials, function or dimensions, etc.), their type and extent is to be agreed separately. The costs are to be borne by the client.

VII. Despatch and transfer of risks

1. Packaging and despatch are carried out according to our best judgement. Even where the freight and carriage are paid, the goods are always transported at the risk of the receiver, and if no specific instructions are given regarding the packaging and despatch, this is carried out according to our best judgement without any obligation to use the cheapest transport and packaging.
2. The risk is transferred to the client as soon as the assignment is handed over to the person responsible for the carriage, or has left the supplier's warehouse for despatch purposes.
3. If the despatch is delayed for reasons for which the client is responsible, the risk is also transferred to the client on the date on which the supplier is ready to despatch, however, the supplier is obliged to take out the insurances demanded by the client on his request and at his cost.

VIII. Reservation of ownership

1. The supplier reserves ownership of the delivery object until all amounts owed him by the client as a result of the business relations, including future amounts and those arising from contracts concluded at the same time or later, are paid. This also applies when individual amounts or all amounts are included in an open invoice, and the balance has been struck and accepted as a statement of account.

If the client breaches the contract, in particular by defaulting on his payments, after sending a reminder, the supplier is entitled to take back the delivery object, and the client is obliged to return it. If the supplier takes back or seizes the object, so long as the hire-purchase act does not apply, the contract is only cancelled if this is expressly declared by the supplier in writing. In case of seizure or other interventions by third parties, the client is to inform the supplier in writing without delay.

2. The client is entitled to sell the delivery object on in the due course of business. However, he now transfers to the supplier all entitlements against the purchaser or third parties, including all subsidiary rights arising from the onward sale.
3. The client is authorised to collect the debts also after the transfer. The supplier's authority to collect the debts himself is not affected by this. However, the supplier undertakes not to collect the debts so long as the client continues to duly fulfil his payment obligations.

The supplier can demand that the client inform him of the transferred debt and the debtor, give him all the data necessary for collection, submit the related documents and inform the debtor of the transfer. If the delivery object is sold on together with other goods which do not belong to the supplier, then the client's claim on the purchaser at the level of the delivery price agreed between the supplier and the client is deemed transferred.

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4. The client always undertakes processing or reshaping of the delivery object for the supplier, without any obligations ensuing for the supplier. If the reserved object is processed or reshaped along with other objects not belonging to the supplier, the supplier acquires part ownership of the new goods in the relation of the invoice value of the reserved object to the remaining goods processed or reshaped on the date of the processing or reshaping.

If the client acquires sole ownership of the new item, the contractual parties agree that the client grants the supplier part ownership of the new item in the relation of the invoice value of the reserved object to the remaining goods processed or reshaped and safeguards this for the supplier free of charge.

IX. Guarantee

1. If the delivery object has any defects within the meaning of § 434 of the German Civil Code, for which the supplier is responsible, excluding any rights the client may have to withdraw from the contract or reduce the purchase price, the client is entitled to subsequent fulfilment unless statutory provisions entitle the supplier to refuse subsequent fulfilment. The supplier can undertake subsequent fulfilment at his own discretion either by remedying the defect or by delivering a non-defective item. During the subsequent fulfilment, reduction of the purchase price or withdrawal from the contract by the client are excluded. On the second unsuccessful attempt at subsequent fulfilment, this is deemed to have failed. If the subsequent fulfilment has failed, or if the supplier has refused subsequent fulfilment as a whole, the client may choose at his own discretion between demanding a reduction in the purchase price (deduction), or declaring his withdrawal from the contract. The following restrictions continue to apply:
- a) The results on the supplier's test bench are decisive for determining the operating characteristics of the delivery object.
 - b) In case of delivery or production of individual items, the supplier is only liable for the design in accordance with the drawings.
 - c) If the delivery consists mainly of items from other companies, the supplier's liability is limited to transferring those rights he has against the supplier of these items.
 - d) The supplier is not liable for defects in the drawings or materials supplied by the client.
2. The following applies to the settlement:
- a) The client is to inform the supplier of any **obvious** defects in the delivery immediately in writing, at the latest, however, within **seven** days of receipt of the delivery object.

In case of any defects which cannot be determined within this period, even by means of thorough inspection, the supplier is to be informed immediately in writing as soon as they are discovered.

If the client fails to inspect the goods or if he reports a defect too late, he forfeits

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his guarantee rights against the supplier.

- b) In order to carry out all the repairs and replacement deliveries necessary according to the reasonable discretion of the supplier, following notification, the client is to give the supplier the necessary time and opportunity, otherwise, the supplier is released from his liability for defects. Only in urgent cases where the operational safety is endangered, and in order to prevent excessive damage, (in which case the supplier is to be informed immediately), or if the supplier is in default with the remedying of the defect, does the client have the right to remedy the defect himself, or have it remedied by third parties, or to demand compensation from the supplier for the necessary costs.
- c) Of the costs directly accrued through the repair or replacement delivery, provided the objection proves justified, the supplier is to bear the costs for the replacement part including delivery within the country, as well as the appropriate costs for removal and installation directly relating to the defective delivery object.

Furthermore, if this can be reasonably demanded in individual cases, he also bears the travel costs of his engineers and assistants within the country, provided these were employed with the supplier's prior agreement. All other costs are to be borne by the client. The rejected parts are to be returned to the supplier on his request.

- 3. No guarantee is taken on for damage resulting from the following:

Unsuitable or improper use, incorrect assembly or start-up by the client or by third parties, natural wear and tear, in particularly on parts subject to wear and tear, incorrect or careless treatment, improper maintenance, unsuitable equipment, replacement materials, insufficient building works, unsuitable site, chemical, electrochemical or electrical influences, in so far as these are not through any fault of the supplier.

- 4. If the client or a third party undertakes improper subsequent reworking, the supplier is not liable for the consequences. The same applies for any alteration to the delivery object made without the prior agreement of the supplier.
- 5. Guarantee claims against the supplier can only be made by the direct client and cannot be transferred.
- 6. Guarantee claims against the supplier lapse twelve months after completed delivery and/or surrender of the goods.
- 7. The above paragraphs conclusively govern the supplier's guarantee provisions and exclude other guarantee entitlements of any kind, in so far as this is legally permissible. This does not apply to compensation for damages arising from guaranteed qualities which the client should secure against the risk of consequential damage.

X. Limitation of liability

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1. All other claims by the client are excluded, particularly further claims including any claims to damages due to consequential damage and damage resulting from the repair works provided neither the supplier nor his servants and assistants have caused the damage either by gross negligence or intent. In particular, the supplier's liability for slightly negligent violations of duty is excluded provided that these do not concern any substantial contractual duties, damage from injury to life, body or health, or guarantees, or claims are affected by the product liability law. The same applies to the violation of obligations of the supplier's vicarious agents.
2. In so far as the supplier is at all liable for simple negligence, the following applies to the extent of the liability:
 - a) Claims for damages are limited to compensation for damages which are **related to the contract in a typical way and are predictable**. The level of damages is limited to the amount to be paid for the delivery or service.
 - b) The supplier is only liable for deviations in the composition of the materials used up to the level of his own claims against the respective sub-suppliers. In such a case, the supplier is released from his liability if he cedes his rights against the sub-suppliers to the client.

XI. **The client's right to withdraw from the contract given impossibility and default in delivery**

1. The client may withdraw from the contract if the entire performance becomes ultimately impossible for the supplier prior to the transfer of risks. The same applies in case of incapability on the part of the supplier. The client may also withdraw from the contract if, in one order of similar objects, part of the delivery becomes impossible in terms of numbers, and he has a justified interest in refusing a part delivery. If this is not the case, the client may reduce his counter-performance correspondingly.
2. If default in delivery occurs within the meaning of section V of the delivery conditions, and if the client grants the supplier in default an appropriate subsequent term with the explicit declaration that on expiry of this term he will refuse acceptance of the performance, and if this term is not observed, the client is entitled to withdraw from the contract.
3. If impossibility occurs during the delay in acceptance or through the fault of the client, the client remains obligated to provide counter performance.
4. In so far as is legally permissible, all other further claims on the part of the client are excluded, in particular rights of cancellation and entitlements to compensations for damages of any kind.

XII. **Special conditions for processing contracts**

Supplementary to or deviating from the above delivery conditions, for such processing cases the following applies:

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1. The processor bears no liability for the behaviour of the materials sent to him, in particular as a result of mechanical processing, thermal treatment and other processing steps. His entitlement to remuneration is not affected by this. Any additional effort or expense caused by unforeseeable material properties are to be borne by the client.
2. If, as a result of slight negligence during processing by the processor, his servants or assistants, the material becomes unusable, the client forfeits his right to claim for damages. If material sent becomes unusable due to material flaws or other defects during processing, the client is to refund the supplier his costs expended.
3. Liability for defects is excluded.

XIII. **Use of software**

1. The client may only use, copy, edit or translate the software, or change the object code to the source code to the legally permissible extent (§§66a ff. of the Copyright Law). The client undertakes not to remove the manufacturer's data – in particular copyright notes – or to change this without the supplier's prior express permission.
2. All other rights to the software and to the documentation including the copies remain the property of the supplier or the software supplier. The issuing of sub-licences is not permissible.
3. The selection programs etc. are aids but not legally binding interpretations.

XIV. **Jurisdiction and applicable law**

1. The law of the Federal Republic of Germany applies to these terms of business and to all legal relations between the supplier and the client.
2. In so far as this is legally permissible, Rheine is the legal venue for all disputes arising indirectly or directly from these contractual relations.
3. If a provision of these terms of business or a provision within the framework of other agreements is ineffective, this does not affect the effectiveness or validity of all other provisions or agreements.
4. The place of performance is Rheine.

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