

General Terms and Conditions of KTR Kupplungstechnik GmbH

Terms of Delivery and Payment

I. Validity of Conditions

These conditions are to be used with regard to:

1. A person who concludes the contract acting in his/her commercial or freelance professional occupation (entrepreneur).
2. A legal entity under public law or special fund under public law.

II. General

1. All shipments, services and quotations from the part of the supplier are exclusively subject to these general terms and conditions. They are part of all contracts the supplier concludes with his or her contractual partner (hereinafter referred to as „buyer“) regarding the shipments or services offered by him or her.
2. General terms and conditions of the buyer or third parties are not applicable, even if the supplier does not separately contradict their validity in particular. Even if the supplier refers to correspondence containing the general terms and conditions of the buyer or a third party or refers to such correspondence, this does not mean any approval of the validity of such general terms and conditions.
3. A contract becomes valid, in the absence of any special agreement, upon the written acknowledgement of the order.

III. Offer, scope of delivery and changes in design

1. The supplier's quotations are non-binding and without obligation. Declarations of acceptance and all orders are subject to the written or fax/mail approval by the supplier in order to be legally valid.
2. The supplier's written order confirmation is decisive in determining the scope of delivery. The quotation is decisive 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. Amendments, modifications or additional agreements are subject to written approval by the supplier.
3. Documents relating to the quotation, such as diagrams, drawings, indications of weight and dimensions as well as other performance data are approximate figures, unless they are explicitly designated as binding. They are not guaranteed features, but descriptions or identifications of the shipment. The supplier reserves all ownership rights and copyrights to the estimates of costs, drawings and other documents, including in electronic form. They must not be made accessible to third parties. If the order is not placed with the supplier, they have to be returned immediately to the supplier on demand. Paragraphs 1 and 2 apply accordingly for the buyer's documents. However, they may be made accessible to third parties whom the supplier has permissibly entrusted with supplies.
4. The buyer takes over the responsibility for the data, for documents and any other material to be provided by him.
5. The supplier reserves the right to perform modifications in design at any time. He is not however obliged to perform such modifications on products that have already been delivered.

IV. Prices

1. In the absence of any special agreement the prices are quoted ex works including loading in the plant, but excluding packaging and unloading. Those orders for which fixed prices are not explicitly agreed are charged at the list prices valid on the day of delivery. If a significant change occurs in the prices for materials, wages or energy costs, either contracting party may demand a resettlement of the prices by negotiation. The prices are subject to VAT. at the respective statutory level. This is charged each in accordance with the tax law regulations.
2. If transportation costs are charged, the delivery is made carriage paid to place of destination. Further costs arising at the place of destination have to be covered by the buyer. Packaging materials are charged at cost and are not taken back.
3. For small orders the supplier charges a minimum quantity surcharge in accordance with the pricelist.

V. Payment

1. Unless otherwise agreed, the supplier's invoices are to be settled within thirty days from the date of the invoice net. Partial deliveries are charged proportionately. Regardless of any contradictory terms of the buyer, the supplier is entitled to offset payments against the buyer's former debts first. If costs and interest have already accrued, the supplier is entitled to offset the payment against the costs first, then against interest and finally against the primary obligation.
2. A payment is not deemed effected before the amount is at the supplier's disposal. In case of checks and bills of exchange, the payment is not deemed effected before the check or bill of exchange is cleared.
3. If a payment deadline is not met, the supplier is entitled to charge interest from this date on at the rate of 8 % exceeding the base interest rate plus the statutory VAT. without any particular reminder being required and with reservation of the enforcement of further rights. The supplier reserves the right to claim further damages caused by delay.
4. If the buyer fails to fulfill his payment obligations, in particular if a check is not cleared, if he ceases his payments or if the supplier becomes aware of other circumstances which call the buyer's creditworthiness in question, the supplier is entitled to demand payment of the entire outstanding amount, including if he has accepted the check. In this case the supplier is also entitled to demand payments in advance or the provision of securities.
5. The buyer is only entitled to offset, retain or deduct, even in cases that defects or counterclaims are asserted, if the counterclaims are determined by law or indisputable.

VI. Delivery and delivery period

1. The dates and deadlines stated by the supplier are without obligation, provided that they are not otherwise explicitly agreed in writing. The observation of the delivery time in each case assumes the punctual provision of all documents, approvals, particularly plans, releases to be procured by the buyer as well as the observation of the agreed terms of payment and any other obligations. If these preconditions are not fulfilled in time, the deadlines are extended appropriately; this does not apply if the delay is the supplier's responsibility.
2. The delivery date is deemed observed if the object of delivery has left the premises before its expiry or if the buyer 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, including subsequent difficulties with the procurement of material, troubles in operation, strike, lockout, personnel shortages, lack of means of transport or official directives, etc., even if they happen to the supplier's contractors or subcontractors and even if periods and dates have been bindingly agreed. They entitle the supplier to postpone the delivery or service for the term of impediment plus an appropriate startup time or to withdraw from the contract fully or partially for the part not yet fulfilled. The supplier is not responsible for the circumstances described above if they occur during an existing delay either. The supplier will advise the buyer of the beginning and end of such impediments as soon as possible.
4. If the supplier is responsible for the noncompliance of bindingly agreed periods and dates, or is in default, and if this results in damages for the buyer, the buyer is entitled to claim overall default damages at 1/2 % for each calendar week completed, however at the maximum 5 % of the value of the part of the overall shipment which cannot be used in time or according to the contract as a result of the delay.
5. If, after the due date, the buyer sets the supplier an appropriate period for performance, taking into account the statutory exceptions, and if this period is not observed, the buyer is entitled to withdraw from the contract within the framework of the statutory provisions. With the exception of the customer's right to withdraw from the contract in accordance with figure XII., any further claims are excluded, unless the default results from gross negligence on the part of the supplier.
6. If the dispatch and/or the acceptance of the delivery object is/are delayed for reasons which the buyer is responsible for, starting one month after the notification of the dispatch or readiness for acceptance, the costs accruing as a result of the delay will be charged to him.

VII. Technical acceptance inspection by the buyer or his representative

If, prior to acceptance of the goods, the buyer demands that inspections are performed (e. g. material, operational or dimensional inspections, etc.), their type and extent is to be agreed separately. The costs are to be covered by the buyer.

IX. Reservation of ownership

1. The following agreed reservation of ownership serves to assure all currently existing and future claims by the supplier towards the buyer resulting from the supply relationship between the contractual parties via a business relationship (including outstanding balance claim resulting from a current account relation limited to this delivery relationship).
2. The supplier reserves ownership of the goods supplied to the buyer by the supplier until all amounts claimed by him have been settled. The goods or the goods taking their place by this clause, being subject to the reservation of ownership, are hereinafter referred to as goods subject to retention.
3. The buyer stores the goods subject to retention on behalf of the supplier free of charge.
4. The buyer is entitled to process and sell the goods subject to retention until the case of enforcement (paragraph 9) occurs in the proper course of business. Pledging and transfers by way of security are impermissible.

5. If the goods subject to retention are processed by the buyer, it is agreed that the processing is effected on behalf of and for account of the supplier as the manufacturer, and that the supplier acquires ownership or joint ownership (ownership in fractional shares) of the newly created item at the ratio of the amount of the goods subject to retention versus the amount of the newly created item, provided that processing is done with materials originating from several owners or the value of the materials processed exceeds the value of the goods subject to retention. In case that such acquisition of ownership does not occur with the supplier, the buyer hereby already transfers his future property or his joint ownership of the newly created item at the aforementioned ratio as a security to the supplier. If the goods subject to retention are combined with other materials to become a uniform product or are mixed inseparably, and if one of the other materials is considered as the major product, the supplier transfers a share in joint ownership of the uniform item to the buyer in the ratio mentioned in sentence 1, provided that the major item belongs to him.
6. If the goods subject to retention are resold, the buyer hereby already surrenders the resulting claim against the purchaser as a security to the supplier, in case of joint ownership of the supplier in the goods subject to retention, as a share in joint ownership. The same applies to any other claims which take the place of the goods subject to retention or which arise from the goods subject to retention, such as, for example, insurance claims or claims arising from prohibited actions in case of loss or destruction. The supplier authorizes the buyer revocably to collect the claims transferred to the supplier on his own behalf. The supplier may only cancel this collection authorization in case of enforcement.
7. If third parties access the goods subject to retention, in particular via execution, the buyer will immediately point to the supplier's ownership and advise the supplier accordingly in order to allow him to assert his ownership. If the third party is not in a position to remunerate the supplier with the judicial or extrajudicial expenses arising in this context, the buyer is liable towards the supplier.
8. The supplier will release his own choice of goods subject to retention and the products or claims taking their place on request, provided that their value exceeds the amount of the claims secured by more than 10 %.
9. If the supplier withdraws from the contract due to the conduct of the buyer contrary to contract (case of enforcement), in particular default of payment, he is entitled to claim the goods subject to retention.

X. Guarantee and material defect

If the shipment is subject to material defects, the supplier warrants as follows under the exclusion of any further claims, subject to paragraph XII.:

Material defects

1. The supplier can choose to repair all the parts that turn out to be defective as a result of circumstances found out before transfer of risk or replace them with ones free of defects. The discovery of such defects has to be reported to the supplier in writing by return. Parts that have been replaced become the property of the supplier.
2. On consultation with the supplier, the buyer should grant the supplier the due time and occasion to perform any repairs and replacements that are deemed to be necessary; otherwise the supplier is exempted from liability for the resulting consequences. Only in urgent cases endangering the operational safety and in order to prevent excessive damage (in which case the supplier is to be notified immediately), the buyer is entitled to repair the defect himself or have it repaired by a third party and demand compensation of the necessary expenses from the supplier.

3. 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. Furthermore, he bears the costs for the disassembly and assembly as well as the costs for the provision of necessary fitters and assistants including travel costs, provided that this does not cause any disproportionate burden on the supplier.
4. Within the framework of legal provisions, the buyer has the right to withdraw from the contract if the supplier – taking into account the statutory exceptions - has allowed a reasonable deadline set for remedy of the defect to expire without success. If the defect is negligible, the buyer is only entitled to reduce the contract price. The right to reduce the contract price is otherwise excluded. Further claims are determined in accordance with chapter XII. 2 of these conditions.
5. Liability is not accepted for the following particular cases: Unsuitable or improper use, incorrect assembly or start-up by the buyer or third parties, natural wear and tear, incorrect or careless treatment, improper maintenance, unsuitable equipment, insufficient building work, unsuitable site, chemical, electrochemical or electrical influences - unless they are responsibility of the supplier.
6. If the buyer or a third party makes improper rectifications, 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.

XI. Guarantee and defect of title

1. If use of the delivery object causes infringement of intellectual property rights or copyrights in the home country, the supplier will generally provide the buyer with the rights for further use on his own cost or modify the delivery object for the buyer in such a way as to avoid the breach of property rights. If this is not possible within a reasonable period of time or under reasonable economic conditions, the buyer is entitled to withdraw from the contract. The supplier is also entitled to a right to withdraw from the contract under the stated conditions. Furthermore, the supplier will release the buyer from claims of the property rights owner which are undisputed or legally binding.
2. The supplier's obligations mentioned in chapter XI. 1. are ultimately subject to chapter XII. 2 for cases of property right or copyright infringement. They only apply if
 - the buyer immediately advises the supplier of infringements of industrial property rights or copyrights enforced,
 - the buyer gives the supplier reasonable support and enables him to carry out the necessary modifications in accordance with chapter XI.1,
 - all defense measures including out-of-court settlements are reserved to the supplier,
 - the legal defect is not due to any instructions given by the buyer
 - the legal violation was not caused by an unauthorized modification of the delivery item by the buyer or use of the item by him in a manner which does not comply with the contract.

XII. Liability

1. Where, as a result of the supplier's fault, the delivery object cannot be used by the buyer as contractually agreed, due to suggestions or advice - provided prior or after the signing of the agreement - not or having been incorrectly implemented or due to the infringement of other contractual ancillary obligations - in particular, instructions for operating and maintaining the delivery object - the provisions of sections X., XI.1 and XII.2 apply accordingly under exclusion of all and any other rights of the buyer.

2. For damages not caused to the delivery item itself, the supplier is only liable, for whatever legal reasons,
 - a. in the event of intent,
 - b. in the event of gross negligence on the part of the owner/the bodies or chief executives,
 - c. in the event of culpable damage to life, limb or health,
 - d. in the event of defects which were maliciously concealed or the absence of which had been guaranteed by him,
 - e. in the event of delivery object defects provided liability is provided in accordance with the product liability law for injury to persons and damages to materials or other special legal requirements.

In cases of culpable breach of primary contractual duties the supplier is also liable for gross negligence of other staff and for simple negligence; the latter is limited to typical damages for the type of contract and which could reasonably be foreseen. Further claims are excluded.

XIII. Special terms and conditions for machining contracts

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

1. The processor bears no liability for the behavior of the materials sent to him, in particular as a result of mechanical treatment, thermal treatment or other machining processes. His entitlement to remuneration is not affected by this. Any additional effort or expense caused by unforeseeable material properties are to be covered by the buyer.
2. If, as a result of slight negligence during machining by the processor, his agents or assistants, the material becomes unusable, the buyer forfeits his right to claim for damages. If the material sent becomes unusable due to material faults or other defects during machining, the buyer is to refund the supplier the spent costs.
3. Liability for defects is excluded.

XIV. Limitation

All claims on the part of the buyer, for whatever legal reasons, will expire in 12 months. In respect of claims for damages in accordance with section XII. 2 a – e, the legal time limits shall apply.

XV. Use of software

1. If software is included in the scope of delivery, the buyer shall be granted a non-exclusive license to use the software supplied including its documentation. It shall be transferred for use on the delivery item intended for this purpose. Using the software on more than one system is forbidden.
2. The buyer may only use, copy, edit or translate the software, or change the object code to the source code at the legally permissible extent (§§ 69 a ff. of the Copyright Law). The buyer undertakes not to remove the manufacturer's data – in particular copyright notes – or to change this without the supplier's prior explicit permission.
3. All other rights to the software and to the documentation including the copies remain the property of the supplier or the software supplier. Issuing sub-licenses is not permitted.
4. Selection programs, etc. are aids, but not legally binding interpretations.



XVI. Applicable law and place of jurisdiction

1. The law of the Federal Republic of Germany applies to these general terms and conditions and to all legal relations between the supplier and the buyer, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of the supplier. The supplier shall, however, be entitled to take legal action at the buyer's registered office.

XVII. Binding effect of the contract

Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected. This shall not apply if adherence to the contract constitutes an unacceptable hardship for either contract party.

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