

General Terms and Conditions of Sale

KWS KAECHELE GmbH

§ 1 Scope

- 1.1 These General Terms and Conditions of Sale apply to all present and future entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB). They do not apply to consumers.
- 1.2 We provide all our deliveries and services exclusively subject to these General Terms and Conditions. We do not recognise any conflicting, deviating or supplementary conditions of the customer unless we have expressly agreed to their validity. Our Terms and Conditions shall also apply if we carry out the delivery to the customer without reservation in the knowledge that the customer's terms and conditions conflict with or deviate from our terms and conditions.

§ 2 Documents, drawings, samples etc.

- 2.1 We reserve all proprietary rights, copyrights and other rights to all drawings, technical documents, plans, calculations, samples, catalogues, cost estimates and other information of a tangible and intangible nature - also in electronic form - that we make available before or after conclusion of the contract. These documents may be used by the customer only for the contractually stipulated purpose. They may not be used by the customer in any way without our express consent, in particular they may not be made accessible to third parties in any way. In the event of infringement, the customer must compensate us for damages.
- 2.2 We shall provide the customer with free information, drawings and other documents that enable the customer to commission, use and maintain the system after acceptance at the latest. We are not obliged to provide workshop drawings and drawings of individual components unless this has been expressly agreed with the customer.
- 2.3 If we deliver our products as samples to the customer as agreed for test/trial purposes, the products are always (non-binding) standard versions for which we cannot guarantee that they correspond to the conditions on site at the customer. The conditions on site and the exact use must be clarified by the customer. This also and in particular applies to further use of the samples by installation in end devices. Suitability and product safety for the specific use shall be ensured by the customer. Unless otherwise agreed, samples must be returned to us in flawless condition immediately after the expiry of the transfer period granted by us. If samples are not returned despite a grace period, we shall be entitled to charge the purchase price for a sample in accordance with the price list, transport costs and any repair or overhaul costs incurred in the event of a damaged return delivery. Costs for import including customs and tax are always to be borne by the customer.
- 2.4 The machine descriptions and technical data published in brochures and on our website do not claim to be complete. They may change in the course of further development and are therefore not a contractual basis.

§ 3 Offer and conclusion of contract

- 3.1 We are entitled to accept the contractual offer contained in the order within two weeks of receipt by us. The acceptance can be declared either in writing or by delivery of the goods to the customer.
- 3.2 Cost estimates within the scope of a repair or general overhaul are subject to change and non-binding, unless they are expressly designated as a binding offer.
- 3.3 Conclusion of the contract is subject to correct and timely delivery by our suppliers. This shall apply only in the event that we are not responsible for the non-delivery, in particular in the event of the conclusion of an implied covering transaction with our supplier. The client will be informed immediately of the non-availability of the service. The consideration shall be refunded without delay.
- 3.4 Our order confirmation is decisive for the order. If we do not send a separate order confirmation, the goods invoice or the delivery note shall be deemed to be the order confirmation. If the customer has objections to the content of the order confirmation, they must immediately object to this in writing. Otherwise, the contract shall be concluded in accordance with the order confirmation.
- 3.5 Information about products and services as well as machine descriptions on advertising media, such as brochures, illustrations and drawings as well as information about weight, dimensions and performance are general information for potential interested parties and are to be regarded as standard values only. They do not constitute a guarantee of the quality of the product or service in question unless this has been expressly agreed.

§ 4 Delivery, transfer of risk

- 4.1 Unless otherwise stated in the order confirmation, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handover or, in the case of shipment, upon delivery of the goods to the transport person. If the dispatch or handover of the delivery item is delayed due to circumstances for which the customer is responsible, the risk shall pass to the customer from the day on which the delivery item is ready for dispatch and we have notified the customer of this.
- 4.2 The handover shall be deemed to have taken place if the customer is in default of acceptance.
- 4.3 We shall be entitled to make partial deliveries if this is not unreasonable for the customer.

§ 5 Delivery periods, delay in delivery

- 5.1 Deadlines and dates for delivery and performance stated by us are non-binding unless they have been agreed as binding. Even bindingly agreed dates are not fixed dates unless they have been expressly determined as such in writing.
- 5.2 The time limit for delivery and performance results from the agreements made in accordance with the order confirmation. Compliance with the deadline is subject to all commercial and technical questions having been clarified and the customer having fulfilled all obligations incumbent upon them, in particular having submitted any documents to be procured and having made any agreed down payments. If this is not the case, the period for delivery and performance shall be extended accordingly.

- 5.3 The delivery deadline shall be deemed to have been met if the delivery item has left the factory or notification of readiness for dispatch has been given by the time the delivery deadline expires.
- 5.4 If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims or rights remain reserved.
- 5.5 If the conditions of 5.4. are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.
- 5.6 The period for delivery or performance shall be extended appropriately in the event of incorrect or untimely self-delivery by our suppliers and in the event of measures within the scope of industrial disputes as well as the occurrence of unforeseen obstacles over which we have no influence, insofar as such obstacles delay completion or delivery of the delivery item. Such unforeseen obstacles are in particular natural disasters of any kind, fire, traffic accidents, hostage-taking, terrorism, sabotage, power failure. This shall also apply if these circumstances occur at sub-suppliers. The aforementioned circumstances are also not our responsibility if they occur during an already existing delay. In important cases, we shall inform the customer immediately of the beginning and end of such obstacles. In these cases we reserve the right to withdraw from the contract.
- 5.7 In the event of our default, we shall be liable in accordance with the statutory provisions insofar as the underlying purchase contract is a transaction for delivery by a fixed date within the meaning of Section 286 (2) No. 4 of the German Civil Code (BGB) or Section 376 of the German Commercial Code (HGB). We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery for which we are responsible, the customer is entitled to assert that their interest in the further performance of the contract has ceased to exist.
- 5.8 We shall also be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible; fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract for which we are responsible, our liability for damages shall be limited to the foreseeable, typically occurring damage.
- 5.9 We shall also be liable in accordance with the statutory provisions insofar as the delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- 5.10 Due to exceeding deadlines for delivery or performance, the customer may withdraw from the contract only if, after exceeding the deadline, they have set us a reasonable deadline with a threat of refusal and the delivery has not been made within the deadline. This does not apply if we have seriously and finally refused performance or if there are special circumstances which exceptionally justify immediate withdrawal.
- 5.11 Furthermore, in the event of a delay in delivery, we shall be liable for each full week of the delay within the framework of a lump-sum compensation for delay in the amount of 3% of the net price for each week, but not more than a total of 15% of the net price of the delayed performance which could not be used for its intended purpose due to the delay.

§ 6 Commissioning and installation

- 6.1 If the customer has requested installation and commissioning, the customer must carry out preparatory work in good time and create the necessary conditions to enable proper installation. This does not apply to preparatory work that is to be carried out by us as agreed.
- 6.2 The customer's preliminary work must be carried out in accordance with our instructions and drawings. The customer must ensure, at their own expense, that the building and the ground are adequately loadable and suitable for commissioning. Furthermore, the customer is obliged to make all necessary connections for our product to ensure proper functioning.-
- 6.3 Lifting equipment, means of transport, processing machines, materials and supplies such as water, fuels, compressed air, electricity, gas, energy and heating as well as other necessary materials shall be made available to us free of charge, unless otherwise agreed.
- 6.4 We are free to instruct the customer to provide tools or to bring our own tools. In both cases, this shall be at the expense of the customer. Excluded from this decision are special tools that have been specially manufactured for a product and are not available to the customer on site. Any costs for formalities or licensing requirements for import and export are to be borne by the customer.
- 6.5 The customer shall provide us with auxiliary staff and operating personnel at their own expense.

§ 7 Prices and terms of payment

- 7.1 The prices stated in the order confirmation shall be decisive. Unless otherwise agreed, these prices are ex works and do not include packaging, freight, postage, insurance, customs, other expenses and statutory VAT. The list prices valid on the day of delivery shall apply if the contract was concluded more than four months ago. If the freight or customs costs are changed after conclusion of the contract in the case of contracts with the conditions freight paid or duty paid, these additional costs shall also be borne by/for the benefit of the customer.
- 7.2 Insofar as cost changes unforeseeable for us occur after conclusion of the contract until execution of the order, e.g. due to an increase in wage or material costs or the introduction or significant increase of taxes or customs duties, we shall be entitled to adjust the prices within the scope of the changed circumstances and without charging an additional profit. This shall not apply if we are in default of delivery. ~~ff~~
- 7.3 Unless otherwise agreed in text form, payments shall be made to us within 30 days of the invoice date without any deductions. After expiry of this period, the customer shall be in default of payment. We shall be entitled to demand interest on arrears at the statutory rate, but at least 9 percentage points above the base interest rate p.a. If we can prove a higher damage caused by default, we shall be entitled to claim it.
- 7.4 If the customer has ordered the installation and assembly of a system and/or training, the customer shall bear all necessary ancillary costs (travel, transport, etc.), unless otherwise agreed.
- 7.5 We shall be entitled to perform or render outstanding deliveries or services only against advance payment or the provision of security if, after the conclusion of the contract, we become aware of circumstances that are likely to substantially reduce the customer's creditworthiness or which jeopardise the payment of our outstanding claims by the customer under the respective contractual relationship. In this case, we may also prohibit the resale and further processing of items delivered under retention of title.

- 7.7 If a cost estimate or quotation has been prepared by us, we may additionally charge for supplemental expenses for our service with regard to working time, spare parts and other efforts if this unexpected supplemental expense was unknown to us in advance or could not be planned, e.g. due to missing information from the customer, circumstances or conditions on site, employees, the building, the rooms, aids, tools and other necessities that were not properly prepared by the customer or not communicated to us. Invoicing will then take place according to the current circumstances.

§ 8 Offsetting and retention

- 8.1 The customer may set off a counterclaim only if it undisputed or has become res judicata.
- 8.2 The customer shall be permitted to assert a right of retention only if the counterclaim is based on the same contractual relationship and is undisputed or has been finally determined by a court of law.

§ 9 Warranty, compensation

- 9.1 In accordance with § 377 of the German Commercial Code (HGB), the customer shall inspect each delivery/service for completeness and damage, including damage to packaging, upon receipt/acceptance. The obligation to inspect and give notice of defects also extends to deviations in quantity and identity. Complaints must be sent to us immediately in writing. Hidden defects must be notified in writing immediately after their discovery. The customer must arrange for a statement of facts to be made at the shipping company.
- 9.2 Insofar as there is a defect for which we are responsible, we shall be entitled to subsequent performance by either remedying the defect or delivering a defect-free delivery item at our discretion. Delivery items replaced by us within the scope of subsequent delivery shall become our property. No new limitation period shall commence as a result of the subsequent performance. If we refuse subsequent performance, if it fails or if it is unreasonable for the customer, the customer may assert further rights, in particular demand a reduction in price or withdrawal from the contract.
- 9.3 We shall be liable in accordance with the statutory provisions if the customer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable damage typically occurring.
- 9.4 We shall be liable in accordance with the statutory provisions if we culpably breach an essential contractual obligation; however, in this case, too, the liability for damages shall be limited to the foreseeable, typically occurring damage. An essential contractual obligation exists if the breach of duty relates to an obligation the fulfilment of which the customer has relied on and was entitled to rely on.
- 9.5 After notification of the defect, the customer is obliged to provide us with pictures, videos or other evidence of the defect in order to find out whether the defect was caused by us fraudulently. The verification of the defect shall be carried out only by examining the pictures sent to us. If we are unable to draw any conclusions about the possible cause of the defect from the pictures, the customer shall be obliged to return the defective delivery item to us at their own expense. After a thorough examination, the possible cause of the defect will be determined and the customer will be informed immediately. In the event of fraudulent fault on our part, we shall be obliged to provide and dispatch a replacement free of charge. Here too, the shipping costs shall be borne by the customer if the customer's place of business is outside Germany.

- 9.6 The delivery item is free of material defects if it complies with the agreed specification or - if no such specification exists - with our technical drawing. We reserve the right to make changes to the construction and/or design which do not affect either the function or the value of the delivery item and which do not constitute a defect. Defects which do not or only insignificantly impair the value and/or the usability of the delivery item do not constitute grounds for claims for defects.
- 9.7 The customer shall not be entitled to claim for defects in particular in the following cases: Usual wear and tear, unsuitable or improper operation or use, faulty assembly or commissioning, unsuitable or improper storage by the customer or third parties; faulty or negligent handling, improper maintenance, unsuitable operating materials, faulty assembly work, unsuitable areas of use; chemical, electrochemical or electrical influences; defects based on designs specified or determined by the customer or materials specified, determined or provided by the customer, including sample materials or other materials provided by the customer. In these cases, claims for defects on the part of the customer shall be considered only if the customer proves that the defects have not been caused, either in whole or in part, by the aforementioned influences.
- 9.8 Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply to mandatory liability under the Product Liability Act.
- 9.9 Unless otherwise stipulated above, liability is excluded for the following.
- 9.10 The limitation period for claims for defects shall be 12 months from the transfer of risk, unless another limitation period is mandatory by law.

§ 10 Total liability

- 10.1 Any further liability for damages than provided for in § 9 is excluded - regardless of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, from other breaches of duty or from tortious claims for compensation for property damage pursuant to § 823 BGB.
- 10.2 The limitation according to clause 1 shall also apply insofar as the customer, instead of a claim for compensation for damage, demands compensation for useless expenses instead of performance.
- 10.3 Insofar as our liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of our employees, representatives and vicarious agents.

§ 11 Retention of title

- 11.1 We shall reserve title to all goods delivered by us until full payment of all claims, including those from previous contracts. The claims also include cheque and bill of exchange claims as well as claims from current account. If, in connection with the payment, a liability from a bill of exchange is established for us, the retention of title shall expire only when our claim from the bill of exchange is excluded.
- 11.2 If the customer is in default of payment, if it becomes apparent that our claims for payment are jeopardised by the customer's inability to pay or if the customer otherwise acts in breach of contract, we shall be entitled to demand the return of the goods on the basis of the reservation of title.

- 11.3 The customer shall be obliged to treat the object of purchase with care; in particular, they are obliged to sufficiently insure it at their own expense against fire, water and theft damage at replacement value. If maintenance and inspection work is required, the customer must carry this out in good time at their own expense.
- 11.4 In the event of seizures or other interventions by third parties, the customer must notify us immediately. The customer shall bear all costs that have to be incurred in order to cancel the seizure and to recover the delivery item, insofar as they cannot be recovered from the third party.
- 11.5 The customer is entitled to dispose of the delivery item in the ordinary course of business, subject to revocation for good cause. In particular, transfer by way of security and pledging by the customer are not permitted. The goods subject to retention of title may be passed on by the customer only to the purchaser if the customer is not in default with its obligations towards us.

In the event of resale, the customer hereby assigns to us all claims arising from the resale, in particular payment claims but also other claims in connection with the sale, in the amount of our final invoice amount (including VAT).

The customer is entitled to collect the assigned claims on a fiduciary basis until revoked by us for good cause. The resale of the receivables within the scope of genuine factoring requires our prior consent. For good cause we shall be entitled to notify the third-party debtors of the assignment of receivables also on behalf of the customer. Upon notification of the assignment to the third-party debtor, the customer's right to collect shall expire. In the event of revocation of the right to collect, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment.

Significant grounds within the meaning of these provisions shall be deemed to exist in particular in the event of default in payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency of the customer.

- 11.5 Processing of the delivery item by the customer shall always be carried out for us. We shall be deemed to be the manufacturer within the meaning of § 950 BGB without any further obligation. If the delivery item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the invoice amount to the purchase price of the other processed goods. In all other respects, the same provisions shall apply to the item created by processing as to the delivery item.
- 11.6 In the event that the delivery item is combined, mixed or blended with movable items of the customer in such a way that the customer's item is to be regarded as the main item, the customer hereby assigns to us co-ownership of the overall item in the ratio of the value of the delivery item to the value of the other combined, mixed or blended items. The customer shall keep the property for us free of charge. If the delivery item is combined, mixed or blended with movable items of a third party in such a way that the item of the third party is to be regarded as the main item, the customer hereby assigns to us the remuneration claim to which it is entitled against the third party in the amount corresponding to the final invoice amount attributable to the delivery item.

The new item created by combining or mixing or the (co-)ownership rights to the new item to which we are entitled or which are to be transferred as well as the claims to remuneration assigned in accordance with the above paragraph shall serve as security for our claims in the same way as the delivery item itself.

- 11.7 Insofar as the retention of title or the assignment of claims should be ineffective or unenforceable due to non-mandatory foreign legal provisions, the security corresponding to the retention of title or the assignment of claims in this area shall be deemed agreed. If the cooperation of the customer is required hereunder, the customer shall take all measures necessary to establish and maintain the security.
- 11.8 We shall undertake to release the securities to which we are entitled at the customer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released is incumbent on us.

§ 12 Technical documentation

Our documentation corresponds to the language of the contract. Either German or English.

§ 13 Place of performance, place of jurisdiction, applicable law

- 13.1 The place of performance for delivery and performance as well as for all other obligations arising from the delivery contract is Pforzheim for both parties.
- 13.2 The place of jurisdiction for all legal disputes arising from the contractual relationship as well as regarding its creation and its effectiveness is Pforzheim for both parties in the case of merchants. At our discretion, we may also bring an action at the customer's place of business.
- 13.3 The contractual relationship shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

§ 14 Severability clause

Should individual provisions of the Agreement with the customer, including these General Terms and Conditions, become invalid in whole or in part, this shall not affect the validity of the remaining provisions.

