



KTP Delivery and Payment Terms and Conditions

1 General provisions

1.1 All deliveries made by KTP are subject to the following terms and conditions. They also apply to all future transactions even if we do not make reference to these terms and conditions in every individual case.

Within the meaning of our Delivery and Payment Terms and Conditions, "Purchasers" are both business purchasers and consumers.

1.2. Deviations from these Delivery and Payment Terms and Conditions are only valid if they are agreed in writing. This also applies when they differ from the Delivery and Payment Terms and Conditions of the Purchaser, even if we are aware of these.

1.3 Claims of the Purchaser cannot be assigned without our consent.

2 Offer and conclusion of contract

2.1 Our offers are non-binding and are subject to change unless otherwise expressly agreed.

2.2 Orders are only deemed to be accepted if they have been confirmed in writing. Any amendments to the order confirmation given by us and any other arrangements and verbal agreements must also be confirmed by us in writing.

2.3 The information and descriptions contained in our catalogues and brochures are only definitive if no express reference is made to deviations. If production-related or other changes are made to the dimensions, weights, illustrations or drawings in the catalogues or brochures, the Purchaser will be informed of the relevant changes in the form of a binding offer. If he/she accepts this offer in writing, then only the revised performance specifications shall be binding. No additional written confirmation in accordance with Clause 2.2 is required as such an offer is deemed to be accepted if the Purchaser does not expressly reject the amended offer within two weeks of receiving it. Slight deviations from the performance specifications are to be accepted as being in accordance with the contract provided they do not impair the contractually agreed use of the item. No notification of any such deviations is required. Obvious errors, such as printing, computing, spelling and calculation errors are not binding on us and do give rise to a claim for fulfillment.

2.4 The Purchaser assumes full responsibility for all documents, such as drawings, templates, samples or the like to be supplied by him/her. Verbal information regarding dimensions, tolerances or the like require written confirmation.

2.5 We retain the rights of ownership and copyright on all cost estimates, sketches, drawings and other documents. They may not be made accessible to third parties or used for other purposes, in particular for manufacturing items oneself, without our consent. On request, they must be returned to us immediately.

2.6 Samples are only supplied against payment.

3 Scope of the delivery

3.1 Regarding the scope of the delivery, our written order confirmation or accepted binding offer in accordance with Clause 2.3 shall prevail.

3.2. We reserve the right to make structural or design changes arising from technical improvements or legal requirements during the delivery period provided that the delivery item is not altered substantially and the change is reasonable for the Purchaser.

4 Prices

4.1 Our prices are given in euros ex works (09456 Annaberg-Buchholz), plus packaging and insurance, plus VAT at the rate applicable on the invoice date.

4.2 Price changes are permitted if there are more than four weeks between the offer and the conclusion of the contract or if there are more than three months between the conclusion of the contract and the agreed delivery date. If thereafter, prior to completion of the delivery, the wages, material costs or market cost prices increase, we are entitled to increase the price reasonably in accordance with the increase in cost.

The Purchaser is only entitled to withdraw from the contract if the price increase exceeds the increase in the general cost of living between placement of the order and delivery significantly.

4.3. If the Purchaser cancels a placed order without justification, we will charge the Purchaser the invoice amount minus 10 % for testing and handling costs as well as any lost profits. The Purchaser is entitled to provide evidence of lower damages.

5 Payment terms

5.1 Unless otherwise agreed, the gross purchase price must be paid in advance or the net purchase price for international transactions. Any agreements to the contrary require express written agreement.

5.2. Payments are only accepted by bank transfer to our bank or in cash. Deductions from the invoice amount are not permitted and discount charges are always borne by the Purchaser.

6 Delivery period

6.1 The delivery period begins only when all the requirements for the execution of the contract are fulfilled, in particular when all the details of the construction have been clarified (e.g. when we have all requested plans and designs for the equipment of the machines and devices ordered) and both parties agree on the terms and conditions of the contract. The delivery period refers to the completion of the item at the factory.

6.2 The delivery period begins only after fulfillment of all the contractual obligations by the Purchaser, in particular after receipt of the agreed payment into our bank account.

6.3 Unforeseen events that we or our subcontractors could not avert despite due care and attention, e.g. operational disruptions, strikes, lockouts, a defective part that cannot be replaced immediately at our own plant or at the subcontractor's plant as well as the delay caused by this or necessary changes owing to new knowledge, may prolong the delivery period to a reasonable extent even if they take place when delivery is already overdue. The same applies if official or other permits or documents required by third parties to execute the deliveries are not received in time and likewise in the event of subsequent changes to the order. The Purchaser shall be informed of any such extensions to the delivery period.

6.4 Partial deliveries are permitted insofar as they are reasonable for the Purchaser.

6.5 We are liable in the event of delays in performance in cases of wilful intent or gross negligence on our part or by a representative or vicarious agent in accordance with the statutory provisions. However, if the Purchaser is a business purchaser, in cases of gross negligence, our liability is limited to foreseeable damage typical for this type of contract provided it is not related to loss of life, bodily injury or damage to health. In other cases of delay in performance, liability for damages is limited to 5% of the value of the work in addition to or in lieu of performance. Any additional claims by the Purchaser are excluded, even after expiry of a deadline for performance set by us.

6.6 If dispatch is delayed at the request of the Purchaser, we are entitled to charge the costs incurred for storage beginning two weeks after notification of readiness for shipment. For storage on our premises, we charge at least 0.5% of the invoice amount for each month or the actual storage costs. The Purchaser has the opportunity to provide evidence of lower damages. After this period has expired without result, we may otherwise dispose of the goods and deliver to the Purchaser within a reasonably extended period of time.

7 Transfer of risk

7.1 Risk is transferred to the Purchaser upon dispatch ex works.

7.2 If shipping is delayed due to circumstances for which we are not responsible, the risk is transferred to the Purchaser from the date on which the item was ready for shipping if the Purchaser is a business purchaser.

7.3 Insurance against transport damage is effected at the expense of the Purchaser unless proof is provided of the Purchaser's own insurance.

8 Packaging and shipping

8.1 Goods are shipped in recyclable packaging such as we deem suitable according to standard commercial practice.

8.2 Packaging is charged at cost.

8.3 In the absence of any special instructions, the choice of transport route and means of transport will be made at our discretion with no liability for the cheapest shipping method or the shortest route.

8.4 If goods which are ready for shipping cannot be delivered at the scheduled time as a result of circumstances for which we are not responsible, the cost of storage on our premises or by a third party will be charged to the Purchaser.

9 Commissioning

9.1 Any expenses incurred during commissioning for installation staff and allowance rates, in particular including overtime and work on Sundays and public holidays, shall be borne by the Purchaser in accordance with German law. Travel and waiting time also constitute working hours.

9.2 The cost of the travel to and from the Purchaser's premises as well as the transportation of tools and luggage are borne by the Purchaser.

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10 Defects, repair, replacement

10.1 Natural wear and damage due to improper handling are excluded from this warranty. If parts which are exposed to increased wear, for example if used for up to 40 hours a week or in two-shift operation, become unusable or their serviceability is impaired within 6 months or 3 months in the case of two-shift operation, it is presumed that the impairment is due to wear unless this presumption is incompatible with the nature of the item or the nature of the impairment.

10.2 The Purchaser is obliged to report any obvious material defects or defects of title to the seller immediately in writing, at the latest 8 calendar days after receiving the goods; it is sufficient to dispatch the notification within the time limit. The Purchaser should describe the defects in as much detail as possible in the notification. The Purchaser is liable for damage in transit.

10.3 The period of limitation for claims and rights of the Purchaser owing to defects – irrespective of the cause – is twelve months following handover of the item, unless a longer limitation period is prescribed by law.

10.4 We are not liable for defects resulting from improper or inappropriate use, faulty assembly or commissioning by the Purchaser or third parties, natural wear and tear, incorrect or careless handling, excessive stress, unsuitable operating materials, ingress of foreign matter, defective work on goods supplied by third parties or external influences.

10.5 The Purchaser must allow us sufficient time and opportunity to carry out repairs and replacements, as otherwise we are exempt from any liability for defects. We are responsible for paying any expenses incurred in the course of supplementary performance, in particular transport, travel, labour and material expenses, as long as the complaint is justified.

10.6 The expenditure required to repair a defect or supply a replacement is borne by the Purchaser – even if the complaint is justified – if, as a result of the item being moved to a different location than the Purchaser's original location, such expenditure increases, unless the move was agreed by us.

10.7 The warranty is invalidated if any unauthorised modifications or repair work are undertaken by the Purchaser or third parties employed by him/her – including during commissioning – without our written permission unless we are in default of remedying or have refused to remedy the defect without justification.

10.8 Claims for compensation for damages that were not sustained by the delivery item itself are excluded if the damage was not incurred on the basis of an assurance.

11 Withdrawal, reduction and compensation

11.1 The Purchaser has the right to withdraw from the contract or to reduce payment if we allow a grace period that we have set for remedying a defect to expire without effect, if the repair or procurement of a suitable replacement part is not possible, and if we refuse to remedy a defect.

11.2 A warranty claim by the Purchaser for compensation for damages in lieu of performance is excluded.

12 Liability in the event of impossibility of performance

12.1 If it subsequently proves impossible to fulfil the contract for reasons for which we are not responsible, we likewise have the right to withdraw from the contract entirely or partially.

12.2 The Purchaser is entitled to demand compensation for damages in accordance with the statutory provisions, however this is limited to compensation for damages in addition to or in lieu of performance and reimbursement of wasted expenses up to 10 % of the value of that part of the delivery that cannot be used due to the impossibility of performance.

13 Extent of liability

13.1 Our liability for breaches of contractual obligations on our part and for those of our vicarious agents and employees is limited to wilful intent and gross negligence. Excluded from this limitation is liability for loss of life, bodily injury or damage to health.

13.2 However, claims for damages for breaching material contractual obligations is limited to foreseeable damage typical for this type of contract if none of the exceptional cases listed in Point 1 also applies.

14 Retention of title

14.1 We shall retain title of the delivery item until full payment has been made. If the Purchaser is a business purchaser, we furthermore retain title of the delivery item until all existing and still arising claims from the business relationship between ourselves and the Purchaser have been settled, irrespective of their legal basis.

14.2 If the validity of this retention of title is subject to special requirements or formalities in the Purchaser's country, the Purchaser is obliged to ensure they are fulfilled at his/her own expense.

14.3 The Purchaser may only dispose of the delivery item in the ordinary course of business; other means of disposal, in particular pledges and assignments by way of security, are not permitted. In the event of attachments and seizures or any other disposal by a third party, the Purchaser must notify us immediately and provide us with all the information and documents necessary to protect our rights. Enforcement officers and third parties must be informed that the goods are our property.

14.4 Any processing of the goods is carried out for us without giving rise to any obligation on our part.

14.5 If our goods are processed, mixed or combined with other goods not belonging to us by the Purchaser, we are entitled to co-ownership of the new item in proportion to the value of the retained goods compared to the other goods at the time of processing, combination or mixing. If the Purchaser acquires sole ownership of the new item, we are deemed to be in agreement with him/her that he/she will grant us co-ownership of the new item in proportion to the value of the processed, combined or mixed retained goods compared to the value of the new item and that he/she will hold it in safekeeping for us without charge.

14.6 The Purchaser hereby assigns any claims arising from the resale of the retained goods to us, irrespective of whether the resale occurred without or after processing, combination or mixing.

We accept the assignment. If the retained goods are sold following processing, combination or mixing with other goods not belonging to us, the assignment of the claim shall be in the amount equal to the value of our retained goods. As long as he/she fulfils his/her obligations arising from the contract, the Purchaser is entitled to collect receivables resulting from the resale. We must be notified immediately, including all details, of any actions or circumstances which threaten our rights of security.

14.7 We are entitled to insure the delivery item against fire, water and other damage at the Purchaser's expense unless proof is provided of the Purchaser's own insurance.

14.8 The Purchaser is obliged to inform us immediately of any appropriation or seizure by third parties of the goods supplied under retention of title and of the rights assigned to us. If we take back the goods supplied by us under retention of title, the taking back of the goods is only deemed to be a withdrawal from the contract if we expressly inform the Purchaser of this in writing.

15 Place of performance and place of jurisdiction

15.1 The place of performance for delivery and payment is our factory in Annaberg-Buchholz.

15.2 For disputes arising from the contractual relationship, if the Purchaser is a business purchaser, any lawsuit must be filed at the court with jurisdiction at our headquarters. We are also entitled to file law suits in the place where the Purchaser's headquarters are situated.

15.3 German law applies exclusively to the exclusion of the Convention on the International Sale of Goods, even if the Purchaser's registered office is located abroad.

16 Miscellaneous

16.1 The assignment of rights and obligations of the Purchaser arising from the contract concluded with us requires our written consent to be legally valid.

16.2 A certificate of tax exemption exists in accordance with § 48 of the German Law on Income Tax (EStG).

16.3 If any provision is or becomes invalid, the validity of the remaining provisions shall remain unaffected.

16.4 This is an English translation of the Original German text and is intended for information purposes only. Only the original German version is legally binding.

Annaberg-Buchholz, 07.02.2013