

General Terms of Delivery of Kern Antriebstechnik GmbH

I. Scope

1. The following terms of delivery shall apply to all contracts concluded between the customer and us for the delivery of goods or services by us. They shall also apply to all future business relations, even if they are not expressly agreed again. Deviating conditions of the customer which we do not expressly acknowledge are non-binding for us, even if we do not expressly contradict them. The following terms and conditions of sale shall also apply if we execute the order without reservation in the knowledge of conflicting or deviating terms and conditions of the customer.
2. In the contracts, all agreements made between the customer and us for the execution of the purchase contracts are recorded in writing.
3. Agreements made in individual cases between the contracting parties (including collateral agreements, supplements and amendments) shall in any case take precedence over these terms and conditions.
4. These terms of delivery shall only apply to entrepreneurs, legal entities under public law or a special estate under public law.

II. General information

We reserve our property rights, copyrights and other industrial property rights in all cost estimates, samples, illustrations, calculations, interpretations, computations, drawings as well as other documents and other information of a physical and immaterial nature – also in electronic form. The customer may only pass these on to third parties with our written consent, irrespective of whether we have marked them as confidential or not. If the order is not placed with us, these must be returned to us immediately.

III. Offer and conclusion of contract

1. We can accept an order that qualifies as an offer to conclude a purchase contract within two weeks by sending an order confirmation or by sending the ordered products within the same period.
2. Our offers are subject to change and non-binding, unless we have expressly designated them as binding.

IV. Terms of payment

1. Our prices apply ex works without packaging plus the applicable statutory value added tax.
2. If we have assumed responsibility for installation or assembly, in addition to the agreed remuneration the customer shall bear all necessary ancillary costs such as travel and transport costs as well as accommodation allowances.
3. The purchase price shall be due for payment net (without deduction) immediately upon receipt of the invoice by the customer, unless the order confirmation states otherwise. A payment shall only be deemed to have been made when we have the amount at our disposal.
4. The customer may only set off such claims which are undisputed or have been legally established. The customer shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship. The customer shall only be entitled to set off counterclaims from other legal relationships to the extent that they are undisputed or have been legally established.

V. Time of delivery and performance

1. Delivery dates or deadlines which have not been expressly agreed as binding are exclusively non-binding information. The delivery period stated by us shall not commence until all technical and commercial questions have been clarified and all obligations incumbent on the customer, such as the provision of official certificates or other documents or the payment of a down payment, have been fulfilled by the customer. If these conditions are not fulfilled in time, the delivery period shall be extended accordingly. This shall not apply if we are responsible for the delay.
2. Compliance with the delivery period is subject to correct and punctual self-delivery. We will inform you as soon as possible of any imminent delays. If non-compliance with the delivery period is due to force majeure, industrial disputes or other events beyond our control, our delivery period shall be extended accordingly. We shall inform the customer of the beginning and end of such circumstances as soon as possible.
3. The delivery period shall be deemed to have been observed if the delivery item has left our plant or readiness for dispatch has been notified before its expiry. If acceptance is to take place, the acceptance date shall be decisive (except in the case of justified refusal of acceptance), alternatively the notification of readiness for acceptance.
4. If the contract is a firm deal within the meaning of § 286 para. 2 no. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code), we shall be liable in accordance with the statutory provisions. The same shall apply if the customer is entitled, as a result of a delay in delivery for which we are responsible, to assert the continuation of his interest in the further performance of the contract. In this case, our liability shall be limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible, whereby fault on the part of our representatives or vicarious agents shall be attributable to us.

5. We shall also be liable to the customer in the event of delay in delivery in accordance with the statutory provisions if the delay is due to an intentional or grossly negligent breach of contract for which we are responsible, whereby any fault on the part of our representatives or vicarious agents shall be attributable to us. Our liability shall be limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible.
6. In the event that a delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation, whereby we are responsible for the fault of our representatives or vicarious agents, we shall be liable in accordance with the statutory provisions with the proviso that in this case the liability for damages shall be limited to the foreseeable, typically occurring damage.
7. Any further liability for a delay in delivery for which we are responsible is excluded. Furthermore, the statutory claims and rights of the customer to which he is entitled in addition to the claim for damages due to a delay in delivery for which we are responsible shall remain unaffected.
8. We are entitled to partial deliveries and partial performances at any time, as far as this is reasonable for the customer.
9. If the customer is in default of acceptance, we shall be entitled to demand compensation for the damage incurred and any additional expenses. The same shall apply if the customer culpably violates his obligations to cooperate or if the dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible. Further claims remain reserved. The risk of accidental deterioration and accidental loss shall pass to the customer upon the occurrence of default of acceptance or debtor's delay.

VI. Transfer of risk, dispatch, packaging

1. The risk shall pass to the customer when the delivery has left the plant. This also applies to partial deliveries or if we have assumed other services such as shipping costs or delivery or installation.
2. If the delivery is to be accepted, the acceptance must take place immediately on the acceptance date, alternatively after our notification of readiness for acceptance. The customer may not refuse acceptance in the event of an insignificant defect.
3. Loading and dispatch are carried out uninsured at the risk of the customer. We shall endeavour to take into account the customer's wishes and interests with regard to the type and route of shipment; any additional costs incurred as a result – even if freight prepaid delivery has been agreed – shall be borne by the customer.
4. We do not take back transport packaging or any other packaging in accordance with the Packaging Ordinance; pallets are excluded. The customer must ensure that the packaging is disposed of at his own expense.
5. If dispatch is delayed at the request or fault of the customer, we shall store the goods at the expense and risk of the customer. In this case, notification of readiness for dispatch shall be deemed equivalent to dispatch.
6. At the customer's request and expense, we shall insure the delivery by means of transport insurance.
7. The customer must take all measures to protect our assembly personnel and our possessions which he would take to protect his own possessions.

VII. Material defects

1. All those parts which turn out to be defective as a result of a circumstance prior to the transfer of risk shall be repaired or replaced free of defects at our discretion. The discovery of such defects must be notified to us immediately in writing. Section 377 HGB applies. Replaced parts become our property.
2. In order to carry out all repairs and replacement deliveries which we deem necessary, the customer shall, after consultation with us, give us the necessary time and opportunity; otherwise we shall be released from liability for the consequences arising therefrom. Only in urgent cases of danger to operational safety or to prevent disproportionately large damage, in which case we must be notified immediately, shall the customer have the right to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the necessary expenses from us.
3. Insofar as the complaint proves to be justified, we shall bear the expenses necessary for the purpose of subsequent performance, provided that this does not result in a disproportionate burden on us. In the event of delivery of a newly manufactured item, we shall also reimburse, to the extent of our statutory obligation, the expenses incurred by the customer in connection with claims for withdrawal in the supply chain.
4. Within the framework of the statutory provisions, the customer shall have the right to withdraw from the contract if – taking into account the statutory exceptions – we allow a reasonable period of time set for us for rectification or replacement delivery due to a material defect to elapse fruitlessly. If there is only an insignificant defect, the customer shall only be entitled to a reduction of the contract price. The right to a reduction of the contract price shall otherwise be excluded.
5. Further claims shall be governed exclusively by Section IX. 2. of these terms and conditions.
6. No liability shall be assumed in particular in the following cases: unsuitable environment or unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable foundation soil, thermal, chemical, electrochemical or electrical influences – unless we are responsible for them.
7. If the customer or a third party carries out improper repairs, we shall not be liable for the resulting consequences. The same applies to changes to the delivery item made without our prior consent.

VIII. Defects of title

1. If the use of the delivery item leads to the infringement of industrial property rights or copyrights in Germany, we shall, at our expense, procure the right for the customer to continue using the delivery item or modify the delivery item in a manner reasonable for the customer in such a way that the infringement no longer exists.
2. If this is not possible under economically reasonable conditions or within a reasonable period of time, the customer shall be entitled to withdraw from the contract. Under the aforementioned conditions we shall also be entitled to withdraw from the contract.
3. In addition, we shall indemnify the customer against undisputed or legally established claims of the respective owners of the industrial property rights.
4. Our obligations under this Section VIII (subject to Section IX) are exhaustive in the event of an infringement of intellectual property rights or copyrights.
5. They only exist if
 - a) the customer notifies us immediately of any claimed infringements of industrial property rights or copyrights,
 - b) the customer supports us to a reasonable extent in defending the asserted claims or enables us to carry out the modification measures in accordance with paragraph 1,
 - c) we reserve the right to take all defensive measures, including out-of-court settlements,
 - d) the defect of title is not based on an instruction of the customer and
 - e) the infringement of rights was not caused by the fact that the customer has arbitrarily modified the delivery item or used it in a manner not in accordance with the contract.

IX. Liability, disclaimer

1. If the delivery item cannot be used by the customer in accordance with the contract as a result of suggestions or advice which we culpably omitted or were faulty and which took place before or after conclusion of the contract, or as a result of culpable violation of other contractual ancillary obligations – in particular instructions for operation and maintenance of the delivery item – the provisions of Section VII shall apply to the exclusion of further claims by the customer.
2. For damage which has not occurred to the delivery item itself, we shall only be liable – for whatever legal reasons – in the following cases
 - a) intent,
 - b) in the event of gross negligence on the part of executive bodies or executive employees,
 - c) in case of culpable injury to life, body, health,
 - d) for defects that we maliciously concealed,
 - e) within the framework of a guarantee promise,
 - f) in the event of defects in the delivery item, insofar as liability is assumed under the Product Liability Act for personal injury or property damage to privately used items.

3. In the event of culpable breach of essential contractual obligations we shall also be liable for gross negligence on the part of non-executive employees and for slight negligence, in the latter case limited to the reasonably foreseeable damage typical of the contract.
4. Further claims are excluded.

X. Statute of limitation

All claims of the customer – for whatever legal reasons – shall be subject to a limitation period of 12 months; this shall also apply to the statute of limitations for withdrawal claims in the supply chain in accordance with § 445b para. 1 BGB if the last contract in this supply chain is not a sale of consumer goods. The suspension of expiration from § 445b para. 2 BGB remains unaffected. The statutory periods shall apply to claims for damages in accordance with Section IX. 2 a-d and f. They shall also apply to defects of a structure or to delivery items which have been used for a structure in accordance with their normal use and which we have caused to be defective.

XI. Software usage

1. Insofar as software is included in the scope of delivery, the customer shall be granted a non-exclusive right to use the delivered software including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.
2. The customer may only reproduce, revise, translate or convert the software from the object code to the source code to the extent permitted by law (§§ 69a et seq. UrhG (Copyright Act)). The customer undertakes not to remove or alter manufacturer information – in particular copyright notices – without our prior express consent.
3. All other rights to the software and the documentation, including copies, shall remain with us or the software supplier. Sublicensing shall not be permitted.

XII. Retention of title

1. The delivery item (reserved goods) shall remain our property until all claims, including all current account balance claims to which we are entitled against the customer now or in the future, have been satisfied. In the event of the customer acting in breach of contract, e.g. default in payment, we shall have the right to take back the reserved goods after setting a reasonable grace period. If we take back the reserved goods, this constitutes a withdrawal from the contract. If we seize the reserved goods, this is a withdrawal from the contract. We shall be entitled to utilise the reserved goods after repossession. After deduction of a reasonable amount for the costs of utilisation, the proceeds of realisation shall be set off against the amounts owed to us by the customer.
2. The customer must treat the reserved goods with care. Maintenance and inspection work which become necessary must be carried out by the customer at his own expense and in good time. We are entitled to insure the delivery item sufficiently at replacement value against fire, water, theft and other damage at the expense of the customer, provided that the customer has not demonstrably taken out the insurance himself.
3. In the event of breach of contract by the customer, in particular default in payment, we shall be entitled to take back the delivery item following a reminder, and the customer shall be obliged to surrender it.
4. The customer is entitled to sell and/or use the reserved goods properly in business transactions as long as he is not in default of payment. Pledging or transfer by way of security is not permitted. The customer hereby assigns to us in full by way of security any

claims arising from the resale or any other legal reason (insurance, tortious act) in respect of the reserved goods (including all current account balance claims); we hereby accept the assignment. We revocably authorise the customer to collect the claims assigned to us for his account in his own name. The direct debit authorisation can be revoked at any time if the customer does not properly meet his payment obligations. The customer is not authorised to assign this claim even for the purpose of collecting the claim by way of factoring, unless the obligation of the factor is simultaneously established to effect the consideration in the amount of the claims directly to us as long as we still have claims against the customer.

5. Any processing or transformation of the reserved goods by the customer shall in any case be carried out on our behalf. If the reserved goods are 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 reserved goods (final invoice amount including value added tax) to the other processed items at the time of processing. The same shall apply to the new object resulting from the processing as to the reserved goods. In the event of inseparable mixing of the reserved goods with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including value added tax) to the other mixed items at the time of mixing. If, as a result of the mixing, the customer's item is to be regarded as the main item, the customer and we agree that the customer assigns to us pro rata co-ownership of this item; we hereby accept the assignment. Our sole or co-ownership of an item thus created shall be held in safe custody for us by the customer.
6. In the event of access by third parties to the reserved goods, in particular seizures, the customer shall point out our ownership and inform us immediately so that we can assert our ownership rights. Insofar as the third party is not in a position to reimburse us for the judicial or extrajudicial costs incurred in this connection, the customer shall be liable for these.
7. We shall be obliged to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%, whereby we shall be responsible for selecting the securities to be released.

XIII. Place of performance, place of jurisdiction, applicable law

1. The place of performance and jurisdiction for deliveries and payments (including actions on cheques and bills of exchange) as well as all disputes arising between us and the customer from the contracts concluded between us and him shall be our registered office. However, we shall also be entitled to sue the customer at his place of business.
2. The relations between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
3. In the event of differences of opinion regarding the interpretation or translation of these General Terms of Delivery, the German version shall prevail.