

Kalanderwalzenfabrik (KWF) Hilger GmbH & Co. KG

General Terms and Conditions of Delivery

Art. 1 General

- 1.1 These Terms and Conditions apply towards
- any person who when concluding the contract was acting in pursuit of his/her commercial or self-employed professional activity (entrepreneur); or
 - any legal entity organized under public law or a separate asset fund organized under public law.

- 1.2 All supplies of goods and services shall be governed by these Terms and Conditions and any separate contractual agreements that may be concluded between the parties. Terms and conditions of purchase of the Buyer which deviate from these Terms and Conditions shall not be deemed part of any contract even if the order is accepted by the Seller and no objection to the said terms and conditions of purchase is raised by the Seller.

In the absence of any other separate agreement, a contract shall come into existence on the issue of a written confirmation of the order by the Seller.

- 1.3 Where customary commercial clauses are agreed, the rules of interpretation of the Incoterms in the latest version at the time shall apply, provided nothing to the contrary is specified below.

- 1.4 Documents such as illustrations and drawings and statements of dimensions and performance shall be deemed approximate only unless they are expressly designated as being contractually binding. Cost quotations, drawings and other documents may be neither duplicated nor made accessible to third parties.

The Seller retains title and rights of use. The Seller will make documents designated by the Buyer as confidential accessible to third parties only with the Buyer's consent.

Art. 2 Price & Payment

- 2.1 In the absence of any agreement to the contrary, the prices are quoted ex works, packing included. The prices are subject to the addition of value added tax at the rate in force at the time of sale.

- 2.2 In the absence of any agreement to the contrary, payment must be made without any deduction to the Seller's account in the following manner:
- one-third on account at the time of the order being placed;
 - one-third when half the delivery time has elapsed;
 - the balance on delivery or on notification of readiness for dispatch if delivery cannot be effected immediately after completion for reasons for which the Seller is not responsible.

Cheques and bills are only accepted as conditional payment.

- 2.3 Should the Buyer fall into arrears with any payment, interest will be charged on the amount in question at a rate of 8% above the base interest rate unless the Buyer can prove that the Seller's loss is only smaller.

- 2.4 The Buyer is only entitled to withhold payment or to offset his own claims against the Seller's claims insofar as his own claims are uncontested or have been finally and absolutely established by a final judgement.

Art. 3 Delivery Time, Delay in Delivery

- 3.1 The delivery time shall be as agreed between the parties. The agreed delivery times must be met; compliance with delivery times shall be deemed a material contractual duty if it has been expressly agreed as such between the parties. Compliance with them by the Seller shall be conditional on all commercial and technical questions having been clarified and on the Buyer having performed all the obligations incumbent upon him, such as furnishing the necessary official certificates or permits or making a payment on account. If this is not the case, the delivery time shall be reasonably extended. This shall not apply if and insofar as the Seller is responsible for the delay.

- 3.2 The delivery time shall be deemed met if, by the time it has expired, the item of delivery has left the Seller's works or the Buyer has been notified of its readiness for dispatch. Where an acceptance procedure is required to be effected, the date of the acceptance procedure - except where acceptance is justifiably refused - or else the notification of readiness for acceptance shall be authoritative.
- 3.3 If dispatch or acceptance of the item of delivery is delayed for reasons for which the Buyer is responsible, the costs caused by the delay will be charged to the Buyer starting one month from notification of the readiness for dispatch or acceptance. Without prejudice to any other claims he may have, the Seller may, after a reasonable additional time granted by him has been allowed to elapse without the Buyer taking the requisite action, dispose otherwise of the item of delivery, in particular place it in storage for the Buyer's risk and account and/or supply the Buyer with a reasonably extended time of delivery.
- 3.4 If the failure to comply with a delivery time is due to Acts of God, labour disputes or other circumstances beyond the Seller's control, the delivery time shall be reasonably extended. The Seller will inform the Buyer as soon as possible of the start and end of such circumstances.
- 3.5 Should the Seller fall into delay with delivery, resulting in loss or damage for the Buyer, the latter shall have the right to demand lump-sum compensation for delay. This shall amount to 0.5% for each full week of delay - though not more than altogether 5% - of the value of that part of the total delivery which cannot be used in good time or in the manner provided for in the contract.
- If, when the Seller is already in delay with delivery - and taking the statutory exceptions into account - the Buyer grants the Seller a reasonable additional period of time to provide performance and the Seller fails to provide the due performance, the Buyer has the right to repudiate the contract in accordance with the provisions of the law.
- All other claims arising from delay in delivery shall be governed exclusively by Art. 7 of these Terms and Conditions.

Art. 4 Passage of Risk, Acceptance

- 4.1 Except as may be agreed otherwise in any particular case, the risk shall pass to the Buyer at the start of loading of the items of delivery at the Seller's works; this shall apply even where part-deliveries are made or the Seller has agreed to provide additional performance, e.g. to assume the shipping costs or to perform delivery and installation.
- 4.2 Where an acceptance procedure has been agreed, this must be conducted without delay on or by the agreed date or alternatively after notification by the Seller of readiness for acceptance. The Buyer may not refuse acceptance on grounds of the presence of a non-material defect provided the Seller expressly acknowledges his duty to remedy the defect.
- 4.3 Should shipment or the acceptance procedure be delayed or not performed due to circumstances for which the Seller cannot be held responsible, the risk shall pass to the Buyer from the day of notification of readiness for dispatch or acceptance. The Seller undertakes to take out such insurance at the Buyer's expense as the Buyer may demand.
- 4.4 Part-deliveries are permissible insofar as they would not be unreasonable for the Buyer.

Art. 5 Reservation of Title

- 5.1 The Seller reserves title to the item of delivery (the "reserved goods") until such time as all his claims have been fulfilled, including and in particular any balances on current account arising from the business relationship between the Seller and Buyer and to which the Seller is entitled. The Seller is entitled to insure the item of delivery at the Buyer's expense against theft, breakage, fire, water and other damage unless the Buyer can furnish evidence of having taken out such insurance himself.
- 5.2 If the reserved goods are combined with other items in such manner that they constitute a major component of another item, the Seller shall have co-title to the said other item. The production of a new item through combination or processing or the reserved goods shall be done in such wise that the Seller shall always acquire a corresponding co-title share.

- 5.3 If the Buyer resells, for their intended purpose, the goods as delivered or as produced in accordance with Art. 5.2, the Buyer hereby already assigns the claims against his own customer resulting from the sale, or a corresponding portion thereof, to the Seller until the claims of the latter have been satisfied in full.
- 5.4 The Buyer is authorized to collect claims resulting from resale or owed on current account unless and until the Seller revokes the authorization to collect.
- 5.5 In the event of any breach of contract by the Buyer, in particular any delay in payment, the Seller has the right, after issuing due warning, to repossess the items of delivery. This, as well as levy of distress on the items of delivery, shall not constitute any repudiation of the contract by the Seller.
- The Buyer shall inform the Seller without delay of all and any matters affecting the reserved title, in particular enforcement measures or actual interference with the reserved goods.
- 5.6 A petition for the opening of insolvency proceedings shall give the Seller the right to repudiate the contract and demand the immediate return of the item of delivery.

Art. 6 Warranty

In the event of any defects in quality or title of the delivery, the Seller will provide performance under warranty - to the exclusion of all other claims and subject to the provisions of Art. 7 - as follows:

6.1 Defects in quality

- 6.1.1 All parts which prove to be defective due to a circumstance existing prior to the passage of risk will, at the Seller's choice, be either repaired or replaced free of charge. The Seller must be informed of the discovery of any such defect without delay in writing. Replaced parts shall become the property of the Seller.
- 6.1.2 For third-party components of a material nature, the Seller's warranty shall be limited to assignment to the Buyer of the Seller's own warranty claims against the supplier. Should the assigned warranty claims not be fulfilled even after recourse to the courts of law and the conduct of compulsory enforcement measures against the supplier, the Buyer's claims against the Seller shall be reinstated.

- 6.1.3 Particulars of the Seller relating to properties of his products shall be in accordance with the results of his measurements and calculations and shall be deemed characteristic features of the goods but shall not count as warranted properties or guarantees.
- 6.1.4 The Buyer shall, after prior consultation between the parties, allow the Seller the requisite time and opportunity to perform all repairs and replacements as may seem necessary to the latter; otherwise, the Seller shall be released from liability for any consequences which may arise. Only in urgent cases of endangerment to operational safety or in order to prevent loss or damage on a disproportionately large scale - whereby the Seller must be informed immediately - may the Buyer remedy the defect himself or have it remedied by third parties and demand refund of the necessary expenses incurred from the Seller.
- 6.1.5 Of the costs arising through repair and/or replacement delivery, the Seller will - provided the complaint is justified - bear the costs of the replacement item, including shipment within Germany, as well as the reasonable dismantling and installation costs and, if this can be reasonably expected given the circumstances of the individual case, the costs for the provision of any fitters and auxiliary personnel as may be necessary.
- 6.1.6 The Buyer has the right, within the scope of the provisions of the law, to repudiate the contract if the Seller - having due allowance for the exceptions permitted by law - fails to provide remedy for a defect in quality within a reasonable period of time allowed to him for the performance of repair or replacement. If the defect is of an insignificant nature only, the Buyer shall only have the right to reduce the contractually agreed price.
- 6.1.7 The Seller will not provide performance under warranty for any defects resulting from measures or constructions expressly demanded by the Buyer or affecting materials or products supplied by the Buyer.
- The Seller will, in particular, not provide performance under warranty in any of the following cases:
- Unsuitable or improper use, faulty installation or commissioning by the Buyer or third parties, non-use of original parts and materials, natural wear and tear, faulty or negligent treatment, improper servicing and maintenance, unsuitable operating equipment, materials and supplies, faulty construction work, unsuitable building ground and foundations, exposure to unusual effects of any kind

(e.g. vibrations of other machine units, penetration by foreign bodies), chemical, electrochemical or electrical influences - provided they are not due to any fault of the Seller.

- 6.1.8 If the Buyer or any third party effects repair in an unprofessional manner, the Seller shall have no liability for the resulting consequences.

The same shall also apply in the case of any alteration or modification made to the item of delivery without the Seller's prior consent.

- 6.1.9 If so requested by the Seller, the Buyer has a duty to return the defective part to the Seller.

- 6.1.10. The foregoing warranty provisions shall also apply *mutatis mutandis* to the defect remedy itself. The Seller's obligation shall end at the end of the original limitation period pursuant to Art. 8, extended by the period of interruption to operations caused by the defect remedy process.

6.2 Defects in title

- 6.2.1 If use of the item of delivery results in an infringement of industrial property rights or copyright in Germany, the Seller will, at his own expense, either procure the right for the Buyer to continue using the item of delivery or modify it in a manner which is reasonable for the Buyer and such that the infringement no longer exists.

If this is not possible on economically reasonable terms or within a reasonable period of time, the Buyer is entitled to repudiate the contract. The Seller shall, under the same circumstances, also be entitled to repudiate the contract.

The Seller will additionally, in the case of fault on the latter's part, indemnify the Buyer against all claims of the owners of the rights concerned provided the said rights are undisputed or have been finally and absolutely established at law.

- 6.2.2 Subject to the provisions of Art. 7, the obligations of the Seller set forth in Art. 6.2.1 constitute the full extent of the obligations incumbent upon him in the case of infringements of proprietary rights and copyright.

They shall only exist if

- the Buyer informs the Seller without delay of claims for infringement of proprietary rights or copyright;
- the Buyer provides the Seller with all reasonable support scope in defending the asserted claims and/or allows the Seller the opportunity to make the modifications referred to in Art. 6.2.1;

- all defensive measures, including out-of-court settlements, are reserved to the Seller;
- the defect in title is not the result of any instruction of the Buyer;
- the defect in title has not been caused by the Buyer making unauthorized alterations to the item of delivery or using it in a manner not foreseen in the contract.

Art. 7 Liability

- 7.1 If, through the fault of the Seller, the item of delivery cannot be used for the contractually envisaged purpose as a result of non-implementation or deficient implementation of proposals or consultation either before or after conclusion of the contract or through the breach of other secondary contractual obligations - in particular instruction in the operation and servicing of the item of delivery - the provisions of Arts. 6 and 7.2 shall apply *mutatis mutandis*, to the exclusion of all other claims.

- 7.2 For loss or damage sustained not to the item of delivery itself, the Seller may only be held liable, on any legal grounds whatsoever,
- for wilful intent;
 - for gross negligence on the part of the owner, the governing or managing bodies or senior executive personnel;
 - for culpable injury or damage to life, body, limb or health;
 - for defects which the Seller has fraudulently concealed or if he has given a guarantee for the quality of the item;
 - for defects to the item of delivery in cases where the Seller has liability under the German Product Liability Act for personal injury or physical damage to privately used objects.

In the event of breach of material contractual duties, the Seller also has liability for employees who are not senior executive personnel.

- 7.3 In any of the aforesaid cases - with the exception of liability under the German Product Liability Act - the Seller's liability shall be limited to the loss or damage which is reasonably foreseeable and typical for the type of contract concerned.

- 7.4 All other claims for compensation or damages on any legal grounds whatsoever are excluded.

Art. 8 Limitation Period

With the exception of claims under warranty for newly delivered parts, all claims of the Buyer shall lapse after 12 months. The statutory limitation periods shall apply in the case of wilful or fraudulent conduct and in the case of claims under the German Product Liability Act.

The start of the limitation period shall be determined in accordance with the statutory provisions. Warranty claims shall, however, lapse 18 months from the time of commissioning for economic use and in no case later than 24 months from the delivery date.

Art. 9 Software Use

Where software is included in the scope of delivery, the Buyer is granted a non-exclusive right of use to the software supplied, including its documentation. The software is provided for use on the item of delivery for which it is intended. Use of the software on more than one system is prohibited.

The Buyer may reproduce, revise or translate the software or convert it from the object code to the source code only within the scope permitted by law (Sections 69a et seq. UrhG [German Copyright Act]). The Buyer undertakes not to remove manufacturer's information, in particular copyright notices, or to alter them without the Seller's prior written consent.

All other rights to the software and documentation shall remain the property of the Seller or the software supplier. Sub-licences may not be granted.

Art. 10 Applicable Law, Legal Venue

- 10.1 All legal relations between the Seller and Buyer shall be governed exclusively by the law of the Federal Republic of Germany applicable to legal relationships between domestic parties.
- 10.2 Where the Buyer is a registered trader, a legal entity organized under public law or a separate asset fund organized under public law, the legal venue shall be the courts having jurisdiction for the Seller's registered place of business. The Seller shall, however, also have the right to bring legal action against the Buyer in the courts having jurisdiction for the latter's main place of business.

Art. 11 Federal Data Protection Act

Pursuant to Sections 27 et seq. of the German Federal Data Protection Act ("Bundesdatenschutzgesetz" - abbreviated "BDSG"), the Seller has the right to store personal data of the Buyer within the scope of the business relationship, to transmit the said data abroad and to use, amend and delete it. The data is initially stored at a central location of the Seller. The Buyer is hereby notified accordingly pursuant to Section 33 (1) BDSG; no further notifications will be issued.

Art. 12 Miscellaneous Provisions

- 12.1 The place of performance for the mutual obligations arising from the contractual relationship is, where the Buyer is a registered trader, a legal entity organized under public law or a separate asset fund organized under public law, the Seller's registered place of business. This shall also apply where standard commercial terms are agreed.
- 12.2 Declarations which have the purpose of establishing, preserving or exercising rights must be made in writing.
- 12.3 Except with the written consent of the Seller, the Buyer may not assign his contractual rights to third parties.
- 12.4 The corresponding special terms and conditions of the Seller shall apply additionally and with priority to repair and assembly/fitting contracts.
- 12.5 The English text of these General Terms and Conditions of Delivery is enclosed for the sake of convenience only. In the event of dispute, the German text shall apply exclusively.