



## General delivery and payment terms

### § 1

#### General, area of validity

1. Our general delivery and payment terms apply to companies as defined under § 310, paragraph 1 in conjunction with § 14 of the Bürgerliches Gesetzbuch (Civil Code, hereafter termed „BGB“). Entrepreneurs in this sense is any natural person or legal entities or incorporated business partnerships with who we enter into a business relationship and who act in a corporate capacity or as self-employed professional.
2. The following terms apply to all our offers and deliveries. They apply to all current and future business relations, even if they are not explicitly agreed upon.
3. The customer's purchase terms are not part of the contract. They are not accepted, even if we have knowledge of them and if we don't explicitly object to them after the receipt. Latest with receipt of the delivered goods and the service, our general delivery and payment terms are deemed as accepted. Varying agreements are only binding if we acknowledge them in writing.
4. The rights of this contract cannot be transferred to another party.

### § 2

#### Offers, contract conclusion, bidding documents

1. All our offers, were they made verbally or in writing, are subject to change and are non-binding. They do not obligate to delivery. With order of the goods, the customer declares with binding effect that it wants to place the order and purchase the goods. We are entitled to accept the purchase order, its included contract offer within two weeks after receipt. The acceptance can be declared either in writing or through delivery to the customer. Our purchase order acknowledgement determines exclusively the scope of the contractual owed payment.
2. Conclusions of transactions through representatives are binding for the customer but for us first through a written acknowledgment notification;
3. We reserve sole ownership and copyright to any documents, which belongs to the offer. Without our prior agreement, these documents may not be distributed to third parties. If the order is not realised, the documents have to be returned to us upon our request. Prices of individual sales positions are only valid as part of the total offer and cannot be ordered as individual positions. Drawings, copies/photographs, dimensions, weights and other service data have only a binding effect if this is explicitly agreed in writing.
4. When the customer orders the goods electronically, we will immediately acknowledge the receipt of the order. The notification of order receipt is not yet an acceptance with binding effect of the order. The notification of order receipt can be combined with the notification of acceptance. If the customer orders the goods by electronic means, we save the contract text, and upon request, it will be send with e-mail to the customer in addition to the present general delivery and payment terms.
5. We reserve the right to changes of structure, material selection, specification and design even after sending a notification of order acceptance if those modifications do not contradict the notification of order acceptance or the specifications of the customer. The customer will agree to the proposed modifications if it finds them reasonable.

### § 3

#### Pricing

1. Our prices result from the notification of order acceptance. Our prices are calculated ex works, excluding packing, shipping and other transportation costs, and duty is unpaid (foreign countries).
2. If between closing of contract and delivery or service the prices of our contractor's supplier or our costs (e.g. freight increases, wages and raw material increases, etc.) or our taxes should increase, we are entitled to increase our price accordingly, except when the price is explicitly confirmed as fixed price.
3. If we consider a request of a modification by a customer, we are entitled to charge the customer for the resulting extra costs.
4. The customer will be charged with value-added tax, pursuant to statutory regulations. Eventual increases of the value-added tax between the time of the order and delivery are borne by the customer.

#### § 4

##### Payment terms

1. Our deliveries are due for payment (without any deduction) within 30 days after receipt of the service. After this stated payment period, the customer is in default.
2. A grant of discount needs a formal individual contract - and additionally as further requirement – providing that by then all outstanding accounts are settled. For the discount calculation, the net invoice amount (after deduction of abatements, freight charges and other passed-on third party costs) is decisive.
3. We are not obliged to accept bills of exchange and cheques. We accept bills of exchange only as subject of a discount option. Cheques and bills of exchange will be first credited after check encashment, and releases of covenants will be first credited after payment. Until then, the amount receivable and their payment due dates remain unchanged. No liability is accepted for prompt encashment or protest. Protest and collection charges will be borne by the customer
4. When applicable, we are entitled to impute payments first for earlier debts of a customer despite contrary terms of this customer.
5. The retention of payments or the offset of possible customer counterclaims - as contested by us - will be not allowed.
6. In case of the customer's (debtor's) failure to comply with the terms of payment, all outstanding debts will become immediately due. The customer's payment default is subject of detention of the goods, pursuant to the stipulations as in following ¶ 5.

#### §5

##### Delinquency and credit unworthiness

1. After expiry of the agreed payment deadlines (delinquency) or receipt of cheque- and/or bill of exchange protest, we are entitled to
  - withdraw from all contracts and demand damages due to the failure to fulfill obligations
  - exercise our reservation of proprietary rights and take possession of the delivered goods (cf. ¶ 10 below)
  - demand collaterals and use demanded collaterals
  - declare all unpaid accounts due and deliver only against prepayment
  - charge default interests, starting from the due date in an amount of eight percent above the basic interest rate of the European Central Bank, plus entitlement to charge the accruing default interest of the current value-added tax
  - charge any further possible default damage after submitting appropriate evidence to the customer.
2. In case of judicial enforcement or in case of filing a bankruptcy proceeding in regards of the assets of the customer, all granted rebates, bonuses and discounts on unpaid bills are moot.

#### § 6

##### Delivery deadlines

1. Received orders are only considered as accepted after issuance of our written notification of acknowledgement. The delivery dates and delivery due dates are just approximate times. Delivery dates and delivery due dates - which can be stipulated with and without binding effect - have to be made in writing,
2. Delivery due dates that are not part of a fixed delivery date start with the date of our notification of order acknowledgment. Delivery due dates and delivery dates are considered as fulfilled when the goods were shipped or when readiness for shipment is communicated within the deadline.
3. Delivery due dates and delivery dates are extended for the length of the time in which the customer is in default towards us with this or other orders, regardless of our other rights concerning the customer delinquency.
4. If we are the cause of the delivery delay, the customer may withdraw from the contract after passage of an appropriate respite, set by the customer, was unsuccessful or after acts of gross negligent or intentional damage on our part. The customer may ask for damages, however, the customer is restricted to the extra costs for a substitute purchase. Further claims do not apply. Liability for slight negligence and negligence pursuant to § 287 BGB is particularly precluded. Liability limitation for slight negligence does not apply for us in case of accountable injury to body or health or loss of the customer's life.
5. It is agreed that partial deliveries may be exercised except when it is explicitly and in writing excluded. For the payment of partial deliveries, § 4 of these general delivery and payment terms applies.

## § 7

### Shipping, transfer of risk

1. In case of shipping, the danger of accidental loss or accidental deterioration of the goods passes from us with delivery to the carrier or the haulier or any other responsible and determined shipping person or institution to the buyer. The shipping takes place ex works – if not otherwise agreed.
2. If free delivery is agreed, the danger of accidental loss or accidental deterioration of the goods/sold item passes on with arrival of the vehicle in front of the delivery address, at the ground level or at a spot, which is reasonably accessible for the vehicle. Our customer is obligated to provide necessary equipment or coworkers for unloading, if this is technically possible.
3. The handover is the same if the customer is in default of acceptance.
4. If the goods are ready for shipment but the delivery is delayed, and we are not the cause, the danger passes with receipt of the shipping readiness notification to the customer. Deliveries ready for shipping have to be immediately accepted, latest within five weekdays after the notification date of shipment readiness. We are otherwise entitled to ship the goods per our own choice. If the shipment or transportation of the goods should be delayed for reasons not caused by us, we are entitled but not obliged to store the goods according to our discretion at the expense and risk of the customer and under exclusion of our liability and to pass the resulting costs to the customer. We are also entitled to take appropriate measures for the preservation of the goods and to charge the goods as delivered.
5. Without specific shipping instructions, we select to best of our ability but without liability the most affordable shipping method. We are entitled to purchase at the expense of the customer a transport- and breakage insurance. Damage claims have to be paid within a deadline of two months. They have to be confirmed in writing, and the evidence of nature and scope has to be provided. With handover of the goods to the carrier or haulier, this responsibility is passed on to the customer latest with goods departure from the factory or the storage facility. This will be applied, even if the delivery is made through our own vehicles.
6. Our delivered goods can be only returned free of transportation charges when they are in perfect condition or after our prior agreement. Voluntary accepted returned goods will be credited, each after its condition minus a share of costs of at least 20 % of the credited value of the returned goods. The credit takes place after the goods are received and after the goods inspection in our facility. A return of custom-made goods or goods, acquired upon wish of the customer, is excluded.

## § 8

### Responsibility for defects

We provide a warranty for defective products including the lack of promised features, pursuant to the following requirements:

1. Our warranty refers to proper factory execution and usage of faultless materials. With natural wear and tear, excessive use and improper assembly, a warranty is excluded.
2. After execution of for instance agreed goods acceptance through the customer, the allegation of defects, which are found during the agreed method of acceptance, is excluded.
3. We provide as our first option responsibility for defective goods through repair or replacement.
4. If the subsequent performance fails, the customer can always ask for a price reduction or rescission of the contract. In case of a minor contract violation, especially if it is just a minor defect, the customer is not entitled to cancel the contract.
5. Customer's claims of deficiencies require that it complied properly with its obligations, due responsibilities to inspections and claims, pursuant to § 377 of the Handelsgesetzbuch (HGB = Code of Commercial Law). The customer has to take the full burden of proof for all claim requirements, particularly for the defect as such, for the point in time of the defect detection and for the timely notification of the defect. Same applies also for the complaints regarding the quantities, dimensions and measures.
6. If the customer chooses - after supplemental performance – by reason of a legal or material deficiency a rescission of the contract, it is not entitled to a claim for damages due to deficiency. If the customer chooses the damages after a failed supplementary performance, the goods stay with the customer, if it deems it reasonable. The damage is limited to the difference between purchase price and value of defective goods. This does not apply, if we caused the contract violation maliciously.
7. The warranty period is one year after delivery of the goods. That does not apply when the customer did not notify us timely about the deficiency (cf. paragraph 6. of this provision).

8. With regards of the nature of the goods, as a principle, only the product description of the manufacturer is agreed upon and takes effect. Public statements, promotions or advertisement of the manufacturer are no contractual statements of the goods.
9. If the customer receives a deficient assembly instruction or a deficient technical documentation, we are only obligated to the delivery of an assembly instruction or technical instruction, which is free of any deficiency, and only then, when the deficiency causes problems for the contractual usage of the assembly part.
10. The customer does not receive legal guaranties from us. Manufacturer warranties remain unaffected.

#### § 9

##### Liability limitations

1. In case of a slight breach of duty, our liability is limited to the foreseeable, contract- typical and average direct damage to these kind of goods. This applies also to the slight breach of duties of our legal representatives or assistants. We are not liable in case of violations of minor contractual obligations.
2. The above liability limitations do not apply to the customer claims for product liability. Liability limitations do not apply in case of unacceptable physical and health damages or the customer's loss of life.
3. The customer's claims for damages, due to a deficiency, expire one year after delivery of the goods. This does not apply if we are accused of gross negligence as well as in case of assignable physical damages and health damages or the customer's loss of life.

#### § 10

##### Reservation of proprietary rights

1. Pending the fulfillment of the requirements (including the balance of the current account) to which we are against the customer legally under any reasons or in future entitled, will be granted in the following paragraphs 2 through 9 about regulated securities. They will be released per our own discretion as long as their values does not exceed our demand of more than ten percent.
2. The goods will remain our property, and the workmanship and processing or assembly is always conducted for us as manufacturer but without our obligation. Should our joint property expire by association or a merger, it is agreed that the joint property of the customer merges with us in the standard matter and in the effective invoice amount.
3. The customer safeguards our joint property free of charge. Property of which we are entitled joint owner are described in the following as retained goods.
4. Our customer is entitled to process or sell retained goods in the course of appropriate business. The customer assigns the receivable at closure of the contract to us in full amount. They result from the re-sale, processing or any other legal reason, (insurance, tort) of the retained goods (including all balances of the current account). We accept the assignment. None of our property rights (simple, expanded, extended open account title) expires, even if the goods, which were originated with us were purchased by another buyer and as long as it did not pay us for the goods. This applies particularly for sales in scope of affiliated companies.
5. We revocably authorize the customer to collect the accounts receivable in its own name but assigned to us per our invoice. We reserve the right to collect the accounts receivable ourselves if the customer does not properly keep up with its payment obligations, if it incurs delinquency or files a request for opening of a bankruptcy proceeding or if it ceases payments. If this should be the case, we may demand that the customer announces the assigned accounts receivable and all necessary information for collection purposes to us and that it hands the corresponding documents to us and informs the debtor (third party) about the transfer.
6. In case of access by third parties to the retained goods, our property rights will be pointed out to the customer.
7. The customer surrenders - for the security of our claims – also its claims to us, which result from the combination of the goods with property against a third party.
8. The customer is obligated to provide us immediately with third party access to the goods in case of a seizure as well in case of possible damages or destruction of the goods. If the third party is unable to meet our demands, the customer will be liable to pay us the incurred loss and the judicial and extra judicial costs of legal proceedings, pursuant to § 771 ZPO (Civil Process Order). The customer has to notify us immediately in case of transfer of the good to another owner as well as change of its own address.
9. In case of contrary contract conduct of the part of the customer – particularly delinquency – we are entitled to take the retained goods back and to demand possibly the surrender of claims of our customer against third parties. The redemption as well as the seizure of the retained goods through us is no rescission from the contract.



10. At our request, the customer is obligated to name its customers to us, to inform the relevant customers about the assignment, to inform us about the necessary data for entitlement of our rights against the buyers and to hand over documents. We are also entitled to notify the buyers of our customers about the assignment.
11. If we stipulate with the customer payments of the purchase price debt based on a check/bill of exchange procedure, the clause stretches also to the encashment of the by us accepted bill of exchange through the company and does not expire through credit of cheques received by us.
12. The customer is obliged to handle the goods with care. As far as maintenance and inspection work is necessary, the customer has to exercise these at own expense and regularly. At our request, an inventory and sufficient identification of the retained goods should be made at all times possible to us in the respective storage location.

§ 11

Limitation

Our claims of compensation for delivery of material to be manufactured and production of moveable property expire after five years.

§ 12

Final provisions

1. The transfer of rights and obligations of the customer from this contract to a third party needs our prior written consent.
2. Place of delivery and payment is 27211 Bassum.
3. The appropriate court near our company location has the legal jurisdiction if the customer is a merchant, a legal identity under public law or a public service fund asset. Same applies if the customer has no general place of jurisdiction or if its location or habitual residency at the time of commencement of legal proceedings are not known. We are also entitled to file commencement for legal proceedings to a court with location or branch, which has jurisdiction over the location or branch of plaintiff.
4. For these terms and conditions and all legal relationships between us and our customer, the laws of the Federal Republic of Germany applies. The provisions of the UN International Sales of Good do not apply.
5. The customer acknowledges to us that no protected rights of third parties are violated through its order.
6. If we provided a warranty guarantee, the buyer or purchaser is not entitled to use it upon first acclamation. A claim of benefit follows only after and under submission of an appropriate award.
7. Should individual provisions of this contract with the customer, including these general terms of payment and delivery, be or become invalid, it will not affect the validity of the remaining provisions. The provision which is invalid, whether in part or in its entirety, will be replaced by a regulation whose economic effect will be as close as possible to the effect intended by the invalid provision.

**KMH-KAMMANN METALLBAU GMBH**