

General Terms of Delivery and Payment

§ 1

General - Scope of application

1. Our general terms of delivery and payment apply to companies as defined under § 310, Para.1 in conjunction with § 14 of the Bürgerliches Gesetzbuch (Civil Code, hereafter termed "BGB"). Entrepreneur(s) in this sense is/are any natural person/s or legal entities, or incorporated business partnerships with whom we enter into a business relationship and who act in a corporate capacity or as a 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 do not constitute an integral part of the contract. They are not recognized, even if we have knowledge of them and if we do not explicitly object to them upon receipt. Our general terms of delivery and payment are deemed to have been accepted at the latest upon receipt of the goods and services supplied by us. Varying agreements are only binding when acknowledged by us in writing.
4. We are neither willing nor obliged to participate in a dispute settlement procedure before a consumer arbitration board.
5. The rights arising from this contract are not transferrable.

§ 2

Offers, contract conclusion, bidding documents

1. All our offers, whether made orally or in writing, are subject to change and are non-binding; they do not constitute an obligation to deliver. By ordering the goods, the customer makes a binding declaration that he/she wishes to purchase the ordered goods or place the order. We are entitled to accept the contract offer contained in the order within two weeks of receipt. Acceptance can be declared either in writing or by delivering the goods to the customer: Our order confirmation is exclusively decisive for the scope of the contractual obligations.
2. Transactions with representatives are binding for the customer, for us only after written confirmation.
3. We reserve sole ownership and copyright to all documents applying to the offer. These documents may not be made accessible to third parties without our prior consent. If the order does not come to conclusion, they must be returned to us upon request. Prices for individual items as offers are only valid if the entire order for this offer is placed. Drawings, photographs, dimensions, weights or other performance data are only binding if this has been expressly agreed in writing.

4. In the case that the customer orders the goods electronically, we will immediately confirm receipt of the order. The confirmation of order does not constitute a binding acceptance of the order. The confirmation of receipt can be combined with the declaration of acceptance. If the consumer orders the goods electronically, the text of the contract will be saved by us and sent to the customer by e-mail on request, together with these General Terms and Conditions.
5. We reserve the right to make changes to the design, the choice of materials, the specification and the type of construction, even after confirmation has been sent, provided these changes do not contradict either the order confirmation or the customer's specification. In addition, the customer agrees to our suggestions for changes, insofar as these are reasonable for him/her.

§ 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 the closing of the 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 expenditure should increase, we are entitled to increase our price accordingly, except when the price is explicitly confirmed as a fixed price. We will notify the customer of any price adjustment in text form. As soon as the payment for the affected order increases by a total of more than 5%, the customer is entitled to withdraw from the contract for a one-off delivery with a notice period of two weeks after receipt of the adjustment notification, but no later than the contractually agreed delivery/service date.
3. If we consider a request for 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. Should an increase of the value-added tax occur between the time of the order and delivery, this is to be 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. However, we are entitled at any time, even within the framework of an ongoing business

- relationship, to carry out a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.
2. The granting of a discount requires, in addition to an individual contractual agreement, the further requirement that by then all outstanding accounts are settled. For the discount calculation, the net invoice amount (after deduction of discounts, 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 discounting option. Cheques and bills of exchange will only be credited after cheque encashment, and releases of covenants will only be 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 any different provisions of the customer.
 5. The retention of payments - or the offsetting of possible customer counterclaims contested by us - will not be permitted.
 6. In the 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 to detention of the goods, pursuant to the stipulations as in the following § 5.

§ 5

Default in payment and credit unworthiness

1. After expiry of the agreed payment deadlines (default) or when we become aware of a cheque and/or bill of exchange protest, we are entitled to
 - withdraw from all contracts and demand compensation 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 provided collaterals,
 - declare all unpaid accounts due and make outstanding deliveries only against payment in advance;
 - charge default interest, starting from the due date in an amount of nine percentage points 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 the case of judicial enforcement or the filing of bankruptcy proceedings with regard to the assets of the customer, all granted rebates, bonuses and cash discounts on unpaid bills are no longer valid

§ 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 periods that are agreed without a specified delivery date begin with the date of our notification of order acknowledgment. Delivery due dates and delivery dates are considered as fulfilled when the goods have been shipped or when readiness for shipment is communicated within the deadline.
3. Delivery periods 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 default.
4. In the case that 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, or the customer may ask for compensation in the case of acts of gross negligent or intentional damage on our part. However, the customer's compensation 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 the case of accountable injury to body or health or loss of the customer's life.
5. It is deemed to have been agreed that partial deliveries may be exercised except when it is explicitly excluded in writing. For the payment of partial deliveries, § 4 of these general delivery and payment terms applies.
6. All events and circumstances beyond our control, such as natural disasters, war, labour disputes, shortages of raw materials and energy, traffic and operational disruptions, fire and explosion damage, orders from higher authorities, release us from our contractual obligations for the duration of the disruption and a reasonable start-up time to the extent of the effects of such disruption. Delivery and service periods are also extended accordingly. This also applies to the payment or consideration obligations of the customer. In such cases, we are also not obliged to procure the goods from third parties. Clauses 1 to 4 also apply in the case that the events and circumstances make it uneconomical for us to carry out the transaction in question or if they occur at the sub-suppliers. If the above-mentioned events or circumstances lasting more than three months or if, in individual cases, it is unreasonable for one of the parties to adhere to the contract even before the end of this period, and taking into account the reciprocal interests of one of the parties, both we and the customer are entitled, to the exclusion of claims for damages, to withdraw from the contract with regard to the delivery quantity affected by the disruption. We will inform the customer immediately about such events

or circumstances. In the event of withdrawal, we will immediately refund any consideration already received.

7. Delays in delivery by suppliers/transport companies, or interruptions in the supply chain as a result of BREXIT or the CoViD-19 pandemic, as well as business closures caused by these (including those ordered by the authorities), are also deemed to be obstacles for which we are not responsible within the meaning of § 6 above and that directly or indirectly affect us, our suppliers and/or transport companies involved.

§ 7

Shipping, transfer of risk

1. The risk of accidental loss and accidental deterioration of the goods passes to the customer on handover, in the case of mail-order sales to the forwarding agent, carrier, or other person or institution responsible for carrying out the shipment. Unless otherwise agreed, shipping is always ex works (Incoterms: Ex Works).
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 ground level or at a spot which is reasonably accessible for the vehicle. Our customer is obligated to provide necessary equipment or employees for unloading, if this is technically possible.
3. The delivery is deemed to have taken place even in the event that 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 of such delay, the risk passes with receipt of the shipping readiness notification to the customer. Deliveries ready for shipping have to be immediately accepted, at the latest within five weekdays after the notification date of shipment readiness. Otherwise, we are entitled to ship the goods at our own discretion. 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 at our own 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. In the absence of specific shipping instructions, we select, to the best of our ability but without liability, the most affordable shipping method. We are entitled to take out, at the expense of the customer, a transport and breakage insurance. Notifications of damage must be reported immediately – at the latest directly upon acceptance of the damaged goods by the customer – and their type and scope must be proven in writing. This responsibility is passed on to the customer with the handover of the goods to the carrier or forwarder - at the latest with the departure of the goods from the factory or the storage facility. This will be applied, even if the delivery is carried out by our own vehicles.

6. Our delivered goods can only be returned free of transportation charges when they are in perfect condition or after our prior agreement. Voluntarily accepted returned goods will be credited, each according to 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 at the wish of the customer is excluded.

§ 8

Responsibility for defects

We provide a warranty for defects in the goods, including the lack of guaranteed properties, in accordance with the following specifications:

1. Our warranty refers to an operationally correct execution and the use of flawless materials. The warranty excludes defects arising from natural wear and tear, excessive use and incorrect installation.
2. After the customer has carried out an agreed acceptance of the goods, further complaints about defects that can be determined in the agreed type of acceptance are excluded.
3. We initially provide a warranty for defects in the goods by rectification or replacement delivery, at our discretion.
4. If the supplementary performance fails, the customer is entitled to demand a reduction in payment (reduction) or cancellation of the contract (withdrawal) at his discretion. In the case of a minor contract violation, in particular in the case of a minor defect, the customer is not entitled to cancel the contract
5. The customer's claims for defects presuppose that he has duly complied with his obligations to examine and give notice of defects under § 377 of the German Commercial Code (HGB). The customer bears the full burden of proof for all the prerequisites for a claim, in particular for the defect itself, for the time the defect was discovered and for the timeliness of the notice of defects. This also applies to complaints regarding the number of items, dimensions and weight.
6. In the case that the customer chooses to withdraw from the contract due to a defect in title or quality defect after subsequent performance has failed, he is not entitled to any additional claims due to the defect. If the customer chooses compensation after subsequent performance has failed, the goods remain with the customer if this is reasonable for him. Compensation for damages is limited to the difference between the purchase price and the value of the defective goods. This does not apply in the case that the violation of contract is due to malicious intent on our part.
7. The warranty period is one year after delivery of the goods. That does not apply if the customer did not notify us timely about the deficiency (cf. Para. 5. of this provision).

8. With regard to the quality of the goods, solely the manufacturer's product description applies as agreed. Public statements, promotions or advertising by the manufacturer do not constitute any contractual information on the quality of the goods.
9. In the event that the customer receives faulty assembly instructions or faulty technical documentation, we are only obliged to provide fault-free assembly instructions or fault-free technical documentation, and only if the fault prevents proper assembly or contractual use of the part.
10. The customer does not receive any guarantees from us in the legal sense. Manufacturer warranties remain unaffected.

§ 9

Liability limitations

1. Unless otherwise stated in these General Terms and Conditions, including the following provisions of this § 9, we shall be liable in accordance with the statutory provisions in the event of violation of contractual and non-contractual obligations.
2. We are liable for damages – for whatever legal reason – within the framework of culpable liability in the event of intent and gross negligence. In the case of simple negligence, we are liable, subject to statutory liability limitations (e.g. diligence in our own affairs; insignificant breach of duty), only
 - a) for damages arising out of death or injury to body or health,
 - b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the contractual partner regularly relies and may rely). In this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
3. The limitations of liability resulting from § 9, Clause 2 also apply towards third parties and in the event of breaches of duty by persons (also in their favour), whose fault we are responsible for according to legal regulations. In deviation from § 9, Clause 2, however, we are only liable in the case of gross negligence on the part of non-executive employees in the event of a breach of an essential contractual obligation. In this case, our liability is limited to compensation for the foreseeable, typically occurring damage. Furthermore, in the case of gross negligence on the part of non-executive employees, we are liable for damages arising out of death or injury to body or health.
4. The limitations of liability resulting from § 9 Clause 2 and Clause 3 do not apply insofar that a defect was fraudulently concealed or a guarantee was granted for the quality of the goods, and for claims by the customer under the Product Liability Act.
5. Claims by the customer due to a defect expire one year after delivery of the goods. In place of this one-year period, the statutory limitation periods apply in the following cases:
 - a) in the case of liability due to intent or gross negligence,



- b) in the case of fraudulent concealment of a defect,
 - c) for claims against us due to the defectiveness of a product if it has been used for a building in accordance with its normal used and this has caused its defectiveness,
 - d) for claims for damages arising out of death or injury to body or health,
 - e) in the event of recourse by the customer based on the regulations governing the sale of consumer goods,
 - f) for claims under the Product Liability Act.
6. The devices and components supplied by us may not be used in systems that fall under Directive 2014/68/EU on pressure equipment (Pressure Equipment Directive) and the Pressure Equipment Ordinance, as well as Directive 2010/35/EU on transportable pressure equipment and the ordinance governing transportable pressure devices. In this context, pressure equipment includes, in particular, vessels (unfired pressure vessels), steam boilers, pipelines, pressure-retaining equipment, and equipment with an internal overpressure of more than 0.5 bar. We assume no liability for such use of the devices and components supplied by us.

§ 10

Reservation of proprietary rights

1. Pending the fulfillment of the requirements (including the balance of the current account) to which we are entitled against the customer legally for any reason, now or in the future, we will be granted the securities regulated in the following §§ 2 to 12. They will be released at our discretion as long as their values exceed our demand by more than ten percent.
2. The goods will remain our property, and the workmanship/working and processing or assembly is always conducted for us as manufacturer but without any obligation for us. Should our joint property expire by association or a merger, it is agreed that the customer's (co-) ownership of the joint property shall be transferred to us in proportion to the value (invoice value).
3. The customer safeguards our joint property free of charge. Property of which we are entitled to joint ownership is 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 now assigns to us in full claims arising from the resale, processing or any other legal reason at closure of the contract. They result from the re-sale, processing or any other legal reason, (insurance, tort) of the reserved goods (including all balances of the current account). We accept the assignment. None of our property rights (simple, expanded, extended or current account title) expire, even if the goods originating from us were purchased by another buyer and as long as he/she has not paid us for the goods. This applies particularly for sales within the framework of affiliated companies.



5. We revocably authorize the customer to collect the claims assigned to us in his/her own name but for our account. We reserve the right to collect the accounts receivable ourselves if the customer does not properly meet his/her payment obligations, if he/she defaults on payment, or an application for the opening of bankruptcy proceedings has been filed or if he/she 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 he/she hands the corresponding documents to us and informs the debtor (third party) of the assignment.
6. In the case of access by third parties to the retained goods, our property rights will be pointed out to the customer.
7. The customer will also assign to us, in order to secure our claims, his/her claims which accrue against a third party as a result of the connection of the goods to a piece of property/land.
8. The customer is obliged to notify us immediately of any third party access to the goods in the case of seizure, as well in the case of possible damage or destruction of the goods. In the case that the third party is not in a position to reimburse us for the judicial and extra-judicial costs of a lawsuit in accordance with § 771 of the Code of Civil Procedure (ZPO), the customer is liable for the loss we have incurred.
9. In the case of behaviour of the customer that is contrary to contract – in particular default of payment – we are entitled to take back the retained goods and, if necessary, to demand the assignment of claims of our customer against third parties. The redemption as well as the seizure of the retained goods by us does not constitute a termination of the contract.
10. The customer is obliged, at our request, to name his/her 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 our customer's buyers about the assignment.
11. Insofar as we agree with the customer payments of the purchase price debt by means of a cheque/bill of exchange procedure, the reservation will also extend to the encashment of the bill of exchange accepted by us by the entrepreneur and does not expire through credit of the cheque received by us.
12. The customer is obliged to handle the goods with care. Insofar as maintenance and inspection work is necessary, the customer has to carry this out regularly and at his/her own expense. At our request, we must, at any time, be able to take stock and adequately label the goods at the location where the goods are stored.

§ 11

Exportkontrolle

1. The customer is obliged to inquire with the local authorities of the country in which he/she resides, under what conditions the product that has been ordered may be



- imported; the product must be declared to the competent authorities and any applicable fees must be paid. The customer must check with the local authorities about the import and use of the products or services ordered. The customer is further obliged to make sure that the technical characteristics specified by the manufacturer comply with the legal requirements of the country into which the product is imported.
2. Before exporting goods in which KMH products are installed, the customer must obtain all necessary export licenses and not sell or transfer the products, directly or indirectly, to companies, persons or countries if this conflicts with export control laws or regulations. The customer is not entitled to return goods.
 3. The customer is not entitled to return goods or to demand compensation if he/she is refused an export license. We are not liable for any legal infringement by the customer. The customer indemnifies us from any claims or other sanctions that may be imposed on us for infringements of export control laws in connection with the delivery items.

§ 12

Limitation

Our rights to compensation for the delivery of movable items to be manufactured and produced expire after five years.

§ 13

Final provisions

1. The transfer of rights and obligations of the customer from this contract to a third party requires our prior written consent.
2. Place of fulfilment for delivery and payment is 27211 Bassum.
3. Place of jurisdiction – including international place of jurisdiction – for all disputes arising directly or indirectly from the contractual relationship is the place of jurisdiction responsible for our company headquarters if the customer is a merchant, a legal identity under public law or a public service fund asset. The same applies if the customer is an entrepreneur within the meaning of § 14 BGB, or if the customer has no general place of jurisdiction or his/her location or habitual residency at the time of commencement of legal proceedings is not known. We are also entitled to sue before a court which has jurisdiction over the registered office or branch of the customer.
4. The law of the Federal Republic of Germany applies to these terms and conditions and all legal relationships between us and our customers. The provisions of the UN International Sale of Goods laws do not apply.





5. The customer confirms that no protected rights of third parties are violated by the order placed by him/her.
6. If we have provided a warranty guarantee bond, the buyer or purchaser is not entitled to use it upon first acclamation. A claim of benefit follows only after and on submission of a corresponding arbitration award.
7. Should individual provisions of this contract with the customer, including these general terms of payment and delivery, be or become wholly or partially invalid, this shall 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.

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