

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“). Entrepreneur(s) in this sense is any natural person or legal identities 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 do not 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 he/she 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 belong to the offer. Without our prior agreement these documents may not be distributed to third parties. If the order is not realized, 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 by 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 he/she finds them reasonable.

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§ 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. Should an increase of the value-added tax occur between the time of the order and delivery then this 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 besides a formal individual contract the further requirement, 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 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 contrary terms of this customer.
5. The retention of payments or the offset of possible customer counterclaims - as contested by us - will not be permitted.
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 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 demanded collaterals
 - declare all unpaid accounts due and deliver only against payment in advance
 - charge default interests, 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 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

Seite 2

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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 have been 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, or the customer may ask for compensation in 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 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.
6. We are not liable for deliveries that are not possible or for delivery delays, insofar as these have been caused by force majeure. We are also not liable for deliveries that are not possible or delays in delivery, insofar as these are caused by other events which were unforeseeable at the time of the contract and for which we are not responsible (e.g. transport, freight delays, shortage of manpower, energy or raw materials, breakdowns of any kind, difficulties in the procurement of materials or energy, strikes, legitimate lockouts, difficulties in obtaining necessary regulatory approvals, regulatory action or the lack of, incorrect or untimely delivery by suppliers). If such events make the delivery substantially more difficult or impossible for us and the hindrance is not just temporary, we are entitled to withdraw from the contract in whole or in part at our discretion, without being liable for damages. In the event of temporary hindrances, the delivery periods shall be extended or the delivery dates shall be postponed by the duration of the hindrance plus a reasonable start-up period. If the customer cannot reasonably be expected to accept delivery as a result of the delay, he/she may withdraw from unfulfilled parts of the contract after setting a reasonable grace period.

§ 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 forwarder 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 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. Otherwise, we are otherwise 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.

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5. Without specific shipping instructions, we select to 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. With handover of the goods to the carrier or forwarder, 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 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 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. Warranty is excluded for natural wear and tear, excessive use and improper assembly.
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, warranty 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 he/she 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, he/she 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 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 damage to these kinds 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.

Seite 4

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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 compensation, 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.
4. The devices and components supplied by us may not be used in systems that fall under the 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 on transportable pressure equipment. In this sense, pressure equipment includes, in particular, containers (unfired pressure vessels), steam boilers, piping, pressure-maintaining equipment parts and equipment parts having a safety function and with an internal excess pressure of more than 0.5 bar. We accept 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 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 do 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 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 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 he/she did not pay us for the goods. This applies particularly for sales in scope of affiliated companies.
5. We revocable authorize the customer to collect the accounts receivable in his/her 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 his/her payment obligations, if he/she incurs delinquency or files a request for opening of a bankruptcy proceeding 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) 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 will also assign to us, for the security of our claims, his/her claims, which arise from the connection 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 possibly demand the assignment 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.

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10. At our request, the customer is obligated 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 the buyers of our customers about the assignment.
11. If we agree with the customer payments of the purchase price debt by means of a cheque/bill of exchange procedure, the clause will also extend to the encashment of the by us accepted bill of exchange through the company and does not expire through credit of the cheque 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 regularly and at own expense. At our request, an inventory and sufficient identification of the retained goods should be made possible to us in the respective storage location at all times.

§ 11

Export Control

1. The customer is obliged to inquire with the local authorities of the country in which it is established 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 indicated by the manufacturer comply with the legal requirements of the country to 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 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 delivery of material to be manufactured and production of moveable property expire after five years.

§ 13

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 fulfilment for delivery and payment is 27211 Bassum.
3. The place of jurisdiction is the legal court responsible for our headquarters location, 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 is 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.

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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.

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Seite 7

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