

Terms and Conditions of Sale and Delivery

I. Scope

1. These Terms and Conditions of Sale and Delivery of KMT Produktions- + Montagetechnik GmbH (hereinafter referred to as the Supplier) are an integral part of all and any contracts concluded with each of your contracting partners (hereinafter referred to as the Customer) to the extent that the Customers are entrepreneurs (Section 14 of the German Civil Code (BGB)), public-law legal entities or special funds under public law.
2. All deliveries and services provided by the Supplier shall be solely subject to the terms and conditions set out in Section 1. These shall also apply for all future business with the Customer, where legal transactions of a same or similar nature are concerned.
3. The general terms and conditions of the Customer shall not apply even if not expressly rejected by the the Supplier. In particular, deviating terms and conditions of the Customer shall not become an integral part of the contract even if the Customer places an order under reference to its terms and conditions and the order is accepted by the Supplier.
4. Any individual agreements concluded with the Customer in specific cases (including side agreements, additions and amendments) shall in all cases take priority over these Terms and Conditions of Sale and Delivery. Subject to proof to the contrary, the contents of such agreements must be set forth in a written contract or by our written confirmation.
5. Legally relevant declarations and notices of the Customer with regard to the contract (e. g. deadlines, notice of defects, withdrawal or reductions), must be made in writing, i.e. by letter, email or fax. Statutory provisions on form and additional proof, in particular in case of doubts regarding the legitimation of the declaring party, shall remain unaffected of this.
6. The remaining parts of the contact shall remain binding even if individual points should be or become legally invalid.

II. Offer and prices

1. The prices valid on the day of delivery shall apply unless otherwise agreed in form of an offer or a contract.
2. All offers made by the Supplier are non-binding and subject to change, unless the Supplier has expressly declared them to be binding. This shall also apply if the Supplier has provided the Customer with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, referrals to DIN standards), other product descriptions or documents – also in electronic form – for which the Supplier expressly retains all ownership and copyrights
3. Obvious print or typing errors as well as mistakes on the part of the employees of the Supplier may be remedied and entitle the Supplier to withdraw from the contract, as the case may be.
4. Where, in the event of call orders or forward orders, only a part of the agreed quantity is accepted within the agreed period, the Supplier is entitled to immediately deliver and invoice the outstanding quantity.
5. The ordering of goods by the Customer qualifies as a binding contract offer. Unless otherwise stated in the order, the Supplier is entitled to accept this contract order within 14 days after receipt by the Supplier. Acceptance can be declared either in writing (e.g. in form of an order confirmation) or through the delivery of the goods to the Customer.
6. Drawings, illustrations, dimensions, weights and other performance data are only deemed binding if they have been expressly agreed in writing.
7. The prices are ex works / EXW Incoterms ® 2010 excluding packaging and insurance and plus the relevant statutory VAT.

III. Delivery

1. Information on delivery periods are approximate, unless nothing else has been agreed with the Customer.
2. The Supplier is only entitled to provide partial deliveries and services if these are to the benefit of the Customer in accordance with the purpose of the contract and this does not result in any considerable additional effort and/or expenses on part of the Customer.
3. In the event of custom-made goods, the supplier reserves the right to excess or short deliveries up to 10 % of the ordered quantity. Custom-made goods or customer-specific parts are excluded from exchange and return.
4. The occurrence of a delay in delivery is determined in accordance with the statutory regulations. Each delay in delivery however requires a reminder by the Customer. The non-compliance of agreed delivery deadlines shall only authorise the Customer to withdraw from the contract if the Customer has previously set a reasonable extension deadline for the Supplier with a warning of withdrawal. (Section 323 of the German Civil Code (BGB)).
5. The deadline for the delivery of goods or services commences on the date the written agreement between the Customer and the Supplier is available to both parties. Compliance with the deadlines is subject to the timely receipt of all documents to be provided by the Customer, required permits and approvals, the timely clarification and approval of plans, compliance with the agreed payment terms and other obligations. If these conditions are not met, the deadline will be extended appropriately.
6. Where any events of force majeure not in the control of the Supplier impede or delay the execution of accepted orders or make the execution of such impossible (non-availability of the service), the Supplier must communicate this promptly to the Customer while at the same time communicating the expected new delivery date. In addition, the Supplier is entitled to extend the delivery or remaining delivery or partial delivery of goods for the duration of the force majeure or even withdraw from the contract in full or in part. The Supplier shall not assume responsibility for governmental intervention, industrial breakdowns, strike, lockout, interruptions of work caused by political or economic situations, war and mobilisation, general lack of raw and operating materials.

The unavailability of goods or services in this sense also includes the failure of the Supplier to be supplied by its sub-suppliers, where the Supplier has entered into a congruent hedging transaction, and neither the Supplier nor its sub-suppliers are responsible or where the Supplier is not obligated to procure, as the case may be.

IV. Payment

1. The purchase price shall be due and payable within eight days after invoicing and delivery or acceptance of the goods. The Supplier is however at all times entitled, also within the scope of an ongoing business relationship, to request payment for a delivery to be made against prepayment, either in full or in part. The Supplier must declare such a proviso at the latest upon conformation of the order. If a prepayment is not made or not fully made within the set deadline, the Supplier is entitled to withdraw from the contract without further ado.
2. Deductions from the purchase price, e.g. in form of early payment discounts, are not accepted.
3. Upon expiry of the payment deadline set forth in Section 1, the Customer shall be in default. While the Customer is in default, the purchase price will be subject to interest in accordance with the relevantly applicable statutory rate. The Supplier reserves the right to assert claims for any exceeding damage caused by the delay. In dealings with businesspeople, the Supplier's claim on commercial maturity interest (Section 353 German Commercial Code (HGB)) shall remain unaffected by this.
4. The Customer may set off claims of the Supplier only against uncontested claims accepted by the Supplier or other legally established claims or claims within the scope of a relation requiring reciprocal performance between the parties. The Customer is only authorised to exercise its right of retention where its counter-claim is based on the same contractual relationship.

V. Dispatch and packaging

1. The delivery shall be made on the account of the Customer, unless no other agreement has been reached deviating from II. Section 7 of these Terms and Conditions of Sale and Delivery. The goods shall in all cases be dispatched at the best discretion of the Supplier, whereby no responsibility shall be assumed that the selected means of transportation is the cheapest. If a different means of transportation that that planned by the Supplier is required, the additional costs must be borne by the Customer.
2. In the event that the dispatch of the goods is delayed due to no fault of the Supplier, the Customer will bear the costs and risks of storage. In this case, the notification of readiness to dispatch by the Supplier will correspond to the actual dispatch of the goods.
3. If the Customer is in default of acceptance, fails to cooperate or if the delivery of the goods is delayed for any other reasons under the control of the Customer, the Supplier is entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this, a lump sum compensation to the sum of EUR 100.-- per calendar day will be charged; commencing on the delivery date or – in absence of a delivery date – upon notification of the dispatch readiness of the goods.
4. The packing cannot be returned to the Supplier and must be disposed by the Customer properly and according to the relevant regulations.

VI. Retention of title

1. The delivered goods (reserved goods) will remain the property of the Supplier until fulfilment of all due claims owed by the Customer within the scope of the contract. If the combined value of all security interests owed to the Supplier exceeds the value of all secured claims by more than 10%, the Supplier will release a corresponding part of the security interests at the request of the Customer.
2. For the duration of the retention of title, the Customer may not pledge or assign the goods as security. The resale of the goods is permitted to the Customer only in the normal course of business and only under the condition that the Customer receives payment from its customer or include the provision that ownership shall only be transferred to the Customer when the Customer has fully met all payment obligations.
3. If the Customer resells the reserved goods, it hereby assigns any future claims from the resale due from its customers as well as all ancillary rights – including balance claims – as a precautionary measure to the Supplier, without special declarations being required for this. If the goods are resold together with other items, without an agreement on an individual price for the reserved goods, the Customer hereby assigns the share of the overall claim to the Supplier that corresponds to the price of the reserved goods charged by the Supplier. The Customer may resell the reserved goods in the normal course of business against immediate payment or with retention of title. The Customer is not entitled to pledge or transfer the reserved goods by way of security.
 - a) The Customer is permitted to process the reserved goods or merge or blend them with other items. Processing shall be conducted on behalf of the Supplier. The Customer will store any new items created within the course of this process for the Supplier with the due diligence of a prudent businessperson. The new goods shall be deemed reserved goods.
 - c) The Supplier and the Customer hereby agree that if the reserved goods are merged or blended with other items not belonging to the Supplier, the Supplier will become the joint owner of the new product to the extent of the ratio of the value of the merged or blended reserved goods to the other items at the time the merging or blending is carried out. The new goods shall therefore also be deemed reserved goods.
 - c) In accordance with No. 3, the provision on the assignment of claims also applies for the new goods. Such assignment, however, only covers the amount corresponding to the value of the processed, merged or blended reserved goods, invoiced by the Supplier.
 - d) If the Customer joins the reserved goods with real property or movable assets, it shall, as a precautionary measure and without requiring any further specific declaration, also assign its claim

- to entitlement for remuneration for such joining together with all ancillary rights to the sum of the joined reserved goods to the other merged or blended goods at the time of the joining to the Supplier.
5. Until further notice, the Customer is authorised to collect assigned receivables from the resale of the goods. Where good cause exists, in particular in the event of default in payment, suspension of payment, opening of insolvency proceedings, protest of a bill of exchange or substantiated indication of over-indebtedness or imminent insolvency of the Customer, the Supplier is entitled to withdraw the direct debit authorisation of the Customer. Furthermore, following a prior warning in compliance with a reasonable deadline, the Supplier can disclose the assignment for security, exploit the assigned claims and request the Customer to disclose the details of the assignment of security to the Customer.
 6. The Customer must inform the Supplier promptly in writing if an application is filed on the initiation of insolvency proceedings or where goods are pledged or attached or subject to other acts or interventions by third parties. Where a legitimate interest is substantiated, the Customer must submit to the Supplier the relevant documents necessary for the assertion of its rights against the Customer.
 7. In the event of an essential breach of a contractual obligation by the Customer, in particular in the event of the non-fulfilment of payment obligations, the Supplier is, after the unsuccessful expiry of a reasonable deadline set to the Customer, entitled to withdraw the reserved goods and to terminate the contract; the statutory provisions on the dispensability of a period of grace shall remain unaffected by this. The Customer is obligated to return the reserved goods. The withdrawal of the reserved goods or the assertion of the retention of title or attachment of the reserved goods by the Supplier does not entail a withdrawal from the contract, unless the Supplier has expressly declared its withdrawal.

VII. Rights in the event of defects

1. Unless otherwise provided for, the rights of the Customer in the event of material and legal defects (including incorrect delivery and short delivery as well as improper assembly or faulty assembly instructions) shall be governed by the statutory provisions. In all cases, this shall not affect the statutory special regulations with regard to the final delivery of the goods to the consumer (supplier's recourse in accordance with Sections 478, 479 of the German Civil Code (BGB)).
2. The basis for the Supplier's liability for defects shall first and foremost be the agreement on the properties of the goods. Such agreements on the properties of the goods shall include all product specifications that are the object of the individual contracts or that have been publicly disclosed by the Supplier (in particular in catalogues or on the Internet homepage of the Supplier).
3. Where no agreements have been entered into on the properties of the goods, it shall be assessed on the basis of the statutory provisions whether a defect exists or not (Section 434 (1) P. 2 and 3 of the German Civil Code (BGB)). The Supplier shall however not assume any liability for the public statements of third parties (e.g. advertising statements).
4. The claims for defects on part of the Customer are subject to whether the Customer has performed its obligations to inspect and complain in accordance with Sections 377 and 381 of the German Commercial Code (HGB). If a defect is detected upon delivery, within the scope of the inspection or at any other point in time, this must be promptly communicated to the Supplier in writing. In any case, obvious defects must be reported in writing within 7 working days from delivery and any defects not identifiable within the scope of the inspection from the time of their detection within the same deadline. In the event that the Customer fails to carry out an inspection and/or report a defect, the liability of the Supplier shall be excluded for the defect not reported in due time and as set forth by the statutory provisions.
5. If the delivered goods are defective, the Supplier may first choose whether it will subsequently act by eliminating the defect (rectification) or by supplying defect-free goods (replacement). The right of the Supplier to reject the subsequent performance of the contract in accordance with the statutory conditions shall remain unaffected by this.

6. The Supplier is entitled to make the subsequent performance owed, subject to the condition that the Customer pays the purchase price due. The Customer is however entitled to withhold part of the purchase price in proportion to the defect.
7. The Customer must grant the Supplier the time and opportunity required for the subsequent performance owed and in particular submit the contested goods for inspection. In the event of a replacement delivery, the Customer must return the defective goods to the Supplier in accordance with the statutory provisions. The subsequent performance neither includes the disassembly of the defective goods nor its installation, if the Supplier was originally not obligated to install the goods.
8. The efforts and expenses incurring for the inspections and subsequent performance of the contract, i.e. in particular transportation, road, labour costs and material costs (excluding costs for disassembly and installation), shall be borne by the Supplier if an actual defect exists. The Supplier may otherwise request the reimbursement of the costs incurred for an unjustified request for the rectification of defects (in particular, costs for the inspection and transportation of the goods), unless the absence of defects could not be identified by the Customer.
9. Where the attempt of subsequent performance has failed or where an adequate deadline set by the Customer for the subsequent performance of the contract has unsuccessfully expired or can be dispensed with in accordance with the statutory provisions, the Customer may withdraw from the contract or reduce the purchase price. This right to withdraw shall however not apply for insignificant defects.
10. The claims of the Customer to damage compensation or the compensation of fruitless efforts and expenses shall only exist for defects as set out in VIII. are otherwise excluded.
11. Where a commissioning, inspection or repair is requested at the place of operation of the system, the costs incurring for the travel, catering, accommodation and work shall be charged in accordance with the customer service and service terms of the Supplier. The deployment of technicians on certain dates must be arranged with the Supplier; whereby the date shall be determined by the Supplier. Customer service trips aboard shall be conducted only upon agreement.
12. Natural wear and tear as well as damages due to improper use are excluded from warranty. Our warranty shall only expire if interventions or changes have been carried out on machines or controls delivered by us by the operator or third parties on behalf of the operator without our approval.

VIII. Liability

1. Unless not otherwise provided for in these Terms and Conditions of Sale and Delivery, including the provisions set out below, the Supplier shall be liable for any violation of contractual and non-contractual obligations in accordance with the statutory provisions.
2. The Supplier shall be liable to pay damage compensation – for whatever legal reason – within the scope of fault-based liability in the cases of intent and gross negligence. In the event of ordinary negligence, the Supplier shall, in accordance with the statutory provisions, be liable subject to milder liability standards (e.g. for prudence in its own affairs) only
 - a) for damage in cases of loss of life and injury to the body or health, or
 - b) for damage resulting from the not insignificant violation of an essential contractual obligation (obligation mandatory for the proper execution of the contract and on the compliance of which the contracting partner regularly trusts and may trust); in this case the liability of the Supplier is however limited to the compensation of the foreseeable, typically occurring damage.
3. The limitations of liability set out in Section 2 shall also apply for breaches of duty by or in favour of individuals for whose fault the Supplier must assume responsibility in accordance with the statutory provisions. They shall not apply to the extent that the Supplier has fraudulently concealed a defect or has provided a guarantee for the properties of the goods as well as for claims of the Customer in accordance with the product liability law.
4. The Customer may only withdraw from or terminate the contract due to a breach of duty, which is not a defect if the Supplier is not responsible for the breach of duty. A free right of termination on

the part of the Customer (in particular in accordance with Sections 651, 649 of the German Civil Code (BGB)) is excluded. Apart from that, the statutory provisions and legal consequences shall apply.

IX. Limitation period

1. Other than set out in Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims resulting from material and legal defects shall be one year from delivery of the goods. The limitation period commences with the acceptance of the goods.
2. If the delivered goods however constitute a building or an object that in compliance with its customary manner of use has been used as a building, and that is the cause of the defect (building material), the limitation period in accordance with the statutory provisions shall be 5 years from delivery (Section 438 (1) No. 2 of the German Civil Code (BGB)). Additional statutory special regulations on limitation periods (in particular Section 438 (1) No. 1, (3), Sections 444, 479 of the German Civil Code (BGB)) shall remain unaffected of this.
3. The above specified limitation periods, within the scope of purchase right, shall also apply for contractual and non-contractual damage claims of the Customer which are based on a defect of the goods, unless the application of the standard statutory limitation period (Sections 195, 199 of the German Civil Code (BGB)) may result in a shorter limitation period in individual cases. Damage claims of the Customer in accordance with VIII. (2) Sentence 1 and Sentence 2 a), as well as in accordance with the Project Liability Law, shall however only expire in accordance with the statutory limitation periods.

X. Software use

1. Where software is included in the scope of delivery, the Customer shall be granted a non-exclusive right to use the software, including its documentation. The software is provided for use on the respectively supplied item. A use of the software on more than one system is prohibited.
2. The Customer may reproduce, change and translate the software or convert it from object code to source code only within the scope permitted by law (Sections 69 a et seq. German Copyright Law (UrhG)). The Customer undertakes not to remove manufacturer specifications – in particular copyright notifications – without the prior express consent of the Supplier.
3. All other rights to the software and the documentation including copies shall remain with the Supplier or the software supplier. The granting of sub-licences is not permitted.

X. Data processing

The Supplier declares that he collects, processes and uses personal data within the scope of this contract or its implementation in accordance with Section 14 of the Federal Data Protection Act (BDSG). In addition, the Supplier undertakes to delete such data immediately if they are no longer required for the due and proper performance of the contract.

XI. Place of jurisdiction, choice of law

1. If the Customer is a businessperson in terms of the German Commercial Code, a public-law legal entity or a special fund under public law, the sole – also internationally – place of jurisdiction for all disputes directly or indirectly resulting from this contractual relationship shall be at the registered office of the Supplier in Villingen – Schwenningen. In all cases, the Supplier is however entitled to file suit at the place of performance of the delivery obligation in accordance with these Terms and Conditions of Sale and Delivery or at preferential places as individually agreed or at the general place of jurisdiction of the Customer. Preferential statutory provisions, in particular with regard to exclusive competences, shall remain unaffected by this.
2. The legal relationships under this contract shall be governed by German law under exclusion of all references to other legal systems and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

As of 11/2017