

KWD Kupplungswerk Dresden GmbH

Terms and Conditions of Sale and Performance for Use in Relation to Businesspersons, Legal Entities under Public Law and Special Funds under Public Law

- 1. Applicability of the Terms and Conditions, Offer and Conclusion of the Contract, Written Form**
 - (1) Deliveries, services and offers of KWD Kupplungswerk Dresden GmbH (hereinafter: "Supplier") shall be exclusively governed by these Terms and Conditions of Sale and Performance. These Terms and Conditions shall be deemed accepted at the latest when the Purchaser takes possession of the goods or performance. We do not recognise terms and conditions of the Purchaser that conflict with or deviate from our Terms and Conditions of Sale and Performance, unless we give our express written consent to the applicability thereof. Our Terms and Conditions of Sale and Performance shall apply even if, knowing of terms and conditions of the Purchaser that conflict with or deviate from our Terms and Conditions of Sale and Performance, we unconditionally make the delivery to the Purchaser.
 - (2) All agreements made between the Supplier and the Purchaser for the purpose of implementing this contract shall be laid down in writing in this contract.
 - (3) To observe the requirement of communication in written form or by telegraph, telefax or telex, it shall not be sufficient to use any other form of telecommunication, particularly not e-mail. The written form may not be replaced by the electronic form.
- 2. Rights in Drawings, Sketches and Right of Indemnity**
 - (1) Drawings, illustrations, dimensions, weights or other performance data shall only be binding if this has been expressly agreed in writing.
 - (2) The Supplier shall reserve all ownership rights and intangible rights, particularly copyrights, in cost estimates, drawings, sketches, illustrations, technical documents and other documents. The documents may not be made accessible to third parties. Drawings of component parts and workshop drawings shall only be made available by the Supplier if this was agreed in writing when the purchase order was placed.
 - (3) The Purchaser warrants that documents and drawings submitted by it shall not infringe third-party proprietary rights. In relation to the Purchaser the Supplier shall not be obliged to examine whether third-party proprietary rights shall be infringed as a result of carrying out the order. The Purchaser shall indemnify the Supplier against any and all third-party claims arising from an infringement of proprietary rights.
- 3. Prices**
 - (1) Our offers shall be subject to change without notice, unless otherwise indicated in the acknowledgement of the order. In the absence of a specific agreement, prices shall apply ex works Dresden, excluding packaging, freight charges, postage, attestations and value guarantees. Value-added tax at the respective statutory rate shall be added to the price. Agreed prices shall not be binding for repeat orders. An extra charge shall be imposed for small-volume purchases and deliveries at short notice.
 - (2) In the case of contracts with an agreed delivery period of longer than six weeks, the Supplier shall reserve the right to increase prices commensurate with cost increases that have occurred due to collective agreements or increases in the price of materials. If the increase is more than 5 % of the agreed price, the Purchaser shall have the right to terminate the contract.
- 4. Payment Terms, Set-off and Withholding**
 - (1) Unless otherwise agreed, the Supplier's invoices shall be payable within 10 days as from the invoice date with a 2 % cash discount or within 30 days after the invoice date net cash. The date when the invoiced amount is received on the account shall be decisive for the deduction of a cash discount.
 - (2) In the case of invoiced amounts under EUR 55,00 net, an extra charge of EUR 20,00 net shall be charged.
 - (3) Despite contrary provisions of the Purchaser, the Supplier shall be entitled to first of all set off payments against the Purchaser's older debt and shall inform the Purchaser of the type of set-off that has occurred. If costs and interest have already been incurred, the Supplier shall be entitled to first of all set off the payment against costs, then against interest and finally against the principal claim.
 - (4) A payment shall first be deemed made once the Supplier can freely dispose of the amount. In the case of cheques, the payment shall first be deemed made once the cheque has been cashed.
 - (5) If the Purchaser defaults on payment, the Supplier shall be entitled to charge default interest and assert any claim for further losses in accordance with legal regulations.
 - (6) If the Supplier becomes aware of circumstances that call the Purchaser's credit-worthiness into question, particularly if the Purchaser dishonours a cheque or ceases payments, or if the Supplier becomes aware of other circumstances that call the Purchaser's credit-worthiness into question, the Supplier shall be entitled to demand the immediate payment of the entire residual debt, even if it has accepted cheques. In this case the Supplier shall additionally be entitled to demand advance payments or the provision of security.
 - (7) Even if the Purchaser has made complaints or asserted counterclaims, the Purchaser shall only be entitled to set off, withhold payment or reduce the price on condition that its counterclaims have been declared final and absolute or are undisputed. Nevertheless the Purchaser shall also be entitled to withhold payment on the basis of counterclaims arising from the same contractual relationship.
 - (8) In the event that the Purchaser is at risk of being unable to pay and in the event that an application for the commencement of insolvency proceedings concerning the Purchaser's assets is filed, the Purchaser shall be obliged to put in a separate place all goods still on hand from the Supplier's deliveries on the day when such an event occurs and to notify the Supplier without delay. The assertion of a right to have goods put in a separate place shall not constitute rescission of the contract.
 - (9) In the case of payment by bill of exchange whose due date exceeds a 30-day period, discount and bill charges shall be chargeable to the Purchaser.
 - (10) In the event that orders are suspended, the agreed price shall be due and payable immediately after the deduction of expenses saved.
- 5. Extended Reservation of Title**
 - (1) Until such time as all accounts receivable (including all balances due from a current account) that the Supplier is entitled to on any legal basis against the Purchaser now or in future have been satisfied, the Supplier shall be provided with the following security, which the Supplier shall on request, at its option, release in so far as the value thereof exceeds the accounts receivable by more than 20 % on a sustained basis.
 - (2) The goods shall remain the Supplier's property. Processing or transforming shall always occur on behalf of the Supplier as the manufacturer, but without putting the Supplier under any obligation. If the Supplier's (joint) ownership rights lapse as a result of the goods being combined with other goods, it is already now agreed that the Purchaser's (joint) ownership rights in the unitary item shall pass to the Supplier on a proportionate basis in terms of value (invoice value). The Purchaser shall act as custodian of the Supplier's (joint) property free of charge. Goods in which the Supplier has (joint) ownership rights are hereinafter referred to as goods under reservation of title.
 - (3) The Purchaser shall be entitled to process and sell goods under reservation of title in the ordinary course of business as long as it is not in default. Pledges and transfers of ownership by way of security shall not be allowed. By way of security, the Purchaser already now assigns to the Supplier accounts receivable (including balances due from a current account) arising from reselling or from some other legal basis (insurance, tort) in respect of goods under reservation of title, regardless of whether the goods under reservation of title are resold without having been processed or after having been processed or whether or not they are connected to land or movables. If goods under reservation of ownership are resold after having been processed or together with other goods not belonging to the Supplier, or if they are connected to land or movables, the Purchaser's account receivable from its customer shall be deemed assigned in the sum of the contract price of the goods under reservation of ownership agreed between the Purchaser and the Supplier. The Supplier revocably authorises the Purchaser to collect in its own name for the Supplier's account the accounts receivable assigned to the Supplier. This authorisation to collect accounts receivable may only be revoked on condition that the Purchaser fails to properly meet its obligations to pay.
 - (4) In the event that a third party seizes goods under reservation of ownership, particularly by levy of execution, the Purchaser shall draw attention to the Supplier's ownership rights and notify the Supplier without delay, so that the Supplier can enforce its ownership rights. In so far as the third party is not in a position to reimburse the Supplier for court or out-of-court costs incurred in this connection, the Purchaser shall be liable for these.
- (5) In the event that the Purchaser acts in breach of the contract, particularly if the Purchaser defaults on payment, the Supplier shall, provided that the prerequisites for rescission of the contract are met, be entitled to take back goods under reservation of ownership or, if need be, demand that the Purchaser assigns to the Supplier its claims for the recovery of possession against the third party. The taking-back of goods under reservation of ownership shall constitute rescission of the contract.
- 6. Responsibility for Drawings, Test Certificates**
 - (1) The Purchaser shall be responsible for the completeness and accuracy of the drawings and illustrations made available by it.
 - (2) In the absence of a specific contractual agreement, the Supplier shall not be obliged to issue certificates, attestations, works certificates or test certificates, or to have these issued, or to have acceptance inspections carried out by a third party including authorities. The Purchaser shall bear the cost of such certificates and acceptance inspections.
- 7. Period for Delivery and Performance**
 - (1) Delivery periods shall apply only on an approximate basis. A delivery period indicated shall not be binding. Part deliveries shall be allowed. Deliveries in advance shall be deemed agreed. The delivery period shall begin when the acknowledgement of the order is sent off, but not before the documents, permits and clearances to be obtained by the Purchaser have been submitted and not before an agreed down payment has been received.
 - (2) The delivery period shall be met if the delivery item has left the works or notification of readiness for dispatch has been given by the end of the delivery period.
 - (3) Even in the case of bindingly agreed periods and dates, the Supplier shall not be to blame for delays in delivery and performance due to force majeure and due to events that make it, not only temporarily, considerably more difficult or impossible for the Supplier to deliver, including in particular strike, lockout, official orders, rejected material etc., even if these occur at the Supplier's suppliers or its subcontractors. They shall entitle the Supplier to defer the delivery or performance by the duration of the impediment plus a reasonable start-up period or to rescind the contract in whole or in part on account of the part not yet performed. If the delivery period is extended, or if the Supplier is released from its obligation, the Purchaser may not derive from this any damage claims. The Supplier may invoke the aforementioned circumstances only on condition that it notifies the Purchaser without delay. In particular damage claims including claims for compensation for lost profit or for other economic losses incurred by the Purchaser are excluded, unless default is due to at least gross negligence on the part of the Supplier. Liability for damages arising from death, physical injury or damage to health and from a culpable breach of material contractual duties shall also remain unaffected. In the event that material contractual duties are culpably breached, the Supplier shall (except in cases of intent, gross negligence and liability for losses arising from death, physical injury or damage to health) only be liable for reasonably foreseeable damages typical of the contract.
 - (4) The Supplier shall be entitled to deliver and perform in part at any time, unless the part delivery or part performance is of no interest to the Purchaser.
 - (5) A prerequisite for the performance of the Supplier's obligations to deliver and perform shall be that the Purchaser's obligations are properly performed in due time.
 - (6) If the Purchaser defaults on acceptance, the Supplier shall be entitled to claim compensation for the loss incurred by it. The risk of accidental deterioration and accidental loss shall pass to the Purchaser when default in acceptance begins.
- 8. Dispatch, Passage of Risk**
 - (1) The risk shall pass to the Purchaser as soon as the consignment has been handed over to the carrier or has left the Supplier's warehouse for the purpose of dispatch. If dispatch is delayed at the Purchaser's request, the risk shall pass to the Purchaser when readiness for dispatch is notified.
 - (2) Unless the Purchaser has issued specific dispatch instructions and these have been acknowledged in writing by the Supplier, the Supplier shall choose the method of dispatch and the route.
- 9. Warranty**
 - (1) The Supplier warrants that the products shall be free from defects in manufacturing and materials. Even in the case of works, the warranty period shall be one year. This does not apply to items that have been used for a building structure commensurate with their normal use and have caused defects therein, or to building structures and works whose outcome consists in performing planning and supervisory work in this connection. The warranty period shall begin on the date of delivery, in the case of works at the time of acceptance. The Supplier shall be entitled to, at its option, remedy the defect or deliver a replacement, in the case of works to remedy the defect or produce a new work.
 - (2) The Purchaser must give prompt written notification of defects, but no later than within one week after receipt of the delivery item. Defects that cannot be discovered within this period, even on careful inspection, shall be made known to the Supplier in writing promptly after discovery.
 - (3) The Supplier shall not accept any warranty for defects caused by normal wear and tear, incorrect or negligent handling, improper storage, unsuitable or improper use or non-observance of instructions for installation, processing, use or maintenance, alterations to products or the exchange of parts.
 - (4) In the event that the Purchaser gives notification that the items do not correspond with the warranty, the Supplier shall, at its option and at its expense, demand that:
 - the damaged item be sent to the Supplier for repair and subsequent return;
 - the Purchaser makes the damaged part available, and the Supplier shall send its customer service technicians to the Purchaser to carry out the repair work.
 - (5) If the Purchaser demands that work under the warranty be carried out at a place other than the Purchaser's domicile or principal place of business, the Supplier may meet this request, whereby parts falling under the warranty shall not be charged, but working hours and travel expenses shall be charged at the Supplier's cost rates.
 - (6) If the Supplier fails to render supplementary performance within a reasonable period, the Purchaser may, at its option, reduce the price or rescind the contract.
 - (7) The above sections definitively embody the warranty for the products and preclude other warranty and damage claims of any kind, including claims for compensation for lost profit or on account of other economic losses of the Purchaser. This does not apply to claims arising from a quality or durability guarantee. The limitation of liability shall also not apply, in so far as a loss was caused by intent or gross negligence. Liability for damages arising from loss of life, physical injury or damage to health and from a culpable breach of material contractual duties shall also remain unaffected. In the event that material contractual duties are culpably breached, the Supplier shall (except in cases of intent, gross negligence and liability for damages arising from loss of life, physical injury or damage to health) only be liable for reasonably foreseeable damages typical of the contract. Furthermore the exclusion of liability shall not apply in cases where the Supplier is liable under the Product Liability Act [Produkthaftungsgesetz] for personal injury or property damage to privately used objects due to faults in the delivery item.
- 10. Cancellation of the Contract**
 - (1) Without prejudice to more extensive legal and contractual rights of the Supplier, the Supplier shall be entitled to a flat-rate reimbursement of expenses at the rate of 5 % of the invoice value, if the Supplier cancels the contract.
 - (2) The Purchaser shall have the right to prove that expenses have not occurred at all or are materially lower than the flat rate agreed.
- 11. Place of Performance and Jurisdiction, Final Provisions**
 - (1) The entire legal relationship between the Supplier and the Purchaser shall be governed by the laws of the Federal Republic of Germany.
 - (2) The place of performance for the duties of the Supplier and the Purchaser shall be the Supplier's principal place of business.
 - (3) In so far as the Purchaser is a merchant, a legal entity under public law or a special fund under public law, Dresden shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship.
 - (4) If a provision in these Terms and Conditions or a provision under other agreements is or becomes ineffective, this shall not affect the effectiveness of any other provisions or agreements.