

# General Terms and Conditions of Maschinenbau Kitz GmbH

(Version: April 2023)

## 1. General provisions

1.1 Our deliveries are made exclusively on the basis of the conditions outlined below. Our general terms and conditions apply to both consumers and businesses unless it is explicitly stated that they apply solely to either businesses or consumers. When applied to businesses, they shall also apply to all future business transactions, even if explicit reference is not made to these terms and conditions in each specific case.

1.2 In the context of our general terms and conditions, the term "consumer" refers to a natural person with whom legal relationships are entered into for purposes outside said natural person's trade, business or profession. In the context of our general terms and conditions, the term "business" refers to a natural or legal person under private or public law, a special fund under public law or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his, her or its trade, business or profession. In the context of our general terms and conditions, the term "Customer" refers to both businesses and consumers.

1.3 No verbal agreements have been made. Subsidiary agreements and changes and specific agreements reached in individual cases take priority. Subject to proof to the contrary, a written contract or our written confirmation shall be definitive for the content of such agreements.

1.4 These general terms and conditions shall apply exclusively; we hereby expressly exclude general terms and conditions issued by the Customer that deviate from our own. They shall become an integral part of the contract only if and to the extent that we have expressly agreed to their validity. This requirement for our agreement shall apply in all cases, such as in the case of unconditional delivery on our part.

1.5 The Customer may not assign any of its claims without our consent.

## 2. Quotation and conclusion of contract

2.1 Unless otherwise expressly agreed, our quotations shall remain non-binding and subject to change.

2.2 Orders are not accepted until confirmed in writing by us. This provision also applies to orders through our shop (shop.mk-group.com). Any changes to the order confirmation issued by us shall also be confirmed in writing, as shall any other deals or verbal agreements.

2.3 The details and descriptions in our catalogue brochures and online shop are only definitive if no explicit reference to deviations is made. In case of any changes to the dimensions, weights, diagrams or drawings in our catalogues, brochures and online shop due to production circumstances or for any other reason, the Customer shall be notified of the relevant changes in a binding quotation. If the Customer provides a written statement of acceptance of such a quotation, the modified performance specifications shall be exclusively binding. No further written confirmation in accordance with Clause 2.2 shall be required. Such a quotation shall be deemed to have been accepted if the Customer does not issue a rejection of the quotation within

three weeks of receipt, providing the Customer has been expressly notified of the significance of its behaviour prior to the commencement of this period.

Any deviations from the performance specifications that are normal in the trade, particularly deviations with regard to colour, texture and weight that are due to the nature of the materials used, shall be considered contractual, provided that they do not impair the contractual use of the item. No notification is required for such deviations. We consider all obvious mistakes, printing errors, miscalculations and typing errors to be non-binding; no claims for fulfilment, withdrawal, reduction or damages may be made on the basis of such errors.

2.4 The Customer shall assume full liability for ensuring the binding nature of documents that must be delivered by the Customer, such as drawings, gauges, samples, etc. Any verbal agreements regarding dimensions, tolerances, etc. must be confirmed in writing.

2.5 We reserve all property rights and copyright with regard to cost proposals, sketches, drawings and other documents. They must not be made accessible to third parties or used for other purposes, in particular self-production, without our written approval. They must be returned to us without delay upon request.

2.6 Samples are only supplied subject to a fee.

### **3. Scope of delivery**

3.1 The scope of delivery is defined in our written order confirmation or the accepted binding quotation in accordance with Clause 2.3.

3.2 Guards shall be included in the delivery only if this is agreed. We shall provide written information on any residual risks.

3.3 Electrical accessories are supplied on the basis of the following regulations: accessories for three-phase motors are supplied in accordance with the EN 60034 standards series, accessories for frequency inverters for variable-speed electrical drive systems are supplied in accordance with the EN 61800 standards series and accessories for the electrical equipment of machines generally limited based on design and performance are supplied based on the specifications of EN 60204.

3.4 For the duration of the delivery period, we reserve the right to make modifications to the design or form resulting from technological improvements or legal requirements, providing said modifications do not significantly alter the delivery item and are considered by the Customer to be reasonable.

### **4. Prices**

4.1 Our prices apply in euros ex-works in Troisdorf-Bergheim, Germany, plus packaging and insurance and plus value-added tax at the rate applicable on the date in question, where such tax is applicable for overseas deliveries.

4.2 Insofar as the agreed prices are based on our list prices and delivery is to take place more than four months after the contract is concluded, our list prices that are valid at the time of the delivery (minus any agreed percentage or fixed discount) shall apply if the Customer is a business. In this case, the Customer is entitled to withdraw from contracts that have not yet been fulfilled if the price increase is equivalent to 20% or more of the original price. However, this right to withdrawal must be exercised without delay upon receipt of the notification of the increased price.

### **5. Terms of payment**

5.1 Unless otherwise agreed, the purchase price shall be due concurrently with the transfer of the purchased item and payable in full within 30 days starting from the invoice date. Payments made within 14 days starting from the invoice date shall be granted a 2% discount, providing no agreements to the contrary have been made.

5.2 The following terms of payment shall apply for custom orders, e.g. products that deviate from those shown in the catalogue, and also for orders of standard items that exceed EUR 10,000 in value:

30% of the order value upon placement of the order

30% of the order value upon notification of completion, but prior to shipping

30% of the order value upon invoicing

10% of the order value 30 days after the invoice date

Plus VAT in each case

5.3 A separate payment schedule shall be issued in writing for custom machines.

5.4 Cheques shall only be accepted on account of payment. Payments by bill of exchange shall not be accepted.

5.5 The Customer shall default on the payment on the 31st day following the due date without any further statement from us. In such cases, interest shall be charged at 5 percentage points above the applicable basic interest rate. No separate reminder shall be required in order for us to charge this interest. We reserve the right to claim for further damages in addition to these interest charges. If the Customer is a business, interest shall be charged at a rate of 9 percentage points above the applicable basic interest rate plus a flat-rate fee of EUR 40.

5.6 If the Customer is a business, the Customer shall only be permitted to withhold payment in the case of claims that are undisputed, legally enforceable or awaiting adjudication, or in case of counter-claims arising from the same contractual relationship due to the defective nature of the purchased item or production costs; the same applies to offsetting against such claims. In the case of defect rectification costs or additional production costs arising from the same contractual relationship, the Customer shall not be entitled to withhold payment unless the sum withheld is in reasonable proportion to the defects and the expected cost of subsequent performance.

5.7 We are entitled to make outstanding deliveries or provide outstanding services only upon receipt of advance payment or security payment if, following the conclusion of the contract, we become aware of circumstances that are likely to significantly affect the solvency or creditworthiness of the Customer and that jeopardise the payment of our outstanding claims by the Customer on the basis of the applicable contractual relationship (including other individual orders to which the same framework agreement applies).

5.8 If it becomes apparent following the conclusion of the contract that our entitlement to the payment of our outstanding claims is jeopardised due to the inability of the Customer to pay, then we are entitled to withdraw from the contract in accordance with the statutory provisions on the refusal of performance (Section 321 of the German Civil Code (BGB)) – after setting a deadline where necessary. In the case of contracts on the manufacture of non-fungible items (custom-made items), we can declare a withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

## 6. Delivery time

6.1 The delivery period shall not begin until all the prerequisites for the performance of the order are established, in particular until all the details of the performance have been clarified (requested plans or samples for the set-ups of the ordered machines and units are in our possession, etc.) and both parties are in agreement with regard to all the conditions of the contract. If a down-payment is due upon placement of the order in accordance with Clause 5.2 or any other agreement, the delivery period shall not begin until the agreed down-payment has been received. The delivery deadline refers to the completion of production at the factory.

6.2 If the fulfilment of a contractual duty is hindered by unforeseeable circumstances lasting for a period of more than 14 calendar days that we/our subcontractors are unable to avoid despite employing the utmost care in our duties, e.g. due to interruptions to operation caused by fire, water or damage to machinery through no fault of our own, or due to force majeure, e.g. strikes, lawful lockouts, lack of power and raw materials, pandemics or epidemics, transport bottlenecks caused through no fault of our own or any other hindrance that cannot be objectively deemed to be our fault, the failure in our own factory or that of a subcontractor of a part that cannot be replaced immediately, delays caused by the sub-contractor, or modifications required due to newly acquired information, the delivery period shall be extended by the length of time for which the aforementioned conditions or the effects thereof persist, even if said conditions occur during an existing delay in delivery. The same shall apply if governmental approvals or other approvals or third-party documents required for the performance of deliveries are not submitted on time, or if the order is changed following placement. The Customer shall be notified of such extensions to the delivery time in writing or text form.

If a delivery deadline has been set and said deadline is exceeded by more than 4 weeks, and it is thus objectively unreasonable for the Customer to expect the contract to still be honoured, the Customer is entitled to withdraw from the contract due to the unfulfilled portion of the contract. If the Customer has agreed a binding delivery deadline, the Customer is entitled to withdraw immediately if punctual performance is critical for the Customer.

6.3 Partial deliveries are permissible as long as the partial delivery can be used by the Customer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the Customer does not incur any significant extra expenses or additional costs as a result. Such partial deliveries are subject accordingly to the terms of payment detailed in Clause 5.

6.4 The occurrence of a delay in our delivery shall be governed by the statutory provisions. In any case, however, a reminder from the customer is required. If we are in default on delivery, the Customer may demand lump-sum compensation for the damage they suffer due to the delay. The lump sum for damages shall be 0.5% of the net price (delivery value) for each fully completed calendar week of the delay, but will total not more than 5% of the delivery value of the goods that are delivered late. We reserve the right to prove that the Customer has not suffered any damage at all or only a significantly lower level of damage than the aforementioned lump sum. This limit shall not apply in case of injury to life, limb or health, nor if the delay in question is caused by intent or gross negligence.

The rights of the Customer in accordance with Clauses 11 and 12 of these general terms and conditions and our statutory rights, particularly where the obligation to perform is excluded (for example, if performance and/or subsequent improvement is impossible or unreasonable), remain unaffected.

6.5 If shipping is delayed at the wishes of the Customer, we shall be entitled to charge the Customer for the costs of storage starting 14 calendar days after the Customer has been notified that the purchased item is ready for shipping. Storage in our factory shall be charged at a minimum of 0.5% of the net invoice sum for each month, or in line with the actual cost of storage. The Customer is entitled to provide proof of minor damage. If this period expires without event, we are entitled to make other arrangements for the use of the goods and provide the Customer with a suitable extended deadline.

## **7. Transfer of risk**

7.1 The risk shall be transferred to the Customer when the delivery item is handed over to the freight forwarder, freight carrier or other third parties appointed to carry out the shipment (the start of the loading process is definitive in this case), provided that the Customer is a business.

7.2 If delivery is delayed as a result of circumstances beyond our control, the risk shall be transferred to the Customer on the date that the goods are ready for shipping, provided that the Customer is a business and we have notified the Customer that the goods are ready for shipping.

7.3 The cost of any insurance against transport damage must be borne by the Customer unless evidence can be provided of self-insurance and the Customer is a business.

## 8. Packaging and shipping

8.1 The goods shall be shipped at our discretion in recyclable packaging using industry-standard methods.

8.2 Packaging shall be charged together with the cost price. In the case of carriage-paid return of the packaging material in reusable condition, a credit note equivalent to a maximum of 2/3 of its calculated value shall be paid, though only with prior written consent.

8.3 If no special instructions are provided, the route and means of transport shall be decided according to our best judgement; we accept no liability for cheaper freight or shorter routes.

8.4 If, due to circumstances beyond our control, it is not possible to ship the goods at the intended time despite their being ready for shipping, the Customer shall be charged for the cost of storage either on our premises or those of a third party.

## 9. Commissioning

9.1 The expenditures incurred during commissioning for fitter and allowance rates shall be borne by the customer, in particular also for overtime, Sunday and Bank Holiday working, in accordance with the law of the Federal Republic of Germany. Travel and waiting times shall be classed as working time.

9.2 The Customer shall bear the costs of travel to and from the site, and also the costs of transporting any tools and travel baggage.

## 10. Defects, subsequent improvement, delivery of replacements

10.1 If the Customer is a consumer, the Customer has to report any obvious material defects or defects of title to us in text form within 10 days following receipt of the goods; it is sufficient to send off the report within this period. Any defects that occur after the expiration of this period must be reported without delay in text form. The Customer must describe the defects in as much detail as possible.

10.2 If the Customer is a business, defects must be reported in text form without delay. Any additional costs resulting from a delay in the reporting of defects must be borne by the Customer. Section 377 of the German Commercial Code (HGB) remains unaffected by this requirement. Any other defects or consequential damage must be reported to us at the latest within 14 calendar days of their discovery or the earliest time at which they could have been discovered. Obvious transport damage can only be recognised if noted on the receipt of delivery.

10.3 Unless a longer limitation period is required by law, the limitation period for Customer claims and rights arising from defects – regardless of the reasons therefore – shall be two years starting from the hand-over of the item.

10.4 We accept no liability for defects resulting from non-intended or improper use, faulty or incorrect installation or commissioning on the part of the Customer or third parties, natural wear, mistreatment or negligent treatment, excessive use (more than an average of 40 hours per week), unsuitable operating materials, penetration of foreign matter, defective work on parts supplied by third parties, or outside influences.

10.5 We accept no liability for defects in hardware or software components provided by the Customer. We reserve the right to reject hardware or software components produced by the customer on the basis of a

suitability test. The introduction of such a test shall be indicated in advance. The Customer shall bear the costs for the suitability test. Regardless of the suitability test, liability for defects in hardware or software components provided by the Customer is excluded. The Customer shall bear the burden of proof for consequential damage caused by the defects.

10.6 If the delivered item is defective, we can initially choose whether to provide supplementary performance by eliminating the defect (subsequent improvement) or by delivering a defect-free item (delivery of a replacement) in the case of contracts with businesses. If the type of supplementary performance that we choose in individual cases is unreasonable for the customer, they can reject it. Our right to refuse supplementary performance under the statutory provisions remains unaffected.

10.7 The Customer is required to allow us the necessary time to perform subsequent improvements and deliver replacements. We shall bear or reimburse the costs required for the purpose of supplementary performance, particularly transport, travel, work and material costs and, where applicable, any removal and installation costs, in line with the statutory regulations, insofar as the claim is justified. Otherwise, we can demand reimbursement from the Customer for the costs arising due to any unjustified demand for the rectification of defects if the Customer knew or could have recognized that there was no defect.

10.8 For contracts concluded with businesses, the expenses incurred for the purpose of subsequent improvement or delivery of replacements shall – even if the complaint is justified – be borne by the Customer insofar as they are increased because the item is transported to a location other than the subsidiary of the Customer, unless such transport was agreed with us. For contracts concluded with consumers, the restrictions detailed in Section 439 (3) of the German Civil Code (BGB) apply.

10.9 The warranty claim shall be rendered void as soon as the Customer or the third party enlisted by same independently performs modification or repair work – including commissioning work – on the goods without our written consent, unless we are delayed in performing subsequent improvements or have unjustly refused to do so.

10.10 In urgent cases (for example, where there is a risk to operational safety or to prevent disproportionate damage), the customer has the right to remedy the defect themselves and to demand compensation from us for the expenses that were objectively required to do so. We are to be notified immediately of any such work performed by the Customer, in advance where possible. The right of the Customer to perform such work does not exist if we would be entitled to refuse the applicable supplementary performance in accordance with the statutory provisions.

10.11 Where the Customer is a business, claims for reimbursement of expenses by the Customer in accordance with Section 445a (1) of the German Civil Code are excluded unless the last contract in the supply chain is a consumer goods purchase (Sections 478 and 474 of the German Civil Code) or a consumer contract for the provision of digital products (Sections 445c p. 2, 327 (5) and 327u of the German Civil Code). Claims by the Customer for damage or compensation for wasted expenditure (Section 284 of the German Civil Code) shall exist only in accordance with Clauses 11 and 12 below, even in the event of defects in the goods.

10.12 If the Customer is a business, they not shall be entitled to payment for damages not incurred on the delivery item itself unless said damages are the result of an assurance.

## **11. Withdrawal, reduction and payment of damages**

11.1 In case of defects, the Customer is entitled to withdraw from the contract in accordance with the statutory regulations (withdrawal) or reduce their payment where the relevant legal prerequisites apply (reduction). In the event of an insignificant defect, however, there is no right of withdrawal.

11.2 If the Customer is a business, they shall not be entitled to make a warranty claim for damages in place of performance. If the Customer is a consumer, they shall only be entitled to claim for damages in place of

performance if subsequent improvement has failed after two attempts, or if subsequent improvement has been refused or is unreasonable.

11.3 The restriction detailed in Clause 11.2 shall not apply with regard to liability due to injury to life, limb or health, in the event of culpability, in the event of claims on the basis of the German Product Liability Act or if we maliciously conceal the defect or have taken on a guarantee for the condition of the delivery item.

11.4 Furthermore, the right to claim damages due to defects is not excluded if the defective performance also represents a violation of a cardinal duty of the contract (a duty whose fulfilment affects the contract and that the Customer can trust to be fulfilled).

11.5 Any changes to the burden of evidence that disadvantage the Customer bear no connection to the regulations outlined above.

## **12. Liability in the case of impossibility of performance and other violations of duty**

12.1 In the case of impossibility of performance and other violations of duty on our own part or that of our representatives or vicarious agents, we shall be liable in accordance with the statutory provisions. However, in the case of contracts with businesses, our liability in case of negligence shall be limited to the foreseeable damage typical for the contract and a maximum of 10% of the net invoice sum for the part of the delivery that cannot be used due to said impossibility of performance or violation of duty. No further claims made by the Customer due to the impossibility of delivery shall be recognised, even once we have been set a deadline for performance.

12.2 The restriction detailed in Clause 12.1 does not apply to liability due to injury to life, limb or health, to claims on the basis of the German Product Liability Act or to cases where the impossibility of performance or other violations of duty are the result of intent or gross negligence.

12.3 The Customer's right to withdraw from the contract remains unaffected by these provisions.

12.4 Any changes to the burden of evidence that disadvantage the Customer bear no connection to the regulations outlined above.

## **13. Retention of title**

13.1 We reserve the rights to the ownership of the delivery item until payment has been received in full (hereinafter referred to as "goods subject to retention of title"). If the Customer is a business, we furthermore reserve the rights to the ownership of the delivery item until all claims arising from and still to arise from the business relationship between us and the Customer have been paid off, regardless of the legal basis for said claims.

13.2 Where the validity of this retention of title is linked to special prerequisites or formalities in the Customer's country, the Customer is required to arrange the fulfilment or completion of said prerequisites and formalities at the Customer's own cost.

13.3 The Customer shall only be permitted to access the delivery item in the proper course of business; no other access – in particular in return for pledges or the provision of security – shall be permitted. In the event of seizure, confiscation or other orders issued by third parties, the Customer must inform us of such events without delay and provide us with access to all the information and documentation necessary in order to maintain our rights. Enforcement officers and third parties must be informed as to what is our property. If this obligation is violated, the Customer shall be liable for the resulting damages.

13.4 The processing of the delivered goods shall not incur any duties on our part.

13.5 If the Customer processes, mixes or connects our goods with other goods that do not belong to us, we shall be entitled to the joint ownership of the new item in line with the value of the goods subject to retention of title in proportion to the other goods at the time of processing, connection or mixture. Should the Customer acquire sole ownership of the new item, we hereby mutually agree that the Customer shall assign to us joint ownership of the new item in line with the value of the processed, connected or mixed goods subject to retention of title in proportion to the new item.

13.6 The Customer hereby assigns to us the receivable arising from the selling on of the goods subject to retention of title, regardless of whether said sale occurs before or after the processing, connection or mixture. We hereby accept this assignment. If the goods subject to retention of title are sold on following their processing, connection or mixture with other goods that do not belong to us, the assignment of the receivable shall be equivalent to the value of our goods subject to retention of title. The Customer is entitled to collect receivables for the selling on for as long as the Customer continues to fulfil their duties in accordance with the contract. We must be informed immediately of any measures or circumstances that affect our security interests. The Customer is prohibited from making any agreements with their buyers that exclude or impair our rights in any way, or that nullify the advance assignment of the claim.

13.7 We are entitled to insure the delivery item against fire, water and other damage at the cost of the Customer, unless the Customer can provide evidence that they possess such insurance themselves. If the Customer possesses such insurance themselves, the Customer hereby assigns to us any claims against the insurance arising from damage affecting the goods subject to retention of title, up to the value of the goods subject to retention of title.

13.8 The Customer hereby undertakes to report to us immediately any access by third parties to the goods subject to retention of title or the rights assigned to us. If we reclaim the goods subject to retention of title, this action shall not be deemed a withdrawal from the contract unless we expressly inform the Customer of such a withdrawal in writing.

13.9 If the value of the securities that exist for us in accordance with the above provisions exceeds the secured receivables by a total of more than 10%, we hereby undertake to release securities chosen at our discretion upon the request of the Customer.

## 14. Data protection

The "Data Protection" section on our website ([www.mk-group.com](http://www.mk-group.com)) provides the Customer with the following information:

- The type, scope, duration and purpose of the collection, processing and use of the personal data required for the processing of orders and invoices; the Customer's right to object to the creation and use of their anonymised usage profile for the purposes of advertising, market research and tailoring our services to suit their needs
- The forwarding of data to companies under our employ who are required to comply with the legal provisions on data protection for the purposes and duration of the credit check and for the delivery of the goods
- The right to receive free of charge information on what personal data pertaining to the Customer we have saved on our systems
- The right to the correction, erasure and blocking of the personal data pertaining to the Customer that we have saved on our systems

## 15. Place of performance, court of jurisdiction, choice of law

15.1 If the Customer is a business, the place of performance for delivery and payment shall be Troisdorf, Germany.



15.2 If the Customer is a business, any disputes arising from the contractual relationship must be brought before the court responsible for our headquarters. We are also entitled to bring claims before the court responsible for the Customer's headquarters.

15.3 German law shall apply exclusively, with the exclusion of international uniform law, particularly laws concerning the international purchase of movable property, even if the Customer's company headquarters are located in a foreign country.

## **16. Place of delivery for purchases through our online shop**

We only deliver from our online shop (<https://shop.mk-group.com>) to businesses and recipients in Germany and Austria unless another delivery location is expressly agreed with the Customer. Orders can also be collected in person from our location in Troisdorf, Germany.

## **17. Cancellation charges**

17.1 If the customer cancels or withdraws a given order before the performance of the given order begins, we shall credit the Customer with the invoice amount minus 10% for testing and handling costs and lost profit, unless the order relates to a custom machine as defined in Clause 5.3. In the case of custom machines, the Customer must pay the invoice amount minus saved expenses.

17.2 If we have already begun working on the order at the time of the cancellation/withdrawal, we will inform the customer about its processing status immediately. In this case, the Customer must pay the fulfilled part of the order minus any saved expenses (e.g. shipping costs) despite the cancellation/withdrawal. Clause 17.1 applies with regard to the unfulfilled part of the order.

17.3 The Customer shall retain the right to prove a lower level of damage in relation to Clauses 17.1 and 17.2.

## **18. Miscellaneous**

18.1 The rights and obligations of the Customer resulting from the order placed may not be assigned or transferred without our prior written consent.

18.2 A certificate of exemption has been provided in accordance with Section 48 of the German Income Tax law (EStG): security number 00-11-0068.

18.3 Should one provision be or become invalid, the validity of the other provisions shall remain unaffected by this.