

Terms and Conditions of Maschinenbau Kitz GmbH

1 General Provisions

1.1 Our deliveries are only made based on the following provisions. They shall also apply to all future business transactions, even if we do not refer to these terms and conditions in each individual case. The terms of delivery and payment shall apply to consumers and entrepreneurs if no reference is made separately to an exclusive validity only for entrepreneurs or only for consumers.

1.2 A "consumer" within the meaning of our terms of delivery and payment is a natural person with whom business relations are entered into without the possibility of attributing to him a commercial or independent professional activity. A "company" within the meaning of our terms of delivery and payment is a natural person or legal entity under private or public law or separate assets under public law or a partnership with legal capacity which acts by performing its commercial or independent professional activities when concluding a legal transaction. Buyers within the meaning of our terms of delivery and payment are both entrepreneurs as well as consumers.

1.3 Deviations from these terms of delivery and payment are only valid if they are agreed in writing. This shall also apply to deviating terms of delivery and payment of the buyer, even if we are aware of these.

1.4 Claims of the buyer cannot be assigned without our consent.

2 Offer and Conclusion of a Contract

2.1 Our offers are non-binding and without obligation insofar as not otherwise expressly agreed.

2.2 Orders shall only be deemed as accepted when they have been confirmed by us in writing. Amendments to the order confirmation given by us as well as other agreements and oral agreements shall also be confirmed by us in writing.

2.3 The details and descriptions provided in our catalogues and brochures are only decisive if no express reference is made to deviations. In case of changes compared with dimensions, weights, diagrams or drawings stated in the catalogues and brochures, due to production or for other reasons, then the buyer shall be informed of the relevant changes in a binding offer. If he accepts this offer through a written declaration the changed performance information shall be solely binding. No further written confirmation according to Clause 2.2. is required. It is deemed as acceptance of this offer if the buyer does not declare a rejection within two weeks from receipt of the changed offer. Slight deviations from the performance information are to be accepted as in line with the contract insofar as they do not impair the use of the object as per contract. These deviations do not require any notification. Obvious mistakes, printing, computing, typing and calculation errors are not binding for us and do not establish any claim for satisfaction.

2.4 The buyer assumes the full liability for the binding nature of the documents supplied by him such as drawings, gauges, samples etc. Oral details concerning dimensions, tolerances etc. require a written confirmation.

2.5 We reserve the property right and copyright to cost estimates, sketches, drawings and other documents. They may neither be made accessible to third parties without our consent nor be used for other purposes, in particular self-production. Upon request they are to be returned to us immediately.

2.6 Samples are only delivered against a charge.

3 Scope of the delivery

3.1 Our written order confirmation or the accepted binding offer according to Clause 2.3 is decisive for the scope of the delivery.

3.2 Protective devices will insofar also be delivered if this is agreed. We will point out any possible residual risks in writing.

3.3 The general regulations EN 292-1, EN 292-2, EN 294 and EN811 shall apply to electrical technical accessories (motors, etc.) insofar as they relate to execution and service.

3.4 The right is reserved to make any modifications to construction or form, necessary for the improvement of the technology or to statutory demands during the term, insofar as the object of delivery is not substantially changed and the change is deemed reasonable for the buyer.

4 Prices

4.1 Our prices are in Euros ex works Troisdorf-Bergheim excluding packaging and insurance plus the respective value-added tax applicable on the date of invoicing.

4.2 Price changes are permitted if there are more than 4 months between the conclusion of the contract and agreed delivery date with consumers, with entrepreneurs more than six weeks. If the wages, material costs or the cost prices in line with the market respectively increase subsequently until completion of the delivery we shall be entitled to increase the price reasonably in line with the increase in costs. The buyer is only entitled to cancellation if the price increase does not just insignificantly exceed the increase in the general costs of living between order and delivery.

5 Terms of payment

5.1 Unless otherwise agreed, the purchase price is due delivery versus payment upon the hand-over of the object of purchase and payable within 30 days after invoice date without any deduction. With payment within 14 days after invoice date we shall grant 2 % cash discount insofar as no deviating written agreement was reached.

5.2 The following term of payment is deemed as agreed for custom-made productions, i.e. productions, which deviate from the productions according to the catalogues and to orders for standard articles, whose value exceeds EUR 10,000.-:

30% of the order value when the order is placed

30% of the order value with notification of completion however before delivery

30% of the order value with invoicing

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

respectively net and including pro rata VAT.

5.3 A deviating mode of payment shall be stipulated in writing with special machines.

5.4 Cheques are only accepted in payment. Bill of exchange payments will not be accepted.

5.5 The buyer shall be deemed in default without any further declarations on our part on the 31st day after the due date. In case of delayed payment – without this requiring a special reminder – and subject to the reservation of further damages, interest will be charged in the amount of 5% points above the respective base lending rate. If the buyer is an entrepreneur then interest will be charged in the amount of 8% points above the respective base lending rate.

5.6 If the buyer is an entrepreneur it is only permitted to retain payments in case of undisputed claims or claims which are declared final and binding, also the offsetting against such.

5.7 In case of any justified doubts about the solvency or creditworthiness of the buyer after conclusion of the contract, insofar as he is an entrepreneur, we shall be at liberty to either demand cash payment of all outstanding claims including claims from bills of exchange or collateral before delivery. Before this request has not been satisfied we are not obligated to further deliver from any pending contract or also entitled to cancel the contract without an obligation for damages.

5.8 The purchase price claim shall be due and payable in full immediately in case the payments are suspended or upon insolvency of the buyer, insofar as he is an entrepreneur.

6 Delivery time

6.1 The delivery time shall only begin when all pre-requisites have been satisfied for the execution of the order, in particular all details of the execution have been clarified (among others requested plans or samples for the setting-up of the ordered machines and devices have been submitted to us) and both parties agree upon all terms and conditions of the contract. It refers to the completion in the plant.

6.2 The delivery time shall only begin upon the satisfaction of all contractual duties of the buyer, in particular after receipt of the agreed down payment.

6.3 Any unforeseeable events, which we or our sub-suppliers could not avoid even by applying the reasonable care and attention, e.g. interferences to operation, strike, lock-outs, rejection of a part in the own plant or at the sub-supplier which cannot be replaced immediately as well as delay thereof or necessary changes owing to new knowledge extend the delivery time to a reasonable extent, even if they occur during a delay in delivery. The same shall apply if official approvals or other approvals which are necessary for carrying out deliveries or documents of third parties are not received in time, also with the subsequent change to the order. The buyer shall be informed of such extensions to the delivery time.

6.4 Partial services are permitted insofar as they are deemed reasonable for the buyer. Insofar as the buyer is an entrepreneur partial deliveries are permitted. The payment provisions according to Section 5 shall apply accordingly for these.

6.5 We shall be liable in case of delay to the service in cases of willful intent or gross negligence on our part or the part of a representative or vicarious agent according to the statutory provisions, If the buyer is an entrepreneur our liability in cases of gross negligence is however limited to the typical, foreseeable damages for the contract insofar as it does not concern liability owing to the injury to life, the body or the health. In other cases of the delay in the service liability for the damages besides the service or instead of the service is limited to 5% of the value of the work. Any further claims by the buyer are – even after expiry of a deadline for service which may have been set to us - excluded.

6.6 If the shipment is delayed at the buyer's request we shall be entitled to charge the costs incurred through the storage beginning two weeks after notification that the goods are ready for shipment. We shall charge for the storage in our plant with at least 0.5 % of the invoice amount for each month or the actual storage costs. The buyer has the possibility to prove lesser damages. After the unsuccessful expiry of this deadline we can dispose otherwise of the goods and supply the buyer with a reasonably extended deadline.

7 Passing of risk

7.1 The risk shall pass to the buyer upon the shipment ex works insofar if the buyer is an entrepreneur.

7.2 If the shipment is delayed as a result of circumstances for which we are not responsible then the risk shall pass to the buyer from the date upon which the goods are ready for shipment already, insofar as the buyer is an entrepreneur.

7.3 Insurances against damages in transit shall be taken out at the buyer's costs, insofar as there is no proven self-insurance and the buyer is an entrepreneur.

8 Packaging and shipment

8.1 The goods shall be shipped at our discretion in a customary manner in reusable packaging.

8.2 The packaging shall be charged at cost price. A credit of a maximum of 2/3 of the charged value with carriage paid return shipment of the packaging material in reusable condition shall only be carried out with a prior written assurance.

8.3 The transportation route and the transportation means shall be chosen, in case no special instructions have been given, at our best discretion and without any liability for more reasonably priced shipment or a shorter route.

8.4 If the goods which are ready for shipment cannot be delivered at the scheduled time as a result of circumstances for which we are not responsible, then their storage with us or at third parties shall be on account of the buyer.

9 Putting into operation

9.1 The expenses incurred with the putting into operation for fitter and accommodation rates shall be borne by the buyer, in particular also for overtime, Sunday and bank holiday work according to German law. Travelling time and waiting time shall be deemed as working hours.

9.2 The roundtrip costs as well as for transporting the tools and the travel luggage shall be borne by the buyer.

10 Defects, subsequent improvement, substitute delivery

10.1 Natural wear and tear and damages through improper handling are excluded from the warranty. If parts, which are exposed to increased wear and tear, for example with a use of up to 40 hours per week or in the two-shift operation, become useful or are substantially impaired in their usability within 6 months or 3 months in the two-shift operation then it will be presumed that the impairment is due to wear and tear unless this presumption is not compatible with the type of the object or the type or impairment.

10.2 If the buyer is a consumer then he undertakes to report obvious defects of quality and title to the seller in writing within 10 days after receipt of the goods; the dispatch of the notification within the deadline is sufficient. The defects are to be described in as much detail as possible for the buyer.

10.3 If the buyer is an entrepreneur then defects are to be reported immediately in writing. The additional costs incurred owing to a delayed report of the defects are to be borne by the buyer. § 377 HGB [German Commercial Code] remains unaffected thereby. The complaint of obvious defects must be submitted immediately by an entrepreneur. For other defects the complaint shall be deemed as immediate if it is made by no later than two weeks after delivery after their discovery. Any obvious damages in transit can only be recognized insofar as they are noted on the confirmation of receipt.

10.4 The statute-of-limitations for claims and rights of the buyer owing to defects – no matter for what reason – is two years after the object is handed over insofar as no longer deadline is envisaged and mandatory by law.

10.5 We shall not be liable for defects as a result of improper or unsuitable use, faulty assembly or putting into operation by the buyer or third party, natural wear and tear, faulty or negligent handling, excessive use, unsuitable equipment, penetration of foreign bodies, faulty work to deliveries of third parties or external influences.

10.6 The buyer must give us the necessary time and opportunity to carry out subsequent improvements and make substitute deliveries, as we are otherwise indemnified from the liability for defects. We shall bear the expenses which are necessary for the purpose of subsequent performance, in particular transport, route, work and material expenses insofar as the complaint is justified.

10.7 The expenses which are necessary for the purpose of subsequent improvement or substitute delivery – even with justified complaint – shall be borne by the buyer insofar as they are increased due to the fact that the object was transported to another location than the buyer's branch unless the transport was agreed with us.

10.8 The warranty claim shall expire as soon as the buyer or third party commissioned by him makes independent changes or repair work – also for putting into operation- without our written consent unless we are in default with carrying out the subsequent improvement or unjustifiably rejected this.

10.9 There is no claim for reimbursement of damages which were not suffered to the object of delivery itself if the damages were not suffered owing to an assurance.

11 Cancellation, reduction and damages

11.1 The buyer is entitled to cancellation, a right to reduction

- if we allow a reasonable final deadline which was set for us to remedy a defect to expire unsuccessfully
- if the improvement or procurement of a suitable substitute piece is impossible
- if we refuse to remedy a defect.

11.2 If the buyer is an entrepreneur a warranty claim on his part for damages instead of the performance is excluded. If the buyer is a consumer he can only demand damages instead of the performance if the subsequent improvement has failed after the unsuccessful second attempt.

12 Liability in case it is impossible to satisfy the contract

12.1 In the event of any incapacity to satisfy the contract, which was subsequently determined and for which we are not responsible, we are also entitled to cancel the contract in full or in part.

12.2 The buyer is entitled to demand damages according to the statutory provisions, which is however limited to damages besides or instead of the performance and to the reimbursement of fruitless expenses of 10% of the value of that part of the delivery, which cannot be used owing to the impossibility to satisfy the contract.

13 Scope of liability

13.1 Our liability for own breaches of duty and for those of our vicarious agents and employees is limited to willful intent and gross negligence. Excluded from this restriction is the liability owing to the injury to life, body and health.

13.2 The claim for damages for the breach of essential contractual duties is however limited to the typical, foreseeable damages for the contract if one of the exceptional cases listed in Sub clause 1 does not exist at the same time.

14 Reservation of title

14.1 We reserve the right to the property to the object of delivery until payment in full. If the buyer is an entrepreneur we reserve the right until the redemption of all claims accrued from the business relationship

between us and the buyer. If the buyer is an entrepreneur we also reserve the right to the property to the object of delivery until the redemption of all claims accrued and still to be accrued from the business relationship between us and the buyer no matter on which legal grounds they are based.

14.2 Insofar as the validity of this reservation of title is linked to special pre-requisites or form regulations in the buyer's country the buyer is required to ensure these are satisfied at his costs.

14.3 The buyer may only dispose over the object of delivery in the proper business transaction, other disposals, in particular attachments of the assignments as collateral, are not permitted. The buyer must inform us immediately in case of attachment and seizures or other disposals by third parties and make all information and documents available to us which are necessary for safeguarding our rights. Enforcement officers or a third party are to be informed of our property.

14.4 The delivered goods shall be processed on our behalf without this obligating us in any way.

14.5 In the event that our goods are processed, mixed and connected by the buyer with other goods which do not belong to us we shall be entitled to the co-ownership to the new object at a ratio of the value of the reserved goods to the other goods at the time of the processing, connection or mixture. If the buyer acquires the sole ownership to the new object we hereby agree with him that he grants us the co-ownership to the new object at a ratio of the value of the processed, connected or mixed reserved goods to the value of the new objects and shall keep this in safekeeping for us free of charge.

14.6 The buyer hereby now already assigns us the claim from the resale of the reserved goods, no matter whether the sale is carried out without or after processing, connection or mixture. We accept the assignment. In case of sale of the reserved goods after processing, connection or mixing with other goods which do not belong to us the assignment of the claim shall apply in the amount of the value of our reserved goods. As long as he satisfies his obligation from the contract the buyer is entitled to collect claims from the resale. We are to be informed immediately of any measures or circumstances which endanger our security rights, by stating all details.

14.7 We are entitled to insure the object of delivery at the buyer's costs against fire, water and other damages insofar as the buyer did not conclude this insurance himself as proven.

14.8 The buyer undertakes to inform us immediately of any access by third parties to the goods delivered under the reservation of title and to the rights which were assigned to us. If we take back the goods which were delivered by us under the reservation of title then the taking back shall only be deemed as a cancellation of the contract if we expressly inform the buyer thereof in writing.

15 Place of performance and place of jurisdiction

15.1 The place of performance for delivery and payment is our plant in Troisdorf.

15.2 In case of disputes ensuing from the contractual relationship, if the buyer is an entrepreneur, the action is to be filed at the court that has jurisdiction for our headquarters. We are also entitled to file action at the buyer's headquarters.

15.3 German law shall apply exclusively under the exclusion of the laws concerning the International purchase of movable objects, even if the buyer's registered seat is overseas.

16 Cancellation costs

16.1 If the buyer unjustifiably cancels an order which was placed then we shall credit the buyer the invoice amount minus 10% for examination and handling costs and missed profits. The buyer reserves the right to prove lesser damages.

17 Miscellaneous

17.1 Assignment of rights and duties of the buyer from the contract concluded with us require our prior written consent in order to be valid.

17.2 An exemption certificate is available according to § 48 EStG [Income Tax Act]- security number 00-11-0068 -

17.3 Should one provision be or become null and void then this shall have no effect on the validity of the other provisions.

According to BDSG [Federal Data Protection Act] we would like to point out that we do store and process corresponding data pertaining to you.