

General and Delivery Terms and Conditions of Helmut Kreutz Mahlwerke GmbH

§ 1 General

(1) The general and delivery terms and conditions below apply exclusively to all deliveries and other services. Our customer declares that it is in agreement with these terms and conditions when placing the order, as well as for future business, even if they are not expressly referred to but are received by the customer with an order confirmed by us. If the order is placed in deviation to our own general and delivery terms and conditions, only our general and delivery terms and conditions shall apply, even if we do not object. Deviating terms and conditions shall only apply if they are expressly recognised by us in writing.

(2) Deviating terms and conditions of the buyer which are not expressly recognised by the seller are not binding, even if the seller does not expressly object to them. Additional verbal agreements require written confirmation in order to become effective. Special written agreements only have priority over these terms and conditions insofar as they deviate from them.

(3) The ineffectiveness of individual provisions in this contract or its components shall not affect the validity of the remaining provisions. The contract parties shall be obliged to replace the ineffective provision within the scope of what is reasonable and in good faith with an effective provision which is equivalent in terms of economic outcome, providing this does not bring about a significant change to the content of the contract. The same shall apply if a matter requiring regulation is not expressly regulated.

(4) The place of fulfilment for all obligations, including the duty of payment, related directly or indirectly to this contractual relationship is the seller's registered office.

(5) The place of jurisdiction is the court responsible for the seller's registered office, provided the buyer is a merchant. The seller shall also be entitled to bring a case before a court which is responsible for the registered office or a branch of the buyer.

§ 2 Offers, scope of service and conclusion of contract

(1) Contract offers from the seller are non-binding.

(2) Only the seller's order confirmation is relevant for the scope of the service owed in accordance with the contract. Additional agreements and promises from representatives require written confirmation.

§ 3 Prices and payment terms

(1) Prices are ex works not including packaging and other shipping and transport charges. Packaging shall be charged at cost and only taken back if the seller is obliged to do so by virtue of mandatory legal regulations.

(2) If there are more than four months between the conclusion of the contract and delivery, and the seller is not responsible for the delay in the delivery, the seller may reasonably increase the price taking into consideration material, labour and other additional costs which are borne by the seller. If the purchase price is increased by more than 40%, the buyer shall be entitled to withdraw from the contract.

(3) If the seller takes into account change requests from the buyer, the buyer shall be invoiced the resulting additional costs.

(4) The invoices are payable with 30 days of the invoice date. If the payment is made by bill of exchange, cheque or other transfer documents, the costs of discounting and collection shall be at the buyer's expense.

(5) If the payment deadline is missed and the buyer is at fault, interest of 8 % above the current applicable base rate shall be charged while reserving the right to raise further claims.

§ 4 Offsetting and retention

Offsetting and retention are excluded, unless the offset claim is undisputed or is determined without further legal recourse.

§ 5 Delivery deadline

The specification of a delivery time is non-binding and shall be extended appropriately if the buyer for its part is slow or fails to perform a required or agreed cooperative act. The same applies in the event of actions within the scope of industrial disputes, in particular strike and lockouts, as well as the occurrence of unforeseen obstacles which are outside of the control of the seller, e.g. force majeure, late delivery by an upstream supplier, traffic or operational disruptions, materials or energy shortages etc. Changes requested by the buyer to the goods supplied shall also result in an appropriate extension of the delivery deadline.

§ 6 Transfer of risk

The risk shall be transferred to the buyer as soon as the seller has made the goods available to the buyer and has notified the buyer of this.

§ 7 Retention of title

(1) The seller shall retain the title to the goods supplied until full payment. The retention of title also applies until all claims between the buyer and seller, including future and conditional claims arising from the business relationship, have been met.

(2) The buyer is not authorised to assign the goods as security or to pledge the goods; however the buyer shall be entitled to resell the goods which are subject to retention of title in the normal course of business. The buyer assigns herewith to the seller its resulting claims against its business partners.

(3) If the goods are processed by the buyer, the retention of title also covers the new object. The seller shall acquire joint ownership; its portion shall equate to the value of the goods it has supplied as a portion of the value of the goods processed by the buyer. If the new object is sold, the buyer assigns herewith to the seller the portion of the resulting claim which equates to the portion of the seller's ownership in it.

(4) If the value of all of the existing securities for the seller persistently exceeds the existing claims by more than 20 %, the seller shall at the request of the buyer release securities as the seller chooses.

(5) The seller is entitled to assert retention of title without withdrawing from the contract.

§ 8 Claims for defects

(1) If the purchase is a commercial transaction for both parties, the buyer has to inspect the goods without delay upon receipt and before use, providing this is feasible in accordance with the normal course of business, and if this reveals a defect, to inform the seller in writing without delay and at the latest within 10 days. If the buyer fails to notify the seller, the goods shall be considered to be approved, unless the defect was not noticeable during the inspection. For the rest §§ 377 ff. of the German Commercial Code (HGB) apply.

(2) The claims for defects are restricted to supplementary performance, whereby the seller shall be able to choose between rectification and replacement. If the rectification fails, the buyer shall have the right, as it chooses, to demand a reduction in the payment or cancellation of the contract.

(3) Further claims by the buyer are excluded, unless they result from acceptance of a guarantee. This shall not apply in the event of wilful intent, gross negligence or a breach of material contract obligations by the seller.

(4) The limitation period for claims for defects is one year from the delivery of the purchased item.

§ 9 Liability

Claims for compensation by the buyer are excluded. This shall not apply in the event of wilful intent, gross negligence, a breach of material contract obligations by the seller, acceptance of guarantee or injury to life, body or health.

§ 10 Right to withdraw

After concluding the contract, the seller shall be entitled, as it chooses, to withdraw completely or partly from the contract or to demand the provision of security or payment in advance, if there has been a change in the person of the buyer or the legal form of the company or if it becomes aware of facts which adversely affect the buyer's creditworthiness.

§ 11 Stoppage of payments

If the buyer stops its payments or if an application is made for insolvency proceedings against the buyer's assets or the assets of a joint owner of the buying company, all of the seller's claims shall be due immediately. At the same time all discounts granted and other payment reductions shall no longer apply. The buyer shall also be obliged to establish all inventory from our deliveries still in stock and to return it to our representative.

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