

Terms and Conditions of Sales and Delivery

of

KTI-Piersch Kältetechnik GmbH

applicable to:

1. a person who, when entering into the agreement, is exercising his or her commercial or independent professional activities (entrepreneur);
2. a corporate body under public law or a special fund under public law.

I. General

1. These Terms and Conditions of Sale and Delivery as well as any specific separate agreements form the basis of all supplies and services. Any deviating buyer's purchasing conditions shall not become part of the contract, not even through the acceptance of an order. Failing express agreement, a contract shall come into existence upon a written order confirmation by the supplier.
2. Any references or confirmations by the buyer indicating his purchasing conditions are hereby explicitly rejected.
3. The supplier reserves the right of ownership and copyright to samples, cost estimates, drawings and similar information, both tangible and intangible – also in electronic form; they may not be made accessible to any third party. The supplier undertakes not to disclose any information to third parties, which the buyer declared confidential, except with the buyer's consent.

II. Conclusion of contract, quality, order confirmation

1. Our proposals are subject to confirmation. Our proposals are only binding, if they are explicitly designated as such. Otherwise, they are an invitation to submit tenders. In such cases our written confirmation of the purchase order shall be required for a contract to come into existence.
2. We only give a guarantee for the quality of our products if expressly designated as such in a proposal or an order confirmation and if such obligations from a guarantee indubitably result from the proposal or the order confirmation.
3. Our written order confirmation shall be relevant for the scope of delivery rendered.
4. Any verbal side agreements and assurances given by our staff and representatives shall become legally binding only after our written confirmation.

III. Price and payment

1. In the absence of any special agreement, prices shall be valid ex works, including loading in the plant, but excluding packaging, unloading and, if applicable, installation, which shall be carried out at the prices valid at the time the work is carried out. Any applicable legal VAT shall be added to the prices in the amount valid at the time.
2. In the absence of any special agreement, payment shall, without any deductions, be made into the account of the supplier in the following manner: 1/3 instalment upon receipt of order confirmation; 1/3 upon notification to the buyer that the main components are ready for shipment, the remaining amount shall be due within one month after the passing of the risk.
3. The buyer shall have the right to withhold payment or offset claims of his own only in so far as his claims are undisputed or established as final and absolute.

4. The buyer shall pay the cost of shipping of the goods. These costs also include any taxes, duties and the like originating from the shipment.

IV. Delivery time, delay in delivery

1. The delivery time is stipulated in the parties' agreements. The supplier shall comply with the delivery time on the condition that all commercial and technical questions between the contracting parties are clarified and the buyer has met all his obligations such as provision of the necessary government certificates or permits or the payment of an instalment. The delivery time shall not apply prior to that. Failing this, the delivery time shall be extended appropriately. This shall not apply if the supplier is responsible for the delay.
2. Observance of the delivery deadline is dependent upon a correct and timely delivery to the supplier. If delays become apparent, the supplier shall give notification as soon as possible.
3. The delivery deadline is deemed to have been observed if the delivery item has left the supplier's work by the expiry of the deadline or if readiness for shipment was advised. If an acceptance needs to be made, the acceptance date shall be the relevant date – except if the acceptance was refused on justified grounds – or, alternatively, the notification of readiness for acceptance.
4. If the shipment or acceptance of the delivered goods is delayed for reasons for which the buyer is responsible, the costs incurred through such delay will be charged to the buyer starting one month after the notification of readiness for shipment or the notification of readiness for acceptance respectively.
5. If failure to observe the delivery deadline is due to force majeure, labour disputes or other events which are beyond the supplier's control, the delivery time will be extended appropriately. The supplier shall inform the buyer of the beginning and end of such circumstances as soon as possible.
6. The buyer may withdraw from the contract if the entire performance becomes ultimately impossible for the supplier before the passing of the risk. Furthermore, the buyer may withdraw from the contract if, under a purchase order, a part of the delivery scope becomes impossible to perform and the buyer has a legitimate interest in rejecting the partial delivery. If this is not the case, the buyer shall have to pay the amount of the contractual price applicable to the partial delivery. The same applies in the event of an inability of the supplier. As for the rest, section VII. 2. shall apply. If impossibility or inability occurs during a delay in acceptance or if the buyer is solely or largely responsible for these circumstances, the buyer shall remain obliged to effect payment.
7. If the supplier is in delay, the buyer may, provided that he can credibly show that he suffered damage from such delay, demand damages for each complete week of delay in the amount of max. 0.5%, however, not more than a total of 5% of the price of that part of the delivery which could not appropriately be used because of the delay. Both claims for damages by the buyer for a delay in delivery as well as claims for damages instead of performance that exceed the limits stipulated above, shall in all cases of delayed delivery be excluded, even after a delivery deadline set to the supplier has expired to no avail. This shall not apply in the event of liability due to intent, gross negligence or injury to life, body or health. A change of the burden of proof to the disadvantage of the buyer is not entailed in the above provisions.

V. Passing of risk, acceptance

1. The risk shall pass to the buyer once the delivery item has left the plant, even if partial deliveries are made or if the supplier has taken over other services such as shipping costs or shipment and installation. If an acceptance has to be made, such acceptance shall be relevant for the passing of the risk. The acceptance must be carried out immediately at the set date, or alternatively, after the supplier has advised readiness for acceptance. The buyer shall not refuse the acceptance in the case of a minor non-compliance.
2. If the shipment, service, start, performance of erection or installation is delayed for reasons for which the buyer is responsible or if the buyer is in delay of acceptance for any other reason, the risk shall pass to the buyer.
3. Partial deliveries shall be permissible in as far as the buyer can be reasonably expected to accept them.

VI. Reservation of title

1. We reserve title to our goods until all claims that have resulted from the business relationship or any accessory claims in close connection with the delivered goods (interest on use, damage due to delay etc.) have been paid. With regard to transactions against a current account the reservation of title shall also serve to secure our current account balance claims, the reservation of title also serves to secure our current account balance claims. The machining or processing, assembly or other utilization of goods subject to reservation of title shall be deemed effected by our order. If goods subject to reservation of title are mixed, connected or combined with other objects ("third-party goods"), the buyer assigns his ownership title or co-ownership title in the new object to us and shall store it for us free of charge, with the due diligence of a merchant. We accept the assignment.
2. If the buyer sells goods subject to retention of title alone or together with third-party goods, he already now assigns to us any claims resulting from the sale, together with any ancillary rights, in the amount of the value of the goods subject to retention of title. We accept the assignment. The value of the goods subject to retention of title is our invoice amount plus a collateral fee of ten percent. Any and all claims by the buyer are also assigned in the same manner, which accrue to the buyer under agreements in connection with the processing or installation of goods subject to retention of title, as well as any claims that accrue to the buyer through the connection of goods subject to retention of title with the land of a third party. The advance assignment also extends to any current account balance claims.
3. If the buyer installs any goods subject to retention of title as a material component into his own premises, he already now assigns to us any claims resulting from a sale of the premises or of the real estate rights in the amount of the value of the goods subject to retention of title (including a collateral fee of 10%), together with any ancillary rights. The advance assignment also extends to any current account balance claims. We accept the assignment.
4. The buyer is only allowed to sell, use or install the goods subject to retention of title in the usual orderly run of business and provided only that claims in the sense of the above paragraphs are in fact transferred to us. The customer shall not be entitled to any other kind of disposition of the goods subject to retention of title, in particular the customer shall not pledge such goods or assign them as security. The buyer shall not be allowed to agree a non-assignment clause with his customers.
5. Subject to revocation, we entitle the buyer to collect the claims assigned under the above paragraphs. We shall not make any use of the right to collect as long as the buyer meets his payment obligations, also towards third parties. If requested by us, the buyer must name the debtor of an assigned claim and furnish comprehensive particulars – whereby it will not be sufficient to give us access to the account and business documents – and to notify the debtor of such assignment. We are entitled to also notify the debtor of the assignment ourselves. Upon a cessation of payments, an application for or opening of insolvency proceedings or the execution of a extrajudicial settlement procedure with the creditors regarding the clearance of debts, the rights of the buyer to sell, use or install the goods subject to retention of title, and the authorization to collect the assigned claims shall cease.
6. The buyer shall inform us immediately of any third-party execution proceedings referring to the goods subject to retention of title or the claims assigned (in advance), while handing over the documents necessary for an objection.
7. If the buyer is in default of payment, we shall be entitled to take back the goods subject to retention of title after a first reminder, and the buyer shall be obliged to surrender such goods. The buyer grants us the right to enter his premises, to mark or remove the goods supplied. The buyer shall bear the costs of the return.
8. If the liquidable value of the securities granted exceeds the claims to be secured by more than ten percent, we shall, on the buyer's request, in so far be obliged to a retransfer or release.

VII. Claims for defects

For material defects and defects of title of the goods supplied, the supplier shall provide the following warranties, subject to section VIII, and excluding any further claims:

Warranty

1. All parts which turn out to be defective due to circumstances which existed before the transfer of risk, shall, at the supplier's discretion, be either reworked or replaced with compliant goods free of charge. If non-compliances are found, the supplier must be notified immediately. The supplier shall become the owner of any replaced parts.
2. Upon coordination with the supplier, the buyer shall grant the required period of time and occasion to carry out any and all reworks and replacement deliveries which the supplier deems necessary; otherwise the supplier shall be exempt from any liability for the consequences thereof. The buyer shall have the right to remedy any defect himself or have them remedied by third parties and demand compensation for the necessary expenses from the supplier only in urgent cases of hazards to the operating safety or to avoid disproportionately large damage, in which case the supplier must be notified immediately.
3. The supplier undertakes to rectify defects which are in violation of the contract and which affect the serviceability of the goods, provided that the defect is due to faulty construction, material or workmanship. This obligation shall only apply to such defects occurring during the warranty period from the time of the transfer of risk of the goods and were not known to the buyer at the time the contract was concluded. Defects which the buyer could not possibly be unaware of shall also be regarded as known defects.
4. Defects must be reported in writing within 48 (forty-eight) hours and within no more than 8 (eight) days of being discovered or of being identifiable, stating the serial number of the goods, the nature of the defect and the breach of contract.
5. During the warranty period the identical delivery terms as to the original order of equipment shall apply for the delivery of parts for replacement.
6. The work involved in respect of any replacement under warranty shall be at the expense of the buyer. The defective part must be returned within 60 (sixty) days of the discovery or identification of the defect. The transport costs for the return delivery shall be borne by the buyer.
7. The returned part shall be checked with reference to the warranty. If a claim cannot be made under the warranty, the buyer shall be liable for the repair/replacement costs as well as the transport expenses. Failure to give notice of defect or delay in giving notice, omission of the serial number of the goods, and failure to return the goods within the time limit of 60 (sixty) days from the discovery or identification of the defect, shall be inexcusable and shall render the warranty null and void.
8. Commercial agents shall not be authorized to accept complaints or make binding commitments in connection with defects.
9. The warranty does not provide for any indemnity or compensation for any transport or system downtime.
10. If supplementary performance fails, the buyer may – notwithstanding any claims to damages – withdraw from the contract or reduce the remuneration. Within the framework of legal regulations, the buyer is furthermore entitled to withdraw from the contract, if the supplier – taking into consideration the statutory exceptions – fails to observe an appropriate deadline, which was set him for a supplementary performance or a replacement delivery on grounds of a defect. If the defect is a minor one, the buyer shall only be entitled to a price reduction.
11. No liability shall be assumed in particular in the following cases: Unsuitable or improper use, faulty installation and/or commissioning by the buyer or a third party, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating supplies, defective construction work, unsuitable building ground, chemical, electro-chemical or electrical influence – provided that the supplier is not responsible for them.
12. In the event of repairs carried out inexpertly by the buyer or a third party, the supplier shall not be liable for the resulting consequences. The same shall apply for any modifications of the goods supplied, which are carried out without obtaining the supplier's prior consent.
13. The buyer must notify the supplier of any defects immediately and in writing. Payments by the buyer may in the event of a notice of defect be withheld to an extent appropriate in relation to the defects occurred. The buyer may withhold payments

only if a defect is claimed which is without any doubt justified. The buyer does not have a right to withhold payments if his claims for defects have become statute-barred. If the notice of defect was not justified, the supplier shall be entitled to demand compensation from the buyer for the expenses incurred by the supplier.

Defect of title

14. If the use of the goods delivered leads to an infringement of any industrial property rights or copyrights at home, the supplier shall, at the supplier's own expense, provide the buyer with the basic right to continue to use the goods delivered or to modify the goods delivered in a way acceptable to the buyer, so that the property rights infringement no longer exists. If this is not possible at economically appropriate conditions or within an appropriate period of time, the buyer shall be entitled to withdraw from the contract. Under the said conditions, the supplier shall also have the right to withdraw from the contract. Furthermore, the supplier shall exempt the buyer from any undisputed or legally binding claims asserted by the owners of the property rights. The buyer must advise any defects immediately and in writing. Payments by the buyer may in the event of a notice of defect be withheld to an extent appropriate in relation to the defects occurred. The buyer may withhold payments only if a defect is claimed which is without any doubt justified. The buyer does not have a right to withhold payments if his claims for defects have become statute-barred. If the notice of defect was not justified, the supplier shall be entitled to demand compensation from the buyer for the expenses incurred by the supplier.
15. Subject to section VIII.2, the supplier's obligations stipulated in section VII. 7 shall be final in the event of any infringement of industrial property rights or copyrights. They exist only if,
 - a. the buyer notifies the supplier immediately of any asserted industrial property right or copyright infringements;
 - b. the buyer supports the supplier to an appropriate extent in the defense against such claims and/or enables the supplier to carry out modification steps as described under section VII. 7 herein;
 - c. the supplier may reserve all defensive measures, including extrajudicial regulations;
 - d. the defect in title is not based on an instruction by the buyer and
 - e. the infringement was not caused by an unauthorized alteration by the buyer of the goods delivered or by a non-contractual use on the part of the buyer of the goods delivered

VIII. Liability

1. The supplier's liability is determined exclusively by the agreements made in the paragraphs above. Any rights not explicitly granted there, e.g. delivery of defect-free goods, withdrawal from the contract or price reduction, as well as compensation for damage of any kind, including also damage which did not occur in the delivered goods themselves, for whatever legal reason, shall be excluded.
2. Any claims for damages on the part of the buyer due to material defects are excluded as a matter of principle. This shall not apply in the event of a fraudulent concealment of a defect, failure to comply with a guarantee of quality, injury to life, body or health, and in the event of any intentional or grossly negligent breach of contract on the part of the supplier. A change of the proof of burden to the disadvantage of the buyer is not entailed in the above provisions. Any further claims or claims other than stipulated in paragraphs VII and VIII of these Terms and Conditions of Sale and Delivery
3. If not otherwise stipulated herein, any other claims for damages on the part of the buyer shall be excluded, regardless for which legal reason, in particular because of violation of duties under a debt obligation and from tort. This shall not apply if liability is assumed
 - a. under the Product Liability Act;
 - b. in the event of wrongful intent;
 - c. in the event of negligence on the part of owners, legal representatives or senior executives;
 - d. in the event of malevolence;
 - e. in the event of non-compliance with a granted guarantee;
 - f. because of culpable injury to life, body and health; or
 - g. because of culpable breach of material contractual obligations.

4. However, damages for the breach of material contractual obligations shall be limited to foreseeable damage typical for a contract, provided no other of the above-mentioned cases applies. A change of the burden of proof to the disadvantage of the buyer is not entailed in the above provisions.

IX. Statute of limitations

1. Any claims by the buyer shall become statute-barred after 12 months. §§ 438, section 1 No. 2; 479; 634 a) section 1 No. 2 BGB (German Civil Code) remain unaffected. In as far as the supplier is liable according to the provisions in para. VIII herein, the statutory period of limitation shall remain.

X. Use of software

1. If the scope of delivery includes software, the buyer is granted a non-exclusive right to use the software supplied, including its documentation. The software is provided for use with the delivered product for which it is intended. It is forbidden to use the software on more than one system.
2. The buyer may duplicate, revise, translate the software or convert the object code to the source code only to the extent legally permitted (§§ 69 a. seq. Urhg/German copyright act).
3. The buyer undertakes not to remove any manufacturer's data – in particular any copyright information – or alter them in any way without the supplier's prior consent. Any other rights in the software and the documentation including any copies remain with the supplier or the software supplier respectively. It is forbidden to grant sub-licenses.

XI. Applicable law, place of jurisdiction, place of performance, written form and severability

1. The place of performance for both payment and delivery is 88481 Balzheim.
2. The law of the Federal Republic of Germany shall apply to all legal relations between the supplier and the buyer, excluding the UN Convention on Contracts for the International Sale of Goods (CISG)
3. The place of jurisdiction shall be the court in Ulm which is competent regarding the supplier's registered seat of business. However, the supplier shall be entitled to take legal action at the buyer's head office.
4. Any side agreements, reservations, modifications and supplements shall not be valid except if confirmed by us in writing.
5. Should one of the provisions of these Terms and Conditions of Sale and Delivery or a provision within the framework of any other agreement referring to the delivery contract be or become ineffective, the effectiveness of all other provisions or agreements shall not be affected.

Balzheim, July 2019

Registry Court Ulm HRA 5278, Registered seat: Balzheim

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