

General Terms & Conditions of Business and Delivery of Krampitz Tanksystem GmbH

(as at November 2015) of Krampitz GmbH, Dannenberger Str. 15, 21368 Dahlenburg

1. General – scope of application

- (1) These terms and conditions of sale apply to all business relationships with our customers. Our terms and conditions of sale are exclusively applicable; we do not recognise any provisions of the customer which conflict with or deviate from our terms and conditions of sale unless we have expressly approved them in writing. Our terms and conditions of sale also apply if we unreservedly carry out deliveries to the customer with knowledge of customer provisions which conflict with or deviate from our terms and conditions of sale.
- (2) Individual agreements with the customer made in specific cases (including subsidiary agreements, additions and amendments) will invariably have priority over these terms and conditions of sale. A written agreement or our written confirmation is authoritative for the contents of such agreement, subject to provision of evidence to the contrary.
- (3) Our terms and conditions of sale only apply if the customer is an entrepreneur (section 14 German Civil Code (*Bürgerliches Gesetzbuch* – BGB), a legal entity under public law or a special fund under public law (*öffentlich-rechtliches Sondervermögen*).
- (4) The proprietary rights of third parties must be observed when using the goods supplied.

2. Offers – offer documents

- (1) Our offers are non-binding and subject to alteration. This also applies if we have provided the customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to German DIN standards), other product specifications or documents – including in electronic form – in which we reserve ownership and copyright. The customer requires our prior written consent before passing on such materials to third parties.
- (2) The restrictions under the above sub-clause (1) also apply to all other documents which we have provided to the customer in the past or supply to it in the future and which are described as “confidential”.
- (3) Orders by the customer are deemed to be binding contractual offers. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 2 weeks of receipt.
- (4) This acceptance can be declared either in writing (by an order confirmation) or by delivering the goods to the customer.

3. Prices – terms of payment

- (1) Unless otherwise stated in the order confirmation, our prices are in euros and “ex works”, excluding packaging.
- (2) We reserve the right to amend our prices if a period of more than four months lies between the time of conclusion of the contract and the agreed delivery date and reductions or increases in costs have come about, in particular but not exclusively as a result of collective wage agreements or changes in the price of materials. We will provide the customer with proof of such changes upon request. In the event of reductions in costs, the customer has the right to seek an adjustment in the price to its benefit under the above conditions.
- (3) Statutory VAT is not included in our prices; it will be listed separately in the invoice at the statutory rate on the date the invoice is issued.
- (4) Discounts for early payment must be agreed separately in writing.
- (5) Unless otherwise stated in the order confirmation, the net purchase price is due for payment (without any deductions) within 30 days of the invoice date. The statutory rules regarding the consequences of delayed payments apply.

(6) The customer is only entitled to offset or withhold payment if its counterclaims have been recognised by declaratory judgment, are uncontested or have been acknowledged by us. This does not apply if the counterclaim directly concerns our primary contractual obligation under the same contract (see in particular clause 6(5)).

4. Delivery period – delay in acceptance

(1) The goods and services to be furnished will be described in the order confirmation, stating the anticipated date of completion. The agreed delivery period is only approximate; a variation of up to 2 (two) weeks is possible. The delivery period starts when the order confirmation is sent, but not before all details of execution have been settled. If requests for changes by the customer are received after the order has been confirmed, a new delivery period will be agreed.

(2) The delivery period is met if the goods have left our works/stores by the end of the delivery period or we have notified the customer that the goods are ready to be dispatched.

(3) If we are unable to keep to a binding delivery deadline for reasons for which we are not responsible (non-availability of the goods or services), we will inform the customer of this without delay, also giving the reason for the delay and a new anticipated delivery deadline, as applicable. If the goods or services are no longer available or are not available by the new delivery deadline either, we are entitled to withdraw from the contract; in this case we will reimburse any counter-performance by the buyer without delay. Non-availability of the goods or services applies in particular, but not exclusively, if our own suppliers fail to deliver on time (if neither we nor our suppliers are at fault or if we were not obliged to procure the goods or services) and in cases of force majeure. The buyer's rights in the event of a delay in delivery remain unaffected.

(4) If the customer defaults in accepting the goods or services or otherwise culpably breaches its duties to cooperate, we are entitled to seek reimbursement of any damage incurred by us, including any additional expenses. We reserve the right to assert any further claims.

(5) In the event that the conditions under sub-clause (4) are given, the risk of accidental loss or accidental deterioration of the purchased item passes to the customer at the time the customer has defaulted on acceptance or entered into debtor's delay (*Schuldnerverzug*).

5. Transfer of risks – transport insurance

(1) Unless otherwise stated in the order confirmation, delivery "ex works" is agreed. At the time of transfer of the goods to the forwarder or freight carrier or the time of loading on to our vehicles, or at the latest by the time the item leaves the works or store, the risk of loss or accidental deterioration of the item will pass to the customer in all cases.

(2) If desired by the customer, we will arrange transport insurance for the delivery; the costs incurred in connection with this will be borne by the customer.

6. Customer's warranty claims

(1) The basis of statutory liability for defects is above all the agreement made regarding the quality of the goods. All product specifications that are covered by the individual purchase agreements or published by us (in particular but not exclusively in catalogues or on our internet homepage) are deemed to be the agreement regarding the quality of the goods. We do not accept any liability for public statements by third parties.

(2) The claims based on defects do not relate to natural wear and tear or to damage which arises following the transfer of risks as a result of incorrect or non-compliant treatment, excessive loads, inappropriate equipment, defective construction work or defective construction sites. The assertion of claims based on defects is furthermore excluded insofar as such claims are attributable to unprofessional modifications or repair or service work carried out by the customer or third parties.

(3) A requirement for any claims regarding defects made by the customer is that the customer has properly complied with its duties to inspect the goods and complain about any defects under section 377 German Commercial Code (*Handelsgesetzbuch* – HGB). The customer is required to inspect the goods without delay upon receipt to the extent feasible in the ordinary course of business and to report any defects that are found to us and the freight carrier without delay.

(4) If the purchased item is defective, we are entitled to elect to provide subsequent performance by remedying the defect or to deliver a new item that is free from defects. The right to refuse subsequent performance under the statutory conditions remains unaffected. In the event that the defect is remedied, we are obliged to bear all the costs necessary for the purpose of remedying the defect, in particular but not exclusively transport, transit, work and material costs, provided that these are not higher due to the purchased item being transported to another location (outside Germany) than the place of performance (in Germany). In this case it is necessary to clarify with the customer in advance how the costs can be minimised or what possible alternatives exist for minimising the costs. We do not agree to assume the entire costs for transport, transit, work and materials in order to satisfy claims based on defects if the place of performance is located outside Germany.

(5) We can make any subsequent performance contingent on the customer paying the purchase price due. In the meantime, the customer is entitled to withhold part of the purchase price that is reasonably proportionate to the defect.

(6) If the subsequent performance is unsuccessful, then the customer is entitled to elect to seek rescission or a reduction in the purchase price.

(7) In the event of defects, claims by the customer to damages or reimbursement of futile expenditure also only exist as set out in the provisions of clause 7 of these terms and conditions of sale.

(8) By derogation from section 438(1)(3) German Civil Code, the general period of limitation for claims arising from material defects and defects in title (warranty period) is one year from delivery. If acceptance and approval is agreed, the limitation period starts to run at time of acceptance and approval. After expiry of the warranty period, any claims based on defects are excluded. The special statutory rules regarding statute-barring (in particular section 438(1)(1) and (2), section 438(3), section 444 and section 479 German Civil Code) remain unaffected. Claims for damages according to clause 7 expire exclusively in accordance with the statutory rules.

7. Other liability

(1) We are liable for damage in accordance with the statutory provisions, unless otherwise provided for below. In the event of breaches of duty – regardless of the legal grounds – we are accountable for wilful misconduct (*Vorsatz*) and gross negligence (*grobe Fahrlässigkeit*) within the scope of our liability based on fault. Subject to a more lenient standard of liability under the statutory provisions (e.g. standard of care in one's own affairs), we are only liable in the event of ordinary negligence (*einfache Fahrlässigkeit*) for:

- a) damage arising from injury to life, body or health and
- b) damage arising from the breach of a material contractual obligation (an obligation which has to be fulfilled to make it possible to properly perform the agreement in the first place and whose observance the contractual partner expects and may reasonably expect on a regular basis); however, in this case the liability is limited to compensation of the predictable, typically occurring damage.

(2) The above limitations of liability also apply to breaches of duty by or for the benefit of persons for whose fault we are accountable under the statutory rules. For claims under the German Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG) the statutory provisions exclusively apply.

8. Reservation of title

(1) We reserve the right of ownership in the purchased item until receipt of all payments under the delivery contract. If the customer acts in breach of the contract, in particular but not exclusively if it defaults on payment, we are entitled to require that the purchased item is returned due to the reservation of ownership. If we require that the purchased item is returned, this at the same time constitutes a withdrawal from the contract. If the customer fails to pay the due purchase price, we may only assert these rights if we have previ-

ously set the customer a reasonable time limit for payment without success or if it is not necessary to set such a time limit under the statutory provisions. After taking back the purchased item we are entitled to realise it and the proceeds of realisation are to be offset against the customer's debts (minus reasonable costs for realisation).

(2) The customer agrees to treat the purchased item with care; in particular it agrees to adequately insure against damage from fire, water and theft to cover its replacement damage it at its own expense. If service and inspection work is necessary, the customer must carry such work out in time and at its own expense.

(3) The purchased item may not be pledged or provided as security to third parties before full payment of the secured claims. In the event of levies of execution or other interventions by third parties, the customer is required to inform us of this in writing without delay so that we are able to bring legal action in accordance with section 771 German Code of Civil Procedure (*Zivilprozessordnung – ZPO*). If the third party is not in a position to reimburse the court fees and other fees incurred by us for a legal action in accordance with section 771 Code of Civil Procedure, the customer will be liable for the shortfall.

(4) Until any revocation pursuant to c) below, the customer is entitled to further process and/or sell the purchased item in its ordinary course of business ("extended reservation of title"). In this case, the following provisions additionally apply:

- a) Any processing (including mixing and combining) will take place on our behalf as the manufacturer of the resulting new product. We will directly acquire the ownership of the product to its full value or, if processing takes place using materials of several owners, the co-ownership in the product in the ratio of the value of the item purchased to the value of the product. In addition, the same applies for the resulting new product as for the purchased item.
- b) The customer already assigns any claims for receivables arising against third parties from the resale of the purchased item or the product to us as security, in the case of co-ownership on a pro rata basis. We accept this assignment. The same applies to any other claims for receivables replacing the purchased item or otherwise arising in relation to the purchased item (e.g. insurance claims or claims arising from tortious actions in the event of loss or destruction) and for any claims arising against third parties due to the association of the purchased item with a property. The customer's duties referred to in clause 8(2) and (3) also apply in relation to the assigned claims.
- c) Apart from us, the customer remains authorised to collect the assigned claim. We agree not to collect the claim as long as the customer is meeting its payment obligations towards us and we do not assert the reservation of ownership by exercising a right in accordance with clause 8(1). If we do so, however, we may require that the customer discloses the assigned claims and their debtors to us, provides all details needed to collect the claims, hands over the relevant documents and informs the debtors (third parties) about the assignment. Moreover, we are entitled to revoke the customer's authorisation to resell and process the purchased item in this case.
- d) We agree to release the security to which we are entitled upon request by the customer to the extent that the realisable value of our security exceeds the claims to be secured by more than 10%; we are responsible for selecting which security to release.

9. Legal forum – place of performance

(1) If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive legal venue for all disputes arising from the contractual relationship is our place of business in Dahlenburg, Germany (local court (*Amtsgericht*) or regional court (*Landgericht*)). However, we are also entitled to bring legal action at the general place of jurisdiction of the customer. Any overriding statutory provisions, especially those regarding exclusive jurisdiction, remain unaffected.

(2) These terms and conditions of business and our contractual relationship with the customer are governed by the law of the Federal Republic of Germany with the international uniform law, in particular, the United Nations Convention on Contracts for the International Sale of Goods being excluded.

(3) Unless otherwise stated in the order confirmation, our place of business is the place of performance.