

## General Terms and Conditions for offline business

### General Terms and Conditions of KRAMPITZ Maschinentank GmbH

(Rev.: May 2020) Dannenberger Str. 15, 21368 Dahlenburg

#### Section 1. General - Application

- (1) These General Terms and Conditions apply to all our business relations with customers **which are NOT handled via our online shop**. Business transactions handled via our online shop are exclusively subject to our terms and conditions for online business, unless otherwise specified.

Our terms and conditions of sale apply to all our contracts of sale; the application of terms and conditions of customers deviating from or conflicting with our terms and conditions is excluded, unless expressly approved by us in writing. Our terms and conditions of sale apply even when we make the delivery to the customer without reservations knowing that the customer's terms and conditions deviate from or conflict with our terms and conditions.

- (2) Individual agreements with the customer (including collateral agreements, amendments) take precedence over these terms and conditions of sale.

Subject to proof to the contrary, the content of such agreement is governed by a written contract or our written confirmation.

- (3) Our terms and conditions of sale apply only when the customer is an entrepreneur (Section 14 BGB (German Civil Code)), a legal person under public law or a special fund under public law.
- (4) When using the goods supplied, industrial property rights of third parties must not be infringed.

#### Section 2. Bid – Tender Documents

- (1) Our bids are submitted without obligation and are not binding. This also applies when we submit to the customer catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN norms), other product descriptions or documents – including in electronic form – where we retain legal title and copyright.

The disclosure of such material by the customer to third parties is subject to our prior and explicit written approval.

- (2) The restrictions under para. (1) above apply also to any other documents we make or made available to the customer if these are classified as “confidential”.
- (3) The customer's order is deemed to be a binding contractual offer. Unless otherwise specified in the purchase order, we are entitled to accept this contractual offer within two weeks of receipt.
- (4) Acceptance of the purchase order can be declared either in writing (through an order confirmation) or by delivery of the goods to the customer.

#### Section 3. Intended Use

When submitting the contractual offer you agree not to use the goods supplied by us for nuclear, military and/or terroristic purposes.

#### Section 4. Prices – Terms of Payment

- (1) Unless otherwise agreed, our prices are specified in Euros “ex works” (EXW Incoterms® 2020): KRAMPITZ Maschinentank GmbH, Henningen 78, 29410 Salzwedel, Germany, excluding packaging.

- (2) We reserve the right to amend our prices accordingly if more than four months have expired between conclusion of the contract and the agreed date of delivery and costs have been increased or decreased within this period, in particular due to the conclusion of collective agreements or changed material prices. On customer's request we will provide proof of such circumstances. In the event of cost decreases the customer, under the above provisions, is entitled to an adjustment of prices in his favour.
- (3) Our prices are stated net plus the statutory VAT which will be specified in the invoice separately at the statutory rate valid on the date of the invoice.
- (4) The deduction of any cash discount is subject to separate written agreement.
- (5) Unless otherwise specified in the order confirmation, the purchase price is due for payment net (without any deduction) within 30 days of the date of the invoice. Default in payment is subject to legal provisions.
- (6) The customer is not entitled to setoff unless his counterclaim is uncontested, has been established by a final decision or has been recognised by us. The customer is further entitled to set off his claims against us when he asserts claims or counterclaims from the same contractual relationship.
- (7) The customer is entitled to refuse to perform only when his counterclaim is based on the same contractual relationship.

#### **Section 5. Delivery Period – Default in Acceptance**

- (1) The services to be provided and the expected date of completion are specified in the order confirmation. The delivery period is an estimated period only, it may deviate from the actual period by up to 2 (two) weeks. The delivery period commences upon sending of the order confirmation, however not before all details of the execution of the purchase order are clarified. If the customer submits change requests after confirmation of the order, the delivery period will be agreed newly.
- (2) The delivery period is deemed observed when on expiry of the period the goods have left our premises/warehouse, or the customer has been notified that the goods are ready for dispatch.
- (3) If we are not able to observe the binding delivery period for reasons beyond our control (non-availability of goods/services), we will inform the customer immediately specifying the reason of the delay and, if possible, the new estimated delivery period.

If the goods are not available or will not be available at all even within the new delivery period, we are entitled to cancel the contract; any payments already made by the customer will be reimbursed immediately in this case. The goods/services are deemed to be not available in particular when we are not supplied in due time by our suppliers (for reasons beyond our or our suppliers' control or when we were not obliged to procure) and in cases of force majeure. The purchaser's rights are not affected in the case of default of delivery.

- (4) If the customer is in default in acceptance or if he culpably violates other obligations to cooperate, we are entitled to claim damages including any extra expenses we have incurred. We reserve the right to additional claims.
- (5) If the criteria under para. (4) are met, the risk of accidental loss or deterioration of the goods/services purchased passes to the customer as soon as he defaults in acceptance or payment of debt.

#### **Section 6. Passage of Risk – Transport Insurance**

- (1) Unless otherwise specified, the goods are delivered "ex works" (EXW Incoterms® 2020): KRAMPITZ Maschinentank GmbH, Henningen 78, 29410 Salzwedel, Germany. In the case of sale to destination according to customer's instructions the goods will be delivered free carrier (FCA Incoterms® 2020).

- (2) On customer's request we will arrange the transport and provide transport insurance. The costs associated with these services will be borne by the customer and charged separately.

## **Section 7. Customer's Complaints**

- (1) Liability for defects is governed primarily by the written agreement regarding quality of goods. We are not liable for any public statements of third parties who do not act on our behalf.
- (2) Liability for defects does neither cover normal wear and tear, nor any damage or loss that has occurred after passage of risk due to improper treatment or use, excessive load, inappropriate tools, inappropriate construction work or subgrade. Liability is also excluded when the claimed defect is due to improper changes or repair and maintenance jobs carried out by the customer or third parties.
- (3) The assertion of claims for defects requires that the customer has complied with his inspection and notification duties defined in Section 377 HGB (German Commercial Code). The customer is obliged to inspect the goods immediately to the extent this is appropriate in the due course of business, and inform us immediately if a defect is detected. If the defect detected is obviously caused by transport, it has to be reported additionally to the carrier – if a consignment note was issued or receipt has to be confirmed by a signature, the damage should be recorded on this document.
- (4) In the case of a justified defect of the object purchased, we are entitled to subsequent performance by either rectifying the defect or supplying a new item free of any defects. This does not affect the right to refuse subsequent performance under the statutory provisions. If we chose to rectify the defect, we are obliged to bear any costs required, in particular transport, travelling, labour and material costs provided these have not increased because the object purchased has been relocated to a place (outside Germany) other than the place of performance (within Germany). In this case it has to be agreed in advance with the customer how costs can be minimized, or what other options exist. The general assumption of transport, travelling, labour and material costs associated with the settlement of customer's complaints at a place of performance outside Germany is excluded.
- (5) We are entitled to subsequent performance subject to the condition that the customer pays the purchase price due. The customer is however entitled to retain provisionally a portion of the purchase price appropriate in relation to the defect.
- (6) If subsequent performance is not successful, the customer is entitled to cancel the contract or demand reduction of the purchase price.
- (7) Customer's claims for damages or compensation for futile expenses are exclusively subject to the provisions of Section 7 of these terms of sale, even in the case of defects.
- (8) By derogation from Section 438 para. 1 No. 3 BGB the general period of limitation for quality defects and defects of title (warranty period) is one year from the date of delivery. If acceptance inspection is agreed, the period of limitation commences on the date of the acceptance inspection. Claims for defects are excluded after expiry of the warranty period. This does not affect any statutory special provisions for limitation (in particular Section 438 para. 1 Nos. 1 and 2, para. 3, Sections 444, 479 BGB). Claims for damages according to Section 7 are exclusively subject to the statutory provisions for limitation.

## **Section 8. Other Liability**

- (1) Unless otherwise agreed in the contract, we are liable as follows:

Unless otherwise specified below, our liability for damages is based on the statutory provisions. In the event of breach of duty for whatever cause in law, our liability for default covers damage/loss caused intentionally and by gross negligence.

Subject to extenuating liability criteria according to the statutory provisions (e.g. *diligentia quam in suis*) we are liable in the event of ordinary negligence in the following cases only:

- a) damage/loss caused by injury to life, body or health, and
  - b) damage/loss caused by breach of substantial contractual obligations (obligations the fulfilment of which is deemed to be necessary for the due and careful completion of the contract and on whose fulfilment the contractual party regularly counts and may regularly count); in this case liability is however limited to compensation for the foreseeable and typical damage/loss.
- (2) The above restrictions of liability also apply to breaches of duty by or for the benefit of persons for whose faults we are liable in accordance with law. Claims under the product liability law are subject exclusively to the statutory provisions.

## **Section 9. Reservation of Title**

- (1) Goods delivered remain our property until all payments under the delivery contract have been received. In the event of breach of contract by the customer, in particular default in payment, we are entitled to recover possession of the object purchased based on the reservation of title clause. Our request for return of the object purchased constitutes cancellation of the contract. If the customer fails to pay the purchase price due, we may assert these rights only after we have granted the customer a reasonable grace period and this period has expired without any payment made, or if such a grace period is not required under the applicable statutory provisions. After return of the object purchased we are entitled to sell it, the proceeds of such sale will be deducted from the customer's financial obligation – less reasonable administrative costs.
- (2) The customer is obliged to treat the object purchased with care; he is obliged in particular to insure it at his own cost at the reinstatement value against damage by fire, water and theft. Any maintenance and inspection jobs required must be carried out by the customer in due time at his own costs.
- (3) Until full payment of all secured receivables has been made, the object purchased must neither be pledged to third parties, nor its ownership transferred to a third party as security. In the event of pledges or interventions of third parties the customer has to inform us immediately so that we can lodge a complaint under Section 771 ZPO (German Code of Civil Procedure). If such third party is unable to reimburse the court fees and any extra-judicial expenses of the legal action we have incurred, the customer is liable for the loss we have incurred.
- (4) Subject to withdrawal, according to c) below the customer is entitled to process and/or sell the object purchased in the ordinary course of business ('extended reservation of title'). In this case the following additional provisions are applicable:
  - a) Processing (including mixing and compounding) is carried out for us as producer of the new product manufactured. We acquire direct ownership of the product at the full value or, if processing involves material of several owners, we acquire a co-owner's share in the product in proportion of the value of the object purchased to the value of the product. The new product created is subject to the same provisions as the object purchased.
  - b) The customer assigns the receivables from the resale of the object purchased or the sale of the new product – in the case of co-ownership a proportional share - already now to us as security. We accept the assignment. The same applies to any other claims which take the place of the object purchased or are created otherwise regarding the object purchased (e.g. insurance claims or claims in tort in the event of loss or destruction) as well as to any claims towards third parties which are created by the incorporation of the object purchased into real property. The customer's duties mentioned in Section 8 paras. 2 and 3 also apply to the receivables assigned.

- c) Besides ourselves the customer remains entitled to collect the accounts receivable. We agree not to collect the accounts receivable as long as the customer meets his payment obligations towards us and we do not make use of the reservation of title clause by asserting a right under Section 8 para. 1. However, if this is the case we may request the customer to disclose the accounts receivable and the respective debtors, to provide any information required for collection, to submit the relevant documents and inform the debtors (third parties) about the assignment. In this case we are also authorised to revoke the customer' authority to sell and process the objects purchased.
- d) We agree to release on customer's request the securities we hold to the extent the realisable value of our securities exceeds the accounts receivable to be secured by more than 10%; the selection of the securities to be released lies with us.

#### **Section 10. Jurisdiction – Place of Performance**

- (1) If the customer is a businessman, a legal person under public law, or a special fund under public law, the exclusive venue for any disputes arising out of the contractual relationship is our business seat in Dahlenburg, Germany (local or regional court). However, in all cases we are also entitled to commence an action at the customer's general venue. This does not affect any overriding statutory regulations, in particular with regard to exclusive jurisdiction.
- (2) These General Terms and Conditions as well as the business relationship between us and the customer are governed by the law of the Federal Republic of Germany; the application of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods, is excluded.
- (3) Unless otherwise specified in the order confirmation, the place of performance is our business seat.