

# General Terms of Delivery and Payment of KSI Filtertechnik GmbH

## § 1 General provisions – scope

- 1.1 The exclusive basis for all of our deliveries, services and quotes shall be the following terms. These terms also apply to all present and future business relationships, even if they are not expressly agreed upon again.
- 1.2 Customers in the definition of these General Terms and Conditions are businesses. Businesses for the purposes of these General Terms and Conditions are natural persons or legal entities, or registered partnerships with legal capacity, with whom a business relationship is established and who act in exercise of a commercial or self-employed profession.
- 1.3 Exclusively these General Terms of Delivery and Payment (GTD) shall be the basis for all deliveries and services of KSI Filtertechnik GmbH its affiliates, unless the latter, hereinafter referred to as KSI for short, invoke their own general terms of delivery and payment (GTD). Provisions in deviation thereof, in particular general terms and conditions of contractual partners, shall apply only if their applicability has been expressly acknowledged by KSI in writing prior to the signing of the contract. KSI is not obligated to object to contract forms or general terms and conditions of contractual partners, notably also not if such general terms and conditions name the applicability of the same as an explicit condition for the conclusion of the transactions. KSI declares its intent to contract exclusively on the basis of these GTD. These GTD shall apply to both the present transaction as well as to all future business.

## § 2 Offer, conclusion of the contract and quotation documents

- 2.1 Our offers are non-binding and subject to change. Technical changes and changes in terms of shape or colour and/or weight shall remain reserved within reasonable limits.
- 2.2 By placing the order, the customer bindingly declares its intent to purchase the ordered products. KSI is entitled to accept the binding offer to conclude a contract contained in the order within four weeks from receipt. The acceptance can be declared either in writing or (implicitly) by delivery of the product to the customer.
- 2.3 Receipt by KSI of orders transmitted electronically will be confirmed immediately. The confirmation of receipt shall not represent a binding acceptance of the order yet. The confirmation of receipt can be combined with an acceptance declaration by KSI.
- 2.4 The contract will be concluded subject to correct and timely supply to KSI by its suppliers. This shall apply only in the case that non-delivery is outside of our responsibility, in particular in case a congruent covering transaction has been concluded with our supplier. The customer shall be informed without delay of the non-availability of the service and the related impossibility to perform the order. The consideration paid shall be returned immediately.
- 2.5 If the customer orders the products via electronic channels, the contract text will be stored by us and be sent, including these GTD, by email to the customer on request.
- 2.6 Verbal information, side agreements and assurances shall be invalid, unless they are expressly confirmed in writing by KSI as being agreed prior to the conclusion of the contract or in the order confirmation. Employees of KSI, except for employees with written power of attorney to collect payment, are not authorised to accept money on behalf of KSI.
- 2.7 We reserve property and copyrights on illustrations, drawings, price lists, calculations and other documents. These documents may only be transferred to third parties or be made accessible to third parties by the buyer with our explicit written agreement.
- 2.8 The customer warrants that no proprietary rights of third parties have been violated by the production, insofar as we have delivered items according to drawings, models or other documents provided by the customer. If third parties bring cease and desist claims against KSI by invoking existing rights, KSI shall be entitled – without being obligated to review the legal situation – to discontinue any further activity and to demand damage compensation if the customer is at fault.
- 2.9 The customer undertakes to indemnify KSI from all related claims of third parties in the definition of Sec. 2.8 of the GTD without delay. Besides the third party's recourse claim, the indemnification shall also cover the cost for the defence against such a claim.

## § 3 Prices and terms of payment

- 3.1 Unless agreed otherwise, the prices are understood ex-warehouse/factory, including packaging, postage, freight, other shipment expenses, insurance and customs duties paid.

- 3.2 The prices are understood to be net prices, plus the value added tax in the currently applicable amount.
- 3.3 We reserve the right to adjust our prices accordingly if cost reductions or increases occur in a substantial amount (X% of the calculated cost item) after the signing of the contract, in particular due to wage agreements or purchase price and material price increases. KSI shall prove these costs to the customer on request by means of suitable documents.
- 3.4 The period for the payment of the purchase price is regularly 10 days upon receipt of the products by the customer, unless a different payment target date has been agreed with it. After the end of this period, the customer will be in default without further warning.
- 3.5 In the event of default, the default interest shall be determined pursuant to Sec. 288 (2) BGB [German Civil Code] plus a default fee of €40.00. Claims of higher default damage by KSI shall remain unaffected by this.
- 3.6 Payment will be deemed made on time if  
a) it was remitted on time (within the period) in the regular course of business for banking transactions;  
b) as soon as KSI can dispose over the amounts in case of cash payment or payments by bills of exchange or cheque.
- 3.7 If the customer is in default of payment, or if its bills of exchange are protested or if it becomes insolvent, receivables called for payment also at a later date shall also become due immediately.
- 3.8 In the event of a deterioration of the customer's credit rating occurring after the confirmation and in the event of a default of payment of the customer for other deliveries, KSI shall have the right to demand advance payments or the provision of corresponding securities.

## § 4 Reservation of title

- 4.1 Delivered products shall remain the property of KSI until the complete payment of all claims, regardless of their legal reason and regardless if they relate to the present or prior transactions.
- 4.2 During the applicability of a reservation of title, any resale to a third party shall be permissible only as part of the ordinary course of business and with continuation of the reservation of title. Any other disposition, in particular processing, pledging or transfer by way of security is prohibited. The contractual partner shall be explicitly informed thereof. If an inseparable combination of products (for example, the fixed installation of the product) with the property of the contractual partner or of a third party occurs before the complete payment, or if the products subject to the reservation of title should nonetheless be finished or processed, the property right of KSI shall not be lost because of this. It shall be agreed in this case that KSI becomes a co-owner according to the economic value of the contributions originating from KSI and the contractual partner or third party, up until the complete payment of the purchase price. The contractual partner is obligated to ensure that the products subject to the reservation of title are in a fully resalable condition and appropriately insured for the duration of the continued reservation of title.
- 4.3 If, in spite of the agreed reservation of title, the ownership of the contractual products is transferred to a third party, the contractual partner hereby assigns on this day already all resulting claims against its buyers to KSI by way of security. The assignment shall be disclosed in the contractual partner's books. If the contractual partner's accounting system is computer-based, this assignment shall be additionally entered into the open items list.
- 4.4 If the products subject to the reservation of title are attached or exposed to third parties taking control over them in any other way, the buyer shall be obligated to inform the third party of the property rights of KSI, for as long as the title has not transferred to it, and immediately inform KSI in writing so that KSI can enforce its property rights. The buyer shall be liable to KSI for the costs incurred in this connection in and out of court if the third party is unable to refund these costs to the seller.
- 4.5 KSI undertakes to release the securities in its entitlement on request by the buyer to the extent that they exceed the realisable value of the open claims against the buyer by 10%.

## § 5 Right of withdrawal

- 5.1 KSI shall be released from its performance obligation and can withdraw from the contract if a supplier fails to deliver or makes merely an insufficient delivery for reasons outside of the responsibility of KSI and if KSI proves the congruent covering transaction with the supplier to the customer on request.

5.2 The same applies if, for reasons outside of the responsibility of KSI or its assistants or vicarious agents, the delivery becomes impossible for KSI or if it is excessively complicated due to force majeure, war, strike, lockout, political unrest, transport obstructions, measures by authorities, business disruptions, fire damages or similar.

5.3 KSI shall also have a right of withdrawal from the contract if, after the signing of the contract, a substantial deterioration of the customer's credit rating becomes known, which has the potential of putting our claim for payment at risk or if the customer has made untruthful statements as to its credit rating. The same applies if the customer breaches its duties of care in a gross manner regarding the products delivered subject to the reservation of title.

#### **§ 6 Delivery period, delay and performance not in accordance with the contract**

6.1 The delivery date stated and confirmed by KSI is understood merely as an estimate. The delivery will be deemed performed correctly and on time if it is made at the latest two weeks after the confirmed date.

6.2 In case of deliveries that are delayed for reasons of Sec. 5 (5.1) and (5.2), the delivery period shall extend accordingly without KSI coming in delay because of this.

6.3 The right of the customer to demand damage compensation in the event of default of KSI or in the event of a service performance not in accordance with the contract shall be limited to the following cases:

- a) simple negligent breach of non-essential contractual duties; and
- b) intentional or gross negligent breaches of contractual duties by simple assistants.

6.4 In the event of default by KSI, liability shall furthermore be limited for each week of delay to a lump-sum delay compensation payment in the amount of 1% of the corresponding delivery value, whereas at most to a total compensation payment of 5% of the delivery value. Further compensation for delay cannot be claimed by the customer.

6.5 It shall be up to KSI's to prove to the customer that no damage at all or a substantially lower damage has been incurred in consequence of the delay. The lump-sum damage compensation pursuant to Sec. 6.4 shall reduce accordingly. The liability for the compensation of damages shall be limited for the rest to the damage predictable and typical for the contract.

6.6 If the customer is in delay of acceptance or fails to fulfil other duties to cooperate, KSI shall be entitled to demand compensation for any incurred damage including any additional costs.

#### **§ 7 Transfer of risk**

7.1 The risk of accidental loss and accidental deterioration of the products shall transfer to the customer on the handover and, in the case of a sale by delivery to a place other than the place of performance, on delivery of the object to the freight forwarder, the carrier or other person or entity assigned with the performance of the shipment.

7.2 It shall be held equal to the handover if the customer is in delay of acceptance. In that case, the risk of accidental loss or accidental deterioration of the object of purchase shall also transfer to the customer at the point in time when the latter is in delay with acceptance.

7.3 If the shipment is delayed on request by or for reasons within the sphere of the customer, the risk shall be deemed transferred to it upon the notification of the readiness for shipment.

#### **§ 8 Warranty for defects and warranty period**

8.1 KSI shall provide the warranty for any defects on the products, at its choice, either by reworking or by replacement delivery.

8.2 Claims of the customer arising from expenses becoming necessary for the purpose of reworking, in particular transport costs, expenses for travel, labour and material shall be precluded if the expenses increase because the object of delivery has been taken to a place other than the customer's business site in retrospect, unless the transport corresponds to a use as intended.

8.3 If the subsequent fulfilment fails, the customer can generally demand, at its choice, either lowering the payment (reduction) or reversing the contract (withdrawal). In case of a merely minor deviation from the contract, in particular in case of merely insignificant defects, no right of withdrawal will apply.

8.4 Assertion of a warranty claim requires the written form. Timely mailing of the notification shall be sufficient for observation of the time limit. The customer shall have the full burden of proof for all conditions for the claim being given, in particular the defect itself, the time of the discovery of the defect, and the timeliness of the notification of defects.

8.5 If the customer chooses to withdraw from the contract for a defect of title or property defect after a failed subsequent fulfilment, it shall not have any damage compensation claim for the defect in addition. If the customer chooses damage compensation after a failed subsequent fulfilment, the products shall stay with the customer if this can be reasonably expected from it. The damage compensation shall be limited to the difference between the purchase price and the value of the defective item. Further claims of the customer are excluded.

8.6 KSI will not compensate damages that have not occurred on the item of delivery itself. KSI will likewise not be liable for lost profit or other financial losses of the customer. One of the aforementioned exclusions shall not apply in the case of breaches of contract caused by fraud.

8.7 The warranty period shall be one year from receipt of the products by the customer. In case of used items, the limitation period shall be one year from delivery of the products. This shall not apply if the customer has not notified us of the defect within the prescribed period (Sec. 8.4). The aforementioned warranty periods shall also apply if the object of delivery is installed into a building.

8.8 Generally, only the manufacturer's product description shall be deemed agreed as properties and condition of the products. Public statements, promotions or advertising by the manufacturer do not constitute any additional statement of properties and condition of the products.

8.9 If the customer receives a defective assembly instruction, KSI shall merely be liable for the delivery of a fault-free assembly instruction and notably also if the defect of the assembly instruction prevents the correct assembly.

8.10 The customer receives guarantees in the legal sense from KSI. Manufacturer guarantees remain unaffected by this.

8.11 Any warranty will be lost if the operating or maintenance instructions of KSI are not followed, or if the objects of purchase are modified, parts replaced or consumable materials used that do not conform to the original specifications.

#### **§ 9 Liability limitations**

9.1 In case of simple negligent breaches of duty, our liability shall be limited to the direct and predictable average damage that is typical for the contract as dependent on the type of product. This also applies in case of simple negligent breaches of duty by the legal representatives or vicarious agents of KSI.

9.2 KSI shall not be liable for simple negligent breach of non-essential contractual duties. Liability shall be limited to intent or gross negligence if it can be limited pursuant to the legal regulations.

9.3 The foregoing liability limitations do not apply to claims of the customer arising from product liability. In addition, the liability limitations shall not apply to injuries to body and health, which are attributable to KSI's fault, or to the loss of the life of the customer.

9.4 Damage compensation claims of the customer for a defect shall lapse by limitation after expiration of one year from delivery of the products. This shall not apply in the event that we are accountable for gross negligence or intent or in the event of injuries to body and health, which are attributable to KSI's fault or the loss of the life of the customer.

#### **§ 10 Place of fulfilment and place of jurisdiction**

10.1 Unless stated otherwise in the order and order confirmation, the place of fulfilment for the delivery and other service of the Contractor shall be the address of destination determined by KSI in dealings with merchants, legal entities of public law or public-law investment funds. The place of fulfilment for our payment obligation is the place of the registered office of our company.

10.2 The place of jurisdiction for all disputes is the place of KSI's registered office, if the client is a merchant, legal entity of public law or a public-law investment fund. However, we reserve the right to sue the Contractor at its general place of jurisdiction.

10.3 Unless agreed otherwise, exclusively German law applies without the reference standards of private international law and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

**§ 11 Data protection and final provisions**

- 11.1 Personal data, which arise in connection with the contractual relationship, will be stored for the purpose of data processing in observation of the GDPR.
- 11.2 Changes or amendments of contracts concluded with KSI including the AZB [Supplementing Terms and Conditions] require the written form for validity. This also applies to the waiver of the requirement of the written form.
- 11.3 Any invalidity of a part of the foregoing terms (including this clause) shall have no effect on the validity of the remaining terms. The statutory provisions shall apply instead of the terms not having become a part of the contract or in replacement of any invalid provisions.

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