

**Krüger & Salecker Maschinenbau GmbH & Co. KG's
Standard Terms and Conditions
for the Delivery and Assembly of Special Machines**

1. General

1.1

All manufacturing contracts between Krüger & Salecker Maschinenbau GmbH & Co. KG and its customers are subject to Krüger & Salecker Maschinenbau GmbH & Co. KG's Standard Terms and Conditions alone; conditions that are contrary to or differ from these standard terms and conditions will not be recognised unless Krüger & Salecker Maschinenbau GmbH & Co. KG has expressly consented to their application in writing. These terms and conditions will also apply should Krüger & Salecker Maschinenbau GmbH & Co. KG carry out the customer's delivery and assembly, even though it is aware of the Customer's conditions that are contrary to or differ from these standard terms and conditions.

1.2

No verbal side-agreements have been made. Any agreements that differ from or supplement these terms and conditions must be recorded in writing.

2. Conclusion of a contract/transfer of the customer's rights and obligations

2.1

Quotations from Krüger & Salecker Maschinenbau GmbH & Co. KG are subject to change.

2.2

The Customer is bound by an offer to conclude a manufacturing contract for four weeks at the most. The manufacturing contract will come into force should Krüger & Salecker Maschinenbau GmbH & Co. KG confirm acceptance of the manufacturing contract in writing within the period of time stated or begin to carry out the manufacturing contract. Krüger & Salecker Maschinenbau GmbH & Co. KG is however obliged to notify the Customer immediately of the rejection of its quotation once it has clarified whether it is feasible.

2.3

Krüger & Salecker Maschinenbau GmbH & Co. KG reserves rights of title and copyright as well as industrial property rights (including the right to register these rights) to documents accompanying a quotation, especially drawings, models, samples, cost estimates and any software and other technical documents that the Customer receives from Krüger & Salecker Maschinenbau GmbH & Co. KG. These documents and the information that they incorporate must be kept secret and may not be made accessible to third parties without Krüger & Salecker Maschinenbau GmbH & Co. KG's express written consent. They must be returned to Krüger & Salecker Maschinenbau GmbH & Co. KG immediately should a contract not be concluded.

2.4

Transfers of the Customer's rights and obligations under the manufacturing contract must be approved by Krüger & Salecker Maschinenbau GmbH & Co. KG in writing.

3. Drawings and descriptions

Krüger & Salecker Maschinenbau GmbH & Co. KG will provide the Customer with information and drawings, at the latest at the time the order is accepted and at no expense, so as to enable him to commission, use and maintain the equipment. The agreed number of such instructions and drawings must be handed over, at least however one copy of each. Krüger & Salecker Maschinenbau GmbH & Co. KG is not required to provide workshop drawings for the subject matter of the contract or for replacement parts.

4. Checks carried out before dispatch

4.1

Provided that the parties have agreed this, the subject matter of the contract will be inspected at the manufacturing location during normal working time before it is delivered to the Customer.

Checks carried out will be in accordance with normal practice in the relevant industrial sector in the country of manufacture, unless the contract includes any provisions on technical specifications.

4.2

Krüger & Salecker Maschinenbau GmbH & Co. KG is required to inform the Customer in good time and in writing of these tests in order that the Customer may be represented when they are carried out. Should the Customer not be represented, he will receive the test report from Krüger & Salecker Maschinenbau GmbH & Co. KG, the correctness of which he may no longer dispute.

4.3

Should the tests reveal that the subject matter of the contract is not according to contract, Krüger & Salecker Maschinenbau GmbH & Co. KG will be required to remedy every defect immediately in order to restore the subject matter of the contract to a condition in compliance with the contract. The Customer may only demand that the test be repeated in cases of significant defects.

4.4

Krüger & Salecker Maschinenbau GmbH & Co. KG will pay all the costs of tests carried out at the place of manufacture. The Customer is however required to pay all the costs of travel and accommodation incurred by his representative in connection with the tests.

5. Preliminary work, approval drawing and working conditions

5.1

Krüger & Salecker Maschinenbau GmbH & Co. KG will deliver in time the drawings required for the assembly of the subject matter of the contract as well as all instructions required in order to construct suitable foundations and in order to transport the subject matter of the contract and the required fittings to the assembly location and in order to install all the required connections to the equipment.

5.2

The Customer is required to check the drawings and instructions referred to under 5.1 for their compatibility with the local situation, especially with regard to the precise dimensions of the machines to be installed as well as entry and exit ducts and electrical connections. The Customer will inform Krüger & Salecker Maschinenbau GmbH & Co. KG of a positive result by signing and returning to Krüger & Salecker Maschinenbau GmbH & Co. KG the submitted drawings and instructions referred to in 5.1 (approval drawing).

5.3

By signing the approval drawing, the Customer undertakes to make all the installations available in time and to ensure that the conditions required for the assembly of the subject matter of the contract and the trouble-free use of the equipment are fulfilled. This does not apply to preliminary work that Krüger & Salecker Maschinenbau GmbH & Co. KG is required to carry out in accordance with the contract concluded.

5.4

The Customer's signature on the approval drawing also requires him to carry out the preliminary work that he is required to perform according to the drawings and instructions provided by Krüger & Salecker Maschinenbau GmbH & Co. KG referred to in section 5.1. This work must be completed on time. The Customer is required under all circumstances to ensure that the foundations are able to bear the required weight. If the Customer is responsible for transporting the subject matter of the contract to the assembly location, he is required to ensure that it arrives on time.

5.5

Should the parties have agreed that Krüger & Salecker Maschinenbau GmbH & Co. KG will assemble the subject matter of the contract at the assembly location, the Customer is required to ensure that

- Krüger & Salecker Maschinenbau GmbH & Co. KG's employees are able to begin working in accordance with the agreed timetable and to work during normal working hours. The work may be carried out outside normal working hours should Krüger & Salecker Maschinenbau GmbH & Co. KG consider this to be necessary and should the Customer have been given adequate notice of this in writing.
- he draws Krüger & Salecker Maschinenbau GmbH & Co. KG's attention in writing to all the relevant safety regulations that apply at the assembly location before the assembly begins. The assembly will not be carried out in an unhealthy or dangerous environment. All necessary safety and protective measures must be taken before assembly begins and retained during assembly.
- Krüger & Salecker Maschinenbau GmbH & Co. KG's employees are able to find accommodation and meals close to the assembly location and have access to sanitary installations and medical care as required by international standards.

- Krüger & Salecker Maschinenbau GmbH & Co. KG are provided at no expense and on time with all the required cranes, lifting equipment and means of transport within the assembly location, additional equipment, machines, materials and supplies (including petrol fuel, oils, grease and other materials, gas, water, electricity, steam, compressed air, heat, light etc.) as well as the measuring and test equipment he has available at the assembly location. Krüger & Salecker Maschinenbau GmbH & Co. KG will inform the Customer at least a month before assembly begins which cranes, lifting equipment, measuring and test equipment and means of transport will be required within the assembly location.
- Krüger & Salecker Maschinenbau GmbH & Co. KG is provided at no expense with the required storage space in order to protect the subject matter of the contract, the tools and equipment required for the assembly as well as the personal possessions of Krüger & Salecker Maschinenbau GmbH & Co. KG's employees from theft and damage.
- the access routes to the manufacturing location are suitable for the required transportation of the subject matter of the contract and Krüger & Salecker Maschinenbau GmbH & Co. KG's parts or equipment.

6. Failure by the Customer to fulfil the obligations for which he is responsible

6.1

Should the Customer recognise that he will be unable to comply with his obligations in connection with the completion of the plant, especially those obligations referred to in section 5.1, he will be required to notify Krüger & Salecker Maschinenbau GmbH & Co. KG immediately and in writing, stating the reasons and giving Krüger & Salecker Maschinenbau GmbH & Co. KG a date by when he will be able to fulfil his obligations.

6.2

Should the Customer fail to fulfil his obligations without errors and particularly within the agreed time limit as required by section 5 in connection with the completion of the plant, then and irrespective of Krüger & Salecker Maschinenbau GmbH & Co. KG's rights set out in section 6.3, the following will apply:

- Krüger & Salecker Maschinenbau GmbH & Co. KG may wholly or partly cease fulfilling the obligations to which it is committed in accordance with the contract concluded. It is required to notify the Customer immediately and in writing of its cessation of work.
- Should the subject matter of the contract not be located at the assembly point, Krüger & Salecker Maschinenbau GmbH & Co. KG will ensure the storage of the subject matter of the contract at the Customer's risk. Krüger & Salecker Maschinenbau GmbH & Co. KG will at the Customer's request insure the subject matter of the contract.
- Should the fulfilment of the contract be delayed because the Customer has culpably not fulfilled his obligations, he will be required to pay Krüger & Salecker Maschinenbau GmbH & Co. KG that part of the contractual price that would have been due had the delay not occurred.

6.3

Should the completion of plant be impeded due to the Customer's failure to fulfil his obligations in accordance with section 6.2 and should this failure to perform not be due to force majeure, Krüger & Salecker Maschinenbau GmbH & Co. KG may also demand in writing that the Customer fulfil his obligations in connection with the completion of the plant, especially those described in section 5, within an appropriate final deadline.

Should the Customer culpably fail to fulfil his contractual obligations in the completion of the plant, especially in accordance with section 5, within the time limit set, Krüger & Salecker Maschinenbau GmbH & Co. KG will be entitled to claim compensation from the Customer for the damage incurred due to the latter's failure to fulfil his obligations.

7. Regional laws and regulations

Krüger & Salecker Maschinenbau GmbH & Co. KG will ensure that, at the time of its acceptance, the plant corresponds with the recognised rules of the technology. The Customer will at Krüger & Salecker Maschinenbau GmbH & Co. KG's request provide it with appropriate information in writing on the relevant laws and regulations.

8. Changes requested by the Customer before acceptance

8.1

Subject to the following provisions, the Customer is entitled to demand changes in the plant's size, design and construction up to the time it is accepted. Krüger & Salecker Maschinenbau GmbH & Co. KG may demand such changes in writing.

8.2

The request for a change must be submitted to Krüger & Salecker Maschinenbau GmbH & Co. KG in writing and exactly describe the change requested.

8.3

As soon as Krüger & Salecker Maschinenbau GmbH & Co. KG has received a change request or itself submitted a proposed change, it will inform the Customer in order to reach an additional agreement in writing whether and, if applicable, how the changes may be carried out as well as changes in the contractual price, completion date and other contractual provisions that will thereby ensue.

Krüger & Salecker Maschinenbau GmbH & Co. KG will also inform the Customer of changes when these are due to amendments of the law and regulations in accordance with section 7.

8.4

Should completion of the plant be delayed due to disagreements between Krüger & Salecker Maschinenbau GmbH & Co. KG and the Customer concerning the consequences of changes, the Customer will still be required to pay that portion of the contractual price that was due in accordance with section 12 before the disagreements began. Should the changes that led to the disagreements between the parties also have implications for the contractual price, the parties will reach a separate agreement on the precise amount of the new contractual price. Any payments already made by the Customer will be deducted from this new agreed contractual price.

8.5

Subject to compliance with section 7, Krüger & Salecker Maschinenbau GmbH & Co. KG is not required to carry out alternations required by the Customer until the parties have either agreed on the effects on the contractual price, the completion date and other contractual provisions or the dispute is decided in law.

9. Completion, delivery delays and reservation of the right to make changes

9.1

Completion dates or completion periods, whether agreed as binding or not, must be in writing. Completion periods on the expiry of which acceptance is to be carried out begin on the day the contract is signed. Should amendments to the contract be agreed subsequently, a new completion date or completion period must be agreed if required.

9.2

The Customer may call upon Krüger & Salecker Maschinenbau GmbH & Co. KG to deliver six weeks after a non-binding completion date or non-binding completion period has been exceeded. On receiving this request, Krüger & Salecker Maschinenbau GmbH & Co. KG will be in arrears should it not perform in answer to this request.

Should the Customer be entitled to compensation for damages due to arrears, this compensation is limited in cases of minor negligence on the part of Krüger & Salecker Maschinenbau GmbH & Co. KG to a maximum of 5 % of the agreed contractual price.

Should in addition the Customer wish to cancel the contract and/ or demand compensation instead of fulfilment of the contract, it is required, after the expiry of the grace period of 6 weeks referred to in section 9.2 sentence 1, to set Krüger & Salecker Maschinenbau GmbH & Co. KG an adequate grace period for delivery. Should the Customer be entitled to compensation instead of fulfilment of the contract, this claim will be limited in cases of minor negligence to a maximum of 25 % of the agreed fee for the work.

Should Krüger & Salecker Maschinenbau GmbH & Co. KG by coincidence be unable to complete the project whilst it is in arrears, it will be liable subject to the limitations on liability agreed above.

Die Krüger & Salecker Maschinenbau GmbH & Co. KG will not be liable should the damage also have occurred had completion been on time.

9.3

Should a binding completion date or binding completion period not be met, Krüger & Salecker Maschinenbau GmbH & Co. KG will be in arrears as soon as the completion date and completion period are exceeded. The Customer's rights will be governed by section 9.2 sentence 3 ff.

9.4

In the event of delays in completion for which the Customer is responsible (because, for example, he has omitted to obtain the required official permits or authorisations in time or has not paid an advance on the manufacturing fee in time), the agreed completion dates and completion periods will be extended or postponed accordingly.

This will not affect Krüger & Salecker Maschinenbau GmbH & Co. KG's right to demand compensation from the Customer for any costs incurred due to the delay.

9.5

Should Krüger & Salecker Maschinenbau GmbH & Co. KG be prevented from fulfilling its completion obligations on time due to circumstances that did not become apparent until after the contract had been concluded (especially as a result of force majeure, natural disasters, industrial disputes, intervention by public authorities, supply difficulties, transport breakdowns, unusual traffic conditions, unforeseeable operating breakdowns, unforeseeable delays in deliveries by suppliers further down the line or for similar reasons) the obligation to complete the project will be suspended for the duration of the disturbance and to the extent of its effects. Krüger & Salecker Maschinenbau GmbH & Co. KG is required to notify the Customer immediately that completion is currently being hindered or made impossible together with the reasons. The Customer is entitled to cancel the contract after the expiry of a reasonable grace period set by him should a suspension of the completion obligation be intolerable for him. It is not necessary to set a grace period in the cases referred to in law (§ 323 sections 2 and 4, § 326 section 5 of the Civil Code or § 376 of the Commercial Code). Krüger & Salecker Maschinenbau GmbH & Co. KG is for the reasons referred to above not

responsible for the failure to complete or delayed completion. There is no entitlement to compensation or the reimbursement of expenses incurred. Should partial completion be invoked, the Customer may only cancel the whole contract should he have no interest in partial fulfilment of the contract.

9.6

Changes in design or shape as well as differences in shades of colour are permitted during the completion phase provided that these changes and deviations are not major and are tolerable for the Customer.

10. Transfer of risk and acceptance

10.1

Unless anything to the contrary has been agreed, it is agreed that delivery will be “ex works”. The risk of accidental destruction and of accidental deterioration of the subject matter of the contract will pass to the customer at the time of acceptance or the handover of the subject matter of the contract to the party authorised to carry out the delivery, irrespective of who pays the freight costs. The same will apply in the event of notification that the goods are ready for dispatch but the delivery does not take place for reasons for which the Customer is responsible.

10.2

Following completion of the assembly and in the absence of any agreement to the contrary, acceptance tests will be carried out in accordance with the following rules in order to determine whether the plant is in conformity with the provisions of the contract:

10.2.1

Krüger & Salecker Maschinenbau GmbH & Co. KG will inform the Customer in writing that the plant is ready for acceptance. Should the delivery date or delivery period not have been binding, this notification will include a date for the acceptance tests that gives the Customer adequate time to prepare for the tests and to have himself represented at them, however, 12 workdays maximum. Should the delivery date or delivery period have been binding, the expiry date will correspond with the date on which the acceptance tests are to be carried out.

The Customer will pay all the costs of the acceptance tests. Krüger & Salecker Maschinenbau GmbH & Co. KG will on the other hand pay all the costs incurred for its employees or its representatives.

10.2.2

The Customer will provide at his expense energy, lubricants, water, fuel, raw materials and all other materials required in order to carry out the acceptance tests and the last adjustments in preparation for the acceptance tests. He will also erect at his own expense equipment and provide the necessary manpower or auxiliary materials required in order to carry out the acceptance tests.

10.2.3

Should the Customer have received the notification referred to in section 10.2.1 but fail to fulfil his obligations in accordance with sections 10.2.1 and 10.2.2 or impede the acceptance tests in any other way, the tests will be considered to have been successfully carried out on the date on which the acceptance tests are to take place referred to in Krüger & Salecker Maschinenbau GmbH & Co. KG's notification. This will not apply however should the Customer object to the fiction of acceptance within a period of two weeks. The period for registering objection will begin on the date that was foreseen in Krüger & Salecker Maschinenbau GmbH & Co. KG's notification as the date on which the acceptance tests should take place. Krüger & Salecker Maschinenbau GmbH & Co. KG will remind the Customer at the beginning of the period for registering objections of the planned significance of his behaviour.

10.2.4

Krüger & Salecker Maschinenbau GmbH & Co. KG will prepare a report on the acceptance tests, which will be sent to the Customer. Should the Customer not be present at the acceptance tests in spite of having received notification as described in section 10.2.1, the acceptance report prepared by Krüger & Salecker Maschinenbau GmbH & Co. KG will be considered correct. This will not apply however should the Customer object to the fiction of acceptance within a period of two weeks, The period for registering objection will begin on the date that was foreseen in Krüger & Salecker Maschinenbau GmbH & Co. KG's notification as the date on which the acceptance tests should take place. Krüger & Salecker Maschinenbau GmbH & Co. KG will remind the Customer at the beginning of the period for registering objections of the planned significance of his behaviour.

10.2.5

Should the acceptance tests show that plant is not in compliance with the contract, Krüger & Salecker Maschinenbau GmbH & Co. KG will be required to eliminate every defect immediately. The tests will be carried out again in accordance with section 10 should the Customer request this immediately in writing. This will not apply in the event of minor defects.

10.3

The plant will have been accepted

- when the acceptance tests have been successfully carried out or are considered to have been successfully carried out in accordance with section 10.2.3; or
- when the Customer receives written notification from Krüger & Salecker Maschinenbau GmbH & Co. KG that the plant has been completed, provided that it fulfils the provisions of the contract with respect to acceptance; this will only apply however in cases in which the parties have not agreed that acceptance tests will be carried out. Minor defects that do not impair the performance of the plant do not constitute a reason to refuse acceptance.

10.4

The Customer is not entitled to use the plant or a part of it prior to acceptance. Otherwise, the plant will be considered to have been accepted by the Customer after six days of use, unless Krüger & Salecker Maschinenbau GmbH & Co. KG's has given its written consent or the parties have agreed something different. Krüger & Salecker Maschinenbau GmbH & Co. KG is then no longer obliged to carry out acceptance tests.

10.5

Should delivery or acceptance be delayed or not take place due to circumstances not attributable to Krüger & Salecker Maschinenbau GmbH & Co. KG, risk will pass to the Customer on the day that readiness for delivery or acceptance is notified. Krüger & Salecker Maschinenbau GmbH & Co. KG undertakes to conclude such insurance as the Customer requests, at the latter's expense.

10.6

Should acceptance not take place, Krüger & Salecker Maschinenbau GmbH & Co. KG is entitled to make use of its rights in law.

10.7

Should Krüger & Salecker Maschinenbau GmbH & Co. KG demand compensation, this will be 15% of the contractual price. Krüger & Salecker Maschinenbau GmbH & Co. KG may also claim higher damages provided that it can prove them. The Customer is expressly permitted to prove that no damage or reduction in value has occurred or that the reduction in value is considerably lower than the lump-sum amount referred to under section 10.7 sentence 1.

11. Prices

11.1

Unless Krüger & Salecker Maschinenbau GmbH & Co. KG's order confirmation states anything to the contrary, Krüger & Salecker Maschinenbau GmbH & Co. KG's net prices plus the legally applicable turnover tax including the cost of loading in the plant will apply. The costs of packaging and freight will be invoiced separately, unless anything different has been agreed. In the case of deliveries abroad, the purchaser will pay the costs of freight as well as any customs duties and import taxes, unless anything different has been agreed.

11.2

Should turnover tax be increased between the signing of the contract and delivery, Krüger & Salecker Maschinenbau GmbH & Co. KG is entitled to charge the turnover tax applicable on the day of the delivery and to add or deduct any difference.

11.3

Should the parties' contractual agreement stipulate that Krüger & Salecker Maschinenbau GmbH & Co. KG should also assemble the subject matter of the contract at the assembly location, the price for the assembly work will be determined by whether the parties have agreed to invoice the costs by time or whether a lump-sum amount for assembly has been agreed as part of the contractual price.

11.3.1

Should invoicing by time spent on the assembly have been agreed, the following items will be invoiced separately:

- all reasonable travel costs incurred by Krüger & Salecker Maschinenbau GmbH & Co. KG's for its employees and for transporting their tools, in accordance with the type and class of the means of transport either agreed in the contract or agreed separately;
- out-of-pocket expenses including reasonable pocket money for each day that the assembly personnel are absent from their place of residence, including rest days and public holidays;
- working time incurred invoiced on the basis of the hours that the Customer confirms with his signature on the relevant timesheets as having been worked. Overtime and work on Sundays, public holidays and at nights will be invoiced at special rates. The rates will be governed by the agreement made in the contract; in the absence of such an agreement, they will be determined by the rates customarily demanded by Krüger & Salecker Maschinenbau GmbH & Co. KG. In the absence of any agreement to the contrary, the hourly rates will include wear and tear to Krüger & Salecker Maschinenbau GmbH & Co. KG's tools and light equipment;
- the time required for the preparation and formalities of the trip there and back, return trips as well as other trips to which the employees are entitled by applicable law, regulations or collective law agreements in the Customer's country, the daily journeys between the employees' accommodation and the assembly location should this exceed half an hour per single journey and should suitable accommodation closer to the assembly location not be available, transitional periods during which the work is held up due to circumstances for which Krüger & Salecker Maschinenbau GmbH & Co. KG is not responsible according to the parties' signed contract,
- contractual expenses incurred by Krüger & Salecker Maschinenbau GmbH & Co. KG in providing equipment as well as, where applicable, a fee for the use of its heavy tools;

- taxes and dues on the invoice price that Krüger & Salecker Maschinenbau GmbH & Co. KG is required to pay in the country where the assembly is carried out.

11.3.2

Should the parties have agreed that the assembly should be carried out at a lump-sum price, the agreed price includes all those items listed under section 11.3.1.

Should the assembly be delayed for reasons for which the Customer or one of its contractual partners – but not Krüger & Salecker Maschinenbau GmbH & Co. KG – are responsible, the Customer will reimburse Krüger & Salecker Maschinenbau GmbH & Co. KG for

- waiting times and additional travel times;
- costs and additional work incurred due to the delay, including dismantling, securing and erecting the assembly equipment;
- additional costs, especially costs incurred by Krüger & Salecker Maschinenbau GmbH & Co. KG due to the fact that its equipment is tied up at the assembly location longer than planned;
- additional out-of-pocket expenses and travel costs incurred by the assembly team;
- additional financing and insurance costs; other documented costs incurred by Krüger & Salecker Maschinenbau GmbH & Co. KG due to deviations from the assembly program.

12. Payment conditions, consequences of untimely payment, especially reduction of engine power, right of retention

12.1

In the absence of any agreement to the contrary, payment will be made within 30 days of the invoice date as follows:

12.1.1

In the case of assembly costs invoiced by time spent:

- 1/3 of the agreed price of the subject matter of the contract at the time the time the contract is signed;
- 1/3 at the time Krüger & Salecker Maschinenbau GmbH & Co. KG informs the Customer that the subject matter of the Contract or major parts thereof are ready to be shipped from the manufacturing location and
- the remaining third of the contractual price as well as payment for the assembly of the subject matter of the contract on site on acceptance. Krüger & Salecker Maschinenbau GmbH & Co. KG is entitled to request down payments for work done up to the time of acceptance.

12.1.2

Should assembly be included as a lump-sum amount in the contractual price:

- 30 % of the contractual price at the time the contract is signed;
- 30 %, at the time Krüger & Salecker Maschinenbau GmbH & Co. KG informs the Customer that the subject matter of the Contract or major parts thereof are ready to be shipped from the manufacturing location;
- the remaining portion of the contractual price on acceptance. Die Krüger & Salecker Maschinenbau GmbH & Co. KG is entitled to request down payments for work done up to the time of acceptance.

12.1.3

Irrespective of the means of payment used, payment will not be considered to have been made until the whole amount has been irrevocably credited to Krüger & Salecker Maschinenbau GmbH & Co. KG's account.

12.2

Should payment not be received on time, Krüger & Salecker Maschinenbau GmbH & Co. KG is entitled to demand interest of nine percentage points above base rate as interest on arrears. Krüger & Salecker Maschinenbau GmbH & Co. KG expressly reserves the right to claim additional damages.

12.3

The Customer may only offset counter-claims that are either undisputed or have been established in law; this will not apply should the Customer be entitled to claims for compensation on account of defective performance by Krüger & Salecker Maschinenbau GmbH & Co. KG that consist in recovering the costs of eliminating the defects or – should a service not be complete – the additional costs of completion. The Customer is not entitled to withhold payment on account of claims that do not derive from the same contractual relationship.

In case of untimely payment Krüger & Salecker Maschinenbau GmbH & Co. KG also has the right to reduce the engine power to 75% by means of a modified programming code with which the subject matter of the contract is equipped by factory adjustment on the part of Krüger & Salecker Maschinenbau GmbH & Co. KG.

In good time before expiry of the payment term agreed a message will appear on the display of the subject matter of the contract which reminds the customer to pay the respective payment instalment in due time. Just like a reduction to 75% performed this message can be deactivated by entering a payment code and the respective programming code be deleted; this respective payment code will be surrendered by Krüger & Salecker Maschinenbau GmbH & Co. KG to the customer only when the latter has fully met his payment obligation.

If the customer still does not fulfil his duty to pay despite the performed reduction to 75% Krüger & Salecker Maschinenbau GmbH & Co. KG will again send a reminder setting a term for payment to the customer. After expiry of this term set in the written reminder the engine power of the subject matter of the contract will be reduced to 50%.

Krüger & Salecker Maschinenbau GmbH & Co. KG will separately notify the customer about this further reduction in the written reminder. The customer will again be reminded of timely payment on the display of the subject matter of the contract in due time before expiry of the payment term set in the written reminder. Just like a reduction to 50% the message on the display can be deactivated by entering a payment code and the respective programming code can be deleted; again, this respective payment will be surrendered by Krüger & Salecker Maschinenbau GmbH & Co. KG to the customer only when the latter has fully met his payment obligation.

Apart from the reduction of the subject matter of the contract described above Krüger & Salecker Maschinenbau GmbH & Co. KG expressly reserves the right to assert further damage.

13. Reservation of title

13.1

Krüger & Salecker Maschinenbau GmbH & Co. KG retains title to all objects and materials delivered until all claims arising from the business relationship are settled.

13.2

Krüger & Salecker Maschinenbau GmbH & Co. KG is required to waive its reservation of title at the Customer's request should the Customer have fulfilled all claims associated with the subject matter of the contract and should adequate security exist for the remaining claims arising from the current business relationship.

13.3.

The Customer is entitled to re-sell the reserved goods provided that this corresponds with his normal business activity. He assigns however to Krüger & Salecker Maschinenbau GmbH & Co. KG with immediate effect all the receivables derived from the re-sale of the reserved goods until all present and future claims from the business relationship are paid. This applies irrespective of whether or not the reserved goods have been sold without or following further processing or after having been combined or mixed (with other products). Should the reserved goods be in the possession of a third party, the Customer assigns his claims against this third party, particularly his claims to the return of the goods, with immediate effect to Krüger & Salecker Maschinenbau GmbH & Co. KG. Krüger & Salecker Maschinenbau GmbH & Co. KG accepts this assignment.

13.4

The Customer's authority to dispose of the reserved goods will end should the Customer have or be threatened by severe financial difficulties or should Krüger & Salecker Maschinenbau GmbH & Co. KG revoke its consent to disposal of the goods or to the collection of payments on account of behaviour by the Customer in breach of contract – particularly payment arrears – threatening Krüger & Salecker Maschinenbau GmbH & Co. KG's security interests. The Customer is required to notify Krüger & Salecker Maschinenbau GmbH & Co. KG immediately should the latter's security interests be impaired or threatened by measures initiated by third parties.

13.5

Krüger & Salecker GmbH & Co. KG is entitled to recover the subject matter of the contract, having first set a reasonable grace period, should the Customer behave in breach of contract, particularly should he fall into payment arrears. The recovery of the subject matter of the contract will entail termination of this contract by Krüger & Salecker GmbH & Co. KG. Krüger & Salecker GmbH & Co. KG is entitled to dispose of the subject matter of the contract having once recovered it. The proceeds of the sale will be deducted from the Customer's liabilities, less reasonable expenses of the disposal.

14. Warranty

Quality defects

14.1

Customer claims on account of quality defects become time expired in one year following the Customer's acceptance of the subject matter of the contract in accordance with section 10. Liability for damages arising from culpable injury to life, limb or health is not subject to a time limitation in the event of deliberate intent or gross negligence nor in the event of an infringement of a cardinal contractual obligation. This also applies to defects in a building or subject matter of the contract used in the manner customer for a building and causing its defects.

14.2

Additional claims on account of the fraudulent concealment of defects or the assumption of a guarantee of a particular quality are not impaired.

14.3

The elimination of defects will be handled as follows:

14.3.1

The Customer is required to report claims for the elimination of defects to Krüger & Salecker Maschinenbau GmbH & Co. KG. The Customer will receive written confirmation that his claim has been received should the claim be reported verbally.

14.3.2

Should the Customer demand subsequent fulfilment, Krüger & Salecker Maschinenbau GmbH & Co. KG has the option either of repairing the defect or delivering new equipment. Krüger & Salecker Maschinenbau GmbH & Co. KG is required to reimburse the necessary costs of subsequent fulfilment, especially the costs of transportation, travel, labour and materials. Should the Customer have moved the subject matter of the contract to a different place following delivery by Krüger & Salecker Maschinenbau GmbH & Co. KG, he will be required to pay the additional transport and travel costs. Notwithstanding § 275 section 2 and 3 of the German Civil Code, Krüger & Salecker Maschinenbau GmbH & Co. KG may refuse subsequent fulfilment should this only be possible at disproportionate expense. Should Krüger & Salecker Maschinenbau GmbH & Co. KG manufacture new equipment for the purposes of subsequent fulfilment, it may demand the return of the defective equipment from the Customer in accordance with the provisions of §§ 346 to 348 of the Civil Code.

14.3.3

Should the subsequent fulfilment not be successful or unreasonable for the Customer or its performance be seriously and finally rejected by Krüger & Salecker Maschinenbau GmbH & Co. KG, the Customer has the option either of reducing the price or of cancelling the contract.

Liability for compensation is restricted in accordance with the provisions of section 15. The same applies to a claim for the reimbursement of expenses.

14.3.4

Krüger & Salecker Maschinenbau GmbH & Co. KG must give its prior consent to the elimination of defects covered by warranty by the Customer himself. An exception is only permitted in the event of emergencies; Krüger & Salecker Maschinenbau GmbH & Co. KG must be notified in this case, stating the name and address of the specialist company. The Customer must in any event mention on the order form that the work relates to the elimination of de-

fects in Krüger & Salecker Maschinenbau GmbH & Co. KG plant and that these dismantled parts are to remain available for a certain period of time. Krüger & Salecker Maschinenbau GmbH & Co. KG is required to reimburse all the repair costs that the Customer can prove that he has incurred. The Customer must make clear that the costs of eliminating the defect have been kept as low as possible.

14.5

Krüger & Salecker Maschinenbau GmbH & Co. KG is not liable for defects that

- are due to materials provided by the Customer or a design stipulated or whose details were determined by the Customer,
- are due to poor maintenance or to a faulty repair by the Customer or to changes made without the written consent of Krüger & Salecker Maschinenbau GmbH & Co. KG,
- due to normal use and normal wear tear or deterioration.

14.6

No warranty is assumed for makeshift repairs carried out at the Customer's request.

14.7

The Customer may submit claims in accordance with the work and services contract with respect to material defects in parts installed to eliminate defects until the limitation period for the subject matter of the contract expires.

Defects of title

14.8

Should the use of the subject matter of the contract entail the infringement of commercial proprietary rights or copyrights in Germany or – provided that Krüger & Salecker GmbH & Co. KG is informed accordingly – in the country of destination – Krüger & Salecker GmbH & Co. KG will basically procure the right to continued use by the Customer or modify the subject matter of the contract in a manner that is reasonable for the Customer such that the proprietary right is no longer infringed.

The Customer is entitled to cancel the contract should this not be possible at commercially reasonable conditions or within a reasonable period of time. Krüger & Salecker GmbH & Co. KG will also be entitled to cancel the contract under these circumstances.

Krüger & Salecker GmbH & Co. KG will also relieve the Customer of undisputed claims or claims established in law lodged by the owner of the proprietary rights concerned.

14.9

Subject to infringements of proprietary rights or copyrights, Krüger & Salecker GmbH & Co. KG's obligations referred to in section 14.8 are conclusive.

They will only apply provided that

- the Customer notifies Krüger & Salecker GmbH & Co. KG immediately of infringements of proprietary rights or copyrights complained of,
- the Customer provides reasonable support to Krüger & Salecker GmbH & Co. KG in resisting claims or enables the supplier to carry out the modifications referred to in section 14.8,
- Krüger & Salecker GmbH & Co. KG reserves the right to carry out all defence measures including out-of-court agreements and the defect of title has not been caused by the Customer unilaterally changing or using the subject matter of the contract in a manner not according to contract.

15. Liability for compensation

15.1

Irrespective of the legal grounds, Krüger & Salecker Maschinenbau GmbH & Co. KG is liable for compensation only in cases of deliberate intent or gross negligence on the part of its official bodies or agents. The above exclusion of liability for simple negligence does not apply to the infringement of essential contractual obligations.

Liability in cases of the infringement of essential contractual obligations is limited to typical, foreseeable damage. Should the damage be covered by an insurance policy concluded by the Customer for this type of claim (with the exception of fixed sum insurance policies), Krüger & Salecker Maschinenbau GmbH & Co. KG will only be liable for any related disadvantages suffered by the Customer, e.g. higher insurance premiums or interest disadvantages, until the claim is dealt with by the insurer.

15.2

Compensation claims due to contractual liability become time expired one year from the event justifying the claim. This also applies to identical competing claims due to extra-contractual liability.

15.3

Liability for claims on account of a guarantee assumed by Krüger & Salecker Maschinenbau GmbH & Co. KG as well as liability under the German Product Liability Law or other mandatory norms is not affected by the above provisions. The same applies should the claim relate to injury to life, limb and health.

15.4

Liability on the part of Krüger & Salecker Maschinenbau GmbH & Co. KG is excluded in the following cases,

- damage caused by the subject matter of the contract not being used in accordance with Krüger & Salecker Maschinenbau GmbH & Co. KG's specifications, in particular operating instructions;
- damage due to inadequate or a lack of maintenance of the equipment that the Customer has not commissioned Krüger & Salecker Maschinenbau GmbH & Co. KG to carry out;
- damage caused by parts of the subject matter of the contract on which third parties have carried out repair or maintenance work or other changes and the damage cannot be proved to be due to a breach of Krüger & Salecker Maschinenbau GmbH & Co. KG's obligations.

16. Software use

Should software be included in the contents of the delivery, the Customer is granted a non-exclusive right to use the software provided including its documentation. Use is permitted on the subject matter of the contract provided for this purpose. Use of the software on more than one system is not permitted.

The Customer may only duplicate, revise, translate or convert the software from the object code to the source code to the extent permitted in law (§ 69 a ff. of the German Copyright Law). The Customer undertakes not to remove the manufacturer's references – particularly copyright references – or to change them without Krüger & Salecker GmbH & Co. KG's express consent beforehand.

All other rights to the software and the documentation including copies remain the property of Krüger & Salecker GmbH & Co. KG or the software supplier. The granting of sub-licences is not permitted.

17. Legal venue, applicable law and other matters

17.1

Krüger & Salecker Maschinenbau GmbH & Co. KG's registered office is the sole legal venue for all present and future claims arising from the business relationship.

17.2

The contractual relationship is subject to the law of the Federal Republic of Germany.

17.3

Should individual parts of the above standard terms and conditions be invalid or have been waived, this will not affect the validity of the remainder. The contractual parties are required to replace invalid provisions by such provisions as are legally valid and that correspond as far as possible with the meaning and objective as well as the commercial result of the invalid provisions.