

## Standard Terms and Conditions of K&S for the Delivery and Assembly of Standard Machines

(Last revised: January 2022)

### § 1 General

- 1.1 All purchase and delivery contracts between K&S and the Customer are governed solely by these standard terms and conditions of Krüger & Salecker Maschinenbau GmbH & Co. KG (hereafter abbreviated to “K&S”).
- 1.2 These terms and conditions will also apply should K&S carry out the service due by contract without reservation, even though it is aware of the Customer’s conditions that are contrary to or differ from these standard terms and conditions.
- 1.3 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 and cancellation by the Customer

- 2.1 K&S’ quotations are subject to change.
- 2.2 K&S may accept orders from the Customer that represent quotations in accordance with 145 of the German Civil Code (BGB) within four weeks.
- 2.3 In cases of doubt, orders will not become binding until confirmed by K&S. The nature and scope of the services required by contract will be governed by the order confirmation.
- 2.4 K&S reserves all rights of title and copyright to documents accompanying a quotation, especially drawings, models, samples, cost estimates and any software and other documents that the Customer receives from K&S. These documents and the information that they incorporate must be kept secret and may not be made accessible

to third parties without K&S' express written consent. They must be returned to K&S immediately – without retaining any copies – should a contract not be concluded.

- 2.5 Should the Customer rescind the contract concluded with K&S before risk has passed, K&S reserves the right to claim a cancellation fee of 20% of the contractual price as compensation for the costs it has incurred, whereby the Customer is free to prove that the costs were not incurred or not for the amount claimed; K&S is free to prove that it is entitled to a higher amount.

### § 3 Prices

- 3.1 Unless K&S' order confirmation states anything different, K&S' prices are net prices subject to the addition of value added tax as stipulated by law including loading at the factory. The costs of packaging and transport insurance, freight as well as any customs duties and import taxes will be invoiced separately, unless anything different has been agreed.
- 3.2 In the event of a change in the value added tax stipulated by law between the conclusion of the contract and the delivery, the value added tax in force on the day the delivery is made will be charged and the Customer will be charged or reimbursed any difference.
- 3.3 Any changes in the costs of raw materials, labour, energy and/or other costs, which were not foreseeable by K&S at the time the order was confirmed and for which it is not responsible, entitle K&S to implement appropriate price changes.
- 3.4 Should more than four months have elapsed between the conclusion of the contract and the delivery, K&S is entitled to raise its prices in accordance with the relevant market price, subject however to a maximum of 5%.
- 3.5 The deduction of a cash discount is only permitted provided this has been agreed separately in writing.

## § 4 Payment conditions

- 4.1 Subject to any different agreements in an individual case, the Customer will make a pre-payment of 50% of the purchase price to K&S after the order confirmation and an invoice for the pre-payment have been received. The remaining 50% of the purchase price are due as soon as the Customer receives notification that the main parts are ready to be delivered and the respective final invoice.
- 4.2 Subject to any different agreements in an individual case, all payment obligations are due within 7 days of the invoice date.
- 4.3 In the event of payment arrears, K&S is entitled to charge interest on these arrears of nine percentage points above the current base rate for as long as the arrears remain. K&S expressly reserves the right to claim additional damages.
- 4.4 Should it become evident after the contract has been concluded that the right to payment is endangered due to the Customer's inability to perform, particularly due to its lack of creditworthiness, K&S, having set a reasonable deadline, is entitled to demand the immediate provision of collateral or payment in cash for all goods delivered but not yet paid for and pre-payment without any deductions for all goods still to be delivered and to withhold goods still to be delivered. Should the Customer fail to comply with these demands within the stipulated deadline, K&S will be entitled to refuse delivery and to rescind the contract as well as to demand compensation.
- 4.5 The Customer may only offset undisputed counter-claims that have been established in law or are due for judgement. The Customer is not entitled to withhold payment on account of claims that do not relate to the same contractual relationship.

## § 5 Delivery, reservation of right to make changes, changes to services, delivery arrears

- 5.1 The service K&S is required to provide is stipulated in the order confirmation.

- 5.2 Changes in design or form as well as variations in the shade of colour may be made during the period of completion, provided these changes and variations are not material and are reasonable from the Customer's point of view.
- 5.3 K&S is entitled to make part-deliveries to a reasonable extent.
- 5.4 The following will apply should the Customer demand changes with regard to the scope, design and the assembly to the subject matter of the contract or proposes such changes to K&S in writing up the time that risk passes:
- 5.4.1 The change request must be submitted in writing and the change demanded must be described exactly.
- 5.4.2 Soon after K&S has received a change request or has itself submitted a change proposal, K&S, in order to reach a supplementary agreement, will notify the Customer in writing whether and possibly how the changes might be made as well as the other changes with regard to the contract price, completion date and other provisions of the contract to which this gives rise.
- K&S will also inform the Customer of changes should these changes be due to amendments of the law and of regulations in accordance with § 8.
- 5.4.3 Should completion of the subject matter of the contract be delayed due to disagreements between K&S and the Customer with respect to the consequences of the changes, the Customer will be required to pay that part of the contractual price that would have been due up to the beginning of the disagreements. Should the changes that have led to the disagreements between the parties also have implications for the contractual price, the parties will conclude a separate agreement on the precise amount of the new contractual price. Any payments already made by the Customer will be netted against this new contractual price.
- 5.4.4 Subject to compliance with § 8, K&S is not required to carry out the changes demanded by the Customer until the parties have reached an agreement.

## § 6 Delivery time, delivery arrears

- 6.1 As a matter of principle, delivery dates and delivery deadlines are non-binding unless expressly described as “binding” by K&S as part of the order confirmation.
- 6.1.1 A binding delivery date or binding delivery deadline (hereafter abbreviated collectively to “**delivery time**”) is subject to the reservation that K&S will be delivered correctly, completely and on time by its own pre-suppliers with whom K&S has concluded a covering transaction due to the contract concluded with the Customer.
- 6.1.2 The delivery time will have been complied with should the subject matter of the contract have left K&S’ factory by the end of the delivery time or when K&S has notified the Customer that it is ready for delivery.
- 6.2 Six weeks after a non-binding delivery time has been exceeded, the Customer may demand that K&S deliver. K&S will be in arrears on receiving this demand should it not perform in response to the demand.
- 6.2.1 Should the Customer be entitled to payment of damages on account of arrears, this amount is limited to a maximum of 5% of the agreed purchase price in the event of minor negligence on the part of K&S.
- 6.2.2 Should the Customer also wish to rescind the contract and/or demand compensation instead of performance, he must set K&S a reasonable deadline for delivery after the period of six weeks referred to in § 6.2 sentence 1 has expired. Should the Customer be entitled to compensation instead of performance, this claim is limited to a maximum of 25% of the agreed purchase price in the event of minor negligence.
- 6.2.3 Should completion by K&S become impossible unintentionally whilst K&S is in arrears, K&S will be liable with the limitations on liability referred to above. K&S will not be liable if the damage would also have occurred had completion been on time.
- 6.3 Should a binding delivery time be exceeded, K&S will be in arrears from the time the arrears occur. The Customer’s rights will be governed by §§ 6.2.1 to 6.2.3.

- 6.4 In the event of delays in completion for which the Customer is responsible (for example, because it fails to provide certificates or permits on time or to make a pre-payment of the purchase price on time), the agreed delivery times will be extended correspondingly. K&S' right to claim compensation from the Customer for the arrears is not affected.

## § 7 Force majeure

- 7.1 Should K&S be prevented from fulfilling its obligations to perform on time due to circumstances that do not become evident until after the contract has been concluded and for which K&S is not responsible, particularly as a result of force majeure, natural disasters, industrial disputes, intervention by public authorities, supply difficulties, traffic disturbances, exceptional traffic situations, unforeseen breakdowns of operations, the unforeseen failure of a supplier to deliver a covering order concluded for this purpose (e.g. on account of the supplier's insolvency) or for other equivalent reasons, the obligation to perform will be suspended for as long as the hindrance lasts and to the extent of its implications. K&S therefore assumes no procurement risk.
- 7.2 K&S is required to notify the Customer immediately that the temporary hindrance to or the impossibility of providing the service has occurred and of the reasons.
- 7.3 K&S will – as far as possible – endeavour to provide a substitute purchase. Should K&S' costs increase as a result of the substitute purchase, K&S will be entitled to adjust its price to the Customer. K&S will also notify the Customer immediately of the possibility of a substitute purchase and of any price adjustments beforehand.
- 7.4 Should the suspension of the obligation to perform or the price adjustment in accordance with § 7.3 be intolerable for the Customer, following a reasonable deadline set by the Customer, it will be entitled to rescind the contract. It is not necessary to set a deadline in the cases stipulated by law (e.g. §§ 323 paragraph 2, 323 paragraph 4, 326 paragraph 5 BGB as well as § 376 HGB).

- 7.5 K&S is not responsible for the failure to perform or delayed performance due to the reasons referred to above. Should a part-delivery have been made, the Customer will be entitled to rescind the contract should it no longer have any interest in the part-shipment.

## § 8 Norms and standards

- 8.1 K&S will ensure that the subject matter of the contract will comply with the acknowledged rules of the technology at the time of acceptance. Relevant in this context are therefore particularly: EU Machinery Directive 2006/42/EU, EU-RNV Directive 2004/108/EU as well as applied harmonised norms with respect to the safety of machines, namely the General Principles on Design, Risk Assessment and Risk Minimisation of EN ISO 12100:2010, safety clearances EN 13857, Emergency Stop EN 13850, Safety-Related Parts of Control Mechanisms EN 13849-1.

## § 9 Transfer of risk, acceptance

- 9.1 Unless anything to the contrary has been agreed, it is agreed that delivery will be “free to freight forwarder” (place of delivery: Nieland 1, DE-Bad Schwartau). 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 should delivery not take place for reasons for which the Customer is responsible.
- 9.2 Should acceptance be required, this is relevant for the transfer of risk. It must be carried out immediately on the date agreed for acceptance or alternatively on notification by K&S that the goods are ready for acceptance. Acceptance will be governed by the following:
- 9.2.1 K&S notifies the Customer in writing that the subject matter of the contract is ready for acceptance. This notification includes a date for the acceptance tests that must be

sufficient so as to enable the Customer to prepare itself for the tests and to ensure a representative.

9.2.2 K&S will pay the costs of its own personnel and representatives. The Customer will pay all the other costs of the acceptance tests and will in particular provide energy, lubricants, water, fuel, raw materials and other materials at its own expense should these be required in order to carry out the acceptance tests. The Customer will also erect at its own expense the equipment required for assembly and also provide the human resources and operating materials required in order to carry out the acceptance tests.

9.2.3 Should the Customer have received notification in accordance with § 9.2.1 but is nevertheless not represented at the acceptance tests or should it fail to fulfil its obligations in accordance with § 9.2.2 or impede the acceptance tests in any other way, the tests will be considered to have been successfully carried out on the date of the acceptance tests referred to in K&S' notification to the Customer. This will not apply however should the Customer object to the fiction of acceptance within a period of two weeks. The period for registering objections will begin on the date foreseen in K&S' notification as the date of the acceptance tests. K&S will remind the Customer at the beginning of the period for registering objections of the foreseen significance of its behaviour.

9.3 Should dispatch or acceptance be delayed or not take place due to circumstances for which K&S is not responsible, risk will pass to the Customer from the date on which readiness for delivery or acceptance is notified. K&S undertakes to conclude any insurances demanded by the Customer at the latter's expense.

9.4 Should acceptance not take place for any illegitimate reason, K&S is entitled to make use of its rights provided for in law. Should K&S demand compensation, this amounts to 15 % of the sale price, whereby the Customer is free to prove that no costs were incurred or not for the amount claimed; K&S is free to prove that its claim is higher.

## **§ 10 Reservation of title**

10.1 K&S retains title to all objects and materials delivered until all claims arising from the business relationship are settled.



- 10.2 The Customer is entitled to re-sell the reserved goods provided that this occurs in accordance with its normal business activity. As a precaution however, it assigns to K&S 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 its claims against this third party, particularly its claims to the return of the goods, with immediate effect to K&S. K&S accepts this assignment.
- 10.3 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 K&S 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 K&S' security interests. The Customer is required to notify K&S immediately should the latter's security interests be impaired or threatened by measures initiated by third parties.
- 10.4 K&S 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 it fall into payment arrears. The recovery of the subject matter of the contract by K&S will entail termination of this contract. K&S is entitled to dispose of the subject matter of the contract once it has been recovered. The proceeds of the sale will be deducted from the Customer's liabilities, less reasonable expenses of disposing of the reserved goods.

## § 11 Use of software

- 11.1 Should K&S, in accordance with the contractual agreement, also have provided software and operator documentation for use in addition to the subject matter of the contract, on having paid the sale price in full, the Customer will receive a non-exclusive right, unlimited as to time, to use the software to the extent described below and in the contract agreed between the parties. Before full payment has been made, all data media as well as the operator documentation provided are subject to reservation of title.

- 11.1.1 The maximum number of individuals who may use the software simultaneously may not exceed the number of licences purchased by the Customer. The permitted use includes the installation of the software, loading in the main memory as well as use by the Customer according to the intended purpose. Otherwise, the number of licences as well as the nature and scope of use will be governed by the contractual agreement between the parties.
- 11.1.2 The right to use the software granted by contract is not transferrable.
- 11.1.3 Under no circumstances is the Customer entitled to sub-let or otherwise sub-licence the software acquired, to broadcast it or to make it accessible publicly, either by cable or cable-free, or to provide it to third parties for a charge or free of charge, for example, by way of Application Service Providing or as "Software as a Service".
- 11.2 The Customer is entitled to make a backup copy should this be necessary in order to secure future use. The Customer will display "backup copy" as well as a reference to the manufacturer's copyright on the backup copy.
- 11.3 The Customer is only entitled to de-compile or duplicate the software subject to the provisions of § 69e of the German Law on Copyright (UrhG). This is however subject to the condition that K&S has not provided the information necessary for this purpose to the Customer within a reasonable period of time when requested to do so.
- 11.4 The right to process the software is limited to the receipt or the recovery of its agreed functionality.
- 11.5 The Customer is not granted any additional rights to use or exploit the software.
- 11.6 Should the Customer use the software to an extent that exceeds the right acquired, either qualitatively (with regard to the nature of the permitted use) or quantitatively (with regard to the number of licences acquired), it will immediately purchase the rights of use to permit this use. Should the Customer fail to do this, K&S will exercise the rights it is entitled to in law.
- 11.7 References to copyright, serial numbers as well as other characteristics serving to identify the programme may not be removed from the software or altered.

## § 12 Rights in the event of quality defects

12.1 Warranty claims by the Customer are conditional on it having fulfilled its obligation to inspect the goods and to report defects as stipulated in § 377 HGB. The Customer is required to inspect the goods delivered with regard to their compliance with the contract as soon as they are received. Any quantity deficiencies or mistakes in the delivery as well as identifiable defects in the goods must be reported to K&S immediately in writing and the nature of the complaint stated. Defects only identified subsequently must be reported in the form described as soon as they are discovered.

12.2 If the subject matter of the contract is defective, K&S must be given the opportunity of subsequent fulfilment, which, at K&S' option, may be either the elimination of the defect or the delivery of a new defect-free article.

Should the defect be eliminated, K&S is required to pay all necessary expenses incurred in eliminating the defect, especially the costs of transportation, travel, labour and materials; K&S will not pay these costs should they have been caused by the subject matter of the contract having been moved to a different location than the agreed place of fulfilment after the transfer of risk. This will not apply should the relocation of the subject matter of the contract be in accordance with its use according to purpose and K&S is aware of this.

12.3 The Customer is entitled to rescind the contract and reduce the price in accordance with the provisions of the law. There is no right to rescind the contract if the defects are only minor. The Customer is not entitled to carry out the work itself.

12.4 K&S's liability to provide compensation is limited in accordance with § 14. The same applies to the reimbursement of expenses incurred.

12.5 K&S is not liable for defects in the subject matter of the contract or for any consequential damage should this have been caused by improper or unsuitable use, incorrect assembly or commissioning by the Customer or a third party, normal use/wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building land, chemical, electro-chemical or electrical influences – beyond K&S' responsibility.

- 12.6 Warranty claims by the Customer and equivalent competitive claims due to non-contractual liability will expire – depending on which occurs first – in the case of new products, in one year or however on having operated for 2,000 hours in each case from the time that risk passes in accordance with § 9 and, in the case of used products, in six months or after 1,000 operating hours in each case from the time that risk passes in accordance with § 9. The expiry deadline provided for in law will apply to claims for compensation in the cases referred to in § 14.1 S. 1 and 14.2; this also applies to defects in a building or to products used in their normal manner for a building causing the building to be defective.
- 12.7 Additional claims on account of the fraudulent concealment of defects or the assumption of a guarantee of a particular quality are not impaired.

### § 13 Rights in the event of defects of title

- 13.1 The subject matter of the contract delivered by K&S on the basis of the contract concluded as well as any possible software provided (collectively abbreviated hereafter to **“the subject matter of the contract”**) is free from the rights of third parties that are contrary to use according to contract. This does not include reservation of title customary in the business.
- 13.2 Should third parties be entitled to such rights and should they claim these rights, K&S will be required to take all reasonable steps at its own expense to defend the subject matter of the contract against the third party rights claimed. The Customer will notify K&S immediately in writing should such third party claims be asserted and grant K&S all authority and powers that are necessary in order to defend the subject matter of the contract against the third party rights asserted.
- 13.3 In the event of defects of title, K&S is entitled, at its own option,
- to eliminate the third party rights preventing the contractual use of the subject matter of the contract by means of legal measures or
  - to eliminate the assertion of these claims or
  - to change or to replace the subject matter of the contract in such a way that it no longer infringes the rights of third parties and that does not materially affect the

functionality of the subject matter of the contract that is due and undertakes to reimburse the Customer any necessary costs incurred in pursuing the case.

- 13.4 Should relief in accordance with § 13.3 not be secured within a reasonable grace period set by the Customer, the Customer may, subject to the conditions stipulated in law, at its own option either reduce the price or rescind the contract and/or demand compensation: § 12.4 will apply as appropriate to demands for compensation.
- 13.5 Warranty claims by the Customer in the event of defects of title expire in accordance with § 12.6.

### **§ 14 Liability to provide compensation**

- 14.1 Irrespective of the legal grounds, K&S 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.
- 14.2 Liability for claims on account of a guarantee assumed by K&S 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 result from injury to life, limb and health.
- 14.3 Should the damage be covered by an insurance concluded by the Customer covering the claim concerned (excluding fixed sum insurance), K&S is only liable for any related disadvantages incurred by the Customer, e.g. increased insurance premiums or interest disadvantages up to the time the insurance settles the claim.
- 14.4 Liability on the part of K&S is excluded in the following cases:
- damage caused by the subject matter of the contract not being used in accordance with K&S' specifications;
  - damage due to inadequate or a lack of assembly or maintenance of the equipment that the Customer has not commissioned K&S 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 K&S' obligations.

## § 15 Place of jurisdiction, applicable law and other matters

- 15.1 K&S' registered office is the sole legal venue for all present and future claims arising from the business relationship.
- 15.2 The contractual relationship is subject to the law of the Federal Republic of Germany to the exclusion of UN purchasing law (United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980).
- 15.3 The Customer may only transfer contractual rights and obligations to third parties subject to K&S' consent. K&S may make its consent dependent on the payment of a management fee of 1% of the total net order value; the Customer is free to prove that K&S has not incurred any or only lower costs, whilst K&S is free to prove that the management expense is higher.
- 15.4 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.