

# Conditions of Sale, Delivery and Payment

## Revision Level: July 2020

### Order Placement

Upon placing an order with us, regardless of its form, the buyer accepts our terms and conditions of sale, delivery and payment for the business relationship in its entirety. The buyer's terms and conditions of purchasing and/or payment are only valid for us if we have accepted them in writing.

### Pricing

The prices quoted by ourselves are only valid for the respective individual order; repeat orders are deemed new orders. In the event that increases in wages or material cost which we are unable to foresee become applicable before the order is executed, we reserve the right to adjust our prices accordingly without invoicing any additional profit. Our prices are quoted in Euros ex Works excluding packaging and any legally applicable value added tax. Packing is invoiced and cannot be returned.

### Terms of Payment

Invoices are due and payable 30 days net after invoice date. A 2% discount is granted for payments effected within 10 days after invoice date. Payments may only be made directly to our company. Companies which are unknown to us are required to provide us with adequate references. Goods will be shipped COD, or after receiving prepayment, to buyers about whom adverse information is received. Past due payments on the part of the buyer entitle us to invoice interest at the current bank rate for open commercial loans without previously issuing a reminder. The same applies in the case of delayed issuing of acceptance. Bills of exchange will only be taken on deposit on the basis of explicit agreement, and only as payment with billing of the usual discount charges and other costs associated with bills of exchange.

If, after the contract has been concluded, the buyer's financial circumstances should take a considerable turn for the worse, or if we become aware of circumstances which justify downgrading the buyer's creditworthiness after the contract has been concluded, all of our claims shall become immediately due and payable. Furthermore, in this case we are also entitled to demand prepayment or provision of security for pending shipments and are entitled to withdraw from such contracts if the buyer has not effected payment or provided adequate security before the expiration of a reasonable deadline set by ourselves.

### Retention of Title

We retain ownership of the goods until all claims resulting from the business relationship have been paid, including ancillary claims, and until the redemption of bills of exchange or cheques given in payment thereof. This also applies in the event that the purchase price has been paid for specifically designated shipments. In the case of payment on open account, retention of title serves as security for our outstanding balance.

If the cheque - bill of exchange procedure is used, ownership of our goods subject to retention of title – subject to all further rights of our current account retention – is not transferred to the buyer until he has redeemed the bill of exchange as the drawee.

The buyer is entitled to process or rework our goods subject to retention of title in the course of ordinary business operations. Processing or rework takes place without obligation to us as manufacturer in the spirit of §950 BGB (German civil code). We automatically acquire title to any new object created through processing or rework. If our goods subject to retention of title are processed together with other goods which do not belong to us, we acquire joint title to the new object in proportion to the invoice value of our goods subject to retention of title relative to the invoice value of the other jointly processed goods. If, through combination, an object supplied by us becomes a major component of another primary object, it is agreed that joint title to the primary object will pass to us in proportion to the invoice value of our object relative to the invoice value of the primary object, or its current market value in the lack of an invoice value. In this respect, the primary object shall be kept by the buyer on our behalf free of charge and with due care.

The buyer undertakes to adequately insure our goods subject to retention of title at his own expense against all type of loss or damage. It is agreed that all insurance claims resulting herefrom with regard to the goods subject to retention of title shall be assigned to us, already at this point in time; we herewith accept this assignment.

The buyer is only permitted to sell the goods subject to retention of title (paragraph 1) in the normal course of business and as long as he is not in arrears. If the buyer sells the goods subject to retention of title, he irrevocably assigns all resultant claims against his customers to us as a precaution, already at this point in time, including all subsidiary rights and his right to demand surrender on the basis of retention of title, until payment of all of our claims has been effected. We herewith accept this assignment.

In the event that objects are sold to which we hold joint title, the buyer's claim against his customer is only assigned to us in the proportion which results from clause 3. The buyer undertakes to provide any information and hand over any documentation which is required for the enforcement of our rights vis-à-vis third-party buyers. We are entitled to notify third-party buyers regarding such assignment. The buyer is entitled to collect the claims transferred to ourselves in escrow as long as he properly meets his financial obligations vis-à-vis ourselves.

The buyer must notify us without delay of any third-party attachment of the goods subject to retention of title or the assigned claims.

We undertake to release the securities of our choice to which we are entitled in accordance with the foregoing stipulations insofar as their value exceeds the claims to be secured by 20%.

The enforcement of retention of title rights, as well as any garnishment of our goods on the part of ourselves, does not constitute withdrawal from the contract.

### Delivery

Specified delivery deadlines are non-binding and are only valid as estimates, unless fixed delivery dates have been agreed upon. Lead-times begin on the date of order confirmation. Lead-time is accordingly extended in the event of force majeure, strikes and lock-outs, as well as work stoppages and delayed shipments, which cannot be foreseen by ourselves and are due to reasons beyond our control.

However, if we are in default and allow an extension of 6 weeks to elapse unexploited, the buyer is entitled to withdraw from the contract. Claims for compensation of damages due to delay and other damages resulting from delayed deliveries are excluded. We are entitled to make partial shipments to a reasonable extent; from a legal standpoint, each partial shipment is deemed a separate contract. We reserve the right to over-ship or short-ship by an amount of up to 10% of the actually ordered goods.

### Return of Goods

If the goods have been shipped in compliance with the contract, they can only be returned in exceptional cases with our approval. Customised goods and non-stock items cannot be returned. Returned goods are credited at invoice value, although we reserve the right to invoice the costs of inspection and processing of returned goods.

### Guarantee Claims

Notification of obvious defects must be submitted to us within 8 days after receipt of the goods – along with certification from the railway service provider, the postal service provider or the freight forwarder in the case of transport damage. We guarantee the quality and reliable functioning of goods supplied by ourselves for a period of one year.

- The guarantee covers free subsequent supply of all components which prove to be unusable during the guarantee period due to defective materials or poor workmanship.
- In the event of a complaint, the buyer must provide us with the opportunity of eliminating the defect at our own facility.
- The guarantee does not cover damage due to normal wear and tear, improper handling, short-circuiting, suddenly occurring events resulting from force majeure, fire, extinguishing and rescue activities, lightning, explosions of any kind, breaking and entering, theft, robbery, plundering and sabotage and related incidents, water and all types of flooding. Nor does the guarantee cover damages resulting from unqualified modifications carried out by the buyer or any third party.
- In the event that rectification fails, the buyer is entitled to demand, at his own discretion, either a reduction of the purchase price or cancellation of the contract.
- In order to enforce complaints, the buyer is entitled to withhold payment to an extent which is in reasonable relationship to the submitted complaints.
- Characteristics can only be warranted in writing. The following applies in the event of claims for compensation due to missing warranted characteristics: in the event of liability regardless of culpability, we are not liable for damage due to defects in consideration of guarantee claims to which the buyer is entitled, in particular the right to cancel. Insofar as liability for consequential damage due to defects regardless of culpability applies (in particular due to positive breach of contract or fault in contract negotiations), we are only liable in the case of damages caused as the result of gross negligence.

### Other Liability

Claims for compensation of damage on the part of the buyer resulting from positive breach of obligation due to the violation of duties during contract negotiations and due to impermissible action are excluded. They can be enforced insofar as damage has been caused by malicious intent or gross negligence on the part of the supplier, his representatives or his agents. The exclusion of liability is also inapplicable in the case of violation of cardinal obligations.

### Shipping

The goods are shipped at the expense and the risk of the buyer, even if prepaid shipment has been specified by means of divergent agreements. This applies as well in the event that the goods are shipped to a recipient specified by the buyer. Packaging, route and shipping mode are selected by ourselves, insofar as no explicit instructions have been received from the buyer.

Transport insurance is only procured upon explicit request from the buyer. The costs are borne by the buyer.

### Copyright Protection

Our design proposals, samples, models and the like are our intellectual property and may not be copied or used in any other way by the buyer for the purpose of replication, even if no specific protective rights apply hereto. The buyer is liable for the compensation of damages for each and every violation of this stipulation.

### Quotations

Our quotations are non-binding. Incoming orders are not binding until order confirmation has been issued to the buyer. This applies to all types of oral agreements and declarations as well. Forwarding of our quotations to third parties is impermissible.

### Place of Fulfilment, Court of Jurisdiction, Applicable Law

The place of fulfilment for both parties is Schonach, Germany. If the buyer is a registered merchant, the court of jurisdiction is Villingen-Schwenningen, Germany. For both parties to the contract, the business relationship is subject exclusively to German law under exclusion of the so-called Hague Convention on the Law Applicable to Contracts for the International Sale of Goods.

KBS-Antriebstechnik GmbH  
Am Fabrikberg 7, D-78136 Schonach