

General Terms and Conditions of Sale

**of Köster GmbH Machine and Mold Construction, Robert-Bosch-Straße 4,
D-74182 Obersulm-Willsbach**

§ 1 Scope of application

- (1) These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers ("Buyer"). The GTCS only apply if the Buyer is an entrepreneur (§ 14 BGB).
- (2) The GTCS apply in particular to contracts for the sale and/or delivery of electrically, pneumatically or hydraulically driven machines or parts thereof ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the latest version of the GTCS shall also apply to all subsequent transactions, without this having to be expressly mentioned or agreed at the time they are concluded.
- (3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business shall only become part of the contract if and insofar as we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's GTCS.
- (4) Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail). Legal formal requirements and further evidence, in particular in case of doubt about the legitimacy of the declarant, remain unaffected.

§ 2 Quotations, orders

- (1) Our quotations are - in particular with regard to quantity, price and delivery time - always subject to change and non-binding.
- (2) The order of the goods by the Buyer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within two weeks of its receipt by us.
- (3) Orders placed by the Buyer shall only be deemed accepted when we have confirmed them in writing. If we do not specifically confirm in writing a contract concluded orally or by telephone, the invoice issued by us shall be deemed to be the confirmation.

§ 3 Delivery period and delay in delivery

- (1) Stated delivery periods are always non-binding unless expressly agreed otherwise in writing.
- (2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this without delay and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any compensation already paid by the Buyer.
- (3) The occurrence of our delay in delivery shall be determined in accordance with the legal regulations. In any case, however, a reminder by the Buyer is required. If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has not suffered any damage at all or that the damage is significantly less than the aforementioned lump sum.
- (4) The rights of the Buyer pursuant to § 8 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Delivery shall be ex works, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Buyer, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping routes, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. Otherwise, the statutory provisions of the law on contracts for work and services shall apply mutatis mutandis to an agreed acceptance. The handover or acceptance shall be deemed equivalent if the Buyer is in default of acceptance.

§ 5 Prices and terms of payment

- (1) Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract shall apply, ex warehouse, plus statutory value added tax, if any.

- (2) In the case of a sale by delivery to a place other than the place of performance (cf. § 4 para. (1)), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
- (3) The purchase price shall be due and payable within 30 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.
- (4) Upon expiry of the payment period pursuant to paragraph (3) above, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353 HGB) remains unaffected.
- (5) The Buyer shall only be entitled to rights of set-off or retention insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular pursuant to § 7 para. 6 sentence 2 of these GTCS.
- (6) If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is endangered by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory regulations on the dispensability of setting a deadline remain unaffected.

§ 6 Retention of title

- (1) Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claim), we retain title to the goods sold.
- (2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us.
- (3) In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand surrender of the goods on the basis of the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

§ 7 Claims for defects

- (1) The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below.
- (2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by us (in particular in the catalogue or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods.
- (3) Insofar as the quality has not been agreed, it shall be assessed according to the statutory regulation whether a defect exists or not (§ 434 para. 1 p. 2 and p. 3 BGB).
- (4) The Buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 382 HGB). If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects shall be notified to us in writing within five working days of delivery and defects not apparent on inspection within the same period of time from discovery. If the Buyer fails to carry out the proper inspection and/or give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.
- (5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- (6) We are entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.
- (7) The Buyer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions.
- (8) We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions if there is actually a defect. Otherwise, we may demand reimbursement from the Buyer of the costs incurred from the unjustified request for rectification of the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to the Buyer.
- (9) In urgent cases, e.g. in the event of a risk to operational safety or to avert disproportionate damage, the Buyer shall have the right to remedy the defect himself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be

notified immediately of such self-execution, if possible in advance. The right of self-execution does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

- (10) If the supplementary performance has failed or a reasonable deadline to be set by the Buyer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.
- (11) Claims of the Buyer for damages or reimbursement of futile expenses shall also exist in the case of defects only in accordance with § 8 and are otherwise excluded.

§ 8 Other liability/CE marking

- (1) Insofar as nothing to the contrary results from these GTCS including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations. In this respect, we assume responsibility for the conformity of the goods with all requirements contained in the relevant harmonization legislation of the European Community and applicable to the affixing of the CE marking, but not for the conformity of the product with any further product (safety) relevant regulations and requirements which may apply outside the European Community.
- (2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in own affairs; insignificant breach of duty), in the following cases
 - a) for damages resulting from injury to life, body or health,
 - b) for damages arising from the breach of an essential contractual obligation (obligations the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from paragraph (2) shall also apply in the event of breaches of duty by or in favor of persons for whose fault we are responsible in accordance with the statutory provisions. They do not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the Buyer under the Product Liability Act.
- (4) Due to a breach of duty which does not consist of a defect, the Buyer may only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

§ 9 Prohibition of the activity of reverse engineering

The Buyer is prohibited from disclosing the know-how contained in the goods, insofar as the goods are not a publicly available product, by dismantling and analysing the goods for his own use (so-called "reverse engineering").

§ 10 Limitation

- (1) Notwithstanding § 438 para.1 no.3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance.
- (2) The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages of the Buyer pursuant to § 8 para. 2 p. 1 and p. 2 (a) of these GTCS and pursuant to the Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

§ 11 Selection of law and place of jurisdiction

- (1) The law of the Federal Republic of Germany shall apply to these GTCS and the contractual relationship between us and the Buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction - including international jurisdiction - for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Obersulm-Willsbach, Federal Republic of Germany. The same shall apply if the Buyer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

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