

General Sales Conditions for the Delivery of Hoists, Conveyors and Similar Machines

§ 1 General – Area of Application

- (1) Our sales conditions apply exclusively; any conditions from the customer that are opposing or deviating from our sales conditions will not be accepted by us, unless we agreed explicitly in writing to their validity. Our sales conditions also apply if we are aware of customer terms that oppose or deviate from our sales conditions and perform deliveries to customers without any reservations. A contract shall be formed in the absence of a separate agreement with written confirmation of the order by the supplier.
- (2) All agreements made between us and the customer for the purposes of the execution of this contract shall be set down in writing in this contract.
- (3) Our sales conditions only apply for companies as defined by par. 310 sec. 1 BGB (German Civil Code).
- (4) Our sales conditions also apply to all future transactions with the customer.

§ 2 Offer – Offer Documents

- (1) If the order is to be regarded as an offer in accordance with par. 145 BGB (German Civil Code), we shall consequently be allowed to accept it within 2 weeks.
- (2) We reserve the ownership rights and copyrights to illustrations, drawings, calculations and other documents. This is also true for written documents which are labelled as confidential. Our explicit written agreement is required by the customer before disclosure to third parties.

§ 3 Prices – Payment Conditions

- (1) Unless otherwise specified in the confirmation of order, our prices are ex works, including loading at the factory and excluding packaging and unloading.

We reserve the right to adjust our prices accordingly if cost reductions or cost increases occur after the conclusion of the contract, especially due to tariff settlements or changes in the price of materials. We will present these to the customer upon request.
- (2) Statutory value added tax is not included in our prices; it is made out separately according to the rate applicable by law on the day the invoice is issued.
- (3) Any deduction of discount shall be subject to prior written agreement.
- (4) If the order confirmation does not specify otherwise, payment is to be made as follows: 1/3 down payment after receipt of order confirmation, 1/3 as soon as customer is notified to the effect that the main components ordered by contract are ready for dispatch; the remainder within one month after the transfer of risk. The legal regulations concerning the consequences of default apply.
- (5) Customers are only entitled to make set-off claims if their counterclaims have legal validity, are uncontested or recognised by us. Any right of retention shall be excluded.

§ 4 Delivery Time

- (1) The start of the delivery time quoted by us requires the clarification of all technical and legal questions and the customer to perform all obligations incumbent on him, e.g. procurement of necessary official certificates or approvals, or that agreed down payments have been made. If this is not the case, the delivery period is extended appropriately. This does not apply if the delay is due to the supplier.
- (2) Compliance with the delivery deadline shall be subject to correct and prompt delivery to the supplier itself. The supplier shall provide notification of any delays that become apparent as soon as possible. The right to object on grounds of non-performance shall be reserved.
- (3) The delivery deadline is deemed to have been met when the item to be delivered has left the supplier's premises or readied for shipment by the end of the period and the availability for shipment communicated. If acceptance is required, the date of acceptance or alternatively, the notification of readiness to accept shall be decisive, except in the case of a justified rejection of acceptance.
- (4) If dispatch or acceptance of the delivery item is delayed for reasons for which the customer is responsible, the customer shall be charged the costs caused by the delay, beginning one month after the notification that the delivery item is ready to be dispatched or undergo acceptance.
- (5) If the delivery time can not be adhered to because of force majeure, industrial disputes or other events beyond the supplier's sphere of influence, the delivery time shall be extended accordingly. The supplier shall inform the customer of the beginning and end of such circumstances as soon as possible.
- (6) If the customer is in default in acceptance or if it culpably infringes other cooperation obligations, then we shall be entitled to demand reimbursement of the loss thus incurred by us including any additional expenditure. The right to further claims is reserved.
- (7) Insofar as the conditions specified in sec. 6 arise, the risk of accidental loss or deterioration of the purchased goods shall be transferred to the customer at such time as the customer becomes in acceptance or payment default.
- (8) We are liable according to legal regulations as far as the sales agreement is a firm deal in the sense of par. 286 sec. 2 no. 4 BGB (German Civil Code) or par. 376 HGB (German Commercial Code). We shall also be liable according to statutory provisions, provided as a result of a delay in delivery for which we are responsible the customer is entitled to assert that its interest in the further performance of the contract has ceased to exist.
Insofar as the delay in delivery is not based upon a wilful contractual infringement for which we are responsible or a culpable breach of an essential contractual obligation, our liability to pay compensation shall be limited to foreseeable damages which typically occur.

§ 5 – Transfer of Risk – Packaging Costs

- (1) Risk passes to the customer when the delivery item has left the factory; this also applies when partial deliveries are made or the supplier has also taken on additional obligations such as payment of transport costs or delivery and installation. If there is a requirement of acceptance, this determines the passing of risk. Acceptance must take place promptly at the time of delivery, alternatively after the supplier's notification of readiness for acceptance. The customer is not permitted to refuse acceptance of the goods on account of a defect that is not substantial.
- (2) If dispatch or acceptance are delayed or omitted for reasons for which the supplier is not responsible, risk passes to the customer from the date of notification of readiness for dispatch or acceptance. The supplier undertakes to take out all insurance required by the customer at the latter's expense.
- (3) Partial deliveries are permitted, if not unreasonable for the customer.
- (4) Separate agreements apply for the return of packaging.
- (5) If required by the customer, delivery will be covered by transport insurance. Costs incurred by this insurance have to be paid by the customer.

§ 6 – Responsibility for Defects

- (1) Defect claims of the customer assume that he acted correctly according to his examination and reproof obligations according to par. 377 HGB (German Commercial Code).
 - (2) Insofar as a material defect is present, all parts that have proven to be defective due to a circumstance obtained before the transfer of risk shall, at the discretion of the supplier, be remedied or replaced by error-free parts free of charge. The supplier is to be notified of all such defects as soon as they are identified. Replaced parts become the property of the supplier.
 - (3) In order for the supplier to make repairs and replacement deliveries as appear necessary, the customer must provide sufficient time and opportunity in coordination with the supplier to do so; otherwise the supplier is released from liability for the consequences. Only in urgent cases where there is a risk to work safety or to avoid disproportionately large damage (of which the supplier shall be informed immediately) shall the customer have the right to remedy the defect itself or have it remedied by third parties, and to demand reimbursement of the necessary expenses by the supplier.
 - (4) From the costs arising from the repairing work or the replacement of the objects of supply, the costs of the replaced item including the forwarding charges shall be born by the supplier, provided that the complaint was justified. In addition, he shall bear the costs of dismantling and installation as well as the costs of any necessary provision of assemblers and other workers, including travelling expenses, unless this would cause a disproportionate burden on the supplier.
 - (5) Under statutory regulations, the customer has a right to rescind the contract if the supplier under consideration of the legal exceptions allows a deadline set for the remedy of a defect or a replacement delivery due to a defect to expire without any resolution. If a defect detected is inconsequential in nature, the customer shall be entitled to a reduction of the purchase price only. The right to reduce the contractual price is otherwise excluded. Further claims shall be determined as stipulated in par. 7 sec. 2 of these conditions.
 - (6) No liability shall be assumed in particular in the following cases: Unsuitable or inappropriate use, incorrect fitting/commissioning on the part of the customer or a third party, normal wear and tear, incorrect or negligent treatment, improper maintenance, unsuitable operating fluids, faulty construction work, an unsuitable base, chemical, electrochemical or electrical influences - insofar as they are not answerable for by the supplier.
 - (7) If the customer or a third party carries out repairs incorrectly the supplier is not liable for the ensuing consequences. This also applies to changes made by the client to the delivery item without the supplier's prior consent.
- (8) If the use of the delivery item leads to an infringement of domestic industrial property rights or copyrights the supplier will generally procure at its own costs the right for the customer to continue using the delivery item, or modify the delivery item in a way that is reasonable for the customer and such that the infringement of intellectual property rights no longer persists.

If this is not possible within a reasonable period of time or under reasonable economical conditions the customer is entitled to rescind the contract.

Under these conditions the supplier is also entitled to rescind the contract.

In addition, the supplier shall indemnify the customer against undisputed or legally enforceable claims from the relevant owners of the property rights.

- (9) The obligations of the supplier referred to in section 8 shall be final and conclusive subject to par. 7 sec. 2 in respect of breaches of industrial or intellectual property rights and copyrights. They shall only apply if:
 - the customer immediately notifies the supplier of asserted breaches of industrial property rights or copyrights
 - the customer supports the supplier to an appropriate extent in the defence of the asserted claims and/or enables the supplier to effect modification measures in accordance with section 8
 - the supplier has reserved the right to all defending measures, including out of court settlements
 - the defect of title is not due to an instruction given by the customer and
 - the infringement was not caused by the customer changing the delivery item on his own authority or using it in a way incompatible with the contract..

§ 7 – Joint Liability

- (1) If the customer cannot use the delivery item in the way intended by the contract due to the fault of the supplier resulting from not or incorrectly carrying out suggestions and agreements made before or after the contract is signed, or from a breach of other secondary contractual duties especially instructions for operating and servicing the delivery item, the provisions of par. 6 and 7 sec. 2 apply accordingly and to the exclusion of all and any other rights of the customer.
- (2) The supplier shall be liable for defects other than to the delivery item, for whatever legal reasons, only in case of
 - a. intent,
 - b. gross negligence of bodies or executives
 - c. culpable violation of life, body, health
 - d. defects whose presence was disclosed by the supplier maliciously or their absence guaranteed by the supplier
 - e. delivery item defects to the extent as liability is provided under the product liability law for personal injury and property damage in relation to privately used items.

In the event of culpable fundamental breach of contract, the supplier shall also be liable for gross negligence by the supplier's employees and for slight negligence; in the event of slight negligence liability shall be limited to the contractually relevant, foreseeable damage or loss. All other claims are excluded.

§ 8 - Limitation

All claims of the ordering party for whatever legal reasons shall become statute-barred in 12 months. This deadline also applies to defects in construction work or to objects of supply, which were used for construction work in accordance with their normal method of utilisation and have caused its defectiveness. The statutory limitation periods apply to claims for damages in accordance with par. 7 sec 2 a-e.

§ 9 – Industrial Property Rights

- (1) We retain ownership of the purchased item until receipt of all payments from the delivery contract. In the event of a breach of contract by the customer, especially a delay in payment, we are entitled to take back the purchased goods. In the event that we take back the purchased goods, this shall not constitute a withdrawal from the contract. We are authorised to sale of the purchased goods after retraction; the proceeds of sale are to be deducted from the commitments of the customer - minus appropriate costs for recovery.
- (2) The customer is obliged to treat the purchased goods carefully; he is especially obliged to sufficiently insure them at his own cost against fire and water damage and theft at the original value. As far as maintenance and inspection work becomes necessary, the customer must perform such work at its own costs on time.
- (3) In the event of seizure or other third-party interventions, the customer must notify us immediately in writing so that we may file a suit in accordance with par. 771 of the German Code of Civil Procedure (ZPO). In as far as the third party is not capable of refunding us with the cost of the action in and out of court according to par. 771 of the German Code of Civil Procedure (ZPO), the customer shall be liable for our loss..
- (4) The customer is allowed to sell the purchased goods in a correct transaction; but he already now conveys all requests in height of the invoice final amount (including VAT) of our claim which arises from the sale against his buyers or third parties, namely independent from whether the item was sold without or after processing. The customer remains entitled to assert the claim even after having assigned the claim. Our right to collect the claim ourselves shall remain unaffected by this. We are, however, obligated to not extract the claim as long as the customer complies with his payment duties from the received proceeds of sale, does not enter into default of payment and, in particular, has not been issued a petition for the opening of settlement or solvency proceedings or bankruptcy is present. If this is the case, however, we can demand that the customer makes his accrued claims and his debtors known to us, report all necessary information for collection, hand over the corresponding documentation and inform the debtors (third parties) of the surrender.
- (5) The processing or treatment of the purchased goods by the customer is always executed for us. If the purchased goods are processed jointly with other items not being our property, then we acquire co-ownership in the new items in relation of the value of the purchased goods (total invoiced amount incl. VAT) to the other objects processed at the time of processing. As for the rest, the same shall apply to the item arising due to processing as to the purchased goods of sale delivered under reserve.
- (6) If the purchased goods are inseparably merged with other items not in our property, then we shall acquire the co-ownership of the new goods in the ratio of the objective value of the purchased goods (total invoiced amount, incl. VAT) to the other merged goods at the date of merging. If merging is performed in such a manner that the goods of the customer are to be regarded as the principal item, then it is deemed agreed that the customer transfers to us a prorata co-ownership. The customer keeps the arisen sole or common ownership for us.
- (7) The customer also cedes to us the requests for covering our requests which arise by the connection of the goods with an estate against third parties.
- (8) We undertake to release the security owed to us at the customer's request to the extent that the value of our security exceeds the claims to be secured by more than 10%; the selection of the type of security to be released shall be incumbent upon us.

§ 10 – Software Use

If software is included in a delivery, the customer shall be granted a non-exclusive right to use the software and its associated documentation. It shall be provided for use on the intended delivery item. The software may not be used on more than one system.

The customer may only copy, revise or compile the software or convert it from the object code to the source code to the extent permitted by law (Articles 69 a ff. of German Copyright Law (UrhG)). The customer shall be obliged not to remove the manufacturer's specifications - especially the copyright references - nor to change them without the express prior consent of the supplier.

All other rights in the software and documentation, including copies, shall remain with the supplier and/or software supplier. The granting of sublicenses is excluded.

§ 11 – Place of Jurisdiction – Place of Performance

- (1) If the customer is a businessman, our headquarters is our place of jurisdiction; however, we are entitled to bring an action against the customer at the court in his area of residence.
- (2) The law of the Federal Republic of Germany under exclusion of the UN sales law applies.
- (3) Unless otherwise stated in the order confirmation, the place of performance shall be our place of business.

KW Kranwerke GmbH

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