

## Domestic General Conditions for the delivery of machines, equipment, spare parts and tools (Domestic General Conditions of Delivery)

last amended: 05/2018

### 1. Application area

1.1. The following Terms and Conditions for Delivery apply to the delivery of machines, equipment, spare parts and tools by Krasser GmbH to companies (moreover supplier) and/or public facilities (moreover customer).

### 2. General

2.1. These terms and conditions apply to all kinds of delivery mentioned under point 1. 1.. Any other contractual arrangements have to be concluded in writing.

2.2. Deviant terms for purchase or other terms by customer will only be added to contract if it is explicitly and in written form agreed on. The contract concludes with the written order confirmation through the supplier to the customer

2.3. The supplier reserves all property and copy rights of all documents and information (e.g. samples, cost estimates, graphs etc.) electronic and nonelectronic. The committed documents and information cannot be made accessible to a third party. A third party however can only get access after the supplier agrees on it in written form.

### 3. Price and payment

3.1. Unless agreed otherwise, the prices shall be net ex works (EXW, Incoterms 2010) including loading at work, and shall exclude packaging and unloading. The prices quoted shall be exclusive of taxes and are therefore net prices.

3.2. Unless expressly agreed upon otherwise in writing, payment of the agreed price shall be made without any deduction to the account of the supplier:

- a. on delivery of spare parts: within 14 days
- b. on delivery of replacement items: net within 14 days

3.3. Down payments shall be made net within 14 days after written confirmation of an order.

3.4. Payments shall be considered as being made, when the entire invoice amount is irrevocable credited to the account of the supplier.

3.5. The customer is not entitled to retain payments or to offset claims against the supplier. This will not apply if the claims are legally determined or undisputed by the supplier.

### 4. Delivery period, delivery delay

4.1. Delivery time is the date confirmed in writing by both parties. There shall apply a customary and reasonable delivery period if no delivery time is confirmed in writing.

4.2. In the event that the customer breaches their duty of co-operation (e.g. delayed procurement of the required official certifications or permits, incorrect definition of necessary specifications or detailed descriptions of the delivery item, no making of a down payment, missing export permit) the delivery time will extend.

4.3. The period begins when all commercial and technical issues between the parties have been completely clarified.

4.4. The period will extend accordingly if deliveries to the supplier are not complete or not on time and the supplier informs the customer whenever he is aware of it and as soon as possible.

4.5. The delivery shall be considered to have been carried out when the delivery item has been available to the customer at work of the supplier or the ordering party has been informed that the item

is ready for collection (EXW, ex work, Incoterms 2010). If an acceptance date is specifically and in written form agreed on - except for justified rejection of acceptance - the agreed formal acceptance date shall govern for the delivery on time, alternatively an announcement of readiness for collection.

4.6. In the event that the customer is responsible for causing a delay in shipping or acceptance of the goods for delivery, the customer will be charged for the costs incurred as a result of the delay.

4.7. In the event of circumstances, which are not on the sphere of influence of the supplier (e.g. force majeure, industrial disputes, supply shortages), the delivery period shall be extended appropriately. The supplier shall inform the customer of the beginning and the end of such circumstances as soon as possible.

4.8. The customer shall only be entitled to withdraw from the contract without giving notice, if

- a. it is impossible to provide the services completely before the transfer of risk or
- b. the execution of part of the delivery becomes impossible and the customer has a justified interest in refusing a partial delivery or
- c. the supplier is not able to deliver based on inability.

If it becomes impossible to perform the contract or if it is frustrated while the customer is in default of acceptance or if the customer is solely or largely responsible for these circumstances, the Buyer shall remain obliged to effect payment.

### **5. Transfer of risk and (partial) acceptance of the delivery**

5.1. Unless otherwise specified in a written agreement the (partial) delivery of the delivery item or a part of the delivery item shall be made, when it has been available to the customer at work of the supplier and the transport risk and/or the risk of loss of the item shall be passed to the customer as soon as the goods leave the works. The supplier shall be responsible for neither the loading onto a means of transport nor the clearing for export (export custom declaration) and/or further transport of the delivery item. The Incoterm EXW (ex work, 2010) shall apply. The customer shall also carry the transport risk in case of partial delivery or if the supplier has undertaken to carry out and setting up the delivery item.

5.2. Unless agreed otherwise in writing the risk shall be transferred to the customer on the date of acceptance, alternatively following notification by the supplier of readiness for acceptance. The customer shall not be allowed to refuse acceptance in case of the existence only of a non-significant defect.

5.3. If the acceptance is not reached or delayed for reasons which are not the fault of the supplier, the risk shall be passed to the customer, when the supplier announces the readiness for acceptance.

5.4. The supplier undertakes to take out any insurances at the customers expense, that the customer demands.

5.5. Partial delivery shall be permitted, insofar as this is reasonable to the customer.

### **6. Transfer of ownership and reservation of ownership**

6.1. The ownership of the delivery item shall only be transferred to the customer upon full payment by the customer - including for any additionally owed ancillary services (e.g. assembly of the delivery item).

6.2. In case of payment default the supplier shall be entitled to retake the delivery item, if the customer, despite being reminded and being set a reasonable final deadline by the supplier, has failed to pay. The customer shall be obliged to return the delivery item and to assist the supplier optimally with the retrieval of the delivery item. This shall also apply to any other non-contractual behavior of the customer. The customer has to compensate all costs, which occurred in the course of the supplier's retrieval of the delivery item.

6.3. The supplier may demand return of the delivery item on the grounds of retention of ownership, if he has withdrawn from the contract. Liens or other rights of a third of the delivery item under reservation

of ownership shall be overwritten in written form by the customer promptly after the supplier has announced the justification.

6.4. In the event that an application for the commencement of insolvency proceedings against the assets of the customer has been made, the supplier shall be entitled to withdraw from the contract with immediately effect and demand the immediate return of the delivery item. The customer must immediately inform the supplier of the application for the commencement of insolvency proceedings against his assets, as soon as he has been aware of.

6.5. The customer shall be able to sell the delivery item on within the scope of ordinary business. In the event of a sale, the customer must by now assign all claims, which have been assigned to the customer due to the sale against other customers or third parties, to the supplier. Following the assignment of claim the customer shall be authorized by the supplier to collect claims against customers or third parties (collection authority). The right assigned to the supplier to collect the claims by oneself, remains unaffected.

6.6. The collection authority of the customer shall lapse, if the customer is in default of payment, the collection authority has been revoked or an insolvency application against the assets of the customer has been made. If the collection authority lapses, the supplier shall be able to demand the customer to disclose the transferred claims and their debtors, to provide all information necessary for the collection and hands over all the necessary documents for collection as well as to inform the debtors of the assignment, insofar as the supplier has not carried it out by oneself.

6.7. In case the customer resells the delivery item together with other goods, which do not belong to the supplier, the customer's debt to the supplier in the amount of the delivery price agreed between the supplier and the purchaser is deemed to be assigned.

6.8. The customer takes on the job of processing, adjustment and restructuring of goods (reserved goods), which are subject to a retention of title of the supplier, for the supplier at all times. If the goods subject to retention of title are processed with other objects not belonging to the supplier, the supplier shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title to the other processed objects at the time of the processing.

6.9. The customer shall be the depositary of the reserved goods or the co-ownership upon order of the supplier. The same provisions, which also apply to the reserved goods, shall apply to the co-ownership, which arises due to the processing, adjustment or restructuring, as well.

### **7. Guarantee for property damage**

7.1. The supplier shall grant warranty for all delivery items, which prove to be defective due to circumstances or causes which occurred prior to passage of risk, in the framework of the statutory provisions. The supplier shall repair or replace the deficient delivery items at its own option. Replaced parts shall become the supplier's property.

7.2. The customer must examine the delivery item and reprehend possible defects within a reasonable period. Should the customer fail to reprehend identified defects within a reasonable period, the customer shall lose the warranty claims and claims for damage (§ 377 UGB).

7.3. The supplier shall allow the customer the time and opportunity required to perform the rectifications or replacement deliveries. In case of particular urgency to prevent directly threatening disproportionately large damage and/or in case of threat of the operational safety, the customer shall be entitled to rectify the fault himself or have it rectified by third parties upon prior notification and to demand the supplier to refund the incurred costs.

7.4. If the complaint of the defect from the customer turns out justified, the supplier shall bear, out of the direct cost incurred by subsequent improvement and/or replacement, the costs of the replacement part including dispatch, as well as the costs of de-installation and installation, making available of the required mechanics and assistants including their fees, to the extent in which the costs are proportionally and usual in the industry.

7.5. Further going claims on the part of the customer do not exist, with the exception of the legal damage claims as described in point 8.

7.6. The supplier does not assume liability or warranty particularly in the following cases: unsuitable or improper use, incorrect installation and/or putting into service by the purchaser or a third party, natural wear, faulty or negligent handling, inappropriate maintenance, inappropriate working materials, deficient construction work, unsuitable subsoil, chemical, electrochemical or electrical influences - provided that they are not the responsibility of the supplier.

7.7. In case of improper rectification carried out by the customer or a third party, the supplier shall not assume any liability or warranty regarding all the arising consequences. The same applies for modifications of the delivery item made without the prior approval of the supplier.

### **8. Compensation**

8.1. If the customer is unable to use the delivery item due to the fault of the supplier as a result of a failure of or a defect in workmanship, as a result of recommendations and advice provided prior to or following formation of the contract, or as a result of a breach of other contractual ancillary obligations - in particular including instructions for operating and servicing the Item of Supply - then the terms of point 6 , point 7 and point 8 shall apply, and shall be deemed to exclude any and all other rights of the customer.

8.2. The supplier shall only be liable - on whatever legal grounds - for damage other than that found to affect the goods supplied hereunder themselves, if the damage has been caused by intent or gross negligence on the part of the owner/its executive bodies or senior managers, in the case of negligent injury to life, body or health, in the case of defects concealed fraudulently or the absence of which the Seller has expressly guaranteed, and, if the goods supplied are found to be defective, to the extent the Seller is liable for personal injury or damage to property for private use under the Product Liability Act.

8.3. Further liability, particularly for substitution of slight negligence, except in case of minor personal injuries, is excluded.

8.4. Any reimbursement for consequential damages, lost profit, financial losses, unrealized savings, loss of interests and damages arising from third-party claims against the seller is excluded.

8.5. The amount of liability is limited in all cases to the total price, which the customer paid the supplier for the damage causing delivery item. If there is no total price, the liability shall be limited to the total amount of the charges rendered, offset and paid to the supplier within a year.

8.6. The contractor is liable for all damages caused by his assistants and/or employees under the rules of the vicarious liability, only insofar as the defect was caused by a grossly negligent act, which was inevitably necessary for the fulfillment of the performance obligation.

8.7. Further claims are excluded.

### **9. Limitation**

9.1. Any demands of the customer, which shall be claimed on whatever legal grounds, expire by limitation of time after 12 months.

### **10. Software usage**

10.1. Providing that software is included within the scope of delivery, the customer will be granted a non-exclusive entitlement to utilization of the delivered software including the documentation. It shall be transferred exclusively for use on the delivery item intended for this purpose. The use of the software on more than one system is prohibited.

10.2. The customer may only reproduce, edit and translate the software to the legal admissible extent (Sections 69 a ff. of the German Copyright Law) or convert it from the object code into the source code. The customer undertakes not to remove any manufacturer's details - including but not limited to references to copyright - or to change such details without the supplier's prior express consent.

10.3. All other rights to the software and the documentation including copies thereof shall remain with us or with the software supplier. The allocation of sublicenses shall be prohibited.

**11. Additional costs for rectification in foreign countries**

11.1. In case of rectifications on the delivery items, which were already send to the foreign customer, the customer shall bear the additional costs, which arise due to the rectifications in a foreign country, especially the additional costs for the provision of technicians and assistants of the supplier.

**12. Applicable law, jurisdiction**

12.1. Only Austrian law applies to the order, its performance, and the resulting rights to claims. The application of the UNCITRAL United Nations Convention on Contracts for the Sale of Goods, as well as the referral standards of the Austrian IPRG is excluded.

12.2. Place of fulfillment is Graz, Austria.

12.3. All disputes about the validity of the contract, the contract itself and termination of the contract shall be declared competent only to the court for commercial matters, which is responsible for the number of disputes, in Graz, Austria.