

## 1 General

- 1.1 The following General Terms and Conditions ('GTCs') apply to the sale and/or creation of technical products ('deliveries and services') by KKS Ultraschall AG, 6422 Steinen ('KKS') and shall be binding if declared to be applicable in the quotation or in the order confirmation or if the parties have agreed them in writing or some other way. Any other conditions on the part of the customer shall only apply if they have been explicitly accepted by KKS in writing.
- 1.2 Any agreements reached in connection with the contract and any legally relevant declarations made by the parties shall only apply if in written form.

## 2 Offer, order, and conclusion of the contract

- 2.1 Offers, brochures, and catalogues or any other quotations from KKS are non-binding. In addition, illustrations, descriptions, drawings, dimensions, weights, etc. should be treated as approximations and are no guarantee of attributes.
- 2.2 All rights in respect of documents shall remain with the party which issued them and may not be passed on to a third party.
- 2.3 The order placed by the customer represents a binding offer, which KKS may accept within 14 days by sending an order confirmation. The contract shall take effect with this order confirmation. Any modifications to orders require the written consent of KKS and may incur additional costs, which shall be paid by the customer. Any cancellation before the order confirmation shall result in an administrative fee. Following the order confirmation, cancellation or withdrawal is only possible if KKS is indemnified in full (an administrative fee at the least).
- 2.4 The following are considered an integral part of the contract in the order of precedence shown: the order confirmation and any enclosures, the present GTCs, and the order form.
- 2.5 The services to be provided by KKS are definitively set out in the order confirmation and any enclosures. KKS is entitled to make modifications which represent improvements, providing these do not lead to any increase in price.
- 2.6 If any drawings, plans, software, or other technical documents are issued, the customer shall acknowledge any property rights and other rights KKS may have in respect of these. Any such documents shall be treated as confidential and may not be made available to a third party without the prior written consent of KKS. They may only be used for the purpose for which they were issued and only to the extent required for fulfilment of the contract. Following termination of the contract, they shall be returned to KKS, if it requests this, or destroyed.
- 2.7 The provisions and standards applicable at the place of domicile of KKS in respect of operating safety and/or the prevention of illness and accidents shall apply. Specific provisions applicable in a country of destination or any other safety measures require explicit agreement in order to be observed.

## 3 Prices and payment conditions

- 3.1 The prices agreed are fixed prices and are applicable for 6 months following conclusion of the contract. If delivery only takes place after 6 months have passed for reasons for which the customer is responsible, KKS shall be entitled to charge the prices applicable on the day of delivery. The right is reserved to adjust the price in the event of modifications to orders.
- 3.2 Providing nothing else has been agreed, KKS's prices shall be taken to be in Swiss francs including VAT, ex works from KKS in Steinen, but excluding packaging, delivery, insurance, customs duties, levies and other ancillary costs, or any

deductions. For all orders, payment of the purchase price shall be made in the following instalments unless anything else has been agreed:

- One third following receipt of the order confirmation
- One third after two thirds of the agreed delivery period have passed
- One third when the goods are ready to be despatched

3.3 In each case, payments shall be made within a period of 30 days of the event triggering the payment (order confirmation, time passed, readiness for despatch). In the event of late payment, the full amount concerned shall become due and the customer shall be in default for the full amount, without any warning being required, and obliged to pay default interest of 5% per annum and for any loss or damage resulting from the default (maximum amount) in accordance with the table relating to loss or damage for default published by the Verband Schweizerischer Inkassounternehmen (Association of Swiss Collection Agencies – see: <http://www.vsi1941.ch/verzugsschadentabelle.html>). The right to compensation for any other loss or damage is reserved.

3.4 If agreement has been reached for payment to be made by bill or exchange, the customer shall bear the cost of the discount, tax, and collection expenses involved.

3.5 Payment dates shall also be observed if transport, delivery, installation, commissioning, or acceptance of deliveries or services are delayed or rendered impossible for reasons for which KKS is not responsible or if non-essential parts are missing or some kind of rework proves to be necessary which does not prevent the deliveries being used.

3.6 If the down payment or the securities to be provided upon conclusion of the contract are not forthcoming as stipulated in the contract, KKS shall be entitled to adhere to or withdraw from the contract and demand compensation for any loss or damage in either case. If the customer is in arrears with any subsequent payment for whichever reason or KKS has serious grounds in the light of circumstances occurring after the conclusion of the contract to fear not receiving payments from the customer in full or on time, KKS shall be authorised without any restriction of its statutory rights to suspend any further performance of the contract and withhold deliveries.

## 4 Delivery

4.1 The agreed delivery period shall begin as soon as the contract has been concluded, the various official formalities such as import, export, transit, and payment authorisations have been arranged, the payments due at the time of ordering have been made, and any securities have been provided, and as soon as the main technical points defined by KKS have been resolved and the customer has fulfilled all its contractual or non-contractual obligations towards KKS. The delivery period shall be deemed to have been observed if notification of readiness for despatch has been sent to the customer before it has expired.

4.2 The delivery period shall be extended accordingly:

- a) if KKS does not receive in time the information it needs to fulfil the contract or if the customer subsequently amends it and thereby causes deliveries or services to be delayed;
- b) if hindrances occur which KKS cannot avert despite exercising due care, regardless of whether these apply to KKS, the customer, or a third party. These hindrances may be things like epidemics, mobilisation, war, uprisings, significant disruption of operations, accidents, industrial disputes, late or defective supply of the necessary raw materials, semi-finished, or finished products, rejection of important workpieces, official interventions or omissions, or natural phenomena;

c) if the customer or a third party is behind schedule with the work it has to perform or in default in terms of fulfilling its contractual obligations, particularly if the customer fails to comply with payment conditions.

4.3 The customer shall be entitled to claim compensation for default in respect of delayed deliveries, providing it can be shown the delay was the fault of KKS and the customer can provide proof of loss or damage as a result of this delay. If the customer is provided with a remedy in the form of replacement delivery, then the entitlement to compensation for default shall cease.

Compensation for default shall be equal to a maximum 0.5% for each full week of delay – subject to a total of 5% – based on the contractual price of the delayed (partial) delivery. Compensation for default shall also be restricted to the proven loss or damage sustained by the customer. No entitlement to compensation for default shall apply during the first 2 weeks of the delay. Any further compensation for loss or damage is excluded.

Once the maximum compensation for default has been reached, the customer shall allow KKS a period of grace and provide notification of this in writing. If this period of grace is not observed for reasons for which KKS is responsible, the customer shall be entitled to refuse acceptance of the delayed (partial) delivery. If (partial) acceptance would not be reasonable for it in commercial terms, it shall be entitled to withdraw from the contract and demand reimbursement of any payments already made, with any deliveries made being sent back in return.

4.4 If a fixed deadline is agreed as opposed to a delivery period, this shall be treated as if it were the last day of a delivery period; points 4.1 to 4.3 shall apply by analogy.

4.5 Any delay in terms of deliveries or services shall not give the customer any rights or entitlements beyond those explicitly stated in this point 4. This restriction shall not apply to any unlawful intent or gross negligence on the part of KKS, although it shall apply to any unlawful intent or gross negligence on the part of auxiliary persons.

## 5 Packaging, transport, and insurance

5.1 Packaging shall be arranged by KKS at the expense of the customer and shall not be taken back. If, however, the packaging has been marked as belonging to KKS, the customer shall return it, carriage paid, to the place of despatch.

5.2 Transport shall be arranged at the expense and at the risk of the customer. The customer shall address any complaints to the last carrier, providing it has received the deliveries or shipping documents. The obligation to provide notification of defects (point 8.1) remains unaffected by this.

5.3 The customer is entirely responsible for insuring deliveries at its own expense, even though the relevant policy may be taken out by the supplier subject to explicit agreement to this effect.

## 6 Reservation of ownership

6.1 KKS shall remain the owner of all its deliveries until it has received payment in full in accordance with the contract.

6.2 The customer is obliged to cooperate with any measures required to protect the property of KKS; in particular, it shall authorise KKS, upon conclusion of the contract and at the customer's expense, to arrange for an entry or notification regarding reservation of ownership to be made in public registers, books, or the like in accordance with the relevant national laws and take care of any associated formalities.

6.3 The customer shall at its own expense, and for the duration of reservation of ownership, maintain the condition of the items delivered and insure them in favour of KKS against theft, breakage, fire, water, and other risks. In addition, it shall take all measures to ensure that KKS's ownership interest is neither impaired nor revoked.

## 7 Transfer of benefits and risks

7.1 Benefits and risks shall be transferred to the customer upon notification of readiness for despatch.

7.2 If despatch is delayed at the request of the customer or for other reasons for which KKS is not responsible, it shall be the responsibility of the customer to arrange storage and insurance for the deliveries at its own expense and at its own risk.

## 8 Warranty

### 8.1 Notification of defects

8.1.1 The customer shall inspect deliveries and services as soon as this is feasible in the usual course of business. The customer may also request joint acceptance testing, subject to a fee. A detailed list of any defects shall be sent to KKS without delay by registered mail ('notification of defects'). If it fails to do so, the deliveries and services shall be deemed to have been approved. Delivery and service shall also be deemed to be free of defects if the customer makes use of deliveries or services from KKS.

8.1.2 The only guaranteed attributes are those explicitly referred to as such in the order confirmation or the specifications. The guarantee shall apply until the warranty period expires, but no longer. If acceptance testing has been agreed, the guarantee shall be deemed to have been satisfied if this testing has provided evidence of the relevant attributes.

### 8.2 Remedy of defects

8.2.1 KKS shall have a right to remedy defects in any event. Remedy of defects, once notification of defects has been provided, shall be performed by KKS or persons it has nominated within a reasonable period of time consistent with the ordinary course of business.

8.2.2 If, following remedy of defects, the customer still feels the deliveries and services are defective, it shall inform KKS of this immediately in the form of a further detailed notification of defects via registered mail. KKS shall remedy the defects for a second time within a reasonable period (see point 8.2.1). Following this remedy of defects, joint acceptance testing shall be performed unless anything else has been agreed:

- KKS shall inform the customer of the times it or its representative can participate in acceptance testing.
- A log shall be drafted in respect of acceptance testing, which shall be signed by the customer and KKS or their representatives.
- If any defects or deviations from the contract are relatively insignificant, the customer may reduce the price to reflect the impairment. Withdrawal from the contract or any entitlement to compensation for loss or damage shall be excluded.
- If the order is associated with such significant defects or deviates so far from the contract that it cannot be used by the customer, it may refuse it. Refusal to accept shall be excluded in the event of partial deliveries or if the delivery involves plant erected on customer premises whose removal could not be performed without disproportionate inconvenience. In such cases, the customer shall only be entitled to a reasonable price reduction. Any entitlement to compensation for loss or damage shall be excluded.

- Acceptance testing shall be deemed not to have identified any defects if acceptance testing is not performed at the scheduled time for reasons for which KKS is not responsible or if the customer refuses to sign an acceptance testing log drafted in accordance with point 8.2.2.

8.3 The warranty period shall last for 24 months. It shall begin upon notification of readiness for despatch or when acceptance of deliveries or services is agreed or, if KKS is also taking care of installation, once this is complete. If despatch, acceptance, or installation are delayed for reasons for which KKS is not responsible, the warranty period shall end 28 months following notification of readiness for despatch, but no later.

8.4 Exclusion of warranty

8.4.1 The warranty shall expire immediately if the customer or a third party make any inappropriate modifications or repairs or if the customer, in the event of a defect, does not immediately take all appropriate measures to mitigate any loss or damage, inform KKS without delay, and give it the opportunity to remedy the defect.

8.4.2 Excluded from the warranty is any loss or damage which cannot be shown to be the result of poor materials, faulty construction, or defective design as may occur, for example, as a result of normal wear, defective maintenance, failure to observe operating instructions, excessive stress, unsuitable operating equipment, chemical or electrolytic influences, construction or installation work not performed by KKS, or as a result of any other reasons for which KKS is not responsible.

8.4.3 KKS provides no warranty for deliveries or services from subcontractors nominated by the customer.

## 9 Liability

9.1 Any liability claims of the customer in respect of KKS shall be waived unless they have been explicitly acknowledged in writing.

9.2 Any cases of breach of contract and their legal consequences and any claims of the customer, regardless of the legal grounds on which they are based, are definitively governed by these GTCs. In particular, any entitlement, unless explicitly stated, to compensation for loss or damage, abatement, revocation of the contract, or withdrawal from the contract is excluded. Under no circumstances shall the customer be entitled to compensation for any loss or damage not associated with the delivery item itself, such as loss of production, loss of use, loss of orders, lost profit, or any other indirect or direct loss or damage.

9.3 This exclusion of liability shall not apply to any unlawful intent or gross negligence on the part of KKS, although it shall apply to any unlawful intent or gross negligence on the part of auxiliary persons.

## 10 Concluding provisions

10.1 Any agreement, including this provision, may only be modified or revoked in writing.

10.2 Should a provision in this agreement prove to be wholly or partly ineffective, the parties shall replace this provision with a new agreement which comes as close as possible to its legal and economic intention. The remaining provisions shall remain unchanged.

10.3 All disputes arising from or in connection with delivery or service, including any disputes relating to materialisation, binding effect, supplementation, and termination, should be governed exclusively by the **ordinary courts in the place of domicile of KKS**.

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10.4 All contracts between KKS and the customer shall be governed by **Swiss law** (excluding Swiss international private law and international treaties, particularly the Vienna Convention).

The content of these General Terms and Conditions corresponds to the edition of 10.07.2015.