

KIS Antriebstechnik GmbH & Co. KG – General Terms and Conditions of Sales and Delivery – GTCSD

1. General - Scope

- 1.1 The General Terms and Conditions of Sales and Delivery of KIS Antriebstechnik GmbH & Co. KG (hereinafter referred to as the GTCSD KIS) shall apply to all contracts in which the company KIS Antriebstechnik GmbH & Co. KG (hereinafter referred to as KIS) acts as a seller and the other contracting party acts as a buyer.
- 1.2 The GTCSD KIS shall apply exclusively in legal transactions with entrepreneurs (*Unternehmer*) within the meaning of § 310 (1) of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*). We do not recognize any terms and conditions of business of the buyer that deviate from the GTCSD KIS unless we have expressly agreed to their validity in text form (*Textform*).
- 1.3 The INCOTERMS® 2020 are decisive for the interpretation of trade terms.

2. Offer - Offer Documents

- 2.1 Our offers are subject to change and non-binding, as are any representations, designations, technical specifications of our products on websites, brochures or in other media.
- 2.2 All agreements, conclusions, amendments, supplements or ancillary agreements are only binding for us if they have been confirmed by us in text form.
- 2.3 If we confirm the content of an enquiry by the buyer, by whatever means (electronically, by telephone or in any other way), by sending the buyer the type designation and technical and commercial details by means of a data sheet, this shall constitute our offer, which is directed towards the conclusion of the contract with the inclusion of our GTCSD KIS. We reserve the right to make technical and other changes in technical specifications, shape, colour or weight within the scope of what is reasonable / usual tolerances.
- 2.4 The offer is subject to change and requires acceptance by the buyer in text form.
- 2.5 In the event of verbal contract negotiations, the contract shall also be concluded by means of a letter of confirmation sent by us, subject to the exclusive application of our GTCSD KIS, unless the buyer immediately objects to the conclusion of the contract in text form.
- 2.6 The conclusion of the contract is always subject to our correct and proper self-delivery, unless we are responsible for the failure of self-delivery.
- 2.7 We reserve all property rights, copyrights, rights of use and exploitation to illustrations, drawings, calculations and other documents. This also applies to such written documents which are not expressly designated as confidential. The buyer must obtain our express consent in text form before any disclosure to third parties.
- 2.8 Claims and rights of the buyer arising from our contractual relationship are neither assignable nor pledgeable.

3. Prices and Terms of Payment

- 3.1 Unless otherwise stated in our offer or order confirmation, our prices are ex works (*ab Werk*) (INCOTERMS® 2020), excluding packaging, which will be invoiced separately.
- 3.2 All prices are net prices excluding taxes, customs duties and other charges as well as the costs for packaging and transport.
- 3.3 We shall only grant a discount by agreement; however, the prerequisite for a discount is the settlement of our other due claims. The date of the value date is decisive.
- 3.4 Offsetting as well as the exercise of a right of lien and retention against our claims shall only be permissible with claims that are due and have been acknowledged by us or have been declared final and absolute by a court of law.
- 3.5 Unless otherwise stated in the offer or in the order confirmation, the net purchase price (without deduction) is due for payment within 30 days from the invoice date.

The statutory rules concerning the consequences of default in payment shall apply.

- 3.6 We reserve the right to change our prices appropriately, i.e. in the ratio in which cost reductions or cost increases occur after conclusion of the contract, in particular due to collective wage agreements or changes in the price of materials. The ratio of labour or material costs to the total cost expenditure shall be decisive. We shall provide evidence of costs and proportions to the customer on request.
- 3.7 We reserve the right to make deliveries only against advance payment.
- 3.8 A surcharge of EUR 60,- net shall be charged for the provision of a certificate of origin.

4. Delivery Time

- 4.1 A delivery time stated by us does not begin before clarification of all technical questions, after approval of drawing and / or data sheet by the buyer in text form.
- 4.2 Compliance with our delivery obligation further presupposes the timely and proper fulfilment of the obligations, in particular any cooperation and provision obligations of the buyer. The plea of non-performance of the contract (*Einrede des nichterfüllten Vertrages*) remains reserved.
- 4.3 If the buyer is in default of acceptance or violates other duties to cooperate, we shall be entitled to claim liquidated damages in the amount of 25% of the net order value to compensate for the damage caused by the delay, unless the buyer is not responsible for the breach of duty. The buyer shall be at liberty to prove that we have suffered less or no damage. Further claims or rights, in particular to fulfilment, remain reserved.
- 4.4 If the conditions of 4.3 are met, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the Buyer at the time when the buyer is in default of acceptance or debtor's delay (*Schuldnerverzug*).
- 4.5 A transaction for delivery by a fixed date (*Fixgeschäft*) requires our confirmation in text form and the express designation as a fixed date. The buyer must have pointed out the special significance of the date to us when placing the order.
- 4.6 We shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract for which we are responsible - any fault on the part of our representatives or vicarious agents is attributable to us - our liability for damages is limited to the foreseeable, typically occurring damage.

5. Transfer of Risk/ Shipping/ Quantities

- 5.1 Unless otherwise agreed, delivery "ex works" is agreed. Delivery shall be deemed to have taken place as soon as we have notified the buyer in text form that the purchased item is ready for collection by the buyer (INCOTERMS® 2020).
- 5.2 The goods shall be shipped at the risk of the buyer.
- 5.3 INCOTERMS® 2020 shall apply to the shipment of the purchased goods. At the buyer's request, we shall select the forwarding agent or carrier. Delivery costs shall be borne by the buyer. If the shipping method is not specified, we do not give any guarantee for the cheapest shipping method. The selection of the forwarder or carrier shall be made with the care of a prudent businessman.
- 5.4 If the loading or transport of the goods by the buyer is delayed after a request for collection, we shall be entitled to store the goods at the buyer's expense and risk, to take all measures deemed necessary for their preservation and to charge them to the buyer without prejudice to his continuing right and obligation to collect the goods. The same shall apply if goods notified as ready for dispatch are not collected within three days after notification of readiness for dispatch. Further rights to compensation for damages remain unaffected.
- 5.5 The DIN standards (*DIN-Normen*) apply for compliance with specified dimensions. Otherwise, we state dimensions and weights in our offers and order confirmations to the best of our knowledge. Compared to the order quantity, an excess or short delivery of up to 10% is

- permissible for serial productions. Partial deliveries are permissible. The weights and delivery quantities stated in our delivery notes and invoices shall be decisive for invoicing.
- 5.6** INCOTERMS® 2020 shall apply to the transfer of risk (*Gefahrenübergang*). We are not obliged to insure the delivery item for transport to the buyer without a separate agreement. This also applies if we have selected the forwarder or carrier.
- 6. Multiple Deliveries**
- 6.1** The GTCSD KIS also apply to multiple delivery contracts (*Sukzessivlieferungsverträge*) between the buyer and KIS.
- 6.2** The call-off quantities and deadlines agreed in such a contract are binding for the buyer. If he does not accept them or does not accept them on the agreed date, he shall be in default of acceptance.
- 6.3** If the buyer has not called off the agreed quantity by the end of the final deadline, KIS may set the buyer an extended acceptance period of up to three months.
- 7. Liability for Defects / Warranty**
- 7.1** § 377 of the German Commercial Code (*Handelsgesetzbuch - HGB*) shall apply to the assertion of claims for defects. The buyer must immediately inspect the delivered goods for deviations in quality and defects and notify us in text form of any recognisable defects within a period of two working days from receipt of the goods. Hidden defects must be reported to us within a period of two working days from discovery, insofar as these could not have been detected and reported within the aforementioned period during proper inspection of the goods.
- 7.2** Insofar as there is a defect in the purchased item, we shall be entitled to supplementary performance in the form of rectification of the defect or delivery of a new item free of defects.
- 7.3** We shall be liable in accordance with the statutory provisions insofar as the buyer asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentional breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- 7.4** We shall be liable in accordance with the statutory provisions if we culpably breach a material contractual obligation; however, even in this case, liability for damages shall be limited to the foreseeable, typically occurring damage.
- 7.5** Insofar as the purchaser is otherwise entitled to compensation for damage instead of performance (*Schadenersatz statt der Leistung*) due to grossly negligent or intentional breach of duty, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 7.6** Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the German Product Liability Law (*Produkthaftungsgesetz - ProdHaftG*).
- 7.7** The limitation period for claims for defects is twelve months, calculated from the transfer of risk.
- 8. Force Majeure**
- In the event of force majeure and other unavoidable events, we may restrict delivery for the duration of the effects or withdraw from the contract in whole or in part. Such events of force majeure shall include, in particular, labour disputes, breakdowns, repairs that cannot be postponed by us or our suppliers, official measures of any kind – including pandemic-related measures such as plant closures – interrupted, delayed or restricted supply of raw and auxiliary materials, water - subject to the reservation of self-supply with the energy carriers electricity, gas, oil and district heating - as well as a lack of means of transport, traffic difficulties, war, riot and the like, as well as any other unavoidable event.
- 9. Total Liability**
- 9.1** Any further liability for damages than provided for in section 7 is excluded - irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages arising from fault upon conclusion of the contract (*culpa in contrahendo*), due to other breaches of duty or due to tortious claims for compensation for property damage in accordance with § 823 BGB.
- 9.2** The limitation according to 7.4 shall also apply insofar as the buyer demands compensation for useless expenditure instead of a claim for compensation for damage, instead of performance.
- 9.3** Insofar as liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages of our bodies, employees, representatives and other vicarious agents.
- 10. Reservation of Title and Default in Payment**
- 10.1** We retain ownership of the purchased item until receipt of all payments from the delivery contract and from further claims from the business relationship against the buyer. In the event of conduct by the buyer in breach of the contract, in particular in the event of default in payment, we shall be entitled to take back the object of sale. The act of taking back or the demand for taking back does not constitute a declaration of withdrawal.
- 10.2** The buyer shall be in default at the latest after 30 days from the invoice date without reminder. If this payment deadline is exceeded, the buyer may no longer sell the goods owned or co-owned by us and is obliged to provide us with securities. The same applies if we assert justified doubts about the creditworthiness of the buyer. Without prejudice to other claims for default of payment, we shall be entitled to interest on our claims from the due date at a rate of 9 percentage points above the base rate. The buyer shall grant us a lien on the material handed over to us for the execution of the order and on claims in lieu thereof as security for all present and future claims arising from the business relationship with him. If the buyer is in default of payment, if there is a credit default or if we have taken back the item, we are authorised to utilise it, whereby the utilisation proceeds shall be credited against the buyer's liabilities - less reasonable utilisation costs. Further claims or rights remain reserved.
- 10.3** If ownership has not yet been transferred, the buyer is obliged to treat the object of sale with care and in particular to insure it adequately at replacement value against fire, water and theft at his own expense. Insofar as maintenance and inspection work is required, the buyer must carry this out in good time at his own expense and provide evidence of this at our request.
- 10.4** In the event of seizures or other interventions by third parties, the buyer must notify us immediately in text form. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action in accordance with § 771 of the German Code of Civil Procedure (*Zivilprozessordnung - ZPO*), the buyer shall be liable for the loss incurred by us.
- 10.5** The buyer is entitled to resell the object of sale in the ordinary course of business; however, he already now assigns to us all claims in the amount of the final invoice amount (in Germany: including VAT, hereinafter only the final invoice amount) which accrue to him from the resale against his customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The buyer remains authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the buyer meets his payment obligations from the proceeds collected, does not default on payment and, in particular, no application for the opening of composition or insolvency proceedings has been filed or payments have not been suspended. If this is the case, we may demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the associated documents and informs the debtors (third parties) of the assignment.

- 10.6** The processing or transformation of the object of sale by the buyer shall always be carried out for us. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount) to the other processed objects at the time of processing. In all other respects, the same shall apply to the object created by processing as to the object of sale delivered under reservation.
- 10.7** If the object of sale is inseparably mixed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (final invoice amount) to the other mixed objects at the time of mixing. If the mixing takes place in such a way that the buyer's item is to be regarded as the main item, it shall be deemed to be agreed that the buyer transfers co-ownership to us on a pro rata basis. The buyer shall keep the sole ownership or co-ownership thus created for us.
- 10.8** The buyer also assigns to us the claims to secure our claims against him which arise against a third party through the connection of the object of sale with a plot of land.
- 10.9** We undertake to release the securities to which we are entitled at the buyer's request insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released is ours.
- 11. Rights to Tools, Moulds and Models**
By payment of cost shares for tools, moulds and models, the buyer does not acquire any rights, neither ownership nor copyrights, rights of use or exploitation, to these.
- 12. Third Party Property Rights**
If property rights of third parties are violated during delivery according to drawings or other information of the buyer, the buyer shall indemnify us against all claims. This includes internal and external costs of legal defence.
- 13. Export, Import, Customs and Foreign Trade Law**
Compliance with all licensing obligations and notifications in relation to the goods with regard to (re-)exports or imports as well as customs regulations shall be the sole responsibility of the buyer. When obtaining any permits and making notifications in relation to the goods with regard to (re-)exports or imports as well as customs regulations, we shall act exclusively to fulfil our own obligations. In this respect, the buyer shall not be entitled to any claim, claim for performance or claim for damages against us.
- 13.1** In the event of collection of the goods by a buyer domiciled outside the Federal Republic of Germany or his agent and in the event of shipment to a foreign territory, the buyer shall be obliged to provide us with the export certificate required for tax purposes without delay. Otherwise, the buyer undertakes to pay the VAT rate applicable to deliveries within the Federal Republic of Germany.
- 13.2** In the case of deliveries within the EU, the buyer undertakes to provide us with proof of transfer in accordance with the respective VAT obligations immediately after delivery.
- 14. Consignment Warehouse**
- 14.1** Insofar as the buyer maintains a consignment warehouse for KIS, a purchase contract shall be concluded with KIS upon the removal of the consignment goods from the consignment warehouse by the buyer.
- 14.2** The consignment goods do not become the property of the buyer through delivery to the buyer. The buyer is obliged to store the consignment goods separately from other goods and to mark them as such.
- 14.3** KIS shall be entitled to inspect the consignment goods itself or through third parties at any time.
- 14.4** The buyer is entitled and, at the request of KIS, obliged to insure the consignment goods against fire, theft and damage by third parties for the account of KIS.
- 14.5** The buyer shall provide KIS with a list of the goods withdrawn from the consignment warehouse in the previous month by the 5th calendar day of each month at the latest. Shortages shall be borne by the buyer.
- 15. Arbitration Clause**
- 15.1** All disputes arising out of or in connection with this contract or concerning its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (*Deutsche Institution für Schiedsgerichtsbarkeit e.V. - DIS*), to the exclusion of the ordinary course of law.
- 15.2** The arbitral tribunal shall consist of three arbitrators.
- 15.3** The place of arbitration shall be Dortmund.
- 15.4** The language of the proceedings shall be German or English.
- 15.5** The applicable law in the matter is the law of the Federal Republic of Germany, excluding private international law and the UN Sales Convention.
- 16. Place of Performance**
The place of performance is the registered office of our company.
- 17. Severability Clause**
Should one or more of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions. The ineffective condition shall be replaced by an effective one which largely fulfils the economic purpose pursued with it.

KIS Antriebstechnik GmbH & Co. KG, January 2023