

# General Business Terms and Conditions of Sale of KUHN GmbH, Technische Anlagen\*

Franz-Kuhn-Strasse 1-3, 74746 Höpfigen (as of January 1, 2022)

## § 1 Scope of application

We enter into all contracts exclusively subject to the following terms and conditions, even if we do not make express reference to them in the future. Our customers acknowledge these terms and conditions no later than the time of conclusion of the contract. Deviations conflicting with these General Business Terms and Conditions of Sale shall only become part of the contractual content if we expressly acknowledge such deviations in writing. Even in cases where we express our willingness to acknowledge any deviating general business terms and conditions, our following proviso regarding retention of title is non-negotiable. Any conflicting terms of purchase on the part of our customers are subject to our express approval in writing in order to be legally effective.

## § 2 Offer and conclusion of contract

Our offers are without engagement with regard to price and availability. Unless expressly designated as binding, the documents accompanying our offer are only to be considered as approximations. Offers and cost estimates prepared by us must be treated as confidential. We reserve all rights to any drawings, plans, calculations, models, samples, etc. produced for the purpose of preparing any offers.

The contract shall be concluded subject to correct and timely delivery to us by our subcontractors. This applies only if we are not responsible for non-delivery, in particular where a matching offset transaction has been concluded with our subcontractor. The customer will be informed about the unavailability of service without delay. Any payments made will be refunded immediately.

## § 3 Prices

Our prices are quoted ex works – except as otherwise agreed – and exclude packaging. They are based on the cost factors existing at the time of preparation of the offer or of the order confirmation. We reserve the right to revise prices should the cost factors change prior to delivery. Value added tax shall be shown and charged separately.

## § 4 Order confirmation

Orders, arrangements, assurances and the like are subject to our express confirmation in text form to become legally valid. Any objections to our confirmations shall be submitted in text form without delay, at the latest within one week of service. Any orders placed by our customers shall be binding for us upon receipt of an order confirmation in text form acknowledgment or upon delivery on our part. Any drawings, plans, calculations, models, samples, etc. provided to our customer for the purpose of executing any orders shall remain our property and be returned to us upon execution of the order. These items may not be passed on to or brought to the attention of any third party.

## § 5 Delivery

### 5.1 General information

Delivery is carried out at the expense and risk of the customer. The risk of deterioration or loss shall pass to the customer no later than when the goods are loaded onto the relevant means of transport. Goods not accepted shall be stored at the expense and risk of the customer. Partial deliveries are permissible and shall be deemed to be separate deliveries. We reserve the right to choose the means of transport and the shipping route. However, we shall not be liable for choosing the cheapest means of transport. If the customer specifies a particular shipping method or shipping company, such customer is required to bear any extra costs that may arise. Free or freight-collect delivery without installation by us to a building site, a warehouse or any other location specified by the customer involves delivery without unloading. A requirement for this is a public thoroughfare capable of being used by heavy-duty vehicles. Unloading must be carried out by the customer without delay and in an appropriate manner. If delivery is delayed because our customer fails to accept delivery of the goods within 14 days of notification as ready for delivery, the risk passes to the customer from that day.

### 5.2 Delivery dates and deadlines

Any specifications of the time of delivery are without engagement. Delivery begins after completion of the work as soon as all construction and delivery details have been clarified and all prerequisites for delivery have been fulfilled by the ordering party. Unforeseeable exceptional circumstances shall release us from our obligation to deliver the goods. Any claims for damages arising from non-performance or late delivery are excluded unless they are deliberate or result from gross negligence on our part. If the customer is in arrears with its [payment] obligations to us, we shall not be bound to any delivery deadlines agreed.

## § 6 Warranty and defects

6.1 The customer is obliged to inform us of any defects, reported short-

falls or incorrect deliveries in writing and without delay, no later than within 5 working days after delivery, but in any event prior to processing or installation. Shipping damage must be reported to us at the time of delivery of the damaged equipment, and a complaint in writing made to the carrier. Any other complaints from the customer shall be excluded.

6.2 No alterations to the defective parts may be made without our express agreement, otherwise the customer shall forfeit all claims under the warranty. In the event of demonstrable defects, we have a choice of either repairing these free of charge or providing replacements upon return of the defective parts.

6.3 Our warranty against, or liability for, any defects shall no longer apply should our operating instructions not be fully observed. The customer shall have the burden of proving that operating instructions were followed at all times.

6.4 Without specific written agreement, we bear no responsibility that the goods and equipment supplied by us are in conformity with foreign regulations.

6.5 If no formal acceptance is required or specified, our deliveries and services shall be regarded as fulfilled upon acceptance or upon being put into operation.

6.6 We guarantee the warranted characteristics, the faultlessness and the functioning of goods, plants or parts thereof delivered, in accordance with the state of the art from time to time. Parts subject to wear are hereby excluded. The latest relevant version of the general conditions for products and services of the electrical industry shall apply to the electrical plant components in accordance with the version in force at the time of contracting with the customer.

6.7 The statutory limitation period for any claims arising from defects begins with the date of acceptance, however no later than 3 months after delivery.

6.8 We assume no liability for damage occurring for the following reasons:

Unsuitable or improper use, incorrect or improper assembly, which was not carried out by us, commissioning or repairs carried out by the customer or a third party, normal wear and tear, incorrect or careless handling, improper mode of operation, inadequate construction, failure to observe the operation and/or maintenance instructions/periods.

6.9 Should it turn out during the inspection of the damage that we are not responsible for the defects specified, we are entitled to invoice the costs arising from the inspection and/or repair, such as travel expenses, the fee for damage appraisal, engineer and technician costs, etc., based on our standard prices.

## § 7 Customer's entitlement to rescission

7.1 In the event of a delay in providing services attributable to us, the customer shall only be entitled to rescind the contract and explicitly threaten to refuse to take delivery after granting an adequate grace period, which has in the meantime lapsed.

Furthermore, the customer is entitled to terminate the contract if we culpably allow an adequate grace period to lapse although this was granted to us for rectification of defects or replacement regarding a defect for which we are responsible within these General Business Terms and Conditions of Sale. The customer is also entitled to terminate the contract should the rectification of defects or the delivery of the replacement not be possible, whether seen objectively or subjectively.

## § 8 Returns

Goods supplied by us will be taken back only if free from defects after prior written consent, return shipping charges prepaid, at the risk of the party returning goods to the extent that taking back the goods was previously agreed upon by us in writing. The value shall be credited less an appropriate share of costs for taking goods back. Taking back custom-produced goods or goods which were procured specifically for the customer is excluded in any event.

## § 9 Payment

### 9.1 Payment terms

Our invoices are payable within 14 days after the date of the invoice. Set-off of counter-claims is only permissible if acknowledged by us or finally adjudicated in a court of law. If an order is delivered in partial shipments, then billing shall also be in partial invoices, with the payment deadline beginning from the date of the invoice. Except as otherwise agreed, starting from a net order value of €20,000.00, the following terms of payment shall apply to invoicing:

- a) 30% upon placement of the order
- b) 60% after delivery
- c) 10% after commissioning, but no later than 1 month after delivery

## 9.2 Delay in payment; creditworthiness

In case of a delay in payment the default interest applicable by law from time to time shall be charged, starting from the date of the default, without a special notice of default having to be given to the customer. The charging of further damages arising from delay is not excluded by this. Our claims shall immediately become due without regard to agreed deadlines if circumstances become known to us that give reason to doubt the creditworthiness of the customer. In this case, we reserve the right to execute outstanding shipments and other orders only after payment of cash in advance.

## § 10 Retention of title

10.1 The goods supplied by us remain our property until they have been fully paid for.

10.2 In reciprocal commercial transactions the supplied goods shall remain our property until full payment of all claims existing against our customer on the date of the invoice. The customer is only entitled to the resale of goods in the normal course of business. The customer hereby assigns to us its claims arising from the resale. We hereby accept such assignment. At the latest in the event of default, the customer must provide us with the details of the debtor of the assigned claim. To the extent that the value of our existing items of collateral exceeds our claim by more than 20%, at the request of our customer or a third party adversely affected by our excess collateralization, we are obliged to release items of collateral at our own discretion.

10.3 When working on or processing our goods, we shall be deemed to be the manufacturer pursuant to Section 950 of the German Civil Code and the products shall remain our property at all times during processing. If third parties are also involved in processing, we are limited to co-ownership up to the amount of the value of the invoice of the goods subject to the retention of title. The ownership thus acquired shall be deemed to be reserved property.

10.4 Our customer must insure all goods supplied subject to retention of title against fire and theft at its expense and provide us with evidence of such insurance cover upon request. The claims of the purchaser against the insurance company for compensation are already assigned to us at this point.

10.5 In the event of delays or difficulties in payment, we are authorized to demand the return of goods delivered. Reclaiming of goods only constitutes rescission of the agreement if we expressly communicate this to our customer in text form. Otherwise, reclaiming of goods shall be for the purpose of collateral security for our claims. All transport and storage costs associated with reclaiming goods shall be at the expense of our customer. The same applies to any diminution in value or to disassembly costs.

## § 11 Statute of limitations

All claims of our customer, for whatever legal reason, shall lapse in twelve months unless the law stipulates a shorter limitation period.

The statutory periods shall apply to intentional or fraudulent behavior as well as to claims on the grounds of the German Product Liability Act (*Produkthaftungsgesetz*).

## § 12 Choice of law, validity, jurisdiction

The laws of the Federal Republic of Germany shall apply to the contractual relationship, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

The invalidity of individual contractual provisions shall have no effect on the validity of the remaining provisions thereof. Legal provisions shall take the place of the conditions which have become invalid. To the extent that minimum statutory provisions for nonmerchants apply, these shall take the place of these conditions.

The place of performance for shipment and payment is Höpfigen, Germany. If legally permissible, Mosbach Regional Court (*Landgericht*) shall be the place of jurisdiction for all disputes.

## § 13 Data protection

The customer is informed and agrees that, in compliance with statutory provisions, we may collect, store and process order-specific, goods-specific and personal data in our data processing systems.

\* The original German text shall be the governing version.