

Terms and Conditions of Sale and Delivery

Status February 2015

of Karl Heesemann Maschinenfabrik GmbH & Co. KG, Reuterstraße 15, 32547 Bad Oeynhausen, Germany, entered in the Commercial Register of the District Court Bad Oeynhausen under the number HRA 189, this company represented by Karl Heesemann Verwaltungs-GmbH, this company in turn represented by the director Christoph T. Giese.

§ 1 General - Scope of validity

1. Exclusively our Terms and Conditions of Sale and Delivery apply. We do not recognise any terms and conditions of the customer which contradict or deviate from our Terms and Conditions of Sale unless we expressly consent to their validity. Our Terms and Conditions of Sale and Delivery also apply where, in knowledge of deviating terms and conditions of the customer, we make delivery to the customer without reservation.
2. All agreements which are made between us and the customer must be made in writing in order to be effective.
3. Our Terms and Conditions of Sale and Delivery also apply for all future business transactions with the customer.

§ 2 Offer - Offer documentation

1. Our offers are non-binding and subject to change. In all cases, orders are only deemed to have been accepted after they have been confirmed by us in writing.
2. Minor deviations from the illustrations and markings contained in our public statements remain reserved, as are also changes which serve technical progress.
3. In case that sanding tests have been carried out in our laboratory or are intended to be performed, the sanding results can only be achieved in an industrial environment if all parameters (such as sanding material, machine settings and processed materials etc.) are identical with those of our laboratory tests.

§ 3 Prices - Terms and conditions of payment

1. Unless otherwise provided in the confirmation of order, our prices are quoted „ex works“ without shipping and packaging costs. Where we lay out these costs, the customer is under an obligation to reimburse us for the same upon the rendering of a corresponding invoice.
2. The statutory value added tax is not included in our prices. It is shown separately in the invoice in the statutory amount as at the date of issue of the invoice.
3. Should the customer fall into default of payment, we shall be entitled to demand default interest in the amount of eight percentage points above the basic interest rate, without prejudice to our right to assert a claim for further damage.
4. Should a customer who has been granted the right to make instalment payments fall into arrears of payment with an instalment, either in whole or in part, for longer than fourteen days, the entire remaining claim shall immediately become due and payable.
5. The customer shall only be entitled to exercise rights of set-off or withholding where its counterclaims are undisputed or have been judicially decided and are final and legally binding. Furthermore, it shall only be authorised to exercise a right of withholding in so far as its counterclaim is based on the same contractual relationship.

§ 4 Limitation of liability

1. In the event of any breach of fundamental contractual duties for which we are responsible, we shall be liable in a scope limited to the damage reasonably foreseeable and typical for the type of contract concerned. In all other cases, we shall only be liable in the case of deliberate intent or gross negligence. This exclusion shall not apply where the risk of damage is generally to be covered by third party liability insurance or product liability insurance, or for damage arising from injury to life, limb or health.

§ 5 Duty of delivery and acceptance

1. A pre-requisite for the commencement of any delivery period quoted or agreed by us is the clarification of all technical questions.
2. Compliance with our obligation of delivery necessitates the punctual and proper fulfilment of the obligations of the customer.
3. Where the performance to be provided by us falls due, the reasonable extension of time to be set us for the performance must amount to at least one month. Damages on account of delayed performance or subsequent performance may only be demanded from us if we are in default with fulfilment of the claim for longer than one month.
4. We may refuse to make the performance incumbent upon us if, following the conclusion of the contract, it becomes apparent that our claim to remuneration is jeopardised by the lack of the customer's ability to pay, unless the customer pays the purchase price or provides security for the same. § 321, para. 2, BGB [Bürgerliches Gesetzbuch – German Civil Code] applies correspondingly.
5. Should the customer fall into default of acceptance, or should it be in breach of any other duties of co-operation, we shall be entitled to demand the damage thereby incurred by us, including any additional expenses. In this case, the risk of any accidental loss or any incidental deterioration of the object purchased shall also pass to the customer at the point in time when it falls into default of acceptance.

§ 6 Passing of risk

1. Except as provided to the contrary in the confirmation of order, delivery ex works is agreed, so that risk passes to the customer upon delivery of the object to the carrier or freight forwarder or any other person or institution charged with the execution of the shipment.

§ 7 Warranty claims

1. A pre-requisite for any exercise by the customer of its rights on account of delivery of a defective item is that the customer has fulfilled its duties of inspection and notification of any defects in accordance with § 377 HGB [Handelsgesetzbuch – German Commercial Code].
2. In the case of material defects, we shall not be liable for any consequential damage arising from the fact that the object of purchase was only free from defects following successful subsequent performance.
3. The reasonable period to be set us for subsequent performance shall amount to at

least one month. In the case of subsequent performance, we shall have the choice between elimination of the defect and delivery of an item free from defects. We shall be under no obligation of subsequent performance in the case of insignificant material defects. A rectification measure shall not automatically be deemed to have failed after the second unsuccessful attempt. All expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are to be borne by ourselves except in so far as they are increased through the fact that the object of purchase has been brought to a site other than that to which the shipment or delivery was to be made in accordance with the agreements reached at the conclusion of the contract.

4. The customer may not rescind the contract on account of insignificant material defects. However, its right to claim a reduction in the purchase price remains unaffected. In all cases of rescission, the customer has also to pay compensation for any deterioration in the object of purchase which has arisen through its having been taken into service in accordance with the intended purpose.
5. Claims for damages may only be asserted subject to the conditions of § 4 of these Terms and Conditions of Sale and Delivery.
6. The foregoing limitations of the rights of the customer shall not apply in the case of the fraudulent concealment of a defect or in any case where a warranty has been given in regard to a specific quality or property.
7. Claims of the customer arising from the delivery of a defective item shall lapse by limitation one year following delivery of the item. This provision governing the period of limitation shall also apply for claims on account of failure to honour guarantees or on account of the lack of warranted properties. In cases of fraud or deliberate intent, the statutory limitation periods remain unaffected. The same shall apply for any damage arising from injury to life, limb or health.

§ 8 Security through reservation of title

1. We reserve title to the object of purchase up until receipt of all payments under the existing current account relationship (business relationship) with the customer. In the event of any conduct on the part of the customer in breach of the contract, in particular in the case of default in payment, we shall be entitled to demand the return of the object of purchase. The repossession of the object of purchase does not constitute any rescission of the contract unless we expressly declare the same in writing. Following repossession of the object of purchase we shall be authorised to realise the same. The proceeds of realisation, less reasonable realisation costs, are to be set off against the liabilities of the customer.
2. In the case of seizure or any other intervention by third parties, the customer shall notify us without delay in writing so that we can file third party proceedings.
3. The customer is entitled to re-sell the object of purchase in the ordinary course of business. However, it assigns to us already now all receivables in the amount of the final invoice sum (including value added tax) which accrue to it against its customers or third parties as a result of the re-sale. Even following the assignment, the customer remains authorised to collect these receivables. Our authority to collect the receivables ourselves remains unaffected thereby. We undertake, however, not to collect the receivables as long as the customer fulfils its payment obligations from the proceeds collected, does not fall into default of payment and, in particular, no application is made for the opening of any insolvency or composition proceedings in regard to its assets and the customer does not cease to make its due payments. Should any of these cases occur, we may demand that the customer disclose to us particulars of the receivable assigned and of the debtor thereunder, that it provides us with all details necessary in order to collect the same, hands over the pertinent documents and notifies the third-party debtor of the assignment.
4. Any processing or transformation of the object of purchase by the customer is in all cases carried out on our behalf. Should the object of purchase be processed together with other objects which do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the object of purchase to other processed objects at the time of the processing. In all other respects, the same shall apply for the item created through the processing as for the object of purchase delivered subject to reservation of title.
5. We undertake, at the demand of the customer, to release the security to which we are entitled in so far as the value of our security exceeds the receivables to be secured by more than 20 percent. The choice of the securities to be released lies with us.

§ 9 Measurements and description

1. In the case of custom-made items manufactured on the basis of a contract for work and labour in accordance with drawings supplied by the customer and/or upon its instructions, the customer alone shall be responsible for ensuring that the items to be delivered are suitable and fit for their intended purpose, comply with the statutory provisions and that no patent, utility model protection or other legal claims of third parties are infringed.

§ 10 Installation and assembly

1. The provision of installation and assembly personnel and the secondment of technicians, irrespective of whether a separate charge is made for them or whether their services are included in the agreed total price, is made on the basis of our separate Terms and Conditions of Assembly.

§ 11 Final provisions

1. The court venue is the place of our business address inland, Bad Oeynhausen.
2. Except as provided to the contrary in the confirmation of order, our place of business is the place of performance.
3. All contractual relationships shall be governed exclusively by German law.
4. Contractual rights may only be transferred to third parties by mutual agreement.
5. Should individual provisions of these Terms and Conditions of Sale and Delivery be or become invalid, the validity of the remaining provisions shall not be affected thereby. In place of the invalid provisions, a legally valid arrangement shall apply which most closely corresponds to the purpose pursued with the invalid provisions.