

## **General Terms and Conditions of Business and Delivery (Date Juli 2022)**

### **1. Applicability**

All deliveries, services and offers from Kessel inox GmbH are only undertaken as legal transactions with entrepreneurs (§ 14 German Civil Code) on the basis of our General Terms and Conditions of Business and Delivery. These also apply to all future transactions, even if not expressly agreed again. We expressly reject contradictory General Terms and Conditions. Deviations shall only be effective if they have been agreed to specifically and confirmed by ourselves in writing.

### **2. Offer**

Our offers are always subject to change. A purchase contract only exists once we have confirmed the order in writing. We reserve ownership of and copyright to samples, cost estimates, drawings and similar information of a physical and immaterial nature (including electronic versions). The customer may not share such documents with third parties. They must be returned to us on request.

Our offers remain binding for 90 calendar days. Prices or statements provided in brochures, catalogues, advertisements etc. are subject to change and non-binding. Our most recent offers apply in all cases. Any claims on the part of the purchaser resulting from our contractual relationship cannot be assigned without our consent.

We reserve the right to change designs for deliveries forming part of the contract if such changes relate to further technical developments. Major changes must not occur. This does not jeopardise the purpose of the contract. Details of the output, weight, dimensions and consumption of our machines and systems are subject to change. In order to be effective, verbal supplementary agreements and undertakings by sales staff must be confirmed in writing by us.

The customer undertakes to ensure that the necessary media, such as electricity, compressed air, water supply and drainage etc. are provided as detailed in our specification. The customer must also obtain any necessary official permits.

### **3. Prices**

Prices applying to offers/order confirmations are indicated as such and are charged in euros. The prices stated in our order confirmation apply plus the statutory level of VAT. Prices apply ex factory and do not include loading, packaging and transport. If the agreed delivery date is more than six months after conclusion of the contract, the prices applicable at the time when the goods/services are made available apply.

Should the cost of raw materials, labour, energy etc. change significantly after an offer is provided or a contract concluded, we shall be entitled to demand an appropriate price adjustment to reflect the changed costs if the goods or services are to be provided more than 4 months after the contract was concluded. We will provide evidence of this to our contractual partner on request. Interim invoices shall be raised for part deliveries. The clauses relating to price changes shall also apply if the purchaser asks for the delivery date to be extended at a later date.

The installation prices (and any flat rate prices agreed for installation) apply to normal working hours on working days within the 38-hour week. If the site or customer demands work during the evening or at the weekend, our applicable installation rate supplements apply.

Should work or commissioning be delayed due to circumstances brought about by the customer, the customer shall pay any additional costs incurred for waiting periods, daily allowances, accommodation and additional mileage.

#### 4. Payment

Unless otherwise agreed, our invoices shall be paid immediately net cash. A deposit shall be agreed for orders worth more than €15 000. Terms of payment: 1/3 upon receipt of order confirmation, 2/3 once the goods are supplied but 30 days after readiness for dispatch at the latest.

If there is a delay in payment, we shall be entitled to charge interest of 8 percent above the basic interest rate (§ 247 German Civil Code). This does not affect the right of Kessel inox GmbH to assert further claims for compensation. Our contractual partners are entitled to demonstrate that we have incurred less damages from the delay.

Cash discounts must be agreed in writing. If a cash discount is agreed, this is taken into account in the final invoice. It only applies however if all payments are made at the agreed times and there are no outstanding unpaid invoices. Cash discounts are not possible for installation work already undertaken.

Payment is only considered to be complete when the full amount is available to us. In the case of cheques, this is once the sum is credited without reservation. Discountable bills of exchange shall only be accepted following our express agreement and on account of performance. Subject to collection, any bills of exchange are posted on the day of maturity and are only considered as payment once finally discharged. The customer pays any costs associated with discounting and redemption.

The customer is only entitled to withhold payment or offset payment with counterclaims if his claims are found to be beyond dispute and legally effective.

#### 5. Delivery and delayed delivery

The delivery time is agreed on by the contractual parties; unless expressly agreed otherwise, it is however only a non-binding approximate time. Part deliveries are permitted if they can be deemed reasonable for the customer.

If we are to meet delivery dates, all commercial and technical issues must be clarified by the contractual parties and the buyer must have met all the duties incumbent on him, such as provision of the necessary official certificates or approvals, or payment. If this is not the case, the delivery time shall be extended by an appropriate period. This shall not apply if we are responsible for the delay.

Compliance with the delivery date requires us to be supplied with the correct goods at the correct time.

The delivery date shall be considered to be observed if the delivery item has left the supplier's factory or readiness for dispatch is reported by this date. If acceptance is required, unless acceptance

is refused for good reason, the acceptance date or alternatively notification of readiness for acceptance applies.

If dispatch and/or acceptance of the delivery item is delayed for reasons for which the customer is answerable, he shall be charged the costs resulting from the delay as of one month after notification of readiness for dispatch or acceptance.

If the delivery time cannot be observed due to force majeure, labour disputes or other events beyond our control, the delivery time shall be extended accordingly. We shall inform the customer as soon as possible should such a situation arise and once it is over.

After setting an appropriate new deadline, the customer may withdraw from the contract if we are not able to provide all goods / services before the transfer of risk. The customer may also withdraw from the contract if, in the case of an order, it becomes impossible to provide part of the delivery and he has a justified reason for rejecting the part delivery. If this is not the case, the customer must pay the contractual price for the part delivery.

The same applies if we are unable to deliver the items. Further claims, especially claims for compensation due to non-performance or untimely or incomplete performance, are excluded unless we or our management staff have acted with intent or gross negligence.

Should the customer assert his right to withdraw in an unauthorised manner, we shall be entitled to claim flat rate damages of at least €100, unless the customer can demonstrate that we have incurred no damage or considerably less damage. Alternatively, we are entitled to claim compensation from the customer for the damages actually incurred.

If any inability or impossibility of performance occurs while the customer is in default of acceptance or if the customer is solely or principally responsible for such an occurrence, he remains under obligation to make complete payment.

Should the customer be in default of delivery or acceptance, or should he violate other obligations to cooperate, we shall be entitled to claim for damages we incur and any additional costs. Moreover at the time of default of acceptance, the risk of accidental destruction or deterioration of the item is transferred to the customer.

## 6. Transfer of risk and acceptance

Risk, especially the transport risk, passes to the customer when the delivery item has left the factory. This also applies in the case of part deliveries or if we have taken on additional services, e.g. payment of dispatch costs or delivery and installation. If requested by the customer, we will insure the delivery against theft, damage from breakage, transport, fire and water, and other insurable risks, at the customer's cost.

If acceptance is needed, this decides the transfer of risk. It must take place immediately upon the acceptance date or alternatively once the supplier reports readiness for acceptance. The customer may not reject acceptance in the event of an insignificant defect.

Should dispatch and/or acceptance be delayed or not happen at all as a result of circumstances for which we are not answerable, the risk is transferred to the customer on the day readiness for dispatch and/or acceptance is reported. We undertake to take out insurance at the cost of the customer if requested.

## 7. Retention of title

Until all payment claims (including all payments relating to the current account balance) for our deliveries have been met, Kessel inox GmbH retains ownership of these goods (global retention). We retain ownership of all goods (retained goods) until they are paid for in full.

Should the customer breach the contract, in particular fall into arrears with payment, we shall be entitled to take back the goods after notice is given and the customer shall undertake to return them at his own cost. Assertion of the retention of title and distraint of the delivery item by ourselves shall not constitute withdrawal from the contract. The customer's obligatory right to ownership shall cease to apply if he falls into payment arrears.

Should the goods be returned to us, under consideration of the type of manufacture, we shall be entitled to claim either a flat rate free of at least €50, unless the customer can demonstrate that we have incurred no costs or costs considerably below this figure, or compensation for the cost actually incurred less expected savings or other possible purchases.

The delivery (retained goods) remains the property of Kessel inox GmbH. Processing or alteration is always undertaken on behalf of Kessel inox GmbH, but without any obligation on our part. Kessel inox GmbH is entitled to joint ownership of the new item created, in the ratio of the value of the goods supplied under the retention of title (invoice value) to the new item. In this case, the contractual partner shall store the item for us free of charge.

The contractual partner is entitled to resell the goods in our ownership (retained goods) in the ordinary course of business. However, he shall assign to us in advance all payments equivalent to our unpaid invoices which he receives from reselling the item to his customer or a third party. This applies regardless of whether the item is resold with or without processing. The contractual partner may still collect this outstanding payment even after assignment. Our right to collect the outstanding payment ourselves is not affected. We are however obliged not to collect the outstanding amount as long as the contractual partner fulfils his payment obligations from the earned revenue and does not fall into payment arrears and in particular there is no claim for opening insolvency proceedings or payments stop. Should one of the latter circumstances apply, we can demand that the contractual partner informs us of the assigned payments and the relevant debtors, provides all details required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Should third parties access the goods subject to retention of title, the customer must indicate our ownership and report this to us immediately..

Pledging as collateral or the transfer of ownership by the customer are not permitted. Third-party access to the goods subject to our retention of title must be refused. We must be informed immediately.

If the value of the securities due to us exceeds the total payment owed by the purchaser by more than 20 %, we undertake to release securities of our choice if asked to do so by the purchaser.

We are entitled to insure the delivery item at the cost of the customer against theft, damage from breakage, transport, fire and water and other damage provided the customer has not already taken out insurance and can demonstrate this.

An application to open insolvency proceedings shall entitle us to withdraw from the contract and to demand immediate return of the delivery item.

## 8. Liability for delivery defects

Subject to item 9, we shall be liable for material defects and defects of title relating to the delivery, to the exclusion of all further claims, as follows:

### a) Material defects

All those parts found to be defective as a result of circumstances in place before the transfer of risk – in particular due to an incorrect design, inferior materials or defective work – shall be repaired or a replacement delivered free of charge, the choice being ours. We must be immediately informed in writing should such defects be found. Replaced parts become our property.

Following agreement with us, the customer must make available the time and opportunity we require to repair or replace the delivery. If this is not done, we shall be freed of liability for any resulting consequences. The customer shall only be entitled to remedy the defect himself or have it remedied by a third party and claim from us compensation for any costs incurred in urgent cases where operational reliability is at risk and/or in order to prevent disproportionately high levels of damage. We must be notified of these circumstances.

Provided the complaint proves to be justified, of the costs incurred for repairs or replacement, we shall pay the costs of the replacement item, including dispatch, and the appropriate removal and installation costs. Furthermore, if justly demanded due to the location of the defect, this may also include the costs of any fitters and assistants required. We shall also only pay the costs of repair or replacement if such costs are not increased by the delivery item being taken somewhere other than the place of performance.

The customer has the right to withdraw from the contract in accordance with the provisions of law if, after taking into account statutory exceptions, we fail to meet an appropriate agreed deadline for repairs or replacement caused by a material defect or the subsequent performance fails.

If the defect is insignificant, the customer shall only be entitled to a reduced contract price. If the liability for defects relates to construction work in accordance with § 1 VOB Part A (German Construction Contract Procedures), the customer may reduce the contract price; withdrawal from the contract in this case is excluded.

We are not liable in the following cases in particular:

Inappropriate or improper use, incorrect installation and/or commissioning by the customer or a third party, natural wear, improper or negligent handling, incorrect maintenance, inappropriate equipment, improper construction work, unsuitable foundations, chemical, electrochemical or electric influences – unless caused by us.

If the customer or a third party undertakes improper repairs, the supplier shall not be liable for resultant consequences. The same applies to any changes to the delivery item made without our prior consent.

### b) Defects of title

(1) If use of the delivery item results in the infringement of commercial property rights or copyrights within Germany, we will at our own cost ensure that the customer is entitled to continued use or we will modify the delivery item in a way acceptable to the customer such that the said rights are no longer infringed.

If this cannot be done at an acceptable cost or within an acceptable timescale, the customer shall be entitled to withdraw from the contract. We shall also be entitled to withdraw from the contract under these conditions.

We shall also indemnify the customer from claims by the holder of the property rights which are indisputable or enforceable by law.

(2) The obligations stated in item 8. b. (1) are conclusive for cases of infringement of property rights or copyrights, subject to item 9. b.

They only apply if - the customer informs us immediately of the alleged infringements of property rights or copyrights,

the customer provides us with sufficient support in disproving the asserted claims and/or enables us to undertake modification measures according to item 8. b. (1),

we are granted the right to take all measures to counter the claims, including out-of-court settlements,

the defect of title does not relate to an instruction from the customer and

the legal violation was not the result of the customer modifying the delivery item without our consent or using it in a way contrary to the contract.

## 9. Liability

a) If we are responsible for the customer being unable to use the object delivered as stated in the contract as a result of our failing to implement or incorrectly implementing suggestions or advice provided before or after the contract was concluded or other plans forming part of contract negotiations and customer support or which are standard in trade or other contractual obligations, especially instructions for operating and maintaining the delivery object, the provisions in items 8. and 9. b. shall apply, to the exclusion of further claims by the customer.

Kessel inox GmbH assumes no liability for inadequate planning or lack of planning by third parties which are neither agents of Kessel inox GmbH nor appointed by Kessel inox GmbH for the purpose of consultancy or other specialist planning work (e.g. an architect appointed by the customer).

b) No kinds of claims for compensation or claims for reimbursement of costs may be asserted against Kessel inox GmbH or our agents, vicarious agents and legal representatives, provided they do not relate to actions of intent or gross negligence, or the infringement of key contractual obligations through negligence. This limitation on liability does not apply if the liability claim relates to fraudulent intent and/or an offered guarantee. We shall also be liable for ordinary negligence in the event of death, injury or damage to health for which we are responsible.

In all cases our liability as laid down in the German Product Liability Act (Produkthaftungsgesetz) shall remain unaffected. If Kessel inox GmbH violates a major contractual duty, our liability shall be limited to a reasonably foreseeable amount, typical for such contracts. Unless otherwise stated in the preceding items, the contractual partner may not make any other claims on any legal grounds.

#### 10. Limitation period

Customer claims relating to defects to the delivery item are limited to a period of 12 months. In the case of intentional or malicious behaviour and claims pursuant to the German Product Liability Act (Produkthaftungsgesetz), the statutory time limits shall apply. They shall also apply to defects to a construction or a delivery item which was used as part of a construction and caused this to become defective.

#### 11. Customer service

If repairs or servicing work is required which does not fall under warranty, we shall make our customer service available at the applicable chargeable rates. Customer service fitters are not authorised to provide warranty promises or to make any other commitments on our behalf.

#### 12. Data protection

All data shall be handled in compliance with the applicable statutory data protection provisions. In accordance with § 33 section 1 of the Federal Data Protection Act, the customer is hereby notified that his personal details will be stored in machine-readable form and processed by computer for contractual purposes and internal market research and marketing purposes. If necessary, the data will be shared with companies involved in processing the transaction. This also applies to creditworthiness checks. Data shall not be shared with third parties for any other reason.

#### 13. Applicable law, place of performance, place of jurisdiction

The terms and conditions of business and all legal relations between Kessel inox GmbH and the contractual partner are subject to German law to the exclusion of both the United Nations Convention on Contracts for the International Sale of Goods and the German conflict of laws.

The place of performance for the delivery of goods is our shipping point. The place of performance for payments and other services is the headquarters of Kessel inox GmbH.

Legal action for all disputes arising from this contractual relationship if the customer is a purchaser, a legal person in public law or special asset in public law should be brought at the court responsible for the headquarters of Kessel inox GmbH. We are however also entitled to bring action at the customer's headquarters.

#### 14. Severability clause

Should part of this contract or these General Terms and Conditions be ineffective, this shall not affect the effectiveness of the contract and General Terms and Conditions. Subsequent additions or amendments to the contract must be made in writing and confirmed by us. 04-08-2169-1-BR-sm (W19/April)