KIST + ESCHERICH

General Terms & Conditions of Delivery & Service

I) General information

1. Objective and personal scope of application

The following terms shall apply to all our deliveries and services, as well as to retrofitting, repairs, maintenance and provision of services (including additional services, e.g. proposals, planning aids, consulting) to entrepreneurs within the meaning of § 14 of the BGB [German Civil Code], to legal entities under public law and to special funds under public law. They do not apply to le-gal relationships with consumers within the meaning of § 13 of the BGB [German Civil Code]. Our General Terms of Delivery and Service can be viewed in the download pane of our website at the link https://www.kist-escherich.com, where they can then be printed or saved.

2. Priority of individually agreed terms

If and insofar as individually agreed terms are concluded, these take priority over the General Terms of Delivery and Service. With regard to matters that are not regulated in such individually agreed terms we have concluded with the purchasing party, these Terms of Delivery and Service shall additionally apply.

3. Preclusion of third-party terms and conditions

Any terms and conditions from the purchasing party that deviate from these present terms are hereby rendered ineffective. We are not bound by these terms and conditions even if we do not expressly repeat our objections to you after receiving them. Unless otherwise agreed, our terms shall be deemed to have been accepted when the order is placed or when the order confirmation is received. But at the latest when our delivery or service is acknowledged and accepted.

4. Effectiveness

Should individual provisions be or become ineffective, this shall not affect the effectiveness of the remaining provisions of these General Terms of Delivery and Service. In the event that a provision becomes ineffective, an effective provision which comes as close as possible to the eco-nomically intended purpose shall be deemed to have been agreed.

5. Text form

Unless otherwise agreed by means of an individually agreed term, deviations from the following terms, other amendments or supplements to the order must be agreed in text form (§§ 126b, 127 of the BGB [German Civil Code]).

6. Copyright, confidentiality

We reserve all proprietary rights and copyrights of illustrations, drawings, calculations, expertise and ideas that we have developed, and also of other documents. These documents may not be made accessible to third parties and may not be used for your own purposes and/or purposes outside the contract. This particularly applies to those documents that are marked as “confidential”.

II) Order

1. Confirmation of order in text form

Our quotes are not binding until an order placed on the basis of a quote (purchase order) is confirmed by us in text form. Each order (purchase order) is subject to our order confirmation in text form for it to be accepted as legally binding. If deliveries are made without prior order confirmation, our invoice shall also be regarded as an or-der confirmation.

2. Content of order

The content of an order exclusively concerns the technical specifications of the ordered deliveries and services that have been confirmed in text form in accordance with our quotes and order confirmations. We reserve the right to make ap-propriate technical and design-related changes to the ordered deliveries or services, provided that the technical functionality, normal use and the value of the delivery or service are not im-paired or are only minimally impaired and that these changes are considered reasonable by the purchasing party.

III) Service and delivery obligation

1. Condition of provision of goods from suppliers

For products that we do not manufacture our-selves, the contract shall be concluded subject to an accurate and

timely delivery from our suppliers, unless we are responsible for any non-deliveries or delays. The purchasing party shall be informed in a timely manner if a delivery is delayed or cannot be fulfilled.

2. Force majeure/disease outbreaks

If there is a long-term disruption due to circumstances for which we are not responsible and which could not have been foreseen, in particular as a result of force majeure, a strike, a lockout, import or export bans, transport restrictions, regulatory interventions, disease outbreaks (in particular, pandemics and epidemics), as well as the ensuing disruptions to production or similar, we are entitled to withdraw from the contract without any liability to damages. Due to the wide-ranging effects of pandemics and epidemics, particularly as a result of legislation passed by the state, lockdown regulations, production stop-pages, insolvencies of supplier companies, supply bottlenecks, delays in delivery, transport restrictions, import and/or export restrictions, high absence rate due to illness etc., as well as other cases of force majeure, there may be time delays in the manufacturing, commissioning and supply of the contractual delivery and/or service, for which the likelihood, extent and duration cannot be estimated. Agreed contractual dates and deadlines shall not be binding in the event of force majeure and/or the aforementioned circumstances and shall be subject to a reasonable extension, taking into account the duration of the disruption.

3. Partial delivery

Partial deliveries are permitted and are considered as independent deliveries with regard to payment and complaints.

4. Material adverse change of financial condition of the purchasing party

If, after the contract is concluded, there is a material adverse change in the financial condition and/or liquidity of the purchasing party or if such already existing circumstances become known after the contract is concluded, we may, at our discretion, withdraw from the contract or demand immediate payment of all outstanding in-voices, even if the invoice amounts were previously deferred in whole or in part by means of a bill of exchange. Material adverse changes would include the lowering of credit score by a credit reference agency, bills and cheques being noted/protested, garnishments, suspension of payments, insolvency proceedings being opened as well as the opening of insolvency proceedings being refused for lack of sufficient assets. In the event that we do not withdraw from the contract despite an adverse change to the financial situation, we will only supply each delivery upon full payment and only after full advance payment for orders with an equivalent value of more than € 10,000.00.

IV) Delivery date/deadline

1. General terms of delivery dates/deadlines

Unless otherwise agreed, our quoted delivery dates/deadlines are to be regarded as provisional and not yet binding estimates. If binding delivery dates/deadlines have been agreed, these shall be eligible for a reasonable extension if they cannot be met due to circumstances for which we are not responsible. The technical complexity is the defining criterion for whether an extension for deliveries and services is deemed reasonable, unless a shorter or longer period is reasonable in individual cases, taking into account the interests of both parties, or is agreed by mutual consent. The delivery deadline begins on the date of our written confirmation, but not before all details for executing the order and all other conditions to be met by the ordering party for the proper execution of the contract are clarified. The above also applies to delivery dates.

2. Drop dead dates

The agreement of binding drop dead dates or fixed delivery deadlines must be expressly stated as a drop dead date and is only binding if this has been agreed in text form.

3. Obligation to cooperate

The purchasing party is obligated to provide all data, documents and other information required to execute the contract when placing the order or at least immediately after placing the order. If the subject of the order is retrofitting, repairs, maintenance and/or servicing work, the purchasing party is obligated to provide accurate data for the technical condition of the machine or plant to be overhauled or repaired and to inform us in advance in writing of all components associated with our services. If preliminary technical work is required on the part of the purchasing party, this must be carried out on time and be free of defects. If such documents and data are not received on time, or if necessary preliminary work is not carried out on time and/or with defects still present, the purchasing party is not entitled to demand that delivery dates/deadline be adhered to. In this case, a claim for damages due to de-

lays is precluded. The delivery date/deadline shall be deemed to be reasonably extended.

V) Delivery date/deadline

1. Passing of risk (FCA clause)

Unless another delivery clause from the INCOTERMS 2020 has been expressly agreed with the purchasing party, the risk of loss and/or adverse change to the objects of the contract shall pass to the purchasing party as soon as the objects of the contract have been loaded onto the vehicle at our premises (FCA clause INCOTERMS 2020). This also applies if the shipment is made at our expense or with our vehicle. The shipment shall in all cases be at the risk of the purchasing party, even if prepaid delivery has been agreed.

2. Passing of risks with notice of readiness for shipment

If the shipment of the delivery is delayed at the request of the purchasing party or for reasons for which we are not responsible, the risk shall pass to the purchasing party upon notice of readiness for shipment.

VI) Prices

1. General pricing conditions

Our prices are ex-works plus packaging and statutory value added tax. Unless otherwise agreed, our prices for all deliveries and services, including those outside the European Monetary Union, are in Euros.

2. Packaging and packing material

The costs for packaging and packing material shall be borne by the purchasing party. The packaging and packing material is to be returned to us. The costs of the return transport shall be borne by the purchasing party. For deliveries out-side of Germany, the return of any of the packaging is not required.

VII) Delivery date/deadline

1. Payment deadlines/offsetting interest and costs

Unless otherwise agreed, the invoiced amounts are payable without deduction within 30 days of receipt of the invoice. All payments shall first be offset against interest and costs and then against the oldest claim. The purchasing party's right to determine the amount of the fee is waived in accordance with § 367 (2) of the BGB [German Civil Code].

2. Default interest, right to refuse performance

In the event of a delay in payment on the part of the purchasing party, the purchasing party shall pay interest on the outstanding debt at a rate of 9 percentage points above the base interest rate in accordance with § 247 of the BGB [German Civil Code], subject to the claim for further dam-ages caused by the delay. Furthermore, we shall be entitled to refuse to provide deliveries and services on the basis of subsequent orders until the outstanding invoices have been settled in full.

3. Payment of bills of exchange and cheques

Bills of exchange are only accepted upon express agreement and, in the same way as cheques, only as a means of payment and subject to acceptance in individual cases. Discounts and other expenses shall be borne by the purchasing party.

4. Other disturbances affecting service

The provision of contractual services is subject to the creditworthiness and solvency of the purchasing party. If a payment defaults, bills of ex-change or cheques are dishonoured, payments are suspended, procedures to settle debts are initiated, there is non-compliance of the terms of payment, a credit reference agency lowers the credit rating or circumstances exist where the creditworthiness of the purchasing party should be lowered, we shall be entitled at any time to make appropriate changes to the terms of the contract and, if after continued non-compliance with the terms of payment, to withdraw from the contract irrespective of any period that is agreed.

5. Right to set off and right of retention

The purchasing party shall only have a right to set off or a right of retention against our out-standing claims from the party's counterclaims, and only in the case of synallagmatic claims arising from the same legal relationship as the claim to set off or for claims which are now legally established or have been recognised in writing.

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VIII) Retention of title and security right of the entrepreneur

1. Agreement on simple and extended retention of title

The delivered goods (retained goods) shall re-main our property until all claims against the purchasing party arising from the business relation-ship have been settled. The purchasing party shall not acquire partial ownership of the object of the agreement through partial payments, but shall instead acquire the appropriate expectant rights. Bills of exchange and cheques shall only be regarded as payment once they have been honoured.

2. Extended retention of title

If we process or combine the object of the con-tract with other goods/products that do not be-long to us or the purchasing party forms a new uniform thing, we shall be entitled to co-ownership rights of the new object in proportion to the ratio of the value of the retained goods to the value of the other processed and/or incorporated goods at the time the goods/products are processed and/or combined. Our resulting co-ownership rights shall be deemed to be retained goods within the meaning of these provisions.

3. Extended retention of title/disposal and assignment of future claim

The purchasing party may only dispose of the products subject to our retention of title in the normal course of business and only if the party is not in default after settling all our claims arising from the business relationship. The purchasing party hereby assigns us its claims that arise from a resale of the retained goods by way of security for all our claims that arise from the business relationship. We hereby accept this assignment. If the retained goods are sold by the purchasing party together with other goods we do not own or goods we do not have co-ownership rights for, the claim from the resale shall only be assigned to us to the value of our retained goods. The value of the goods subject to retention of title shall be determined by the value in our invoices in each case. The purchasing party is entitled to collect claims assigned to us from the resale until they are revoked by us at any time.

4. Compromising the right to ownership

When a retention of title is effective, the purchasing party is prohibited from pledging goods or as-signing them by way of security. In the event of garnishments, seizures or other dispositions or interventions by third parties, in particular by way of enforcement of a judgement, the purchasing party must notify us immediately in writing.

5. Duty to return

If the purchasing party defaults in whole or in part when settling our claims, we shall be entitled to demand the return of the reserved goods at any time and to make other use of them, as well as to withhold outstanding deliveries, including in cases where we have not withdrawn from the purchase. Further notice or a further deadline is not required for this purpose. If we assert our rights to retention of title, this shall not be deemed a withdrawal from the agreement.

6. Releasing a security

If the value of the securities to which we are entitled in accordance with the above provisions exceeds the outstanding invoice value by more than 10%, we shall be obliged, at the request of the purchasing party, to release excess securities at our discretion, but with the stipulation that, with the exception of deliveries in an authentic current account relationship, securities need only be released for such deliveries or for the value to replace them if they themselves have been paid for in full.

7. Security right of the entrepreneur

We shall be entitled to security for our claims arising from the agreement in accordance with § 647 of the BGB [German Civil Code] on the purchasing party's movable things which have come into our possession for the provision of the contractual services.

IX) Material defects

1. Quality specifications

The quality of the services to be provided by us or the objects of the contract to be delivered is definitively defined by the content of our written or electronic quotation documents. Unless other-wise agreed, the usage arising from our quote shall be the sole subject matter of the agreement. Unless expressly described as guaranteed quality, all contents contained in our quotation documents and other printed matter as well as on data carriers purely serve as a product description and do not constitute a quote to conclude a guarantee agreement. This also applies to the contents in our advertisements.

2. Duty of the purchasing party to carry out an inspection and give notice of defects

The purchasing party must inspect our deliveries and review our services immediately upon receipt and report any visible defects in writing within a period of two weeks after delivery. Defects which were undiscovered within this period, even after careful inspection, must be re-ported to us in writing immediately, but no later than two weeks after being discovered. If the purchasing party fails to notify us of defects in good time, our delivery shall be deemed to have been duly made in accordance with the contract and as being free of defects. § 377 of the HGB [German Commercial Code] applies here.

3. Minor defects, third-party fault

No claims may be made in cases of defects only considered minor deviations from the agreed quality, minor impairment to usability, natural wear and tear or damage arising after the passing of risk from improper or negligent handling of the product, excessive strain, unsuitable equipment, unsatisfactory assembly, unsuitable foundations, chemical, electrochemical, electronic or electric influences or other specific external in-fluences not provided for in the contract, or in cases of software errors that cannot be reproduced. If the purchasing party or third parties carry out improper modifications or repair work, serial numbers on delivered devices/components/systems are rendered illegible, data plates, CE and TÜV [Technical Inspection Association] certification markings or other safety markings affixed to the product are removed or destroyed, no claims may be made for such defects and the consequences that arise. The purchasing party may not refuse to accept deliveries on the basis of minor defects.
Claims may also not be made if the purchasing party has not, insufficiently or incorrectly fulfilled its obligations to cooperate in accordance with Section IV, paragraph 3 of these terms and a defect has at least partly been caused as a result of this.

4. Liability for material defects

Our deliveries or services shall be corrected or replaced free of charge at our discretion if there is a material defect within the period of defect warranty, provided that the cause of the defect already existed at the time risk was passed, for which the purchasing party is obliged to present its case and provide evidence. We shall first be granted a reasonable period of time for this supplementary performance. If the supplementary performance is unsuccessful, the purchasing party may withdraw from the contract or be eligible to reduce the price. Any claims for damages remain unaffected by this. Used products are sold under exclusion of any warranty.

5. Warranty period

Unless otherwise agreed, claims for material defects shall become statute-barred after 12 months. This does not apply if the law pursuant to § 438 (1) (2) (buildings and things used for buildings), § 445b (1) (rights of recourse) and § 634a (1) (2) (building defect claims) of the BGB [German Civil Code] stipulate longer periods, as well as in cases of injury to life, body or health, in the event of an intentional or grossly negligent breach of duty by us and in the event of a fraudulent non-disclosure of a defect. The statutory provisions on suspending the statute of limitations and suspending and recommencing the periods remain unaffected.

6. Reimbursement of expenses

Expense claims from the purchasing party that are required for the purposes of subsequent performance, particularly transport, travel, labour and material costs, shall be precluded if the expenses increase because the object of the delivery has subsequently been transported to a place other than a branch of the purchasing party, unless the transfer is in line with its intended use.

7. Limitations for rights of recourse

The purchasing party may only make rights of re-course against us in accordance with § 478 of the BGB [German Civil Code] (recourse of the entrepreneur) if the purchasing party has not made any agreements with its customer beyond the statutory claims for defects and/or there is no other equivalent compensation agreement be-tween us and the purchasing party within the meaning of § 478 (4) of the BGB [German Civil Code].

8. Returning defective products

If the purchasing party makes a claim to us using a warranty, it is obliged to provide a prepaid re-turn of the defective products to us if we request this or to keep the defective products ready for inspection and defect testing on-site at its branch.

9. Other compensation for damages

In all other respects, Section XI shall apply to claims for damages. (Other claims for damages) of these General Terms of Delivery and Service. Further claims or claims other than those regulated in this Section XI made by the purchasing party against us and persons we use to

perform an obligation in light of a material defect are precluded.

X) Legal defects, industrial property rights, copyrights

1. Third-party property rights

Unless otherwise agreed, we are obliged to pro-vide the deliveries and services only within Germany and without industrial property rights and copyrights of third parties (hereinafter referred to as "Property Rights"). If a third party asserts justified claims against the purchasing party due to an infringement of Property Rights by deliveries and services provided by us and used in accordance with this agreement, we shall be liable to the purchasing party within the period stipulated in Section IX no. 5 as follows:

a) We shall, at our discretion and our expense, either obtain a right of use for the deliveries and services concerned, or modify them to an extent that there is no infringement to the property right, or exchange them. If this is not possible for us under reasonable conditions, the purchasing party is entitled to the statutory withdrawal rights or rights to reduce the price.

b) Our obligation to pay damages, if any, shall be pursuant to Section XI of these terms.

c) Our aforementioned obligations shall only apply if the purchasing party informs us of the claims asserted by third parties immediately in writing, does not acknowledge an infringement and leaves all defensive measures and settlement negotiations to our discretion. If the purchasing party stops using the delivered product in order to reduce the damage or for other good cause, it shall be obliged to indicate to the third party that the discontinued use of the product does not constitute an acknowledgement.

2. Representation of the purchasing party

Claims from the purchasing party are precluded if it is responsible for the violation of property rights.

3. Other grounds for exclusion

Claims from the purchasing party are also precluded if the infringement of property rights is as a result of special specifications from the purchasing party, an unforeseeable application or if the delivery is modified by the purchasing party or used in conjunction with products that we did not deliver.

4. Other legal defects

If there are other legal defects, the provisions of Section IX shall apply accordingly.

5. Preclusion of further claims

Further claims or claims other than those regulated in Section X as well as Sections IX and XI made by the purchasing party against us and persons we use to perform an obligation in light of a legal defect are precluded.

XI) Other claims for damages

1. Preclusion of liability

Claims for damages and reimbursement of expenses on the part of the purchasing party, regardless of their legal basis, in particular due to breach of duties arising from the contractual obligation from unlawful acts, are precluded.

2. Mandatory liability

This shall not apply in cases of mandatory liability, e.g. under the Produkthaftungsgesetz [German Product Liability Act], in cases of intentional wrongdoing, gross negligence, injury to life, body and health, breach of material contractual obligations and acceptance of guarantees. The claim for damages and reimbursement of expenses for the violation of material contractual obligations is, however, limited to foreseeable damages that were anticipated in the contract, provided that there is no intentional wrongdoing, gross negligence or liability for injury to life, body or health. The burden of proof does not shift to the purchasing party with the above provisions.

3. Limitation period

If the purchasing party is entitled to claims for damages under the present Section XI, these shall become statute-barred upon expiry of the limitation period applicable to claims for mate-rial defects in accordance with Section IX no. 5. In the case of claims for damages under the Produkthaftungsgesetz [German Product Liability Act], the statutory limitation provisions shall apply.

XII) Miscellaneous

1. Withdrawal on the part of the purchasing party

The purchasing party's legal right to withdraw from the contract does not presuppose any liability on the part of the purchasing party if the delivery is defective. In all other cases, the purchasing party may only withdraw from the contract if we are responsible for a breach of duty.

2. Data protection

In the course of establishing and executing a contract, personal data may be automatically processed on our part. This is done in accordance with the relevant legal provisions. We hereby refer to our data protection notice, which you can view using the following link https://www.kist-escherich.com.

XIII) Place of performance, place of jurisdiction/applicable law

1. Place of performance

The place of performance for the contractual performance from both parties in this contract is Munich, Germany.

2. Place of jurisdiction

Unless otherwise agreed, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Munich, Germany. However, we are also entitled to take legal action against the registered office of the purchasing party.

3. Applicable law

Our legal relationship with the purchasing party shall be regulated exclusively by the Federal Re-public of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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