

GTC (General Terms and Conditions of Sale and Delivery) of Heinrich Kopp GmbH - 01/2023

Article I: General provisions

1. The legal relationships between Seller and Buyer regarding the Seller's deliveries and/or services (hereinafter referred to as Deliveries) shall be subject exclusively to these General Terms and Conditions of Sale and Delivery (GTC). The Buyer's General Terms and Conditions shall only when expressly accepted in writing by the Seller. The mutually agreed written declarations of the two parties shall determine the scope of the Deliveries.
2. The Seller reserves the unlimited exploitation rights under property and copyright law to quotations, drawings and other documents (hereinafter referred to as Documents). Access by third parties to the Documents shall be subject to the Seller's prior consent and the Documents must be returned to the Seller without delay if the order is not placed with the Seller. Clauses 1 and 2 shall apply also to the Buyer's documents; however, access to the latter may be granted to third parties to whom the Seller has permissibly assigned Deliveries.
3. The Buyer shall have the non-exclusive right to use standard software and firmware with the agreed performance characteristics in unchanged form on the agreed devices. The Buyer may create a backup copy of the standard software without explicit agreement.
4. Partial Deliveries shall be permissible, providing they are reasonable for the Buyer.
5. In these Terms and Conditions of Sale and Delivery, the term "claims for damages" shall also include claims for the reimbursement of futile expenses.
6. All offers by the Seller are subject to confirmation.

Article II: Prices, payment terms and offsetting

1. Prices are ex works excluding packaging and exclusive of the currently applicable statutory value-added tax and customs clearance.
2. If the Seller has assumed responsibility for installation or assembly and unless otherwise agreed, the Buyer shall bear all necessary ancillary costs such as travel and transport, as well as per diem costs in addition to the agreed remuneration.
3. Payments shall be made without deduction to the Seller's paying agent.
4. The Buyer may only offset such claims that are deemed undisputed or have been finally determined by a court of law.

Article III: Retention of title

1. The Deliveries (reserved goods) shall remain the property of the Seller until all the Seller's claims against the Buyer arising out of the business relationship have been settled. Should the value of all securities to which the Seller is entitled exceed the sum of all secured claims by more than 20%, the Seller shall release an appropriate part of the securities at the request of the Buyer; the Seller may select the securities to be released at his discretion.
2. While retention of title prevails, the Buyer may not pledge or transfer ownership of the goods by way of security, and reselling shall only be permitted to resellers within the normal course of business and only on condition that the reseller receives payment from his customer or makes a caveat that ownership shall only be transferred to the customer once the latter has fulfilled the payment obligations.
3. If the Buyer sells reserved goods, all future claims on the customers arising out of the resale shall be immediately assigned to the Seller, as well as all and any ancillary rights – including any current account balance claims – as security, without the need for any further specific declarations. If the reserved goods are resold together with other goods without a unit price having been agreed for the reserved goods, the Buyer shall transfer to the Seller that part of the overall receivables that corresponds to the price invoiced by the Seller for the reserved goods.
4. a) The Buyer may process the reserved goods or mix and combine them with other goods. Processing shall be on behalf of the Seller. The Buyer shall handle this new article for the Seller with the due diligence of a prudent business person. The new article shall be classed as reserved goods. b) Buyer and Seller have already agreed that in case of combination or mixing with other items that do not belong to the Seller, the latter shall in any case be deemed co-owner of the new article to an extent commensurate with the value of the other goods in relation to the value of the combined or mixed reserved goods at the time they were combined or mixed. The new article shall thus be classed as reserved goods. c) The provision regarding the transfer of claims set out in paragraph 3 shall also apply to the new article. However, transfer shall only cover the amount corresponding to the sum invoiced by the Seller for the processed, combined or mixed reserved goods. d) If the Buyer combines the reserved goods with property or movable goods, the claim to reimbursement to an extent commensurate with the value of the other goods in relation to the value of the combined or mixed reserved goods when they were combined or mixed shall also be transferred, as well as all and any ancillary rights, as security without need for any further specific declaration.
5. With the exception of revocation, the Buyer shall be entitled to collect transferred receivables arising out of the resale. In case of good cause, in particular in the case of default in payment, cessation of payment, institution of bankruptcy proceedings, acts of protest or justified indications of the Buyer's over-indebtedness or imminent insolvency, the Seller shall be entitled to revoke the Buyer's direct debit authorisation. In addition, the Seller may, subject to prior warning and a reasonable grace period, disclose the assignment by way of security, realise the assigned claims, as well as demand the disclosure of the assignment by way of security by the Buyer to the customer.

6. In case of attachment, confiscation or other dispositions or interventions by third parties, the Buyer shall notify the Seller without delay. When substantiating a legitimate interest, the Buyer must provide the Seller with the information and documents required to assert the rights vis-à-vis the customer without delay.
7. In case of breaches of obligations by the Buyer, in particular default in payment, on expiry of a reasonable yet fruitless grace period for the Buyer to render payment, the Seller shall be entitled to both take back the goods and withdraw from the contract; the legal provisions relating to the dispensability of a grace period remain unaffected. The Buyer must surrender the goods. The taking back of the goods and/or assertion of retention of title or attachment of the reserved goods by the Seller, shall not constitute a withdrawal from the contract unless the Seller expressly declares this.

Article IV: Delivery deadlines; default

1. The meeting of delivery deadlines is subject to the timely submission of all documents, necessary permits and releases, in particular plans, to be supplied by the Buyer, as well as compliance with the agreed payment terms and other obligations by the Buyer. If these requirements are not satisfied in good time, the deadlines shall be extended appropriately; this shall not apply if the Seller is responsible for the delay.
2. The Seller shall be entitled to withdraw from the contract if the deliveries are not received for reasons beyond his control despite having previously concluded an appropriate purchase agreement and exercising due commercial diligence. The Seller shall notify the Buyer of the late availability of the deliveries without delay and, if he wishes to withdraw from the contract for this reason, shall immediately exercise their right of withdrawal. The Buyer shall also be entitled to withdraw from the contract as a result of the information from the Seller. In case of withdrawal, regardless of by whom, the Seller shall reimburse the Buyer for the consideration without delay. The above provision shall also apply if for reasons beyond his control, the Seller does not receive the material required to make the delivery item despite having previously concluded an appropriate purchase agreement and exercising due commercial diligence.
3. If failure to meet deadlines is due to a) force majeure, e.g. military mobilisation, war, acts of terrorism, rebellion or similar events (e.g. strikes, lock-outs), b) virus or other attacks by third parties on the Seller's IT system providing that these occurred despite due diligence having been exercised in maintaining protection measures, c) obstacles due to German, US American or other applicable national, EU or international regulations under foreign trade law or due to other circumstances for which the Seller is not responsible, or d) unpunctual or incorrect delivery to the Seller, the deadlines shall be extended appropriately.
4. If the Seller is in default, the Buyer may – providing that he can demonstrate that a loss has been incurred – demand compensation of 0.5% for each full week of default, but up to a maximum of 5% of the price for the part of the Deliveries that could not be used for the intended purpose due to the default.
5. Both claims for damages by the Buyer due to delayed delivery and claims for damages in lieu of performance going beyond the limits set out in paragraph 3. shall be excluded in all cases of delayed delivery, even after any delivery deadline for the Seller has expired. This shall not apply in cases of liability for intent, gross negligence or injury to life, limb or health. The Buyer may withdraw from the contract within the scope of the statutory provisions only insofar as the Seller is responsible for the delayed delivery. The above provisions do not entail a change in the burden of proof to the detriment of the Buyer.
6. At the Seller's request, the Buyer shall declare within a reasonable grace period whether he intends to withdraw from the contract on account of the delayed delivery or insist on delivery taking place.
7. If dispatch or delivery is delayed by more than one month after notice of readiness for dispatch at the request of the Buyer, the Buyer may be invoiced for storage costs of 0.5% of the price of the delivery items for each further month or part thereof, but up to a maximum of 5%. The contracting parties shall be at liberty to prove that the storage costs were higher or lower.

Article V: Passage of risk

1. Even in the case of carriage-paid delivery the risk shall pass to the Buyer as follows: a) in case of delivery without installation or assembly, upon dispatch or collection. At the request and expense of the Buyer, the delivery shall be insured by the Seller against the usual transport risks; b) in case of delivery with installation or assembly, upon handover at the Buyer's premises or, if agreed, after successful trial operation.
2. If dispatch, delivery, commencement of performance of installation or assembly, handover on the Buyer's premises or trial operation is delayed for reasons attributable to the Buyer or if the Buyer defaults on acceptance for other reasons, the risk shall pass to the Buyer.

Article VI: Installation and assembly

Unless otherwise agreed in writing, the following provisions shall apply to installation and assembly:

1. The Buyer shall bear the cost of and duly provide: a) all earthwork, construction work and other ancillary work outside the Seller's scope, including the necessary skilled and unskilled labour, building materials and tools, b) the commodities and materials required for assembly and commissioning such as scaffolding, lifting gear and other devices, fuels and lubricants, c) power and water at the place of use including connections, heating and lighting, d) at the assembly site, suitably sized appropriate dry and lockable rooms for storing machine parts, apparatus, material, tools, etc. and suitable working and recreational rooms including appropriate washroom facilities for the assembly personnel; in addition, the Buyer must take steps to protect the property of the Seller and the assembly personnel as they would do so for their own property and personnel, e) protective clothing and guards that are required due to the special conditions prevailing at the assembly site.
2. Prior to the start of assembly work the Buyer must volunteer the necessary information regarding the location of concealed electricity, gas and water lines or similar facilities, as well as the necessary structural information.

3. Prior to the start of installation or assembly, the materials and items required for the tasks must be provided at the installation or assembly site and all preparatory work for installation must be so advanced that installation or assembly can commence as contractually agreed and to be carried out without interruption. Access roads and the installation or assembly site must be levelled and cleared.
4. If installation, assembly or commissioning is delayed due to circumstances beyond the Seller's control, the Buyer shall bear the reasonable costs incurred for the waiting time and additional necessary travel of the Seller or assembly personnel.
5. The Buyer must provide the Seller with confirmation of the working hours of the assembly personnel on a weekly basis, as well as of the end of installation, assembly or commissioning without delay.
6. If the Seller demands acceptance of the Deliveries upon completion, the Buyer must comply with said demand within two weeks. Acceptance shall be deemed to have taken place if the Buyer allows the two-week period to lapse or if the Deliveries – upon completion of an agreed trial phase, where applicable – are put into use.

Article VII: Receipt

The Buyer may not refuse receipt of Deliveries due to minor defects.

Article VIII: Material defects

The Seller shall be liable for material defects as follows:

1. All those parts or services with material defects shall be repaired, redelivered or rendered again at the Seller's discretion free of charge, providing that the cause already existed at the time of the passage of risk.
2. Claims for subsequent fulfilment shall become statute-barred 12 months after the start of the statutory limitation period; the same shall apply to rescission and reduction. This period shall not apply if the law according to sections 438 (1) 2 (Buildings and Things used for Buildings), 479 (1) (Recourse claims) and 634a (1) 2 (Building defects) of the German Civil Code (BGB) prescribes longer periods in case of intent, fraudulent concealment of the defect, as well as non-compliance with a guarantee of quality. The legal provisions regarding suspension of expiry, suspension and recommencement of limitation periods shall remain unaffected.
3. Notwithstanding section 434 BGB in the version applicable from 01.01.2022, the goods delivered by us shall be deemed free of defects if, at the passage of risk, they meet the subjective requirements (section 434 (2) BGB) and the assembly requirements (section 434 (4) BGB) irrespective of whether the goods meet the objective requirements (section 434 (3) BGB).
4. The Buyer must notify the Seller of defects in writing without delay.
5. In case of notice of defects, the Buyer may withhold payments to an extent commensurate with said material defects. The Buyer may only withhold payments if a notice of defects is asserted, the legitimacy of which is unquestionable. If the claims are time-barred, the Buyer shall have no right to withhold payment. If notices of defects were lodged unjustifiably, the Seller shall be entitled to demand that the Buyer refund the expenses incurred.
6. The Seller must be allowed an appropriate period for subsequent fulfilment.
7. If the subsequent fulfilment fails, the Buyer – without prejudice to any claims for damages according to paragraph 10 – may withdraw from the contract or reduce the remuneration.
8. Claims for defects shall not be constituted by only minor deviations from the agreed quality, insignificant impairment to usability, natural wear and tear or damage that occurred after the passage of risk as a result of incorrect or careless handling, excessive strain, unsuitable resources, defective construction work, unsuitable sites or due to special external influences not envisaged under the contract, as well as in case of non-reproducible software errors. No claims for defects shall be constituted either arising from improper modifications or repairs and any consequences arising from them carried out by the Buyer or third parties.
9. Claims by the Buyer regarding expenses for subsequent fulfilment, in particular transport, travel, labour and material costs shall be excluded if the expenses increase because the goods must be conveyed to a place other than the premises of the Buyer, unless said conveyance complies with the intended use of the goods.
10. Recourse claims by the Buyer on the Seller according to section 478 BGB (Recourse of the entrepreneur) shall only be constituted providing that the Buyer has not concluded any agreements with his customer going beyond the legal claims for defects. Regarding the scope of recourse claims by the Buyer on the Seller according to section 478 (2) BGB, paragraph 8 shall apply accordingly.
11. In respect of claims for damages by the Buyer due to material defects reference is made to section XII of these GTC which shall apply accordingly. This shall not apply in case of fraudulent concealment of the defect, non-compliance with a guarantee of quality, injury to life, limb or health and of a wilful or grossly negligent breach of an obligation by the Seller. The above provisions do not entail a change in the burden of proof to the detriment of the Buyer. Further or different claims for defects by the Buyer to those set out in this Article VIII are excluded.

Article IX: Industrial property rights and copyrights; defects of title

1. Unless agreed otherwise the Seller must only perform delivery in the country of the place of delivery free of any third-party industrial property rights and copyrights (hereinafter referred to as: Proprietary Rights). If a third party asserts justified claims against the Buyer due to the breach of Proprietary Rights through Deliveries used as contracted supplied by the Seller, the Seller shall be liable to the Buyer as follows within the period set forth in Article VIII (2): a) At his discretion, the Seller shall either obtain a right of use for the goods at his own expense or modify the Deliveries in such a way that the Proprietary Right is not breached, or shall replace the goods. If this is not possible for the Seller under reasonable conditions, the Buyer shall be entitled to legal rescission or reduction rights. b) The duty of the Seller to give redress shall be in line with Article XII. c) The Seller's obligations set forth here shall only be constituted providing that the Buyer notifies the Seller in writing of the claims asserted by third parties without delay, does not recognise the breach, and the right to execute all defensive measures and to negotiate a settlement is

reserved for the Seller. If the Buyer ceases to use of the Deliveries for mitigation or other important reasons, the third party must be notified that the cessation of use does not constitute recognition of a breach of Proprietary Rights.

2. Claims by the Buyer shall be excluded if the Buyer is responsible for the breach of the Proprietary Rights.
3. Claims by the Buyer shall also be excluded if the breach of Proprietary Rights is caused by special specifications of the Buyer, by a use not foreseeable by the Seller or if the goods are modified by the Buyer or used together with products not supplied by the Seller.
4. In the event of breaches of Proprietary Rights, the Buyer's claims set forth in 1a) shall be subject to the provisions of Articles VIII 4, 5 and 9 accordingly.
5. The provisions of Article VIII shall apply accordingly in the event of any other defects of title.
6. Further or different claims by the Buyer against the Seller and his vicarious agents to those set out in this Article IX on account of a defect of title shall be excluded.

Article X: Fulfilment proviso

1. Fulfilment of the contract shall be under the proviso that no obstacles due to German, US American or other applicable national, EU or international regulations under foreign trade law, embargoes or other sanctions preclude performance.
2. The Buyer shall provide all information and documents required for export, shipment and import.

Article XI: Impossibility; contract amendment

1. If delivery is impossible, the Buyer shall be entitled to demand compensation unless the Seller is not responsible for the impossibility. However claims for compensation on the part of the Buyer shall be limited to 10% of the value of the part of the Deliveries that cannot be used purposefully due to impossibility. This limitation shall not apply in cases of liability for intent, gross negligence or injury of life, limb or health; this does not constitute a change in the burden of proof to the detriment of the Buyer. The Buyer's right to withdraw from the contract shall remain unaffected.
2. If events within the meaning of Article IV 2 a) to c) significantly change the economic importance or content of the Deliveries or exercise a considerable influence on the Seller's business, the contract shall be amended in good faith. If this is not economically viable, the Seller shall be entitled to withdraw from the contract. The same shall apply if the necessary export licences are not granted or cannot be used. If the Seller wishes to exercise the right of withdrawal, the Buyer must be notified accordingly without delay on identifying the impact of the event, even if an extension of the delivery deadline had been previously agreed with the Buyer.

Article XII: Further liability

1. Unless set forth otherwise in these General Terms and Conditions of Sale and Delivery, the Seller shall be liable for any breaches of contractual and extra contractual obligations in accordance with the statutory provisions.
2. Irrespective of the legal basis, the Seller shall be liable for damages within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence the Seller shall only be liable, subject to statutory limitations of liability (e.g. diligence in own affairs; minor breaches of obligation)

a) for damages arising from injury to life, limb or health,[67](#)

b) for damages arising from the breach of a cardinal contractual obligation (obligation which must be fulfilled to allow proper performance of the contract in the first place, and which the contracting partner is able to and may rely upon as being regularly observed); in this case however the Seller's liability shall be limited to compensation for the foreseeable, typically occurring damages.

3. The liability limitations set forth in paragraph 2 shall also apply vis à vis third parties, as well as in the event of breaches of obligations by persons (also in their favour), for whose fault responsibility shall be borne by the Seller in accordance with statutory provisions. Said liability limitations shall not apply in case of a defect being fraudulently concealed or a guarantee for the quality of the goods has been assumed, nor for claims by the Buyer in accordance with the Product Liability Act.
4. The above provisions do not entail a change in the burden of proof to the detriment of the Buyer.

Article XIII: Place of jurisdiction and applicable law

1. Sole place of jurisdiction for all disputes arising out of and in connection with the business relationship between the parties shall be the Seller's registered office for all disputes arising directly or indirectly from the contractual relationship if the Buyer is a merchant. However the Seller shall also be entitled to bring an action at the Buyer's registered office.
2. This contract and its interpretation shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Article XIV: Severability clause

Should individual provisions of these GTC be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, this shall not effect the validity of the remaining provisions of the GTC. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision, the effects of which are as close in spirit to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. These provisions shall apply accordingly in the event that the GTC are found to be incomplete.