



General Terms and Conditions of Kries Energietechnik GmbH & Co. KG

I. General Provisions

1. The scope of the supplies or services (hereinafter referred to as “Supplies”) shall be determined by the written declarations of both parties. However, the Buyer’s general terms and conditions shall only apply to the extent that the supplier or service provider (hereinafter referred to as the “Supplier”) has expressly agreed to them in writing.
2. The Supplier reserves the unrestricted right of ownership and copyright to cost estimates, drawings and other documents (hereinafter referred to as “Documents”). The Documents shall not be made available to third parties without the prior consent of the Supplier and shall be returned to the Supplier immediately upon request if the order is not placed with the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to the Buyer’s Documents; these may, however, be made available to those third parties to whom the Supplier has lawfully subcontracted supplies.
3. The Buyer has the non-exclusive right to use standard software with the agreed performance characteristics in unchanged form on the agreed equipment. The Buyer may make a back-up copy without express agreement.
4. Partial supplies are permitted if they are reasonable for the Buyer.

II. Prices and terms of payment

1. Prices are ex works excluding packaging plus applicable statutory VAT.
2. If the Supplier has taken over the installation or assembly, and unless otherwise agreed, the Buyer shall bear, in addition to the agreed remuneration, all necessary ancillary costs, such as travel costs, costs for the transport of hand tools and personal luggage as well as travel.

3. Payments shall be made free of charge to the Supplier's payment office.
4. The Buyer may only set off against claims which are undisputed or have become legally established.

III. Retention of title

1. The supplied goods (reserved goods) shall remain the property of the Supplier until all claims against the Buyer arising from the business relationship have been settled. If the value of all security rights to which the Supplier is entitled exceeds the amount of all secured claims by more than 20%, the Supplier shall release a corresponding part of the security rights at the request of the Buyer.
2. If the purchased item is processed with other items not belonging to the Supplier, in particular by installation and connection, the Supplier shall acquire co-ownership of the new item in the ratio of the objective value of the purchased item to the other processed item at the time of processing.
3. For the duration of the retention of title, the Buyer may not pledge or transfer the goods by way of security, and resale shall be permitted only to resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the reservation that title shall not pass to the customer until the customer has fulfilled its payment obligations.
4. In the event of attachment, seizure or other disposition or intervention by third parties, the Buyer shall notify the Supplier immediately.
5. In the event of a breach of duty by the Buyer, in particular in the event of default in payment, the Supplier shall be entitled to rescind the contract after a reasonable period of grace set by the Supplier has expired without result; the statutory provisions concerning the dispensability of setting a time limit shall remain unaffected. The Buyer is obliged to surrender the goods.

IV. Delivery deadlines; default

1. Adherence to delivery dates shall be subject to the timely receipt of all documents, necessary permits and approvals, in particular plans, to be supplied by the Buyer, as well as the Buyer's compliance with the agreed terms of payment and other obligations. If these conditions are not fulfilled in time, the

time limits shall be extended accordingly; this shall not apply if the Supplier is responsible for the delay.

2. If the deadlines are not met due to force majeure, e.g. mobilisation, war, riot or similar events such as strikes, lock-outs, the deadlines shall be extended accordingly.
3. Claims for damages by the Buyer due to delay in delivery as well as claims for damages in lieu of performance are excluded in all cases of delayed delivery, even after expiry of a delivery deadline set to the Supplier. This does not apply where liability is mandatory in cases of intent, gross negligence or injury to life, body or health. Within the limits of the law, the Buyer may only cancel the contract if the Supplier is responsible for the delay in delivery. The above provisions do not imply a change in the burden of proof to the detriment of the Buyer.
4. The Buyer shall, at the Supplier's request, declare within a reasonable period of time whether it is withdrawing from the contract due to the delay in delivery or insisting on delivery.
5. If dispatch or delivery is delayed at the Buyer's request by more than one month after notification that the goods are ready for dispatch, the Buyer may be charged a storage fee of 0.5% of the price of the items of the Supplies for each month commenced, but not more than a total of 5%. The right of the parties to prove higher or lower storage costs remains unaffected.

V. Transfer of risk

1. The risk shall pass to the Buyer as follows, even in the case of freight prepaid delivery:
 - a) In the case of Supplies without installation or assembly, when they have been dispatched or collected. At the Buyer's request and expense the Supplier shall insure the Supplies against the usual risks of transport;
 - b) In the case of Supplies involving installation or assembly, on the date of acceptance by the Buyer or, if agreed, after a faultless trial run.

2. If dispatch, delivery, commencement, performance of installation or assembly, acceptance in own operation or trial operation is delayed for reasons for which the Buyer is responsible, or if the Buyer is otherwise in default of acceptance, the risk shall pass to the Buyer.

VI. Installation and assembly

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

1. The Buyer shall bear the following costs and shall make them available in good time:
 - a) All earthwork, construction and other ancillary work outside the industry, including the necessary skilled and unskilled labor, building materials and tools.
 - b) The items and materials required for assembly and commissioning, such as scaffolding, hoists and other equipment, fuels and lubricants.
 - c) Energy and water at the point of use, including connections, heating and lighting.
 - d) At the installation site, sufficiently large, suitable, dry and lockable rooms for the storage of machine parts, equipment, materials, tools, etc., and for the assembly staff, suitable working and recreation rooms, including sanitary facilities which are appropriate in the circumstances. In addition, the Buyer shall take the same measures to protect the property of the Supplier and the installation personnel on the site as it would take to protect its own property.
 - e) Protective clothing and equipment required due to special circumstances at the installation site.
2. Prior to commencement of the installation work, the Buyer shall provide, without being requested to do so, the necessary information regarding the location of concealed electricity, gas, water or similar services and the necessary structural information.

3. Prior to the commencement of the installation or assembly, the materials and items required for the commencement of the work must be at the installation or assembly site and all preparatory work must have progressed to such an extent that the installation or assembly can be commenced as agreed and carried out without interruption. Access routes and the installation or assembly site must be levelled and cleared.
4. If installation, assembly or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Buyer shall bear a reasonable amount of the costs for waiting time and additional necessary travel by the Supplier or the assembly personnel.
5. The Buyer shall certify to the Supplier on a weekly basis the duration of the working hours of the installation personnel and the completion of the installation, assembly or commissioning.
6. If the Supplier requests acceptance of the Supply after completion, the Buyer shall do so within two weeks. Failure to do so shall constitute acceptance. Acceptance shall also be deemed to have taken place when the Supply has been put into use, if necessary, after completion of an agreed trial period.

VII. Acceptance

The Buyer may not refuse to accept Supplies due to minor defects.

VIII. Material defects

The Supplier shall be liable for material defects as follows:

1. All those parts or services shall, at the discretion of the Supplier, be repaired, replaced or provided free of charge which show a defect within the Statute of Limitations period – irrespective of the period of operation – if the cause of the defect was already present at the time of the transfer of risk.
2. Claims for material defects expire after 12 months. This does not apply if the law according to Sections 438 (1) No. 2 (buildings and goods for buildings), 479 (1) (right of recourse) and 634a (1) No. 2 (construction defects) of the German Civil Code (BGB), as well as in cases of injury to life, body or health, in the event of willful or grossly negligent breach of duty by the Supplier

and in the event of fraudulent concealment of a defect. The statutory provisions on suspension, interruption and recommencement of the statute of limitations apply.

3. The Buyer shall immediately notify the Supplier in writing of any material defects.
4. In the event of complaints, the Buyer's payments may be withheld to an extent that is reasonably proportionate to the material defects that have occurred. The Buyer may withhold payments only if the subject of the complaint is justified beyond doubt. If the complaint is unjustified, the Supplier shall be entitled to claim compensation from the Buyer for the expenses incurred.
5. The Supplier must first be given the opportunity to remedy the defect within a reasonable period of time.
6. If the subsequent performance fails, the Buyer may – without prejudice to any claims for damages pursuant to Article XI – withdraw from the contract or reduce the payment.
7. There shall be no claims based on defect in cases of insignificant deviation from the agreed quality, of only minor impairment of usefulness, of natural wear and tear, or of damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable foundation soil, or from any special external influences not assumed under the contract, or from non-reproducible software errors. If the Buyer or a third party carries out improper modifications or commissioning work, no claims for defects will be accepted for these or the consequences thereof.
8. Claims by the Buyer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, are excluded if the expenses increase because the delivery item has subsequently been brought to a place other than the Buyer's branch office, unless this corresponds to its intended use.
9. The Buyer's rights of recourse against the Supplier pursuant to Section 478 of the German Civil Code (BGB) shall exist only to the extent that the Buyer has not entered into any agreement with its customer exceeding the scope of the statutory warranty claims. Furthermore, Clause 8 shall apply accordingly

to the scope of the Buyer's right of recourse against the Supplier pursuant to Section 478 (2) of the German Civil Code (BGB).

10. Claims for damages are otherwise subject to Article XI (other claims for damages). Any other claims of the Buyer against the Supplier and its vicarious agents in respect of a defect other than those set out in this Article VIII shall be excluded.

IX. Industrial property rights and copyrights; legal defects

1. Unless otherwise agreed, the Supplier is obliged to make the delivery only in the country of the place of delivery free of industrial property rights and copyrights of third parties (hereinafter: Property Rights). If a third party asserts justified claims against the Buyer on account of the infringement of Property Rights by the Supplier's Supplies used in accordance with the contract, the Supplier shall be liable to the Buyer within the period specified in Art. VIII No. 2 as follows:

- a) The Supplier shall, at its option and expense, either acquire a right of use for the Supplies in question, modify them so that the Property Right is no longer infringed, or replace them. If this is not possible for the Supplier on reasonable terms, the Buyer shall be entitled to the statutory rights of rescission or reduction.
- b) The Supplier's obligation to pay damages is governed by Article XI.
- c) The foregoing obligations of the Supplier shall apply only if the Buyer immediately notifies the Supplier in writing of the claims asserted by the third party, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved for the Supplier. If the Buyer ceases to use the Supplies in order to minimise damage or for other important reasons, it shall be obliged to inform the third party that the cessation of use does not imply any acknowledgement of an infringement of Property Rights.

2. Claims by the Buyer shall be excluded to the extent that the Buyer is responsible for the infringement of the Property Rights.



3. Claims of the Buyer shall also be excluded if the infringement of the Property Rights is caused by special specifications of the Buyer, by an application not foreseeable by the Supplier, or by the Supplies being modified by the Buyer or being used together with products not supplied by the Supplier.
4. In the event of an infringement of Property Rights, the provisions of Art. VIII Nos. 4, 5 and 9 shall apply accordingly to the claims of the Buyer regulated in No. 1 a).
5. In the event of other defects of title, the provisions of Article VIII shall apply accordingly.
6. Any other claims of the Buyer against the Supplier and its vicarious agents in respect of a defect of title other than those set out in this Article IX shall be excluded.

X. Export control

The parties shall comply with all applicable import, export, anti-boycott and sanctions regulations, including, without limitation, those of the United States, the European Union and other relevant countries (“Export Control Regulations”). The Buyer warrants that neither it nor any of its parent, subsidiary and/or affiliated companies is on any sanctions list and shall notify the Supplier immediately if it or any of its parent, subsidiary and/or affiliated companies is placed on any government sanctions list. The Buyer shall not, directly or indirectly, sell, export, re-export, transfer, purchase or otherwise transfer the Products ordered for an unauthorised end-use or to a prohibited recipient or to a sanctioned country (including Belarus, Cuba, Iran, North Korea, Russia and Syria) or otherwise violate applicable export control regulations. The Buyer shall notify the Supplier immediately if it becomes aware of any violation of applicable export control regulations in relation to the Products ordered and shall respond to any request for information from the Supplier in relation to applicable export control regulations within two weeks. The Supplier reserves the right to cancel any Purchase Order if the Supplier, in its sole discretion, has reason to believe that the transaction resulting from the Purchase Order violates or has violated any export control regulations or if any export control regulations that come into effect after the Purchase Order is received prohibit or materially affect the performance of the resulting transaction.

XI. Impossibility; contract adjustment

1. If delivery is impossible, the Buyer shall be entitled to claim damages, unless the Supplier is not responsible for the impossibility. However, the Buyer's claim for damages shall be limited to 10% of the value of that part of the delivery which cannot be put to the intended use as a result of the impossibility. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury to life, body or health; this does not imply a change in the burden of proof to the detriment of the Buyer. The Buyer's right to cancel the contract remains unaffected.
2. If unforeseen events within the meaning of Article IV.2 substantially change the economic importance or the content of the Supplies or substantially affect the Supplier's business, the contract shall be adapted in accordance with the principles of reasonableness and good faith. If this is not economically justifiable, the Supplier has the right to withdraw from the contract. If the Supplier intends to exercise this right of rescission, it shall notify the Buyer thereof without undue delay after becoming aware of the implications of the event, even if an extension of the delivery period had initially been agreed with the Buyer.

XII. Other compensation claims

1. Claims for damages and reimbursement of expenses on the part of the Buyer (hereinafter referred to as "claims for damages"), irrespective of their legal basis, in particular for breach of obligations arising from the contractual relationship and for tort, are excluded.
2. This shall not apply in cases of strict liability, e.g. under the Product Liability Act, in cases of intent, gross negligence, injury to life, limb or health, or due to a breach of fundamental contractual obligations. A claim for damages for breach of material contractual obligations shall, however, be limited to loss foreseeable loss typical of the contract, provided that this is not caused intentionally or due to gross negligence or due to injury to life, limb or health. The above provisions do not imply a change in the burden of proof to the detriment of the Buyer.
3. Insofar as the Buyer is entitled to claims for damages in accordance with this Article XII, these shall become time-barred upon expiry of the Statute of Limitations period applicable to claims for material defects in accordance with Article VIII No. 2.



The statutory limitation periods apply to claims for damages under the Product Liability Act.

XIII. Applicable law and place of jurisdiction

1. If the Buyer is a merchant, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Supplier's place of business. However, the Supplier is also entitled to bring an action at the Buyer's domicile.
2. The legal relationships in connection with this contract shall be governed by German substantive law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XIV. Binding nature of the contract

If any provision of this contract is or becomes invalid, the remainder of this contract shall remain in full force and effect. This does not apply if adherence to the contract would constitute unreasonable hardship for one of the parties.

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Kries Energietechnik GmbH & Co. KG