

§ 1 Scope of Application

Save any other agreements expressly made in writing, these Sales and Delivery Terms shall apply to all offers, quotations, bids, purchase agreements, orders, deliveries and services provided by Arnbruster Kelterei-Technologie ("Seller") to Buyer. These Sales and Delivery Terms shall also apply to any future business relations between Seller and Buyer even in the event that they are not expressly agreed to again. Seller shall not accept Buyer's General Terms and Conditions of Business – even in the event that Seller has not expressly refused such acceptance.

§ 2 Offers/Quotations and Conclusion of Contract

(1) Seller's offers, quotations or bids are subject to change unless expressly stated as binding in the wording of the offer, quotation or bid. A contract shall only be deemed to have been concluded upon Seller's written confirmation to Buyer.
(2) Seller shall only assume warranty if such warranty has been expressly agreed to in the order confirmation or in Seller's advertisements.
(3) Seller's documents provided to Buyer as part of initiating the contract, such as pictures, illustrations and drawings as well as any details concerning weight, space, power requirements and performance capabilities shall be decisive; Seller reserves the right to make reasonable technical modifications, technical improvements or design changes.
(4) Buyer shall not disclose, publish, reproduce, copy or otherwise make available to any third party any of the documents, materials, drawings, descriptions, samples and cost estimates provided by Seller in conjunction with the offer, quotation or bid without Seller's permission. Upon Seller's request, Buyer shall return such documents and materials to Seller without retaining any copies thereof.

§ 3 Prices

(1) Seller shall make deliveries at the prices communicated to Buyer in current price lists or order confirmations. All prices shall be deemed ex works/point of shipment.
(2) Packaging shall be charged separately.
(3) Any prices quoted and/or stated in any documents other than the order confirmation shall be deemed non-binding and are subject to change at any time.
(4) In case of contracts with an agreed delivery period in excess of four (4) months Seller reserves the right to raise the prices based on respective cost increases incurred as a result of supplier agreements, collective wage/salary bargaining agreements or material price increases. If the increase should amount to more than five (5) percent of the agreed purchase price, Buyer shall have the right to cancel the contract under the provisions of Section 313, Paragraph 3, BGB (German Civil Code). Claims for damages shall be excluded in this case.

§ 4 Delivery Period and Force Majeure

(1) Any delivery terms not expressly agreed to in writing as binding shall be deemed to be non-binding. Seller shall make its best efforts to meet non-binding or approximate delivery periods (i.e. stated as "approximately," "approx.", "ca.", "to the extent possible" etc.). Seller reserves the right to make deliveries only after expiration of any revocation period to which Buyer may be entitled (such as according to Section 355, Paragraphs 1 and 2, BGB). Delivery periods shall start, at the earliest, after receipt of all documents or materials required for the content-related definition of the order, to the

extent that Buyer is under obligation to provide such documents or materials per mutual agreement and after receipt of any agreed down payment. A delivery period shall be deemed to have been met if the goods are ready for shipment within the agreed period and Buyer has been informed accordingly.
(2) Delivery periods shall be extended in the event of circumstances beyond Seller's control which have a major impact on the manufacture or delivery of the goods, in particular in case of labor disputes and other circumstances affecting Seller or its sub-suppliers (operational disruptions through no fault of Seller's) by the duration of the disruption. In the event that an adjustment of the contract required by operational disruptions that are not Seller's fault is not feasible despite all reasonable efforts, Seller shall be released from its delivery obligations.
(3) In the event that the delivery period is extended by the afore-stated reasons or Seller is released from its delivery obligations, Buyer shall not be entitled to assert any claims of liability against Seller. Seller shall not be liable for any operational disruptions for which Seller is not at fault, even if such disruptions result in default of performance. Seller shall be obligated to inform Buyer of the occurrence of such circumstances.
(4) Prior to the expiration of delivery periods, Seller – to a reasonable extent – shall be entitled to make partial deliveries, to include partial invoicing.
(5) In the event that shipping or delivery of the goods are delayed at Buyer's request or due to circumstances arising within Buyer's scope of risk and responsibility, Buyer shall reimburse Seller for any costs incurred for storage of the goods to be delivered as well as for the costs of the interest charged on the capital employed for the goods to be delivered. If the goods are stored by Seller, Seller shall be entitled to a minimum of 0.5 percent of the open balance of the invoice for each month that has started after Buyer has been informed that the goods are ready for shipment, without prejudice to the possibility of demonstrating a lower amount of damage. Seller, however, shall be entitled – after stating a reasonable period and after fruitless expiration of such period – to otherwise dispose of the goods to be delivered and to make a replacement delivery to Buyer within a reasonably extended period.

§ 5 Scope of Delivery, Transportation and Passing of Risk

(1) Risk – at the latest – shall pass to Buyer upon the goods being shipped from Seller's plant or shipping point. In the event that shipment is delayed by any actions or conduct of Buyer's or due to a circumstance for which Seller is not responsible, risk shall pass to Buyer at the time Seller has issued a notice that the goods are ready for shipment.
(2) Seller shall take out transport insurance on behalf of Buyer and at Buyer's cost based on the general transport insurance terms which cover the risk of transporting the goods included in the order ex works up to the agreed destination (ship-to location).
(3) In the event of an agreement of trade terms, Incoterms in effect at the particular time shall apply. The scope of delivery shall be stated in the order confirmation.

§ 6 Payment and Default

(1) Save any other agreements in the order confirmation or invoice, payments are due within eight (8) days after delivery, readiness for shipment and/or invoicing, without any deductions, in cash, by check or wire transfer.
(2) Payments shall be deemed to have been effected only on the day on which Seller can dispose of the invoiced amount.
(3) In case of default, Seller shall charge late-payment interest at the respective legal rate,

however, amounting to at least eight (8) percent above the respective base interest rate. In the event that Seller is able to demonstrate higher damage as a result of Buyer's default, Seller shall be entitled to asserting such claim accordingly.
(4) Buyer shall be entitled to offset any claims against Seller – and/or refuse or withhold payment – only in the event that Seller has accepted such counter-claims, has not disputed them or that such counter-claims have been confirmed by a final court judgment. Save the existence of the afore-mentioned prerequisites, Buyer shall not have the right to refuse or withhold any payments or to use them to offset any counter-claims.
(5) In case of installment payments, Seller shall have the right to demand immediate payment of the entire residual purchase price if Buyer is in arrears with two or more consecutive installments or if the overdue balance amounts to more than ten (10) percent of the purchase price.
(6) In case of payments made from abroad, Seller shall charge Buyer with any bank transaction costs incurred.
(7) Seller expressly reserves the right to refuse acceptance of checks or bills of exchange. Any acceptance shall only serve the purpose of receiving payment of a debt. Any discount or bill of exchange expenses shall be charged to Buyer and be immediately due for payment.
(8) In the event that Seller is made aware of circumstances raising doubt about Buyer's credit-worthiness, in particular in case of Buyer's failure to pay a check or in case Buyer ceases to make payments, Seller shall have the right to make the entire residual debt due for immediate payment. In addition, Seller shall have the right to demand advance payments or the provision of collateral.
(9) In the event that Buyer ceases making payments entirely and/or in the event that bankruptcy proceedings against Buyer's assets and/or proceedings to settle claims in or out of court are initiated against Buyer, Seller shall have the right to cancel any parts of the contract with Buyer that are still pending performance.

§ 7 Claims for Defects

(1) In the event that any services performed or goods delivered by Seller are defective, Seller – at its sole discretion – shall have the right to either supply replacement goods or repair the defect. Multiple corrections – typically two – shall be permissible within a reasonable period of time.

(2) Buyer's right to assert claims due to defect shall be subject to a statute of limitations commencing – on a case by case basis – at the time of the passing of risk and expiring after twelve (12) months, unless a longer period is compulsory by law.
(3) Buyer shall only be able to assert claims for obvious defects of factory products or services after acceptance provided that Buyer communicates such defects to Seller without delay, but no later than within two weeks following delivery. Furthermore, the provisions of Section 640, Paragraph 2, BGB, shall apply. In any other cases – e.g. in the event of hidden defects – Buyer shall inform Seller in writing without delay after their detection to preserve Buyer's right to assert claims for defects (Notification Obligation according to Section 377, HGB – German Commercial Code). Buyer shall retain the defective items in the condition existing at the time of detecting the defects and make them available for Seller's inspection.
(4) Immaterial, reasonable deviations from dimensions and workmanship – particularly in the case of re-orders – shall not entitle Buyer to raise complaints unless the parties have agreed on absolute conformance. Technical improvements as well as any technical changes which may be required shall also be deemed to conform to the contract to the extent that they are reasonable and do not

constitute any impairment of the product's fitness for use.
(5) In the event that Buyer fails to comply with Seller's operating, usage or maintenance instructions, performs alterations to the product, exchanges parts or uses consumables which do not correspond to the original specifications, Buyer shall not be entitled to any warranty if Buyer is unable to disprove Seller's substantiated claim that only one of the afore-stated circumstances, acts or omissions has caused the defect.
(6) Seller shall not be held liable for normal wear.
(7) The above provisions of this paragraph shall not apply to the sale of second-hand items. The delivery of such items is subject to the exclusion of any claims for defects.
(8) In the event that Seller, above and beyond its legal and contractual obligations, should agree to provide any information concerning the utilization of its product, Seller shall only be liable under the provisions of this § 7 if the parties have agreed on a special remuneration for such information.

§ 8 Limitation of Liability

Claims for damages arising out of a positive violation of contractual duties, misconduct or negligence at the time of concluding the contract, and from impermissible actions which are not concurrently based on a violation of a major obligation to perform contractual obligations by Seller are excluded against Seller as well as Seller's assistants and agents employed in the discharge of its obligations to the extent that the damage was not caused intentionally or by gross negligence. This provision shall not apply to claims for damages arising out of defects concerning the contractually assumed suitability [of the product] which are intended to protect Buyer from the risk of consequential damage resulting from defects. This provision shall not affect any claims for damages pursuant to the Liability for Defective Products Act nor any liability for damage to life, limb or health.

§ 9 Reservation of Title

Any and all goods delivered by Seller shall remain Seller's property up to complete payment and settlement of any and all claims arising under the business relationship between Seller and Buyer. This provision shall also apply to disputed and/or conditional claims.

§ 10 Place of Performance

Seller's place of business shall be deemed the place of performance.

§ 11 Legal Venue

These Terms of Business as well as any and all legal relations between Seller and Buyer shall be subject to the laws of the Federal Republic of Germany. The lower district court (Amtsgericht) Brackenheim, Germany, which has first-instance technical and geographic jurisdiction for Seller, shall be the exclusive legal venue – to include any litigation involving bills of exchange, checks or documents, irrespective of the value in dispute – in the event that the parties are registered businesses/merchants or legal entities under public law.