

General Terms and Conditions for Deliveries and Repairs of KERN Microtechnik GmbH

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I. Scope

The following General Terms and Conditions (hereinafter "GTC") shall apply to all contracts between KERN Microtechnik GmbH (hereinafter "KERN") and entrepreneurs (§ 14 German Civil Code, BGB), legal entities under public law or special funds under public law (hereinafter "the Customer") for services of repair or manufacture and delivery, even if they are not mentioned again separately in later contracts. Deviating, conflicting or supplementary general terms and conditions of the Customer are hereby explicitly rejected. These General Terms and Conditions shall also apply if KERN executes the order in ignorance of terms and conditions that conflict with or deviate from these GTC. The Customer's own general terms and conditions shall only apply if KERN has expressly agreed to them in writing.

II. Conclusion of contract, written form, scope of services

1. Quotations from KERN are subject to change without notice. A contract is only concluded upon written confirmation of an order or is implied by execution of the order or the ordered delivery.

2. The legal relationship between the Customer and KERN shall be governed solely by the contract as concluded in writing including these General Terms and Conditions. Amendments and changes to the concluded contract as well as to these General Terms and Conditions must be made in writing in order to be effective. This shall also apply to the cancellation or amendment of this written form clause. The written form shall also be deemed to be sufficient if it is transmitted via telecommunication, in particular by e-mail.

3. Only services and deliveries expressly agreed between the parties are included in the scope of services. Additional services are neither owed nor included in the price. In the event that the parties disagree as to whether certain services are part of the commissioned scope of services or whether a supplement is to be concluded, KERN shall be entitled to refuse performance.

4. It is the exclusive responsibility of the Customer to check the suitability of KERN's products and services for the intended purposes (including those of its own customers). Liability for the suitability of KERN's products and services for the Customer's purposes presupposes that KERN has confirmed or guaranteed their suitability in writing.

5. The documents relating to a quotation, such as illustrations, drawings, weights and dimensions, are only approximate unless they are expressly designated as binding.

6. KERN is entitled to use subcontractors for the provision of services.

Insofar as the rendering of services by the respective subcontractor requires the provision of confidential information by the Customer, the Customer agrees that this may be passed on to the subcontractor by KERN for the purpose of rendering services. Before passing confidential information to subcontractors, KERN shall oblige said subcontractors to treat the information confidentially.

III. Payment, set-off, right of retention

1. All prices and payments are exclusive of the applicable statutory value-added tax and packaging costs for the respective delivery or service.

2. Deliveries are FCA (Incoterms 2010) from 82481 Murnau, Ammergauer Str. 11 or 82438 Eschenlohe, Olympiastraße 2.

3. Unless otherwise agreed, payment is due upon invoicing.

4. The Customer shall be in default of its payment obligation

– irrespective of a reminder by KERN – if it does not make payment within 14 days from the due date and receipt of an invoice or equivalent payment schedule.

5. If a due claim of KERN is not settled even after a payment reminder and expiry of a further period of two weeks, all claims of KERN arising from the business relationship with the Customer shall become due immediately. KERN shall then be entitled only to perform further deliveries and services against advance payment or adequate security.

6. The Customer may only offset its own claims against claims of KERN if the Customer's claims are undisputed or have been legally established, or in the case of a claim of the Customer that is based on the same contractual relationship. The Customer may only assert a right of retention on the basis of its own claims arising from the same contractual relationship.

IV. Price changes

Price changes are permissible if the period between conclusion of the contract and the agreed delivery or service date exceeds four months. If wages, material costs or market purchase prices increase thereafter until completion of the delivery or service, KERN shall be entitled to increase the price correspondingly in line with the cost increases. The Customer shall only be entitled to withdraw from the contract if the price increase significantly exceeds the increase in the general cost of living between order and delivery.

V. Cancellation costs

If the Customer unjustifiably withdraws from a previously placed order, KERN may, without prejudice to the possibility of demanding fulfillment of the contract or asserting claims for a higher actual loss, demand up to 10% of the net sales price or the net remuneration for the costs incurred when processing the order and for lost profit. The Customer reserves the right to prove that KERN has suffered no or less damage as a result of the withdrawal.

VI. Deadlines, dates, delays

1. Dates and deadlines are only binding if confirmed by KERN.

2. Unless otherwise agreed, time limits shall commence upon dispatch of the order confirmation, but not prior to the provision of any documents, approvals, releases to be procured by the Customer as well as compliance with the agreed terms of payment from this and other orders and other obligations of the Customer.

3. The agreed deadlines shall be extended or the agreed dates postponed in case of disruptions to KERN's business operations or the business operations of its suppliers or subcontractors for which KERN is not responsible, in particular due to strikes, lawful lockouts, official orders and all other cases of force majeure. The deadlines shall be extended or the dates postponed by the duration of the disruption plus a reasonable start-up period. The same shall apply in the event of operational disruptions, lack of raw materials or operating resources, lack of transport facilities as well as in the event of late, improper or insufficient delivery by suppliers, if these circumstances are not the responsibility of KERN and if they can be proven to have a considerable influence on the performance owed by KERN. KERN shall not be responsible for the aforementioned circumstances even if they arise during an already existing delay. KERN will inform the Customer as soon as possible of the beginning and expected end of such disruptions. The above restrictions do not apply to forward transactions.

4. If KERN is in default, the Customer must allow KERN a

grace period of at least 4 weeks in writing before it can withdraw from the contract.

VII. Warranty

1. In the case of a defect whose cause was already present at the time of the transfer of risk, the Customer shall have a claim to rectification or subsequent delivery at the discretion of KERN.

The costs incurred for the rectification/replacement (transport, travel, labor and material costs) as well as the costs for the inspection of the defect shall be borne by the Customer.

If KERN cannot remedy a defect subject to its warranty obligations, or if further attempts at rectification are unreasonable for the Customer, the Customer may demand a reduction in price instead of rectification or may withdraw from the contract. Otherwise, the statutory provisions shall apply.

2. The Customer must notify KERN of any defects immediately in writing.

3. The warranty obligation shall not apply if

- a) the Customer has not used the item to be produced and delivered in accordance with the contract (hereinafter "delivery item") or the item to be repaired in accordance with the contract (hereinafter "repair item") in accordance with its intended use or
- b) changes are made to the delivery item or repair item by the Customer without the specific written consent of KERN.

4. The Customer's right to assert claims for damages shall be governed by the conditions set out in Clause VIII and Clause IX; § 444 German Civil Code (BGB) shall remain unaffected.

5. In the case of a breach of non-performance-related obligations pursuant to § 241 para. 2 BGB, the Customer shall only be entitled to assert a claim for damages in place of performance that goes beyond the statutory provisions if it has previously warned KERN in writing and the breach of obligation has nevertheless not been remedied by KERN.

VIII Liability for damages, recalls

1. Claims of the Customer for expenses or damages, regardless of the legal basis, are limited to damages that were caused by KERN or one of its vicarious agents or contractors

- a) intentionally,
- b) due to gross negligence or
- c) in the case of essential contractual obligations, due to ordinary negligence.

Essential contractual obligations in this sense are those obligations of KERN which are supposed to fulfill the rights of the Customer in accordance with the contents and purpose of the contract concluded with KERN, as well as those obligations whose fulfillment makes the proper execution of the contract concluded with KERN possible in the first place, and on whose observance the Customer has regularly relied and depended.

2. Liability shall be limited to the amount of damages that were foreseeable at the time the contract was concluded or at the latest at the time the breach of duty was committed, and to the typical damages for comparable transactions of this type, unless KERN is liable due to intent or gross negligence on the part of its legal representatives or executive employees.

3. Liability shall be limited in terms of reason and amount to the sum insured via the liability insurance cover purchased by KERN.

4. The above limitations of liability shall not apply in the event of death, personal injury or damage to health, or in the

event of liability under the Product Liability Act (Produkthaftungsgesetz), or in the case of other, more extensive mandatory statutory liability of any kind.

IX. Statute of limitations

1. Warranty claims shall become statute-barred within twelve months of the transfer of risk.

2. Claims for damages, insofar as they are not connected with a defect, shall become statute-barred within one year of the end of the year in which the claim arose and the Customer became aware of the circumstances giving rise to the claim, or ought reasonably to have become aware of them unless the oversight was due to gross negligence.

3. The provisions in Clause 1 and Clause 2 above shall not apply if the claims are based on an intentional or grossly negligent breach of duty by KERN, or if there is a case of injury to life, body or health, or in the case of liability under the Product Liability Act, or in the case of other, extensive mandatory statutory liability of any kind; otherwise § 444 BGB shall remain unaffected.

X. Place of jurisdiction, applicable law

1. In the event of all disputes arising from or in connection with the contractual relationship, the Customer shall bring an action before the court with jurisdiction for the registered office of KERN. KERN is also entitled to sue the Customer at the Customer's place of business.

2. German substantive law shall apply exclusively, to the exclusion of the provisions on the International Sale of Goods (CISG) and those provisions of German private international law which would lead to the application of a foreign legal system.

3. Insofar as a version of these GTC in a language other than German exists, only the German language version shall be legally binding. This also applies to amendments and supplements to these GTC, insofar as a German language version exists.

XI. Miscellaneous

1. Transfers of rights and obligations of the Customer arising from the contract concluded with KERN shall require the written consent of KERN in order to be effective.

2. Should one of the provisions of these GTC be or become invalid in whole or in part, the validity of the other provisions shall remain unaffected. In the event of the invalidity of a provision, a provision that comes as close as possible to the sense and purpose and economic significance of the invalid provision shall be deemed to have been agreed. The same shall apply in the event of a contractual gap.

XII. Special terms and conditions for production and delivery contracts

The following special terms and conditions additionally apply for production and delivery:

1. Deliveries, deadlines, dates

1.1 Deliveries are made FCA (Incoterms 2010) from 82418 Murnau, Ammergau Str. 11, or 82438 Eschenlohe Olympiastraße 2.

1.2 The delivery period shall be deemed to have been observed if readiness for dispatch has been notified by the end of the delivery period or if the delivery item has left KERN's works.

1.3 Partial deliveries are permissible within the agreed delivery periods, provided that they are reasonable for the Customer and do not result in any disadvantages for the Customer.

1.4 We reserve the right to implement design or shape changes during the delivery period which are attributable to improvements in technology or to legal requirements, provided that the delivery item is not significantly changed as a result and the changes are reasonable for the Customer. Changes of this nature also do not constitute a defect.

1.5 If the manufacture and delivery of serial parts has been ordered, KERN shall be entitled to deviate from the order quantities to the extent customary in the trade as long as this is reasonable for the Customer.

2. Transport and sales packaging, disposal

2.1 Packaging shall become the property of the Customer.

2.2 The Customer shall assume the obligation to dispose of the transport packaging properly after delivery under its own responsibility and on its own expense in accordance with the statutory provisions.

2.3 The Customer shall indemnify KERN against the obligations under § 4 of the German Packaging Ordinance (Verpackungsverordnung, obligation to take back transport packaging) and all associated claims of third parties, regardless of their nature.

2.4 KERN's handover/exemption right in accordance with the above provisions shall not expire until two years have elapsed from the time of delivery.

2.5 Upon request, the Customer shall prove to KERN that it has implemented organizational measures to ensure proper disposal of transport packaging, including details of the individual measures. If it has reached agreements regarding disposal obligations with its customers or other third parties, it shall inform KERN of this upon request.

2.6 The above provisions in Clauses 2.2 to 2.5 shall apply mutatis mutandis to sales packaging. However, this shall not apply if the Customer (within the meaning of § 3 para. 11 German Packaging Ordinance) no longer resells the delivery items in the form in which they were delivered to it; in this case KERN's obligation to take back sales packaging and the other provisions of the Packaging Ordinance shall remain in effect.

2.7 Pendulum packaging: These packagings with appropriate marking are the property of KERN and must be returned. Otherwise KERN may charge the customer for the costs.

3. Acceptance and transfer of risk

3.1 The Customer is obliged to accept the delivery item within 14 days of notification of its readiness. If delivery by KERN has not been expressly agreed, handover shall take place at the registered office of the KERN plant.

3.2 The Customer must inspect the delivery item for existing defects or incorrect deliveries immediately and at the latest within 10 days of receipt of the goods or performance of the services. If a defect becomes apparent at this time or

subsequently, the Customer must notify KERN of this immediately. Reference is made to the consequences pursuant to § 377 para. 2 German Commercial Code (HGB).

3.3 If the Customer is in default with the acceptance of the purchase object, KERN shall be entitled, after setting a grace period of fourteen days, to withdraw from the contract and/or to claim damages for non-performance. The statutory provisions on the dispensability of setting a deadline shall remain unaffected.

3.4 The risk shall pass to the Customer upon collection of the delivery item or upon delivery of the delivery item to the shipping department. If the Customer declares that it will not accept the delivery item, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the Customer at the time of refusal.

3.5 If acceptance of the delivery item is delayed at the Customer's request or due to circumstances for which the Customer is responsible, KERN may charge storage charges amounting to 0.5% of the net sales price of the delivery items per month or part thereof, but not more than a total of 5%, after expiry of one month from notification of readiness for dispatch. Both parties reserve the right to prove that higher or lower storage costs have actually been incurred.

4. Retention of title

4.1 KERN shall retain title to all delivery items pending full settlement of all claims of KERN vis-à-vis the Customer arising from the business relationship between the parties. If the Customer acts in breach of contract, in particular in the event of default in payment, KERN shall be entitled to take back the delivery items after setting a deadline and withdrawing from the contract. The statutory provisions on the dispensability of setting a deadline shall remain unaffected. The Customer shall be obliged to surrender the goods after KERN's withdrawal from the contract.

4.2 KERN is entitled to insure the delivery items at the Customer's expense against theft, breakage, fire, water and other damage, provided that the Customer has not demonstrably purchased adequate insurance independently.

4.3 The Customer is entitled to resell the delivery items in the ordinary course of business; however, it hereby assigns to KERN all claims in the amount of the purchase price agreed between the parties (including VAT) together with all ancillary rights accruing to the Customer from the resale, irrespective of whether the delivery items are resold without or after processing. The Customer is authorized to collect these claims after their assignment. KERN's authority to collect the claims itself remains unaffected; however, KERN undertakes not to collect the claims as long as the Customer duly fulfills its payment obligations, is not in default of payment and no application has been made for the opening of insolvency, composition or bankruptcy proceedings, and has not entirely ceased making its payments. If this is the case, however, the Customer shall disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

4.4 In the case of sales within the framework of current account relationships, KERN's extended retention of title refers to the current account claim or, after balancing, to the balance claim.

4.5 The processing or transformation of the goods by the Customer is always carried out for KERN. If the delivery items are processed with other items not belonging to KERN, KERN shall acquire co-ownership of the new item in the ratio of the value of the delivery items to the other processed items at the time of processing. The same provisions shall apply to the new item created by processing as to the items delivered under retention of title.

4.6 If the delivery items are inseparably mixed with other

items not belonging to KERN, KERN shall acquire co-ownership of the new item in the ratio of the value of the delivery items to the other mixed items at the time of mixing. The Customer shall store the jointly owned items for KERN free of charge.

4.7 The Customer may neither pledge the delivery items nor assign them by way of security. In the event of their seizure, confiscation or other dispositions by third parties, the Customer shall notify KERN immediately and provide all information and documents required by KERN to safeguard its rights. The Customer shall make enforcement bodies and third parties aware that the items are owned by KERN.

4.8 KERN shall release the securities to which it is entitled at the Customer's request insofar as they exceed the value of the claims to be secured by more than 20%, to the extent that these have not yet been settled.

5. Warranty

5.1 If products are manufactured in accordance with design documents received from the Customer, KERN shall only be liable for their manufacture. The Customer shall bear responsibility for the documents to be supplied by it, such as drawings, gauges, samples, etc.

5.2 Any references to certifications, DIN or CE standards as well as other descriptions of the goods merely contain a description of the goods. An assurance of properties within the meaning of § 443 BGB (German Civil Code) must be expressly agreed or designated as such.

6. Industrial property rights, rights to documents

6.1 Unless expressly agreed otherwise, KERN warrants that the delivery items within Germany are free from industrial property rights and copyrights of third parties (hereinafter: "property rights").

6.2 KERN shall not be liable if and to the extent that the Customer is responsible for the infringement of property rights. This is in particular the case if KERN manufactures delivery items on behalf of and according to plans and specifications of the Customer and the infringement of property rights is based on the plans and specifications of the Customer, and furthermore also if the Customer uses the goods contrary to purpose or intended purpose, changes them or uses them together with products not delivered by KERN and this gives rise to the infringement of property rights. In such cases, the Customer shall indemnify KERN against all claims of the respective third party within the internal relationship.

6.3 In the event of an infringement of property rights for which KERN is liable, KERN shall be entitled, at its discretion, either

- a) to acquire a right of use at its own expense so that the delivery items can continue to be distributed or
- b) to change the performance objects in such a way that they no longer infringe the property rights.

If this is not possible for KERN under reasonable conditions, the Customer shall be entitled to the statutory rights of withdrawal and reduction.

6.4 The Customer must inform KERN immediately of any third-party claims in respect of property rights. The Customer shall leave the final decision on all defensive measures and negotiations to KERN and shall support KERN to the best of its ability in defending the claims. It shall not acknowledge the infringement without having agreed this with KERN in advance. If the Customer discontinues the sale of the goods in order to reduce the amount of the damages or for any other reason, it shall point out to the third party that this does not imply any acknowledgment of an infringement of property rights.

6.5 All rights to all calculations, drawings, flowcharts, files, plans and other documents produced by KERN shall remain with KERN, even if production was carried out using the

Customer's know-how and/or specifications.

7. Statute of limitations for customer claims pursuant to Clause XII.6

7.1 Claims of the Customer pursuant to Clause XII.6 shall become statute-barred within twelve months of the transfer of risk.

7.2 The provision in the above Clause 7.1 shall not apply if the claims are based on an intentional or grossly negligent breach of duty by KERN, or if there is a case of injury to life, body or health, in the case of liability under the Product Liability Act, or in the case of other, more extensive mandatory statutory liability; otherwise § 444 BGB shall remain unaffected.

XIII. Special terms and conditions for repair services

For repair services, the following additional special conditions apply:

1. Scope of performance

1.1 KERN shall repair the repair objects in a professional manner. Unless a different scope of services has been agreed in writing, the repair shall include the performance of work to restore the functionality of the repair objects, as determined by KERN on the basis of the information provided by the Customer, inspection of the repair objects by KERN as well as in the course of the repair.

1.2 The costs for spare parts required for the repair (including costs for shipping, customs, etc. if applicable) shall be invoiced separately. The special terms and conditions for production and delivery pursuant to Section XII shall apply mutatis mutandis to the delivery of these spare parts.

2. Remuneration, cost estimates, quotations

2.1 KERN's quotation contains a list of all items to be provided by KERN for the purpose of the repair on the basis of the information provided by the Customer. These costs represent a forecast of the costs. If the inspection of the repair objects on site and the execution of the repair results in higher or lower costs, the actual costs incurred shall be reimbursed in accordance with the rates specified in the quotation for working hours, travel time, travel costs, accommodation costs, expenses, etc. as well as the spare parts that were actually required and used. If the inspection of the repair objects on site and the execution of the repair reveals that the costs forecast in the quotation will be exceeded by more than 20%, the Customer's consent must be obtained. If this is not granted, the costs incurred to date shall be borne by the Customer in accordance with the rates specified in the quotation for working hours, travel time, travel costs, overnight accommodation costs, expenses, etc.

2.2 If the Customer requests a quotation with a binding price indication instead of the forecast-based quotation pursuant to Clause 2.1, a separate written order for the preparation of a cost estimate by means of an on-site inspection of the items to be repaired shall be required in advance against payment. In the course of this preliminary inspection, which is subject to a fee, it shall be determined which work and spare parts are actually necessary and thus a quotation with a binding price shall be prepared. When creating the binding quotation, the rates for working hours, travel time, travel costs, overnight accommodation costs, expenses, etc. as listed in the forecast-based quotation pursuant to Clause 2.1 shall be charged.

3. Acceptance

3.1 After notification by KERN that the repair work has been completed, the Customer shall be obliged to accept the properly executed repair work without delay. If the Customer

does not declare its refusal of acceptance within one week of notification of completion of the repair work, the work shall be deemed accepted. The Customer may not refuse acceptance due to insignificant defects.

3.2 If the Customer refuses acceptance due to significant defects, it shall notify KERN of this in writing, stating the defects. The Customer shall set KERN a reasonable deadline for the removal of the defects.

3.3 If the acceptance fails at least twice, the Customer may assert its statutory rights, in particular it may withdraw from the contract.

4. Performance period

4.1 The exact dates for the performance of the repair service shall be agreed between the parties.

4.2 All services shall be provided from Monday to Friday during KERN's normal business hours (Monday to Friday, 07.00 to 17.00).

Insofar as services are provided outside these times at the Customer's request, the Customer shall bear the additional costs thus incurred (in particular overtime premiums, lump sums for emergency services, etc.).

5. Place of performance

The place of performance for the repair of the repair objects is the agreed place of business of the Customer and the place of installation of the repair objects specified therein or, in the case of repair via KERN Tele-Service, the registered office of KERN.

6. Customer's duty to cooperate

6.1 The Customer shall provide the employees of KERN with all necessary support during their work, in particular at the Customer's premises. This includes in particular a duty to cooperate as follows:

- The Customer shall draw KERN's attention to all faults and anomalies found in the items to be repaired
- The Customer shall ensure that a competent employee is available as contact person at the place of operation
- The Customer shall grant the employees of KERN free access to the relevant repair items
- The Customer shall ensure that the work can be carried out without interruption
- The Customer shall provide KERN with the current version of the technical documentation for the repair items as well as other necessary information

6.2 The Customer shall ensure that all necessary cooperation services, also with regard to occupational safety, are provided in good time, to the extent required and free of charge for KERN.

6.3 If the Customer does not fulfill its duties to cooperate or fails to do so in time or in the agreed manner, KERN shall be entitled to refuse performance until the necessary measures have been taken.

In addition, in the event of a breach of the Customer's duties to cooperate, KERN shall be entitled to demand compensation for any damages incurred, including any additional expenses.

If the Customer does not fulfill its duty to cooperate, even within a reasonable grace period, KERN shall furthermore be entitled to withdraw from the repair contract.

7. Waste materials

If waste materials such as residual oils, cooling lubricants or other wastes are produced during the repair work, these wastes shall remain the property of the customer and the customer shall be responsible for disposing of these materials properly.