

Jahnel-Kestermann Getriebewerke GmbH

Delivery and Payment Conditions

1. GENERAL

- 1.1 Our delivery and payment conditions apply, in their respective current version, to all current and future orders of domestic or international customers, if we have not expressly acknowledged deviations in writing. Ancillary agreements and subsequent modifications are only binding for us after our written confirmation. This also applies to cancellation of the form of writing clause. Receipt of our deliveries and performance is deemed as an approval of our delivery and payment conditions.
- 1.2 Any purchasing conditions of the customer are binding for us only after express written acknowledgement. The same holds true for other General Standard Terms and Conditions of the customer or contract partner.
- 1.3 Agreements of the customer with travelers, representatives and agents are binding for us only after our written confirmation. Our representatives, agents and travelers are only entitled to accept cash and checks when presenting a power to collect.
- 1.4 We are entitled to process data of the customer in connection with the business relation to him in the sense of the federal data protection act.

2. OFFER AND CLOSING OF CONTRACT

- 2.1 Our offers are without obligation. A delivery or other contract is only closed when we have confirmed the customer order or other order in writing or delivered the goods.
- 2.2 We reserve the right to changes of the production process as well as product composition to the extent as type and quality of the product are not changed to the disadvantage by this.
- 2.3 If nothing to the contrary has been expressly agreed, then information published by us in catalogs, brochures and other publications in text or image format (for

instance descriptions, illustrations or drawings) finally characterize the condition of goods delivered by us and their uses. These are to this extent approximate values customary for the industry, unless they are expressly designated as binding in the order confirmation. Other information from the manufacturer are not binding.

3. PRICES

- 3.1 All prices are understood as net prices excluding value added tax, which the other contract party has to pay additionally at the respective statutory rate, if nothing to the contrary has been expressly agreed, and apply from our production location without packaging. If no different information has been given, then prices stated are in European currency (Euro).
- 3.2 We reserve the right to adjust prices if the basis for our cost estimate should change.
- 3.3 Decisive for the cost estimate are prices applicable on the day of delivery, if a fixed price has not been expressly agreed in writing.

4. DELIVERY

- 4.1 Delivery periods (dates) begin on the date of our order confirmation, but not before unambiguous clarification of all engineering and commercial details. The delivery period is complied with, if the object has left our works respectively warehouse by expiry of the period, or readiness for dispatch has been notified, if the goods cannot be dispatched in due time without our fault.
- 4.2 In case of delivery periods and dates not expressly designated as "fixed" in the order confirmation, the other contract party may set a reasonable grace period for delivery/performance after their expiry. We can only be in default after expiry of this grace period.
- 4.3 Delivery periods and dates are extended irrespective of our rights from delay of payment by the buyer by the period by which the other contract party does not fulfil its obligation to us.

- 4.4 Unforeseeable, extraordinary events not within our responsibility like labor disputes, operating troubles, measures taken by the authorities, transportation troubles or other cases of act of God, no matter whether these events occur with us or with our supplier, liberate us from the obligation of the respective contract; but obstructions of a temporary nature only for the duration of the obstruction plus a reasonable startup period. If such events subsequently render the delivery impossible or unreasonable for one of the parties, then both parties are entitled to rescind the contract.
- 4.5 Our liability for damage from default based on an ordinary negligent breach of duty is excluded, unless the breach of duty leads to injury to life, body or health. This regulation is not associated with a change of the burden of proof to the disadvantage of the other contract party.
- 4.6 We are entitled to perform partial deliveries to the extent as these are reasonable for the other contract party. Partial deliveries may be separately invoiced.

5. INFORMATION AND CONSULTATION

Information given and consultation concerning our products is performed based on our prior experience. The figures stated in this respect are average values determined. Suitability tests of the goods delivered and compliance with processing instructions are not dispensable due to information given and consultation. Verbally conveyed information is without obligation. Item 10 of these conditions applies to any liability.

6. DISPATCH AND PASSAGE OF RISK

- 6.1 If nothing to the contrary has been agreed, then delivery is performed ex works. If one of the Incoterms should have been agreed as delivery condition, then the version valid at the time of closing of the contract is applied.
- 6.2 If, upon request of the other contract party, the goods should be transported to a location different from the place of fulfilment, then the other contract party bears all cost incurred thereby. We are free in selection of the transport route and the transport carrier in our duty-bound equitable decision. Transport damage must be notified to us for the type and scope in writing by the other contract party immediately upon receipt of the goods. Insurance coverage of the goods for

transport damage, transport losses or breakage is closed only upon express wish of the other contract party on his account and at his cost.

- 6.3 In case of deliveries ex works, dispatch and transport are always performed at risk of the other contract party. This also applies if delivery is made from the warehouse of a third party (chain-of-delivery business) and for return of goods or empties (returnable transport packaging). Risk passes to the other contract party, also in case of partial deliveries, as soon as the shipment has been delivered to the person performing transport or has left our warehouse or in case of delivery ex works our works.
- 6.4 If dispatch of the delivery is delayed for reasons within the responsibility of the other contract party, or if the other contract party himself is responsible for transport of the goods, then passage of risk occurs upon notification of readiness for dispatch to the other contract party. Storage cost after passage of risk is borne by the other contract party. When storing at our works or warehouse, the storage cost amounts to monthly 0.5 % of the invoice amount. Proof of higher storage cost remains reserved. We are entitled to dispose of the delivery otherwise in case of fruitless expiry of a reasonable period of time, and to deliver to the other contract party within a reasonably extended period of time.
- 6.5 In case of delivery free domicile/warehouse, also in case of partial delivery, risk passes to the other contract party as soon as the goods have arrived at his business operation/warehouse ready for unloading. Unloading must be performed immediately and properly by employees and unloading appliances of sufficient numbers to be provided by the other contract party. Waiting times will be charged by us as customary in the industry. If approach to the destination fails for reasons within the risk of the other contract party, then risk passes to the other contract party upon failure of approach. This also applies in case of unjustified denial of acceptance by the other contract party. Item 6.4 applies accordingly.

7. PROCESSING OF PARTS SENT IN

- 7.1 Parts sent in for processing must be sent in free our works and with sufficient packaging, enclosing a delivery note.
- 7.2 Gear units must be delivered without oil and cleaned.
- 7.3 Title to waste material of parts sent in for processing passes to us.

- 7.4 When processing materials sent in, we are not liable for defects or damage due to inadequacy of the materials sent in, if we are not acting with intent or gross negligently. Furthermore, item 11 applies. If materials sent in become useless during processing due to faulty materials, then we must still be reimbursed for processing cost incurred, if we have not acted with intent or gross negligently.

8. PAYMENT

- 8.1 Payments must be made in Euro (€) and must be made free of postage and expenses. They may only be made to the appointed paying agent stated by us. Bills of exchange and checks are only deemed as payment after their redemption and are accepted without obligation for timely presentation and protestation.
- 8.2 In the absence of specific agreements, payment must be made in cash without any deduction free of our appointed paying agent, in the amount of
- 1/3rd of the order amount after receipt of the order confirmation,
 - 1/3rd after notification to the customer that the main parts are ready for dispatch.
 - The residual amount must be paid within 30 days after invoice date.

If payment periods are exceeded, then we are entitled to claim interest at a rate of 8 percentage points above the base interest rate (§ 247 BGB) p.a.

- 8.3 Setoff against counterclaims of the other contract party is only admissible if these counterclaims are uncontested or final and conclusive. The other contract party may only at most retain triple the amount of subsequent performance expense. When exercising the right of retention, then the other contract party is obliged, for the amount unpaid, at our choice, collateral by bank guarantee or deposit with a notary public of his choice.
- 8.4 In case of late payment, we may
- 8.4.1 immediately assert all claims from this and other transactions, even if they are not yet due for payment, with respect to the customer;

- 8.4.2 postpone our deliveries or other performance under this or other orders until complete fulfilment of all of our claims unsettled from this or other orders by the customer;
 - 8.4.3 request provision of reasonable collateral;
 - 8.4.4 request return of goods delivered by us and still under reservation of title. If the goods, due to passage of time, should no longer or no longer unrestricted be utilizable, then we are entitled to claim compensation for loss of value.
- 8.5 If, after closing of the contract, we obtain knowledge of facts about substantial deterioration of financial circumstances of the other contract party, which in duty-bound commercial discretion are suitable to endanger our claim for counter performance – this especially includes application for opening of insolvency proceedings, then we may request provision of suitable collateral within a reasonable period of time until the time of performance or performance against counter performance. If the other party to the contract does not in due time comply with our justified request, then we may cancel the contract or request damages. In this situation, we may render all amounts immediately due, also amounts possibly granted indulgence for.

9. RESERVATION OF TITLE AND INDUSTRIAL PROPERTY RIGHTS

- 9.1 We retain title in all goods delivered until full payment of reimbursement owed including all incidental claims. When accepting bills of exchange or checks, payment is deemed made only after their final redemption. The incidental claims specifically include the cost for packaging, freight, insurance, bank expenses, collection expenses, cost for lawyers and court and other cost.

The customer is obliged to insure goods under reservation of title against the usual insurable risks, specifically burglary, fire and other damage at the invoice value. He already now assigns all claims against the insurance company to the supplier.

- 9.2 Handling and processing of the goods under reservation of title is performed for us as manufacturer in the sense of § 950 BGB without obliging us. The processed goods are deemed as goods under reservation of title in the sense of item 8.1. In

case of processing, adjunction and blending of goods under reservation of title with other goods by the customer, we are due co-ownership in the new goods in the ratio of the invoice value of the goods under reservation of title to the invoice value of the other goods used. If our title lapses due to adjunction or blending, then customer already now transfers rights of title due to him in the new stock or item in the scope of the invoice value of the goods under reservation of title and safekeeps it free for us. The rights of co-ownership due under this are deemed as goods under reservation of title in the sense of item 8.1.

- 9.3 The customer is entitled, only within the scope of proper business operations and for as long as he is not in default to resell, process, adjunction with other objects or otherwise install the goods under reservation of title (hereinafter shortly referred to as "resale"). Any other disposal of the goods under reservation of title is inadmissible. Levy of execution or other seizure of the goods under reservation of title by third parties must be notified to us immediately. All intervention cost, for instance cost of third-party action against execution according to § 771 ZPO, is borne by the customer, to the extent as it cannot be claimed from the third party (respondent of the action against execution) at first request and the intervention was justified. If the customer grants indulgence for the purchasing price to his customer, then he must reserve title in the goods under reservation of title under the same conditions under which we have reserved title in delivery of the goods under reservation of title; but the customer is not obliged to reserve title with respect to future claims against his customer. Otherwise, the customer is not entitled to resell.
- 9.4 Receivables of the customer from resale of the goods under reservation of title are already hereby assigned to us. They serve as collateral to the same extent as the goods under reservation of title. The customer is only entitled and authorized to resell if it is ensured that the claims due to him therefrom pass on to us.
- 9.5 If the privileged goods are sold by the customer together with other goods not supplied by us for a total price, then assignment of receivables from the sale is performed in the invoice amount of our respective privileged goods sold.
- 9.6 If the receivable assigned is included in a current account, then the customer already hereby assigns a share of the balance including closing balance of the current account corresponding to the amount of this receivable to us.

- 9.7 The customer is authorized to collect receivables assigned to us until our revocation. We entitled to revoke if the customer does not properly fulfill his payment obligations from the business relationship with us or if we gain knowledge of circumstances suitable to substantially reduce the credit worthiness of the customer. If the preconditions for exercising of the right to revoke are fulfilled, then the customer upon our request must immediately disclose the receivables assigned and their debtors, give all information required for collection of the receivables, hand over the associated documentation and notify the debtor of assignment. We ourselves are also entitled to make notification of assignment to the debtor.
- 9.8 If the nominal amount (invoice amount for the goods or nominal amount of the receivables) of the collateral existing in our favour exceeds the secured claims by in total more than 20 percent, then upon request of the customer we are to this extent obliged to release collateral of our choice.
- 9.9 If we assert the reservation of title, then this is only deemed as a cancellation of the contract if we expressly state this in writing. The right of the customer to possess the privileged goods lapses if he does not fulfil his obligations from this or another contract.
- 9.10 We reserve the title and copyright in illustrations, drawings, samples and other documentation. They may neither be reproduced nor made accessible to third parties without our approval and must be immediately returned to us upon request or in case of non-award of the contract.
- 9.11 If, in manufacture of products according to samples or other information given by the customer, industrial property rights of third parties are violated, then the customer indemnifies us from and against all claims.
- 9.12 If we are not awarded the contract, then we are entitled to claim reasonable reimbursement for product samples manufactured by us.

10. WARRANTY

- 10.1 We are not liable for improper or unsuitable use of the products.
- 10.2 The other contract party is obliged to carefully inspect the goods delivered – even if samples or specimen have been sent first – immediately after receipt for

completeness and regularity. The delivery is deemed approved if a notification of defects has not been received within 3 working days after receipt of goods at the destination, or if a defect could not be detected during a proper inspection, within 3 working days after its discovery in writing, by telex, by telefax or by e-mail. This also applies to additional delivery. If an additional delivery is not objected to within 3 days after receipt of goods at the destination, then it is deemed approved. Our field service employees are not authorized to accept notifications of defects or objections of quantity.

- 10.3 In case of justified notification of defects, the other party to the contract at first only has a claim for subsequent fulfilment, which we will perform by our choice by delivery of products free of defects (against return delivery of the goods objected to) or by remedy of the defects. If subsequent fulfilment has failed or unreasonable for the other contract party (§ 440 BGB) or dispensable, because
- a. we finally decline subsequent fulfilment
 - b. we do not effect subsequent fulfilment on a contractually determined date or within a specific period of time and the other contract party in the contract has associated continuation of his interest in performance in the timeliness of performance or
 - c. special circumstances exist, which when weighing the interests of both parties justify immediate repudiation (§ 323 para. 2 BGB),
- then the other contract party is immediately due the right of reducing the purchasing price or by his choice repudiate from the contract and claim damages instead of performance or reimbursement of futile expenses according to item 10.
- 10.4 Expenses required for the purpose of subsequent fulfilment, especially transport, infrastructure, working and materials cost are borne by us. This does not apply if the expenses increase because the product after delivery has been moved to another location than the residence or business domicile of the other contract party, unless moving corresponds to proper use of the object.
- 10.5 If the other contract party accepts defective goods, even though he recognized the defect, then he is only due claims and rights due to defects if he reserves the right to those in acceptance because of the defect.
- 10.6 Assignment of claims due to defects by the buyer to third parties is excluded. In case of notification of defects, payments of the buyer may only be retained to a scope forming a reasonable ratio to the defects asserted.

11. LIABILITY FOR DAMAGES

- 11.1 We are liable for damage to life, body or health according to statutory regulations.
- 11.2 Furthermore, our liability for breach of duty and our liability outside of the contract is limited to intent and gross negligence. The liability of gross fault of our employees, staff members and simple servants is excluded.
- 11.3 Excepted from item 11.2 is violation of essential duties of the contract (cardinal duties). In this case, we are liable even in case of ordinary negligence for own fault as well as for fault of one of our employees, staff members or simple servants.
- 11.4 Liability is limited to damage typical for the contract, the occurrence of which we had to expect at closing of the contract based on the circumstances known to us at this time.
- 11.5 Further liability is excluded, independent of the legal grounds. We are especially not liable for missing commercial success, loss of profits, consequential damage, consequential harm caused by a defect and damage from claims of third parties.
- 11.6 The above limitation of liability also applies to claims for reimbursement of futile expenses (§ 284 BGB).
- 11.7 Claims for damages directed at us, no matter on what legal grounds, are limited in time to two years from the start of the period of limitation regulated by law, but at the latest from delivery of the object.
- 11.8 The above regulations do not include reversal of the burden of proof at a disadvantage of the other contract party.
- 11.9 Claims for damages under the product liability act remain untouched.

12. PLACE OF FULFILLMENT, PLACE OF JURISDICTION, APPLICABLE LAW

- 12.1 Place of fulfilment for all reciprocal obligations is the domicile of Jahnelt-Kestermann.

- 12.2 Exclusive place of jurisdiction for all disputes is our domicile according to commercial register, if the other contract party is merchant or instrumentality of public law in the sense of § 29 a) para. 2 ZPO. But we are also authorized to sue the other contract party at his statutory place of jurisdiction.
- 12.3 The relation between us and the other contract party is subject to German law under exclusion of the treaty of the United Nations for international purchase of goods (CISG) and the rules of private international law. INCOTERMS apply in supplement for interpretation of the contract.
- 12.4 Should individual regulations be invalid or lose validity due to circumstances occurring later on, then the validity of the remaining regulations remains untouched.