

General Terms and Conditions of Business of KRACHT GmbH, Werdohl

(Valid from 01.09.2020)

I. Validity and Provisions

(1) These general terms and conditions of business of KRACHT GmbH, Werdohl (hereinafter also known as Supplier) alone shall apply for business customers (hereinafter also known as Buyer) in accordance with Section 14 of the German Civil Code [BGB].

(2) They shall apply for all contracts for the supply of goods or other services including contracts for services to produce a result and all future business transactions with the Buyers insofar as they constitute legal transactions.

(3) The Buyer's terms and conditions of business shall not be recognized by us even if we have not expressly rejected them upon receipt thereof.

II. Offer

(1) Our offers are subject to change without notice and are not binding, unless agreed otherwise. Verbal declarations of will shall not be binding until we have confirmed them in writing.

(2) The documents pertaining to the offer such as diagrams, drawings, statements of measurements and weights shall only apply as being approximations unless they have been expressly designated as being binding and the intended use is not impaired. The Supplier shall be entitled to modify the promised performance and to deviate from it if, as a result thereof, the intended use of the performance is not impaired.

(3) The Supplier shall reserve the copyright and industrial property rights to cost estimates, drawings and other documents. Third parties must not be allowed access to them.

III. Delivery term, Delivery and Default

(1) The delivery period shall only be regarded as having been agreed as an approximation. The delivery period shall not commence until all technical and commercial queries have been clarified. The Supplier shall have complied with the delivery period if the goods have left his works or the Buyer has been notified that the goods are ready for dispatch by the time it has expired.

(2) The delivery period shall be extended as appropriate by at least the duration of the circumstances stated below, if delivery is delayed as a result of a strike, non-delivery or late delivery to the Supplier or force majeure, such as a breakdown in production or restricted production due to the forces of nature, pandemics, or similar, or if the Buyer has delayed or failed to co-operate as agreed. Modifications for which the Buyer is responsible shall result in the delivery period being extended by a commensurate length of time. This shall not apply if the Supplier is culpable for these circumstances for this. The beginning and end of such hindrances are to be notified by the Supplier in important cases.

(3) Notwithstanding Section 286, II and III of the German Civil Code [BGB], the Supplier shall only find himself in default if he has been notified by the Buyer that he is in default. In the event of the Supplier being in default the Buyer shall only be entitled to withdraw from the contract after he has set the Supplier a reasonable period of time to fulfil the contract, stating at the same time that failure to comply with the subsequent period of time allowed for delivery will result in refusal on the part of the Buyer to take delivery of the goods.

IV. Passing of risk and Taking delivery of the goods

(1) Provided that nothing is stated otherwise in the order confirmation, the agreed terms of delivery shall be ex Works [EXW]. If the goods are sent at the Buyer's request, the statutory regulations in Section 447 BGB shall apply. Otherwise risk shall pass over to the Buyer when we notify him that the goods are ready for dispatch. At the Buyer's request insurance cover for the transport can be arranged by us at his expense. The Buyer is to take delivery of delivered goods even if minor defects can be detected. If the Buyer does notify the Supplier of these defects, he shall do so irrespective of his rights under Section VIII.

(2) In so far as it is an intra-community consignment in accordance with Section 6a of the German Value Added Tax Act [UstG], the Buyer shall be obliged to grant an intra-community entry certificate in accordance with Section 17a of the German Value Added Tax Implementation Act [UstDV]. To do so the Buyer shall receive a form from the Supplier to fill out and return to the Supplier without undue delay.

V. Price and Payment

(1) Prices shall apply straight net ex Works, plus VAT, excluding packing and other dispatch and transit costs. Packing shall be charged at cost and only taken back by us if we are obliged to do so by law. Transport packing must be returned to us carriage-free and free of charge for us. The value of the transport packing will not be credited. The price which counts shall be the price valid on the day on which the order is confirmed as a matter of principle.

(2) The price in force on the date the contract is signed shall apply for delivery periods up to four months, unless the Supplier is responsible for a delay. Otherwise the Supplier may adjust his price as appropriate in response to changes in the costs of materials, wages and other ancillary costs. If the purchase price changes by more than 40%, the disadvantaged Party shall be entitled to withdraw from the contract.

(3) Payments are to be paid net within 30 days from the date of invoice. If the Buyer is in default, the Supplier shall consequently be entitled to invoice the Buyer interest from the date on which he falls into default onwards in accordance with Section 288 Para 2 BGB at nine percentage points above base rate as well as a lump sum amounting to €40.00 in accordance with Section 288 Para 5 BGB. Draft charges shall be for the Buyer's account in all cases. If just a single draft is not honoured on time, the entire account shall become payable immediately.

VI. Offsetting, Right of Retention and Right to withhold performance

Offsetting, rights of retention and rights to withhold performance shall not be admitted, unless the demand for a counter-claim is not contested or has been adjudicated.

VII. Reservation of title

(1) The delivered goods shall remain the property of the Supplier until payment for them has been made in full. The reservation of title shall also apply until all accounts, including future and conditional accounts in the business relationship between the Buyer and Supplier have been paid in full.

(2) The Buyer shall not be authorised to assign the goods by bill of sale as a security, or to mortgage them, however, he is entitled to sell the goods subject to reservation of title in a proper commercial transaction. The accounts against his purchaser materializing from such a transaction are hereby assigned to the Supplier.

(3) If the goods are processed or treated by the Buyer, the reservation of title shall also cover the entirely new thing. The Buyer shall acquire co-ownership for that percentage corresponding to the value of his goods to that of the goods supplied by the Supplier.

(4) If the value of all the securities held by the Supplier should exceed his accounts on an enduring basis by more than 20%, the Supplier shall consequently release securities as he chooses at the Buyer's request.

(5) The Supplier is entitled to assert his reservation of title rights without withdrawing from the contract.

(6) The Supplier shall be entitled to request the return of the items belonging to it at any time, in particular, to assert rights of segregation and ownership and assignment of the right to counter-performance in the event of insolvency proceedings being opened on the Buyer, if the fulfillment of its accounts are jeopardized by the Buyer, in particular if insolvency proceedings are opened on the Buyer's assets or if there is a significant deterioration in his financial status. The assertion of rights of reservation as well as levy of execution on the items supplied by the Supplier shall not constitute withdrawal from the contract.

VIII. Warranty and Notification of defects

(1) The Buyer may only assert claims under warranty subject to the condition that he has complied with his obligations incumbent upon him under Section 377 of the German Commercial Code [HGB] to inspect the goods and to notify defects properly.

(2) Insofar as the purchased thing is defective the Supplier is entitled, as he chooses, to effect a cure by either rectifying the defect or by supplying a new fault-free item. If he decides to rectify the defect, or supply a replacement, the Supplier shall be obliged to bear all the necessary costs incurred for the purpose of effecting a cure, in particular for transportation, fares, labour, and materials, insofar as these have not been incurred as a result of the purchased item having been relocated to a location other than the place of fulfilment.

(3) If the cure is unsuccessful, or if the Supplier refused to effect a cure, the Buyer shall consequently be entitled to demand as he chooses, to withdraw from the contract, or to demand a reduction in the contract price.

- (4) The Buyer shall not be entitled to assert claims under warranty if the fitness for use of the supplied items is no more than minor.
- (5) The Supplier can also be held liable in accordance with the statutory regulations, if the Buyer asserts compensation claims for damages attributable to intent or gross negligence including intent or gross negligence on the part of our representatives, or assistants. If we are not accused of an intentional breach of contract, our liability to pay compensation for damages shall be limited to damages typically occurring and foreseeable.
- (6) The Supplier shall also be liable under the statutory regulations if he is inculpable breach of an important contractual duty (cardinal duty). In this case the liability to pay compensation for damages shall be limited to foreseeable and typically occurring damages.
- (7) If the Buyer is entitled to a right for compensation for damages instead of performance, the Supplier's liability shall be limited to foreseeable and typically occurring damages (also in the cases regulated in Para 3).
- (8) Besides which, indirect damages and consequential damages which are the consequence of defects in the supplied item will, given this, only qualify for compensation if such damages are typically to be expected when the supplied item is used as intended.
- (9) Liability on account of a culpable death, personal injury and physical harm shall not be affected; this shall also apply for compulsory liability in accordance with the German Product Liability Act.
- (10) Unless regulated otherwise above, the Supplier's liability is ruled out.
- (11) The period of limitation for claims under warranty shall be 12 months from the passing of risk.
- (12) In the event of a claim being asserted on the Seller (Buyer in the contract with Supplier) by his customer under a quality warranty, and the Seller seeks to recover his costs from the Supplier in accordance with Sections 438 Para 1 No 2, Section 479 Para 1, Section 634a of the BGB, the period of limitation shall not be affected.

IX. Joint Liability

- (1) Liability to pay compensation for damages shall be limited as provided for in VIII – regardless of the legal status of the asserted claim. This shall apply in particular for compensation claims for damages arising from faults when the contract was signed on account of other breach of duty, or on account of tortious compensation claims for property damages in accordance with Section 823 BGB.
- (2) If liability claims for compensation for damages against us are ruled out, or limited, this shall also apply with regard to the personal liability of our salaried staff, employees, representatives and assistants to pay compensation for damages.

X. Cancellation of the contract

The Supplier shall reserve the right to withdraw from the contract if the claim for a counter-performance is jeopardised, in particular in those cases in which an attempt made to effect enforcement measures against the customer is unsuccessful, if the Buyer passes on product drawings and drawings of hydraulic plant without permission. In addition to this, the Supplier shall also be entitled to withdraw from the contract in those cases in which he is unable to supply his goods within the delivery period, even if it were to be extended, as a result of a strike, not having been supplied, or supplied on time, by his supplier, force majeure, such as production breakdown or restriction due to the forces of nature, pandemics etc. Every cancellation of contract (termination by notice being served) must be made in writing.

XI. Export control

(1) The supplier draws the ordering party's attention to the fact that the European and German foreign trade and payments law applies to the import/export of goods (commodities, software and technology) as well as the rendering of services (e.g. assembly, maintenance, servicing, repairs and instructions /training etc.) entailing cross-border activities to honour the contractual obligation, and the individual deliveries and technical services may be subject to export control law restrictions and bans. The relevant legal requirements entail the Regulation (EU) No. 2021/821 (EU Dual-Use Regulation) and its Annexes, the German Foreign Trade and Payments Law (AWG), the German Foreign Trade and Payments Ordinance (AWV) and their Annexes (Part I Section A and B of the German export list) as stated in the respective, valid versions.

Furthermore, European and national embargo requirements are in place against certain countries and persons, companies and organisations that may ban a delivery, provision, import or export and sale of goods as well as the rendering of services or render these subject to authorisation. The ordering party takes note of the fact that the above-mentioned legal requirements are subject to constant

amendments and adjustments, and are to be applied to the contract as stated in their respective, valid versions.

(2) The ordering party undertakes to acknowledge and comply with the European and German export control provisions and embargo requirements, in particular if the ordering party is affected by a re-export control condition of an authorisation granted to the supplier by the export control authority. The supplier shall inform the ordering party of a corresponding condition at the latest prior to the import/export.

The ordering party furthermore undertakes neither to directly nor indirectly sell, export, re-export, supply, forward or otherwise make available the supplied goods to persons, companies, institutions or organisations in countries insofar as this violates European or German export provisions or embargo requirements.

(3) The ordering party undertakes on request to forward to the supplier appropriate and complete information about the end use of goods to be supplied or the services, in particular issue so-called end use certificates and forward these as originals to the supplier, to review the end use and the purpose of use of goods to be supplied or services and furnish proof in that respect to the relevant export control authority.

(4) If the relevant authorities fail to issue export or import licenses or other foreign trade and payments law licenses or releases that may be necessary, or not in good time, or if other hindrances apply as a result of the foreign trade and payments or embargo law requirements to be honoured by the supplier as exporter or importer or by our suppliers in respect of honouring the contract or the delivery, the supplier shall be entitled to withdraw from the contract or from the individual delivery or service obligation. This also applies if corresponding export control and embargo law hindrances occur initially between entering into the contract and the delivery or the rendering of the service and in the case of exercising warranty rights, e.g. by way of a change in the legal situation, and render performing the delivery or rendering the service temporarily or ultimately impossible because the necessary export or import licenses or other foreign trade and payments law licenses or releases are not issued by the relevant authorities or are withdrawn or other legal hindrances as a result of foreign trade and payments and embargo law requirements to be complied with conflict with executing the contract or performing the delivery/rendering the service. Claims for damages on the part of the ordering party are excluded by way of corresponding application of the provisions of Joint Liability set out in Item IX. of these Terms and Conditions of Business.

(5) Complying with delivery periods may be rendered conditional on the release or issue of export or import licenses or other foreign trade and payments law licenses by the relevant authorities. If the supplier is prevented from performing a timely delivery as a result of the duration of the proper institution of foreign trade and payments law application or authorisation proceedings, the delivery time shall be extended appropriately by the period of the delay caused by such official proceedings.

(6) The ordering party shall be liable in full to the supplier for damage that the supplier sustains and expenses it incurs as a result of the culpable failure on the part of the ordering party to honour European and/or German export provisions or embargo requirements.

XII. Proprietary rights

The Buyer himself shall be obliged to conduct a check to verify whether industrial property rights have possibly been breached by placing the order, and to draw our attention to this as necessary, if the order has been placed for parts actually protected by industrial property rights. He shall assume all responsibility for claims asserted against us in carrying out an order for this reason by an entitled party. The Buyer shall have to bear all the fees, costs and expenses incurred in connection with every legally successful case taken against him outside Germany.

XIII. Place of fulfilment, Place of jurisdiction and Applicable law, Written form

(1) The place of fulfilment for our performance if the terms of delivery are ex Works [EXW], shall be the supplying plant. The place of jurisdiction shall be Altena.

(2) With the exception of the conflict of laws law, German law shall apply as a supplement to these provisions for all legal relationships between us and the Buyer. The provisions of the Convention dated 11.04.1980 on Contracts for the International Sale of Goods (CISG) shall not apply.

(3) All amendments and side agreements to the contracts must be made in writing. The requirement for written form shall also apply for the cancellation of the requirement for written form. A confirmed e-mail shall satisfy the requirement for written form.

Supplementary provisions for the supply of hydraulic plant:

The above-named provisions shall apply for hydraulic plant with the following supplements and / or amendments.

(1) The preparation of a single copy of conventional drawing documents in German is included in the order value (offer price). Should additional documents be requested, they will be prepared and invoiced at cost price.

(2) The offer price (order value) includes all the work envisaged in the preliminary planning. In so far as modifications requested by the Buyer become necessary while the order is being handled or afterwards, a new agreement will be reached on price.

(3) The Buyer alone is responsible for mounting protective cladding - to the extent that it is not required under German safety laws. In such cases it can be supplied by separate agreement.

Only applicable for the fully assembled plant as a whole:

(1) As stated in the offer (order confirmation) the plant will be supplied fully assembled, provided that it is possible and reasonable and not unduly expensive to transport it.

(2) If transportation and packing make it necessary to dismantle bulky pipes, valves and other parts, the costs of reassembly on the installation site shall be for the Buyer's account. The installation costs at destination are not included in the price. If the Buyer wishes the Supplier to arrange assembly and start-up by one of the Supplier's fitters, the Supplier shall invoice the Buyer for the necessary expenditure in accordance with the Supplier's terms and conditions of assembly MB I. and MB II.

(Countries other than Germany).

(3) Pipe screws will have to be tightened by the Buyer sometime after plant start-up, even if they have been tightened by the Supplier. Costs incurred as a result of this shall be for the Buyer's account.

(4) In so far as the Supplier is aware at the project planning stage for the hydraulic plant of conditions leading the Supplier to expect the unfavourable influence of temperature (E.g. increase in ambient temperature, lack of air ventilation, idle performance attributable to function etc.) sufficient oil coolers will be planned by the Supplier if possible. If after start-up an additional oil cooler should turn out to be necessary, this shall not substantiate a claim under warranty.

Supplementary provisions for repairs:

The warranty for defects shall be limited to the replaced parts and the professional workmanship of the workshop and assembly work. Here too the Buyer shall be responsible for notifying defects without undue delay. Relevant defects are to be notified without undue delay after the repair has been carried out. Moreover the provisions regulated under Numbers VIII and IX shall apply for the scope of warranty and the professional workmanship of workshop and assembly work.