

**General Terms and Conditions
of Krüger & Salecker Maschinenbau GmbH & Co.KG**

1. Scope of application, general provisions

- 1.1 The entire business relationship, including future business relationships, between Krüger & Salecker Maschinenbau GmbH & Co KG (hereinafter referred to as "**K&S**") and the customer shall be governed exclusively by these General Terms and Conditions (hereinafter referred to as "**General Terms and Conditions**").
- 1.2 However, this shall only apply if the customer is not acting as a consumer (Section 13 BGB) when entering into a business relationship with K&S. K&S is entitled to demand proof of this from the customer. K&S's offer is aimed exclusively at entrepreneurs. An entrepreneur is a natural or legal person or a partnership with legal capacity that is acting in the exercise of its commercial or independent professional activity when concluding the contract.
- 1.3 Terms and conditions of purchase or other terms and conditions of the customer are hereby rejected. They shall not be applied. This shall also apply if and to the extent that the scope of regulation of the customer's terms and conditions of purchase or other terms and conditions of business exceeds the scope of regulation of these General Terms and Conditions of Business or if K&S performs the contractually owed service without reservation in the knowledge of conflicting general terms and conditions of business of the customer.
- 1.4 K&S is authorized to amend its General Terms and Conditions with effect for the entire future business relationship with the customer following written notification. With regard to the agreed service, K&S is only authorized to make a change if this is within the customary scope. The change shall be deemed approved if the customer has not sent a written objection within six weeks of notification of the change. K&S shall specifically draw the customer's attention to this consequence when announcing the change.
- 1.5 If there is a framework agreement between the customer and K&S, these Terms and Conditions of Sale and Delivery shall apply both to the framework agreement and to the individual order.
- 1.6 Agreements that deviate from or supplement these General Terms and Conditions must be made in writing to be effective. This also applies to deviations from contractual written form requirements.
- 1.7 Should one of the provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remainder of the contract. The parties are obliged to replace ineffective provisions with provisions that are legally effective and correspond as closely as possible to the meaning, purpose and economic result of the ineffective provisions. Under no circumstances shall the relevant provision in these General Terms and Conditions be replaced by the customer's terms and conditions. The same applies in the event of a loophole in the General Terms and Conditions.

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2. Conclusion of contract, cancellations by the customer and written form

- 2.1 Offers from K&S are subject to change and non-binding until the contract has been concluded.
- 2.2 Customer orders are binding for the customer. This shall also apply to orders placed verbally or by telephone. K&S may accept these within 4 weeks.
- 2.3 K&S reserves all property rights and copyrights to offer documents, in particular drawings, models, samples, cost estimates, software and other documents that the customer receives from K&S.
- 2.4 Offers from K&S must always be treated confidentially. Any disclosure requires the prior written consent of K&S. All offer documents, in particular drawings, models, samples, cost estimates and software, which the customer receives from K&S prior to conclusion of the contract must be returned to K&S immediately or destroyed if a contract is not concluded. In the event of destruction, the customer shall provide K&S with proof of such destruction without being requested to do so.
- 2.5 In case of doubt, the contract between K&S and the customer shall only be concluded upon written confirmation of the order by K&S. If K&S does not confirm the order, the contract is effectively concluded when K&S begins to fulfil the order with the knowledge of the customer.
- 2.6 The written order confirmation from K&S is exclusively authoritative for the content of orders, unless the customer immediately objects to the confirmation in writing. This applies in particular to orders placed verbally or by telephone. The written objection to K&S shall in any case no longer be deemed immediate if it is not received by K&S within seven days of receipt of the order confirmation by the customer.
- 2.7 In the event that the customer cancels the contract concluded with K&S before the transfer of risk due to a statutory right of termination, K&S reserves the right to claim a cancellation fee of 20% of the contract price as remuneration, whereby the customer is free to prove that the claim has not arisen or has not arisen in the amount claimed. K&S shall also be free to prove that a higher claim has arisen.

3. Type and scope of services, partial deliveries and changes to services

- 3.1 The nature and scope of K&S's performance shall be determined by the content of the order confirmation.
- 3.2 K&S is entitled to make changes in design, material and form as well as deviations in color during the execution of the order, provided that these changes are within the customary scope and are reasonable for the customer.
- 3.3 K&S shall be entitled to make partial deliveries, provided these do not fall below a reasonable minimum.
- 3.4 K&S shall be entitled to have the customer's order executed in whole or in part by suitable subcontractors carefully selected by K&S.
- 3.5 If the customer requests changes to the scope, design and construction of the subject matter of the contract before the transfer of risk, or if K&S proposes such changes in writing, the following shall apply:
 - 3.5.1. The change request must be submitted in writing and must precisely describe the requested change.
 - 3.5.2. Requests for amendments require the written consent of the other party in order to be effective.
 - 3.5.3. The customer's change request shall only be taken into account if it is received by K&S before the customer has been notified of the completion of the service.

- 3.5.4. Shortly after K&S has received or submitted a change request, K&S shall notify the customer in writing for the purpose of reaching a supplementary agreement as to whether and, if so, how the changes can be implemented and what changes will result with regard to the price, the completion deadline and other contractual provisions.

K&S shall also inform the customer if such changes are due to amended laws and regulations in accordance with Section 7 (Norms and Standards).

- 3.5.5. Subject to compliance with Section 7 (norms and standards), K&S shall not be obliged to carry out the changes requested by the customer until the parties have reached agreement.
- 3.5.6. If K&S's performance is delayed due to disagreements between K&S and the customer regarding the consequences of changes within the meaning of clause 3.5, the customer shall in any case be obliged to pay that part of the price for the service provided by K&S until the disagreement arises.

If changes that have led to disagreements between the parties also have an impact on the contract price, the parties shall reach an express agreement on the specific amount of the new contract price. Any payments already made by the customer shall be offset against this newly agreed contract price.

4. Delivery date, reservation of self-delivery, co-operation of the customer

- 4.1 Delivery dates and delivery periods are non-binding unless the parties expressly agree that they are binding.
- 4.2 Delivery dates shall be deemed to have been met upon notification of readiness for dispatch or other provision of the service; this shall apply in particular if the subject matter of the contract has left K&S's factory by the end of the delivery period.
- 4.3 K&S points out that it is dependent on timely and proper self-delivery by its suppliers for the delivery of the subject matter of the contract. If, despite the conclusion of a congruent covering transaction, K&S is not supplied by its supplier with the goods required for the service to be rendered to the customer, or is not supplied correctly or on time, without K&S being responsible for this, K&S may withdraw from the contract with the customer. K&S shall notify the customer of the late or incorrect self-delivery as soon as K&S becomes aware of this.
- 4.4 If the customer fails to clarify all details of the order in good time and if the customer fails to provide all preliminary services in good time, in particular if agreed approvals are not granted in good time or are not granted properly, or if the customer requests changes, the delivery dates shall be extended to a reasonable extent. The right of K&S to claim compensation from the customer for damages caused by the delay shall remain unaffected.
- 4.5 Six weeks after a non-binding delivery period has been exceeded, the customer may request K&S to deliver. Upon receipt of the request, K&S shall be in default if K&S does not fulfil the request, unless the delivery is not made due to circumstances for which K&S is not responsible. In the case of binding delivery dates, the statutory provisions on the commencement of default shall apply.
- 4.5.1. In the event of default, the customer may withdraw from the contract after setting a reasonable grace period if the service is not provided within the grace period. Further claims in the event of a delay in delivery, in particular claims for damages, are limited in accordance with the provisions in Section 15 (Liability).
- 4.5.2. The claim for compensation for damage caused by delay is additionally limited to 5% of the agreed purchase price in the event of slight negligence, unless it is excluded in accordance with Section 15 (Liability).

4.5.3. K&S shall not be liable if, during the delay, completion becomes impossible by chance and the damage would have occurred even if completion had taken place on time.

4.5.4. The right to extraordinary cancellation for good cause remains unaffected.

4.6 The customer shall be obliged to perform all acts of co-operation required for K&S's performance. If it has been agreed that K&S is to carry out the assembly, erection, installation, commissioning or performance of functional tests at the destination of the subject matter of the contract, the customer shall in particular be obliged to provide K&S in good time and at its own expense with a sufficient quantity of the equipment, instruments, operating materials and consumables, including power supply and other materials, required for this purpose. At the request of K&S, the customer shall also provide the required number of assistants for support at its own expense.

5. Force majeure

5.1 Delays in performance due to circumstances for which K&S is not responsible, in particular due to force majeure, operational disruptions and official measures, shall lead to a reasonable extension of the delivery period. Force majeure shall also include national or international sanctions, armed conflicts (even if these result in travel to the destination country being unreasonable), industrial action including strikes and lawful lockouts in K&S's operations or those of its suppliers, as well as supply difficulties, traffic disruptions, pandemics or epidemics and exceptional traffic conditions. K&S assumes no procurement risk in this respect.

5.2 K&S shall inform the customer of this and the expected duration of the hindrance as soon as it becomes aware of such circumstances.

5.3 If a delay in performance pursuant to this clause lasts for more than six months, the customer and/or K&S shall be entitled to withdraw from the contract. There shall then be no reciprocal claims for damages. K&S shall not be responsible for delays in delivery within the meaning of this clause even if and to the extent that they occur during an already existing delay. In the latter case, claims for damages by the customer shall be excluded within the limits of Section 15 (Liability).

6. Dispatch, transfer of risk and acceptance

6.1 Unless otherwise agreed, delivery shall be ex works, EXW Incoterms 2020, (Nieland 1, DE-Bad Schwartau). On request and by individual agreement, K&S shall arrange for the goods to be dispatched to the customer in the customer's name and at the customer's expense and risk. In this case, K&S shall be liable for its own customary care in selecting the transport company.

6.2 The risk of accidental loss and accidental deterioration of the subject matter of the contract shall pass to the customer - if there is no acceptance - when the subject matter of the contract is handed over to the carrier, irrespective of who bears the freight costs. The same shall apply to the notification of readiness for dispatch if dispatch is not effected for reasons for which the customer is responsible. In this case, K&S shall store the subject matter of the contract at the risk and expense of the customer.

Delivery items reported as ready for dispatch must be called off immediately when the delivery date is reached. If the call-off or dispatch is delayed as a result of circumstances for which the customer is responsible, the customer shall be in default from the date of notification of readiness for call-off or dispatch. § 294 BGB is waived.

6.3 If K&S's performance is subject to acceptance, this shall be decisive for the transfer of risk. The following shall apply to acceptance:

6.3.1 K&S shall notify the customer of the completion of the object of performance and provide the customer with the respective performance result. If an acceptance date has not already been

agreed, the notification shall contain a date for the acceptance which is calculated in such a way that the customer has a reasonable amount of time to prepare for the acceptance.

- 6.3.2 Acceptance must be carried out on the acceptance date or, if no acceptance date has been agreed, immediately after notification by K&S that the goods are ready for acceptance.
- 6.3.3. K&S shall bear the costs of its personnel and its representatives. The customer shall bear all other costs of acceptance and shall in particular provide at its own expense energy, lubricants, water, fuels, raw materials and all other materials, insofar as these are necessary for the performance of the acceptance. The customer shall also install the necessary equipment at its own expense and provide the labor or aids required to carry out the acceptance tests.
- 6.3.3. The services of K&S shall be deemed to have been accepted when the customer implements or utilizes the results provided. If the customer has received a notification pursuant to clause 6.3.1 and is nevertheless not represented on the acceptance date or does not fulfil its obligations pursuant to clause 6.3.2 or otherwise prevents the performance of acceptance, the service shall be deemed accepted on the day of the scheduled acceptance date. This fictitious acceptance shall not apply if the customer objects to acceptance within a period of 10 calendar days. This objection period shall commence on the day scheduled for acceptance in accordance with clause 6.3.1. K&S shall inform the customer of the effect of his behavior at the beginning of the objection period.
- 6.3.4 Upon request from K&S, partial acceptances will be carried out for self-contained sections of the contracted services. This is particularly the case when the subject of the order includes a machine as well as the production of an associated molding tool. In this case, K&S may demand the partial acceptance of the machine. The provisions in clauses 6.3.1 - 6.3.3 shall apply accordingly.
- 6.4 In the event of culpable non-acceptance, K&S shall be entitled to demand compensation in accordance with the statutory provisions. This shall amount to 15% of the net purchase price, whereby the customer shall be at liberty to prove that the claim did not arise or did not arise in the amount demanded. This shall not affect K&S's right to prove that higher damages have been incurred.

7. Norms and standards

- 7.1 The contractual items provided by K&S comply with the statutory provisions in Germany. If the customer wishes to sell or use the contractual items outside Germany, the customer must ensure that the contractual items comply with the requirements of foreign law.
- 7.2 K&S shall ensure that the subject matter of the contract complies with the recognized rules of technology at the time of conclusion of the contract. Relevant in this respect are in particular EC Machinery Directive 2006/42/EC, EC ENV Directive 2014/30/EC as well as applied harmonized standards concerning the safety of machinery, namely the General Principles for Design, Risk Assessment and Risk Reduction EN ISO 12100, Safety Distances EN 13857, Emergency Stop EN 13850, Safety-Related Parts of Control Systems EN 13849-1.

8. Prices and price changes

- 8.1 Unless otherwise agreed in individual cases, the prices of K&S are subject to the value added tax applicable at the time of conclusion of the contract. The price stated in the order confirmation shall be decisive.
- 8.2 If the statutory VAT rate increases between conclusion of the contract and actual delivery, the agreed gross purchase price shall increase accordingly.
- 8.3 K&S shall be entitled to subsequently adjust the price stated in the order confirmation at its reasonable discretion if the cost factors that are decisive for the price calculation increase

significantly. Accordingly, a price increase shall be considered in particular if, for example, raw material, labor and energy prices as well as other actual or legal framework conditions change and this leads to a changed cost situation.

The customer must be notified of the price adjustment in writing. It shall enter into force two weeks after receipt of the notification by the customer.

If such a price adjustment leads to a price increase of more than 5%, the customer is entitled to withdraw from the contract if he can prove that he can obtain the service elsewhere at a significantly lower price and otherwise under the same conditions and K&S is not prepared to fulfil the order at a different price despite appropriate proof. The cancellation must be declared no later than two weeks after receipt of the written notification of the price adjustment. Cancellation shall not affect services that have been performed up to the time of the declaration of cancellation. K&S may demand full payment for the services rendered up to the cancellation.

8.4 Additional services shall be invoiced separately if K&S has agreed to them in writing.

9. Terms of payment

9.1 Unless otherwise agreed in individual cases, the customer is obliged to pay a deposit of 50% of the gross purchase price stated in the order confirmation to K&S after receipt of the order confirmation. The remaining 50% of the purchase price shall be due as soon as the customer has been notified that the object of performance is ready for dispatch and the customer has received the respective final invoice.

9.2 Payment must be transferred to an account to be specified by K&S within the payment period specified by K&S in the invoice. In the absence of a separate agreement, the invoice amount shall be paid without deduction within 7 days of receipt of the invoice and free of charge for K&S.

9.3 The deduction of cash discounts is only permitted in the case of a separate written agreement.

9.4 The date of receipt in the bank account of K&S shall be decisive for fulfilment, the timeliness of payment and the accrual of any agreed discounts. K&S is not obliged to accept bills of exchange or cheques. Payment by cheque and/or bill of exchange shall only be made on account of payment. In the case of payment by bill of exchange or cheque, the time of full payment shall only be deemed to be the termination of K&S's liability in connection with these documents after their final payment (including the associated costs) by the customer.

9.5 Even if a term of payment has been agreed, K&S may demand immediate payment of all claims or make payment dependent on advance payments or the provision of security if a significant deterioration in the customer's income or financial circumstances has occurred or such a deterioration is expected in the future due to objective circumstances.

Until the customer fulfils the above obligations, K&S shall be entitled to withhold performance. Furthermore, K&S shall be entitled to withdraw from the contract and claim damages after a reasonable period of time has elapsed without fulfilment.

9.6 In the event of a deferral or instalment payment agreement, all claims against the customer shall become due immediately if the customer definitively refuses to make a payment or is more than 14 days in arrears with a due payment. This does not apply if the amount in arrears is less than 10% of the outstanding receivables.

9.7 The customer is in default of payment if he does not pay immediately in response to a reminder from K&S after the due date of the payment claim. Irrespective of this, the customer shall be in default if he fails to make payment by a date specified in the contract or by a date determinable under the contract. Irrespective of a reminder, the customer shall be in default no later than 30 days after the due date and receipt of an invoice or equivalent statement of claims.

9.8 In the event of default by the customer, K&S may, subject to further claims, charge interest on the outstanding amount at the statutory rate for the duration of the default as well as costs of € 3.00 per reminder. The customer is entitled to provide evidence that K&S has incurred costs of less than € 3.00 per reminder. If the customer is a merchant, the claim shall bear interest from the due date at a rate of 8 percentage points above the respective base rate.

10. Offsetting and right of retention

10.1 Offsetting by the customer with counterclaims is excluded unless the customer's claims are undisputed or have been recognized by declaratory judgement.

10.2 Rights of retention may only be exercised by the customer if the customer's counterclaims against K&S are undisputed or have been recognized by a final and binding court decision.

10.3 Furthermore, a prerequisite for the exercise of rights of retention is that the underlying counterclaims of the customer are directly related to the contract on which the claims of K&S against the customer are based. This provision shall also apply to the assertion of defects.

11. Retention of title and lien

11.1 The delivered goods (goods subject to retention of title) shall remain the property of K&S until full payment of all claims of K&S arising from the business relationship with the customer existing at the time of conclusion of the respective contract. Furthermore, the goods subject to retention of title shall remain the property of K&S until all future claims of K&S against the customer have been paid in full.

11.2 K&S is entitled to a contractual lien on the items that have come into its possession as a result of the order due to its claim arising from the order. The contractual lien may also be asserted for claims from previous business relationships and other services insofar as they are related to the subject matter of the order. The contractual lien shall only apply to other claims arising from the business relationship insofar as these are undisputed or a legally binding title exists and the object belongs to the customer.

11.3 If the customer is more than one month in arrears with the payment of the purchase price or other outstanding payments, K&S may threaten the sale of the pledge in writing. After the expiry of one month after the threat, K&S is authorized to carry out the sale of the pledge. A notification sent by registered mail or a notification sent in another way, in which the post office provides some form of proof of delivery, which is sent to the last address of the customer known to K&S, shall suffice for the threat of a lien sale. In addition, K&S shall notify the customer by e-mail. If the notice of deposit sale is undeliverable, a deposit sale shall only be permitted if a new address cannot be determined despite reasonable efforts by K&S.

11.4 The processing or transformation within the meaning of § 950 BGB (hereinafter uniformly referred to as "processing") of the goods subject to retention of title is carried out free of charge for K&S, i.e. legally it is the manufacturer of the new items within the meaning of § 950 BGB.

In the event of the processing of reserved goods and items of other owners by the customer or its subcontractors, this shall also be carried out free of charge for K&S and the customer. If the customer has made agreements to this effect with the owners of other items used for processing, it shall also be carried out for these other owners. The processing shall be carried out with the proviso that K&S, the customer and, if applicable, the other owners are to be regarded as joint manufacturers of the individual new items at all times and to all degrees of processing.

K&S shall acquire co-ownership of the individual items produced in the ratio of the proportionate invoice value for the respective processed goods subject to retention of title to the total value of all processed items. The same shall apply to cases of combination and mixing

or blending within the meaning of §§ 947 and 948 BGB (German Civil Code). The above provision for the case of processing shall also apply in the case of § 946. All combinations of goods subject to retention of title with a property shall only be for a temporary purpose. In this respect, the customer hereby grants K&S a corresponding right of use.

Should K&S's ownership of the reserved goods nevertheless expire due to any factual or legal circumstances, the customer hereby transfers ownership of the resulting items to K&S at the time of their creation. This shall also apply in the event of several subsequent such processes. In the case of processing of items of different owners as described above and in the case of combination pursuant to § 947 BGB or mixing or blending within the meaning of § 948 BGB, the customer shall transfer co-ownership to K&S in the amount described above. K&S hereby accepts the transfer of ownership. The customer shall store the items for K&S free of charge.

In all of the above cases, the customer acquires a corresponding expectant right to the manufactured or created uniform items, which, like the expectant right to the goods subject to retention of title, becomes a full right. The items resulting from the processing as well as the items assigned to K&S in whole or in part shall be deemed to be reserved goods within the meaning of these terms and conditions.

The customer shall provide K&S with all information necessary to determine its ownership share.

- 11.5 Pledging or transfer by way of security of the goods subject to retention of title to third parties and the assignment or pledging of entitlements thereto are excluded. In the event of seizures and confiscations by third parties, including the assertion of liens such as landlord's liens and other impairments of K&S's security interests, notification must be given immediately. The costs of any intervention by K&S shall be borne by the customer, unless they can be obtained from the third party in question.
- 11.6 In the event of default of payment, K&S shall return the goods subject to retention of title immediately upon request, without the need for a declaration of cancellation by K&S. The same shall apply in the event of a significant deterioration in the customer's financial situation. The request to take back and the taking back shall not be deemed a cancellation of the contract.
- 11.7 If the customer acquires the goods subject to retention of title for the purpose of direct resale, the customer shall be entitled to sell them in the ordinary course of business. If he acquires them for the purpose of combining or processing and subsequent resale, he shall be entitled to sell the processed product in the ordinary course of business. If the reserved goods are not intended for direct resale or for processing with subsequent resale, resale without the prior consent of K&S is not permitted. Resale shall also be inadmissible if the resulting claim is covered by earlier dispositions of the customer in favor of third parties, for example by a blanket assignment.

The claims arising from the sale of the reserved goods are hereby assigned to K&S in full with effect from the time they arise, together with all ancillary and security rights. K&S hereby accepts the assignment. The third-party debtors shall be informed immediately by the customer of the assignment. The customer shall provide K&S with a certificate of assignment upon request.

If goods subject to retention of title are sold together with other goods, the assignment shall be made in the amount that K&S has invoiced to the customer for the goods subject to retention of title concerned on a pro rata basis. In the event that K&S is only entitled to a co-ownership share in the reserved goods, the assignment shall be made in the amount corresponding to the value invoiced by K&S to the customer for the reserved goods delivered by K&S and contained therein, which established the co-ownership share. All assignments shall be made first in favor of K&S.

If the customer includes the claims from a resale of reserved goods in a current account relationship existing with its purchasers, the respective recognized balance claims and the final balance claim shall be assigned to K&S to the extent that they contain individual (partial) claims which would have been assigned in accordance with the above provisions if they had not been claims to be included in the current account.

The customer's books shall be authoritative for determining the third-party debtors by first name and surname, address and amount of the claim. Any other assignment, pledging or other encumbrance of these claims or parts of claims is not permitted.

- 11.8 As long as the customer fulfils its payment obligations to K&S, it may collect the receivables from resales for itself in the ordinary course of business. The assignment of the claim is excluded. This shall not apply in the case of assignment for the purpose of debt collection by way of factoring, if at the same time the obligation of the factor is established to effect the consideration in the amount of K&S's share of the claim directly to K&S as long as K&S's claims against the customer still exist.
- 11.9 If the customer is in default of payment by more than one month, if the customer suspends payment, if the customer protests a cheque or bill of exchange (insofar as K&S is in any way the beneficiary of this cheque or bill of exchange), if goods subject to retention of title are seized or if an application is made to open insolvency proceedings or judicial or extrajudicial composition proceedings against the customer's assets, the customer's right to process or combine/mix and the right to resell the goods subject to retention of title as well as the right to collect the receivables shall lapse.

K&S must be informed immediately of the above events. A list of the goods subject to retention of title shall be sent to K&S. The goods subject to retention of title shall be stored separately and returned to K&S immediately upon request. K&S is also authorized to collect the claims assigned to it immediately. The assigned claims shall be disclosed to K&S without delay, together with their composition, amount, date of origin and the first and last names and addresses of the third-party debtors. This shall also apply to all other information required for the determination and collection of the claims.

The money received after the expiry of the right to collect claims assigned to K&S shall be received in trust up to the amount of all secured claims and paid out to K&S immediately or accumulated in a special account labelled "Money held in trust for XY GmbH". The customer agrees with K&S that the money received is the property of K&S. The customer hereby assigns to K&S the claims arising from the aforementioned account. K&S accepts this assignment.

- 11.10 After taking back the goods in accordance with clause 11.9 or withdrawing from the contract or after setting a deadline in accordance with § 323 BGB and fruitless expiry of the deadline, K&S shall be entitled to freely utilize the goods taken back.

The customer shall be credited with the realization proceeds. Reasonable retrieval, refurbishment and sales costs shall be deducted from the realization proceeds. The salaries of the K&S employees deployed for this purpose shall be recognized on a pro rata basis. 25% of the realization proceeds shall be recognized as sales costs. However, the maximum amount credited shall be the amount that a company at K&S's trading level would normally pay as the purchase price for the returned goods subject to retention of title, taking into account their condition at the time of return and their location. In the case of goods manufactured by K&S, the maximum amount credited shall be the direct cost price of K&S, disregarding administrative and distribution costs. The amounts credited shall be offset against K&S's claims until the latter have expired.

- 11.11 The customer is obliged to insure the goods subject to retention of title at his own expense to the usual extent, but in any case against fire, storm, water and theft damage, sufficiently at replacement value and to provide K&S with proof of insurance cover on request. The customer

hereby assigns to K&S its claims to which it is entitled against the insurance company and/or other third parties in connection with the goods subject to retention of title in the amount of the share attributable to the goods subject to retention of title of K&S. K&S accepts the assignment. The other provisions agreed within the scope of this retention of title shall apply accordingly.

- 11.12 If the retention of title is not effective under the law of the country in which the delivered goods subject to retention of title are located, the customer shall be obliged to provide K&S with equivalent security. If the customer does not fulfil this obligation, K&S may declare all payment claims against the customer due and payable - irrespective of payment terms.

12. Software utilization

- 12.1 Insofar as K&S also provides the customer with software and user documentation for use in accordance with the contract, the customer shall receive a non-exclusive, unlimited, non-transferable right to use the software to the extent agreed below and within the scope of the contract concluded between the parties upon full payment of the purchase price. Prior to full payment, all data carriers and the user documentation provided are subject to retention of title.
- 12.1.1 The software may only be used simultaneously by a maximum number of natural persons corresponding to the license purchased by the customer. The authorized use includes the installation of the software, loading into the working memory and the intended use by the customer. The number of licenses and the type and scope of use are otherwise determined by the contractual agreement between the parties.
- 12.1.2 The customer is not authorized to lease or otherwise sub-license the purchased software, to reproduce or make it available to the public by wire or wireless means or to make it available to third parties for a fee or free of charge, e.g. by way of application service providing or as "software as a service".
- 12.2 The customer is authorized to make a backup copy if this is necessary to secure future use. The customer shall visibly affix the note "Backup copy" and a copyright notice from the manufacturer to the backup copy created.
- 12.3 The customer is only authorized to decompile and reproduce the software in accordance with § 69e UrhG. However, this shall only apply on condition that K&S has not made the necessary information available to the customer upon request within a reasonable period of time.
- 12.4 The right to edit the software is limited to maintaining or restoring the agreed functionality of the software.
- 12.5 If the customer uses the software to an extent that qualitatively or quantitatively exceeds the acquired rights of use, he shall immediately acquire the rights of use necessary for the authorized use. In the event of a culpable breach of this obligation by the customer, the customer shall be obliged to pay K&S a contractual penalty to be determined by K&S at its reasonable discretion. The customer shall be entitled to have the contractual penalty reviewed by a court in terms of reason and amount. The assertion of further claims for damages shall remain unaffected.
- 12.6 Copyright notices, serial numbers and other features serving to identify the program may not be removed or altered from the software.
- 12.7 The customer shall not be granted any further rights of use or exploitation.

13. Material defects and defects of title

- 13.1 The following applies to equipment and associated parts: Unless otherwise agreed, the contractually agreed quality of the equipment to be supplied shall always be determined by the result of the test run at K&S, in the course of which the characteristics of the equipment to be

supplied are determined in relation to the material to be processed by the equipment. K&S has pointed out that a modification of the material to be processed may result in (chargeable) changes to the equipment. It also cannot be ruled out that certain products cannot be processed by the equipment in principle (even with modifications).

- 13.2 Dimensions, performance descriptions and other information on the quality of the delivery item are for specification purposes. In this respect, it does not constitute the assurance of properties that are the subject of a guarantee. Any public advertising statements/product information from third parties or from K&S are not the subject of the contractual product specification, unless K&S makes a corresponding agreement with the customer. Insofar as the materials to be used by K&S are contractually specified, K&S warrants only the conformity with the specification and not the suitability of the materials for the contractual purpose. K&S shall only be obliged to provide information if the materials are obviously unsuitable.
- 13.3 An agreement on specifications of the subject matter of the contract is only agreed if this has been made in writing. Verbal information or information in the documents of K&S shall not constitute an assurance or an offer to conclude agreements on the quality of the subject matter of the contract.
- 13.4 The customer is obliged to properly inspect the delivered goods immediately upon receipt at his own expense and to notify K&S immediately in writing of any defects, incorrect deliveries or shortages. A preclusive period of seven days from receipt of the delivery shall apply to the notification. Hidden defects must be reported to K&S in writing immediately after discovery. If the customer breaches its obligations under this clause 13.4, it shall no longer be entitled to assert claims for defects in respect of the defects concerned.
- 13.5 Any quality defects in a partial delivery shall not entitle the customer to reject the remainder of the completed quantity, unless the customer can prove that acceptance of only part of the delivery is unreasonable for him in view of the circumstances.
- 13.6 Damage caused by external influences, improper handling, faulty operation, faulty assembly or commissioning by the customer or third parties, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable building ground, chemical, electrochemical or electrical influences, normal wear and tear or corrosion are excluded from the liability for defects.
- 13.7 Claims for defects shall not exist in the event of only insignificant deviations from the agreed quality or usability. In all other cases, the customer shall have a claim to rectification of defects or replacement delivery. K&S shall be entitled to make a reasonable number of attempts to remedy defects or make replacement deliveries, but at least three.
- 13.8 If a third party asserts justified claims against the customer due to infringement of industrial property rights or copyrights by the service provided by K&S, K&S shall, at its discretion
- (a) obtain at its own expense a right of use sufficient for the agreed or presumed use of the subject matter of the contract and grant it to the customer or
 - (b) modify the subject matter of the contract in such a way that the property right is not infringed or
 - (c) exchange the delivery item, insofar as this does not impair the agreed or presumed use of the contractual item by the customer
- 13.9 If the rectification of defects or the replacement delivery pursuant to clause 13.7 fails within a reasonable grace period set by the customer or if K&S is unable to rectify the defect or is unable to do so under unreasonable conditions, the customer shall - without prejudice to any claims for damages pursuant to Section 15 (Liability) - have the right to reduce the contract price or to withdraw from the contract at its discretion. This right is limited to the subject matter of the contract concerned, insofar as such a restriction is not unreasonable for the customer due to

the nature of the item. The limitation of warranty rights shall not apply if the performance parameters are expressly warranted or if acceptance of the object of performance is unreasonable under the given circumstances.

- 13.10 The place of fulfilment for subsequent performance shall be the registered office of K&S in Bad Schwartau.
- 13.11 If the subject matter of the contract is subsequently moved to a location other than the customer's branch office agreed in the order and if this increases the expenses required for the purpose of subsequent performance (rectification of defects/replacement delivery), in particular transport, travel, material or labor costs, these shall not be borne by K&S. Any expenses incurred by K&S shall be reimbursed by the customer without delay. These restrictions shall not apply if the transfer of the subject matter of the contract to the place where it is located when the defect occurs corresponds to its intended use and this use has been contractually agreed between the customer and K&S.
- 13.12 Recourse claims of the customer against K&S in accordance with § 445a BGB (recourse of the entrepreneur) shall only exist insofar as the customer has not made any agreements with his buyer that go beyond the statutory claims for defects.
- 13.13 Section 15 (Liability) shall also apply to claims for damages.
- 13.14 Further claims or claims other than those regulated in this Section 13 (material defects and defects of title) of the customer against K&S due to a defect are excluded.
- 13.15 Claims for defects shall become time-barred twelve (12) months after the statutory commencement of the limitation period. This shall not apply insofar as the law pursuant to § 438 para. 1 no. 2 (buildings and items for buildings), § 445b (right of recourse) and § 634 a para. 1 no. 2 (building defects) BGB or pursuant to the Product Liability Act prescribes longer periods, in the event of an intentional or grossly negligent breach of duty by K&S, in the event of fraudulent concealment of a defect and in cases of injury to life, limb or health. The statutory provisions on suspension of expiry, suspension and recommencement of the limitation period shall remain unaffected. If the order confirmation from K&S provides for a longer warranty period, these claims shall expire at the end of the stated warranty period. So-called "guarantee periods" are warranty periods. Claims for material defects for defect rectification or replacement deliveries shall expire three months after completion of the defect rectification or replacement delivery, but not before expiry of the original period. Measures to rectify defects do not constitute acknowledgement of a defect. They are always carried out as a gesture of goodwill and without prejudice to the factual and legal situation.
- 13.16 The following shall apply to defects of title - in addition to the other provisions in this Section 13 (material defects and defects of title):
 - 13.16.1 K&S assures that it is not aware of any infringement of copyrights and/or patent rights of third parties by the subject matter of the contract supplied by it, including any software provided. Excluded from this are customary reservations of title.
 - 13.16.2 Unless otherwise agreed, K&S shall only be obliged to provide the service owed in such a way that it is free from third-party rights in the Federal Republic of Germany as the country of the place of fulfilment (as in clause 18.1).
 - 13.16.3 The customer is obliged to inform K&S immediately of the assertion of claims arising from third-party property rights and to proceed in agreement with K&S when dealing with these claims and pursuing its rights.
 - 13.16.5 K&S shall not be liable for the infringement of third-party property rights if the infringement is based on drawings, developments or other information or specifications provided by the

customer for the service by K&S. In this case, the customer shall indemnify K&S against third-party claims upon first request.

13.16.6 The liability of K&S for the infringement of third-party property rights is also excluded if the infringement was caused by changes made by the customer to the performance of K&S or the installation of additional equipment or the connection of the delivery item with other devices or equipment.

14. Obligation to fulfil, impossibility and non-fulfilment

14.1 If the entire performance becomes impossible for K&S before the transfer of risk due to a circumstance for which K&S is responsible, the customer may withdraw from the contract. In the event of partial impossibility or partial inability, the above provision shall only apply to the corresponding part. In this case, however, the customer may withdraw from the entire contract if he can prove a justified interest in rejecting the partial delivery.

14.2 Further claims of the customer, in particular claims for damages, are excluded in accordance with the provisions in Section 15 (Liability).

14.3 If the impossibility occurs during the delay in acceptance or through the fault of the customer, the customer shall remain obliged to fulfil the contract.

14.4 After the customer has withdrawn from the contract or after setting a deadline with a threat of refusal in accordance with § 323 BGB, K&S is entitled to freely utilize the contractual items taken back. Within the scope of its claim for damages, repossessed contractual items shall be taken into account in accordance with clause 11.9.

14.5 In the event of breaches of duty for which K&S is not responsible and which do not consist of the delivery of defective, newly manufactured goods, the customer shall not be entitled to withdraw from the contract.

15. Liability

15.1 The liability of K&S under contract and law is generally excluded, unless otherwise agreed below.

15.2 The exclusion of liability of K&S pursuant to clause 15.1 shall not apply:

- (a) for damages caused by K&S intentionally or through gross negligence;
- (b) if and to the extent that K&S is liable in accordance with the mandatory provisions of the Product Liability Act;
- (c) if and to the extent that K&S has given a guarantee of quality or durability and damages have arisen from the breach of the guarantee;
- (d) in cases of culpable injury to life, limb and health.

15.3 In cases of slight and ordinary negligence on the part of K&S, K&S shall only be liable - insofar as it is not already liable for damages in accordance with clause 15.2 - for the breach of material contractual obligations. K&S's liability shall be limited to the damage typical for the contract and foreseeable for K&S at the time of conclusion of the contract or commission of the breach of duty. Essential contractual obligations are all obligations whose fulfilment is essential for the proper execution of the order and on whose compliance the customer regularly relies and may rely.

15.4 K&S shall not be liable for damages that are exclusively attributable to the customer's sphere of risk. This includes liability for vicarious agents of the customer. Furthermore, K&S shall not be liable for damages if they are based on the fact that the customer or his vicarious agents have not followed the instructions for use, for example if the delivered products have been stored incorrectly, used improperly or mixed with products from other suppliers, changes have

been made to the products, parts have been replaced or consumables have been used that do not correspond to the original specifications.

- 15.5 Claims for damages by the customer due to ordinary or slight negligence on the part of K&S in accordance with the above clauses 15.2 and 15.3 are excluded in any case if they are not asserted in court within a period of three months after rejection of the claims with a corresponding notice by K&S or its insurer.
- 15.6 All possible claims for damages based on slight negligence on the part of K&S in accordance with the above clauses 15.2 and 15.3 shall become time-barred in accordance with the provision in clause 13.15. Notwithstanding this, the statutory provisions shall apply to the commencement of the limitation period for claims that are not claims for defects.
- 15.7 The above exclusions and limitations of liability shall also apply to the liability of K&S for its executive bodies, employees and vicarious agents as well as the personal liability of K&S's executive bodies, employees and vicarious agents.

16. Secrecy

- 16.1 The customer is obliged to keep information about the technical and commercial knowledge of K&S, which becomes known to him in the course of the business relationship, strictly confidential and to use it only for contractually intended purposes. This obligation shall apply for the duration of the business relationship. It shall also continue to apply for an unlimited period after its termination. It does not apply to publicly known information that has become known without breach of this confidentiality obligation.
- 16.2 For each case of a culpable breach of the obligation under clause 16.1 by the customer, the customer shall be obliged to pay K&S a contractual penalty to be determined by K&S at its reasonable discretion. The customer shall be entitled to have the contractual penalty reviewed by a court as to its merits and amount. The assertion of further claims for damages shall remain unaffected.

17. Prohibition of assignment

The assignment of claims of the customer against K&S to third parties may only take place with the prior written consent of K&S. K&S may make the consent dependent on the payment of an administration fee of 1% of the net order amount (agreed price excluding statutory VAT). The customer shall be entitled to prove that K&S has incurred no or lower costs. This shall not affect K&S's right to provide evidence of higher administrative costs.

18. Place of fulfilment, place of jurisdiction, applicable law

- 18.1 The place of fulfilment for payment and performance by K&S is the registered office of K&S in Bad Schwartau.
- 18.2 Legal disputes shall be brought exclusively before the ordinary courts of law. The courts in Lübeck shall have exclusive jurisdiction for disputes between K&S and the customer. With customers who are merchants, legal entities under public law or special funds under public law, Lübeck is agreed as an additional place of jurisdiction. Actions against K&S can only be brought in Lübeck. Lübeck shall also be the place of jurisdiction if the customer, as a non-merchant, has no general place of jurisdiction in Germany, moves his domicile or usual place of residence outside the Federal Republic of Germany after conclusion of the contract or his domicile or usual place of residence is not known to K&S at the time the action is brought.
- 18.3 German substantive law shall apply exclusively, excluding the provisions of international private law, German conflict of laws and the UN Convention on Contracts for the International Sale of Goods (CISG).