



## GENERAL CONDITIONS OF CONTRACT – DATE SEPTEMBER 2007

### KNAACK & JAHN Anlagenbau GmbH

These conditions apply exclusively for all transactions with traders, corporate bodies in public law, public sector special funds as well as other industrial buyers and entrepreneurs. Deviating or supplementary conditions of the purchaser are only binding where these have been confirmed in writing by K&J.

#### I. Quotation

The documents that belong to the quotation, such as pictures, drawings, weight and dimensional details are only approximately applicable, insofar as these are not expressly stated to be binding. K&J retains the ownership and copyright on quotations, drawings and other documents; these may only be made available to third parties with the express permission of K&J.

#### II. Scope of delivery

The written confirmation of order from K&J applies for the scope of delivery. Ancillary agreements and alterations are subject to the written confirmation of K&J.

#### III. Prices and payment

1. Prices are quoted exclusive of VAT. This will be charged separately in the invoice at the applicable rate according to the pertinent tax regulations.
2. Where nothing to the contrary is agreed in writing, the prices are quoted ex works, without packaging.
3. Invoices become due for payment without deduction, upon receipt. The date of receipt of the payment at K&J is decisive for the timely nature of the payment.
4. A right of retention by the purchaser is excluded, insofar as this is not based on the same contractual relationship, as well as where the offset is being made against disputed or not yet legally determined claims.

K&J is entitled to avert the exercising of a right of retention by providing a security deposit, as well as by a surety.

#### IV. Delivery time

1. Delivery deadlines are only binding, where these have been expressly confirmed as binding by K&J.
2. The delivery deadline starts upon sending the confirmation of order, however not before the purchaser has provided the required documents, permits, approvals as well as receipt of the agreed down payment.
3. The delivery deadlines are complied with, where the delivery item has left the factory within the period or K&J has given notice of readiness for shipment.
4. The delivery deadline is suitably extended in the event of labour disputes, in particular strikes and lockouts, as well as where unforeseen hindrances arise that are beyond the control of K&J, as well as those hindrances that have a considerable effect on the completion or delivery of the delivery item. This also applies where the circumstances arise at subcontractors. K&J shall not be responsible for the above defined circumstances if they occur during existing cases of default. K&J will notify the purchaser as soon as possible of the start and end of such hindrances.
5. The purchaser must fulfil its contractual obligations in order for the delivery deadline to be met.

#### V. Transfer of risk and acceptance

1. The risk (transportation and remuneration risk) passes at the latest upon shipment of the delivery items to the purchaser, even where partial deliveries are made or where K&J has taken on other services, e.g. the shipping costs or transportation and installation. At the request of the purchaser, the shipment will be insured by K&J at the expense of the purchaser, against theft, breakage, transportation, fire and water damage as well as other insurable risks.
2. Where shipment is delayed due to circumstances within the control of the purchaser, or where shipment takes place at the request of the purchaser at a later date to that agreed, then the risk passes to the purchaser on the day of notification of readiness for dispatch, however K&J is obliged to take out the insurance policies requested by the purchaser, at the expense of the purchaser.
3. Delivered items are to be accepted by the purchaser, irrespective of the rights from Section VII., even where they have minor defects.

#### VI. Reservation of title

1. K&J retains ownership of the delivered item until K&J has received all payments due under the delivery contract.
2. The purchaser may not pledge nor transfer as security the delivery item until K&J has received all payments due under the delivery contract. The purchaser must immediately notify K&J in the event of levies of execution as well as seizure or other disposals by a third party.
3. Where the purchaser acts in breach of contract, in particular in case of default in payments, K&J is entitled to take back the delivery item after issuing a reminder and the purchaser is obliged to hand over the delivery item.

#### VII. Warranty claims and liability

1. Where the delivery is a commercial transaction for both parties, the purchaser must inspect the delivered item immediately upon receipt, insofar as this is possible in the usual course of business and, if a defect is evident, shall give immediate notification of this to K&J. Where the purchaser fails to provide this notification, the delivery is deemed to have been approved unless this concerns a defect that was not evident upon inspection; otherwise Articles 377 and following of the German Commercial Code applies.
2. The right of the purchaser to claim for defects expires one year after delivery, respectively acceptance.
3. The rights are restricted, as K&J sees fit, to rectification of the defect or delivery of a fault-free item (subsequent fulfilment). In the event of failure or subsequent fulfilment, the purchaser has the right to reduce or rescind the contract as the purchaser sees fit.
4. To rectify the defect and/or to provide a replacement delivery, the purchaser must give K&J the necessary time and opportunity. Only in urgent cases for operational safety or to prevent disproportionate major damage, of which K&J must be immediately notified, or where K&J is in default of rectifying the defect, the purchaser has the right to rectify the defect or to have the defect rectified by a third party and to demand reimbursement of the necessary costs from K&J.
5. No warranty is accepted for damage that has arisen due to unsuitable or improper use, deficient installation, respectively commissioning by the purchaser or a third party, natural wear, erroneous or negligent handling, unsuitable fuels, replacement materials, deficient construction work, unsuitable foundations, chemical, electronic or electrical effects, insofar as these circumstances are beyond the control of K&J.
6. As a matter of principle, further claims by the purchaser, in particular for consequential damage are excluded. This does not apply for deliberate or gross negligence by K&J as well as in the event of any harm to life, the body or to health. The right of the purchaser to rescind the contract remains unaffected.
7. The above regulations apply accordingly, if the delivered item cannot be contractually used for reasons within the control of K&J (for example missing or inadequate operating instructions).
8. Where nothing to the contrary is specified above, K&J and its vicarious agents are liable for claims for compensation by the purchaser from an infringement of duty, from an infringement of obligations during the contractual negotiations and from unlawful acts, as follows:
  - a) The liability for injuries to personnel is in accordance with the statutory regulations
  - b) The liability for damage to property is restricted to  
€ 3 million per incident and to  
€ 6 million in total.
  - c) The liability for pecuniary loss is excluded.

The liability restriction under b) and the liability exclusion under c) does not apply insofar as a liability limitation according to statutory regulations is not applicable for damage to privately used items according to the law on product liability or in the case of deliberate or gross negligence or the lack of assured properties for contractually typical foreseeable damage.

#### VIII. Installation

Where K&J takes on installation of the delivered item or its monitoring, then the regulations in Section VII. apply accordingly for K&J where liability is concerned.

#### IX. Place of jurisdiction, severability clause, applicable law

1. Where the purchaser is a trader, a corporate body in public law or a special asset under public law, then the exclusive place of jurisdiction is Hamburg for all disputes arising from the contractual relationship. K&J is however entitled to call upon every legally pertinent court.
2. Where individual regulations of these conditions shall be void, this shall not affect the validity of the other regulations as such as well as the contract as such.
3. The law of the Federal Republic of Germany applies. The Hague Convention of 01.07.1964 regarding uniform laws on international purchase and the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 shall not apply.

**SAID. DONE!**