

KOHN Spannwerkzeuge GmbH	General terms and conditions of business	Change status: 01/18	Date 1 June 2018
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1. General

1.1 The following terms and conditions shall apply to all deliveries to the purchaser. The terms and conditions shall apply exclusively. We shall not recognise the purchaser's terms and conditions that conflict with or deviate from these terms and conditions unless we have explicitly agreed to their validity in writing. We shall also not recognise differing terms and conditions even if we fulfil the order without reservation and are aware that the customer's terms and conditions conflict with or deviate from our terms and conditions.

1.2 Oral statements of our representatives or employees shall require our confirmation in writing.

2. Offers

Our offers are subject to change. An order shall only be deemed accepted when we confirm the order in writing. The confirmation shall govern the contents of the order.

3. Prices

3.1 The prices of our price list that is valid at the time of delivery shall apply, unless otherwise agreed upon.

3.2 Unless otherwise agreed upon, our prices shall be quoted in EUR ex works without VAT, customs duty, freight, packaging for shipment, insurance etc. These costs shall be borne by the purchaser.

3.3 The minimum order value is 25,00 Euro.

4. Packaging

The choice of appropriate packaging for shipment shall be made by us. The packaging for shipment shall be charged at cost.

5. Shipment

5.1 Shipment shall always be made on account and at the risk of the purchaser. This shall also apply to the risk if we in exceptional cases assume the transport costs. Unless otherwise agreed upon, we shall determine the means of transport and transport route.

5.2 Special requests of the purchaser (e.g. expedited method of shipment, special packaging, employing a particular shipping agent) shall be taken into account as far as possible and against invoice of any additional costs.

5.3 The risk shall transfer to the purchaser when we hand over the goods to the carrier.

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6. Delivery

6.1 Delivery times shall be non-binding unless a binding delivery date has been explicitly agreed upon. A binding delivery date has been met when the goods have left our factory or it has been communicated that the items are ready for delivery when the purchaser picks them up himself.

6.2 If compliance of a binding delivery date is not possible for us or our subcontractors due to circumstances beyond our control, such as e.g. force majeure, natural catastrophes, war, riots, interference of higher authority, energy shortage or industrial actions, the delivery date shall be automatically extended for the duration of these circumstances. If the circumstances should last longer than three months, the contracting party shall be entitled to withdraw.

7. Complaints and Notification of Defects

7.1 Complaints relating to recognisable defects or recognisable incomplete or incorrect delivery must be made immediately to us in writing and no later than 7 days after receipt of the goods. Other defects must be made immediately to us in writing after discovering the defects.

7.2 In the event of complaints or notifications that are not made in a timely manner, the delivery shall be considered approved. In the event of timely notification, the warranty shall be in accordance with item 8.

8. Warranty

8.1 We reserve the right to make changes in construction or execution that do not impair either the functioning or the value of the goods and are not a defect if they do not impair the usefulness for the contractually intended purpose.

8.2 Warranties shall only be made in writing.

8.3 If there is a defect, we shall be entitled to a subsequent fulfilment by eliminating the defect or delivery of a defect-free item (replacement delivery). We may choose at our discretion between eliminating the defect and replacement delivery. Our right to refuse entirely rectification of the defect or replacement delivery because of excessive costs shall remain unaffected. The purchaser, however, shall be entitled at his discretion to withdraw from the contract or to demand reduction of the purchase price if the subsequent fulfilment fails, is particularly infeasible, is unsuccessful within a reasonable time period, is refused by us or is culpably delayed by us.

8.4 Replaced parts shall become our property.

8.5 We shall assume no warranty for damages, which after transfer of risk to the purchaser are caused by unsuitable or improper shipment, incorrect assembly or initial operation by the purchaser or a third party, changes and attachments not expressly permitted by us, normal wear, faulty or negligent handling by the purchaser or a third party, improper storage, climatic conditions etc.

8.6 The purchaser shall give us the necessary time and opportunity to rectify the defect or make a replacement delivery; otherwise we shall be released from our liability for defects.

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8.7 We may refuse the rectification of the defect or replacement delivery as long as the purchaser has not met all his obligations that are not related to the defective portion of the goods.

8.8 The warranty period shall be 24 months after delivery of the item.

8.9 Claims by the purchaser for damages and reimbursement of expenses due to the defect shall be in accordance with item 9 of these terms and conditions.

8.10 There is basically no right to return purchased goods. Within a period of 30 days after delivery of the goods, the seller may in individual cases accept the return of products. A redemption fee of 10% of the value of the goods and a processing fee of 25.00 Euro will be charged.

9. Claims for Damages and Reimbursement of Expenses

9.1. If damage is caused by a breach of duty by us, we are not liable for damages or reimbursement of expenses if we can prove that we are not responsible for the breach of duty. If we are responsible for the breach of duty, then we shall be liable for damages and reimbursement of expenses within the legal limits, insofar as paragraphs 2 and 3 do not stipulate otherwise.

9.2 In the case of minor negligence, our liability for damages or reimbursement of expenses shall be excluded. We are not liable in particular for loss of profit caused by minor negligence and other financial losses by the purchaser.

9.3 The exclusion of liability according to paragraph 2 shall not apply to warranty claims, injury to life, body or health, claims arising from the German Product Liability Law, and claims due to minor negligent breach of essential contractual obligations. In the event of minor negligent breach of contractual obligations, whose fulfilment is essential to the proper execution of the contract in question (essential contractual obligations) and on whose fulfilment the purchaser may ordinarily rely, the liability, however, shall be limited to foreseeable and typical damages when the contract was signed.

9.4 Insofar as our liability is excluded or limited, this shall also apply for the personal liability of our employees, representatives and vicarious agents.

10. Withdrawal in the Case of Breach of Duty

10.1 The purchaser shall not be entitled to a right of withdrawal based on a service not rendered by us or not rendered in accordance with the contract if we are not responsible for the breach of duty.

10.2 Item 10.1 shall not apply if a no-fault right of withdrawal by the purchaser arises from special agreements. Furthermore, item 10.1 shall not apply in the case of defective goods; in this case, the legal requirements of the law relating to sales shall apply, unless otherwise stipulated in these terms and conditions.

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11. Retention of Title

11.1 The goods delivered by us shall remain our property until the purchaser has paid all claims that we have against him from the ongoing business relationship. Bills of exchange and cheques shall be considered as payment only after they have cleared.

11.2 The purchaser may sell the goods for which we have retained title in the ordinary course of business, unless he is in default of payment or has suspended payments. He shall not pawn the goods or assign them as collateral.

11.3 Seizure of the goods subject to retention shall be communicated to us immediately and the seizure report (copy) attached.

11.4 If claims exist against third parties arising from the damage or destruction of the goods not yet fully paid for, the purchaser shall now assign to us his payment claims resulting from this. If the purchaser resells the goods, he shall now assign to us in pending payment of all of our receivables his rights against the buyer arising from the resale, including all ancillary rights and securities. If the purchaser's receivables from the resale of our goods subject to retention of title are included in a current account, he shall thus now assign to us his payment claim in the amount of the respective and recognised balance, namely in the amount of our claims against the purchaser. We shall accept the assignment. The purchaser may collect his claims assigned to us unless he is in default or has suspended payments.

11.5 The purchaser shall in any case guarantee to cooperate in procuring official approvals or any other formalities insofar as these become necessary.

11.6 If the value of the collateral granted to us exceeds our claims against the purchaser by more than 20%, then we shall be obliged to release the goods to that extent at the request of the purchaser.

11.7 If in the case of deliveries made abroad, we are required to carry out certain measures in the importing country for the retention of title mentioned above in this item or the other rights specified there, the purchaser must notify us accordingly and carry out such measures at his own cost. If the law of the importing country does not permit retention of title but allows the seller to reserve other rights to the delivered item, we shall be able to exercise all rights of this kind. Insofar as an equivalent securing of our claims against the purchaser are not achieved in this way, the purchaser shall be obliged to provide us other security for the delivered goods or any other collateral at his own cost.

12. Payments

12.1 Our payments are payable strictly net 30 days after receipt of the invoice, unless otherwise agreed upon in writing. Payments are always applied to the oldest outstanding invoice due.

12.2 The purchaser may only offset with receivables that are undisputed or legally binding.

12.3 We accept payments other than cash only on account of payment. All payments are to be made without any charges for us. The purchaser shall bear any bank, discount or collection fees even without a specific agreement. Bills of exchange require prior agreement.

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12.4 If the term of payment is exceeded, we shall be entitled without notice to charge the purchaser interest from the date of default in the statutory amount. This interest rate shall be adjusted upwardly if we can provide evidence of a load with a higher rate.

12.5 If a significant deterioration of the purchaser's financial circumstances occurs after the order is placed or if a prior deterioration of the financial circumstances becomes known after the order is placed, then we shall be entitled at our discretion to demand either prepayment or security. Payments may only be made to ourselves or to individuals explicitly authorised in writing or by a power of collection. We reserve the right to process orders with a value of less than EUR 50 and orders from customers unknown to us on a cash on delivery basis.

13. Place of Fulfilment and Place of Jurisdiction

Unless otherwise agreed upon – in particular in an authorised dealer contract – the following provisions shall apply:

13.1 The place of fulfilment for deliveries and services is the location of our supplying factory. The place for payments is Rudersberg.

13.2 German law shall be applied to all relations between the purchaser and ourselves. The UN Sales Convention shall however not be applicable.

13.3 To the extent permitted by law, the sole place of jurisdiction for all litigation, even arising from bills of exchange or checks, shall be agreed to be Stuttgart, Germany. We reserve the right to file a suit at the location of the purchaser as well.

Kohn Spannwerkzeuge GmbH
Rudersberg, 1 June 2018