

Terms of Sale

DEFINITIONS

'The Company' - shall mean Kaltra Innovativtechnik GmbH;

'The Purchaser' - shall mean the party who buys or agrees to buy the Goods;

'The Goods' - shall mean the items supplied under the contract of sale by the company, including its own products and services and those supplied by the Company as agent.

1. OFFER/ACCEPTANCE

Subject to any variation under Condition 3 hereof all contracts whether oral or in writing for the supply of Goods excluding erection are entered into by the Company only upon these conditions of sale to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document) and no contract shall be deemed to have been concluded between the Company and the Purchaser unless and until the Company has accepted the Purchaser's order either expressly or by necessary implication by supplying the Goods.

2. VARIATION

No variation of or additions to these conditions of sale shall be effective unless in writing and signed for on behalf of the Company. Such written variation shall take precedence over any confliction term contained herein.

3. PRICE AND PRICE INCREASES

The contract price of the Goods is based upon the cost to the Company at the date of its quotation for materials, labor and all other expenses and of conforming to any statutory regulation or requirements as may be in force, and is set out in such quotation. The Company reserves the right to unilaterally vary the quoted contract price by priority written notice to the Purchaser (to take account of any upward variation in the aforesaid costs) between the date of the quotation and the date of acceptance of the order. The Company may unilaterally increase the contract price by prior written notice to the Purchaser (to take account of any upward variation in the aforesaid costs) after the date of acceptance of the order, but in such circumstances the Purchaser shall be entitled to cancel the contract without liability if it so wishes, as long as it does so promptly on receipt of the notice.

4. REPRESENTATIONS

Any technical descriptions or other matter of whatever kind contained in any literature or advertisement published by the Company or on behalf of the Company by its agent shall not be deemed to be and shall not constitute any representation or warranty of any kind whatsoever in relation to the Goods or any part thereof.

5. TECHNICAL DATA

At the request of the Purchaser the Company will at reasonable additional cost to the former (payable at the same time and upon the same terms as the contract price):

Supply certified drawings and/or weights and dimensions relating to the Goods;

and/or

Visit any site for any purpose connected with the contract or with the Goods.

6. COPYRIGHT

All drawings, specifications, literature and any other materials prepared by or on behalf of the Company and the copyright therein or in any part thereof is the property of the Company. No part of any such drawing, specification or literature shall be reproduced without prior written consent of the Company; all such drawings, specifications, and literature are confidential and the contents of the same shall not be disclosed to any third parties without the prior written consent of the Company.

7. COPYRIGHT INDEMNITY

Insofar as the Company manufactures or supplies any Goods in accordance with any specification drawing or design provided by or on behalf of the Purchaser and the goods or their said manufacture or supply constitute any infringement of any patent or copyright the property of any person then the Purchaser shall indemnify and keep the Company indemnified against any claim, damage, loss or expenses made against or suffered by it arising out of or in connection with such infringement.

8. DELIVERY/COLLECTION

Times and dates of delivery shall not be of the essence of the contract and the Company shall not be liable for any loss, expenses, damage or claim whatsoever and howsoever arising, resulting from any delay in delivery howsoever such delay is caused.

Subject to above the Company shall deliver Goods to the site or such other place by such date for delivery as agreed between the parties, and where it cannot deliver by such date for any reason, it shall deliver the Goods within a reasonable time.

If the contract provides for the Goods to be collected by or on behalf of the Purchaser the Company shall give the Purchaser notice of the date when and the place where the Goods will be ready for collection and delivery shall be deemed to take place upon the date and at the place so notified.

Without prejudice to the foregoing, if the Purchaser fails to collect the Goods from the Company's premises within 14 days after receiving notification from the Company that the same are ready for collection then any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Purchaser who shall further reimburse the Company any extra expense or costs incurred by it in consequence of such failure together with a reasonable charge in respect of the storage and insurance of the Goods from the date upon which they should have been collected until the date of actual collection. The Company may issue an invoice for the Goods on the date upon which the Goods should be been collected and payment of such invoice shall be in accordance with Condition 12 hereof. Should the contractual delivery date be delayed or postponed at the Purchaser's request or the Purchaser otherwise fails to take delivery on the due date for delivery the Company may issue an invoice for the Goods as if such delivery date had not been delayed or postponed and payment of such invoice shall be due in accordance with Condition 12 hereof. In such a case the Goods shall be deemed for all purposes (including warranty) as being delivered by the Company to the Purchaser on the date originally agreed for delivery and any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Purchaser who shall further reimburse the Company any extra expense or cost incurred by it in consequence of such failure together with a reasonable charge in respect of the storage and insurance of the Goods from the date originally agreed for delivery until the date of actual delivery.

If within 28 days of the receipt by the Purchaser of notice from the Company that the Goods have been dispatched, no part thereof has been received by the Purchaser then the latter shall immediately advise the Company and confirm the same to the Company within three days thereafter otherwise the Company will accept no responsibility for any loss of the Goods.

9. RISK

All risk in the Goods whatsoever shall pass to the Purchaser on delivery.

10. TESTS AND INSPECTION

Any tests of the Goods or any part thereof undertaken by the Company at the request or on the instructions of the Purchaser shall be at the expense of the latter who shall reimburse the Company the cost thereof at the same time and upon the same terms as payment of the contract price. Without prejudice to the foregoing if the Purchaser requires any such test to be witnessed by him or by any representative of his then the Company will give to the Purchaser reasonable notice in writing of the date and place thereof. If the Purchaser or his representative fails to attend the same on the date and at the place so notified the Purchaser shall not be entitled to take any exception to the method, nature, extent, or results thereof and shall be bound by such results and shall reimburse the Company with the costs of such test.

11. PACKAGING

Goods to be delivered by the Company whether in or outside Germany will be packed in a manner suitable for the protection of the Goods under normal transport conditions and for dry indoor storage for up to three months from the date of such delivery provided that the packaging is not damaged or disturbed. Goods to be delivered outside Germany may be packed in some other manner agreed in writing between the parties and will be at the extra cost of the Purchaser payable at the same time and in the same manner as the contract price. All packaging will be nonreturnable.

Unless otherwise provided for in the contract the Purchaser shall pay for the contract price of the Goods and any other costs, charges or expenses provided for by these conditions forthwith upon delivery of the Goods, or for approved credit accounts with the Company within 30 days from the date of the invoice. Any payment not settled by the end of the month following the month in which delivery is made will be liable to a surcharge of 2.5% of the invoice value for every month in which the payment is overdue.

The purchaser shall not be entitled to make deduction from any amount due to the Company in respect of any offset or counter-claim unless both the validity and the amount thereof have been expressly admitted in writing by the Company. Without prejudice to any other rights, failure to pay the contract price of the Goods or part thereof or other monies payable by the Purchaser to the Company will also entitle the Company at its sole discretion either to refuse to make delivery of any further goods agreed to be supplied or to cancel any contract to which these conditions apply, either in whole or in part, by notice in writing to the Purchaser and without incurring any liability to the Purchaser for any loss caused by such a delay or cancellation.

The Contract price of the Goods shall become immediately due and payable in the event that the Purchaser goes into liquidation or administration or a receiver of its assets or any part thereof is appointed or any petition is presented for its winding-up or it enters into any scheme of arrangements with its creditors. The company reserves the right to withdraw with immediate effect and at any time prior to settlement of invoice, any offer of credit it has made or has been implied to the purchaser if it receives adverse information about the financial status of the purchaser or any related company in the purchasers group.

12. PAYMENT

Unless otherwise provided for in the contract the Purchaser shall pay for the contract price of the Goods and any other costs, charges or expenses provided for by these conditions forthwith upon delivery of the Goods, or for approved credit accounts with the Company within 30 days from the date of the invoice. Any payment not settled by the end of the month following the month in which delivery is made will be liable to a surcharge of 2.5% of the invoice value for every month in which the payment is overdue.

The purchaser shall not be entitled to make deduction from any amount due to the Company in respect of any offset or counter-claim unless both the validity and the amount thereof have been expressly admitted in writing by the Company.

Without prejudice to any other rights, failure to pay the contract price of the Goods or part thereof or other monies payable by the Purchaser to the Company will also entitle the Company at its sole discretion either to refuse to make delivery of any further goods agreed to be supplied or to cancel any contract to which these conditions apply, either in whole or in part, by notice in writing to the Purchaser and without incurring any liability to the Purchaser for any loss caused by such a delay or cancellation.

The Contract price of the Goods shall become immediately due and payable in the event that the Purchaser goes into liquidation or administration or a receiver of its assets or any part thereof is appointed or any petition is presented for its winding-up or it enters into any scheme of arrangements with its creditors.

The company reserves the right to withdraw with immediate effect and at any time prior to settlement of invoice, any offer of credit it has made or has been implied to the purchaser if it receives adverse information about the financial status of the purchaser or any related company in the purchasers group.

13. CANCELLATION

No order which has been placed with the Company may be cancelled by the Purchaser except with the agreement, in writing, of the Company and on the terms that the Purchaser shall indemnify the Company in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

14. WARRANTY

The Company warrants the Goods in the manner set out in this Condition 16 and (where attached to these terms of sale) in the warranty procedure document with the type of warranty cover set out in the quotation.

Subject to the terms of the warranty procedure document, the Company will repair or replace as it shall in its sole discretion think fit any part of Goods supplied to a Germany location which has been manufactured and commissioned by it which proves to be defective within a period of 12 months of the date on which the Goods are commissioned or 18 months of the date on which the goods are ready for delivery or the date of invoice whichever is the earlier, and this shall be the Purchaser's sole remedy in respect of any defective Goods.

If the Company does not perform commissioning of the goods, then warranty is limited to replacement of defective parts only for a period of 12 months from the date of delivery or the date of invoice, whichever is the earlier.

The Company shall not be liable to repair or replace any part of the Goods unless and until it is satisfied that the Goods have since delivery been used, installed, operated and maintained in accordance with good engineering practice and/or any instructions or advice given by the Company and that any such defect is not attributable to misuse or misapplication or to improper or inadequate storage of the Goods or any part thereof or storage thereof for more than three months.

Further, the Company shall incur no liability under this warranty unless the Purchaser returns any defective Goods within 21 days of any defect becoming apparent and unless the Purchaser provides the Company promptly with all relevant information concerning the Goods, such defects, and the user, installation, operation, maintenance, and storage thereof since their delivery or any other relevant information that the Company may reasonably require.

In instances of 'parts only' warranties, the cost of removing or dismantling any defective part to be replaced under this warranty, its carriage to the Company's premises and its reinstallation shall be borne by the Purchaser. Any spare part supplied by the Company to the Purchaser under the warranty shall be warranted for the unexpired period of the warranty or three months from delivery whichever period is longer, with the exception of compressors which shall be warranted for 12 months from delivery.

Any spare part supplied by the Company to the Purchaser outside the warranty period shall be warranted for three months from delivery or invoice whichever is the earlier.

All representations, terms, conditions, and warranties not contained in these conditions of sale in respect of the Goods, whether statutory or otherwise and whether expressed or implied are hereby expressly excluded insofar as permitted by law.

In the instances of 'parts and labor' warranties, the warranty shall exclude the cost of any specialist access &/or lifting equipment, which shall be paid for by the Purchaser.

15. INDEMNITY

The Purchaser shall indemnify the Company in respect of any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the contract or the Goods or their storage, installation, use, operation or maintenance save where the same is caused solely by the negligence of the Company.

16. DETERMINATION

If the Company is prevented from performing the contract by any cause beyond its control whatsoever and wheresoever arising then it may by notice in writing to the Purchaser determine this contract and upon receipt thereof by the Purchaser, the same shall forthwith determine. In such event the Purchaser shall pay to the Company all reasonable costs incurred by it up to the date of the said notice in and about its partial and/or attempted performance of its obligations hereunder but subjected thereto neither the Company nor the Purchaser shall be under any other liability to the other in connection with the contract.

17. SEVERABILITY

Insofar as any provision of this contract or any part thereof shall be found or deemed void, voidable, invalid, ineffective or unenforceable, such defect shall not affect the remainder of the contract which shall be construed as if the defective part or parts had been excluded there from at the time when the contract was entered into.

18. NOTICE

Where under any terms and conditions contained herein notice is required to be given by either party to the other such provision shall be satisfied by a written, typed notice signed by a person authorized by the relevant party and transmitted either by post, facsimile or email to the Registered Office of such party where it is a company and to the address notified to the Company where the Purchaser is unincorporated.

The contract shall be governed by German Law and any dispute shall be heard by the European Union courts.

19. TRADEMARKS

The Purchaser shall ensure that any trademarks or other words or marks affixed to or used in relation to the Goods are not obliterated, obscured or omitted without the Company's prior written consent.

The Purchaser shall not add, affix or use any additional words or marks to or in relation to the Goods without the Company's prior written consent.

20. GOVERNING LAW

The contract shall be governed by German Law and any dispute shall be heard by the European Union courts.