

General Terms and Conditions of Sale and Supply

kabotec UG (limited) & CO. KG

§ 1 General

These General Terms of Sales shall apply only to companies, legal persons under private law or special funds under public law within the meaning of Section 310 paragraph 1 German Civil Code (BGB). The following General Terms of Sale and Supply (hereinafter referred to as "GTSS") apply to all current and future supplies and other services including any consultancy services and information of kabotec UG (limited) & Co.KG (hereinafter referred to as "the Seller"). This will also apply even if the Seller does not refer the Customer to them again in subsequent transactions. The Customer's terms and conditions shall not form part of a contract even if the Seller does not expressly raise objections. Instead, these GTSS shall apply exclusively for present and future contracts of the same or similar kind.

§ 2 Orders obligations

Quotations by the Seller are made without obligation. A duty to supply will not exist until the Seller issues a written confirmation of order (§ 145 BGB) within 14 days.

§ 3 Dedicated documents and material

The Seller reserves the copyright to drawings and other design materials. Such materials must not be made accessible to third parties unless written consent of the Seller.

In case of rejection of the order by the Seller all goods, drawings, samples or other details have to be returned to the Seller immediately.

§ 4 Prices and payment conditions

Unless otherwise agreed in writing, prices quoted are ex works or ex Seller's warehouse exclusive of ancillary costs such as freight, customs clearance, packaging and insurance. Turnover Tax at the current statutory rate will apply.

All invoices – subject to any divergent written agreement in individual cases – are payable without cash discount as follows:

50% payment in advance due with order confirmation with proforma invoice before manufacturing, 50% after manufacturing and preparing "ready to be shipped".

In the event of payment default by the Customer, default interest of 9 (nine) percentage points p.a. over the current basic interest rate according to § 247 BGB [German Civil Code] shall be chargeable.

The claiming of further loss caused by default shall remain reserved.

Apart from fixed prices after 3 months changes of prices by the Seller are permitted in case of increased expenses.

§ 5 Right of retention

Rights of set-off or retention shall be available to the Customer only if its counterclaims are legally established, unchallenged or recognised by the Seller. This restriction shall not apply to the right of retention pursuant to § 320 BGB.

§ 6 Delivery periods

Observance of delivery periods and dates is subject to the timely fulfilment of contractual obligations on the part of the Customer. Delivery periods start with the date of the Seller's confirmation of order but not before clarification of all details for execution of the order and receipt of all materials required for execution of the order and of other details to be supplied by the Customer and the receipt of any payment agreed. The delivery period will also be considered to have been met if the goods leave the works or warehouse at the time agreed or notification of readiness to ship has been sent to the Customer but the goods have not been shipped on time for reasons for which the Seller is not responsible. The above arrangements shall apply to the delivery dates correspondingly.

In case of fulfillment of all obligations by the Customer and delay caused by the Seller the Seller shall pay a penalty of 3% of the delivery value per week, maximum 15% of the delivery value in total.

The claiming of further statutory loss caused by default of delivery period shall remain reserved for the Customer.

§ 7 Bearing of risks

The Customer shall bear the risk and cost of shipment of the goods ex works/ex warehouse (EXW) as well as the cost of any transport insurance. This shall also apply if shipment is by a carrier chosen by the Seller.

The risk passes to the Customer directly on leaving the Seller's premises – even in the case of carriage-paid deliveries.

§ 8 Reservation of ownership

All goods delivered shall remain the property of the Seller (reserved goods) until complete and final fulfilment of all claims arising from the business connection for whatever legal reason. The same shall also apply in respect of any future or conditional claims arising from contracts entered into concurrently or later within the context of the business connection. For current invoices, the reserved property shall serve as collateral for the receivables of the Seller from a current account relationship. Treatment and processing of reserved goods shall be performed for the Seller as manufacturer within the meaning of Section 950 BGB, without placing any obligation on the Seller. In the event of treatment/processing, linking or mixing of the reserved goods by the Customer with other goods not belonging to the Seller, the Seller shall have joint ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If ownership by the Seller of the reserved goods expires by linking, mixing or treatment/processing of the reserved goods the Customer will transfer the title it holds in the new part or item to the extent of the invoice value of the reserved goods and will hold it for the Seller free-of-charge with the due care of a prudent businessman. If the Seller acquires ownership or joint ownership of the new item, it shall transfer its ownership or joint ownership of the new item to the Customer under the condition of precedent that the full purchase price will be paid.

The Customer may only sell the reserved goods in the normal course of its business and only on its normal terms of business provided that concurrently the claims under the resale pass to the Seller.

The Customer is not entitled to any other dispositions of the reserved goods, in particular to a pledge or transfer by way of security. The above authorisation will expire in the event of the Customer's default of payment. The authorisation may also be cancelled by the Seller in the cases by a breach of the foregoing obligations and in the case of non-payment of an invoice when due. In such cases, the Customer is also prohibited from treating and processing the reserved goods and linking or mixing them with other goods.

The demands and other claims including the Customer's collateral rights arising from the resale of the reserved goods are now, i.e. with the agreement of these GTSS, assigned to the Seller, which hereby accepts the assignment. They shall serve to secure the Seller's claims to the same extent as the

reserved goods. If the reserved goods are sold by the Customer with other goods not supplied by the Seller, the claim arising from the resale shall be assigned in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. When goods are sold to which the Seller has joint title, the Seller shall be assigned a part corresponding to its share under the joint title.

The Customer is entitled to collect receivables from the resale. The Customer shall notify the Seller immediately of any detriment to its rights through third parties by delivering any documents required for intervention. Any intervention costs incurred shall be borne by the Customer.

The Seller may, if the Customer is more than two weeks in arrears with its payment obligations to the Seller, demand the return of the reserved goods and collect the demands and other claims assigned to the Seller. Furthermore, the Seller may use the reserved goods to satisfy its claims as soon as the Seller has withdrawn from the contract or the conditions for a claim for compensation on the grounds of non-fulfilment have arisen.

If the collectible value of the existing securities exceeds the secured claims by a total of 20 (twenty) percent, the Seller, at the Customer's request, will undertake to release securities to extent selected by the Seller.

§ 9 Warranty

In particular, the Seller does not undertake to assess whether the goods meet or are suitable for the specific purpose intended by the Customer. Contrary to the rule above, in case of new parts to be developed for the Customer in accordance with the Customer's requests, an individual agreement relating to the specific purpose is required.

The Customer shall inspect the goods delivered without delay with the care it considers reasonable and (if necessary by way of a test process) check the quality of the goods supplied and raise a claim for any identifiable defects without delay but no later than 7 (seven) days of receipt of the goods in writing (as far as possible and reasonable, enclosing samples) quoting the invoice, manufacturing and shipping numbers. Hidden defects must be similarly notified immediately when they are detected during the normal course of business. Otherwise the goods will be deemed approved without reservation. Any further obligations of the Customer under Section 377 HGB [German Commercial Code] shall not be affected.

No claims for defects will apply if the Customer fails to grant third party rights of recourse, processes defective goods without prior quality control or supplies goods claimed as defective to third parties without giving the Seller the opportunity to check the defects constituting the claim. The same shall apply to inappropriate or improper use of the goods, faulty assembly or commissioning by the Customer or third parties, improper modifications to the goods supplied, natural wear and tear and faulty or careless handling.

If claims for defects or complaints are justified, the Seller undertakes at its choice either to repair or remedy the defect or supply a replacement. Sorting measures by the Customer shall be agreed in writing with Seller prior to their commencement. In the event of repair, the Customer shall pay any extra costs arising from the goods supplied being taken to a place other than the place of performance.

If the repair chosen by the Seller should repeatedly be unsuccessful; if it should be unreasonable to expect such of the Customer; if it should be refused by the Seller or be delayed beyond a reasonable period on grounds within the Seller's control, the Customer may – notwithstanding any claims for damages – withdraw from the contract or reduce the purchase price.

Warranty claims for defective goods shall expire within one year after passing of the risk. This shall not apply where the law prescribes longer time limits pursuant to § 438, sub-section 1, No. 2 BGB (Building Works and Items for Building Works), § 479 sub-section 1 BGB (Recourse Claim) and § 634 a sub-section 1 No. 2 BGB (Structural Defects) or where the Seller is liable due to wilful intent. Furthermore, any claims for damages are limited as follows:

The Customer's claims for damages and reimbursement of expenses against the Seller or the Seller's employees, representatives and vicarious agents, on whatever legal grounds, are precluded, unless the aforementioned are held liable for wilful intent, gross negligence, the acceptance of a guarantee given, the acceptance of a risk of sourcing, harm to life, limb and health or fundamental contractual duties. This shall also apply to any claims for damages arising from incorrect supplier declarations. This ruling does not shift the burden of proof to the detriment of the Customer.

The Customer's claims for damages and reimbursement of expenses against the Seller or the Seller's employees, representatives and vicarious agents due to the infringement of essential contractual obligations by slight negligence are limited to the foreseeable damage typical of the contract. Essential contractual obligations will be deemed to mean such obligations as those which, when violated, threaten the purpose of the contract, e.g. in cases of substantial delay, considerable infringement of cooperation, notification or confidentiality obligations or in the case of considerable violation of obligations that may determine the success or failure of the contract. This above provision does not in any way shift the burden of proof to the detriment of the Customer.

Apart from cases involving wilful intent, gross negligence or injury to life, limb and health, when determining the amount of damages to be paid by the Seller due consideration adequately in favour of the Seller shall be given as to the economic capabilities of the Seller as well as to the nature, scope and duration of the business relations between the contractual partners as well as to a particularly unfavourable situation of installation of the part supplied. Especially damages, cost and expenditures which shall be paid by the Seller must be in reasonable ratio to the value of the part supplied.

Contractual claims for damages and reimbursement of expenses against the Seller or its employees, representatives and vicarious agents, on whatever legal grounds, shall expire after one year at the latest. The special regulation for warranty claims for defective goods is not affected.

Where the Seller is mandatorily liable under the Product Liability Act of 15 December 1989 for damage to property or personal injury caused by a product's defects, the provisions of the Product Liability Act shall prevail.

§ 11 Other matters

The contractual relationship shall be governed by the law of the Federal Republic of Germany. The provisions of the UN Treaty on International Trade (CISG) are excluded.

Schonach shall be the place of performance for delivery and payment.

All general terms and conditions are contained in this GTSS.