

I. General provisions

1. Definition: Consumers according to these GTC are natural persons, with whom the supplier enters into a business relation but without attributing any commercial or self-employed business activity.
2. Definition: Entrepreneurs according to these GTC are natural or legal persons or incorporated partnerships, with whom the supplier enters into a business relation, acting in a commercial or self-employed business activity.
3. The following terms & conditions shall apply for all offers, deliveries, services and other business relationships between KW Energie GmbH & Co. KG (hereinafter referred to as the "supplier") and a trade partner or reseller (hereinafter referred to as the "customer"). Conflicting conditions of the customer shall have not apply to us. Differing agreements require the supplier's written confirmation.
4. The supplier reserves without restriction its ownership rights and copyrighted rights to use cost estimates, sketches and other documents. The documents may only be made accessible to third parties with the supplier's prior approval and, if the supplier is not awarded the order, they must be returned without delay when requested. This also applies accordingly to the customer's documents. However, the customer's documents may be made accessible to such third parties to whom the supplier has permissibly transferred deliveries or other services.
5. Our offers, including those in brochures and advertisements, are subject to change and non-binding until there is a written order confirmation. We expressly reserve the right to make reasonable technical and optical changes.
6. The supplier points out that personal data will be saved in accordance with § 26 of the German Data Protection Act.

II. Price and terms of payment

1. The purchase price and the prices for ancillary services are to be paid in full to the bank account of KW Energie GmbH & Co. KG on the agreed dates.
2. The prices are ex-factory including loading in the factory, but excluding packaging and unloading. VAT at the applicable statutory rate will be added to the prices.
3. The customer can only offset or assert a right of retention against the supplier's claims if the counterclaim is undisputed or has been legally established.
4. The customer shall bear all public charges (taxes, fees, customs duties etc.) arising from the conclusion or performance of the contract outside of the Federal Republic of Germany.
5. Default interest shall be charged at 5% above the base interest rate of the European Central Bank. 8% above the base interest rate shall be charged for legal transactions in which a consumer is not involved.

III. Retention of title

1. The delivery goods (goods subject to retention of title) shall remain the property of the supplier until all claims arising from the supplier's business relationship with the customer have been settled in full.
2. During the period of retention of title the customer is forbidden to pledge the goods or transfer them by way of security. The customer must notify the supplier without delay about any seizures, impoundments or other orders or interventions by third parties.
3. In the event of a breach of obligation by the customer, particularly a delay in payment, the supplier is authorised to withdraw from the agreement and take back the goods if the customer fails to meet an appropriate deadline that has been set. The statutory provisions regarding the dispensability of setting a deadline shall remain unaffected. The customer is obligated to return the goods. Loss in value and assembly and disassembly costs shall be invoiced to the customer.
4. If the value of all security interests to which the supplier is entitled exceeds 20% the supplier shall, at the request of the customer, release an appropriate part of the security interests.

IV. Deadlines for delivery and delay

1. Compliance with binding deadlines for deliveries requires the timely receipt of all documents to be provided by the customer and compliance with the agreed payment terms. If these requirements are not met in a timely manner, the deadlines shall be extended accordingly; this shall not apply if the supplier is responsible for the delay.
2. If the non-compliance with confirmed binding deadlines is due to force majeure (e.g. mobilisation, war, insurgency) or similar events (e.g. strike, lock-out) the deadlines shall be extended accordingly. The same shall apply to supply shortages with upstream suppliers.
3. If, through its own fault, the supplier falls behind by more than 2 weeks the customer can – if it credibly shows that it has suffered damage as a result of this – demand compensation of 0.5% for each full week of delay, yet up to a maximum of 5% of the price for the part of the delivery that could not be brought into appropriate operation because of the delay.

4. The customer shall not be entitled to make further claims for damages due to delays in delivery. This shall not apply if the supplier was grossly negligent or acted with wilful intent. The customer can only withdraw from the agreement within the statutory possibilities if the supplier is responsible for the delay in delivery. There is no change in the burden of proof to the detriment of the customer in connection with the aforementioned regulations.

V. Transfer of risk

1. Risk is transferred to the customer upon handover to the haulier/freight carrier/collector, and when the goods leave the factory at the latest. This shall also apply if, for example, dispatch costs or installation costs are borne by the supplier. The shipment will only be insured by the supplier at the customer's express wish and at the customer's expense.
2. If delivery is delayed due to circumstances for which the supplier is not responsible, risk shall be transferred to the customer from the date of notification of readiness for dispatch. If, despite notification of readiness for dispatch, the delivery is not collected the supplier is authorised to use its discretion to store the delivery at the customer's expense and risk and invoice the goods as having been delivered.

VI. Installation and assembly

If the installation and assembly of the delivery items are ordered from the supplier the following provisions shall apply, unless otherwise agreed in writing.

1. The customer shall provide at its own expense and in a timely manner:
 - All extra work from a different industry including the required specialist and non-skilled workers, materials and tools.
 - The utensils and materials required for assembly and commissioning (e.g. scaffolding and fuels).
 - Energy and water at the point of use including connections, heating and lighting.
 - Enough large, suitable and lockable rooms at the assembly site for storing the machine parts, materials, tools etc.
2. Before the onset of the assembly work the customer must provide, without being asked, the necessary information about the electricity, gas and water lines or similar systems in the location and the required statistical information.
3. Before starting the assembly or installation the supplies and objects required for commencing the work must be present in the assembly or installation location, and all preliminary work must be so far advanced before installation is started that work on the assembly or installation can commence as agreed and be performed without interruption. Delivery routes and the installation or assembly area must be smoothed and cleared.
4. If the assembly, installation or commissioning is delayed due to circumstances for which the supplier is not responsible, the customer shall bear the reasonable costs of the waiting time and additional travel costs incurred by the supplier or assembly personnel.
5. The customer shall notify the supplier without delay about the length of the working hours of the assembly personnel and the commissioning process.

VII. Acceptance

The customer may not refuse to accept deliveries due to insignificant defects. The customer must notify the freight carrier of possible damage in transit before accepting the delivery or, after acceptance, provide written notification in accordance with the statutory requirements and deadlines.

VIII. Warranty period and material defects

1. The warranty period (§ 437 of the German Civil Code (BGB)) for deliveries amounts to 24 months. For the delivery of combined heat and power units, generators or other machines to the customer the warranty period shall amount to 24 months, but with the restriction to a maximum of 9,000 operating hours. The period of limitation shall start with the transfer of risk. The supplier must be notified in writing without delay about any defects identified (§ 307 of the German Commercial Code (HGB)). Replaced parts shall become the property of the supplier.
2. The obligation to rectify material defects shall not extend to defects caused by mechanical, thermal and chemical effects or excess voltage or a lightning stroke. It shall not apply to defects caused by faulty use and/or maintenance by the customer, unauthorised load, unsuitable equipment, normal wear and tear or other events for which we are not responsible. It shall not relate to natural wear and tear and parts that, due to their material condition or type of use, are subject to premature deterioration.
3. A prerequisite for preserving the warranty is the performance and documentation of the commissioning and the performance of regular maintenance work by the supplier or an authorised trade partner.
4. If the customer is a consumer it has the right, in the event of a material defect, to rectification or replacement delivery at the supplier's option. For warranty cases arising in relation to deliveries not commissioned by the supplier, or for which all regular maintenance work was not performed by the supplier, the supplier shall only bear the costs up to the amount that would have been incurred for rectifying the defect in the supplier's factory. The customer shall bear the transportation, travel, route and accommodation costs. Damage that could have been caused by deficient maintenance is, in this case, excluded from the warranty.
5. If the customer is an entrepreneur the supplier shall, in the event of a material defect, reimburse the costs of the demonstrably defective replacement parts and the time required by an experienced technician for repair. KW Energie shall not reimburse the time spent on troubleshooting, travel costs, set-up times or other claims related

to warranty damage. The basis for cost reimbursement by the supplier is solely the defective component and the warranty claim. These must be submitted to the supplier, who shall decide on the cost reimbursement based on the component testing and the claim. If a notice of defects is found to be unjustified, the supplier reserves the right to invoice all expenditure incurred.

IX. Other claims for damages

1. Claims for damages and reimbursement of expenses (hereinafter: claims for damages), whatever their legal foundation and particularly those due to breach of contractual obligations and unlawful acts, are excluded.
2. This shall not apply in the event of mandatory liability e. g. in cases of wilful intent, gross negligence, damage to life, the body or health and breach of material contractual obligations. However, claims for damages for the breach of material contractual obligations are limited to the foreseeable damage typical for the contract, provided that there is no wilful intent or gross negligence. There is no change in the burden of proof to the detriment of the customer in connection with the aforementioned regulation.
3. If the customer is entitled to claims for damages as per Article IX, these shall lapse with the expiry of the periods of limitation for claims for damages.

X. Place of jurisdiction and applicable law

1. The sole place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship is the supplier's registered office. However, the supplier is also authorised to sue in the place of the customer's registered office.
2. German law, excluding the United Nations Convention on Contracts for the International Sale of Goods, shall apply to all legal relationships connected with this agreement.

XI. Bindingness of the agreement

The agreement shall remain binding even if individual provisions are legally ineffective. This shall not apply if adherence to the agreement would represent an unreasonable hardship for one of the parties.