

# **General Terms and Conditions of Sales and Delivery of KRS Recycling Systems GmbH**

(KRS-AGB-220208\_ENG)

## **I. Scope of application / General stipulations**

All deliveries and services of KRS Recycling Systems GmbH (KRS) are subject to these General Terms and Conditions and possible separate contractual agreements. Terms and conditions deviating from or being opposed to these General Terms and Conditions shall not become part of the contract, unless KRS has expressly given its written consent. This shall also apply if KRS executes the delivery or accepts the payment of the purchase price being fully aware of adverse customer terms.

The present General Terms and Conditions apply only to entrepreneurs within the meaning of Sec. 14 BGB (German Civil Code), legal entities of public law and separate funds under public law.

## **II. Offers and conclusion of contract**

The offers of KRS are not binding, unless expressly designated binding by KRS in written form. The customer's order that might be construed as an offer to conclude a contract can be accepted by KRS within a 16 weeks period by sending an order confirmation or delivering the ordered products within the same delay. Illustrations, drawings, weights and measurements forming part of the offer and any other document only describe the individual item, however, they are not binding as well.

The scope of services shall be defined in writing with the order confirmation. After receipt, the customer shall immediately check the order confirmation for correctness particularly with regard to type, measures, price and delivery time. The customer shall immediately communicate any possible deviation of the order confirmation from the order, at the latest within 3 business days upon receipt of the order confirmation. Later complaints shall not be taken into consideration. In this case, the content of the order confirmation shall be applicable.

## **III. Offer documents**

KRS retains all property and intellectual property rights over illustrations, drawings, weights and measurements and any other document created by KRS. This also applies to such written documents being designated as 'confidential'. The documents shall be returned to KRS on its demand and shall not be submitted to third parties without the prior written consent of KRS. The customer shall assume liability for ensuring that all products produced according to his specifications do not violate any rights of third parties.

## **IV. Prices and payment**

Unless otherwise separately agreed, the prices shall be ex works including loading at the factory, however, excluding packaging, transport costs, freight and unloading. All prices are subject to statutory value-added tax, if any, and/or duties in the respective statutory amount.

Unless otherwise agreed, payment to KRS shall be made without any deduction. The payment shall be deemed to have been effected once it has been irrevocably credited to the account of KRS. The payment to KRS shall be made as follows:

80% of the invoice amount shall be paid immediately with the order, 20 % immediately upon notification of the readiness for delivery, however, before execution of delivery/delivery approval.

Regardless of the means of payment used, settlement shall only be deemed to have been made once the due amount has been irrevocably credited to the account of KRS.

Should a notice of defect or any counter-claims be asserted, the customer shall only be entitled to offset payments or to assert a right of retention, if such counterclaims have been established by court, have been recognized by KRS or are undisputed, and provided that the customer's counterclaim is based on the identical contractual relationship.

## **V. Delivery / Default in delivery**

Any delivery deadlines and delivery dates given by KRS are non-binding, unless their binding nature has expressly been confirmed by KRS in writing. A delivery deadline shall only start upon clarification of all technical and commercial details and after payment of all due amounts that have to be paid in advance. In case of any possible arising delays, the delivery date shall be postponed and the delivery period shall be extended at least for the same period. (Further subsequent postponements /delays are possible as well.)

Compliance with the agreed delivery date / delivery deadline is subject to the provision that KRS itself is supplied with correct goods and on time.

Claims for damages by the customer due to delayed deliveries shall be excluded insofar as they exceed 0.3% of the purchase price of the delayed delivery for each full week of the delay in delivery; they shall be limited to maximum damages of 3% of the purchase price of the delayed delivery. Delay in delivery shall arise at the earliest by the end of the second week following a bindingly agreed delivery date. The customer can only assert claims due to delay of delivery against KRS provided that the fault can be attributed to KRS.

This limit shall not apply if the delay is due to wilful intent or gross negligence on part of KRS. In other respects, figure XII shall apply.

In cases of force majeure and other unpredictable and unavoidable harmful events which KRS cannot be held responsible for, such as in particular operational disruptions, labour disputes and civil unrest, all delivery periods shall be extended accordingly for the time of duration of the disruption plus appropriate start times, provided that it can be shown that such disturbances have a considerable impact on the delivery of the goods. The same shall apply if one or more sub-suppliers of KRS suffer from any such disturbances. KRS shall immediately notify the customer of the beginning and the end of any such disturbances.

Should the customer ask for additional services or should the order processing be changed by the customer, all processing periods shall be extended by the appropriate period necessary for the handling of the requested changes and additional services.

KRS shall be entitled to make partial deliveries and provide partial services at any time, insofar as this is reasonable for the customer. These can be invoiced separately.

## **VI. Acceptance**

As far as the performance of KRS has to be accepted by the customer (in case of work performance only), the acceptance shall immediately take place, however, at the latest within 14 days upon receipt of the delivery, provided that nothing else has expressly been agreed in writing.

In any case of doubt, the performance shall be deemed accepted in conformity with the contract within a period of 14 days after receipt of the services or works. The performance shall be deemed to have been accepted in any case at the date when it is taken in use by the customer.

## **VII. Modifications based on the unilateral right to determine the performance**

With regard to order confirmations that have already been issued, KRS shall be entitled to unilaterally modify individual designs and order positions insofar as these modifications do not affect the performance of the delivery item.

## **VIII. Warranty**

The warranty period shall be 12 months, unless nothing else has expressly been agreed by the parties in writing.

The warranty period shall start at the day of the commissioning, however, at the latest 6 months after delivery.

Wear and tear shall be excluded from warranty.

The same shall apply to defects arising from wrong application, incorrect operation, excessive throughput, improper and irregular servicing, voltage peaks or excessive operation of the purchase item. The warranty shall be limited to defects at devices/components delivered by KRS.

The warranty does not include wearing parts and effects of normal wear.

Wearing parts shall be defined by KRS, a list of wearing parts can be provided on request.

## **IX. Guarantees**

KRS does not give any guarantees. As well, it does not take over any guarantee promise or advertising promise given by suppliers. Information brochures, data sheets and advertising statements are not binding for KRS neither under warranty nor guarantee law, unless KRS separately issues an individual guarantee in writing. In this case, possible guarantees and guarantee values shall individually be agreed in writing and shall explicitly be indicated in the contract or in a mutually signed amendment to the contract in order to be considered as binding.

## **X. Retention of title**

Any delivery item shall remain property of KRS until full payment, including payment of the commissioning works. The retention of title shall not affect the passing of risk according to the delivery conditions.

## **XI. Resale / Assignment of delivery claim**

The customer is not allowed to resale the items and works purchased from KRS to third parties without the prior written consent of KRS.

The customer is prohibited from assigning any manufacturing or delivery claims against KRS to third parties.

## **XII. General limitation of liability**

All claims for damage compensation, irrespective of their legal grounds, shall be excluded, unless KRS can be accused of wilful intent or gross negligence.

The aforesaid exemption from liability shall not apply if the claim for damage compensation results from culpable violation of essential contractual obligations. As far as KRS violates an essential contractual obligation for reason of negligence, the obligation to pay compensation shall be limited to the amount of compensation for the typical foreseeable damage.

Liability for damages arising from injury to life, body or health, as well as liability according to statutory product liability regulations shall be hereby unaffected.

As far as the liability of KRS has been excluded or limited, the same shall be applicable with regard to the personal liability of the people in its governing bodies, all other employees, as well as assistants and vicarious agents.

This liability limitation shall also apply in particular to damages caused by delay or with respect to loss of profit.

### **XIII. Product information, data, drawings and technical information**

All data, drawings or designs created by KRS prior to the beginning of the contract execution shall remain property of KRS even after the settlement of the contract. This also applies to accrued copyrights of KRS. The customer shall supply or return the submitted data to KRS on its request. The customer must remain silent about the submitted data. Without prior written consent of KRS, the customer is not allowed to transmit the submitted data to third parties, unless nothing else has expressly been agreed in writing between the contractual parties, particularly in the frame of a separate non-disclosure agreement.

### **XIV. Declaration of exemption**

In the case where planning documents or data supplied by the customer violate the rights of third parties, the customer undertakes already now to indemnify KRS with regard to any possibly resulting third-party claims.

### **XV. Passing of risk**

The risk of accidental loss or accidental deterioration of the goods shall pass to the customer as soon as KRS has delivered the goods to the customer or handed them over to the carrier or if the customer is in default of acceptance. The provisions of § 447 BGB (German Civil Code) shall apply as well if delivery is carried out with the own means of transport or own employees of KRS, or if the goods are dispatched from a place other than the place of performance, and regardless of who bears the freight costs. Apart from that, KRS executes delivery according to the FCA provisions of the Incoterms 2010.

### **XVI. Other obligations of the customer**

The customer shall be solely responsible regarding the following aspects. The following performances are not part of the services and works of KRS, unless nothing else has expressly been agreed in writing:

- observation of required local authorizations and permits, if necessary
- required local taxes and / or duties
- protection of the delivery item against lightning and overvoltage appropriate to the local conditions
- weatherproof and vibration-free installation of the delivery item
- dust protection
- noise protection
- anti-freeze / water protection
- observation of required local safety regulations
- observation of required local environmental regulations
- observation of required local health and safety regulations

**XVII. General, applicable law, legal venue**

All business transactions comprising delivery from KRS to a customer are subject to the present General Terms and Conditions. The parties can make primarily deviating agreements. However, these shall only be applicable if they are expressly concluded in writing. The present General Terms and Conditions then apply in the second degree.

All legal relations between KRS and the customer shall be governed by the law of the Federal Republic of Germany, excluding UN Sales Law.

The parties agree that the legal venue shall be the court which has substantive jurisdiction over KRS. However, KRS shall be entitled to take legal action before any other competent court.

Modifications to the present General Terms and Conditions must be in writing. This requirement of written form can likewise only be waived in writing.

Should any of the stipulations herein be or become ineffective, this shall have no effect upon the validity of the remaining stipulations. In case any of these stipulations are wholly or partly ineffective, the parties hereto undertake already now to replace the ineffective stipulation by a valid one coming as close as possible to the intended purpose of the ineffective stipulation.

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