

# General Terms & Conditions of Sale & Delivery

0211-MD R00 en 09/2018

## 1. Scope / Applicability

a) These *General Terms and Conditions of Sale and Delivery* exclusively apply to transactions involving merchants as defined in the 1st paragraph of Article 310 of the German Civil Code ("BGB"), hereinafter referred to as the "Customer". Terms and conditions of the Customer that deviate from or are in conflict with these *General Terms and Conditions of Sale and Delivery* shall only apply in the event that we expressly confirm in writing our acceptance of the Customer's terms and conditions. If we accept an order from the Customer stating terms and conditions that deviate from or are in conflict with these *General Terms and Conditions of Sale and Delivery*, and we do not expressly object to such deviating or conflicting terms and conditions of the Customer, then our acceptance of the Customer's order by itself shall not be construed as our acceptance of subject terms and conditions of the Customer.

b) In the event a contract is subject to special conditions agreed upon between the Customer and us that contradict, in part or in full, the one or the other provision of these *General Terms and Conditions of Sale and Delivery*, then the former shall prevail. All other provisions of these *General Terms and Conditions of Sale and Delivery* shall remain in effect.

c) We reserve the right to amend or supplement these *General Terms and Conditions of Sale and Delivery* at any time without prior notice.

## 2. Quotation and Contract

a) Any and all quotations prepared and provided by us shall be regarded as indicative and non-binding unless we have explicitly stated therein that our offer is firm and shall be valid for a specific period of time or until a specific date.

b) Product visualizations accompanying our quotations, if any, such as photos or graphics, are provided for illustration purposes only and shall not be regarded as exact images of the products offered since each of our products is made to individual customer specifications. By the same token, depictions and drawings shown on our website and in our catalogues are to be understood as typical but by no means true examples of each product category. Also, we reserve the right to modify the originally offered product design during order fulfillment if technical reasons require it.

c) In addition to full technical specifications, all inquiries must indicate the exact end use of the product. In the event that the product is intended to be shipped to and remain in a country other than Germany, the Customer must inform us of the final destination of the product.

d) In the event the merchandise is intended for shipment to a country or delivery to a natural or legal person subject to export restrictions or an embargo, the Customer is obligated to inform us thereof immediately. If such circumstances are brought to our attention after a contract between the Customer and us has already been concluded, we shall have the right to cancel such contract immediately at no cost to us.

e) The issuing of a purchase order represents the Customer's legally binding commitment to acquire the merchandise ordered. Provided the order is to be understood as an offer to conclude a contract in accordance with the provisions of Article 145 of the German Civil Code ("BGB"), we shall accept the order within four weeks after we have received the order from the Customer.

f) A supply contract that is legally binding on us does not exist until we have confirmed our acceptance of the order to the Customer in writing or a written agreement has been signed by both the Customer and us. The document by which we confirm our acceptance of the order shall constitute the entire agreement between the Customer and us regarding the manufacture and delivery of the merchandise ordered. All prior or contemporaneous representations, statements, understandings or agreements are merged therein, and there are no other agreements or understandings, oral or written, regarding the subject thereof. No subsequent changes or additions to the contract with respect to the merchandise or the terms and conditions of the contract shall be binding on us unless we have approved them in writing.

g) Obvious typographical, arithmetical and orthographical errors shall have no bearing on the content of the contract and shall not entitle the Customer to claims of any kind against us. Errors that may cause language in the contract to be understood in more than one way shall be brought to our attention without delay to allow us to clarify the ambiguity and correct the mistakes immediately.

## 3. Intellectual Property

Any drawings, blueprints, photos and other documents, as well as samples, provided to the Customer by us, including copies thereof, and all Intellectual Property Rights with respect to the aforementioned materials including, but not limited to, trademarks, copyrights, services marks, trade names, technology, know-how, and trade secrets shall always remain the sole property of KRYTEM GmbH. Such drawings, blueprints, photos and other documents, as well as samples shall not be made available to a third party, or used for any other than the intended purpose, without our prior written consent. All drawings, blueprints, photos and other documents, as well as samples, shall be returned to us – and any and all documents and information provided electronically shall be completely and irreversibly deleted – after the expiration of the applicable record retention period prescribed by law.

## 4. Prices and Terms of Payment

a) Unless explicitly stated otherwise, our quoted prices and the prices shown on our price lists are subject to change. Unless a firm price was agreed upon between the Customer

and us, we reserve the right to adjust the price of any merchandise delivered three or more months after order conclusion to compensate for increases in the cost of materials, labor cost, and cost of transportation. In such cases, the price valid on the day of delivery shall apply.

b) Our prices are to be understood ex-works (EXW) according to Incoterms 2010 plus VAT at the current rate, if applicable. Loading the merchandise onto truck(s) provided by the Customer shall be included in our sales price, provided a fork lift can be used to perform the task. Loading expenses shall be billed separately if it is necessary to rent a crane for this purpose.

c) Prior to delivery, our products shall be suitably packed for transportation. Packing costs shall be billed separately. The Customer purchases the packing materials and shall be responsible for their proper disposal.

d) If requested by the Customer, we may agree to alternate delivery conditions in accordance with current Incoterms rules.

e) The Customer shall bear any and all expenses relating to the merchandise that arise after all risks of loss of or damage have passed to him in accordance with the provisions of paragraph 7, unless such expenses are included in the services provided by us as per paragraph 4 b) or 4 d). In particular, the Customer shall be responsible for any and all additional costs that arise in the event he fails to take delivery of the merchandise once it has been delivered by us in a timely manner and in accordance with the provisions of paragraph 6 a), such as storage costs.

f) Contractually required audits shall be performed at our factory in accordance with the conditions or standards agreed upon with the Customer. The costs of the audit shall be borne by the Customer.

g) All payments are due in full within 30 days from date of invoice, unless special payment terms were agreed upon between the Customer and us. The deduction of early payment discounts shall not be permitted unless such deduction has been expressly approved by us in writing.

h) We reserve the right to charge interest on past due amounts at the rate permitted by law if the Customer fails to make payment by the applicable payment due date.

i) All payments shall be made by bank transfer to the account shown on our invoices.

## 5. Right of Offset, Assignment

a) The Customer shall have the right to withhold amounts payable to us in order to offset amounts we owe to the Customer only if we owe subject amounts to the Customer under the same agreement, and only to the extent the Customer's claim is undisputed or has been validated in a court of law.

b) The Customer shall not be permitted to assign claims against us to any party without our prior written consent.

## 6. Delivery

a) If our confirmation of order stipulates that the merchandise shall be delivered within a certain time frame rather than by a specific date, such period of time shall commence on the date of our confirmation of order. The merchandise shall be deemed delivered once we have notified the Customer that the merchandise is ready for pickup.

b) Our obligation to meet the time of delivery stated in our confirmation of order shall be subject to the Customer's fulfilling his obligations under the contract in a timely and proper manner. Such obligations of the Customer shall include, for instance, the release of documents submitted to him for his approval and specifying technical interfaces. As per the provisions of Article 320 of the German Civil Code ("BGB"), we reserve the right to delay delivery of the merchandise until such time as the Customer has fulfilled his obligations in the event the Customer is in default.

c) If the Customer fails to take delivery of the merchandise or culpably fails to fulfill any other contractual obligation(s) to cooperate, we shall be entitled to claim compensation for any and all damages resulting therefrom, including unbudgeted expenses, without prejudice to any other rights and remedies available to us under the agreement or applicable law.

d) In the event the Customer wishes to modify the technical design of the merchandise or change the terms of delivery after we have confirmed his order, we shall not be held responsible for any delay in delivery resulting therefrom.

e) The timely delivery of the merchandise to the Customer shall be subject to the timely delivery of flawless parts to us by our suppliers and by the Customer, if applicable. We shall inform the Customer of any foreseeable delays in delivery as soon as possible.

f) Our shop in Willich, Germany, will receive trucks to pick up merchandise Mondays through Thursdays between 7am and 12pm and between 1pm and 4pm, and on Fridays between 7am and 2pm. In special circumstances, we may agree to receive trucks on a workday outside regular receiving hours, in which case any extra costs arising therefrom shall be for the Customer's account.

g) We reserve the right to deliver an order in more than one shipment, and bill each shipment separately, if the order has more than one item, and the terms of the contract require us to deliver the merchandise to a destination named by the Customer.

h) In the event a situation or occurrence, that was not foreseeable at the time the order was concluded and that we are neither culpable for nor able to control, including but not limited to acts of God, prevents us from delivering the merchandise within the time frame agreed upon with the Customer, we shall notify the Customer in writing thereof as quickly as possible. We reserve the right to delay delivery for as long as the circumstances preventing timely delivery exist or to cancel the order in part or in full if such circumstances exist for longer than 6 weeks.

#### 7. Transfer of Risks

- a) If we deliver the merchandise on ex-works (EXW) basis, the Customer shall bear all risks of loss of or damage to the merchandise from the time he was notified that the merchandise is ready for pickup at the location agreed upon. The same applies to partial deliveries, and to transactions where additional services are included in the delivery of the merchandise, such as, for instance, the installation of the product.
- b) In the event the merchandise is picked up by the Customer with delay, or not at all, due to circumstances beyond our control, we shall be obligated to insure the merchandise, at the Customer's expense, as instructed by the Customer.
- c) In the event our agreement with the Customer does not call for delivery of the merchandise on ex-works basis (EXW), risks shall be allocated and transferred in accordance with the latest version of the Incoterms rules published by the International Chamber of Commerce that apply to the trade term agreed upon.

#### 8. Retention of Title

- a) Title to the merchandise furnished to the Customer shall remain vested in us, and shall not pass to the Customer, until the Customer has paid in full all invoices issued by us under the applicable agreement, and full payment has been received by us. We shall have the right to repossess the merchandise, or any part thereof, if the Customer fails to fulfil his obligations under the contract.
- b) As long as title to the merchandise is vested in us, the Customer shall be obligated to handle the product(s) with utmost care: Inspections and maintenance work shall be performed, at the Customer's expense, in a conscientious and timely manner, and in full accordance with the instructions of the manufacturer. The customer is required to sufficiently insure, at his expense, the full replacement value of the merchandise against theft, fire damage and water damage. Upon our request, the Customer shall provide to us evidence of purchase of such insurance. The Customer agrees to assign to us already now his rights to all benefits and proceeds under the insurance policy or from claims against other parties in the event of a loss. We agree to receiving this assignment.
- c) Until the Customer has taken full ownership of the merchandise, the merchandise shall not be pledged or subject to attachment or execution by the Customer, nor shall the Customer have or acquire any rights whatsoever with respect to the merchandise, whether in the nature of a lien or claim of any nature whatsoever. The Customer shall take any action requested by us to ensure that no liens or rights of third parties superior to those of us attach to the merchandise. He must notify us immediately in writing of any third-party claims to the merchandise or actions taken by any person or entity with respect to the merchandise, including but not limited to the seizure of the merchandise, and in such case also inform the third party promptly and in an appropriate manner of our retention of title to and superior rights in the merchandise. If the Customer fails to meet these obligations, he shall make available to us all documents and information necessary to claim our rights to the merchandise, and also assist us otherwise in every other way possible, as and when we shall request. The Customer shall not represent or warrant to any third party that it owns the merchandise, or that it can grant a lien thereon, or that the merchandise may be included as collateral for loans made to the Customer or any other party. The Customer shall bear any and all expenses related to defeating third-party rights to our property and the repossession of the merchandise, unless these expenses can be recovered from another party. In the event the Customer files for bankruptcy, we shall be entitled to rescind our agreement with the Customer and demand that the merchandise be returned to us promptly.
- d) The Customer shall not be permitted to sell merchandise, the title to which is still vested in us, to any third party without our prior written consent. If the Customer sells such merchandise after he has received our consent to carry out the transaction, the customer shall assign to us already now his rights to the proceeds of the sale in an amount equal to the invoice value of the merchandise (including VAT, if applicable) agreed upon between the Customer and us. For the assignment to be effective, it shall not matter whether the merchandise is sold in its original condition or was modified prior to sale. The Customer shall retain his right to collect the proceeds of the sale of the merchandise even after he has assigned his right to the proceeds to us, whereby our right to collect the proceeds ourselves under the assignment agreement shall not be affected. We shall not collect the proceeds assigned to us by the Customer if the Customer uses the proceeds of the sale of the merchandise to make payments to us and the Customer's payments are not late. However, we shall exercise our rights under the assignment agreement in the event the Customer fails to make payments due to us or files for bankruptcy.
- e) In the event the merchandise to which we hold title is merged with items we do not own to form a new product, then we shall automatically become co-owner of the new product. Our share in the ownership of the new product shall correspond to the ratio between the value of the merchandise we delivered to the Customer and the value of the other items at the time the new product was created. Only items that are the property of the Customer may be merged with items that are our property.
- f) We commit ourselves to release the securities we are entitled to upon the Customer's request, to the extent their value exceeds the value of accounts receivable by more than 20 percent.

#### 9. Claims, Warranty

- a) To be entitled to claim rights under the manufacturer's warranty, the Customer must examine the merchandise for defects and, if any defects are found, notify the manufac-

turer thereof as required by, and in accordance with, Article 377 of the German Commercial Code ("HGB"). Notification of an obvious defect shall be considered given in time, if notification of such defect is received by us within 5 working days after the merchandise was delivered to its recipient. Notification of a latent defect shall be considered given in time, if notification of such defect is received by us within 5 working days after the defect was detected by the recipient of the merchandise. Any and all notifications of defects must be given in writing. The merchandise shall be deemed accepted by the Customer, if no notification of a defect is received by us within the applicable defect notification period, even if a defect is present.

- b) In the event the merchandise we supplied was faulty at the time the risk of loss of or damage to the merchandise passed from us to the Customer, despite the fact that it was manufactured to the highest standards of workmanship, we shall, at our sole discretion and provided notification of defect was given in time, replace or repair the merchandise. We shall always be allowed a reasonable amount of time for the replacement or repair of merchandise. The foregoing shall not affect the Customer's right of recourse.
- c) In the event immediate action must be taken because a defect threatens to compromise the safe operation of the merchandise, the Customer shall have the right, after conferring with us, to correct the problem himself or have the problem corrected by a third party. Under such circumstances, we shall not be liable for any damages to the merchandise or other damages directly or indirectly caused by improper execution of the repair work. The cost of materials needed to correct the problem shall be reimbursed by us unless the Customer was not rightfully entitled to remedies under the manufacturer's warranty.
- d) If we replace or repair merchandise under a legitimate warranty claim filed in accordance with the provisions of paragraph 9 a) of these General Terms and Conditions of Sale and Delivery, we shall cover the cost of materials and labor arising from the replacement or repair of the merchandise. The Customer shall make available to us on-site any and all equipment necessary to replace or repair the merchandise, such as cranes.
- e) Our warranty shall not cover normal tear and wear, damages sustained during transportation, and damages caused by incorrect repairs or modifications performed by the Customer or a third party. It will be void upon any action inconsistent with the correct and proper use and handling of the merchandise such as misapplication, abuse, improper operation and disregard of our maintenance instructions. In the event we replace or repair merchandise, at our expense, under a warranty claim, and subsequently learn that the Customer was not entitled to a replacement or repair at our cost due to the cause of the defect(s) remedied, then we shall have the right to demand from the Customer reimbursement of any and all expenses we incurred in conjunction with the replacement or repair of the merchandise.
- f) The Customer's right to file a claim under the manufacturer's warranty shall be subject to the statute of limitations provided by applicable law, unless otherwise agreed upon between the Customer and us.

#### 10. Liability, Limitation of Liability

- a) In the event the merchandise we supplied cannot be used by the Customer for the purpose specified in the contract for reasons within our responsibility, such as faulty workmanship or failure to fulfill certain contractual requirements, the provisions of paragraphs 9 and 10 b) of these General Terms and Conditions of Sale and Delivery shall apply, and the Customer shall not be entitled to claim any additional rights.
- b) For damages other than those to the merchandise itself, such as loss of production, we shall be liable, no matter on which legal grounds, only
- if the damages were caused intentionally,
  - if the damages were caused by wilful misconduct of our management,
  - if culpable negligence resulted in another person's injury or death,
  - if we intentionally and purposely failed to disclose existing defects,
  - under the Product Liability Act if the merchandise was defective and the defect caused personal injury or death or damage to personal property
- c) In the event essential obligations under the contract were culpably violated, we shall be liable for such violation of obligations even if it resulted from wilful misconduct of employees not part of management. We shall also be liable for any violation of essential obligations under the contract caused by ordinary negligence, in which case our liability shall be limited to the reasonably predictable loss typical of such contract owing to its nature.
- d) Further rights of the Customer to compensation shall be expressly excluded.

#### 11. Statute of Limitations

The statute of limitations for claiming damages under this contract, no matter for what reason, shall be 12 months. For claims arising out of intentional or fraudulent misconduct, damages covered by the provisions of paragraph 10 b) of these General Terms and Conditions of Sale and Delivery, claims filed under the Product Liability Act, and claims involving items typically used for a building, the statute of limitations under the applicable laws shall apply.

#### 12. Applicable Law, Jurisdiction and Venue

- a) This agreement and the legal relations of the parties to this agreement shall be construed and interpreted in accordance with the substantive laws of Germany without regard to any choice of law principle that would dictate the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be expressly excluded.
- b) The place of order fulfillment shall be Willich. Any controversy, claim or dispute arising out of or relating to this agreement, or breach thereof, or the rights and obligations of each of the parties shall be brought exclusively in the municipal court of Krefeld.