

I. Subject of Contract, Scope, Offer

1. Pre-worded terms and conditions of contract used by Customer for diverse contracts ("General Terms and Conditions of Business" as defined by Art. 305 of the German Civil Code, hereafter "BGB") shall not be part of the contract. The present General Terms and Conditions of Performance, Sale and Delivery of KIC KRONES Internationale Cooperationsgesellschaft m. b. H. (KIC KRONES) shall apply exclusively.
2. Any individual agreements concluded between the parties hereto concerning the rights and duties of these parties shall take precedence over the present Terms and Conditions.
3. All agreements entered into between KIC KRONES and Customer with regard to performance of the contract shall be made in writing.
4. The present Terms and Conditions shall only apply in relation to merchants, legal entities subject to public law and trustees of public funds (as respectively defined by Art. 310 BGB).
5. The present Terms and Conditions shall also apply to all future business transactions between KIC KRONES and Customer.
6. If an order qualifies as an offer (as defined by Art. 145 BGB), KIC KRONES may accept such offer within 4 weeks of its receipt. All offers made by KIC KRONES may be revoked at any time prior to acceptance.

II. Time of Delivery, Scope of Delivery, Acceptance, Default

1. The time agreed for delivery shall commence upon dispatch of the order confirmation and clarification of all technical questions, provided that Customer has made available to KIC KRONES all documents required, and any agreed advance payment has been received.
2. The obligation owed by KIC KRONES shall be deemed to have been fulfilled within due time if, by expiry of the agreed time for delivery, the object of the contract has been properly dispatched, or Customer has been informed of readiness for dispatch.
3. For the determination of the weight of the delivery, the weight measured at the delivery plant or warehouse at which it was dispatched shall be authoritative.
4. A default in performance due to force majeure shall not entitle Customer to a claim (in particular, a claim for a contractual penalty or damages) against KIC KRONES. Any unforeseeable event or an event, which – though foreseeable – is beyond the influence and control of KIC KRONES and the effects of which cannot be avoided by the exercise of reasonable care shall be considered an event of force majeure. Such events include but are not limited to delayed performance/delivery by subcontractors / suppliers, acts of war (whether declared or not), war-like conditions, riot, revolution, rebellion, military or civilian coups d'état, insurrection, turmoil, outrages, mobilization, requisition, blockade, embargo, government order, sabotage, strikes, go-slow strikes, lockout, epidemic diseases, fire, floods, storm tides, typhoons or other poor weather conditions, lack of raw materials and supplies, shipwreck, insufficient loading capacity or port facilities, delays resulting from transportation, loading and discharge, non-availability of freight capacity, justifiable change / exchange of freight forwarder and/or carrier and/or ship owner and/or other commercial shipping company, accidents in transit, earthquakes, radioactive accidents, physical or man-made obstructions of any kind at the building site / production facility.
5. In all cases, where obstacles to performance – regardless of their nature – are not the responsibility of KIC KRONES, the latter shall be entitled to receive a reasonable extension of time for delivery as well as additional compensation to compensate for the additional works and/or costs.
6. If performance is delayed at the behest of Customer, Customer will reimburse actual costs incurred because of the delay. In case of storage in a KIC KRONES plant, KIC KRONES is entitled to demand a flat-rate amount for the additional costs caused by delay of 0.5% of the agreed price for each month of delay started. This provision shall not preclude any further rights that KIC KRONES may have of furnishing proof of higher costs or Customer of furnishing proof of lower costs.
7. Clause 5 also applies to all other cases of default with regard to acceptance by Customer. Where Customer is in default with regard to acceptance or is in violation of any other contractual obligation with regard to cooperation, the risk of accidental loss, destruction or accidental deterioration of the object of contract by KIC KRONES shall pass to Customer at the time such default arises.
8. This agreement shall not preclude any further rights that KIC KRONES may have.
9. Compliance with the time for delivery shall be subject to Customer duly fulfilling his contractual duties in a timely manner.
10. Partial deliveries by KIC KRONES may only be rejected where they impose on Customer in an unreasonable manner.
11. Where acceptance is provided for by contract or by law, such acceptance shall be governed by the legal provisions applicable to acceptance in contracts for work.

III. Price and Payment

1. The prices agreed apply ex factory. Customer bears the costs of shipment, including the costs of packaging, loading, stowage and unloading. Value Added Tax at the rate applicable at the time of delivery is to be added to the prices.
2. To the extent that KIC KRONES is obliged by German regulations governing packaging to take back packaging used for transportation, Customer shall bear the costs of returning the used packaging and the reasonable costs for the reuse thereof. To the extent that the packaging taken back cannot be reused, Customer shall bear the costs of the material processing incurred by KIC KRONES. In addition, Customer shall pay any duties, clearance charges, taxes and other charges incurred as a result of taking back transport packaging.
3. Containers used for transportation are not within the scope of this contract and are not considered packaging. They remain the property of KIC KRONES. They shall be handled with care and shall not be used for any other purpose than the storage of the delivered products. They shall be imported and re-exported by Customer at his expense (shipping costs, duties, clearance charges, taxes and other charges) and risk, and sent back to KIC KRONES.
4. Where it has been agreed that the goods are to be supplied on pallets, KIC KRONES shall have the discretion to choose between supplying the goods on European pool pallets measuring 800 x 1200 mm or on EU 10 disposable pallets. Goods will only be supplied on Europallets against concurrent exchange, i.e. for all pallets on which the goods are delivered, the same number of undamaged empty pallets (European pool pallets only) must be provided

ded by Customer in exchange. KIC KRONES shall invoice Customer for the repair costs of all European pool pallets retained by KIC KRONES as damaged but capable of repair, and invoice Customer for the replacement costs of all pallets not capable of repair, unless Customer can demonstrate that he was not responsible for the damage. Customer shall replace all lost pallets or shall make payment to Seller to cover the costs of replacement, unless he can demonstrate that he was not responsible for the loss. If the goods are delivered on EU 10 disposal pallets, Customer shall be responsible for the unloading and disposal of the pallets.

5. Loaned drums, containers and stacking tanks and all other types of loaned packaging and auxiliary loading equipment shall be returned no later than eight weeks after arrival of the delivery. Where loaned packaging and/or auxiliary loading equipment is not returned within time or is rendered unusable as a result of non-compliance with KIC KRONES' requirements, KIC KRONES shall be entitled to invoice Customer the current price for brand-new packaging of the same kind or to demand rental fees from Customer. These amounts shall be payable immediately. The empties account shall be credited upon the return of the empties, unless Customer can prove that he was not responsible for the late return or unusability of the loaned packaging and/or auxiliary loading equipment.
6. The price agreed upon shall be due in cash without any deduction.
7. KIC KRONES shall be entitled to interest on payments due and in arrears to the extent provided by law. The assertion by KIC KRONES of further rights or damages shall not be affected hereby.
8. Customer shall not be entitled to any rights of set-off or retention, unless his counter-claims have become legally effective (*res judicata*), are uncontested or have been acknowledged by KIC KRONES, and KIC KRONES was given at least one month's advance notice of such counter-claim.
9. Where circumstances are brought to the attention of KIC KRONES after the conclusion of the contract, which cast doubt on the credit standing of Customer, notwithstanding the above or agreed conditions of payment KIC KRONES shall be entitled to security for payment in the form of a simple (i.e. not payable on first demand), irrevocable payment bond or bank guarantee of indefinite term, which shall be returned against payment of the price owed.
10. KIC KRONES shall be entitled to increase the agreed price reasonably if there are cost increases after the conclusion of contract, in particular where this is due to collective labor agreements or increases in the cost of materials. Upon request, KIC KRONES shall furnish proof for such increases to Customer.
11. Customer shall cause the agreed purchase price to be credited, at his own risk and expense, to one of the bank accounts indicated by KIC KRONES.

IV. Assumption of Risk

1. The risk of accidental loss or damage to the object of the contract is transferred to Customer at the moment in which the object of the contract is handed over to the first carrier.
2. Where the object of the contract or part of the object of the contract is ready for shipment and shipment or delivery is delayed for reasons in the responsibility of Customer, the risk of accidental loss or damage shall pass to Customer on the day the object or part of the object of the contract is ready for shipment.
3. Where KIC KRONES orders the shipment of the object of the contract and it is damaged in transit or suffers a defect due to transportation after the object of the contract has been handed over to the carrier, KIC KRONES shall assign its claims resulting therefrom, if any, against transport insurance(s) and carriers to Customer at the latter's request (any liability for the existence of such claims to be excluded); such assignment shall be concurrent with the payment of the overall price agreed for the object of the contract and of all costs owed. Any further claims against KIC KRONES resulting from any damage in transit or a defect due to transportation shall be excluded.
4. Any limitation periods under transport or maritime law, bar periods, exclusions of liability and limitations of liability, which apply in favor of (natural or legal) persons entrusted with the transportation / loading / unloading / storage of the object of the contract in their relationship to KIC KRONES shall apply equally in favor of KIC KRONES in the contractual relationship between Customer and KIC KRONES.
5. Customer shall examine the object of the contract for any damage directly upon unloading at the destination port, and in the event of any recognizable damage or suspected damage shall only acknowledge receipt subject to reservations and shall notify KIC KRONES of the damage without delay. Non-compliance with the aforementioned duties shall render void any transport insurance payment obligations. Where transport insurance payment obligations should be rendered void for the aforementioned reason, KIC KRONES shall not be liable for any damages falling under the exclusion of liability of the transport insurance(s).

V. Retention of Ownership

1. KIC KRONES shall retain ownership of the object of the contract until the irrevocable and unconditional payment of all amounts owed by Customer. Until this time Customer is not entitled to encumber the object of the contract with a security right (e.g. ownership by way of security, pledge, mortgage, land charge, etc.) or to sell it on. Where the "retention of ownership" as a form of security is not recognized under the applicable laws of the country in which the place of installation/use (*lex rei sitae*) is situated, the form of security under the laws of that country which comes closest to the meaning of "retention of ownership", or which represents the typical form of security under that law (e.g. "pledge" or "security interest, attached and perfected"), is agreed instead. Customer shall cooperate in all measures required (in particular by submitting declarations of intention) under the applicable laws of the country in which the place of use is situated to secure the complete validity of an agreed retention of ownership or the complete validity of any other form of security.
2. Customer shall advise KIC KRONES immediately of any attachments, seizures or other measures by third parties in respect of the object of the contract, and provide all documentation required for intervention.
3. For as long as KIC KRONES is still entitled to any rights to the object of the contract of the kind referred to in clause 1, KIC KRONES is entitled, in the event of non-compliance with any obligations by Customer – in particular, if KIC KRONES' ownership of the object of the contract is put at risk, or the object of the contract is improperly used by Customer, or Customer defaults on payment – to demand the return of the object of the contract after giving prior notice. The demand for the return of the object of the contract shall not constitute the rescinding of the contract, unless KIC KRONES expressly declares this to be the case by in writing. Attachment of the object of the contract by KIC KRONES shall always constitute the rescinding of the contract.

4. After taking back the object of the contract, KIC KRONES shall have power over its disposal. The revenue from sale, less reasonable costs of sale, shall be credited against the liabilities of Customer.
5. Customer is entitled to dispose of the merchandise, by sale or otherwise, in the normal course of business; however, Customer assigns to KIC KRONES from the outset, and in a sum corresponding to the total invoice sum (including VAT), any third-party claims or claims from his customer that might result from such disposal. Customer shall continue to be entitled to collect payment even after this cession. This does not affect the right of KIC KRONES to collect payment. However, KIC KRONES shall not collect payment as long as Customer continues to meet all payment obligations from the collected revenues, does not fall into arrears and, in particular, proceedings for insolvency have not been opened or payment has not been suspended. Where this should be the case, KIC KRONES is entitled to demand that Customer shall notify KIC KRONES of all assigned claims and their obligors, shall provide all information required for collection and all associated documentation and shall inform the obligors (third-parties) of the assignment.
6. Where the object of the contract is inseparably combined with other objects which are not owned by KIC KRONES, KIC KRONES shall acquire co-ownership of the new object, its share of ownership being commensurate with the value of the object of the contract relative to the other combined objects at the time of combining. Where these are combined in such a manner that Customer's object is deemed to be the main object, it is herewith agreed that Customer will assign KIC KRONES the proportionate share of ownership. The sole ownership or co-ownership so derived is therefore held in custody by Customer for KIC KRONES.
7. Upon request from Customer, KIC KRONES shall release securities to which it is entitled, in so far as the value of the realizable securities of KIC KRONES exceeds the sums owed which require security by more than 20%; the choice of securities to be released shall be at the discretion of KIC KRONES.

VI. Rights of Customer in Case of Defects

1. KIC KRONES shall be liable to Customer that the object of the contract at the time of the passing of risk to Customer is free of physical and legal defects. Irrelevant deviations from qualities agreed upon shall not constitute defects.
2. However, KIC KRONES shall not be liable for defects or damages arising for the following reasons:
Defects resulting from constructions prescribed or specified by Customer, defects resulting from materials (including sample materials) prescribed, specified or supplied by Customer, or defects resulting from other input of Customer, or defects or damage arising after the passing of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, inappropriate operating materials or such defects arising due to special external circumstances not envisioned by the contract, as well as non-reproducible software errors.
Where Customer or third parties apply unsuitable modifications or maintenance work, any liability of KIC KRONES for these modifications, work or their consequences shall be excluded.
3. Where use is made of EAN coding, KIC KRONES shall make every effort to secure readability. However, KIC KRONES shall not accept any liability for readability.
4. All applications-related consulting advice provided by KIC KRONES in written and oral form is informal only and shall not release Customer from its obligation to check the suitability of the object of the contract for the intended purpose. This also applies even where the delivery has general recommendation for a specific purpose. Should there nevertheless be a question of liability on the part of KIC KRONES, the provision on agreed liability for defects shall apply accordingly. Customer shall have sole responsibility for ensuring that no third-party rights, e.g. use patents and statutory regulations are infringed if the object of delivery should be transformed into a new form.
5. Where a defect in the object of the contract gives rise – while taking in account clauses 1 through 4, above – to the respective remedial rights of Customer, Customer shall, at first, only be entitled to demand remedial performance with regard to the defects within a reasonable time.
6. Customer shall examine the object of the contract directly upon receipt thereof and notify KIC KRONES of any recognizable defects without delay. This obligation of providing notice immediately shall also apply where a defect emerges later. The fact that KIC KRONES is certified as conforming to ISO 9000 shall not serve to release Customer from its duty to examine and give notice of defects according to Art. 377 of the German Commercial Code (HGB). Where Customer omits such notice, the object of the contract shall be deemed to have been approved regardless of any defect.
7. Customer shall send to KIC KRONES samples of the delivery for which defects are claimed. Where samples are taken by neutral sample takers at the place of unloading, these alone shall be authoritative for the appraisal of the delivery. Samples taken by neutral sample takers are the equivalent of original remnants at Customer's which were supplied by KIC KRONES for transformation into a new form or further delivery. This also applies to remnants of the production batch at KIC KRONES from which the delivery for which defects are claimed originally came.
8. Where Customer does not accept the remedial performance offered by KIC KRONES pursuant to the contract, upon fruitless expiry of an extension of time allotted KIC KRONES shall be released from liability for the claimed defect.
9. Where remedial performance has failed, Customer shall be entitled – subject to the conditions contractually agreed upon, including those provided for by the present General Terms and Conditions of Performance, Sale and Delivery – to make any other claims based on the defect. In particular, failure of remedial performance shall be established, where KIC KRONES has allowed a reasonable extension of time allotted by Customer to pass fruitlessly, or has unduly delayed or refused remedial performance, or where a reasonable number of attempts at remedial performance have been unsuccessful.
10. Customer shall only be entitled to retain payment for cause, where the notice of defect is justified beyond all doubt.
11. Where Customer makes a claim based on a defect, and it is subsequently shown, in particular by means of an appropriate inspection by KIC KRONES, that the claim based on defect made by Customer is unwarranted for factual or legal reasons, KIC KRONES shall be entitled to reasonable payment and reimbursement of all expenses for services, particularly those rendered in relation to the inspection.
12. All claims for damages shall be subject to the limitations, modifications and exclusions provided by the following Article VII, as set out below.

VII. Limitation or Exclusion of Liability of KIC KRONES

1. Customer shall carefully observe both the instructions for use and the operating instructions, as well as the safety information provided by KIC KRONES. In particular, Customer shall comply with the instructions of KIC KRONES on how the object of the contract is to be used without risk, which precautions are to be taken regularly and individually, and which types of errors in usage are to be avoided. If Customer breaches this duty, KIC KRONES shall not be liable for any damage resulting therefrom.
2. Limitation of liability of KIC KRONES for damage, both direct and consequential, resulting from defects:

KIC KRONES shall neither be liable for any direct damage resulting from defects (including damage consisting of lost profits) nor for consequential damage resulting from defects, regardless of legal reason. This exclusion of liability shall not apply to claims by Customer for damage based on gross fault (intent / gross negligence).

3. Limitation of liability of KIC KRONES for ordinary (as opposed to gross) negligence:
Any claims of Customer, regardless of legal reason, for damages not based on gross fault (intent / gross negligence) on the part of KIC KRONES shall be excluded, unless the damage is due to the presence of a defect or the breach of material contractual duties (so-called "cardinal duties"), the fulfillment of which is a prerequisite to the proper execution of the contract.
4. Limitation of liability of KIC KRONES for not typically foreseeable damage:
Unless any claims for damages by Customer are already excluded due to the limitations of liability of KIC KRONES for direct and consequential damage (clause 2) and for ordinary negligence (clause 3), where such claims – regardless of legal reason – are not based on gross fault (intent / gross negligence) on the part of KIC KRONES, such claims shall be limited in their amount to compensation for such damage which KIC KRONES, taking into consideration the circumstances that KIC KRONES knew or should have known at the time of conclusion of the contract, should have been able to foresee as a possible consequence of a breach of duty or a breach of contract (typically foreseeable damage).
5. Limitation of liability of KIC KRONES for improper performance:
Unless a claim by Customer has already been excluded due to the limitations of liability in favor of KIC KRONES with regard to direct or consequential damages (clause 2) and for ordinary negligence (clause 3), where – as a result of improper performance – Customer asserts a claim for either damages due to breach of duty or damages in lieu of performance against KIC KRONES, and where such claim is not based on gross fault (intent / gross negligence), this claim for damages shall be limited – beyond the limitation of liability of KIC KRONES for the typically foreseeable damage (clause 4) – to a maximum amount of 10% of the contract price of delivery. Improper performance shall be deemed to exist where obstacles arise during the contractual relationship, which impede or prevent proper fulfillment of contractual duties or where one party to the contract causes injury to the other party.
6. Limitation of liability of KIC KRONES for damage caused by delay:
The above limitations of liability in favor of KIC KRONES with regard to direct and consequential damages (clause 2), ordinary negligence (clause 3), not typically foreseeable damage (clause 4) and improper performance (clause 5) shall also apply to claims for damages of Customer against KIC KRONES with regard to damage caused by delay, unless such damage is based on gross fault (intent / gross negligence). In excess of the foregoing, in all cases of delayed delivery, including claims both for damages by Customer due to delay of delivery as well as damages in lieu of delivery, and even in such cases where time for delivery may have been extended for KIC KRONES and has expired, damages shall be limited in their amount to 0.5% per fully completed week of delay – to a maximum of 5% – based on the price of that portion of the delivery, which could not commence operations expeditiously due to such delay.
7. Limitation of liability of KIC KRONES for persons employed in performing an obligation:
Except where – due to gross fault (intent / gross negligence) of persons employed in performing an obligation – such contractual duties were breached, the fulfillment of which was prerequisite to the proper execution of the contract, any liability for persons employed in performing an obligation (Art. 278 BGB), regardless of legal reason, shall be excluded. In no event shall the liability of KIC KRONES for a person employed in performing an obligation exceed the liability of KIC KRONES for its own fault as provided for in the above limitations of liability. According to Art. 278 BGB, a person employed in performing an obligation is a natural person or legal entity whose services the obligor makes use of in order to perform its obligations.
8. Customer's right to rescind the contract due to non-performance or performance/delivery not in conformity with the contract shall be excluded. This shall not apply, where KIC KRONES has intentionally or grossly negligently failed to perform/deliver in conformity with the contract.
9. The above limitations of liability (Art.VII.1 through VII.8) shall apply neither to claims made pursuant to ss. 1 (and following) of the Product Liability Law, nor to claims based on defects withheld in order to deceive, nor to claims based on the grant of a guarantee regarding a quality, nor to claims based on injury to life, body or health of Customer, his officers and employees, nor to claims based on an obstacle to performance in existence at the time of conclusion of contract, which KIC KRONES had knowledge of at that time, or is at fault for lacking of such knowledge. The above provisions shall not entail a shift in the burden of proof to Customer's disadvantage.

VIII. Limitation Period

1. Where claims arising due to defects would – by default – be subject to statutory limitation periods of 2 years (e.g. Art. 438 s.1 no. 3 BGB; Art. 634 s.1 no. 1 BGB), such limitation period shall be shortened to 1 year. Where Customer has claims due to defects which arise from the grant of a guarantee regarding a quality, these claims shall be excluded from such shortening of the limitation periods. For all other claims, the statutory limitation periods shall apply.
2. The period of limitation begins upon delivery of the object of the contract or, in the case of obligatory installation by KIC KRONES, upon completion of the installation.
Where Customer's acceptance is in delay, the limitation period shall commence upon the occurrence of delay in acceptance.

IX. Jurisdiction, Applicable Law, Place of Performance

1. Where Customer is a fully qualified merchant registered in a German Commercial Register, a legal entity subject to domestic public law or a trustee of public funds (as respectively defined by Art. 310 BGB), the registered place of business of KIC KRONES shall be place of jurisdiction for any disputes arising from or in connection with the contractual relationship. In legal proceedings brought against KIC KRONES by Customer with no domestic place of jurisdiction, the exclusive place of jurisdiction shall also be the registered place of business of KIC KRONES. In legal proceedings brought by KIC KRONES against Customer with no domestic place of jurisdiction, the registered place of business of KIC KRONES shall be a further place of jurisdiction, in addition to the places of jurisdiction provided by law. Any arbitration agreements concluded between the parties shall take precedence.
2. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the applicability of the present Terms and Conditions of KIC KRONES and to all legal relationships of the contractual parties and their legal successors / assigns, that result from the contract and/or any possible ancillary or subsequent transactions. The present choice of law clause as well as the above covenant on jurisdiction shall also be governed by the laws of the Federal Republic of Germany.
The application of the U.N. Law on the Sale of Goods (Convention of the United Nations dated April 11, 1980 relating to contracts on the international sale of goods) shall not be excluded by virtue of the above choice of law.
3. The registered office of KIC KRONES shall be the place of performance.