

I. General provisions

The deliveries, services and quotations provided by KESSLER are all based exclusively on these Terms & Conditions. They are therefore deemed to apply to all future business relations, whether or not expressly agreed. Conflicting or deviating general terms and conditions issued by the CUSTOMER shall not be recognised.

II. Quotations and contract conclusion

- The written order confirmation issued by KESSLER shall be decisive for the scope of delivery. Collateral agreements and amendments require written confirmation from KESSLER.
- All quotations are considered to be subject to availability and modification. Insofar as a binding quotation has been submitted by KESSLER in an individual case, the quotation is deemed to be binding for a period of 2 weeks from receipt.
- Supplements and amendments to the agreements made, including these General Terms and Conditions, must be made in writing in order to be effective.

III. Prices and terms & conditions of payment

- KESSLER's prices are considered to be ex works excluding packaging and plus the currently applicable rate of value added tax. Insofar as the agreed prices are based on KESSLER's list prices and delivery is to take place more than 4 months after conclusion of the contract, the list prices valid at the time of delivery shall apply.
- If KESSLER has agreed to take over the installation or assembly of the equipment and in the absence of any agreement to the contrary, the CUSTOMER undertakes to cover not only the agreed remuneration but also all ancillary costs such as travel expenses, costs for transporting the hand tools and personal luggage as well as the daily expenses.
- In the absence of a special agreement, payments are due 30 days after invoicing; the date of receipt by KESSLER shall be decisive for the date of payment. If the customer fails to pay on the due date, the outstanding amounts shall bear interest at 5% p.a. from the due date; the assertion of higher interest rates and further damages in the event of default shall remain unaffected.
- The CUSTOMER is only entitled to offset payments or retain payments after its claims against KESSLER have been adjudged legally enforceable, are not contested or have been recognised by KESSLER. Furthermore, the CUSTOMER is only entitled to a right of retention if the counter-claim results from the same contractual agreement as KESSLER's original claim.
- If the CUSTOMER ceases to make payments, if there is over-indebtedness or if insolvency proceedings are applied for or if the CUSTOMER is in default with the encashment of due bills of exchange or cheques, KESSLER's total claim shall become due immediately. The same shall apply in the event of any other significant deterioration in the CUSTOMER's financial circumstances. In this case, KESSLER shall be entitled to demand sufficient security or to withdraw from the contract.

IV. Delivery time and terms of delivery

- Adherence to the agreed delivery periods presumes timely supply of all documents and all necessary approvals and releases in accordance with the contractual arrangements, in particular relating to drawings & plans, and adherence to agreed terms & conditions of payment and other obligations by the CUSTOMER. The delivery time is deemed to have been adhered to if, by the expiry of the delivery time, the product subject of the delivery has left KESSLER's premises or readiness for shipping has been communicated. We reserve the right of the defence of non-compliance with the contract. The delivery period shall be extended appropriately in the event of actions in connection with industrial disputes, in particular strikes and lock-outs, as well as in the event of unforeseen impediments beyond the control of KESSLER, and in the event that such impediments can be shown to have had a significant influence on the completion or delivery of the delivery item. This provision shall also apply if the circumstances occur with subcontractors.
- If dispatch is delayed at the CUSTOMER's request or in the event of default in acceptance, the CUSTOMER shall be charged the costs incurred for storage, starting one month after notification of readiness for dispatch, but at least one half of one per cent (0.5%) of the invoice amount for each month where storage is at the KESSLER works.
- If damages result for the CUSTOMER due to a delay which was caused by the fault of the supplier, the CUSTOMER shall be entitled to claim compensation for delayed delivery with the exclusion of any further claims. Compensation for each full week of delayed delivery is one half of one per cent (0.5%), however no more than five per cent (5%) of the value of that part of the total delivery which, due to the delayed delivery, cannot be used on the intended date of application or as per agreement. In all cases, liability for damages due to delayed delivery is restricted to the predictable damage typically anticipated in this line of business.
- KESSLER shall be entitled to make partial deliveries if the partial delivery can be used by the CUSTOMER within the scope of the contractual rights, the delivery of the remaining ordered goods is ensured and the CUSTOMER does not incur any considerable additional expenses or costs as a result.
- Information provided by KESSLER on the subject matter of the delivery or service (e.g. weights, dimensions, consumption values, load-bearing capacity, tolerances and technical specifications) and illustrations of the same (e.g. drawings and images) are only deemed approximate unless exact conformity is a prerequisite for the contractually intended purpose. They are not to be understood as warranted characteristics but as general descriptions or designations of the products. Deviations within standard commercial tolerances or on the basis of legally prescriptive regulations or resulting from technical improvements and the replacement of components of the same or better quality are permitted provided they do not impair the usability of the product as agreed in the contract.

V. Passing of risk, acceptance and place of performance

- The risk shall pass to the CUSTOMER at the latest upon dispatch of the delivery to the CUSTOMER or the end customer designated by the CUSTOMER, even if partial deliveries are made or where KESSLER has assumed other services, e.g. shipping costs or delivery and installation. If dispatch is delayed due to circumstances for which the CUSTOMER is responsible, the risk shall pass to the CUSTOMER from the date of the notified readiness for dispatch.
- Where acceptance of the articles delivered has been agreed, this is the point at which risk is transferred. Insofar as acceptance is crucial, the delivery item shall be deemed to have been accepted if
 - the delivery and, if KESSLER is also responsible for the installation, the installation have been completed,
 - KESSLER has notified the CUSTOMER of this with reference to informal acceptance in accordance with this Point V(1) and has requested the customer to confirm acceptance,
 - 12 working days have elapsed since delivery or installation or the CUSTOMER has started using the goods (e.g. has put the delivered goods into operation) and in this case 6 working days have elapsed since delivery or installation and
 - the CUSTOMER has failed to indicate acceptance within this period for a reason other than a defect notified to KESSLER which makes the use of the delivery item impossible or substantially impairs it.
 The CUSTOMER shall not be entitled to refuse acceptance of the items delivered merely due to an insignificant defect.
- Unless otherwise specified, the place of performance for all obligations arising from the contractual relationship shall be the registered office of KESSLER in Bad Buchau.

VI. Installation and assembly

Unless otherwise agreed, installation and assembly are subject to the following terms & conditions:

- The CUSTOMER is responsible at its own expense for providing the following services and equipment:
 - All ancillary work not covered by KESSLER's business including all and any required skilled or unskilled workers, building materials and tools
 - Any and all equipment and materials required for the installation and commissioning work, such as scaffolding, lifting gear and other jigs and equipment, fuels and lubricants
 - Energy and water at the point of installation including all connections, heating and ventilation
 - Sufficiently large, suitable, dry and lockable rooms at the assembly site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the assembly personnel, including sanitary facilities appropriate to the circumstances; moreover, the CUSTOMER shall take the measures it would take to protect its own property in order to protect the possessions of KESSLER and the assembly personnel at the construction site
 - Any protective clothing and safety equipment (PPE) required as a result of special circumstances on the site.
- Assembly, installation, operating and maintenance instructions must be checked immediately by the CUSTOMER for comprehensibility and freedom from errors; if necessary, KESSLER must be informed immediately.
- Before installation work commences, the CUSTOMER undertakes to volunteer the necessary details of the positions of concealed electricity wires & cables, gas and water pipes and similar installations as well as all necessary static information.
- If the assembly, installation or commissioning work is delayed for reasons for which KESSLER is not responsible, the CUSTOMER undertakes to reimburse any additional expenses incurred by KESSLER or the installation engineers for waiting time and additional travel.

VII. Retention of title

- The goods delivered remain the property of KESSLER unless and until all claims against the CUSTOMER resulting from the transaction have been settled.
- As long as retention of title exists, the CUSTOMER is not permitted to pledge or use the goods delivered as further collateral and resale is only permitted to resellers in the normal course of business on condition that the reseller obtains payment from its customer or, alternatively, makes transfer of title to the new customer conditional upon that customer making payment for the goods in full.
- If the CUSTOMER resells goods subject to a retention of title, he undertakes to assign to KESSLER here and now by way of security any and all future claims against its customer resulting from such resale including all rights and subsidiary rights – including any outstanding balances – so that it is not necessary to make a specific declaration later. If the goods delivered under this contract are resold together with other goods in such a way that the goods under this contract are not assigned a specific individual price, the CUSTOMER implicitly assigns to KESSLER a portion of the total amount owing to it which is equivalent to the amount invoiced to it by KESSLER for those goods.
- If the reserved goods are processed by the CUSTOMER, it shall be agreed that the processing shall be carried out in the name and for the account of KESSLER as manufacturer and that KESSLER shall directly acquire ownership or – if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the reserved goods – co-ownership (fractional ownership) of the newly created item in the ratio of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of ownership should occur at KESSLER, the CUSTOMER hereby assigns to KESSLER its future ownership or – in the above relationship – co-ownership of the newly created object as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, KESSLER shall, insofar as the main item belongs to KESSLER, transfer to the CUSTOMER pro rata co-ownership of the uniform item in the above ratio.
- Where goods are made subject of a distraint or confiscation order or other seizure or action by Third Parties, the CUSTOMER undertakes to inform KESSLER immediately.

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6. In the event of culpable violation by the CUSTOMER of essential contractual obligations, in particular default in payment, KESSLER shall be entitled to take back the goods after issuing a reminder. The CUSTOMER is obliged to surrender the goods. The recovery of goods or assertion of the retention of title or the seizure of the delivery item by KESSLER shall not constitute a withdrawal from the contract, unless KESSLER has expressly declared this to be the case. After prior warning, KESSLER shall be entitled to utilise the recovered goods subject to retention of title and to apply the proceeds thereof to offset the outstanding claims.

VIII. Warranty

- The warranty period shall be 1 year from delivery or, if acceptance is required, from the date of acceptance. If a trial run has been agreed, the warranty period shall commence upon completion of the trial run. This period does not apply to claims for damages by the CUSTOMER arising from injury to life, limb or health or from wilful or grossly negligent breaches of duty by KESSLER or its vicarious agents, which in each case become statute-barred in accordance with the statutory provisions.
- The delivered items must be carefully inspected immediately after delivery to the CUSTOMER or to a third party designated by the CUSTOMER. With regard to evident defects or other defects which would have been recognisable in an immediate, careful examination, they shall be deemed to have been approved by the CUSTOMER if KESSLER does not receive a written notice of defect within 7 working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the CUSTOMER if the notice of defect is not received by KESSLER within 7 working days of the time at which the defect became apparent; if the defect became apparent at an earlier point in time when the goods were used normally, this earlier point in time shall, however, be decisive for the commencement of the notice period. At KESSLER's request, a delivery item complained about shall be returned to KESSLER carriage paid. In the event of justified complaints about defects, KESSLER shall reimburse the costs of the least expensive dispatch route; this shall not apply if the costs increase because the delivery item is located at a place other than that of the intended use.
- In the event of material defects of the delivered items, KESSLER shall be obliged and entitled at its discretion to choose between remedial performance or replacement delivery within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay in repair or replacement, the CUSTOMER may withdraw from the contract or reduce the purchase price accordingly. Of all the immediate, associated costs incurred by such a repair or replacement delivery, we undertake – provided the complaint is proved to be justified – to reimburse the costs of the new part and reasonable costs for removal and fitting and the costs of the provision of engineers and assistants as required if the specific situation so requires up to a maximum cost figure to be agreed separately. All other costs are to be borne by the CUSTOMER. The latter shall also bear any additional costs incurred as a result of KESSLER's remedial performance or replacement delivery taking place at a location other than the location of the contractual delivery. Costs incurred by KESSLER as a result of unjustified complaints about delivered parts and services rendered shall be borne by the customer within a reasonable framework. In any case, the additional costs associated with the remedial performance or replacement delivery shall be limited to 100% of the respective delivery item.
- If KESSLER is shown to be responsible for a certain defect, the CUSTOMER may claim damages under the conditions specified under Section X.
- No warranty shall be assumed for natural wear & tear, component-specific wear & tear, in particular for bearings, sealing rings, seals, tool clamps, rotary unions, clutches, gear teeth, belts, brakes, unless these do not correspond to the technical standard for wear parts, or damage that has occurred after the transfer of risk for one or more of the following reasons: external influences such as liquid, moisture, vibrations etc., unsuitable or improper use, transport or storage, faulty assembly, installation or commissioning by the CUSTOMER or third parties, faulty negligent handling, in particular in breach of KESSLER's operating, assembly, installation and maintenance instructions and other guidelines, unsuitable operating materials or replacement materials, faulty workmanship, unsuitable substrate, chemical, electrochemical and electrical influences as well as non-reproducible software errors. If the CUSTOMER or a third party performs improper modifications or repairs on the products, the warranty for these components and liability for any resulting consequences shall be void.
- In the event of defects in components of other manufacturers which KESSLER cannot remedy for licensing or factual reasons, KESSLER shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the customer or assign them to the CUSTOMER. Warranty claims against KESSLER shall only exist for such defects and other conditions and in accordance with these General Terms of Delivery if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful, or e.g. due to insolvency, is futile.
- Any delivery of used items agreed with the CUSTOMER in individual cases shall be made to the exclusion of any warranty for material defects.

IX. Deficiency in title, proprietary rights and copyrights

- Insofar as a third party asserts justified claims against the CUSTOMER due to the infringement of proprietary rights or copyright (hereinafter referred to as property rights) by products supplied by KESSLER and used in accordance with the contract, KESSLER shall be liable to the CUSTOMER as follows:
- KESSLER shall, at its discretion and expense, either obtain a right of use for the product, modify the product in such a way that the property right is not infringed, or replace the product. If this is not possible for KESSLER to achieve under economically reasonable conditions, the CUSTOMER shall be entitled to withdraw from the contract. Under the conditions mentioned above, KESSLER is also entitled to withdraw from the contract. In addition, KESSLER undertakes to hold the CUSTOMER free from the claims of the copyright holders involved whether the claims are uncontested or legally enforceable. Any claims for damages by the CUSTOMER are subject to the limitations of Point X (Liability) of these General Terms & Conditions.
- The above obligations relevant to KESSLER shall apply only if the CUSTOMER informs KESSLER in writing immediately of any claims made by third parties, a violation is not acknowledged and if all defensive measures and settlement negotiations are reserved for KESSLER. If the CUSTOMER ceases to use the products with a view to reducing the amount of damages claimed or for any other important reason, it is obliged to notify the Third Parties that ceasing to use the product is not tantamount to accepting liability for a possible infringement.
- Claims by the CUSTOMER are excluded insofar as the CUSTOMER is responsible for the infringement of property rights. Claims by the CUSTOMER are also excluded where the infringement of proprietary rights has come about due to specifications requested by the CUSTOMER, or due to a specific application of the machine which was not anticipated by KESSLER or if it was caused by the CUSTOMER's own modifications to the machine or if it is used in conjunction with products not supplied by KESSLER.
- No further claims against KESSLER shall be entertained.

X. Liability

- The liability of KESSLER for damages, regardless of the legal basis, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties in contract negotiations and tort, shall be limited in accordance with this provision, to the extent that culpability is of the essence in the case in question.
- KESSLER shall not be liable in the event of simple negligence on the part of its Officers, legal representatives, employees or other vicarious agents, insofar as this is not a breach of material contractual obligations. Essential contractual obligations are obligations for the timely delivery and installation of the delivery item, its freedom from deficiency in title as well as those material defects which impair its functionality or usability more than only insignificantly, as well as obligations for advice, protection and care which are intended to enable the CUSTOMER to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the CUSTOMER's personnel or to protect the CUSTOMER's property from considerable damage.
- Insofar as KESSLER is liable for damages in accordance with Point 2 above of this provision, this liability shall be limited to damages which KESSLER foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which it should have foreseen if it had exercised due care. Indirect damages and consequential damages resulting from defects of the delivery item shall only be eligible for compensation if such damages are typically to be expected when the delivery item is used in accordance with its intended purpose.
- In the event of liability on the part of KESSLER for property damage and resulting financial losses, this shall be limited to an amount of 5,000,000 € per case of damage, even if this is an infringement of essential contractual obligations.
- The foregoing exclusions and limitations of liability shall apply to the same extent in favour of the Officers, legal representatives, employees and other vicarious agents of KESSLER.
- Insofar as KESSLER provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services to be rendered, this shall be done free of charge and to the exclusion of any liability whatsoever.
- The limitations of this provision shall not apply to the liability of KESSLER for wilful conduct, for guaranteed characteristics, for injury to life, limb or health or in accordance with the Product Liability Act.

XI. Product liability

If the CUSTOMER or its customer resells KESSLER's products to countries outside the European Economic Area, in particular to the USA, the CUSTOMER shall indemnify KESSLER against any and all product liability claims of third parties insofar as they go beyond European product liability provisions.

XII. Design changes & copyright

- KESSLER reserves the right to make design changes at any time. However, KESSLER is not obliged to make such changes to products that have already been delivered.
- KESSLER reserves ownership and copyright in all offers and cost estimates submitted by KESSLER as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the CUSTOMER. The CUSTOMER may not, without the prior express consent of KESSLER, make these objects accessible to third parties, either in their original form or in terms of their content, disclose or publish them, use them themselves or through third parties or reproduce them. At KESSLER's request, the CUSTOMER shall return these items to KESSLER in their entirety and destroy any copies made if they are no longer required by the CUSTOMER in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of normal data backup.

XIII. Final provisions

- If the CUSTOMER is a company or entrepreneur, a legal entity under public law or a special fund under public law, or if it has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all and any disputes arising from the business relationship between KESSLER and the CUSTOMER shall be either 88422 Bad Buchau or the registered office of the CUSTOMER, at the discretion of KESSLER. In these cases, however, 88422 Bad Buchau is the exclusive place of jurisdiction for legal actions against KESSLER. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- The contract is subject to German law and the provisions of the United Nations "Convention on Contracts for the International Sale of Goods" (CISG) are expressly excluded.
- If individual provisions of these General Terms and Conditions are or become invalid, this shall not affect the validity of the remaining provisions. The parties undertake to replace the invalid clause by a suitable clause that most closely reflects the intent of the original clause and is legally binding. The same applies in the event of a loophole.
- The German version always prevail in the event of discrepancies regarding the content of these terms of delivery.

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