

## General Terms and Conditions (GTC)

### 1. General Scope

- 1.1. These General Terms and Conditions ("GTC") shall apply to all deliveries and services of K & W Drive Systems, KNOPF & WALLISCH Getriebe und Motoren Vertriebs-GesmbH ("K&W" or "We"). The relationship between the contracting party ("the contracting party" or "you") and K&W shall be governed by the following terms and conditions in the following order:
- the offer on which the respective individual contract is based;
  - the delivery and pricing clauses;
  - any other contractual and business conditions of third parties (in particular of manufacturers/producers) which were expressly referenced to;
  - these General Terms and Conditions.
- 1.2. Irrespective of the above, only these GTC shall apply, unless otherwise agreed in writing. This means that no other general terms and conditions shall apply. This shall also apply in the event that the contracting party bases the business transaction on their own general terms and conditions or if the validity is generally in doubt. K&W expressly objects to general terms and conditions of the contracting party, even if we are aware of them.
- 1.3. Your orders will only be accepted and executed on the basis of the following conditions. The version valid at the time of conclusion of the contract shall be applicable. In the case of an ongoing business relationship, these terms and conditions shall also form part of the contract if they are not expressly mentioned in the individual contract.
- 1.4. You will be notified of any amendments to these GTC and shall be deemed to have been agreed if you do not object to them within 14 days (you will be explicitly informed of the significance of your silence in the notification).
- 1.5. You hereby expressly confirm that these GTC are legally binding and have become an integral part of the contract.

### 2. Conclusion of Contract, Delivery Obligation and Partial Invalidity

- 2.1. Our offers are generally non-binding. No valid contract is concluded before we have expressly accepted your order.
- 2.2. The possible invalidity of individual provisions of these GTC has no influence on the validity of the remaining provisions. In such a case, K&W and you undertake to replace this provision with a legal and valid provision which corresponds, as closely as possible and legal, the invalid provision in its economic effect.
- 2.3. Oral agreements and amendments to these terms and conditions must be confirmed in writing to be effective; this also applies to any waiver of the written clause.

### 3. Delivery, Dates and Deadlines

- 3.1. K&W is entitled to provide partial deliveries and services at any time.
- 3.2. The agreed delivery dates and deadlines shall only serve as guidelines unless they have been expressly designated as binding in writing. The deadline for the delivery shall commence at the earliest upon receipt of the finally agreed information concerning all commercial and technical matters. Subsequent requests for changes and additions shall extend the delivery period reasonably.
- 3.3. After exceeding a non-binding delivery date or deadline, the contracting party may request K&W to deliver in writing. K&W shall be in delay at the earliest upon receipt of this request.
- 3.4. The contracting party has to accept K&W slightly exceeding binding delivery dates or deadlines without the consequences of being in delay.
- 3.5. Should K&W be in delay of delivery, the contracting party may continue to fulfil the contract or withdraw from the contract after setting a reasonable grace period in writing. If K&W has already rendered partial deliveries or services, the contracting party shall only be entitled to withdraw from the contract regarding outstanding deliveries or services.
- 3.6. If delivery becomes impossible by accident during a delay, K&W shall not be liable, if the damage would have also occurred with delivery on time.
- 3.7. Delivery shall be made ex warehouse in Vienna for the account and risk of the contracting party. All costs for transport and transport insurance from Vienna to the place of installation shall be borne by the contracting party.
- 3.8. In the event of force majeure or an operational disruption through no fault of our own (or of our business partners), which temporarily prevents us from meeting the agreed dates and deadlines, these delivery dates and deadlines shall be extended by the duration of the disruptions to performance caused by these circumstances.

### 4. Prices

- 4.1. All prices are subject to change. Unless otherwise stated in the offer, all prices are quoted in Euro and exclusive of statutory value added tax.
- 4.2. Unless otherwise agreed in writing, the prices quoted are always ex our warehouse in Vienna, excluding packaging, which is charged at cost price. Any transport costs, in particular freight and insurance charges, customs duties, fees or levies, shall be borne by the contracting party.
- 4.3. Prices for services shall always be charged at the rates in force on the day of their performance. The same applies to the travel expenses and accommodation costs of our technicians, instructors and fitters.

### 5. Right of Withdrawal, Return of a Delivery

- 5.1. Force majeure, strikes, natural catastrophes, transport restrictions and similar events shall release us from the agreed delivery period or deadline. This shall also apply in the event that K&W becomes aware of circumstances after conclusion of the contract under which the performance of the main and ancillary services of the contracting party is no longer considered to be secured. Irrespective of this, we shall in this case be entitled to an unconditional and immediate right of withdrawal.
- 5.2. In the event of non-compliance with essential contractual obligations of the contracting partner (e.g. default of payment), K&W is entitled to demand return of already delivered goods or performance of the contract from the contracting partner. In this case, the return shall be made at the risk and cost of the contracting party. Any claims for damages as well as claims in connection with the retention of title remain unaffected by this.

### 6. Warranty, Guarantee, Notice of Defects

- 6.1. The warranty and guarantee described in this article do not apply if products are concerned, which have only been supplied by K&W and manufactured by other business partners (in particular brand-new machines, devices and apparatus) and for which the warranty and guarantee conditions stated by the manufacturer/producer apply. K&W only takes over the handling of the guarantee and warranty process. The question whether a guarantee or warranty claim has occurred at all, however, depends on the manufacturer's regulations. In all other cases, which means cases, where the producer's/manufacturer's conditions do not apply conclusively, the warranty and guarantee provisions as described under 6.2. - 6.7. shall apply.
- 6.2. The contracting party shall inspect the delivery for any obvious defects immediately at the agreed place of acceptance. If the contracting party expressly or implicitly waives the inspection, K&W is to assume that the goods have been properly delivered. Complaints regarding the quality of our deliveries will only be accepted if they have been made in writing to us within 14 days of receipt of the goods at the place of receipt. The notice of defect shall be sufficiently substantiated and documented with appropriate evidence. Hidden defects are to be notified immediately after discovery in the manner stated above.
- 6.3. Minor technical changes and deviations from drawings and catalogues shall be deemed as approved in advance.
- 6.4. All ancillary expenses, such as transport costs or any customs handling costs, etc. shall be borne by the contracting party.
- 6.5. Any warranty period shall be a maximum of 12 months from acceptance. The existence of defects must be proven by the contracting party. § 924 ABGB (Austrian Civil Code) and § 933b ABGB are not applicable.
- 6.6. In the case of justified defects, the warranty shall be limited to improvement, new delivery or supplementation of the missing goods. Several subsequent improvements and replacement deliveries are permissible. Claims for conversion and price reduction are excluded. The warranty is excluded if the contracting party or a third party, not authorized by K&W, has made changes or repairs to the product. In the event of improvement, new delivery or supplementation of the missing goods, the period for asserting claims shall not begin to run again.

### 7. Terms of Payment, Delay and Offsetting Ban

- 7.1. The terms of payment, in particular the due date and type of payment, are stated in the order confirmation or invoice. Compliance with the agreed payment dates is an essential condition for the execution of the delivery or fulfilment of the contract.
- 7.2. Bank transfers shall not be deemed payment until the amount has been credited to the account designated by us. Bills of exchange and cheques shall only be accepted after written agreement, only on account of payment and shall exclude any deduction of

discount. Discount interest and all bank charges shall be borne exclusively by the contracting party.

7.3 We expressly reserve the right to demand a down payment for orders placed by the contracting party.

7.4 If the contracting party is in default of payment, K&W shall be entitled, at its own discretion, to demand compensation for the actual loss incurred or interest at the statutory rate. For entrepreneurs, this is 9.2% p.a. above the base interest rate. This claim also includes compound interest. In addition, in the event of default in payment, the contracting party shall reimburse the court and out-of-court costs as well as the dunning and collection expenses necessary for the appropriate prosecution. This includes, in any case, a lump sum of EUR 40,- as compensation for collection costs according to § 458 UGB (Austrian Commercial Code). The assertion of further rights and claims remains unaffected. In the event of the contracting party's default in payment, K&W shall not be obliged to render its own performance as long as such default persists. Furthermore, in the event of default, K&W is entitled to demand immediate payment of all outstanding payments and/or to demand advance payment or provision of security.

7.5 The contracting party is not allowed to set off any disputed or not legally established counterclaims or without our express consent. The contracting party is also not permitted to exercise a right of retention without a legally binding title or on the basis of claims from other legal transactions.

## 8. Property Rights

8.1 The delivered machines, devices and apparatus as well as accessories and spare parts remain our unrestricted property until complete payment has been made.

8.2 The retention of title also serves to secure our claims from the current business relationship until all our claims in connection with the purchase are settled.

8.3 Pledging of the delivered goods by the contracting party prior to complete payment shall be deemed excluded unless we give our prior written consent.

8.4 As long as he has not become the owner, the contracting party is obliged to ensure appropriate safekeeping of the delivered goods and, if reasonable, to insure them appropriately. In any case, the contracting party bears the risk of destruction, loss or deterioration of the delivery item.

## 9. Fulfilment and Delivery

9.1 The delivery shall be deemed fulfilled when the delivered goods have been handed over to the carrier or the transport company.

9.2 The contracting party is generally obliged to accept the delivery at the agreed conditions. In the event of non-acceptance, we may make use of our statutory rights arising from default of acceptance.

9.3 Regarding packaging, the conditions stated in article 4.2 shall apply. The packaging used by us is licensed under the ARA number 10651.

9.4 Any claims arising out of visible transport damage must be made by the contracting party immediately upon receipt of the goods from the transport company or carrier, and the appropriate preservation of evidence against the carrier or transport company must be carried out. Other complaints must be submitted to us immediately after receipt of the goods.

9.5 Insurance of any kind shall only be taken out by request and at the expense of the contracting party to the extent desired by him.

9.6 Storage measures and the associated costs which become necessary through the fault of the contracting party partner shall be borne by the contracting party. The delivery items shall be deemed to have been duly delivered.

## 10. Liability

10.1 Unless otherwise stipulated in the respective offer (Article 1.1. a.) or in the terms and conditions of third parties (Article 1.1. b.), the contracting party shall be liable without limitation for the compensation of all damages culpably caused by him. He shall not be liable for slight negligence. Limitations of liability do not apply to the compensation of personal injury.

10.2 Unless otherwise stipulated in the respective offer (see Article 1.1. a.) or in the terms & conditions of third parties (Article 1.1. b.), we shall be liable for the compensation of damages culpably caused by us. We shall not be liable for slight negligence. In the event of gross negligence, liability shall be limited to the value of the affected delivery. Limitations of liability do not apply to the compensation of personal injury. Claims for

damages shall in any case only include the pure repair of damage. K&W shall under no circumstances be liable for indirect damages, loss of profit, loss of interest, omitted savings, other consequential damages and damages arising from claims of third parties.

10.3 The contractual partner must furnish proof that any damage incurred by him is attributable to our fault. The contractual partner must also furnish proof that he is not at fault for any damage incurred by us. This applies to all forms of fault (slight/coarse negligence, intent).

10.4 Claims for damages must be asserted in court at the latest within six months after knowledge of the damage and the party causing the damage, otherwise the right shall be excluded.

10.5 We shall not be liable for contracts for work if, despite fulfilment of the warning obligations, the contracting party insists on a certain implementation.

## 11. Data Privacy

11.1 Both K&W and the contracting party are obliged to comply with the provisions of the Austrian Data Protection Act (DSG), the General Data Protection Regulation (GDPR) and any other statutory confidentiality obligations.

11.2 K&W processes the necessary personal data for the purpose of fulfilling the contract. You will find the detailed data protection information in accordance with Art 13 et seq GDPR on our website at: <http://www.kwds.at/footer/datenschutz>

## 12. Place of Performance, Jurisdiction, Applicable Law and Contract Language

12.1 The place of performance for delivery and payment shall be Vienna.

12.2 All disputes arising directly or indirectly out of this contractual relationship shall be decided by the competent court in Vienna.

12.3 Austrian law shall apply to this contractual relationship excluding the conflict of laws rules of international private law (e.g. Austrian International Private Law Code, Regulation (EC) 293/2008) and the UN Convention on Contracts for the International Sale of Goods.

12.4 The contract language is English. For the interpretation of individual provisions, this version of the GTC shall be used.

## 13. Miscellaneous

13.1 The assignment of individual rights and obligations arising from these GTC and the contractual relationship shall only be permitted with the express written consent of the other contracting party.

## K & W Drive Systems, KNOPF & WALLISCH Getriebe und Motorenvertriebs-GesmbH

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