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# **STANDARD CONDITIONS OF SALE**

OF COMPANY

KM AUTO TECHNIK

Kary + Mangler GmbH

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**Edition 07/2017**

# Standard Conditions of Sale

**Effective 01.02.2016**

## § 1 General

(1) The deliveries, services and offers of KM AUTO TECHNIK Kary + Mangler GmbH (hereinafter: „Seller“) to their customers (hereinafter: „Buyer“) are made exclusively based on these conditions of sale.

(2) These conditions apply exclusively. Conflicting, deviating or complimentary terms of the Buyer apply only if and to the extent expressly consented to by the Seller in writing. This requirement of consent applies in any event, even if the Seller executes a delivery to the Buyer being fully aware of the Buyer’s deviating terms.

(3) The provisions of these conditions of sale apply only vis-à-vis entrepreneurs as defined in Sec. 14 of the German Civil Code („BGB“). Pursuant to Sec. 14 an entrepreneur is a natural person or legal entity or an incorporated partnership that enters into a legal transaction in pursuit of its commercial or self-employed occupation.

## § 2 Offer - Offer Documents

(1) Offers of the Seller shall be subject to alterations without notice.

(2) Offer Documentation such as illustrations, drawings, indications of weight or dimensions and/or other technical data as well as DIN, VDE or other internal or external standards referred to shall merely identify the subject matter of the contract and not constitute a warranty of qualities.

(3) The content and extent of the contract shall be determined by the Seller’s written acknowledgement of the order. Additional agreements, amendments, supplements etc. shall be subject to the Seller’s written acknowledgement.

(4) The Seller shall reserve ownership rights and copyrights in illustrations, drawings, cost estimates and other documents. The Buyer shall require the Seller’s express written consent prior to passing these on to a third party.

(5) During the delivery period construction, shape and colour as well as the scope of delivery are subject to modifications as far as a warranty of qualities is not concerned and as far as the modifications and changes are reasonable considering the Seller’s and the Buyer’s interests.

### **§ 3 Prices - Payment Terms**

- (1) Unless stated otherwise in the acknowledgement of the order, prices shall apply ex works excluding packaging. Transport packaging shall be invoiced separately. Statutory value-added tax shall not be included in prices. It shall be indicated separately on the invoice at the statutory rate on the day of delivery or - if the invoice is made out prior to delivery - on the day of invoicing.
- (2) The Seller reserves the right to alter its prices accordingly if relevant cost factors (raw materials, energy, working materials, wages and salaries etc.) change after conclusion of the contract and before the contracted delivery date. If the parties fail to come to an agreement, the Seller is entitled to cancel the contract.
- (3) The purchase price and prices for additional services shall be due and payable within 10 days after the purchase item is handed over and the invoice is handed out or sent. If the Buyer defaults on payment, the Seller shall be entitled to demand interest on arrears at the rate of 8 percentage points above the base interest rate. All rights shall be reserved for the assertion of any other damage. The Buyer may provide evidence of a lower damage or no damage at all.
- (4) The deduction of a cash discount shall be subject to a separate written agreement.
- (5) The Buyer may only set off against the Seller's claims, if the Buyer's counterclaim is undisputed or a legally enforceable instrument is on hand. The Buyer may only claim a right of retention, in so far as this is based on claims arising from the purchase contract.
- (6) The Buyer agrees that invoices may be sent via electronic transmission.

### **§ 4 Delivery Period**

- (1) The delivery period quoted by the Seller shall commence on the condition that all technical issues relevant to the order have been settled.
- (2) Furthermore adherence to the Seller's delivery periods shall be subject to timely and proper performance of the Buyer's obligations. The right to plea non-performance of contract shall remain reserved.
- (3) Delivery dates and delivery periods that are able to be agreed upon on a binding or non-binding basis shall be quoted in writing. Delivery periods shall commence at the time the contract is concluded.
- (4) Whether delivery is in default will be determined according to statutory law.
- (5) Force majeure and events that temporarily prevent the Seller through no fault of its own from delivering the purchase item by the agreed date or within the agreed period shall entitle the Seller to defer the delivery or performance by the duration of the hindrance plus a reasonable start-up period. If corresponding disruptions lead to a postponement of performance in excess of four months, the Buyer may cancel the contract. Other rights of cancellation shall remain unaffected.
- (6) The Buyer shall be obliged to accept the purchase item. If the Buyer defaults on acceptance, the Seller shall be entitled to demand compensation for damage incurred by it in this connection.

## § 5 Passing of Risk

- (1) Unless otherwise stated in the acknowledgement of the order, delivery „ex works“ shall be agreed.
- (2) The risk of accidental loss and accidental deterioration of the purchase item shall be passed to the Buyer upon the hand-over thereof.

## § 6 Buyer's Claims for Defects

- (1) Save as provided below and in clause 7 the statutory regulations shall apply to the rights of the Buyer in case of defects of quality and title.
- (2) In the case of newly manufactured items the period of limitation shall be 1 year. Used items shall be sold excluding every liability for defects. The period of limitation shall commence on delivery of the purchase item.
- (3) The Buyer's claims to the remedying of defects shall be primarily limited to a claim to subsequent performance, i.e. a claim to have defects remedied or a replacement delivered. The Seller shall have the right to choose to either remedy defects or deliver a replacement. In the event that the Seller fails to remedy defects or a reasonable period of time set by the Buyer has expired to no success or is dispensable under statutory provisions, the Buyer may demand a reduction in the purchase price or cancel the contract.
- (4) In the event that defects are to be remedied, the Seller shall be obliged to bear all expenses necessary for the purpose of remedying defects, in particular the cost of transportation, travelling, labour and materials, in so far as expenses are not increased as a result of the purchase item having been transported to a place other than the place of performance.

## § 7 Seller's Liability for Damages

- (1) The Seller's liability for damages shall be limited to the typical contractual foreseeable damage regardless of their legal cause (especially default, defects or other breaches of duty).
- (2) The above exclusions and restrictions to liability shall not affect liability in cases of intentional or gross negligent behaviour, specifically guaranteed characteristics, damage to life, body or health or liability according to the statutory rules of the Product Liability Act [Produkthaftungsgesetz]
- (3) The exclusion or restriction of the Seller's liability shall also apply to the liability of its employees, labourers, associates, representatives and agents.

## § 8 Reservation of Ownership

- (1) The purchase item shall remain the Seller's property („purchase item subject to reservation“) up to the satisfaction of all present and future claims of the Seller arising from the purchase contract as well as from the business relationship.

(2) The Buyer shall be obliged to handle the purchase item subject to reservation with care. In particular the Buyer shall be obliged to adequately insure the purchase item subject to reservation at its own expense against the risk of fire, water damage and theft at the replacement value.

(3) The purchase item subject to reservation may neither be pledged to third parties nor be transferred by way of security. In the event that the purchase item subject to reservation is taken in execution or otherwise seized by a third party, the Buyer shall give the Seller written notification thereof without delay.

(4) The Buyer shall be entitled to resell the purchase item subject to reservation in the normal course of business. However the Buyer shall already now assign to the Seller up to the sum of the final invoiced amount of the purchase money claim payable by the Buyer (including VAT) all accounts receivable that accrue to it against its customers or third parties as a result of reselling, irrespective of whether the purchase items were resold without being processed or after having been processed. The Buyer shall also remain authorised to collect these accounts receivable after the assignment of claims. This shall not affect the Seller's authority to collect accounts receivable itself. The Seller undertakes not to collect accounts receivable itself, as long as the Buyer meets its obligations to pay in conformity with the contract and a petition to commence insolvency proceedings has not been filed. If one of the last-mentioned circumstances has occurred, the Buyer shall at the request of the Seller give the Seller all information necessary for collecting the assigned account receivable and hand out accompanying documents as well as notify relevant debtors (third parties) of the assignment of claims.

(5) In the event that the realizable value of the Seller's collateral security exceeds by more than 10 % the accounts receivable to be secured, the Seller shall be obliged to release to this extent at the Buyer's request the collateral security to which it is entitled. The Seller shall be responsible for selecting the collateral security to be released.

(6) In the event that the purchase item is processed or transformed, this shall always be undertaken for the Seller. If the purchase item is processed with other items not belonging to the Seller, the Seller shall acquire co-ownership rights in the new item in the ratio of the value of the purchase item (final invoiced amount including VAT) to the value of the processed items at the time of processing. Incidentally the same conditions applicable to the purchase item delivered under reservation of ownership shall apply to the item created by processing.

(7) If the purchase item is inseparably mixed with other items not belonging to the Seller, the Seller shall acquire co-ownership rights in the new item in the ratio of the value of the purchase item (final invoiced amount including VAT) to the value of the other mixed items at the time of mixing. If mixing is undertaken in such manner that the Buyer's item is to be regarded as the principal item, it shall be deemed agreed that the Buyer shall transfer co-ownership rights to the Seller on a proportionate basis. The Buyer shall keep the sole property or joint property created in such manner in safe custody for the Seller.

## **§ 9 Altered circumstances with the Buyer**

(1) If the financial situation of the Buyer worsens considerably (e.g. uncovered check or bill of exchange or filing for insolvency or composition proceedings), if the Buyer disposes of goods we supplied under reservation of ownership in excess of the normal course of business, or if the Buyer dissolves his company, then the Seller shall have the right to declare all his claims arising from the business relationship as immediately payable, to repurchase bills of exchange at the Buyer's costs, and to continue supply only against advance payment or provision of security.

(2) In the event of discontinuation of payment or excessive indebtedness of the Buyer or upon filing of insolvency or composition proceedings, the Seller shall be entitled at his option to assert the above rights or to cancel the contract according to the statutory provisions.

## **§ 10 Assignment of claims**

(1) If the Buyer assigns a claim against the seller that results from the business relationship, the Seller may settle this claim at its discretion either against the Buyer or the third party.

## **§ 11 Place of Jurisdiction and Performance**

(1) The place of jurisdiction shall be the place where the Seller's registered office is located. However the Seller shall also be entitled to take legal action against the Buyer at the court having jurisdiction over the Buyer's domicile.

(2) Unless otherwise stated in the acknowledgement of the order, the Seller's place of jurisdiction shall be the place of performance.

## **§ 12 Applicable Law - Various**

(1) The contractual relationship shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods is inapplicable.

(2) If any of these terms should be invalid, the validity of the other terms of the contract shall remain unaffected. Invalid terms shall be replaced by the statutory provisions.