

KEMPER GENERAL CONDITIONS OF SALE

- Version November 2008 -

1. Exclusive applicability

(1) These conditions of sale will exclusively apply. Any differing or conflicting terms will only be accepted by KEMPER if KEMPER has expressly agreed to these in writing.

(2) These conditions will also apply to all future dealings between the parties, including in the case where KEMPER, in the knowledge of differing or conflicting terms, carries out the delivery of the goods.

(3) These conditions of sale only apply in relation to entrepreneurs, legal persons under public law or special funds under public law as referred to in Sec. 310 (1) of the German Civil Code ('Bürgerliches Gesetzbuch': BGB).

2. Quotation and product details

Details of power consumption, performance and operating costs apply to normal, average conditions. KEMPER reserves the right to make construction and design alterations insofar as the goods are not altered in a manner which is unreasonable to the ordering party. In addition, KEMPER is only bound by such details (e.g. in operator's guides, marketing brochures and the like) that have been authored, approved and circulated by KEMPER. In the case of unauthorised alterations to product details, KEMPER accepts no responsibility for these details and any accompanying statements about KEMPER products.

3. Orders and conclusion of contract

An order is made by submitting a written purchase order. The order can also be sent via fax or email. In each of these cases, a sales contract is only concluded when an order confirmation is received by the ordering party. If, once the order has been accepted, well-founded doubts arise regarding the ordering party's ability to pay or its credit worthiness, KEMPER is entitled to request, at its choice, either payment in cash or a deposit prior to delivery. If the ordering party refuses to carry out one of these activities, KEMPER may withdraw from the contract and request that the ordering party reimburses KEMPER's expenditure.

4. Delivery contents and delivery period

(1) The order confirmation will prevail in relation to the performance that KEMPER is to carry out. Where this differs from the order, this will be considered approved by the ordering party if the ordering party does not send notification to the contrary to KEMPER within 14 days of receiving the order confirmation.

(2) Any change requests relating to the confirmed delivery contents will only be considered if they are received by KEMPER no later than six weeks before the confirmed delivery deadline.

(3) In the case of temporary obstacles beyond the control of KEMPER that hinder the performance of the contract, the delivery period will be extended by the period of the hindrance, even if such circumstances occur on the part of subcontractors. If the delay is more than 3 months, both parties are entitled to withdraw. This will also apply during the delay by KEMPER.

(4) If the delivery is delayed for reasons beyond KEMPER's control, and an appropriate period of grace set in a registered letter has elapsed, the ordering party has the right to withdraw from the contract by means of a written declaration addressed to KEMPER.

(5) KEMPER is entitled to make part deliveries, insofar as this is reasonable to the ordering party.

5. Dispatch and passing of risk

The delivery will be ex works (EXW Incoterms 2000), it being understood, however, the risk of performance and risk of price will be passed to the ordering party upon transfer to the carrier which, on the request of the ordering party, may be chosen by KEMPER. In this case, KEMPER will organise the transportation at the ordering party's expense, but will not guarantee that it is the least expensive method of shipment.

6. Acceptance and notice of defect

(1) The delivery item will be considered accepted when it is passed to the ordering party or into the receipt of an authorised person. Obvious material defects must be notified to the carrier, however, written objections must be made to KEMPER no later than 14 days following acceptance. In addition, Sec. 377 of the German Commercial Code ('Handelsgesetzbuch': HGB) remains unaffected.

(2) If ordered goods are not collected within a week of receiving notification of their readiness for collection or, in the case of shipment, are not accepted within a week of the first offer of dispatch, the ordering party will, following a formal notice, be in default of acceptance. In the case of default in acceptance, KEMPER will be entitled to charge for costs which have occurred as a result of storage, these costs being a minimum of 1% of the invoice amount for each month of storage. Further legal rights of KEMPER (particularly in relation to default in acceptance) will remain hereby unaffected.

7. Prices

The price of the goods shall be the seller's quoted price or, where no price has been quoted, the price listed in the seller's published price list current at the date of acceptance of the order. Where the goods are supplied for export from Germany, the seller's published export price list shall apply. Prices are always ex works (EXW Incoterms 2000) plus VAT.

8. Payment

(1) Unless expressly agreed otherwise in writing, all payments are due 30 days from the issue date of the invoice submitted to the ordering party. It may be agreed between the parties that the buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to the seller). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500.

(2) If the agreed payment terms are exceeded by more than 4 calendar days, starting on the 5th calendar day following the due date of the payment, interest on arrears will be payable without the necessity of a dunning notice. The interest on arrears will be, per annum, 8 percentage points above the effective base rate of the European Central Bank. In addition, the remainder will be due immediately, regardless of the currency of accepted bills. This applies additionally to the liquidation of a business or possessions, to significant changes in the financial situation of the ordering party, to the relocation of the ordering party's principal residence and/or to the movement of the delivery items outside the Federal Republic of Germany.

(3) In relation to the payment claims due to KEMPER, the ordering party may only offset, or exercise a right of retention over, claims that are determined undisputed or effective.

9. Retention of title

(1) The goods will remain the property of KEMPER until all the claims to which KEMPER is entitled and which still derive from the business relationship with the ordering party, have been fulfilled in their entirety.

(2) The ordering party is entitled, until further notice, to sell the goods within the scope of its proper business activities. In agreements with third parties, the ordering party is obliged, on its part, to retain the assignment of ownership until the purchase price together with costs and interest have been paid in full. The rights from this retention of title in addition to all claims deriving from the sales contract with third parties are hereby transferred to KEMPER.

(3) The ordering party is entitled and obliged to recover the claims transferred to KEMPER, so long as KEMPER has not revoked this authority. On request, the ordering party must provide notification of the party to which it has sold the goods and of the claims to which it is entitled as a result of the sale. The ordering party must inform KEMPER, without delay, of any impairment of the rights to the goods which are in the ownership of KEMPER.

(4) During the period of the retention of title, the ordering party may neither pledge the goods nor extend rights to the goods to third parties.

(5) If creditors of the ordering party assert rights to the goods supplied under retention of title, the ordering party must inform KEMPER immediately in writing. The ordering party will bear the costs of any countermeasures that result from the assertion of supposed rights of third parties.

(6) KEMPER is entitled to satisfy itself, at anytime, of the existence and the proper condition of the goods. The ordering party is obliged to provide KEMPER with information on the respective storage location and to inform immediately of any changes.

(7) Insofar as the aforementioned collateral exceeds the claims being secured by more than 10%, KEMPER is obliged to release the collateral of its choice upon the request of the ordering party.

10. Warranty

(1) In the event of a material defect, the ordering party is entitled to statutory warranty rights with the following modifications.

(2) Warranty is excluded in the case of a negligible decrease in the value and suitability of the performance carried out due to a defect.

(3) If a material defect arises, the ordering party is obliged to give notice of this immediately in writing. All those parts that emerge as defective as a consequence of a circumstance present before or upon the passing of risk, must be, at the choice of KEMPER, either repaired or replaced free-of-charge. In relation to all the remedial work and replacements that KEMPER is required to perform, the ordering party, in agreement with KEMPER, must allow the necessary time and opportunity; otherwise KEMPER will be released from liability for the resulting consequences. Only in urgent cases where operational safety is put at risk or in order to avert unreasonably great damage, whereby KEMPER must be informed immediately, does the ordering party have the right to correct the defect itself or have it corrected by a third party and to demand reimbursement of the necessary expenditure from KEMPER.

(4) Of the costs resulting from the remedial work or replacement, KEMPER bears – insofar as the complaint turns out to be justified – the costs of the replacement part, including the dispatch and the appropriate costs of dismounting and mounting, furthermore, if reasonably required in the circumstances, the necessary costs for arranging installers and assistants.

(5) Within the scope of the legal regulations, the ordering party has a right to withdraw from the contract if – in consideration of the legal exceptions – a period set for KEMPER to carry out the remedial work or provide a replacement as a consequence of a material defect has elapsed in vain.

(6) No responsibility will be accepted, in particular, in the following cases: inappropriate or improper use, incorrect installation or activation by the ordering party or a third party, natural wear, incorrect or negligent handling, improper maintenance, inappropriate equipment, chemical, electrochemical or electrical factors – insofar as they are not the responsibility of KEMPER.

(7) In the case of remedial work by the ordering party, defective items are the property of KEMPER and must be made available and, if necessary, sent in by the ordering party for inspection in the same condition as the items were when the defect was established.

(8) Only the ordering party is entitled to warranty rights; any transfer to a third party is excluded.

(9) If the ordering party or a third party carries out improper remedial work, KEMPER is not liable for the resulting consequences. The same applies to modifications undertaken to the delivery item without the prior permission of KEMPER.

(10) The period of limitation for warranty claims is 1 (one) year from the delivery of the item to the ordering party.

11. Liability

(1) In the case of wilful or gross negligence on the part of KEMPER or its representatives or subcontractors, KEMPER will be liable in accordance with the legal regulations; in the case of a breach of substantive contractual obligations which is not caused by wilful or gross negligence, KEMPER's liability is limited to foreseeable and typically occurring damage.

(2) KEMPER is liable without limitation for damages resulting from death or personal injury where KEMPER is culpable.

(3) In addition, liability for the presence or absence of assured qualities (BGB Sec. 443) and liability according to the Product Liability Law ('Produkthaftungsgesetz': ProdHaftG) will remain unaffected.

(4) Unless set out otherwise above, KEMPER's liability is excluded. Inasmuch as KEMPER is not liable for consequential damage such as loss of earnings, overdue savings or other damages.

12. Place of fulfilment and jurisdiction

(1) Place of fulfilment for all claims is Stadtlohn.

(2) Exclusive jurisdiction for all disputes, in particular relating to an action on the basis of a document, bill or cheque, is Münster. Regardless of this, KEMPER is entitled to institute legal proceedings against the ordering party at the latter's general jurisdiction.

(3) The contract is governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).