

General Terms and Conditions of Sale and Delivery of KONGSKILDE Industrietechnik GmbH (“KONGSKILDE”)

1. Preamble

1.1 These General Terms and Conditions of Sale and Delivery (“Terms and Conditions”) apply to all business relations between KONGSKILDE and the buyer, unless otherwise agreed between the parties. Conflicting terms and conditions of the buyer will only apply if the terms and conditions have been accepted by KONGSKILDE in writing. They do not apply to customers who are consumers pursuant to § 13 of the German Civil Code (BGB).

1.2 The Terms and conditions apply exclusively and conclusively to the business relationships between KONGSKILDE and the buyer within KONGSKILDE’s geographical area of responsibility in the following countries: Austria, Belarus, Belgium, Estonia, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Switzerland, Russia, Ukraine.

2. Offer/Conclusion of contract

2.1 The offers of KONGSKILDE are subject to change without notice. The depiction of the products in the catalogue does not constitute a legally binding offer, but a non-binding catalogue. With his order, the buyer declares that he wishes to purchase the ordered products. The contract between KONGSKILDE and the buyer is concluded upon the buyer’s receipt of an order confirmation from KONGSKILDE within a period customary in the trade.

2.2 It is the responsibility of the buyer to check the order confirmation immediately after receipt and to inform KONGSKILDE of any errors in the execution of the order at the latest within 8 days after receipt of the order confirmation.

3. Specifications

3.1 All information on weight, dimensions, capacity or technical data provided in catalogues, brochures, drawings or verbally with the same content are only approximate values unless they are expressly declared as binding in the order confirmation. Such information do not represent an assurance of the properties of the delivery item. The specifications can be changed/adjusted by KONGSKILDE at any time, as far as these changes are customary in trade and/or reasonable for the buyer. Such changes do not give rise to any claims against KONGSKILDE by the buyer.

4. Prices

4.1 Prices according to the price lists maintained by KONGSKILDE in the version valid at the time of the order shall apply.

All prices are exclusive of freight charges, assembly costs, costs of specially produced packaging and exclusive of the value added tax applicable at the due date.

4.2 By way of exception KONGSKILDE may demand the prices valid on the day of delivery if the change is reasonable for the buyer. In particular, KONGSKILDE reserves the right to adjust the prices stated in KONGSKILDE’s offer/order confirmation in case of exchange rate changes, changes in customs duties, public fees or similar which affect the price of the relevant delivery.

4.3 The prices stated in the price lists are subject to change and may be changed by KONGSKILDE at any time without notice.

5. Payment

5.1 Unless expressly agreed otherwise, payments arising from the order shall be made in EUR within 14 days and in principle without deduction after delivery and receipt of the invoice. Bills of exchange will only be accepted on account of performance, i.e. the payment obligation will only be fulfilled when KONGSKILDE has actually received the performance owed.

5.2 Any agreed discount deduction shall not be granted on the payment of new invoices before all due invoices from previous deliveries have been paid in full.

5.3 Payments effected by the buyer shall always be used to settle the oldest due liability.

5.4 If the payment deadline is exceeded (default) KONGSKILDE will charge interest at 8 percentage points above the respective base rate. Interest shall be calculated and charged at the end of each month. If the buyer should fail to pay the purchase price after a reminder and the expiry of a period of 2 weeks after receipt of the reminder, all claims of KONGSKILDE arising from the entire business relationship with the buyer shall become due immediately, provided the buyer is responsible for the delay in performance. In this case, KONGSKILDE is entitled to make further deliveries only against advance payment or sufficient security. KONGSKILDE is further entitled to withdraw from all contracts concerning orders not yet executed after a period of 4 weeks set by KONGSKILDE.

5.5 A right of set-off shall only accrue to the customer if his counterclaims have been legally established or are undisputed by KONGSKILDE. The buyer is entitled to exercise a right of retention if the counterclaim is based on the same contractual relationship.

6. Delivery/Shipping

6.1 The time of delivery is to be agreed between the contracting parties in more detail and will be stated by KONGSKILDE in the order confirmation. As far as delivery dates have been agreed upon, they are only valid under the condition of timely fulfilment of all obligations of the buyer necessary for the timely delivery as well as timely delivery to KONGSKILDE itself.

6.2 Unless otherwise agreed with Buyer, delivery shall be EXW **Kongskilde Industries A/S, Skælskørvej 64, DK-4180 SORØ, Denmark** (Incoterms 2020).

6.3 Packaging will be invoiced by KONGSKILDE. Unless otherwise requested by buyer in writing and confirmed by KONGSKILDE, KONGSKILDE shall determine the method of shipment. In all cases, shipment shall be at the risk of the buyer.

6.4 All cases of force majeure, such as war, war-like conditions, rebellion, fire damage, official orders and government measures, natural disasters, strike, lockout, import or export bans, transport accidents, damage to KONGSKILDE's production equipment, lack of labour, raw materials, fuel, Fuel or similar hindrances beyond the control of KONGSKILDE, including delayed deliveries by KONGSKILDE's suppliers as well as their sub-contractors due to the circumstances mentioned in this clause, which temporarily or permanently prevent delivery, are not the responsibility of KONGSKILDE. KONGSKILDE will inform the buyer immediately in case of a case of force majeure, at the latest within 2 weeks after the occurrence of the event preventing the delivery about the further circumstances as well as the expected duration of the obstacle to performance. KONGSKILDE is entitled to postpone the delivery or service by the duration of the impediment to performance plus a reasonable start-up time. If the delivery is delayed by more than one month as a result of this, the customer is entitled to withdraw from the contract with respect to the quantity affected by the delivery obstruction to the exclusion of any claims for damages. Under this condition, KONGSKILDE is also entitled to withdraw from the contract if it has been made unreasonably difficult for KONGSKILDE to render its services as a result of force majeure.

7. Transfer of risk

7.1 The risk of damage to or loss of the goods shall pass to the buyer at the moment when KONGSKILDE notifies the buyer that the goods are ready for collection (EXW Incoterms 2020).

7.2 If the goods by way of exception are not delivered at KONGSKILDE's premises, the risk of damage to or loss of the goods will pass to the buyer at the latest from the moment that KONGSKILDE has delivered the goods to the forwarding agent, carrier or other person designated to carry out the shipment; if the buyer is in default of acceptance, at the moment when the seller offers to hand over the goods.

8. Retention of title

8.1 KONGSKILDE shall remain the owner of the delivered goods until the purchase price has been paid in full.

8.2 As long as the goods have not been paid for in full, the buyer holds the goods in a fiduciary capacity for KONGSKILDE. The buyer is obliged to inform any third party claiming rights to the delivered goods immediately of KONGSKILDE's ownership.

8.3 In the event of seizure or other interventions by third parties the buyer must notify KONGSKILDE immediately so that KONGSKILDE can take legal action according to § 771 of the German Code of Civil Procedure (ZPO). If the buyer does not comply with this requirement, he shall be liable for the damage incurred.

9. Drawings, descriptions, catalogues of spare parts and operating instructions

9.1 The drawings, cost estimates, descriptions, etc. provided to KONGSKILDE's buyer on submission of an offer or on delivery shall remain KONGSKILDE's property and may not be reproduced, made available to third parties or marketed without KONGSKILDE's prior written consent. Drawings made by KONGSKILDE for the offer must be returned immediately upon request.

10. Cancellation/return conditions and change of orders

10.1 The buyer shall only be entitled to withdraw from the contract if the applicable legal requirements are met.

10.2 In cases where the legal conditions for withdrawal are not met, the buyer is only entitled to modify orders and/or to return goods already delivered after prior express consent by KONGSKILDE. Should this be the case, the buyer will bear all costs associated with the modification of the order/return of the goods.

10.3 In the event of return of the goods - except in the event of a justified and legal withdrawal - the goods must be returned entirely unused and undamaged to **Kongskilde Industries A/S, Skælskørvej 64, DK-4180 SORØ, Denmark**, quoting the invoice number and the return delivery note number given at the time of conclusion of the return agreement. The buyer shall bear the shipping costs. The buyer shall also bear the risk of transport.

10.4 In case of return of the goods pursuant to Clauses 10.2 and 10.3 KONGSKILDE shall reimburse the buyer for the amount originally invoiced, less a lump sum to be determined in each individual case before the return of the goods for credit and renewed provision for sale.

11. Notice of defects – Liability for defects

11.1 The buyer is obligated to inspect the delivered goods immediately after delivery by KONGSKILDE for completeness, damage or other defects and to notify KONGSKILDE if a defect is found.

- i. Obvious, in particular visible, defects in the delivered goods must be reported by the Buyer to KONGSKILDE in writing without delay, but at the latest within 8 days of receipt of the delivered goods. If the buyer fails to do so, the goods are deemed to be approved.
- ii. Hidden defects must be reported by Buyer to KONGSKILDE immediately after their discovery; otherwise the goods as approved even in consideration of this defect.

11.2 In case of justified and timely notice of defects KONGSKILDE undertakes at its own discretion either to deliver goods free of defects or to rectify the defects (subsequent performance). Should the subsequent performance remain unsuccessful, the buyer may, at his discretion and in consultation with KONGSKILDE, either reduce the purchase price or withdraw from the contract.

11.3. If after delivery, the buyer installs any additional equipment on the delivered goods or makes any changes to the delivered goods which cause additional costs in connection with the repair or replacement, these costs will be charged to the buyer.

11.4. If a notice of defect subsequently proves to be unfounded, the freight costs incurred by the dispatch of the delivery item complained of shall be borne by the buyer.

11.5. KONGSKILDE is not liable for defects caused by insufficient maintenance or faulty assembly on the part of the buyer and contrary to KONGSKILDE's instructions or by improper modifications or repairs carried out by the buyer on his own authority and without KONGSKILDE's consent. Furthermore excluded from the liability for defects are all parts subject to natural wear and tear, reduction in value or damage due to unsuitable or improper use or excessive strain.

11.6. Warranty claims arising from defects in the delivery item shall expire 12 months after delivery of the delivery item.

12. Liability

12.1 KONGSKILDE shall only assume liability in accordance with the statutory provisions for damages due to injury to life, body or health, in the event of intent or gross negligence on the part of KONGSKILDE, a legal representative or vicarious agent as well as for damages covered by a guarantee granted by KONGSKILDE. Liability under the Product Liability Act shall remain unaffected.

12.2 In the event of slight negligence KONGSKILDE shall only be liable for compensation for damages which are typical for the contract and foreseeable and only in so far as an obligation, the proper fulfilment of which makes the execution of this contract possible in the first place and the observance of which the contracting party could rely on (cardinal obligation), has been breached by KONGSKILDE, a legal representative or vicarious agent.

12.3 Otherwise liability shall be excluded to the extent permitted by law.

13. Final provisions

13.1 The law of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods and legal norms that refer to another legal system are not applicable.

13.2 The place of jurisdiction for disputes arising from or in connection with the contractual relationship between KONGSKILDE and the buyer is Bochum.

13.3 Agreements deviating from these Terms and Conditions must be in writing. This also applies to any amendment or cancellation of this written form requirement.

13.4 Should any provision of these Terms and Conditions or parts thereof be or become invalid, the validity of the remaining provisions shall not be affected. These Terms and Conditions repeal and replace all previously valid Terms and Conditions.