

# KMS

## KELLNER MASCHINEN SERVICE

### General Terms and Conditions (as of 06/2018)

#### I. General

1. For the entirety of the business relationship between KMS Werkzeugmaschinen-service GmbH and the Customer including all future ones, these General Terms and Conditions of Sale and Delivery No.: 06/2018 shall apply exclusively. Any other Conditions of Purchase or other General Terms and Conditions of the Customer are hereby expressly excluded. They shall not be applied. KMS Werkzeugmaschinen-service GmbH shall be entitled to amend their General Terms and Conditions of Sale and Delivery No.: 06/2018 upon appropriate notification and with effect for all future business relationships with the Customer.
2. If a Framework Agreement has been established between the Customer and KMS Werkzeugmaschinen-service GmbH these General Terms and Conditions of Sale and Delivery shall apply for this Framework Agreement as well as for the individual orders.
3. Our General Terms and Conditions of Sale and Delivery No. 06/2018 shall apply only for contracts with entrepreneurs within the meaning of Art. 14 BGB (German Civil Code), legal entities under public law and special funds under public law.

#### II. Conclusion of Contract

1. Offers made by KMS Werkzeugmaschinen-service GmbH are subject to change and not binding. The documentation enclosed with the offer such as illustrations, drawings, specifications of weights and measures are only approximate values unless they have been expressly declared as binding. If KMS Werkzeugmaschinen-service GmbH provides the Customer with drawings or technical documentation on the technical object of purchase which is to be delivered, they shall remain the property of KMS Werkzeugmaschinen-service GmbH.
2. Orders placed by the Customer shall be binding for him. Unless another written confirmation is issued by KMS Werkzeugmaschinen-service GmbH the delivery or the invoice shall be considered as the order confirmation.
3. If the Customer is a merchant, the written confirmation by KMS Werkzeugmaschinen-service GmbH shall be exclusively binding with regards to the content of any orders and agreements, unless objected by the Customer immediately in writing. This shall particularly apply to orders and agreements placed or made verbally or by telephone. Any notification to KMS Werkzeugmaschinen-service GmbH shall not be deemed immediate if KMS Werkzeugmaschinen-service GmbH do not receive it within seven days.

#### III. Delivery Date, Scope of Delivery, Delayed Delivery

1. Delivery dates and terms of delivery shall be considered as agreed only approximately unless a written promise has been made expressly as binding by KMS Werkzeugmaschinen-service GmbH. In case not all details of the order have been clarified by the Customer or the Customer has not made all the required advance payments, the term of delivery shall be extended accordingly. The delivery dates shall be considered adhered to as soon as the readiness for dispatch has been declared.
2. KMS Werkzeugmaschinen-service GmbH has the right to make partial deliveries as long as those do not fall below the reasonable minimum quantity.
3. The Customer must check and sign for the delivery note. KMS Werkzeugmaschinen-service GmbH has to be notified of any objections immediately and in writing. Otherwise, the quantity delivered and signed for shall be considered as accepted.
4. In case of delayed deliveries caused by operational disruptions, regulatory action, failure to deliver to KMS Werkzeugmaschinen-service GmbH on the part of their suppliers or force majeure, the delivery term shall be extended accordingly. As force majeure shall also be considered any industrial action including strikes and legal lockouts at KMS Werkzeugmaschinen-service GmbH or at the plants of any upstream supplier of KMS Werkzeugmaschinen-service GmbH. Claims for damages on the part of the Customer shall be excluded in these cases within the limits of paragraph VII (General Limitations of Liability).
5. In case of a delivery delay on the part of KMS Werkzeugmaschinen-service GmbH the Customer shall be entitled to claim a flat-rate compensation for delayed completion of 0.5% of the value of the part of the delivery in question for each complete week of delay – if he can satisfactorily show that the delay has caused him damage. He shall, however, not be entitled to claim more than a total of 5% of the value of the part of the delivery concerned. Any further claims for damages and additional expenses of the Customer because of the delivery delay shall be excluded. This shall not apply if the delivery delay is caused by the breach of any fundamental contractual obligation and in cases of intent or gross negligence or if there is strict liability for injury to life, body or health; this shall not lead to a change of the burden of proof to the disadvantage of the Customer.
6. The Customer's statutory right of withdrawal shall remain unaffected under the condition that we are responsible for the delay. The Customer is obligated to declare at our request and within a reasonable period of time if he intends to withdraw from the contract upon expiration of the deadline for the delay and/or if he intends to claim damages or additional expenses instead of the service or if he insists on the delivery being carried out.

#### IV. Prices, Terms of Payment

1. Prices are exclusive of VAT, carriage, customs duty, postage, packaging, insurance and other expenses. The price of brand new machines is calculated based on the prices valid on the day of delivery. Packaging is charged at cost and cannot be returned.
2. In the absence of specific agreements, invoices are due for payment immediately and in full.
3. If the Customer falls behind with the payment, the seller is entitled to charge interest for delay to the amount of 10% above the base interest rate. We reserve the

right to enforce any concrete damage caused by the delay.

4. The Customer shall only be entitled to offset rights to the extent that the counterclaims have been legally established, are uncontested or have been acknowledged by KMS Werkzeugmaschinen-service GmbH.
5. Supplier's reservation of the right of withdrawal. The deliverer reserves the right to withdraw from the contract or to demand securities for the delivery at his option, in case the Customer suffers a deterioration of his financial situation, especially insolvency or overindebtedness, after conclusion of the contract. The same shall apply if a deterioration of the financial situation of the Customer already existed when the contract was concluded, but the Supplier, through no fault of their own, did not find out about it until after conclusion of the contract. The Supplier shall be indemnified by the Customer for any expenses the Supplier may have incurred relying on the conclusion of the contract.
6. Withdrawal and termination by the Customer. If the Customer declares the withdrawal from or the termination of the contract unjustifiably, he shall be liable for damages towards the Supplier for all services rendered until then.

#### V. Transfer of Risk, Acceptance

1. The risk shall pass on to the Customer on commencement of loading or dispatch of the delivery item, also if partial deliveries are being made or if KMS Werkzeugmaschinen-service GmbH has taken over other services such as the shipping costs or the delivery and installation and/or the commissioning. Insofar as the delivery item has to be accepted, the acceptance is decisive for the transfer of risk. The acceptance has to be carried out immediately on the acceptance date, alternatively after the Supplier's notification of the readiness for acceptance. The Customer must not refuse acceptance based solely on the fact that the delivery item has a minor defect.
2. If the shipping or the acceptance is delayed for reason for which KMS Werkzeugmaschinen-service GmbH are not responsible, the risk shall be transferred to the Customer from the day of the notification of the readiness for dispatch or acceptance.

#### VI. Warranty, Notice of Defects

1. KMS Werkzeugmaschinen-service GmbH shall be liable for defects of the delivery to the exclusion of any further claims as follows:
  - 1.1 The Customer's statutory period of limitation for claims for defects (warranty period) is 12 months from transfer of risk.
  - 1.2 When a machine is sold, its use in one-shift operation shall be considered the customary and contractual use. All assertions made by KMS Werkzeugmaschinen-service GmbH refer to this, also when referring to properties, nature and use, and in every connection with the warranty regulations. In case the machine is used more intensely, a proportionally shorter period of limitation shall apply. For two-shift operation it shall be 6 months, for three-shift operation 4 months.
  - 1.3 For used products, all warranty shall be excluded. Used machines are delivered with any accessories that are still available and, in the condition, they are in at the conclusion of the contract. Any liability for open or hidden defects shall be excluded, even if the machine was not inspected by the Customer beforehand, unless KMS Werkzeugmaschinen-service GmbH concealed known defects with intent or out of gross negligence.
2. The regulations in paragraph 1 shall not apply in the case of guaranteed specifications or culpable breach of fundamental contractual obligations. Such claims of the Customer as well as claims for damages which have not arisen on the delivery item itself are excluded in accordance with the regulations of paragraph VII (General Limitations of Liability) within the legally acceptable scope. If repairs or additional deliveries are carried out within the scope of the warranty this does not initiate a new start of the warranty period.
3. Properties or nature of the delivery item are only warranted or guaranteed if they are expressly named as such in the contract. Verbal specifications and specifications contained in the KMS Werkzeugmaschinen-service GmbH documentations do not comprise any warranties. Samples, models, measurements, DIN standards, specifications of services and other information about the nature of the delivery item are for specification only and are not warranted properties or guarantees. Insofar as the materials to be used by KMS Werkzeugmaschinen-service GmbH are specified in the contract, this guarantees only the conformity with the specification and not the suitability of the materials for the contractual purpose. KMS Werkzeugmaschinen-service GmbH shall only be obligated to give guidelines if they are obviously unsuitable.
4. Defects caused by external influence, improper installation and handling, inadequate operation or maintenance, corrosion or ordinary wear are excluded from the warranty. In the above case, the warranty does in particular not extend to the deterioration of wearing parts. Wearing parts are all turning parts, all drive components and tools. For the sale of a machine, the warranty regulations are based on a use in one-shift operation.
5. The Customer is obligated to check the delivered goods immediately upon receipt properly and at his own expense. KMS Werkzeugmaschinen-service GmbH must be notified of any defects, wrong deliveries, obviously not licensable wrong deliveries or shortfalls without delay and in writing. A cut-off period of seven days after receipt of the delivery shall apply for the notification. KMS Werkzeugmaschinen-service GmbH have to be notified in writing of any hidden defects immediately upon their discovery. Otherwise, the article 377 HGB (German Commercial Code) shall remain unaffected for a mutual commercial transaction between merchants.
6. Any quality defects of a partial delivery do not entitle the Customer to a rejection of the remainder of the total quantity unless he can prove that the acceptance of only part of the delivery is unreasonable for him with due regard to the circumstances.
7. If the Customer finds a defect, he must not alter, process or hand over the delivery item to third parties. He must give KMS Werkzeugmaschinen-service GmbH sufficient opportunity and time to satisfy themselves of the defect and, as appropriate, carry out the necessary supplementary performance (repair or replacement at the option

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of KMS Werkzeugmaschinenervice GmbH); otherwise, any claims arising from the defects shall become invalid. Only in urgent cases of a danger to the operational safety or to avoid disproportionately serious damage has the Customer the right to rectify the defect himself or have it rectified by third parties and demand compensation for the necessary expenses of KMS Werkzeugmaschinenervice GmbH. KMS Werkzeugmaschinenervice GmbH has to be notified immediately of such circumstances. Irrespective of the presence of any defect, the warranty claims shall lapse if the Customer or a third party carries out any alterations or repairs without the authorisation of KMS Werkzeugmaschinenervice GmbH.

8. The Supplier has to be notified immediately of any damages in transit. The Customer must settle all the necessary formalities with the carrier. He must, in particular, make all necessary observations for the safeguarding of the rights of recourse against third parties. Insofar as ordinary breakage, waste or similar occurrences remain within reasonable limits, they cannot be queried.

9. In case of justified queries, the faulty goods shall be repaired or replaced at the option of KMS Werkzeugmaschinenervice GmbH. Multiple repairs are permissible.

10. KMS Werkzeugmaschinenervice GmbH shall be obliged as part of supplementary performance to reimburse the customer for the expenses incurred for removal of the defective item and installation or delivery of the repaired item or item supplied free of defects. Reimbursement of the costs is ruled out to the extent that expenses are increased because the goods were transported to another destination after our delivery by KMS Werkzeugmaschinenervice GmbH, unless this corresponds with the intended use of the goods. This applies accordingly to claims for reimbursement of expenses by the customer in accordance with Art. 445 a BGB (Recourse of the seller), provided that the last contract in the supply chain is not a purchase of a consumer item.

11. If KMS Werkzeugmaschinenervice GmbH allow an appropriate grace period given for a supplementary performance to lapse within the meaning of Art. 439 BGB without rectifying the defect or delivering a replacement, or if a repair or replacement delivery is impossible, fails or is refused by KMS Werkzeugmaschinenervice GmbH for other reasons, the Customer who is not the consumer has only the right to withdraw from the contract or lower the purchase price to the exclusion of all further claims regarding the delivery item.

12. If the Customer has called on KMS Werkzeugmaschinenervice GmbH to provide a supplementary performance that they owe and set a deadline for that, KMS Werkzeugmaschinenervice GmbH are entitled – even after expiration of the deadline which the Customer had set so far or that can be considered appropriate – to name a date by which KMS Werkzeugmaschinenervice GmbH will be in a position to provide the supplementary performance (supplementary performance date) and to notify the Customer of the supplementary performance. If the Customer does not object to the date designated by KMS Werkzeugmaschinenervice GmbH, by default immediately, the Customer's rights to withdraw or demand instead of the service (should this service even come into consideration according to the General Terms and Conditions of Sale and Delivery) are excluded. This shall apply in particular if KMS Werkzeugmaschinenervice GmbH have pointed out that KMS Werkzeugmaschinenervice GmbH are right away going to have considerable expenses for the preparation and performance of the supplementary performance. If the Customer objects to that, his rights shall be limited to withdrawal from the contract. Correspondingly, the above regulations shall also apply for multiple notifications of supplementary performance by KMS Werkzeugmaschinenervice GmbH.

13. The sending of technical staff and assembly personnel by KMS Werkzeugmaschinenervice GmbH, including if it has been requested by the Customer because of alleged defects, does not lead to a suspension of the limitation period. Neither does the performance of technical operations for the visual inspection, testing or adjustment of the machine. Any suspension of the limitation period is excluded in particular if KMS Werkzeugmaschinenervice GmbH state vis-à-vis the Customer that no defect that had been present at the time of the transfer of risk has been discovered. If no entitlement to supplementary performance existed, the Customer shall be obligated to reimburse KMS Werkzeugmaschinenervice GmbH for the expenses that have been incurred due to the requirement of personnel. The billing rates that are customary at KMS Werkzeugmaschinenervice GmbH shall apply.

14. Claims of recourse by the Customer against KMS Werkzeugmaschinenervice GmbH in accordance with Art. 445 a BGB (Recourse of the Seller) shall exist only to the extent that the Customer has not reached any agreements which go beyond the statutory warranty claims with his buyer.

### VII. General Limitations of Liability

1. If the delivery item cannot be used by the Customer according to the terms of the contract through the fault of KMS Werkzeugmaschinenervice GmbH due to omitted or incorrect advice before or after conclusion of the contract or due to the breach of other contractual accessory obligations (e.g. operating and maintenance instructions), the regulations of the paragraphs VI and VII.2 shall apply accordingly. Any further claims of the Customer are excluded.

2. For damages which have not occurred on the delivery item itself KMS Werkzeugmaschinenervice GmbH shall only be made liable – for whatever legal reasons – only – in case of intent, - in case of gross negligence on the part of the owner / the bodies or any executive employees, - in case of culpable injury to life, body, health, - in case of defects that were fraudulently concealed or the absence of which was guaranteed, - in case of defects of the delivery item insofar as there is liability for personal injury and damage to property for privately used items in accordance with the product liability law. In case of culpable breach of fundamental contractual duties KMS Werkzeugmaschinenervice GmbH shall be made liable also in case of gross negligence by non-executive employees and in case of slight negligence. In the latter case this liability shall be limited to damages that are typical for the contract and reasonably predictable. Any further claims are excluded.

### VIII. Retention of Title, Securities

1. KMS Werkzeugmaschinenervice GmbH reserves the right of extended retention of title of the delivery item until all payments from the delivery contract have been received. In case of breach of contract, especially in case of default of payment or application to open insolvency proceedings, KMS Werkzeugmaschinenervice GmbH shall be entitled to take the delivery item back after sending the appropriate reminders, and the Customer shall be obligated to hand over the item. KMS Werkzeugmaschinenervice GmbH shall also be entitled to demand the dismantling of any machines that were cast on site or screwed on or to carry out their dismantling themselves, at their option. A machine shall not be considered permanently connected to the floor, building or other installations until the retention of title has expired. In case of attachment or other third-party intervention, the Customer must notify KMS Werkzeugmaschinenervice GmbH immediately in writing.

2. KMS Werkzeugmaschinenervice GmbH is entitled to have the delivery item insured against theft, breakage, fire, water and other damages at the Customer's cost, unless the Customer has provably taken out such insurance himself.

3. The Customer is entitled to sell the delivery item on in a regular business transaction. He shall, however, assign all receivables which may arise from the resale against the buyer or against third parties to KMS Werkzeugmaschinenervice GmbH already now, and this regardless whether the retained goods are sold on without or after processing. The Customer is entitled to collect these receivables after he has assigned them. The capacity of KMS Werkzeugmaschinenervice GmbH to collect the receivables themselves remains unaffected; However, KMS Werkzeugmaschinenervice GmbH commits not to collect the receivables as long as the Customer honours his payment obligation correctly. KMS Werkzeugmaschinenervice GmbH can demand that the Customer disclose the assigned receivables and their debtors, make available all details required for collection, hand over all pertaining documents and inform the debtors of the assignment. If the deliver item is sold on together with other goods that are not the property of KMS Werkzeugmaschinenervice GmbH, the Customer's claim against the buyer in the amount of the delivery price agreed between KMS Werkzeugmaschinenervice GmbH and the Customer shall be considered as assigned.

4. The processing or alteration of the retained goods shall always be carried out by the Customer on behalf of KMS Werkzeugmaschinenervice GmbH. If the retained goods are processed or inseparably intermixed with other items that do not belong to KMS Werkzeugmaschinenervice GmbH, KMS Werkzeugmaschinenervice GmbH acquires the co-ownership of the new item in the ratio of the value of the retained goods to the other processed or intermixed items at the time of the processing or intermixing. If goods purchased from KMS Werkzeugmaschinenervice GmbH are combined with other movable items to form a unit or if they are inseparably intermixed and can the other item be considered the main item, it shall be deemed to have been agreed that the Customer shall assign the co-ownership to KMS Werkzeugmaschinenervice GmbH proportionally, provided that the main item is his property. The Customer shall store the property or co-property for KMS Werkzeugmaschinenervice GmbH. For the item that is the result of the processing, altering or combination and intermixing, the same shall apply as for the retained item.

5. KMS Werkzeugmaschinenervice GmbH is entitled to demand appropriate securities for the proper fulfilment of the Customer's liabilities. KMS Werkzeugmaschinenervice GmbH undertake to release the securities they are entitled to in an amount exceeding the value of any unsettled receivables to be secured by more than 20%.

### IX. Obligation of Fulfilment, Impossibility and Non-Fulfilment

1. The delivery obligation and the term of delivery of KMS Werkzeugmaschinenervice GmbH are subject to the proper, complete and timely delivery to us on the part of our suppliers.

2. If the entire performance becomes impossible for KMS Werkzeugmaschinenervice GmbH before the transfer of risk due to a circumstance for which KMS Werkzeugmaschinenervice GmbH is responsible, the Customer can withdraw from the contract. In case of a partial impossibility or a partial inability the above regulations shall apply only to the part in question. However, the Customer can withdraw from the entire contract if he can prove that he has a justifiable interest in refusing the partial delivery. Any further claims of the Customer, in particular claims for damages shall be excluded in accordance with the regulations in paragraphs VI and VII.

3. If the impossibility occurs during a delay in acceptance or through the Customer's fault, he shall remain obligated to fulfil the contract.

4. After withdrawing from the contract or after their setting of a deadline with the warning of non-performance, KMS Werkzeugmaschinenervice GmbH shall have the right to use the goods they have taken back at their own discretion.

### X. Place of Fulfilment, Place if Jurisdiction, Applicable Law

1. Unless agreed otherwise in the contract, the place of fulfilment for the payment and the delivery of goods is the registered office of KMS Werkzeugmaschinenervice GmbH.

2. If the Customer is a merchant, a corporate body under public law or a special fund under public law, the registered office of KMS Werkzeugmaschinenervice GmbH shall be the place of jurisdiction for all legal disputes, including draft and cheque litigations; any claims against KMS Werkzeugmaschinenervice GmbH can only be lodged there.

3. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the international civil law, standardised international law and the UN Convention on Contracts for the International Sale of Goods (CISG).



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**XI. Legal Effect, Data Protection**

1. Should one of the provisions of these General Terms and Conditions of Sale and Delivery be or become invalid, this shall not affect the validity of the remainder of the contract. In its place, the statutory regulation shall apply. On no account shall the provision in question in these General Terms and Conditions of Sale and Delivery be replaced with the Customer's Terms of Business.

2. Any changes or amendments to the contracts require the written confirmation by KMS Werkzeugmaschinenservice GmbH to be valid; this shall also apply to any deviation from the contractual requirement of the written form itself.

3. Any legally relevant declarations of intent such as terminations, declarations of withdrawal, requests for a reduction of the purchase price or claims for damages shall only be valid if they are made in writing.

4. KMS Werkzeugmaschinenservice GmbH is entitled to process and store the Customer's data which they have received in the context of the business relationship – even if they come from third parties – in the sense of the Federal Data Protection Act. KMS Werkzeugmaschinenservice GmbH shall also be entitled to have this data processed and stored by third parties which KMS Werkzeugmaschinenservice GmbH have instructed to do so.