

KTN Kugellagertechnik Neely GmbH & Co. KG | Terms and Conditions of Sale, Delivery and Payment | Status: 01.01.2014

1. General

The following terms and conditions apply to all offers, sales, deliveries and services provided by the company Kugellagertechnik Neely GmbH & Co. KG - referred to hereinafter as „KTN“. Any amendments shall always be subject to the written confirmation of KTN to be valid. Differing terms and conditions, even if communicated by the Buyer/Customer as being its own terms of business shall not bind KTN. The fact that no comment is made about any differing terms and conditions shall not be interpreted as acknowledgement or acceptance.

2. Offer and Formation of Contract

The prices for all offers including recommended retail prices are non-binding. Each order placed shall only be deemed accepted after the Customer has received a written order confirmation from KTN. All verbal and telephone agreements and assurances shall likewise only be deemed valid after they have been confirmed by KTN in writing. Order confirmations shall be immediately checked for accuracy upon receipt and immediate notification given of any irregularities found.

3. Prices, Passage of Risk

The prices quoted are net prices from the registered office of KTN, plus the value added tax applicable by law at the time. Possible costs for packaging, insurance, freight and custom duties as from point of delivery shall be calculated separately. The risk for delivered material shall pass to the Buyer/Customer upon being handed over. For deliveries made by rail, post or forwarding agent/transport company the risk shall pass to the Buyer/Customer with the handover of the consignment to the rail, post or forwarding/transport company.

4. Delivery

Until acceptance of the order, delivery deadlines specified in written order confirmations shall not be binding – subject to being unsold. Delivery deadlines confirmed in writing shall apply unless unforeseen circumstances occur (e.g. force majeure, delay in transport, operational difficulties, at the KTN works or supplier works). KTN shall be entitled in whole or in part to cancel the order to the exclusion of any claims to compensation on the part of the Buyer/Customer inasmuch as the cost situation underlying the offer or the order confirmation has significantly altered, the delivery deadline is lengthened or it is otherwise unreasonable to expect KTN to provide the service. Any cancellation of order shall be in written form. KTN shall retain the right to deliver in instalments (if necessary several). The Buyer/Customer shall not be entitled to claim compensation – particularly for default from deliveries in instalments or delivery delays.

5. Modalities of Payment

The prices agreed upon at contract formation shall be those charged. Payment shall be made inside 21 (twenty-one) days after receipt of the invoice. When payment is made inside 14 (fourteen) calendar days, we grant 1% discount on the invoiced amount. Should the Buyer/Customer default with payments, it shall compensate KTN for damages caused by the default, at least, however, pay interest to the amount of 8% in excess of the baseline interest rate. The Buyer/Customer shall only be able to offset against counterclaims providing these are undisputed or have been ascertained as legally binding. The Customer shall only be entitled to withhold payment on the grounds of counterclaims from the same contract. If, after formation of contract, KTN becomes aware of circumstances that seem to raise doubts about the creditworthiness of the contracting partner, all outstanding claims to payment shall become due for immediate settlement. Circumstances of this nature shall entitle KTN to only provide outstanding services in return for security or advance payment as well as to cancel the contract after the expiration of a set period of time and claim compensation for damages for nonfulfillment.

6. Title Retention

The delivered goods shall remain the property of KTN until all the Buyer's/Customer's commitments to KTN as derived from business relations are satisfied. The Customer shall only be permitted to resell, process or hire out the goods that are subject to the retention of title in regular business transactions. In the event the goods are processed, KTN shall become co-owner of the new item to the extent of the value of the new item in relation to the security collateral that has been processed. Upon the Buyer's/Customer's order placement, the proceeds from the sale, processing or hiring out of the goods that are subject to the retention of title shall be assigned to KTN as security for payments that are still outstanding. The same shall apply for claims to payment on other legal grounds (e.g. insurance, compensation for damages). KTN accepts said assignment. It shall not be permissible to transfer or pledge the goods that are subject to the retention of title or the collateral by way of security. KTN shall be informed immediately of any seizure in respect of the collateral. If the actual value of the collateral exceeds the claims they secure by more than 10%, KTN shall at the request of the Customer select and release the excess amount. Should the Buyer/Customer default in payment or fail to satisfy its commitments derived from the retention of title, KTN shall be able to demand the return of the item from the Buyer/Customer and announce that after the lapse of a certain period the item will be turned to account on the market as far as possible and offset against the purchase price. All costs incurred in taking back the item and realizing the sale shall be borne by the Buyer/Customer.

7. Guarantee and Liability

KTN guarantees that the services provided and products delivered by KTN shall be free from serious defects. In the case of quality defects, KTN shall decide between providing a remedy or delivering anew. KTN shall be entitled to attempt remedy three times. Should the remedy prove to be a failure, is dismissed by KTN or if the Buyer/Customer cannot reasonably be expected to accept it, the Buyer/Customer shall be entitled to pay a lesser sum or to cancel the order. Claims to guarantee shall become statute-barred one year as from the beginning of the period of limitation laid down by law. Any further reaching claims, such as compensation for direct damages and bearing follow-up costs, particularly claims derived from a positive breach of contract shall be ruled out unless these claims are based on intentional or grossly negligent conduct on the part of KTN. Liability for defects shall also not extend to natural wear and tear, or to damages that were caused after the passage of risk through faulty or negligent treatment, excessive operational requirements, unsuitable operational resources or by mechanical, chemical, electrochemical or electrical impact that is not presupposed under the contract.

All and any guarantee for the following is ruled out:

- Defects caused through damaging, wrong connecting or faulty operating on the part of the Buyer/Customer
- Flaws or defects caused by faulty information, drawings or components provided by the Buyer/Customer
- Damages caused by force majeure, e.g. lightning
- Damages caused from unprofessional usage and the failure to abide by operational and maintenance regulations
- Defects caused by wear and tear due to excessive operational demands made of mechanical or electromechanical parts in use that are not intended or by pollution and
- Damages from unfamiliar mechanical, chemical or atmospheric influence

The claim to guarantee shall cease to apply if the Buyer/Customer or third parties intervene in the item without the consent of KTN and said intervention relates to the defect. The Buyer/Customer undertakes to check the delivered item immediately and make its complaint about any evident defects, at the latest inside 8 (eight) workdays. Should these defects only be discovered at a later stage, complaint shall be made immediately upon their discovery. Complaints shall be in written form. The complaint has only to be despatched on time as defined. In line with the present provision, defects not complained about shall be deemed approved and accepted.

8. Place of Performance and Place of Jurisdiction

Place of fulfilment for all deliveries, services and payment shall be Würzburg. Sole place of jurisdiction for disputes derived directly or indirectly from contractual relations, when the Buyer/Customer is a business entity, shall be the registered seat of KTN (Würzburg). The same place of jurisdiction shall apply if the Buyer/Customer is a consumer and does not have any general place of jurisdiction in the country, relocates his place of abode or regular place of whereabouts outside the country after the contract has been formed or if his regular place of abode is unknown at the time legal action is brought. The contractual relations shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

9. Other Provisions

Deadlines shall be lengthened appropriately in cases, for example, of strike, lock-outs, force majeure and other circumstances that cannot be influenced by KTN; in particular, KTN shall not be responsible for traffic congestion and operational problems for which KTN is not responsible, scarcity of raw materials, the failure of suppliers to deliver and such like. KTN shall retain the right to have commitments it derives from the present contract carried out by suitable third parties. Should any one of these provisions be ineffective, the validity of the remaining provisions shall not be affected. Ineffective provisions shall be replaced by valid ones that achieve the original business intention as far as possible. Any ancillary agreements and amendments to the present contract shall require the written form to be valid.

KTN Kugellagertechnik Neely GmbH & Co. KG

Local Lower Court – Register Court Würzburg HRA 6640
 Managing Director Herbert Neely-Skirde
 VAT ID DE 274388894
 Reg. seat Würzburg

Moskauer Ring 59
 D-97084 Würzburg
 IBAN DE48760100850074900850
 SWIFT-BIC: PB NK DE FF

phone +49 931 66694-76
 fax +49 931 66694-75
 info@kugellagertechnik.de
 www.kugellagertechnik.de

