

General Terms and Conditions of Sale (GCS) for Goods and Services



1. Scope of Agreement

The type and scope of the goods and services owing shall be subject solely to reciprocal written declarations and the present General Terms and Conditions of Trade. No other General Terms and Conditions of Trade shall have binding effect unless expressly agreed by Kretzschmar. The contract is not effective until our order-confirmation. Decisive for the content of the contract is the content of our order-confirmation.

The Buyer may not assign any rights accruing from the agreement.

2. Delivery Obligations and Delivery Dates

Kretzschmar shall be entitled to make partial delivery provided that no unreasonable additional costs are thereby entailed for the Buyer. In addition to the rights provided under Sec. 321 BGB (German Civil Code), Kretzschmar may rescind the agreement if, following conclusion of the same, circumstances come to its knowledge which give rise to justifiable doubt regarding the creditworthiness of the Buyer and could jeopardise the former claims.

Adherence to delivery dates shall be subject to timely receipt of all documents to be supplied by the Buyer, in particular plans, approvals and clearances, as well as compliance with the agreed conditions of payment and other preparatory or cooperative action to be taken by the Buyer. In the event of failure to comply with such prerequisites or if delivery is hindered due to force majeure or similar events, such as industrial dispute affecting either Kretzschmar or its subcontractors, or other unforeseen circumstances beyond its control, the delivery period shall be prolonged accordingly.

Should the Buyer default in accepting delivery, it shall be obliged to pay storage charges amounting to 0.5 % of the price of the items, the total amount of which shall not however exceed 5 %, as from one month following notification that the goods are ready for dispatch. Each contracting party shall reserve the right to furnish evidence of and put forward claims for higher or lower storage costs.

3. Prices and Payment

Prices shall apply ex works excluding packaging and insurance and plus the statutory value-added tax prevailing from time to time. Any and all amounts invoiced shall be due and payable net in cash not later than thirty days from the date of invoice. Kretzschmar shall however also be entitled to make delivery conditional upon immediate payment. In the case of Buyers whose financial circumstances are unknown, delivery shall be made against payment in advance or against payment on delivery only. Bills of exchange and cheques shall only be accepted subject to previous agreement and to performance. In such cases, payment shall not be deemed effected until the relevant amount has been unconditionally credited.

In cases where the supplier undertakes assembly work, the Buyer shall bear all costs accruing in connection therewith, including reasonable costs for standby time and other costs incurred due to delays in the assembly work beyond the control of Kretzschmar.

The Buyer may not offset any counterclaims unless such counterclaims have been recognised and any right of retention shall be based solely on the same.

In the event of delayed payment, the Buyer shall be obliged to furnish securities. Any goods or rights of the Buyer in the possession of Kretzschmar or of which it may dispose shall, from such date, serve as collateral to secure amounts outstanding. Kretzschmar shall be entitled to disclose such assignment to the third-party debtor and freely sell the collaterals on the open market at stock-market or market price, save where public auction is mandatory.

Notwithstanding other claims on the grounds of delayed payment, as from the date on which the payment period expires, amounts outstanding shall be subject to interest at a rate of 2 % p.a. above the bank rate set by the German Bundesbank from time to time or an equivalent reference rate set by the European Central Bank, unless proof of higher or lower damage is furnished.

4. Transfer of Risk

Risk shall transfer to the Buyer as follows:

- in the case of delivery without assembly, when the goods leave the suppliers works, or are notified as being ready for collection or dispatch;

- in the case of delivery with assembly, on the day the Buyer takes possession at its own premises.

Should the Buyer delay acceptance of delivery, risk shall transfer on the date from which the Buyer is in default.

5. Retention of Title

The goods shall remain the property of Kretzschmar until all present and future claims arising out of business relations with the Buyer have been satisfied. The Buyer shall be obliged to store the goods separately. The Buyer shall process or finish the goods on behalf of Kretzschmar without any obligations accruing to the latter. To the extent that the Buyer acquires sole ownership of the goods resulting from such processing, connection or integration, it is hereby agreed that the Buyer shall assign to Kretzschmar joint ownership of such goods commensurate with the delivery price of the reserved goods as a proportion of the delivery prices of the other goods included in the end product at the time of processing, integrating or connecting. The former shall store the goods produced or the aggregate asset on behalf of Kretzschmar.

The Buyer may not dispose of the reserved goods and items resulting from processing or finishing the same unless it agrees a similar retention of title, nor may it prejudice the rights of retention of Kretzschmar by disposing of the goods in any other way (e.g. pledging, assignment as collateral). Kretzschmar shall be notified without delay should the goods be seized by third parties.

The Buyer hereby assigns to Kretzschmar any and all amounts receivable accruing to the former as a result of reselling reserved goods or receivables accruing from the sale of goods which result from processing, integrating or connecting the same, including all subsidiary rights, up to the amount of the invoice value of the reserved goods. Furthermore, from the amount due to the Buyer as remuneration for connecting the reserved goods, the former shall assign to Kretzschmar an amount equivalent to the delivery price of such goods as a proportion of the delivery price of the other goods included in the connected goods at the time of such connection. Until further notice, the Buyer shall be authorised to collect such assigned receivables. At the request of Kretzschmar, the Buyer shall notify the debtors of such assignment.

Insofar as the value of such securities exceeds amounts owing to Kretzschmar by more than 20 %, the latter shall at the request of the Buyer release appropriate securities at its own discretion.

6. Rights to Tools

Contribution of partial costs of tools on the part of the Buyer shall not represent entitlement to any rights in relation to such tools.

7. Industrial Proprietary Rights and Copyrights / Deficiency in Title

1. Unless otherwise agreed, Kretzschmar shall be obliged to supply goods free from third-party industrial proprietary rights and copyrights (hereinafter Proprietary Rights) in the country of the place of delivery only. In the event that a third party raises justified claims against the Buyer on the grounds of infringement of Proprietary Rights in connection with any goods supplied by Kretzschmar and used in a manner provided for under the agreement, Kretzschmar shall be liable to the Buyer as follows for the duration of the term specified under clause 12.

a. Kretzschmar may opt either to obtain the right of use to the relevant goods, alter the same to avoid infringement of the Proprietary Right or exchange the goods at its own expense. Should this not be possible on terms that are reasonable for Kretzschmar, the Buyer shall be entitled to exercise its statutory rights of rescission or reduction of the purchase price.

b. Obligation to pay damages shall be subject to Clause 1.

c. The aforesaid obligations shall not apply unless the Buyer immediately notifies Kretzschmar in writing of any claims made by third parties, refrains from admitting to any infringement and unless all rights relating to defence measures and settlement negotiations are retained by Kretzschmar.

Should the Buyer discontinue use of the goods in order to minimise damage or for other serious reason, it shall be obliged to advise the third parties that such discontinuation of use is in no way associated with admission to infringing a Proprietary Right.

- The Buyer shall not be entitled to any claims whatsoever if it is responsible for infringing a Proprietary Right.
- Nor shall the Buyer be entitled to any claims if infringement of a Proprietary Right is the result of specific requirements on the part of the Buyer, an application not envisaged by Kretzschmar, modification of the goods on the part of the Buyer or utilisation in conjunction with products not supplied by Kretzschmar.
- In the event of infringement of Proprietary Rights the provisions on material deficiencies agreed under Clause 12 shall apply. Such provisions shall also apply in cases of other deficiencies in title.
- Additional claims by the Buyer or claims other than those provided for under the present Clause 7 brought against Kretzschmar or its agents on the grounds of deficiencies in title shall be excluded.

8. Control and Acceptance of Goods

Any acceptance of the goods under special test conditions shall be carried out by the Buyer or its authorised representative in the Kretzschmar works. The costs of such acceptance shall be borne by the Buyer. Should the Buyer fail to conduct such test, the goods shall be deemed delivered in accordance with the agreement upon leaving the Kretzschmar works.

If upon completion Kretzschmar requests the Buyer to take acceptance, the Buyer shall be obliged to do so no later than two weeks following such request. Should the Buyer refuse to participate, acceptance shall nevertheless be deemed to have taken place.

9. Rights to Documents and Software

Kretzschmar shall retain all rights of ownership and all copyrights to quotations, drawings and any other documents provided (hereinafter Documents). The Documents may not be made accessible to third parties without the prior consent of Kretzschmar and shall be used for contractual purposes only and returned upon request.

The Buyer shall have a non-exclusive right to use the software supplied by Kretzschmar with the agreed performance features in an unmodified form on the agreed equipment. The Buyer may make two back-up copies without obtaining express approval.

10. Illustrations and Specifications

Illustrations and specifications as well as technical data shall represent the actual facts or intentions at the time of printing the list or other ordering documentation. Kretzschmar shall reserve the right to make changes of any kind, in particular changes as a result of technical progress, design modifications or for similar reasons provided that, taking into account the interests of Kretzschmar, such changes are not unreasonable for the Buyer.

Consultancy in the field of applications engineering shall be provided by Kretzschmar to the best of its knowledge. Particulars and information relating to the suitability or use of Kretzschmar products shall neither be deemed warranted properties nor release the Buyer from the requirement to conduct its own tests. The Buyer shall be responsible for complying with the statutory and official regulations when using goods supplied by Kretzschmar.

11. Material Deficiency

- Claims by the Buyer on the grounds of defects shall be dependent upon the Buyer having complied with its obligations regarding the inspection of goods and notification of defects, as it is mentioned in clause 377 HGB (GERMAN COMMERCIAL CODE).

- To the extent that the object of sale is defective, the Buyer shall be entitled to opt for subsequent performance either in the form of remedy of the defect or delivery of a new object free from defects. In the case of remedying the defect, Kretzschmar shall be obliged to bear all costs necessary in order to remedy such defect, in particular transport, travelling, labour and material costs, provided there is no increase in such costs due to the fact that the object of sale has been moved to a place other than the place of performance.
- Should such subsequent performance fail, the Buyer may at his own discretion request that the agreement be rescinded or the purchase price reduced.
- Kretzschmar shall be liable in accordance with the statutory provisions in the event that the Buyer claims for damages on the grounds of intent or gross negligence, including intent or gross negligence on the part of representatives or subcontractors of Kretzschmar. To the extent that no wilful breach of contract can be imputed, liability for damages shall be limited to predictable, typical occurrences of damage.
- Kretzschmar shall be liable in accordance with the statutory provisions if it becomes guilty of material breach of its contractual obligations. In such case, liability for damages shall however be limited to predictable, typical occurrences of damage.
- This shall be without prejudice to liability for culpable loss of life, bodily injury or damage to health; this shall also apply in the case of mandatory liability pursuant to the Product Liability Act.
- Unless otherwise agreed hereinabove, all liability shall be excluded.
- The period for claims on the grounds of defects shall be limited to twelve months from the date on which risk is transferred.
- This shall be without prejudice to the period of limitation in the case of claims for damages in connection with the goods according to Secs. 478, 479 BGB, which shall amount to five years from delivery of the defective item.

12. Other Claims for Damages

Any and all liability for damages in addition to the liability envisaged under Clause 12 shall be excluded, notwithstanding the legal nature of the claim. This shall apply in particular to claims for damages resulting from culpa in contrahendo, on the grounds of other breaches of obligation or of tortious claims for compensation for material damage pursuant to Clause 823 BGB.

To the extent that liability for damages on the part of Kretzschmar is either excluded or limited, this shall likewise apply with regard to personal liability for damages on the part of its manual and non-manual employees, whether permanent or freelance, its representatives and its agents.

13. Jurisdiction and Applicable Law

At the discretion of Kretzschmar, place of jurisdiction for all disputes arising out of or in connection with contractual relations with the Buyer shall be Bergisch Gladbach, the place of the registered office of the Buyer, or in the case of litigation involving cheques or bills of exchange, also the place of payment.

Contractual relations shall be governed by German law under exclusion of the Convention on the International Sale of Goods (CISG). In the event that individual provisions of the agreement are legally invalid, the remaining provisions shall remain in force. This shall not apply if adherence to the agreement would constitute undue hardship for either party.

Kretzschmar GmbH hereby wishes to advise the Buyer that its personal data will be stored in accordance with the German Data Protection Act.