

# General Terms and Conditions of Delivery and Installation of the Company Sack & Kiesselbach Maschinenfabrik GmbH, Düsseldorf

(English translation, in the event of a conflict between the original German version and the English translation, the original German version shall prevail)

## 1. Scope of Application

These Terms and Conditions apply to all contracts concluded between the company Sack & Kiesselbach Maschinenfabrik GmbH (Supplier) and the Customer, provided the Customer is an enterpriser and acts in performance of his/her/its commercial or independent professional activities. Any other terms and conditions shall not be applicable even if they are not expressly contradicted.

## 2. Conclusion of Contract

- 2.1 Offers of the Supplier are not binding.
- 2.2 The act of sale has to be made in writing.
- 2.3 The Supplier shall be entitled to make alterations to the object of delivery with regard to scope, design and structure as far as the contractually agreed specifications are not altered to the disadvantage of the Customer. Alterations requested by the Customer must be agreed upon in writing. Contract prices and time of delivery must be adjusted accordingly and agreed upon, to.

## 3. Drawings and Descriptions

If one of the parties receives any drawings, technical documentation or other technical information, it must not use such documents without the consent of the other party, except for the installation, commissioning, utilisation and maintenance of the object of delivery. Such documents must not be used for other purposes, copied, reproduced, handed over or disclosed to a third party, unless with the approval of the party submitting them.

All rights in such documents shall remain with the party submitting these documents.

## 4. Delivery, Passing of Risk

The agreed delivery clauses are to be interpreted according to the INCOTERMS in force at the time of conclusion of the contract. If there is no specific delivery clause in the contract, the object of delivery shall be regarded as delivered "ex works" (EXW). If, in case of an EXW delivery, the Supplier undertakes at the Customer's request to send the object of delivery to its place of destination, the risk shall pass at the latest at the point of time when the object of delivery is received by the first forwarding agent. Partial deliveries are permitted.

## 5. Time of Delivery, Delay

- 5.1 If the parties have agreed to a fixed date of delivery and is the expected payment delayed on the foreseen account so the delivery time is extended accordingly.
- 5.2 If the parties, instead of a fixed date of delivery, have agreed to a time of delivery of which the delivery shall be made, such period shall begin upon receipt of the advance payment on an account of the Supplier, with the proviso that the Supplier can irrevocably dispose of said amount (see Item 14) or, if it should occur later, on the day the Customer receives the order undersigned by the Supplier.
- 5.3 If the delivery is delayed due to one of the circumstances set forth under Item 10 due to an act or omission of the Customer, which also includes the exercise of a right of retention by the Supplier, or due to alterations in the object of delivery that have become necessary due to changes in the legal framework conditions, an extension of the time of delivery appropriate under the circumstances shall be granted.
- 5.4 Any other claims against the Supplier with regard to delay are excluded, unless in cases of culpable breach of material contractual duties (cardinal duties), of intent or gross negligence on part of the Supplier or its legal representatives or vicarious agents, or if a damage to life, body or health of a natural person has occurred due to the non-delivery.
- 5.5 If the Customer can foresee that it will not be able to take delivery of the goods on the date of delivery, it must immediately inform the Supplier about that fact, state the reasons and indicate as far as possible the time when it will be able to take delivery. If the Customer fails to take delivery of the goods on the date of delivery, it must nevertheless pay the part of the purchase price payable upon delivery as if the delivery had been made. The Customer undertakes to bear the costs of the storage of the object of delivery and shall bear the risk with regard to the object of delivery from the time it is stored in a warehouse. At the Customer's request, the Supplier must insure the object of delivery at the Customer's expense.
- 5.6 If the Customer's failure to take delivery is not caused by one of the circumstances set forth under Item 10, the Supplier can demand the Customer in writing to take delivery of the goods within a reasonable ultimate period.

If the Customer fails to take delivery within such a period for reasons that the Supplier is not responsible for, the Supplier can withdraw either completely or partially from the contract by giving written notice. In such case, the Supplier will be entitled to compensation for the damage it has suffered due to the Customer's default. The total amount of the compensation must not exceed the purchase price corresponding to the part of the object of delivery with regard to which the contract is rescinded.

## 6. Sales prices

- 6.1 They have been agreed when they are confirmed by the supplier in written form as follows:  
In the confirmation of order or in a written stipulation of both parties and in the invoice of the supplier  
The written form will also be accepted as an E-mail or a telex.
- 6.2 The sales prices are fixed prices and are effective until the goods are being delivered or installed on customers destination.
- 6.3 The sales prices are on Euro basic or on any other written confirmation
- 6.4 The prices are strictly net. In case there are no other agreements, the prices do not include any taxes or costs of forwarding, insurance or duty. ( exception: the VAT for Germany is regulated by German law and will be indicated separately )

## 7. Payment

- 7.1 If there is no different agreement, 30 % of the purchase price shall be due upon conclusion of the contract; another 60 % upon information of the Customer by the Supplier about the readiness of the object of delivery or of essential parts of it for delivery; and 10 % upon delivery.
- 7.2 Irrespective of the means of payment used, the payment shall only be regarded as made when the full invoiced amount has been irrevocably credited to the Supplier's account and the Supplier can dispose of the amount of invoice.
- 7.3 If the Customer is culpably in default with its payments, the Supplier can claim default interest at the legal rate from the due date on.
- 7.4 The Customer can only set any amounts due to the Supplier off against own claims that are undisputed or have become legal.

## 8. Reservation of Title

- 8.1 The Supplier shall retain title in the object of delivery until payment in full of all obligations under the business relationship. At the Supplier's request, the Customer must comprehensively assist the Supplier in its efforts to protect its title in the object of delivery in the respective country

The reservation of title is without prejudice to the provisions on the passing of the risk in Item 4.

If the object of delivery is combined with other items into a uniform thing, it is understood that the Customer assigns to the Supplier co-ownership within the meaning of § 947 Subsec 1 BGB (German Civil Code), i.e. in the proportion of the value of the object of delivery to the value of the new uniform thing that the Customer retains as borrowed. In case of a resale by the Customer, the latter shall be obliged to reserve the title in the property of the Supplier towards the third party. Already now, the Customer assigns the claim for payment to the Supplier.

Based on the reservation of title, the Supplier can demand return free of costs from the Customer, subject to credit of the scrap value of the material after deduction of all costs.

If the Customer fails to meet its obligations to pay of if its financial situation deteriorates in such a manner that the enforcement of the Supplier's claims appears to be in danger in the future, the Supplier shall have amongst others the following rights:

8.1.1 To discontinue the handling of all matters - irrespective of any existing contractual agreements.

8.1.2 To demand the provision of security.

- 8.2 The Supplier shall always be entitled to insure the object of delivery against theft, breakage, fire, water damage and other kinds of damage at the Customer's expense if the Customer has not provably effected such insurance.

## 9. Material Defects/Liability of the Customer for Breach of Duty

- 9.1 The limitation period for claims of the Customer based on defects of quality is 1 year. In case of the conditions set forth under item 8.12, the limitation period by law shall apply. The period of claims for rebuilt items is not longer than 6 month. There is no liability on subjects to regular wear and tear. The warranty upon deliveries of wear parts by sub-suppliers of the Supplier their time of regress will take place.

- 9.2 The limitation period commences upon delivery according to Item 4 or, in cases where installation supervision is additionally agreed, upon acceptance according to item 16.

If the daily operating time exceeds the agreed range, the period shall be reduced accordingly. If there are no other stipulations, single-shift operation shall be regarded as agreed daily operating time.

- 9.3 Any rights the Customer may have under §§ 478, 479 BGB remain unaffected.

- 9.4 Immediately after the delivery or acceptance according to Item 15, the Customer must inspect the object of delivery and give notice in writing of any defects to the Supplier without delay. The notice of defect must describe the defect exactly and in detail.

If the Customer fails to make an inspection immediately upon delivery or acceptance or to give immediately notice of any defects, its claims based on defects shall become forfeited. § 377 HGB (Commercial Code) is applicable.

- 9.5 Within the framework of subsequent performance, the Supplier shall at its option either remove the defect or deliver a new article free of defects after receiving a written notice of defect according to Item 9.4 above.

If, within the framework of subsequent performance, the Supplier chooses to remove the defect, it shall generally be rectified at the location of the object of delivery; however, it shall be within the Supplier's discretion to have the defective part or the object of delivery returned for the purpose of repair or replacement.

The Supplier shall be obliged to remove and install the part as far as that work requires special knowledge. If such special knowledge is not required, the Supplier's obligation with regard to the defect shall end with the delivery of the properly repaired or replaced part to the Customer.

- 9.6 If the Customer has given the Supplier a notice of defect according to Item 9.4 above and there is not found any defect that the Supplier is liable for, the Customer shall indemnify the Supplier for the damage the Supplier has suffered due to such a complaint.

- 9.7 The Customer must see to it at its own expense that any items of equipment not belonging to the object of delivery are removed and reinstalled as far as that is required for the rectification of the defect.

- 9.8 Any defective parts are to be made available to the Supplier and shall pass into its ownership.

- 9.9 The Supplier shall not be liable for any defects caused by materials provided by the Customer or by a design specified by the Customer.

Furthermore, the Supplier shall not be liable for any defects caused by improper installation, failure to comply with the operating instructions, other improper operation by the Customer, poor maintenance, incorrect repair by the Customer, alterations without the written approval of the Supplier and any kinds of use other than those according to contract.

- 9.10 If a used object of delivery is to be delivered according to the contract, it shall be delivered to the Customer to the exclusion of any liability for material defects, unless otherwise agreed. In case of the conditions set forth under Item 9.11, this exclusion of warranty shall not apply.

- 9.11 Without prejudice to the Customer's claims under Items 5.3, 5.4 - any further claims of the Customer for material defects or other breach of duty on part of the Supplier are excluded. This applies in particular also to claims for damages.

There are in particular excluded claims for compensation for consequential damage. This includes without limitation production standstill, loss of profit, loss of use, loss of contract or other consequential damage.

- 9.12 The exclusion of liability according to Item 9.11 above does not apply if, due to the delivery of a defective object of delivery or another breach of duty on part of the Supplier, there was caused a damage to life, body or health of a natural person or if the Supplier, its legal representatives or vicarious agents are liable for intent or gross negligence.

Furthermore, this exclusion of liability does not apply in case of a culpable violation of material contractual duties (cardinal duties). In case of a slightly negligent violation of material contractual duties the Supplier shall only be liable for damage that is typical of the contract and can be reasonably foreseen.

Irrespective of a fault of the Supplier, a possible liability of the supplier resulting in case of fraudulent concealment of defects, from the assumption of a guarantee or a procurement risk or under the Product Liability Act remains unaffected.

Personal liability of the legal representatives, vicarious agents and employees of the Supplier for any damage caused by slight negligence is excluded.

## 10. Force Majeure

Cases of force majeure, including strikes, lock-outs and other unforeseeable events, or any interruptions of production at the Supplier or its suppliers that temporarily prevent the Supplier without its own fault from delivering the object of delivery on the agreed date or within an agreed period shall extend all periods of delivery by the duration of their existence.

## 11. Final Provisions

- 11.1 Any taxes or public duties to be paid in the Customer's country in the performance of this contract shall be borne by the Customer. As far as the Supplier is directly charged, the Customer undertakes to indemnify the Supplier against such obligations.

- 11.2 The German text of the contract and these General Terms and Conditions as well as German law are applicable. Application of the UN sales law (CISG) is expressly excluded. The place of performance and the exclusive place of jurisdiction is Düsseldorf.

- 11.3 If the Customer has its seat outside the area of application of the European union, all disputes resulting from the contract shall be settled according to the conciliation and Arbitration Rules of the International Chamber of Commerce (ICC), by one or several arbitrators to be appointed in accordance with said rules.

If the Customer has its seat in the area of application of the European union the courts of law shall have jurisdiction.

- 11.4 If any of the above provisions should be or become invalid as a whole or in part, this shall not affect the validity of the remaining provisions. The parties undertake to agree, in place of the invalid provision, on a regulation that comes as close as possible to the intended economic purpose.

# Supplementary Terms and Conditions of Installation

If, on the basis of contractual agreements, the Supplier, apart from the delivery, also owes installation supervision, this shall be subject to the following additional provisions:

## 12. Scope of Installation Supervision

If there are no other written agreements, installation supervision shall comprise the following:

- 12.1 Planning of the schedule of installation work as well as fixing of the general installation instructions;
- 12.2 Instruction and supervision of the Customer's installation staff;
- 12.3 Performance of a test run of the object of delivery;
- 12.4 Introduction of the Customer's staff to the operation and maintenance of the object of delivery.

All further work connected with the installation shall be carried out by the Customer.

## 13. Preparatory Work and Working Conditions

13.1 On the basis of the drawings and instructions provided by the Supplier, the Customer shall make available in good time all installations and conditions required for the installation and proper utilisation of the plant, such as suitable foundations, well-swept area around the place of installation, equipment, including all protective installations/devices, according to the local safety regulations, supply and disposal lines and connections, etc.

13.2 The transport of the object of delivery on/in the grounds/premises of the Customer is incumbent on the Customer.

13.3 The Customer must ensure that the following conditions are met:

- 13.3.1 There is made available a sufficient number of skilled staff who perform the installation according to the instructions and under the direction of the Supplier's staff. The Supplier shall communicate the required number of skilled staff as well as training requirements, if any, in good time before the start of the installation work.
- 13.3.2 The Supplier's staff shall have the opportunity to commence the work according to the agreed schedule and to work during the customary working hours. The work can be performed outside the regular working hours if the Supplier considers it to be necessary and if the Customer was informed about it within a reasonable period.
- 13.3.3 Before commencing the installation, the Customer shall inform the Supplier about all relevant safety regulations applicable on the installation site. The installation shall not be carried out in an unhealthy or dangerous environment. The Customer must take all necessary safety and protection measures before the start of the installation and maintain them during the time of installation.
- 13.3.4 The Supplier's staff must be provided with reasonable accommodation near the installation site at the Customer's expense. The accommodation must meet West European requirements and in particular must be equipped with all necessary sanitary installations. As far as required for climatic reasons, the Customer shall, at its own expense, make air-conditioners, refrigerators and cooking facilities available to the Supplier's staff free of charge. During the cold seasons, the accommodation shall be sufficiently heated. As far as required, an installation office including the necessary equipment shall be made available to the Supplier's staff on the grounds of the Customer.

All obligations imposed on the Supplier's staff by the authorities shall be fulfilled by the Supplier. If that should not be possible, the Customer shall inform the Supplier's staff about the obligations to be fulfilled by themselves and will assist the Supplier's staff in complying with any formalities. This refers in particular to work permits, registrations and deregistrations and formalities with regard to entering and leaving the country.

The Customer will help the Supplier's staff to get all permissions required for unrestricted freedom of movement in the country and for travelling home any time with the property of the Supplier's staff. Furthermore, the Customer shall support the Supplier's staff with regard to taking with them or transferring any amounts of daily allowance that have been saved. Any social facilities existing or to be introduced until the performance of the installation at the place of installation as well as any other applicable prerequisites shall be made available or granted to the Supplier's staff in the same manner as to other foreign staff working at the place of installation.

In order to avoid communication difficulties, the Customer shall make available interpreters at its own expense.

In case of accidents or diseases, the Customer is moreover obliged to provide for medical assistance or transfer to an efficient hospital, if required. If a transport home should be necessary due to serious illness or death, the Customer shall take all measures required in that connection and assume the costs incurred. The costs that may be required for a substitute shall be borne by the Customer.

- 13.3.5 The Customer shall punctually and free of costs provide the Supplier at the place of installation with all required cranes as well as lifting equipment and means of transport within the installation site, additional devices, machines, materials, consumables (including petrol, hydraulic oil, grease and other materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.) as well as the measuring and testing devices of the Customer available on the installation site.
- 13.3.6 The Supplier shall, a reasonable time before the begin of the installation, inform the Customer in writing about the cranes, lifting equipment, measuring and testing devices and means of transport that will be required within the installation site.
- 13.3.7 For protecting the object of delivery, the tools and equipment required for the installation as well as the personal property of the Supplier's staff against theft and deterioration, the Customer shall make the required lockable places of deposit available to the Supplier's staff free of charge.
- 13.3.8 The ways of access to the installation site must be suitable for the required transport of the object of delivery, of parts and equipment.

## 14. Non-Performance on Part of the Customer

14.1 If the Customer can foresee that it will not fulfil its obligations under Item 13 or that it will not be able to take delivery of the object of delivery on the installation site or that it will not be able to complete the plant in due time, it must immediately inform the Supplier in writing about that fact, state the reasons and indicate as far as possible the time when it will be able to fulfil its obligations.

14.2 If the Customer fails to fulfil its obligations under Item 13 above, it shall indemnify the Supplier for all resulting costs.

The Customer shall pay to the Supplier the respective part of the agreed remuneration that would have become due without the non-performance on part of the Customer. In such cases the Supplier can, at its own discretion and as far as it is practicable, perform the respective obligations at the Supplier's expense, provided this is done within a reasonable scope

## 15. Acceptance Tests

15.1 If there are no other agreements, acceptance tests shall be performed after completing the installation. The Supplier shall inform the Customer in writing about the readiness of the object of delivery for acceptance. That notice shall indicate a date of acceptance.

The Customer shall bear all costs of the acceptance tests. The Supplier shall bear all costs incurred by its staff and representatives.

15.2 The Customer shall provide, at its own expense, energy, lubricants, water, fuels, raw materials and all other materials as far as they are necessary for the performance of the acceptance tests and the last adjustments to be made in preparation of the acceptance tests. Moreover, the Customer shall, at its own expense, put up equipment and provide the staff or auxiliary means required for the acceptance tests.

15.3 If the Customer has received a notice according to Item 15.1 above and fails to fulfil its obligations under Item 15.2 above or prevents the performance of the acceptance tests in any other way, the tests shall be regarded as successfully completed on the day of the acceptance tests indicated in the Supplier's notice.

## 16. Acceptance

16.1 The object of delivery has been accepted when

- 16.1.1 The acceptance tests have been successfully completed or are regarded as having been successfully completed according to Item 15.3 above; or
- 16.1.2 The Customer has received the written notice of the Supplier announcing the completion of the object of delivery, provided it corresponds to the contractual stipulations with regard to the acceptance; this, however, shall only apply in cases in which the parties have not agreed to perform acceptance tests.

Minor defects of quality that do not affect the performance of object of delivery shall not be a reason for refusing acceptance.

16.2 Before the acceptance, the Customer shall not be entitled to use the object of delivery or any part of it. Otherwise, the object of delivery shall be regarded as accepted by the Customer, unless the Customer has obtained the written consent of the Supplier for using the object of delivery. Then, the Supplier will not be obliged to perform acceptance tests any more.

16.3 After the acceptance of the object of delivery according to Items 16.1 or 16.2, the period described in Item 9.1 shall commence. If the acceptance is delayed for reasons that the Customer is responsible for, the period described in Item 9.1 shall commence upon delivery of the object of delivery.

At the Supplier's written request, the Customer shall issue a certificate on the date of acceptance of the object of delivery.

If the Customer fails to issue such a certificate, this shall not affect the acceptance according to Items 16.1 or 16.2 above.

16.4 Upon acceptance according to Items 16.1 or 16.2, the object of delivery shall be regarded as completed.

## 17. Payments

17.1 The costs of the staff provided by the Supplier for installation supervision shall be charged by the hour. As there are no other agreements, the hourly rates generally applied in mechanical engineering in the Federal Republic of Germany shall be regarded as agreed. Payments for the installation shall be made against monthly invoices within a period of 30 days from the invoice date. If a lump sum for installation supervision is included in the contract price, the Customer shall pay 30 % of the purchase price upon conclusion of the contract; another 60 % upon information of the Customer by the Supplier about the readiness of the object of delivery or of essential parts of it for delivery; and 10 % upon acceptance of the object of delivery.

17.2 In case of installation charged by the hour, the following items shall be invoiced separately:

- 17.2.1 All travel expenses incurred by the Supplier for its staff, including costs of accommodation as well as costs of the transport of its tools and of the personal luggage to a reasonable extent according to the type and class of the means of transport agreed upon in the contract, if applicable;
- 17.2.2 Daily allowance, including reasonable spending money for every day of the absence of the installation staff from their place of residence, including days off and holidays;
- 17.2.3 The hours worked calculated on the basis of the hours confirmed by the Customer's signature as time worked on the respective time sheets. Overtime work, work on Sundays, holidays and at night shall be charged at special rates. The rates shall be as agreed in the contract; if such rates have not been agreed, there shall apply the rates generally charged by the Supplier;  
  
If not agreed otherwise, the hourly rates shall include the wear and tear of the tools and light equipment of the Supplier;
- 17.2.4 The time required for:  
  
Preparation and formalities for journeys there and back;  
Journeys there and back;  
The daily travels between place of accommodation and place of installation;  
Bridging of periods during which the work is impeded due to circumstances that the Supplier is not responsible for according to the contract; all of these items being subject to the rates fixed under c);
- 17.2.5 Expenses of the Supplier according to contract for the equipment provided by the Supplier as well as a fee for the use of its heavy tools, if applicable;
- 17.2.6 All taxes and duties to be paid by the Supplier in the country of delivery and installation supervision;

17.3 In case of installation for a lump sum price, the agreed price shall include all items enlisted under Item 17.2 above. If the installation is delayed for reasons that the Customer or one of its contracting partners is responsible for, but not the Supplier, the Customer shall compensate the Supplier for:

- 17.3.1 Waiting periods and additional travel time;
- 17.3.2 Costs and additional work caused by the delay, including removal, securing and installation of the installation equipment;
- 17.3.3 Additional costs incurred by the Supplier, in particular costs caused by the fact that its equipment is tied-up at the place of installation longer than expected.
- 17.3.4 Additional daily allowances and travel expenses of the installation staff;
- 17.3.5 Additional financing and insurance costs;

17.3.6 Any other proven costs incurred by the Supplier due to deviations from the installation schedule.

## 18. Remark

This "General Terms and Conditions of Delivery and Installation of the Company Sack & Kiesselbach Maschinenfabrik GmbH, Düsseldorf " can be found as well in our home page [www.sack-kiesselbach.de](http://www.sack-kiesselbach.de)