



Conditions of Sale and Delivery of MASCHINENFABRIK ALFING KESSLER GmbH

1. General Terms

1. Deliveries are only executed in conformity with the Conditions of Sale detailed below. General terms and conditions stipulated by the Purchaser, which conflict with these Conditions of Sale are not binding unless expressly confirmed in writing by us. We do not recognize any of Purchaser's terms and conditions which diverge from these Conditions of Sale even if we carry out the order without reservation in full knowledge of such terms and conditions.
2. Any agreements changing these Conditions of Sale will not be binding until we have consented thereto in writing.
3. The Incoterms FCA shall apply in addition to these Conditions of Sale unless otherwise set forth herein.

2. Prices

1. All prices quoted are net prices ex our works.
2. We reserve the right to increase our prices on a pro rata basis in the event of changes in the price of materials and collective bargaining wage increases, where such changes enter into effect prior to the agreed delivery date.

3. Terms of Payment

1. Our invoices are due and payable 30 days from receipt of invoice without deduction. In case of the Purchaser's default of payment, we will have the right to charge default interest at the statutory rate.
2. We reserve the explicit right to refuse or accept bills of exchange. Such bills of exchange will only be accepted on account of payment and will only be considered as payment with discharging effect once they have been redeemed. All discount charges are at the Purchaser's expense.
3. If our claim for payment is jeopardized by non-compliance with the Terms of Payment, or circumstances leading to justified doubts as to the Purchaser's creditworthiness, this will result in the payability of all our claims, irrespective of the currency of any bills of exchange which might have been accepted or credited to the Customer's account. In this case we shall further be entitled to execute outstanding orders only against advance payment.
4. The Purchaser will only be authorized to set off or assert any rights of retention if its counterclaims are either undisputed or have been determined by a court of law with final and binding effect.

4. Reservation of Title

1. All goods delivered remain our property until all claims have been paid in full, including in particular the respective claims on a current account to which we are entitled on any legal basis. This also applies if payments are made on especially designated claims.
2. Any processing or transformation of the goods by the Purchaser will always be carried out on our behalf. In the event of the Purchaser combining our products with goods which do not belong to us, we are entitled to a right to co-ownership of the end product in the proportion of the value of the reserved goods to the other goods involved at the time of processing.
3. The Purchaser is entitled to sell the goods supplied by us in the course of its ordinary business. The Purchaser assigns to us in advance the claims resulting from such sale in the amount of the value of the goods sold under reservation of title; in case the Purchaser has current account arrangements with third parties, this applies mutatis mutandis with respect to the claim on the balance of the current account. The Purchaser will be empowered to collect on the assigned claim ourselves.



However, we undertake to refrain from collecting on the claim as long as the Purchaser meets its payment obligations and, in particular, has not filed for the opening of insolvency proceedings. If that is the case, we can demand that the Purchaser inform us of the assigned claims and their debtors, provide us with all information and documents necessary for collection and inform the debtors (third parties) of the assignment of claims.

4. The Purchaser may not pledge the reserved goods or assign them as collateral; it must inform us without delay of any seizures carried out at the instigation of third parties.
5. The Purchaser holds the reserved goods in safe custody for us. It must insure them against fire, theft and water damage and here and now assigns to us any claims it has against its insurance company, as well as any claims for compensation due to the loss or destruction of the goods.

5. Delivery - Transfer of Risk - Force Majeure

1. In the absence of special agreements, the delivery date quoted in the order acknowledgement is approximate and not binding.
2. Our deliveries are subject to the proviso of proper delivery by our suppliers. This applies in particular to situations in which an excessive number of shafts needs to be scrapped because of material faults, for which the sub-contractors are responsible.
3. Due to conditions peculiar to the crankshaft manufacturing process, we reserve the right to deliver quantities slightly above or below the quantity ordered.
4. Goods are delivered ex our works for the account of and at the risk of the consignee. Insurance against the risks of transportation will only be taken out at the Purchaser's request and expense.
5. If we are unable to provide delivery due to force majeure, in particular due to shortages in raw materials, energy or labor power, industrial disputes, serious transport disruptions, e.g. due to street blockades, unforeseen disruptions in production due to circumstances beyond our control, official measures which cannot be attributed to us or any other unforeseen circumstances for which we are not responsible, we shall not be obligated to provide delivery as long as the obstruction lasts. In this case, the delivery period will be extended by the length of duration of the obstruction. If the obstruction lasts over three months, both parties will be entitled to rescind the contract. In such cases the Purchaser will not be entitled to any claims for damages.

6. Warranty

1. We assume a warranty for the delivered goods for 12 months following delivery.
2. The Purchaser will not be entitled to any rights in case of an insignificant defect in the goods. Crankshafts for motor cars have the quality guaranteed in the contract if they do not show any significant defects after a total driving distance of 10,000 km. Within this scope, where under normal service conditions a crankshaft becomes unserviceable within the aforementioned warranty period as a result of a demonstrable material fault or machining error, we will render subsequent performance by remedying the defect or providing a replacement, at our option. The right to refuse to render subsequent performance entirely under the conditions set forth in sec. 439 para. 3 of the German Civil Code (BGB) remains unaffected. If the subsequent performance is unsuccessful or refused, the Purchaser has the right to reduce the price or rescind the contract, at its option. A defect which only affects a minor portion of the delivery will not entitle the Purchaser to rescind the entire contract.
3. We are not obligated to assume warranty as long as the Purchaser has not met its contractual obligations.
4. Complaints about defects must be notified in good time, namely within 30 days of receipt of goods with respect to quantity and externally visible defects. In the event of defects which are not readily discernible we waive the defense of delayed notification.
5. sec. 478, 479 German Civil Code remain unaffected.



6. The Purchaser's claims for damages due to defects will not be affected by these provisions. They are based on Point 7 of these Conditions of Sale.

7. Liability

1. The Purchaser's claims for damages, regardless of their legal basis, are excluded in case of slight negligence. In particular, we do not assume liability for lost profits and other property damage suffered by the Purchaser due to slight negligence.
2. The exclusion of liability set forth in para. 1 does not apply to claims arising from a guarantee, in case of injury to life, limb or health, for claims pursuant to sec. 1, 4 of the Product Liability Act (Produkt-haftungsgesetz) or for the slightly negligent violation of material contractual duties. However, in the latter case liability is limited to compensation for the typical damage foreseeable at the time the contract is concluded. The same applies in the event of grossly negligent conduct on the part of simple vicarious agents (einfache Erfüllungsgehilfen).
3. To the extent that our liability is excluded or limited, this also applies to the personal liability of our employees, representatives and vicarious agents.

8. Exercise of the Purchaser's Rights

1. If the Purchaser has set a reasonable deadline for performance or subsequent performance pursuant to sec. 281, 323 German Civil Code and such deadline has elapsed without results, then within two weeks of receipt of a written request to that effect, it must inform us in writing if it will assert a claim for damages in lieu of performance and/or rescind the contract.
2. If it does not so inform us within the time limit set forth above, it will forfeit its rights under sec. 281, 323 German Civil Code.

9. Supply of Blanks

If, at the purchaser's request, blanks (open die forged cylinders as blanks or crankshaft blanks) used in manufacture are supplied to us by third parties, or if the purchaser requests that we purchase blanks from specified third parties, our warranty and liability for such defects in the product as may be attributed to defects in these blanks is excluded if the defects in the blanks supplied to us could not be discerned upon inspection conducted according to the state of the art without destruction of the material.

10. Statute of Limitations

The initiation of negotiations regarding a claim or the circumstances justifying a claim will not suspend the limitation period. This does not apply to damages claims.

11. Place of Performance and Legal Venue

1. The delivery point and location for payment is in all cases Wasseralfingen. In the event of any legal disputes arising from the contract, complaints must be filed with the competent court in the district of the registered office of the Supplier. We are also entitled to file suit at the registered seat of the Purchaser.
2. German law is exclusively applicable. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

*The english version of the "Conditions of Sale and Delivery" is a convenience translation of the german version.
The german version is legally binding. (Form-Nr. 9869069 Stand: 01.01.2004)*

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