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EMISSIONS



Kappa Filter Systems GmbH  
**GENERAL DELIVERY TERMS**  
(GDT)

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## 1. Area of application

These General Delivery Terms (GDT) are generally intended for legal transactions between companies. If, in exceptional cases, they are also used for legal transactions with consumers, they will apply only to the extent that they do not contradict obligatory consumer or user-protection regulations.

- 1.1. These General Delivery Terms will apply to the extent that the contract parties have not agreed explicitly in writing to different terms. Any purchasing or business terms set forth by the contract partner are hereby explicitly denied. This applies also if we fail to object to a subsequent contract document in which other business terms are referred to. The most current version of our General Installation Terms also applies for installation work.
- 1.2. The Delivery Terms shall be applied to purchase contracts, service contracts, and work and materials contracts accordingly. The following clauses related to delivery of goods apply accordingly also to services.
- 1.3. We will accept orders of all types, particularly orders received verbally or via telephone, only under the condition of full acknowledgement of our Delivery Terms.

## 2. Quotations and contract closures

- 2.1. Our quotations are always, regardless of how they arise, without obligation for us and subject to cancellation.
- 2.2. All agreements are binding for us only with our written order confirmation.
- 2.3. Should contract documentation be contradictory, the contract text formulated by us will apply. The contract partner is required to review our confirmation. If the contract partner does not submit a documented dispute within eight days of receipt, he acknowledges the correctness of our confirmation. When deliveries are made based on verbal or telephone orders, we will not be responsible for faulty deliveries caused by hearing mistakes or misunderstandings.
- 2.4. If a contract is not concluded with us, cost estimates and completion of plans or other documents and execution of customer-specific activities, etc. shall be appropriately compensated. If a contract is concluded, these costs will be included in the price, in the absence of a different written agreement. We reserve the right to make design changes to the extent that these are necessary or beneficial.
- 2.5. If import and export licenses, currency-related approvals, or other regulatory approvals are required for execution of the contract, the contract partner who is responsible for obtaining such licenses or approvals shall undertake every effort to obtain the necessary licenses and approvals in a timely manner. If such approvals are not received in a timely manner, the delivery time will be extended accordingly.
- 2.6. Changes and amendments to any of the said documents require our written confirmation to obtain validity.

## 3. Plans and documentations

- 3.1. Specifications of weight, dimensions, holding capacity, price, power, and the like that are contained in the catalogs, brochures, mailings, advertisements, figures, price lists, etc. are definitive only when explicitly referenced by us in a written confirmation.
- 3.2. Plans, drawings, and other technical documentation as well as samples, catalogs, brochures, figures, and the like remain our intellectual property at all times. These items may be utilized, reproduced, distributed, published, or presented only with our explicit approval.

#### 4. Prices

- 4.1. The specified prices are the prices that are valid at the time of contract conclusion; excluding value-added tax (VAT) to the extent nothing else was agreed. VAT and any kind of import taxes and customs are to be borne by the customer. We are entitled to raise our prices if at the time of delivery a change occurs to the conditions upon which the price calculations are based. This applies particularly to price deviations; higher wages; subsequent introduction or rising of taxes, duties, or other public expenses; freight; and other secondary charges that directly or indirectly affect or raise the cost of our delivery.
- 4.2. If nothing else has been explicitly agreed, all prices are ex works, without packaging, and without loading. If delivery with shipment is agreed, prices will not include unloading and movement. If a concluded contract omits prices, our list prices valid on the day of shipment will be applied.
- 4.3. With repair orders, the services we deem necessary and practical will be performed and charged according to the expenses incurred. This applies also to services and supplementary services whose necessity reveals it only during completion of the order, whereby we are not obligated to make a separate announcement as long as the original cost estimate is not exceeded by more than one quarter.
- 4.4. The contract partner is required to reimburse our incurred costs for generating repair quotations or performing expert analyses, even if an order is not placed.

#### 5. Packaging

The following apply in the absence of a different, written agreement:

- 5.1. quoted prices exclude packaging;
- 5.2. packaging will be according to usual trade practices in order to avoid damage to the products en route to the specified destination under normal transportation conditions;
- 5.3. packaging will be taken back only at the expense of the purchaser.

#### 6. Delivery and delivery term

- 6.1. In the absence of a different written agreement, the delivery term will begin with the date of our order confirmation.
- 6.2. Delivery times are for us non-binding in the absence of an explicit written agreement to the contrary. Delivery times will be defined by, among other things, our production opportunities, delivery terms of our vendors, etc. However, we strive to maintain the agreed deadlines to the extent possible.
- 6.3. The delivery term will extend for us accordingly without releasing the contract partner from its obligations if the contract partner or its agent does not fulfill its technical, commercial, or financial obligations, e.g. provides plans, specifications, approvals, or releases late; does not make advance or partial payments; does not transfer bank guarantees; or does not open bank credits in a timely manner, etc.
- 6.4. The delivery time will extend by the duration of the obstruction plus an appropriate additional length of time when the following conditions prevent fulfillment: labor conflicts and all circumstances beyond the control of the parties, such as fire, mobilization, confiscation, embargo, prohibition of currency transfers, insurrection, absence of the means of transportation, general lack of supplies, energy consumption restrictions, etc. The purchaser will be notified of the beginning and end of the conditions.

- 6.5. If we have caused a delivery delay, the contract partner can demand fulfillment from us or set an appropriate extension period to subsequently fulfill our entire performance under the threat of withdrawal. If the extension period is not met due to our fault, the contract partner can rescind the contract in writing with respect to all parts that are not yet delivered or which have been announced as ready for shipment and with respect to such parts that, although delivered or announced as ready for shipment, will not be usable for the replacement vendor. We will be required to pay damage compensation only in cases of deliberate acts and gross negligence, whereby our liability is limited so that for every concluded week of default 0.25%, but no more than 5% in total, of the invoice amount is paid as damage compensation. We are entitled to claim the agreed payment for partial deliveries not included in the rescission.
- 6.6. The contract partner is not entitled to delay delivery periods or delivery dates for any reason whatsoever without our written approval. If the contract partner intends to accept the delivery or parts thereof at a time that is later than agreed, we will have the right to either withdraw from the contract or insist on fulfillment of the contract with preservation of the contract partner's payment obligation in accordance with the contract. In both cases, the contract partner is obligated to complete compensation of damages, including storage costs. If we agree to a new delivery term or delivery delay, we will be entitled to adjust our production periods and prices accordingly, even if a fixed price has been agreed.
- 6.7. We are entitled to execute and invoice partial deliveries and early deliveries. The seller will notify the purchaser of partial deliveries and/or early deliveries within an appropriate period of time.
- 6.8. If the purchaser does not accept the contractually provisioned goods at the contractually agreed location or at the contractually agreed time and if the delay is not due to our action or omission, we can either demand fulfillment or withdraw from the contract after setting a second delivery date. In both cases, we are entitled to full damage compensation.
- 6.9. If the goods have been sorted out, we can proceed to place the goods into storage at the expense and risk of the purchaser. We are also entitled to restitution of all justified expenses that we had to incur for execution of the contract and which are not included in the received payments.
- 6.10. If on-call deliveries are agreed, the goods will be considered released no later than one year after the order.
- 6.11. Purchaser claims against us, due to our fault, other than those specified in 6.5, are excluded.

## **7. Transfer of risk and transport**

- 7.1. If not otherwise agreed, the goods are sold "ex works" (EX W) (ready for shipment). The point in time at which risk is transferred is determined as follows: When sold "ex works" risk is transferred when readiness for shipment is announced. When sold "wagon, truck, mobile crane" (agreed place of shipment), "border", or "destination", risk will be transferred upon transfer to the first freight carrier. When sold "FOB" or "CIF" or "C&F", risk is transferred upon actual crossing of the railing of the ship.
- 7.2. Neither separately agreed quality inspections or trial runs nor commissioning or inspection will affect the regulations with respect to the place of fulfillment and transfer of risk.
- 7.3. Transports occur at the risk of the contract partner, even if freight-free delivery is agreed. We will be obligated to conclude transportation insurance only if this is agreed in writing.
- 7.4. If the contract partner desires a special form of transportation or a special means of transportation, we will invoice this separately. Delivery vehicles must be able to approach the unloading location safely and without hindrance and be unloaded without delay. We must be reimbursed for any additional costs and damages, including third-party claims, resulting from violation of this traffic safety obligation. Loading and unloading the means of transportation is the responsibility of the contract partner, even if we contract a transportation company. In these cases, we will act as the representative of the contract partner.

7.5. In addition, the INCOTERMS valid on the day of contract closure will apply.

## 8. Payments

- 8.1. Payments must be made in accordance with our written order confirmation or in accordance with the contract. If these documents do not contain payment dates, half of the payment must be made upon receipt of the order confirmation; the rest when shipment readiness is announced.
- 8.2. In cases of partial invoices, the corresponding partial payments will be due upon receipt of the respective invoice. This applies also to invoice amounts that exceed the original contract sum through follow-on deliveries or other agreements, irrespective of the agreed payment terms for the main deliveries.
- 8.3. Payments must be made in cash without discounts or charges to our point of payment in the agreed currency.
- 8.4. Payments by wire transfer will be considered complete on the day on which the amount is credited to our bank account.
- 8.5. In cases of payment default, the contract partner will be obligated to pay our total expenses and default interest in the amount of our bank interest, but no less than 8% p.a. above the base interest rate of the Austrian National Bank (OeNB) or the German Central Bank (Bundesbank) and to reimburse all judicial and non-judicial dunning and collection costs (whether through a collection agency or attorney). In the event of payment defaults, the interest may be capitalized up to the day of complaint and non-judicial collection expenses added to the principal. We are also authorized to charge for interest on interest. Additionally, we can insist on fulfillment of the contract and, optionally, delay fulfillment of our obligations up to effectuation of the delinquent payments or other performances, assert an appropriate extension of the delivery period, and/or call due the entire purchase price that remains open.
- 8.6. If circumstances become known to us after the respective contract conclusions which, in our opinion, degrade the creditworthiness of the contract partner, all of our claims, including those from other contract conclusions, will be due immediately. In these cases, we are also authorized to execute pending deliveries, including those from other contract conclusions, only with advance payment or to withdrawal from the contract and demand complete damage compensation for non-fulfillment. The right to redeem any goods delivered with retention of title remains unaffected.
- 8.7. If the payment terms are not fulfilled even after an appropriate payment period, we will have the option of withdrawing from the contract. The contract partner will be required at our request to return previously delivered goods and compensate us for the reduced value of the goods as well as reimburse all justified expenses that we incurred during execution of the contract. With respect to goods that are not yet delivered, in these cases we are justified to provide finished or semi-finished parts to the contract partner and demand in return a corresponding proportion of the sales price.
- 8.8. In the case of payment default, the contract partner is also obligated, at our request, to settle all open claims, including interest, expenses, and dunning and collection expenses through assignment of open and yielding receivables or granting of lien rights to assets, or to provide guarantee in any other suitable manner.
- 8.9. If installment payments are agreed, in the event of non-payment only a single installment equal to the total open amount will be due. Additionally, interest customary in the market in the amount of the base interest rate plus 5% of the due principal must be paid.
- 8.10. Payment receipts will be applied first to costs (expenses), then to interest, and finally to the principal. We can declare different dedications within four weeks of payment receipt. We are entitled also to apply dedicated payments first to the unsecured or the oldest invoices.

## 9. Retention of title

- 9.1. Goods that we deliver remain our property until payment of all claims, irrespective of legal reason, in all cases until payment of claims associated with the object plus interest and expenses. Until this point in time, the purchaser is authorized to dispose, handle, process, or aggregate the goods only with the written approval of the seller. With open invoices, retained title serves as collateral for our balance claim.
- 9.2. If our goods are processed or aggregated (mingled or combined) with objects that do not belong to us, we will acquire joint title to this new item in proportion of the value of our goods to the other items processed or aggregated at the time of the processing or aggregation. Our retention of title extends also to the new item.
- 9.3. The contract partner is obligated to conscientiously store our retained goods for us until payment of our claims. We are authorized to enter property and construction sites at any time and to label our goods as our property or joint property, respectively.
- 9.4. The contract partner may divest the retained goods only in the course of proper business transactions and only if the contract partner is not in payment default. The contract partner is not entitled to other dispositions of the retained goods, particularly to pledging or chattel mortgage.
- 9.5. The contract partner cedes to us even now any claims against third parties, including all secondary rights, resulting from the sale of the retained goods, irrespective of whether unprocessed, processed, or aggregated, up to the amount of the claims owed to us, including interest and expenses, irrespective of whether the retained goods were divested to one or several buyers without or following processing or aggregation.
- 9.6. The contract partner is obligated to properly note in its books or include on its invoices cession of the claim as collateral for our purchase price claim (extended retention of title). Furthermore, it is obligated to inform us of its buyers, to grant us access to its books, and to give us the information and documentation necessary for asserting these claims. It must, at our request, inform its buyer of the cession. We are authorized to reveal the cession to the buyer at any time.
- 9.7. To the extent it fulfills all of its payment obligations to us, the contract partner is empowered, until empowerment is withdrawn, to recover from divestiture the claims ceded to us. The contract partner may not, in contrast, dispose of such claims through cession. The contract partner is obligated to use as payment for our open claim the money that it receives from its buyer in exchange for the products delivered by us.
- 9.8. The contract partner must inform us immediately in writing of any intended assignment or any other third-party impairment of our title to the retained goods.
- 9.9. If the value of the existing collateral for us exceeds the total value of our claims by more than 20%, we will be obligated to release a corresponding amount of collateral of our choice at the request of the contract partner.
- 9.10. We are authorized to withdraw from the contract for non-timely payment and to request surrender due to retention of title. We must issue a credit for retrieved retained goods in the amount of their value, less subsequent value reduction, or in the value of any proceeds from the open-market liquidation to which we are entitled and less all expenses incurred or anticipated through exercising the retention of title and liquidation of the retained goods.

## 10. Warranty and damage compensation

- 10.1. Warranty will be performed for defects that the buyer documents were already present at the time of delivery. If defects that negatively affect usability are documented to us, we will take the defective goods back and replace them with defect-free goods. These claims are invalidated if the contract partner does not, at our request, furnish us with samples (for example: defective parts) of the rejected material without delay.

- 10.2. We alone have the right to choose between improvement or price reduction in fulfillment of warranty claims. The contract partner is not entitled to a right to conversion.
- 10.3. Warranty period is 12 months with single-shift operation or 6 months with multi-shift operation, beginning at the time of risk transfer or at the time of delivery with installation, respectively, no later than the completion of installation. This applies also to delivered objects and services that are permanently affixed to a building or the ground.
- 10.4. The contract partner is obligated to diligently inspect our delivery immediately upon arrival, always with the consultation of an expert. The contract partner must report, immediately after delivery, any defects in the form of a registered letter. Defects that cannot be discovered during such inspections must be reported immediately upon their discovery with immediate cessation of any handling, processing, and use, with elimination of all claims.
- 10.5. Our warranty obligation applies only to defects that appear during compliance with intended operating conditions and during proper use. It does not apply particularly to defects that result from poor installation (arrangement and assembly, insufficient setup, failure to observe the installation and commissioning requirements) on behalf of the contract partner or its agents, failure to observe proper operating conditions and poor maintenance (including careless or improper handling and use of unsuitable materials), poor repairs or changes or those performed without our written approval, or system parts that were not delivered by us. We are not liable for damages that result from the actions of third parties, atmospheric discharges, excessive voltage, and chemical influences. The warranty does not extend to the replacement of parts that are subject to natural and normal wear.
- 10.6. Damage replacement claims of all types against us are excluded to the extent that intentional action or gross negligence on our behalf is not proven. The amount of such claims is limited to the net invoice amount of the goods.
- 10.7. We are not liable for third-party damages and consequential damages, nor for asset damages, direct damages, forgone profit, forgone savings, loss of interest proceeds, and damages from the claims of third parties against the buyer. Furthermore, we are not liable for damages that are not acknowledged and covered by our liability insurance.
- 10.8. In particular, our liability is excluded for all damages associated with the results of fire or explosion, regardless of the cause.
- 10.9. All plans, finished items, statics, parts lists, material excerpts, etc. provided by us must be diligently examined after arrival at the contract partner. If these are not disputed within eight days of receipt of such documents, they will be considered approved. If these documents were not prepared by us, but instead by third parties, we will not be liable for their fault.
- 10.10. With the unconditional conclusion of the contract, the contract partner also forgoes all pre-contractual protective clauses from our side, such as warning obligations or disclosure obligations to the extent we are not accused of intentional action or gross negligence. This applies particularly when the order is issued within the framework of a call for tenders in which the contract partner or a third party appointed by the third party plans and paraphrases our services.
- 10.11. In cases of dispute, we can invoke the defense of insufficient objection even if we have not invoked this claim extra-judicially. Damage compensation claims without previous request for us to remove the defect are excluded.
- 10.12. We are liable for personal damages caused by us or our vicarious agents. For other damages caused by us or our vicarious agents, we will be liable only when we are proven to have exhibited gross negligence. Our liability is likewise excluded for violation of an immaterial obligation. Warranty and damage-compensation claims resulting from tasks that the contract partner ordered our employees or vicarious agents to perform for the purpose of executing the contractually-stipulated services, but which are not part of our scope of service are wholly excluded because our employees are thereby surrendered workers.

- 10.13. If the contract provides for a conventional penalty or a contractual penalty on us, then the judicial right to reduce or abate will apply irrespective of the clauses contained in § 348 of the German Commercial Code (HGB) or § 374 of the Austrian Commercial Code (UGB). If the judicial right to reduce or abate was contractually excluded, then a contractual right to reduce or abate will be considered agreed, which we can assert in accordance with the guidelines of the judicial right to reduce or abate.
- 10.14. The assertion of claims does not authorize the contract partner to utilize the non-fulfilled contract exception, to change the payment conditions, nor particularly to withhold all or some of the payment. The warranty period will not be extended due to correction of defects.
- 10.15. If we initiate a return shipment of defective goods or parts for the purpose of improvement or replacement, the buyer will, unless otherwise agreed, assume the expense and risk of transportation. The return shipment of improved or replacement goods or parts to the buyer will be at our expense and risk unless otherwise agreed.
- 10.16. The defective goods or parts replaced in accordance with this section must be provided to us.
- 10.17. We will be responsible for the expenses associated with a defect removal performed by the contract partner itself only if we have provided our written agreement to this.
- 10.18. We will be liable for parts of the goods that we obtained from vendors specified by the buyer only within the scope of warranty claims due to us by the vendor.
- 10.19. If we produce a good based on the buyer's design specifications, drawings, or models, our liability will not extend to the correctness of the design, but instead to the compliance with the buyer's specifications. In these cases, the buyer will hold us harmless and free of damages for any violation of protection rights.
- 10.20. When accepting repair orders or when modifying or converting old and third-party goods and when delivering used goods we accept no liability to the extent it is not related to our performances. We are liable only for performance of the repair, modification, or conversion in accordance with the order.
- 10.21. Starting at the beginning of the warranty period, we do not accept more extensive liability than is meant for this item.

## 11. Product liability

- 11.1. To the extent that clauses of the German and Austrian Product Liability Laws are obligatory, they are based on the objective contract. The contract partner declares knowledge of all previously published notices and warnings related to the danger of the goods. They are considered as a warning from us. The contract partner is further obligated, when divesting the goods, to comprehensively warn its own contract partners and impose on them an equal warning obligation for the further contract chain. Failing this, the contract partner will hold us harmless and free of damages for all damages related to any legal stipulation whatsoever. The contract partner foregoes recourse against us in accordance with § 12 of the Austrian Product Liability Law (PHG) or §§ 4 and 5 of the German Product Liability Law (ProdHaftG). If the fault was caused by several parties, the contract partner is obligated to first assert claims against the other parties. Compensation claims for property damages are excluded. The contract partner is obligated to enjoin this exclusion on its contract partners in the event of other damage compensation. The contract partner is obligated to conclude an insurance contract in accordance with § 16 of PHG and to assert claims on this insurance before any recourse against us.
- 11.2. The purchased object provides only the security that can be expected based on approval regulations, operating instructions, our regulations on handling and using the purchased object, particularly in view of any required examination, and other notices.

- 11.3. Compensation of property damages that result from the Product Liability Law and product liability claims that can be derived from other regulations is excluded.

## **12. Data protection**

- 12.1. We are authorized to store, transmit, revise and delete personal data of the contract partner within the scope of business transactions.
- 12.2. The parties are obligated to absolute confidentiality to third parties of all knowledge obtained from the business relationships.

## **13. Offsetting and withholding**

Assertion of a right of withholding in favor of the contract partner is explicitly excluded. The contract partner is not authorized to offset its payment obligations to us with its claims against us unless the cause and the amount of these claims have been acknowledged by us in writing or have been judicially defined.

## **14. Invalidity, supplementary standards**

- 14.1. These General Delivery Terms remain otherwise binding even if individual points are invalid. The legally invalid point will be replaced by another point that most closely approximates the intended financial purpose of the invalid point of the contract. The contract partner declares that, in view of the price arrangement that is favorable for him, there is no disadvantage through these General Delivery Terms even if the legal situation shifts.
- 14.2. Pertinent technical and commercial EN standards apply additionally, in the absence of which the corresponding German DIN-Standards or Austrian Ö-Standards apply.

## **15. Place of fulfillment, applicable law and place of jurisdiction**

- 15.1. The court of the corporate headquarters shall be applied as the place of jurisdiction for both contract partners for all disputes derived directly or indirectly from the contract, including foreign exchange or check processes. However, we are also authorized to bring suit at the contract partner's general place of jurisdiction.
- 15.2. The parties can also agree to the jurisdiction of an arbitration court.
- 15.3. The law of the corporate headquarters applies with exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 15.4. We fulfill our contractual obligations at the place of our plant or warehouse or at the location from which we send the goods. The place of fulfillment for all of the contract partner's obligations is our corporate headquarters even if the transfer occurs in accordance with the contract at a different location.
- 15.5. The contract will be transferred to any legal successors of the contract partner or any acquirer of the entire company of the respective contract partner in accordance with the advance approval granted here. The contract partner is obligated to transfer the contract to any legal successor or acquirer of the company. Such changes or changes to the participation relationships of one contract partner do not affect the contract in any way.

