

General Terms of Delivery, Performance and Payment

As of: 01.03.2022

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(I) Area of applicability and form requirement

1. KAESER Kompressoren SE's General Terms of Delivery and Service listed below shall apply to all deliveries and services of KAESER for companies in the meaning of section 14 German Civil Code, legal entities governed by public law and special trusts. All legal relations – also future ones - between KAESER and the Buyer shall be based on KAESER's terms of sale as amended. Any differing terms of the Buyer shall not become content of the Agreement, even if an order is accepted.

2. If individual agreements have been concluded, these shall take precedence. If no special provisions have been agreed, they shall be supplemented by these General Terms of Delivery and Performance.

3. Any declarations and notifications from the Customer to KAESER, e.g. setting deadlines, reporting faults, declaring a withdrawal from the contract or price reduction, shall only be effective if made in text form.

(II) Offer, offer documents and/order confirmation

1. Offers shall always be non-binding, in so far as they are not limited by time.

2. Any documents belonging to the offer, such as images, descriptions and drawings, dimensional and weight specifications, are only approximate unless they have been expressly specified as being binding.

3. KAESER shall retain right of ownership and copyright to quotations, drawings, samples and other documents of a physical and non-physical nature, also in electronic form. These may not be made accessible to third parties without consent from KAESER and must be returned without delay on request. KAESER undertakes to make the information and documents designated by the Buyer as confidential only accessible to third parties following consent from the Buyer.

4. Unless otherwise specifically agreed, a contract shall come into force with the written order confirmation from KAESER. This order confirmation shall be decisive for the content of the contract, if applicable in connection with the product description to be agreed with KAESER.

(III) Prices and terms of payment

1. The prices shall apply ex works (Incoterms@2020) and shall not include packaging, freight, postage and insurance. VAT in the currently valid amount shall be added to the prices.

2. In the case of continuous business dealings and payment conduct in keeping with the agreement by the purchaser, the latter must pay KAESER's invoices within 10 days with a 2% discount or within 30 days without discount. Before the delivery of the goods, KAESER shall be entitled to demand payment in advance or cash on delivery from Buyers with whom no business dealings have taken place yet. For orders exceeding EUR 5,000.00, KAESER shall be entitled to demand that 1/3 of the invoice amount is paid on receipt of the order confirmation, 1/3 of the invoice amount after notification of readiness for shipment and 1/3 30 days after the invoice has been issued. For Buyers who have breached the previously agreed payment obligations. KAESER reserves the right to demand a down payment as security before performing the service/delivery.

3. Cheques and bills of exchange shall only be accepted in lieu of performance. Bills of exchange must be eligible for discount. Any discount and collection fees shall be borne by the Buyer and shall be due with issue of the invoice immediately without any discount.

4. The Buyer shall only have the right to retain payments or set off counterclaims if its counterclaims are undisputed or have been deemed res judicata or ready for a decision.

5. In accordance with the statutory provisions, KAESER is entitled to refuse performance and might be entitled to withdraw from the contract if after conclusion it is evident that its claim to the purchase price is at risk due to the Buyer's inability to meet its payment obligations. KAESER can in this case declare its withdrawal immediately, if a non-fungible product is to be produced. The provisions regarding the dispensability of setting a deadline shall always remain unaffected.

(IV) Delivery period and delivery delays/refusal to accept delivery

1. The delivery time shall start with the date of the order confirmation, however not before agreeing on and clarifying all necessary technical questions and documents. In order for KAESER to meet delivery period, it is assumed that the Buyer has met all its obligations such as the provision of documents, authorisations and releases or a down-payment. If this is not the case, the delivery time shall be appropriately extended. This shall not apply in so far as KAESER is responsible for the delay.

2. Upholding the delivery period shall be subject to correct and punctual delivery by KAESER's suppliers. KAESER shall provide notifications of delays as soon as possible once it has indications a delay may be imminent.

3. The delivery period shall be deemed met, if before its expiry the delivery object has left KAESER's plant or notification of readiness for shipping has been issued. If an acceptance has to take place, unless a refusal of acceptance is justified, the acceptance date is decisive, or alternatively the notification of preparedness for acceptance.

4. If the shipping or the acceptance of the delivery object is delayed for reasons for which the Buyer is responsible, starting one month after notification of the preparedness to deliver/for acceptance, it shall be charged the costs incurred,

in particular for the storage. In the event of storage at KAESER's plant, KAESER may charge 0.5% of the invoice amount per month started, at the maximum 10% of the contractual value of the delivery objects not accepted. The Buyer shall be at liberty to maintain that KAESER's warehousing costs are lower and provide proof hereof. KAESER is entitled to otherwise dispose of the delivery object after a fair deadline has expired in vain and to deliver the Buyer with a suitable extended deadline. KAESER is entitled to any further reaching claims, especially rights from sections 293 and following (304) German Civil Code by setting off the services of the Buyer. The same applies to rights of the Buyers under sections 280 and following German Civil Code and for the claims for performance.

5. Upholding the delivery period assumes that the contractual obligations of the Buyer have been fulfilled.

6. The Buyer may withdraw from the contract without setting a deadline, if the entire performance becomes definitely impossible for KAESER before the passage of risk. The Buyer may additionally withdraw from the contract, if in the case of an order, executing one part of the delivery becomes impossible and the Buyer has a legitimate interest for objecting to a part delivery. If this is not the case, the Buyer must pay the contractual price due for the part delivery. The same shall apply in the case of KAESER being unable to perform. If the impossibility or the inability to perform begins during the acceptance delay or if the Buyer is responsible for such circumstances, it shall remain committed to provide counter-performance.

7. If the Buyer without due cause refuses to take delivery or accept the contractual object, delivery or service, KAESER may set the Buyer a suitable deadline for delivery to be taken or acceptance. If the Buyer has not taken delivery of or accepted the contractual object with the deadline it has been set, KAESER is entitled, without prejudice of the right to performance of the contract, to withdraw from the contract or to demand compensation due to non-fulfilment. In any case, KAESER may in this case, also without proving the actual damage incurred, and without prejudice to the possibility of claiming for a higher actual damage, demand a flat sum compensation to the amount of 25% of the net order value for non-accepted standard products and to the amount of 100% for special customisations which cannot be sold elsewhere. The Buyer has the right to claim and prove that the actual damage suffered by KAESER was lower.

(V) Passage of risk, acceptance

1. The risk shall pass to the Buyer when the delivery object has left the works, also if part deliveries have been made or if KAESER has assumed other services, such as shipping charges or delivery and installation. If an acceptance is required, this shall be decisive for the passage of risk. Acceptance must be carried out without delay on the acceptance date, or alternatively after notification from KAESER regarding the readiness to accept. The Buyer may not refuse acceptance if the fault present is insignificant. The shipment shall be insured by KAESER at the expense of the Buyer against transport damages and at the request and expense of the Buyer against other insurable risks.

2. If the shipment and/or the acceptance is delayed or does not take place at all due to circumstances for which KAESER cannot be held responsible, the risk shall pass to the Buyer on the day of notification of the readiness to ship and/or readiness for acceptance. KAESER undertakes to conclude the insurance policies which the Buyer requests at the expense of the Buyer.

3. Part deliveries are permissible in so far as they are deemed reasonable for the Buyer.

(VI) Warranty

1. KAESER shall first provide the warranty for faults through subsequent improvement or replacement as it sees fit. Parts which have been replaced shall become the property of KAESER.

2. In order for KAESER to carry out all improvements and delivery of replacement parts which KAESER deems necessary, after consulting with KAESER, the Buyer must grant KAESER the necessary time and opportunity after agreement with KAESER. Only in urgent cases, e.g. endangering the operational safety or to avoid disproportionately severe damage, does the Buyer have the right to eliminate the faults itself or through third parties and demand compensation from KAESER for the necessary expenses incurred. If a claim is made against KAESER by the Buyer by way of recourse, after a claim has been made against the Buyer itself by its customer, section 445a German Civil Code shall apply to the legal enforcement.

3. In so far as the complaint is justified, KAESER shall bear the costs resulting from the subsequent improvement or delivery of replacement parts, for the replacement part and/or the subsequent improvement of the faulty parts and the costs for installation and disassembly as well as for transport and disposal. A claim regarding the disassembly and installation work cannot be lodged against KAESER in accordance with section 439 para. 3 s. 1 German Civil Code if the Buyer installed the faulty part itself or had it installed by a third party although it was aware that the part was faulty. The same shall apply if the Buyer was unaware of the fault of the part before installation due to gross negligence. The Buyer may in this case only assert a claim if KAESER hid the fault fraudulently or made a guarantee for the condition of the object which is affected by the fault. In any case, KAESER shall have the right to choose to carry out the disassembly and installation including disposal itself or to pay compensation for the appropriate expenses if the Buyer cannot assert any overriding legitimate interest either to carry out the disassembly and installation itself or to have it done by a subcontractor it has hired. When assessing if the expenses are appropriate, especially as regards transport, the contractually agreed or foreseeable place of performance is to be taken into consideration. If the Buyer unexpectedly carries out the installation of the item delivered by KAESER at a remote location, KAESER only has to compensate the expenses which would have been incurred had the installation taken place at the contractually agreed place of performance or at the foreseeable installation location.

4. In the framework of the statutory provisions, the Buyer has a right to withdraw if KAESER – taking into consideration the statutory exceptions – allows a reasonable deadline it has been set for subsequent performance or delivery of replacement parts due to a fault, lapse without remedy. If there is only an insignificant fault, the Buyer only has the right to reduce the contractually agreed price.

5. In particular no warranty shall be provided in the following cases:

a) Unsuitable or incorrect use, incorrect installation or commissioning by the Buyer or third parties, natural wear and tear, faulty or negligent handling, incorrect maintenance, unsuitable operating materials, poor construction work, unsuitable foundation, chemical, electrochemical or electrical influences unless these are KAESER's fault.

b) Not using an engine motor circuit breaker.

c) Incorrect subsequent performance for the contractual object by the Buyer or a third party it has appointed. The Buyer shall be entitled to assert warranty claims and rights if it can prove that the existing circumstances were not the cause for the damage.

d) The customer claims that the contractual object does not meet his expectations in terms of its condition, quality and functionality as a reason for warranty, provided that the customer did not inform KAESER of his expectations before the contract was concluded and KAESER did not know them or should have known them.

6. The precondition for the assertion of warranty claims is additionally that the Buyer has correctly exercised the examination and complaint obligations to which it is committed in line with section 377 German Commercial Code.

7. If the Buyer chooses to withdraw from the contract due to a legal and/or material defect following unsuccessful subsequent performance, it shall not be additionally entitled to any claims for damages due to fault. If the Buyer chooses compensation following unsuccessful subsequent performance, the goods shall remain on its premises if this can be reasonably expected. The compensation shall then be limited to the difference between the purchase price and the value of the faulty product. This shall not apply if KAESER has caused the breach of contract maliciously.

8. The specific product description of the manufacturer of the goods on which the contract is based shall be deemed as agreed for the quality of the goods. Any public statements, praise or advertising of the manufacturer or third parties shall not constitute any contractual performance specifications of the goods.

9. If the Buyer receives faulty assembly instructions, KAESER is solely obligated to supply fault-free assembly instructions, but only if the fault of the assembly instructions prevents a correct assembly. In the event of assembly problems which are due to faulty assembly instructions, the Buyer must contact KAESER by phone, and KAESER shall provide support and advice during the standard and known business hours.

10. The Buyer does not receive any guarantees in the legal sense from KAESER as a general rule. Any guarantees of third party manufacturers shall remain unaffected.

11. Regarding its ability to trade and the actual and legal operational availability, KAESER guarantees delivery and services in the territory of Germany unless the deliveries or services by KAESER are expressly contractually intended to be provided in or for another country. It is therefore solely the Buyer's responsibility to ensure that in the case of intended delivery or use of the products abroad any import regulations, embargo rules, certification regulations and all regulations which must be observed for the use and operation of the deliveries in force there are complied with. This shall also apply to upholding the operating prerequisites typical for the country (e.g. voltage and frequency of the power grid, upholding safety regulations etc.).

12. KAESER cannot be held liable for faults in used goods except in cases of figure VII 2.

13. The warranty period shall be – with the exception of claims from the product liability law for which the statutory provisions apply - 1 year from delivery / acceptance of the goods/service. In the event of faults to a structure or in the event of faults to an object, which in line with its standard application was used for a structure and caused the faultiness of said structure, the warranty period shall be 2.5 years. If the Buyer is in default with the acceptance of the goods/the work, the warranty period shall come into force at the time at which KAESER offered the goods/the work to the Buyer ready for acceptance. With the delivery of the replacement, the warranty period shall only start for the replacement delivery and shall not apply to all the other components which were delivered free of faults.

14. For warranty claims for defects, which the Buyer has asserted against KAESER by way of recourse pursuant to section 445a German Civil Code, the limitation provisions of section 445b German Civil Code shall apply without any restrictions.

15. KAESER shall be entitled to supply the Buyer with spares of equivalent quality to the original ones if the latter are no longer available. This shall in particular also apply in the event that production ceases for contractual objects.

(VII) Liability

1. KAESER shall be liable irrespective of whatever reason, only in cases of intent and gross negligence.

In cases of slight negligence, KAESER shall only be liable

a) for damage from injury to life, body and health,

b) for damage from the breach of an essential contractual duty, limited to the replacement of foreseeable typically occurring damage. Essential contractual obligations are obligations which if not performed prevent the due execution of the contract and on the upholding of which the Buyer regularly trusts and may trust.

2. The above-mentioned liability limitations shall not apply if KAESER has fraudulently concealed a fault or has taken over a guarantee for the quality of the goods. KAESER's liability according to the product liability act shall also remain unaffected.

(VIII) Limitation

Unless the limitation due to claims for defects is already covered in figure VI. 13, the statutory provisions of sections 195 and following German Civil Code and/or the relevant limitation provisions from special acts shall apply to the limitation.

(IX) Reservation of ownership

1. All deliveries and services shall be made under the reservation of ownership. Delivered goods shall remain the property of KAESER up to the full payment of the purchase price, fees and all other accounts receivable due to KAESER from the Buyer from the current business relationship.

2. If the goods are processed or utilised by the Buyer, said processing or utilisation shall take place for KAESER, which is thus deemed as manufacturer in the meaning of section 950 German Civil Code and gains ownership of the intermediate or final product. When processed together with other products which do not belong to the Buyer, KAESER shall gain co-ownership in the new item in the ratio to the value of the goods it has delivered to the value of the foreign goods at the time of processing.

3. The Buyer is entitled at any time to irrevocably resell the delivered goods and to relicense them in the framework of the agreement made in the course of its due business operations. The Buyer already assigns now, for security purposes, all accounts receivable and ancillary claims to the amount of the respective delivered goods in connection with the resale and the business relationship with the Buyer's purchasers. KAESER is entitled to notify the Buyer's purchasers at any time of the assignment of the accounts receivable. At KAESER's request, the Buyer must provide KAESER without delay with the names and addresses of the purchasers.

4. The Buyer undertakes to insure the delivery object at its own expense against theft, breakage, fire, water and other insurable damage as long as KAESER holds reservation of ownership over the delivery object and on request must provide evidence of said insurance to KAESER.

5. The Buyer may neither pledge the delivery object as security nor offer it up as security. In the event of attachment or seizure or other dispositions by third parties, the Buyer must inform KAESER without delay. If KAESER suffers any losses due to not being informed or only informed too late (e.g. by forfeiting its rights), the Buyer must provide compensation.

6. In the event of behaviour by the Buyer in violation of the contract, in particular in the case of default of payment, KAESER is entitled to take back the goods after issuing a dunning notice and the Buyer is committed to relinquish the goods.

7. The assertion of the reservation of ownership as well as the attachment of the delivery object by KAESER shall not be considered a withdrawal from the contract unless the provisions regarding the consumer credit agreement (sections 491 - 498 German Civil Code) apply.

8. At the Buyer's request, KAESER undertakes to release the securities it is entitled to, if the realisable value of the securities exceeds the accounts receivable to be secured by more than 20%. KAESER may choose freely which securities to release.

(X) Industrial property rights, copyrights, non-disclosure

1. All rights to patents, industrial designs and models, trademarks, get-up, design and other industrial property rights as well as copyrights for the matter of the agreement and services shall remain with their rightful owners. This shall in particular also apply to product designations, for software and for name and marking rights.

2. The parties to the agreement undertake to handle all commercial and technical details not known to the public, which become known to them due to the business relationship, as a business secret.

3. Any drawings, tools, software, dies, fixtures, models, templates, samples and similar objects, which were delivered, used or made available by KAESER, are and remain property of KAESER. They may not be given or otherwise made accessible to unauthorised third parties. If the above mentioned objects were manufactured by KAESER, they shall become the property of KAESER already during the creation and manufacturing. The duplication of such objects is only permissible in the framework of the operational requirements and in line with the legal provisions governing patents, trademarks, copyrights and competition.

4. The contractual parties of the Buyer must be committed to act accordingly.

5. The Buyer may only advertise its business relationship with KAESER following previous written permission.

(XI) Collision with rights of third parties

1. If suit is filed against the Buyer by third parties due to the direct infringement of property rights, including copyrights due to deliveries and/or services by KAESER, KAESER shall indemnify the Buyer with regard to the recognised claims for damages against it or claims for damages which have been established by way of settlement well as with regard to the court and legal fees, however subject to the following conditions:

a) The Buyer shall inform KAESER without delay about the suit or warning by third parties, without previously having initiated any steps to defend against it and/or without having involved a lawyer. Immediate measures which have to be introduced, before KAESER can be informed shall be exempted herefrom.

b) Only KAESER is entitled to introduce defence measures and entrust lawyers with carrying out the defence measures and/or issue statements and/or carry out other negotiations. At KAESER's request the Buyer shall hire a lawyer to represent it at KAESER's expense.

c) The Buyer shall inform KAESER without delay and continuously about the matter and shall in particular provide the necessary information and documents.

(XII) Data Security

KAESER collects, processes and uses personal data of the Buyer in compliance with the relevant data protection provisions, only. Accordingly, any personal data will be only used as per the legal regulation or with the official permission of the Buyer.

(XIII) Place of performance and place of jurisdiction, contractual language

The place of performance and place of jurisdiction for all claims from the business relationship, especially from deliveries and services to the Buyer is Coburg, even if sales or services have been handled by a branch. This place of jurisdiction shall also apply to disputes regarding the creation and effectiveness of the contractual relationship. KAESER may additionally file suit at the court responsible for the seat of the Buyer or at any other legally responsible court. Solely German law shall apply, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(XIV) Ineffective clauses

1. If one or several clauses of these terms are or become ineffective, the legal effectiveness of the remaining clauses shall remain unaffected herefrom.
2. The statutory provisions shall apply in place of the ineffective clause. The same shall apply to any unintended gap in these terms.