

General Production and Delivery Conditions of KBA-Industrial Solutions AG & Co. KG

(hereinafter “the supplier”)

These General Production and Delivery Conditions (hereinafter “production conditions”) are applicable to:

1. Individuals who conduct trade in a commercial or freelance capacity at the time of entering into the contract (entrepreneurs);
2. Legal entities or special funds under public law; (hereinafter “customer”).

Should there exist individual contractual agreements between the supplier and customer concerning the points regulated in these production conditions, then they will prevail. The General Production Conditions of KBA-Industrial Solutions AG & Co. KG are in this respect only of a supplementary nature.

I. Scope

1. These general production conditions are applicable between KBA-Industrial Solutions AG & Co. KG (hereinafter “supplier”) and the customer ordering unit production (hereinafter “customer”), unless otherwise expressly agreed in writing by the contract parties, and apply to production of machines, including planning if necessary, and assembly of machines, parts or other general assemblies as well as to all other work carried out by the staff of the supplier. The use of the term “production” within these conditions always includes potential planning and assembly services and/or components from the supplier, depending on context.
2. Divergent terms and conditions on the side of the customer do not become part of the contract when a job is accepted.
3. If production occurs on the customer’s premises in conjunction with machine deliveries from a company connected to the supplier according to paragraph 15 and following of the Stock Corporation Act, then that company’s General Delivery Conditions will also apply.
4. The supplier reserves all property rights and copyrights for samples, cost estimates, designs, attachments, illustrations, plans, descriptions and similar information in physical or immaterial form (including in electronic form); these may not be made accessible to third parties.
5. Collateral agreements and changes require written confirmation from the supplier.
6. Should individual provisions of these conditions be or become ineffective, void, incomplete, contestable or impracticable, then the applicability of the other provisions shall remain unaffected. The contract parties undertake to replace any ineffective, contestable, impracticable or void provisions with others that fulfil the intended commercial purpose of those provisions or fill any created gaps in a similar spirit.

II. Price

1. Production shall be billed according to time and/or material weight in accordance with the supplier’s applicable current cost rates, unless differing terms have been expressly agreed.
2. The cost of taxes and charges that the supplier is to pay to authorities, communal administration or government locations in the country where production takes place, shall be borne by the customer and included in the invoice.
3. In addition, value-added tax at the respective rate set by law is to be paid to the supplier.

III. Payment terms

1. Invoices are to be paid in full immediately upon receipt. Retention of sums owed without compensation is not allowed.
2. a. If the customer is in arrears with payments, including those for a delivery transaction, then the supplier can postpone the fulfilment of his/her own obligations until the delayed payments are made, unless the amount in arrears is the result of an act or omission on the supplier’s behalf.
b. If the supplier acts simultaneously as the deliverer of machines or components to be assembled, then the payment due date of the delivery contract is extended to however long the payment default lasts.

IV. Production, assembly and delivery times

1. All details regarding production and delivery times are only approximate values.
2. If, as an exception, a production or delivery deadline is designated as binding, then it will count as being met when the product is ready for delivery or collection (where agreed) before the deadline’s expiry.
3. The time of production and/or delivery is however essentially dependent on the arrangements of the customer, in particular on quantity and quality of the provided materials, plans, drafts etc. Exceeding the stated production or delivery time will not permit the customer to demand compensation beyond the value stipulated by point 5.
4. If production or delivery is delayed by action related to labour disputes, including strikes and lockouts, or circumstances arising from beyond the supplier’s control, then an appropriate extension of the production or delivery deadline will take effect. This also applies when such circumstances take place after the supplier has fallen behind. The customer will bear costs arising from a delay.
5. If the customer suffers damages as a result of the supplier’s delay, for which the supplier is also at fault, then the customer is permitted to demand compensation (in the form of a lump compensation amount). This sum amounts to 0.5% for every further completed week after a waiting period of 2 consecutive completed weeks, however the total sum may only be 5% of the respective price for the part of the contracted project being assembled by the supplier, the part which cannot be used in time as a result of the delay. The business remains at liberty to show evidence of non-existence of or a lower value for the damage incurred.

V. Risk assumption, delivery

1. The customer assumes the risk associated with the product, i.e. of damage or failure of the object at the product’s location.
2. Irrespective of point 1 in this paragraph, delivery shall occur *ex works* at the business address of the customer’s respective working location according to Incoterms® 2010, which will be given to the customer two weeks after ordering at the latest.

VI. Acceptance of the assembled machine, assembly or components

1. The customer is obliged to accept to the product as soon as he/she has seen the finished product and any contractually obliged trial of the assembled delivery item has taken place.
2. If the product proves not to be in accordance with the contract, then the supplier is obliged to repair any defects at his/her own costs. This does not apply if the defect is irrelevant to the interests of the customer or arises from a circumstance attributable to the customer. If an insignificant defect is present, the customer cannot refuse acceptance if the supplier expressly recognises his/her obligation to repair the defect.
3. The customer is to confirm the orderly operation of the product with the supplier or his/her representative in writing, using a form intended for this as appropriate.
4. If the acceptance is delayed and the supplier is not at fault, then acceptance will be considered as successful after the expiry of two weeks after the supplier providing notice about the finished product.
5. Through acceptance the service will be considered as accepted according to contract.

VII. Warranty

1. To the exclusion of all other claims of the customer and with reference to paragraph 8, the supplier guarantees to eliminate any defects in the product. The method of rectification remains the choice of the supplier.
2. The customer must notify the supplier immediately of any defect uncovered and determine an appropriate deadline for repairing said defect.
3. If the repair of the defect fails definitely, the customer can demand a reduction of the contractual amount. The customer can only withdraw from the contract if the product remains demonstrably of no interest to the customer and the defect is not insignificant.
4. The supplier's warranty obligation does not exist if the defect is insignificant for the interests of the customer or stems from a circumstance attributable to the customer.
5. The warranty does not cover damages incurred for the following reasons:
Natural wear, erroneous or insufficient maintenance, inappropriate equipment, not following the operating manual as well as other reasons which the supplier does not have to state.
6. If a production component supplied by the supplier is damaged during production work and the supplier is at fault, then he/she must return it to operating condition at his/her own costs.

VIII. Limitation of liability

1. The supplier is not liable for defects arising from circumstances for which the customer or his/her agents are at fault.
2. The supplier's liability is voided if the customer's staff or third parties modify the product or perform repairs without permission from the supplier.
3. The supplier is liable for damages – for whatever legal reasons – other than those arising by themselves on the product or assembly object only in the following situations:
 - a. Intent
 - b. Gross negligence
 - c. Culpable injury of life, body or health
 - d. Defects which he/she hid from the client or whose absence he/she guaranteed
 - e. Personal or object damages in so far as liability is enforced by the Product Liability Law

If culpable violation of essential contractual obligations is proven (that is, obligations that shape the nature of the contract and which the customer can reliably trust), then the supplier will also be liable for cases of gross negligence and slight negligence, the latter limited to contract-typical damages that can reasonably be foreseen.

Further claims are excluded.

IX. Limitation period

All claims from the customer, for legal reasons, expire after 12 months at the latest. For warranty claims, the time of the declaration of readiness for acceptance is the determining date. For claims according to paragraph 4 a) through to e), the periods of time set by law are applicable.

X. Production outside of the supplier's premises, non-contractual work, enticement

1. Work which is not carried out in one of the production premises of the supplier (excluding correctional work in the case of defects) requires a separate agreement; in this respect these conditions apply for such cases only as an extension or an alternative.
2. The customer is not permitted to enlist the supplier's staff for services which do not fall under the contract.
3. The customer may only employ production staff for work which is duly billed with the supplier.
4. The customer is obliged to refrain from enticing production staff to work for him/her.
5. In case of actions to the contrary, the customer is obliged to pay compensation.

XI. Place of jurisdiction, applicable law

1. The deciding law for legal relations between domestic parties is that of the Federal Republic of Germany and applies to all legal relations between the supplier and customer, excluding UN sales law.
2. All disputes arising from or in combination with this contract are to be heard by the district court (Landgericht) responsible for the matter and place where the head office of the supplier is located. The supplier is entitled to assert his/her claims at the court responsible for the customer.