

Terms of delivery and sale, v.03-2016

Kallesoe Machinery A/S

1. Generally

Any delivery from Kallesoe Machinery A/S, CVR. 32 89 53 44 (hereafter KM) is based on these terms of delivery and sale, being binding for all deliveries between the parties and thus disregards any agreement or practice which go against the terms, including conditions drawn up and submitted by the Purchaser, unless otherwise stated in the order confirmation sent by KM.

If these terms should not be applicable or not sufficient the provisions from ORGALIME SE 01 apply as a supplement.

The terms of delivery and sale apply for the delivery of a physical Product, for the delivery of an output of work and for the delivery of a combination of both.

When ordering a Product, the Purchaser expressly accepts our general business conditions. Oral agreements or agreements over the phone that deviate from our general business conditions only become binding after written confirmation.

2. Prices

All prices shown in current price lists, quotations, invoices, etc. are before taxes and other charges. The prices are current price, ex. stock. Discounts and other deviations from list prices occur only after additional agreement. In case of changes in exchange rates, commodity prices, tariff and tax rates, transportation costs and other factors that are outside KM's control, KM reserves the right to change the agreed prices accordingly until the time of delivery. KM also reserves the right to change the stated prices without prior notice.

Possible costs for freight and packaging will be put on the invoice.

3. Payment Terms

Payment terms are stated in the order confirmation.

The payment is due according to the payment terms valid at any time, unless otherwise stated in the order confirmation or agreed in writing. If payment is not made on time KM reserves the right to add interests on the at any time overdue payment, counting from the date of payment and 2 % for each month thereof.

In case the Purchaser fails to pay, whether the Purchase is maintained or cancelled, KM is entitled to stop all work on and all deliveries of the order agreement made with the Purchaser until all due payments are paid. The Purchaser is not entitled to stop KM's claims by offset.

4. Product information

Before an order is initiated the Purchaser must approve the layout sent by KM and confirm the measurements specified in the layout. In the event that the Purchaser provides a factory layout to KM, this layout must be in a file format approved by KM, and it is buyer's responsibility to ensure that the layout is correct and complete

All drawings and technical documents relating to the delivery described in the order confirmation and submitted by one party to the other prior or subsequent to the formation of the Contract shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party cannot, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be copied or reproduced.

KM has no obligation to provide drawings and documents on which the manufacturing of the Product or the spare parts is based. If the Purchaser wishes to be supplied with drawings with calculations etc. this will be invoiced according to additional agreement.

5. Order Terms

The order is put down with the current prices for the order day, unless otherwise agreed between the parties.

Information on the order confirmation regarding delivery times, prices and other are stated by best estimate and apply from the date on which KM has obtained all necessary information needed in order to initiate the order.

Orders can only be cancelled by prior agreement with KM.

6. Inspection and testing

All products are inspected and tested by KM prior to delivery.

The Purchaser may participate in the FAT-test if agreed between the parties in the order confirmation or if otherwise agreed. Unless otherwise agreed in writing, FAT will take place during normal working hours, and all additional costs associated with the Purchaser's participation are to be paid by the Purchaser. In the event that the FAT required by the Purchaser are more extensive than KM's usual one, the specifications for this testing must be approved by KM at the signing of the order confirmation, and KM is entitled to demand separate payment.

KM will give the Purchaser a seven days' prior written notice of the time and place for the FAT to give the Purchaser's representative the opportunity to participate.

7. Delivery and packaging

Deliveries are made ex works and the Purchaser bears all subsequent risks of accidental damage to the goods. This applies irrespectively of whether KM under the Agreement bears the costs of transport. Any insurance against damage to the goods after delivery is to be arranged by the Purchaser.

KM does not accept returned packaging.

8. Reception

Before receiving the Product, the Purchaser must ensure that all installations on the site are in order and ensure that all facilities are of such a type and in such a condition that the installation of the Product can take place without delay. If so agreed, necessary staff is to be made available as well as all necessary equipment, including cranes and transport systems.

If the Purchaser refuses to receive the Product after expiration of the scheduled delivery date, KM is entitled, without prejudice to its right to claim compensation for any loss or any damage of the Product due to cancellation or breach of contract, to invoice the Purchaser for all additional costs as a result of the Purchaser's refusal, in the case of which KM is entitled to place the Product in storage on the Purchaser's account and to claim reimbursement from the Purchaser for the costs that KM may run into in order to transport the Product to storage and to charge the Purchaser for the difference between the agreed price and the resale price obtained from a third party.

9. Documentation

With the Product follows one hard copy of the user's manual, possibly with part lists and diagrams. If the Product has been given a login to KM's website the spare parts lists and diagrams are basically only to find there.

The user's manual is written in official language of the country in question unless otherwise agreed in the order confirmation; all other documentation is written in Danish or German or English.

If the Product requires extensive running-in after or in connection with the delivery and installation at the Purchaser's, or if changes in the operation of the Product are expected to occur during the running-in, KM reserves the right to hand over a preliminary user's manual only. In that case, the final documentation must follow as quickly as possible after completion of the running-in, i.e. when the operation is finally determined.

10. Claims and defects

At a SAT-test or at the reception of the Product, the Purchaser must undertake a thorough examination of the Product to ensure that the delivered Product is free of defects. KM cannot be made responsible subsequently for defects that should have been detected at this SAT or in this examination.

All claims, objections, etc. must be advanced to KM in writing immediately after the defect was detected or could have been detected, not later than 3 months after delivery. Failure to timely complaint will result in the Purchaser missing his or hers power of claims of non-fulfilment.

If the Purchaser has brought the Product into service, delivery will always be regarded as having been made. Hereafter, the Purchaser cannot subsequently bring to notice that the Product contained significant defects.

In case of a complaint about the Product, KM must have access to inspect the Product and to carry out control measurements on site, having sent a two days' prior written notice to the Purchaser.

Any return of the Product requires the prior written agreement with KM and must be done in accordance with KM's instructions. Products returned to KM without KM's prior approval will not be credited to the Purchaser's account, and the Purchaser will remain under the obligation to pay the agreed price in accordance with the stipulations of the Agreement.

11. Liability/warranty

KM guarantees that the Product meets the specifications stated in the order confirmation, provided that Product is used in accordance with the relevant instructions.

In this context the Purchaser bears full responsibility for the selection of the Product. This responsibility includes that the Product can function with the Purchaser's products in the Purchaser's intended operational environment, and that in all it can live up to the Purchaser's expected results. KM only has (joint) responsibility for this, if KM expressly has guaranteed a certain result in the contract or order confirmation.

The warranty is valid one year from shipment of the Product in accordance with the Agreement. The warranty applies from the day the Product is brought or could have been brought into service, but the warranty is never valid for more than 12 months from the invoice date. Any warranty work will be done only during normal working hours.

The warranty lapses if the present terms of delivery and sale are not met. The warranty for a delivered Product also lapses if:

- KM's service technicians are not allowed by the Purchaser to make two service visits within either one year or 1800 working hours.
- the Purchaser or a third party who is not a service technician approved by KM has installed, adjusted or otherwise affected the Product.
- a part or parts of the Product in question are modified, or if parts from the Product are replaced with parts from another manufacturer without the prior written consent from KM.
- the product is used for purposes other than originally specified.
- installation, use and maintenance of the Product are done otherwise than in accordance with the instructions, specifications and operating instructions given by KM or with safety rules normally associated with general machine safety.
- materials or semi-manufactured articles delivered by the Purchaser or materials, instructions and/or procedures prescribed by the Purchaser turn out to be unfit for this purpose.

The warranty does not cover wearing parts or normal wear.

Liability Conditions:

- KM is not liable for any losses that were reasonably unforeseeable or for loss of profits, including loss of expected economies, goodwill, loss of or damage to property or trademarks, or other indirect damages or losses that may arise with this Agreement.
- KM is only liable for the function of the Product as described in the order confirmation, not for the quality of the materials being handled, worked and/or processed by the Product.
- Special purchase conditions or specific requirements to the product on the part of the Purchaser, communicated for example in the Purchaser's order confirmation or the Purchaser's general conditions of purchase are not binding for KM, unless KM has agreed with the special terms in writing.
- Any advice given by KM that does not narrowly relate directly to KM's products are purely to be considered as guidelines and cannot result in a consultancy responsibility for KM.
- KM is not liable for the degradation of the Product when due to the Purchaser's wrong storage conditions.
- KM's total liability, if such liability is proven, is explicitly limited to a maximum amount corresponding to the amount that the Purchaser has paid to KM according to the Agreement under which KM's liability was proven.

KM is only liable for damage or loss caused by KM's Product, under general liability rules of Danish law.

12. Cancellation/alteration of the Agreement

Cancellation or alteration of an agreement is only possible with KM's written consent. The consent is always conditioned by the Purchaser compensating KM for costs and losses due to the cancellation or alteration, however at least an amount equal to 15% of the agreed price excl. VAT.

13. Denunciation

If a party fails to fulfil or perform its obligations under this Agreement, and if the defaulting party does not (if possible) bring the non-fulfilment to an end within 30 calendar days after having received the complaint by registered letter from the other party, then the injured party is entitled to give notice to terminate the Agreement without prejudice to such party's other rights and remedies under these terms.

14. Computer software

Computer software includes software that is included in the product and which contains KM's software and/or sublicensed software. The Purchaser acquires the non-exclusive right to use the KM's software only in the use of the Product. KM retains the intellectual property rights to the KM's software even when such software has been produced specially for the Purchaser. KM is not obliged to provide the source code for the Supplier's Software.

Unless otherwise agreed in writing, KM is not obliged to provide the Purchaser with updated versions of the computer software.

KM is not liable for any claim in respect of infringement which is based on:

- use of the computer software by the Purchaser in a manner or place which has not been agreed and which the KM should not reasonably have foreseen, or
- changes to the computer software undertaken by the Purchaser

KM has no liability towards the Purchaser for any infringement of third parties' rights caused by the Purchaser's use of the computer software.

15. Force Majeure

KM is not liable for failure to meet obligations in connection with the quotation or the order confirmation by reason of force majeure, including war, mobilisation, national/local riots and disturbances, intervention by government or by local authorities, strikes, boycotts or lock-out, import or export embargo, currency restrictions, natural disasters or other weather conditions, fire, general shortages or seizure. Or by reason of shortages of labour, transport or energy or of any reason besides these being out of the party's control and impeding the fulfilment of the contract.

The force majeure clause always applies, regardless if the impediment leading to non-fulfilment hits KM itself or one of KM's sub-contractors. If delivery in time or faultless delivery is temporarily impeded due to any of the above circumstances, the delivery time is delayed for a period equal to the duration of the obstacle, each of the parties however being entitled to cancel the agreement, in writing and without liability, if the impediment is presumed to persist for more than three months after the agreed delivery time.

16. Conflicts

Any conflict between the parties is to be settled under Danish law. The court in Herning, Denmark, is proper venue for any difference occurred in connection with KM's deliveries to the Purchaser. KM can decide that any disagreement that may arise in connection with this agreement, including disagreement concerning the existence or the legal force of the agreement, must be settled by arbitration at the Danish Institute of Arbitration, according to the arbitration rules of this institute and valid at the initiation of the arbitration.

If the English edition of the present terms of delivery and sale should object to the Danish edition the Danish edition applies in case of a disagreement.