Terms and Conditions for Construction and Erection/Assembly Works MB 81 (last updated: 22.06.2021, D) of KELLER HCW GmbH, Carl-Keller-Str. 2-10 • D-49479 Ibbenbüren-Laggenbeck

(hereinafter referred to as "Seller")

If these MB 81 and the KMA 02 of the Seller form part of the contract at the same time, these clauses of the MB 81 shall take precedence over the clauses of the KMA 02 in the event of a contradiction.

Applicable for business transactions with

1. Merchants, when the contract pertains to the operation of their trade.
2. Legal entities and special funds under public law, (each hereinafter referred to as "Buyer") including the Seller's data protection notice (taking into account the DSGVO of the Federal Republic of Germany), which can be found at https://www.keller.de/en/kcs/privacy/.

1. SCOPE OF APPLICATION

These terms and conditions apply to all construction and erection/assembly works unless otherwise individually agreed upon. Collateral agreements have to be confirmed in writing by the Seller.

2. PRICING

a) Unless a price is expressly agreed to be inclusive, all construction and installation/assembly work performed will be invoiced on a time and material basis at the rates in effect at the time of performance.

b) The agreed prices are exclusive of value-added tax or other taxes and duties which may incur. If applicable, the Buyer shall additionally pay to the Seller such taxes and duties at the current statutory rate.

c) Time sheets for the construction and erection/assembly personnel provided by the Seller shall be signed by the Buyer every week to certify the working times and services for construction and erection/assembly performed. These certificates serve as a basis for invoicing. The copies of such certified time sheets given to the Buyer or to the local site supervisor, as the case may be, shall serve as a basis for checking the Seller's invoices.

d) If the construction and erection/assembly personnel are without any fault on their part hindered from working full shifts, the Buyer will nevertheless be invoiced for normal working hours.

e) In case of an interruption of the work that is not attributable to the Seller and that requires a withdrawal of the provided personnel, the costs for such interruptions will be invoiced to the Buyer.

f) Costs for board and lodging, including pocket money, shall be covered by daily allowances to be invoiced to the Buyer. With the payment of such allowances, the Seller's personnel shall bear their own costs for board and lodging.

3. PAYMENTS

a) Unless otherwise agreed upon in writing, payments for work performed are due in full immediately upon receipt of the invoice. Withholding of payments or offsetting payments against disputed or not legally binding counterclaims are not permissible.

b) The Seller shall be entitled to invoice monthly instalments if construction or erection/assembly work is of longer duration.

c) On request, the Buyer shall pay to the Seller's personnel cash advances for living expenses. Such advances shall be credited to the Buyer as instalments.

4. REQUIREMENTS

a) The Buyer shall prepare the construction site in such a way that the Seller is able to start with the construction works upon delivery of the necessary materials.

b) Foundations and masonry work, etc. required by general plans and foundation drawings, etc., shall be executed in good time prior to the start of the works so that erection/assembly may be carried out without any obstructions. This includes but is not limited to protection of the construction site against adverse weather conditions and the provision of the necessary auxiliary equipment.

c) Should it be necessary for reasons of unsuitable building ground to foresee more foundations than indicated on the construction drawings of the Seller, such foundations are to be built by the Buyer or at the Buyer's expense.

d) The Buyer has to make all necessary arrangements to ensure that works with other suppliers and contractors at the construction site can be carried out efficiently and systematically according to plan.

e) The Buyer shall be responsible for any delay in starting the works resulting from inadequate preparations on the building site upon arrival of materials and machinery or resulting from the unavailability of equipment and machinery or auxiliary equipment required for assembly at the assembly site. All costs arising from such delays shall be for the account of the Buyer.

5. PARTICIPATION OF THE BUYER

a) The Buyer shall render any assistance to the Seller's personnel that is necessary to carry out their work.

b) He will take all precautions necessary for the safety of persons and property at the erection/assembly site.

c) The Buyer shall, if any problems exist in this regard, arrange for suitable board and lodging reasonably close to the work site and medical care in case of accident or sickness.

d) In the event of accident or sickness of the construction or assembly personnel on construction and assembly sites outside the Federal Republic of Germany, the Buyer shall ensure medical care, the provision of medicines and, if necessary, accommodation in a hospital in accordance with German conditions, i.e. accommodation in the class corresponding to the 2nd class of a German hospital. The costs thereby incurred shall be for the account of the Buyer if they are not wholly or partially covered by insurance policies existing in the Federal Republic of Germany under inter-government agreements for the personnel of the Seller.

6. TECHNICAL ASSISTANCE OF THE BUYER

The Buyer shall, at its sole expense, provide technical support, in particular:

a) provide all auxiliary personnel required (bricklayers, carpenters, fitters, electricians and other skilled workers, and helpers) for the work on hand for the required periods. The personnel must follow the instructions of the erection/assembly supervisor. The Seller disclaims all liability for the auxiliary personnel.

b) carry out all earthmoving, construction, concreting and scaffolding work including procurement of all required materials;

c) provide all necessary equipment including heavy equipment (e.g. mobile cranes, hoists and compressors) and all necessary supplies (e.g. scaffolding timber, wedges, supports, cement, cleaning and sealing materials, lubricants, fuels, driving ropes and belts);

d) provide heating, lighting, energy and water including the necessary connections;

e) transport all erection/assembly components to the erection/assembly site, protect the site and materials against harmful influences of all kinds and maintain the site in clean condition;

f) provide erection/assembly personnel with suitable recreation and working rooms (equipped with heating/air conditioning, lighting, washing facilities and sanitation) and first aid facilities;

g) provide all materials and take all other action required for the adjustment of the equipment delivered and for a test run, If any, agreed upon in the contract. If the Buyer does not fulfil his obligations, the Seller shall, after setting a deadline, be entitled but not obliged to carry out the obligations of the Buyer in his place and at the expense of the Buyer. Furthermore, the legal rights and entitlements of the Seller will not be affected.

7. SAFETY REGULATIONS

a) The Buyer will take all measures required to guarantee the health and safety of the Seller's personnel during their stay at the building site. The costs shall be borne by the Buyer. This applies in particular when the physical integrity is endangered due to the security situation, whether it is the general security situation around the place of erection/assembly or at the place of erection/assembly itself. The Seller will present to the Buyer any reservations concerning the security measures taken. If the Buyer does not react within 5 calendar days after having received such written information or if the measures taken are not sufficient, the Seller is entitled to withdraw his personnel from the building site. All obligations of the Seller shall be considered suspended for the duration of the absence of the personnel of the Buyer. The Buyer shall bear the costs for such a suspension of work.

b) The personnel of the Seller are covered by social security and accident insurance in the Federal Republic of Germany. The Buyer is responsible for social security and accident insurance for auxiliary personnel provided by him. The Buyer is also responsible for the observance of the safety regulations by such personnel.

8. DESIGN FREEZE AND TRANSFER OF DESIGN

If the scope of delivery is individualised for the respective order (i.e. not merely commercial goods), the Seller and the Buyer shall determine the final scope of delivery within 60 days after the contract becomes effective by both parties signing a specification sheet, an interface drawing and a system overview plan ("Design Freeze"). The signature under these documents may not be unreasonably withheld by the Buyer. He is in default of acceptance when the documents presented by the Seller correspond in their content to the specifications of the already signed contract. In the case of an order with an individualised scope of delivery (i.e. no mere commercial goods) it also applies that at a certain point of progress of the project the seller simultaneously sends a number of drawings to the buyer describing the subject matter of the contract to be executed or parts thereof. This usually takes place after the start of the contract but before assembly and commissioning and is called the moment of "Transfer of Design".

9. CONSTRUCTION AND ERECTION/ASSEMBLY SCHEDULE AND RISK ASSUMPTION

a) The erection/assembly and commissioning schedule has been met if the erection/assembly work is ready for acceptance by the Buyer or, if stipulated in the contract, for the test not later than upon expiry of the scheduled erection/assembly period.

b) If the work is delayed by reason of force majeure, in particular strike or circumstances for which the Seller is not responsible, this agreed schedule shall be extended by a reasonable period. This shall also apply if such circumstances occur when KELLER is already in default. Costs incurred by such delay shall be for the account of the Buyer.

c) If prior to the acceptance by the Buyer and without any fault of the Seller the erection/assembly work is lost or damaged in whole or in part, the Seller shall be entitled to the erection/assembly price less the saved expenses. The same shall apply if it is impossible to carry out the erection/assembly due to reasons for which the Seller is not responsible.

d) The Buyer may request a repetition of the erection/assembly work if and insofar as this is reasonable for the Seller, particularly in consideration of his other contractual obligations. The Buyer shall remunerate the Seller again for the reperformance at the rates in effect at the time of reperformance.

10. ACCEPTANCE

a) The Buyer shall accept the work upon receipt of its notice of completion and upon completion of a test run of the erected/assembled equipment if such a test run was agreed upon in the contract. Unless otherwise agreed, the test run shall take place within one work shift. If the agreed output of the reference size is achieved during the test run, the works are in conformity with the contract and the complete scope of supply is accepted.

b) If the work is found to be not in conformity with the contract, the Seller shall remedy the defect at his own expense. This shall not apply if the defect is immaterial to the Buyer's interests or if it is due to a circumstance attributable to the Buyer. If an immaterial defect exists, the Buyer shall not be entitled to refuse acceptance if the Seller expressly recognises his obligation to remedy the defect.

c) Should acceptance be delayed without the fault of the Seller, the acceptance shall be considered granted after a period of two weeks following the notification of completion of the work, if the Seller has referred to the legal consequences in his notification.

d) The liability of the Seller for apparent defects shall expire upon acceptance, insofar as the Buyer has not reserved his right to assert a claim for a certain defect.

11. WARRANTY

The Seller shall be held liable in accordance with the regulations of clause 8 of the General Terms and Conditions for defects in the works carried out under his deliveries and services caused by the personnel of the Seller in such a way that defects in the work of the personnel of the Seller will be remedied at his own expense.

The Seller shall not be held liable if the defect is irrelevant to the Buyer's interests or if it is based on circumstances for which the Buyer is to be held responsible.

12. LIMITATION OF LIABILITY

As far as such an exclusion of claims and rights is permitted by law, the Buyer shall have no right to assert claims against the Seller, irrespective of their legal grounds, other than those conceded by applying the above provisions, in particular no right to assert a claim for damages, whether for non-contractual acts or claims due to possible advantages in relation to the construction or erection/assembly works. This shall not apply to claims based on intent or gross negligence. The above liability for non-conformity with the contract requirements is made in lieu of all other liabilities or warranties, expressed or implied (explicitly or implicitly), including but not limited to any implied warranty of merchantability and/or fitness for any particular purpose and is made in lieu of all other obligations or liabilities on the part of the Seller of any nature whatsoever.

13. LIABILITY OF THE BUYER

Outward and return freight charges for tools shall be for the account of the Buyer. Damage to and loss of erection/assembly tools and other aids, etc., provided by the Seller or the Buyer and personal property of the construction and erection/assembly personnel on the construction or erection/assembly site shall be at the risk of the Buyer. The Buyer shall provide a suitable lockable room for the storage of tools, technical documents, measuring instruments, etc., of the construction and erection assembly personnel.

14. JURISDICTION

Any dispute or claim arising from or in connection with this contract shall be referred to the competent court of jurisdiction at the head office of the Seller. The Seller may also appeal to the competent court having jurisdiction over the Buyer.

General Terms and Conditions AGB KMA 02 (last updated 22.06.2021) of KELLER HCW GmbH, Carl-Keller-Str. 2-10 • D-49479 Ibbenbüren-Laggenbeck

(hereinafter referred to as „Seller")

§ 1 GENERAL

1. Applicable for all contractual relationships between entrepreneurs, legal entities and special funds under public law or (hereinafter referred to as Buyer) and Keller HCW GmbH (hereinafter referred to as Seller), including the Seller's data protection notice (taking into account the DSGVO of the Federal Republic of Germany), which can be found at https://www.keller.de/en/kcs/privacy/.
2. These General Terms and Conditions are valid for all present and future business relations, even when, for subsequent transactions with the Buyer, the Seller does not explicitly refer again to them. The Buyer's terms and conditions of sale and delivery shall under no circumstances form part of the contract, even when they are known or the Seller does not explicitly object to them again regarding subsequent transactions, unless their application is expressly agreed upon in writing.
3. These General Terms and Conditions also apply to erection/assembly and repair services carried out by the Seller. His Terms and Conditions for Erection/Assembly Works are also applicable in this case.
4. In case of doubt, the Incoterms as amended are relevant for the interpretation of trade terms.
5. The contracting parties can choose the language for international contracts - German or English.

§ 2 OFFER AND CONCLUSION OF THE CONTRACT

1. Offers are always non-binding. We reserve the right to make reasonable technical changes and changes in design, colour, and/or weight. Illustrations, drawings, dimensions, weights and other performance data are only binding where this has been expressly agreed in writing.
2. The Seller reserves title and copyright to cost estimates, drawings and other documents. It is not permitted to disclose these documents to third parties without explicit consent given in writing. The Buyer is not entitled to use documents made available to him for any other purpose than that laid down in the contract. The Buyer shall be liable for any misuse and also assumes liability on behalf of its personnel and the organs of the company.
3. The Contract comes into effect with the issue of the written order confirmation of the seller or, where there is no confirmation, by execution of the order.
4. All additions, amendments or collateral agreements to the contract must be in writing or confirmed in writing to be valid. Our sales personnel are not authorised to conclude collateral agreements or to give assurances beyond those defined in the written agreements.
5. When the order is placed by electronic means, the Seller will confirm receipt of the order without delay by the same means. This confirmation of receipt only documents the receipt of the order and does not constitute a binding acceptance. A declaration of acceptance may however be attached to the confirmation of receipt.

§ 3 PRICE AND PAYMENT

1. In the absence of any special agreement, the prices are quoted ex works in euros. The prices are subject to value added tax at the applicable statutory rate. With regard to additional costs for services, the seller refers to the provisions stated in subsection 9 below and to section 4 (1) and (3). The Seller reserves the right to amend his prices accordingly in case of cost reductions or increases, in particular those resulting from collective agreements or changes in material prices taking place eight weeks after conclusion of the contract. The Seller will give proof of such reductions or increases on request. It shall be sufficient proof if the corresponding German producer price index changes during this period.
2. Unless otherwise agreed, orders placed at the online shop of the Seller are payable plus value added tax without any deductions prior to delivery (payment in advance).
   In all other cases, unless otherwise agreed, payment shall be made as follows:
   - 50 % down-payment plus sales tax (VAT) within 10 calendar days after signature of both parties or receipt of the order confirmation of the Seller;
   - 50 % plus sales tax (VAT) upon notification to the Buyer that the main parts are ready for shipment, i.e. prior to their shipment;

   Payments must be made without any deductions to the bank account designated by the Seller.
3. Unless otherwise agreed, invoices for spare parts and repairs are payable net without any deductions.
4. Where several invoices are due for payment, the Seller reserves the right to first use a payment, instalment or down payment made by the Buyer to redeem the debt with the least security, and where there is more than one debt with a similar level of security, to redeem the oldest debt, and where there are equally old debts, to redeem them proportionally.
5. The Buyer only has a right to set off payments when his counterclaims are subject to a final court judgement or when they are undisputed by the Seller. The Buyer is only entitled to retention when his counterclaim is based on the same contractual relationship.
6. Default of payment is governed by statutory provisions provided hat the Buyer is in default by way of a reminder after the due date or, without further conditions, by way of failure to perform within 14 days of the due date and receipt of invoice. While in default, the Buyer shall be liable to pay interest on the debt at a rate of 8 % above the base interest rate. Proof and assertion of higher damages remain unaffected.
7. The Seller must be put in a position, with the assistance of the Buyer, to issue partial invoices in accordance with German accounting rules, if he wishes to do so. For this purpose, the Seller will advise the Buyer of all deliveries and/or services or give proof of such deliveries and/or services by presenting an L/C With his signature under this contract, the Buyer declares that in such a case the Seller has met his obligations and that he can irrevocably keep the purchase price, even when the complete plant or the complete deliveries are not yet set up or in operation.
8. The limitation period for claims of the Seller regarding the purchase price or work performed shall be five years.
9. When, for deliveries outside the Federal Republic of Germany, taxes, custom duties or similar fees arise in the country of the Buyer which are payable by the Seller, the agreed prices will be accordingly increased by these amounts.

§ 4 PACKAGING AND SHIPMENT

1. Unless otherwise agreed, the Buyer shall be invoiced separately for the costs of packaging, shipping, payment transfers and customs duties. The Seller may choose whether to invoice for a lump sum or for the actual costs. The lump sum amounts to 5 % of the gross invoice amount. The Buyer is entitled to prove to the Seller that the costs were lower.
2. The Seller may choose the type of packaging and the method of shipment at his discretion.
3. Insurance of the goods against transport damages will only be concluded at the Buyer's explicit request. The Buyer will be invoiced separately for the cost of such insurance.
4. Where shipment or acceptance is delayed due to reasons for which the Buyer is responsible, he shall bear the costs resulting from the delay. The Seller will choose whether to invoice for a lump sum or for the actual costs.
   The lump sum shall be 0.5 % of the gross invoice amount for each month or any part thereof. The lump sum is limited to 5 % of the gross invoice amount. The Buyer is entitled to give proof of lower costs. Following the expiry of a reasonable extension of time, the Seller is also entitled to make other use of the delivered item and to deliver to the Buyer with a reasonable extension of time.

§ 5 SCOPE AND DELIVERY

1. The written order confirmation of the Seller shall govern the scope of supply. Collateral agreements and amendments have to be confirmed in writing by the Seller.
2. The subject matter of delivery complies with the principles established in the Product Safety Act of 08.11.2011 (as amended on the date of conclusion of the contract). Costs for additional equipment that will be necessary due to local conditions or is needed for the assembly of plant components, or is arising from directives, regulations or provisions issued after conclusion of the contract, or because of different interpretations of generally accepted technical rules by the competent local authorities, shall be borne by the Buyer.
3. When delivering refractory and insulating materials, the Buyer is obliged to accept an additional volume of materials of up to 5 % of the ordered quantity. This excess delivery shall in particular cover the risk of breakage.
4. Soil surveys for the foundation of furnace equipment will not be carried out by the Seller. All details about foundations and the prices related thereto are based on a soil bearing capacity of 2 kp/cm² and on the fact that the nature of the foundation soil is such that it can be dug and is free of ground water. Variations which lead to difficulties shall be at the expense of the Buyer. The values given on the foundation plan shall be applicable for machine plants.
5. Due to continuous technological advances the Seller reserves the right to make alterations and improvements in construction, use of materials and design insofar as this has no detrimental effect on the usability of the delivery item.
6. Unless otherwise agreed, the Seller undertakes to effect delivery free of third-party intellectual property rights and copyrights only for the country where the place of delivery is located.
7. If standardised commodity is not supplied but there is a scope of supply tailored to the respective order, the Seller and the Buyer shall define the final scope of supply by mutual signing of a Functional Specifications Document, a drawing of transition points (interfaces) and a system overview plan ("Design Freeze") within 60 days after the effective date of the contract. The signature under these documents may not be unreasonably withheld by the Buyer. He is in default of acceptance when the documents presented by the Seller correspond in their content to the specifications of the already signed contract.
8. Special conditions apply for erection/assembly and commissioning or supervision of the delivery item, in particular the MB81 of the Seller.

§ 6 TRANSFER OF RISK AND ACCEPTANCE

1. The risk is transferred to the Buyer as soon as the goods are transferred to the party carrying out transport, or leave the stock of the Seller for shipment. This also applies to partial deliveries.
2. Where the performance of the Seller involves the establishment of construction works and/or a plant, the risk shall pass to the Buyer upon commissionin, unless the agreed Incoterms specify an earlier transfer.
3. If the goods are ready for shipment and shipping is delayed at the Buyer's request, or for another reason for which the Buyer is responsible, the risk shall pass to the buyer upon notification of readiness for shipment.
4. Where the Buyer fails to collect the goods following notification of readiness for shipment, or where he is otherwise in default of performance of other essential contractual conditions, the Seller may, having provided a reasonable extension of time, rescind the contract and claim damages in lieu of performance. In this case, the Seller can either claim compensation for the actual loss or a lump sum of 15% of the gross invoice amount unless the Buyer proves that the actual loss was lower.

§ 7 DELIVERY DEADLINES

1. The delivery deadline depends on the contractual agreements. Binding delivery dates or deadlines require the written confirmation of the Seller in order to be valid. Compliance with the delivery deadline requires that the Buyer has carried out his contractual duties and obligations as agreed. If this is not the case, the delivery deadline will be extended by a reasonable period unless the Seller is solely responsible for the delay. The delivery deadline is complied with when, by the time of its expiry, the delivery item has left the factory or notification of readiness for shipment has been given.
2. Compliance with the delivery deadline is conditional upon receiving correct and timely supplies of the Seller's suppliers. This only applies where a failure to supply is not caused by the Seller, in particular where a congruent covering transaction has been concluded with the Seller's supplier. The Seller will inform the Buyer immediately of the unavailability of the performance. Any counter-performance already made shall be reimbursed without delay.
3. Delivery dates or deadlines shall be postponed or reasonably extended when the Seller is prevented from effecting performance on time for reasons of force majeure, industrial disputes or other circumstances for which he is not responsible. This also applies where corresponding circumstances arise at his sub-supplier. The Seller shall not be liable under any legal grounds for the loss resulting therefrom. Where the obstruction lasts more than 3 months, the Buyer is entitled, following a reasonable extension of time, to rescind the contract with respect to the part which has not yet been fulfilled. The Buyer shall not be entitled to damages in this case.
4. The Seller is at any time entitled to effect partial delivery and partial performance unless partial fulfilment of the contract is of no interest to the Buyer.
5. Delivered items must be accepted by the Buyer even when they show minor defects.
6. If a binding deadline is exceeded for which the Seller is solely responsible and if none of the above points 1-5 is applicable, the Buyer is entitled to claim liquidated damages amounting to 0.25% of the net value (without sales tax/VAT) of the scope of supply in delay, namely after exceeding the binding deadline by at least two (2) weeks for each complete week of further exceedance.

§ 8 CLAIMS OF THE BUYER DUE TO DEFECTS

1. The Seller guarantees that the products and services delivered will be free of defects for a period of 12 months from delivery of the goods or acceptance of the work, if such an acceptance is agreed upon. The short period of limitation does not apply to claims relating to product liability according to the Product Liability Act, or when the Seller acted on purpose or where rights under the Product Liability Act are affected, or where the Seller is alleged to have acted on purpose or with gross negligence or where loss of life, personal injury or damage to health has occurred which is attributable to the Seller.
2. Only the product description of the Seller is principally agreed upon to define the character of the goods. Public statements, promoting or advertising do not constitute a contractual description of the specifications of the goods. The Seller shall not receive any guarantees in a legal sense.
3. With regard to defects in the goods, the Seller shall at first comply with warranty obligations at his discretion either by repair or replacement (subsequent performance). Where subsequent performance fails, the Buyer may at his discretion request a lowering of the price (reduction) or cancellation of the contract (rescission) or claim damages within the framework of the limitation of liability (Clause 9). Where only a minor infringement of the contract has occurred, in particular only a minor defect, the Buyer shall have no right to cancel the contract.

4. Written notice must be given on obvious defects in the goods without delay but at the latest within one week after receipt of the goods. Failure to notify these defects results in the loss of the right to assert a claim under warranty. Sending the notification on time is sufficient to comply with the deadline. The Buyer shall provide complete proof of all requirements for asserting a claim, in particular with regard to the defect itself, the time of its discovery and the fact that notification was given within the deadline.
5. In the event that the Buyer decides to rescind the contract due to a defect in title or quality following the failure of subsequent performance, he shall have no additional right to claim damages for the defect. Where the Buyer chooses to claim damages following the failure of subsequent performance, the delivered goods shall remain with the Buyer as far as this is reasonable. Damages shall be limited in this case to the difference between the purchase price and the value of the defective item. The foregoing limitations shall not apply where the breach of contract is the result of intent or gross negligence on the part of the Seller or where damages are payable due to personal injury, damage to health or loss of life.
6. Liability for normal wear and tear or damage caused by inappropriate or improper use is excluded. Also excluded are rights under warranty due to non-reproducible software defects. Where there is a failure to comply with operating, handling or maintenance instructions, where changes are made to the products, parts are replaced or consumables used which do not correspond to the original specifications, or where the raw and work materials being handled are different from those on which the order was based, any liability under warranty shall cease to apply unless the Buyer can refute the substantiated assertion that the defect was only caused by these circumstances.

   For works, erection/assembly and supervision of erection/assembly clause 6 applies already before acceptance by the Buyer.
7. Subject to any agreement to the contrary, used items are sold without any warranty unless there has been an intentional or grossly negligent breach of contract by the Seller or loss of life, personal injury or damage to health due to negligence on the part of the Seller.
8. In the event that the Buyer receives deficient assembly instructions and neither the Seller nor his statutory representatives or agents can be accused of acting with intent or gross negligence, the Seller is, to the exclusion of further claims, only obliged to supply assembly instructions free from faults. This obligation only exists where the defect in the assembly instructions prevents proper assembly.
9. Where the order placed with the Seller is limited to the delivery of complete structural and parts drawings, the Seller can only be held liable under warranty in accordance with the foregoing provisions with regard to defects in the documentation delivered. The Seller assumes no responsibility for poor workmanship on the part of the Buyer.

§ 9 LIABILITY

1. The Seller is liable under the statutory provisions insofar as the Buyer asserts a claim for damages based on intent or gross negligence, including intent or gross negligence on the part of the representatives or agents of the Seller. As far as the Seller is not accused of intentional breach of contract, the liability for damages is limited to the foreseeable, typically occurring damage, i.e. all indirect damages (deficiency) consequential damages or losses, such as loss of use, loss of production costs, costs of interruption of operation, etc., are excluded.

   The Seller is also liable in accordance with the statutory provisions insofar as he is in culpable breach of a material contractual condition; in this case, liability for damages is also limited to foreseeable loss that typically occurs.

   Liability for loss of life, personal injury or damage to health due to negligence remains unaffected; this also applies to mandatory liability under the Product Liability Act.
2. The right of the Buyer to claim damages shall expire one year after the transfer of risk. In the case of claims for damages due to intent or gross negligence, the breach of material contractual conditions or in the case of loss of life, personal injury or damage to health, the statutory limitation periods shall apply.

§ 10 RESERVATION OF TITLE

1. All supplied goods shall remain the property of the Seller until payment in full of all receivables to which the Seller is entitled under the business relationship with the Buyer including all recognised balance claims from the current account. The Seller undertakes to release the securities he is entitled to at the request of the Buyer in so far as the achieved value of the securities of the Seller exceeds the claims to be secured by more than 10%; the selection of the securities to be released is at the discretion of the Seller. The Buyer is obliged to handle the purchased item with care, and he is in particular obliged to insure it sufficiently at its own expense against fire, water and theft at the replacement value. Insofar as maintenance and inspection work is necessary, the Buyer must carry out this work in time at his own expense.
2. The Buyer is entitled to process and to sell the goods subject to the reservation of title during the ordinary course of business provided he is not in default of payment. Pledges and transfers by way of security are not permitted. The Buyer herewith assigns in full to the Seller by way of security all claims relating to the goods subject to the reservation of title arising from resale or on other legal grounds (insurance, tort). The latter accepts the assignment. The Seller authorises the Buyer to collect the transferred claim for his account and in his own name. The collection authorisation may only be revoked if the Buyer fails to comply properly with his payment obligations.
3. In the case of seizure of the goods subject to the reservation of title by a third party, the Buyer shall make reference to the fact that the Seller has a title to the goods and notify the latter without delay.

   In addition, in case of seizure of the goods subject to the reservation of title by a third party, the Buyer shall bear all the costs necessary to annul the seizure, in particular by way of a third-party objection, and to reacquire the item.
4. When the Buyer is acting contrary to the contract, in particular when he is in default of payment, the Seller is entitled to take back the goods subject to the reservation of title. The Buyer is obliged to return the goods. For the purposes of collecting the goods, the Seller is entitled to enter the operating site or other premises of the Buyer where the goods subject to the reservation of title are located. The contract shall be deemed rescinded when the Seller takes back the purchased item. Following redemption of the purchased item the Seller is entitled to liquidate it, the proceeds of the liquidation shall be set off against the Buyer's debts less any reasonable liquidation costs involved.
5. In the case of deliveries outside the Federal Republic of Germany where the above security rights cannot be effectively agreed, a security right will be deemed to have been agreed in respect of all unpaid claims arising under the business relationship between the buyer and the Seller which comes closest to the above security rights and which is permitted and possible under the respective legal system.

§ 11 INSURANCE

In case of erection/assembly works or their supervision by the Seller outside the European Union, the Buyer will conclude and maintain a reasonable insurance (EAR – Erection All Risk) which also covers the Seller. The insurance policy includes the name of the Supplier, his subcontractors, and the subcontractors' personnel as additionally insured personnel.

§ 12 FINAL PROVISIONS

1. The law of the Federal Republic of Germany shall exclusively apply. The UN law on the international sale of goods is expressly excluded, including where the Buyer's terms and conditions provide for its application.
2. The exclusive place of jurisdiction for all disputes under this contract is Münster. The same applies where the Buyer has no place of general jurisdiction in Germany or where his domicile or place of residence is unknown at the time when proceedings are issued. The Seller is however entitled to bring proceedings against the buyer at the location of his registered office or place of business.
3. Court of jurisdiction for of all obligations under the business relationship is the registered office of the Seller.
4. Where individual provisions of the contract with the Buyer, including these General Terms and Conditions, are or will become wholly or partially invalid, the validity of the remaining provisions will not be affected. The partial or whole provision shall be replaced by a provision which, in its economic effect, comes as close as possible to the invalid provision.