

GENERAL TERMS AND CONDITIONS
For the delivery of Machineries and Accessories
KLAEGER SÄGETECHNIK GMBH

I. Scope of Application

1. Any offers and deliveries of KLAEGER SÄGETECHNIK GMBH, Siemensstraße 32, D-71394 Kernen (hereinafter referred to as "KLAEGER"), are subject to the following Terms and Conditions for the delivery of machineries and accessories (General Terms and Conditions) in the latest version. In addition, the General Terms and Conditions of KLAEGER are available under http://www.klaeger.com/assets/klaeger_gtc.pdf at any time and can be saved and printed by the customer in a reproducible form.
2. These General Terms and Conditions shall apply as framework agreement as well as for all future transactions for the sale and delivery of movable goods to the same customer without given notice of the General Terms and Conditions in every single case by KLAEGER. Deviating agreements to the General Terms and Conditions of KLAEGER shall be effective only – and insofar only for the effected case – if they are confirmed by KLAEGER in writing as an amendment to the General Terms and Conditions of KLAEGER. Such requirement of confirmation shall apply in any case for example even in the event that KLAEGER performs a delivery without any reservation and without knowledge of the purchase conditions of the customer.
3. The General Terms and Conditions shall only apply in the event that the customer is an entrepreneur (§ 14 German Civil Code), a legal person of the public law or a separate estate subject to public law.

II. Conclusion of Contracts

1. The offers of KLAEGER are non-binding. The contract is concluded by the order confirmation of KLAEGER only or by the performance of the order.
2. Upon the conclusion of the contract there are no oral subsidiary agreements. Individual agreements expressly made on a case by case basis (including subsidiary agreements, amendments and modifications of the General Terms and Conditions) have precedence over these General Terms and Conditions in any case – insofar as they are concluded af-

ter the conclusion of the contract. In respect of the content of such individual agreements, a written contract or – in the absence of such contract – the written confirmation of KLAEGER to the customer shall be decisive.

3. The documents forming part of the offer such as illustrations, drawings, indications of weight and measurements are only approximate indications unless they are expressly designated as binding. KLAEGER reserves property rights and copy rights in respect of cost estimates, drawings and other documents; such documents shall not be disclosed to third parties. KLAEGER is obliged to disclose plans designated as confidential by the customer only with the consent of the customer.

III. Volume of Delivery

1. As regards the volume of the delivery the written order confirmation of KLAEGER shall be decisive, in case of a time-limited offer by KLAEGER and acceptance within the time limit such offer shall be decisive unless the confirmation order is duly made.

IV. Prices, Terms of Payment and Advanced Payment

1. All prices are basically in Euro ex work including packaging unless other agreements were made. All prices are excluding VAT. Any additional costs arising in Germany or abroad in connection with the delivery shall be borne by the customer.
2. Invoices are payable immediately after receipt of invoice by the customer without deduction within 30 days upon date of invoice unless other payment terms have been agreed with the customer. The receipt of the payment at the bank account of KLAEGER is decisive for the timelines of payment.
3. KLAEGER is entitled to claim interests in the amount of 5 % upon the due date of the payments subject to other agreements. Upon the delay in payment KLAEGER is entitled to interests in the amount of 8 % the basis interest rate (*Basiszinssatz*) indicated by the European Central Bank. The interests for the delay in payment shall be higher or lower in the event that KLAEGER proves a higher interest rate or the customer proves a lower interest rate. The right to claim further damages is reserved. In the event that the customer does not pay the amount after KLAEGER has set a reasonable time limit in

writing, KLAEGER is entitled to withdraw from the contract, to claim reimbursement or compensation in place of performance.

4. KLAEGER is demanding an advanced payment equal to the full amount of the invoice from a customer not having its residence/seat in the territory of the European Union. In such a case KLAEGER is, thus, not obligated to make any delivery without receiving the prepayment of the full amount of the invoice.

V. Right to set off, Right of Retention, Capacity to Pay and Assignment

1. The retention of payments with any claims of the customer against KLAEGER is excluded unless the right of retention is based on claims of the customer arising from the same contract with KLAEGER. The right to set off by a customer against claims of KLAEGER with own claims is prohibited unless the claims are undisputed or has been upheld by a final court decision.
2. In the event that after conclusion of the contract it is foreseeable for KLAEGER that the entitlement of KLAEGER for payment of purchase price is jeopardized due to the inability of the customer to pay (e.g. due to a petition in bankruptcy) KLAEGER is entitled to refuse performance according to the statutory provisions and if applicable after having set a time limit KLAEGER is entitled to withdraw from the contract (§ 321 German Civil Code). As regards contracts for the production of individual goods (individual productions) KLAEGER is entitled to withdraw immediately from the contract; the statutory provision as regards the dispensability of setting a time limit remains unaffected.
3. Rights and obligations resulting from the contract shall not be transferred from the customer to third parties without the express consent of KLAEGER.

VI. Time of Delivery

1. The period of delivery shall start with the delivery of the order confirmation or in the case of IV.4. upon receipt by KLAEGER of the full advanced payment, however, not before the customer has submitted all documents, approvals, acceptances and not before KLAEGER has received the agreed advanced payment.

2. The delivery time is complied with if the goods have passed the premises of KLAEGER until the expiry of the delivery time or the customer has been notified that the goods are ready for dispatch.
3. The delivery period shall be extended reasonably in case of actions in connection with labor disputes in particular but not limited to strikes and lock outs as well as in the case of unexpected obstacles, insofar as such obstacles demonstrably have significant influence on the completion or the delivery of the goods and KLAEGER is not liable for such obstacles. This shall also apply to circumstances which occur with sub-suppliers. KLAEGER shall not be responsible for the aforementioned circumstances even if they occur during an already existing delay. Beginning and end of such obstacles shall be notified by KLAEGER to the customer in important cases as soon as possible.
4. In the event that the delivery is delayed upon request of the customer, the customer shall be charged for the storage costs commencing from one month after KLAEGER has notified the customer that the goods are ready for dispatch; in the event that the goods are storaged at the premises of KLAEGER, however, the customer shall be charged for the storage costs in the amount of one half of the invoiced amount per month. The proof of a higher damage and the rights of KLAEGER according to the statutory provisions (in particular but not limited to compensation of additional expenses, appropriate compensation, notice of termination) remain unaffected; however, the overall amount shall be charged to further claims. The percentage is lower if the customer shows evidence that KLAEGER has no damage or a significantly lower damage as the aforementioned overall amount. KLAEGER is entitled after setting and unsuccessful expiry of a reasonable time limit to dispose the goods otherwise and to supply the customer within a reasonably extended time period.
5. The observance of the delivery period is contingent on the fulfillment of the contractual obligations of the customer.
6. Delivery shall be made only while stocks last.

7. In the event that the goods to be delivered are not available due to the fact that KLAEGER itself was not supplied by its supplier without being responsible, KLAEGER may be entitled to withdraw from the contract. In this case KLAEGER shall notify the customer without undue delay and if applicable propose the delivery of similar goods. In the event that similar goods are not available or the customer does not wish the delivery of similar goods any advance payments already made by the customer shall be immediately reimbursed by KLAEGER.

VII. Passing of Risk and Acceptance

1. The risk passes upon the delivery of the goods to the customer at the latest and even in the event that partial deliveries are performed or KLAEGER has taken over other performances e.g. costs for delivery or transport and installation. The goods are only insured upon the express request of the customer in writing at its own costs against theft, brakeage, transport, fire and damage by water as well as further insurable risks.
2. In the event that the delivery is delayed due to facts for which the customer is responsible, the risk shall pass to the customer upon the date the goods are ready for dispatch; however, KLAEGER shall be obliged upon express request of the customer in writing and on the customer's costs to arrange the insurance which the customer has requested.
3. Goods delivered to the customer have to be accepted by the customer even if they have insignificant defects without prejudice to the right arising from XI.
4. Appropriate partial deliveries are permissible.

VIII. Retention of Title

1. Title to goods shall remain with KLAEGER until the invoice of KLAEGER has been fully settled and all precedent deliveries and performances have been paid including all subsidiary claims and in case of payment by cheque or by bill of exchange title to goods shall remain with KLAEGER up to the date on which the amount is at KLAEGER's disposal (§ 449 Abs. 1 German Commercial Code). This shall also apply in the event that payments were made for specified claims. The collection of single receivables in a

current invoice as well as the statement of account and its acknowledgment shall not affect the retention of title.

2. Any processing or transformation of the delivered goods by the customer shall always be made for KLAEGER. In the event that goods in the ownership of KLAEGER are combined, mingled or intermixed according to §§ 947, 948 German Civil Code, KLAEGER shall become co-owner of these goods proportionately to the invoiced amount of the deliveries and services and the other assimilated goods on the date of processing, combination, intermixture or commingling. In the event that the customer becomes the sole owner due to intermixture or commingling, the customer hereby transfers the co-ownership in the aforementioned relation to KLAEGER and the customer is obliged to keep the new goods save for KLAEGER free of charge.
3. In the event that retention-of-title-goods are sold by the customer alone or in connection with goods which are not in the ownership of KLAEGER, the customer hereby assigns to KLAEGER any receivables arising from any resale in the amount of the value of the goods which are in the ownership of KLAEGER including any subsidiary rights. If KLAEGER is co-owner of the resold products the assignment of the receivable shall cover the amount which corresponds to the co-ownership share of KLAEGER. KLAEGER authorizes the customer - subject to revocation - to collect the receivables assigned to KLAEGER. In the event that the customer is in delay with its obligations towards KLAEGER, the customer is obliged to provide KLAEGER with the debtors of the assigned receivables and shall notify them the assignment. In this case KLAEGER is also entitled to notify the assignment to the debtors by itself and to collect the receivables by itself.
4. If the customer breaches the contract in particular but not limited to delays in payment, KLAEGER is entitled to take back the retention-of-title-goods after a reminder and having set a reasonable time limit and the customer is obliged to return the goods which are in the ownership of KLAEGER unless such time limit is dispensable according to the statutory provisions. If KLAEGER claims its retention of title or pledge the goods, this shall not be deemed as a withdrawal from the contract. The customer hereby agrees that the persons authorized by KLAEGER to take back the retention-of-title-goods are entitled to enter the premises of the customer for that purpose.

5. The customer shall be entitled and authorized to sell, to use or to assemble the retention-of-title-goods only in the ordinary course of business and only under the condition that the receivables assigned to KLAEGER (VIII. 3.) are actually transferred to KLAEGER or that KLAEGER becomes co-owner of the goods according to the preceding provisions in relation to the invoiced amount of the processed, mingled or combined retention-of-title-goods as the case may be. The same applies to the produced end product as for the goods delivered under the retention of title. The customer is not entitled to further disposals on the retention-of-title-goods. In particular the customer is not entitled to pledge or to transfer the goods as security.
6. The customer shall inform without undue delay KLAEGER about enforcement measures by third parties as regards the retention-of-title-goods or the assigned receivables by providing all necessary documents for the objection.
7. The customer has to insure all retention-of-title-goods on its own costs in particular but not limited to fire and theft. Any claims against the insurer are hereby assigned to KLAEGER as regards the retention-of-title-goods; KLAEGER accepts such assignment.
8. In the event that the value of KLAEGER's securities exceeds the receivables of KLAEGER by more than 20 %, KLAEGER is obliged to release the securities to the customer insofar as they exceed the agreed coverage.
9. The customer not having its residence / seat in Germany shall make all necessary actions required by the applicable law in order to ensure that the retention of title of KLAEGER – as provided in these General Terms and Conditions – is effective in the country where the delivery is made.

IX. Delay and Impossibility to perform

1. For the delay in delivery by KLAEGER a reminder of the customer is necessary.
2. In the event that KLAEGER is in delay with the delivery due to slight negligence, the customer may – insofar as he shows evidence that a damage has occurred – claim com-

pensation for each complete week of delay in the amount of 0,5 % each, however, as maximum 5 % of the price of those partial deliveries which cannot be used due to the delay. The customer may show evidence that a higher damage due to the delay has occurred and KLAEGER may show evidence that a lower damage has occurred. Compensation claims of the customer due to the delay in delivery as well as compensation claims instead of the performance which exceeds the limits set out in IX. 2. of these General Terms and Conditions are excluded in all cases of a delayed delivery even after expiry of a time limit for the delivery set by the customer. This shall not apply insofar as compensation is mandatory according to VII.

3. Notwithstanding the customer's right to withdraw from the contract in case of defects (see XI. Warranty of these General Terms and Conditions) the customer may withdraw from the contract in the event that KLAEGER's performance is impossible or in the event of a delay, however, only if KLAEGER is responsible for the breach of contract.
4. Withdrawal or compensation in the event of a delay are subject to the condition that the customer has set a reasonable time limit not lower than 4 weeks in writing to KLAEGER and that the customer hereby expressly clarifies that he/she/it will withdraw from the contract and/or claim compensation after expiry of the time limit. After the expiry of the time limit the customer is obliged upon KLAEGER's request to declare whether he/she/it requires the delivery or claims compensation or withdraws from the contract. In the event that the customer does not make such statement within a reasonable time limit set by KLAEGER, the customer is then not entitled to reject the delivery and to withdraw from the contract and to claim compensation anymore.
5. Setting a time limit according to IX 4. is not necessary if KLAEGER seriously and definitively refuses the agreed contractual performance or if there are special circumstances which after weighing the interests of both parties justify the immediate withdrawal from the contract.
6. The customer may neither withdraw from the contract before the due date nor in case of an insignificant breach of obligation by KLAEGER. Furthermore, the withdrawal from the contract is excluded in the event that the customer is soeley or most predominantly responsible for circumstances which give reason to withdraw from the contract or cir-

cumstances arise for which KLAEGER is not responsible during the default of acceptance of the customer.

7. As regards compensation claims VII. of these General Terms and Conditions shall apply. The preceding provisions shall not change the burden of proof to the disadvantage of the customer.

X. Notice of Defects

1. Obvious defects, i.e. legal or material defects, excessive deliveries, incomplete or wrong deliveries as well as the lack of a possible guaranteed quality as well as the durability of the delivery or of the performance (defects) must be notified without undue delay at the latest within 14 days in writing after receipt of the goods in writing. Hidden defects must be notified as well without undue delay at the latest within 14 days in writing after identifying the defect.
2. If the notice of defect is not submitted by the customer within the time limit pursuant to X. 1. of these General Terms and Conditions the customer is excluded to any claims for such defects against KLAEGER.

XI. Warranty

1. In case of defects KLAEGER shall up on the duly notice of defects pursuant to X. of these General Terms and Conditions up on KLAEGER's choice repair the defects or replace the delivered goods insofar as the customer shows evidence that the goods were defective before the passing of risk. The statutory period for all claims resulting from defective goods is 12 months after the handover of the goods. For damages resulting from injuries to life, body or health caused by a defect, in case of the willful or grossly negligence breach of duty by KLAEGER and in the event that KLAEGER has fraudulently conceived the defect, KLAEGER is liable for 24 months up on the delivery of the goods.
2. If KLAEGER has repaired the defective goods twice or has made a one-time replacement of the goods and the defect could not be remedied as well in the event that KLAEGER refuses without any reason the necessary repair or replacement, improperly delays the repair or the replacement or in the event that the repair is for other reasons

not acceptable for the customer as well if the requirements set out by §§ 281 II or 323 II German Civil Code are fulfilled, the customer may be entitled to withdraw from the contract and to claim deduction according to the statutory law as well as compensation or compensation of expenses, the latter according to XII. of these General Terms and Conditions, instead of remedy or replacement.

3. In case of third-party-products the warranty of KLAEGER is limited to the assignment of the claims KLAEGER has against the supplier of the third party product. In the event that the customer is not able to enforce its rights against the supplier of the third party product, KLAEGER shall remedy the product according to these conditions.
4. The customer shall give KLAEGER upon mutual consultation the necessary time and opportunity to repair or replace the goods.
5. KLAEGER has not obliged to remedy or replace the goods if this causes only disproportional costs. The costs are disproportional if they exceed 25 % of the purchase price of the goods.
6. Parts which were replaced during the remedy of defects become the property of KLAEGER.
7. In the event that the notice of defect was not justified, KLAEGER is entitled to claim compensation for the occurred expenses from the customer.
8. KLAEGER is not liable for defects in case of insignificant deviations from the agreed quality and in case of insignificant adverse effects on the use of the goods as well as for damages which have been arisen in particular but not limited to the following reasons: improper, incorrect or inaccurate use of the goods by the customer or third parties, natural abrasion, incorrect or negligence handling, in particular excessive use insofar as KLAEGER is not responsible. KLAEGER is not liable for damages of the delivered machineries, if the customer has rebuild the machineries or has combined them with other equipment or machineries unless the customer shows evidence that such defect of the machinery did exist before the handover to the customer.

9. In the event that the goods were subsequently taken to another place than the seat of the customer and therefore the expenses such as transport costs, travel costs, labor costs and material costs for the repair or replacement increase, the exceeding expenses have to be borne by the customer unless the delivery to another place corresponds to the agreed use of the goods.

XII. Compensation

1. Unless otherwise agreed in this provision, all claims as regards compensation of the customer of whatsoever nature, including compensation of expenses and indirect damages are excluded. This shall apply in particular but not limited to claims relating to all breaches of duties resulting from the contract as well as from unlawful act. The exclusion of liability applies also if KLAEGER uses employment executive personal or other persons for performing its obligation.
2. Deviating from XII. 1. of these General Terms and Conditions KLAEGER is liable for whatsoever reason only – and this applies also if KLAEGER uses executive personal or other persons for performing its obligation – in the event that:
 - (a) KLAEGER has acted with intend or gross negligence,
 - (b) KLAEGER fraudulently has concealed the defect or has guaranteed the quality of the goods,
 - (c) damages for injuries to life, body or health occur for which KLAEGER is responsible; as well as
 - (d) KLAEGER does not fulfill its substantial contractual obligations (“cardinal duties”) i.e.
 - (aa) in the event of material violation of obligation which jeopardize the achievement of contractual purpose, or
 - (bb) in the event of the violation of duties – the fulfillment of which enables the proper performance of the contract in the first place and the observance on which the customer may regularly rely (“Cardinal Duties”).
3. In the event that XII. 2. (d) of these General Terms and Conditions applies – violation of Cardinal Duties - the liability of KLAEGER shall be limited in case of slight negligence to the typically foreseeable damage.

4. The exclusion of liability does not apply for claims arising from the Product Liability Act. The preceding provisions shall not affect the burden of proof to the disadvantage of the customer.

XIII. Use of Logos in the Advertisement

1. The customer agrees that KLAEGER appoints the customer as reference customer and to use the logo of the customer on KLAEGER's website for this purpose. This shall not give the impression that between KLAEGER and customer exist legal or business relationships (indirect danger of confusion). Furthermore, it may not give the impression that products offered by KLAEGER come from the customer. The customer may refuse the use of the logos on important grounds for example if significant business interests of the customer are jeopardized or affected by the use of the logos.

XIV. Choice of Law, Place of Performance, Place of Jurisdiction

1. Place of Performance for all payments of the customer and for the deliveries of KLAEGER shall be the seat of KLAEGER in Kernen/Remstal.
2. The contractual relationships between KLAEGER and the customer shall be governed by the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the international Sale of Goods dated 11th April 1980 is hereby excluded.
3. Exclusive jurisdiction shall be the seat or the branch of KLAEGER which performs the delivery, for all disputes arising from the contractual relationship in the event that the customer is general merchant, a legal entity of the public law or a separate estate subject to public law. In addition, KLAEGER is entitled to file a suit at the seat of the customer.
4. In the event that any term or provision of these General Terms and Conditions is or will become invalid or unenforceable, than the validity and enforceability of all other terms and conditions shall thereby not be affected. In such case the invalid or unenforceable term shall be substituted by a valid and enforceable term which comes as close as possible to the economic purpose of the invalid or unenforceable term.

January 2019