

Terms & Conditions of Sale

These general Terms and Conditions of Sale apply to the sales of KERN - DEUDIAM Diamantwerkzeuge und Maschinen GmbH products. No terms on purchase orders, invoices or like documents of any customer shall serve to alter or add to these Terms and Conditions of Sale unless agreed in writing and signed by an authorized representative of KERN - DEUDIAM Diamantwerkzeuge und Maschinen GmbH. Acceptance of any goods from KERN - DEUDIAM Diamantwerkzeuge und Maschinen GmbH indicates that the customer has read and understood these Terms and Conditions of Sale and has agreed to their incorporation in the sale contract to the exclusion of all other Terms and Conditions of Sale.

§ 1. Scope

In these conditions the „Seller“ means KERN - DEUDIAM Diamantwerkzeuge und Maschinen GmbH and the „Buyer“ means the person or entity whose order for goods is accepted by the Seller. The following terms apply to all, including future, sale of goods, as far as not modified or excluded by the Seller's express written agreement. These terms are accepted by the Buyer when placing an order with the Seller. Any terms and conditions contained in the documentation of the Buyer, including but not limited to the Purchase Order, shall not be binding on the Seller. This applies despite knowledge by the Seller of existing contradictory terms and conditions.

§ 2. Basis of the Sale

2.1. The Seller shall sell and the Buyer shall purchase the goods by written order of the Buyer which is accepted by the Seller, in the form of an Order Confirmation.

2.2. The Seller's employees or agents are not authorized to make any representations concerning the goods, unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

2.3. Any advice or recommendation given by the Seller or its employees or agents to the Buyer including any advice as to the storage, application or use of the goods, which is not confirmed in writing by the Seller, is followed or acted upon entirely at the Buyer's own risk, and accordingly, the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

§ 3. Orders and Specifications

3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order, including any applicable specification, submitted by the Buyer, and for giving the Seller any necessary information relating to the goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2. If the goods are to be manufactured or any process is to be applied to the goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.3. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller.

§ 4. Price of the Goods

4.1. The price of the goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's standard price list (the „List Price“) current at the date of acceptance of the order. This price shall be quoted on the Order Confirmation accepting the Buyer's order.

4.2. Except as otherwise stated under the terms of any quotation and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis.

4.3. The price is exclusive of any applicable value added tax, which the Buyer may be additionally liable to pay to the Seller, as well as any freight or insurance costs incurred on delivery. Customs duties, clearance charges or equivalent duties shall be for the account of the Buyer.

4.4. While the Seller will try to ensure that the price stated in the Order Confirmation is accurate, errors may occur. If the Seller discovers an error in the price of the goods which the Buyer has ordered, the Seller will inform the Buyer as soon as possible. The Buyer may cancel its order within two working days of being informed of an increase in the price of the goods from the price that was indicated on the Order Confirmation. If the Buyer does not exercise this right of cancellation within two working days, the Buyer shall be bound by the new price.

§ 5. Terms of Payment

5.1. The Seller shall be entitled to invoice the Buyer for the price of the goods on or at any time after delivery of the goods, unless the Buyer wrongfully refuses to take delivery of the goods, in which event the Seller shall be entitled to invoice the Buyer at any time after the Seller has tendered delivery of the goods.

5.2. The Buyer shall pay the price of the goods purchased in full within an agreed number of days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

5.3. Payment shall be made in Euro or such currency as may be agreed by the Parties.

5.4. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1. Cancel the contract or suspend any further deliveries to the Buyer;

5.4.2. Appropriate any payment made by the Buyer to such of the Goods as the Seller may think fit; and

5.4.3. Charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 8 percent per annum above Deutschen Bundesbank Offer Rate from time to time, until payment in full is made.

5.5. Notwithstanding any other term or condition herein and in particular notwithstanding any period of credit extended to the Buyer under any agreement made pursuant to clause 5.2 herein, where the balance on the Buyer's account with the Seller (being the value of invoices charged to the Buyer for which the Seller has not received payment) equals or exceeds the Buyer's agreed credit limit, the Seller may, in its sole discretion, refuse to accept further orders from the Buyer or refuse to make further shipments or sales to the Buyer. Further the Seller may, in its sole discretion, refuse to accept orders from the Buyer or make sales to the Buyer where the value of the Goods ordered by the Buyer, would, if invoiced to the Buyer's account, cause the balance on the said account to equal or exceed the said credit limit. Any decision made by the Seller in the exercise of its sole discretion as provided for in this sub-clause shall not, and shall not be deemed to, prejudice, limit, hamper or affect any subsequent exercise by the Seller of its sole discretion.

§ 6. Delivery

6.1. Delivery of the goods shall be made by the Seller delivering the goods to a carrier at location of dispatch, by the posting of the goods from location of dispatch or by the delivery of the goods to the Buyer at the Seller's place of business, being the location of dispatch, unless otherwise agreed in writing between the Buyer and the Seller.

6.2. Any dates quoted for delivery of the goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. The goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

6.3. Where the goods are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4. Any claim for shortage in delivery must be notified to the Seller in writing within 3 days of the date of receipt of the Goods by the Buyer.

§ 7. Risk and Property

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1. in the case of goods to be delivered to the Buyer at the Seller's place of business or delivered to a carrier at the Seller's place of business, at the time when the Seller notifies the Buyer that the Goods are available for collection or that the goods have been dispatched with a carrier; or

7.1.2. in the case of goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the goods.

7.2. Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Conditions, the property in the goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due. Until such time as the property or the goods passes to the Buyer, the Buyer shall hold the goods as the Seller's fiduciary agent and bailer and shall keep the goods separate from the goods of the Buyer and third parties, and shall keep the Seller's goods properly stored, protected and insured and identified on the Buyer's property, but shall be entitled to use the goods in the ordinary course of business. The Buyer hereby irrevocably authorizes the Seller or its representatives to enter upon the Buyer's premises where the goods are stored, or are thought to be stored, for the purpose of repossessing them and, if the Seller so chooses, subsequently reselling them.

§ 8. Warranties and Liability

8.1. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.2. Any claim by the Buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price of the goods as if the goods had been delivered in accordance with the contract.

8.3. Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet KERN - DEUDIAM Diamantwerkzeuge und Maschinen GmbH specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the goods (or the part in question) free of charge for the replacing items or, at the Seller's sole discretion, refund to the Buyer the price of the goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

8.4. The Seller is liable only for defects which appear under the conditions of operation provided for in the contract and under the proper use of the goods.

8.5. Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.6. Neither party shall be liable or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the obligations in relation to the goods, if the delay or failure was due to any cause beyond their reasonable control, including, but not limited to any Act of God, explosion, fire, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority, war, civil commotion, insurrection, international sanctions or boycotts, import or export regulations or embargoes, difficulties in obtaining raw materials, labor, fuel, parts or machinery, power failure or breakdown in machinery, labor disputes of whatever nature whether involving employees of the Seller or Buyer or of any third party.

§ 9. Cancellation

9.1 If the Buyer makes any voluntary arrangement with its creditors, becomes subject to an administration, or goes into liquidation, or if an encumbrance takes possession of assets or a receiver is appointed; or if the Buyer ceases to, or threatens to cease to, carry on business; or the Seller takes the reasonable view that any of the events mentioned above is likely to occur and notifies the Buyer accordingly, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the contract without any liability to the Buyer, and if goods have been delivered but not paid for, they shall become due and payable immediately.

9.2 If the Buyer and the Seller agree to the sale and purchase of a product, which is not supplied under the Seller's existing product range but is outlined in the Buyer's specifications, then the Seller shall be entitled to cancel the contract without any liability whatsoever to the Buyer if the Seller is unable to manufacture the requested product in accordance with the supplied specification.

§ 10. General

10.1. The subject matter of the Contract between the Parties shall be treated as confidential by the Buyer and shall not be disclosed or used other than by the Buyer in performing under this Contract

10.2. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

10.3. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.4. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.5. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

10.6. Any dispute arising out of, under or in connection with these Conditions or the sale of the goods shall be referred to and settled exclusively by final and binding arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by a single arbitrator appointed by agreement or (in default) nominated, on the application of either party, by the President for the time being of the Law Society of Germany. The place of arbitration shall be the place that at the time being is the competent county court for where KERN - DEUDIAM Diamantwerkzeuge und Maschinen GmbH is situated.

10.7. The Contract and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Germany.

Hövelhof, March 2011

KERN – DEUDIAM Diamantwerkzeuge und Maschinen GmbH
Industriestraße 24 • D – 33161 Hövelhof • GERMANY
T: +49 (0) 5257-507-0 • F: +49 (0) 5257-507-40
info@kern-deudiam.de
www.kern-deudiam.de