

## KLAUKE INDUSTRIEANLAGEN GMBH STANDARD CONDITIONS OF TRADING FOR THE SALE OF GOODS AND SERVICES

### 1. DEFINITIONS AND APPLICABILITY

1.1. In these Conditions (a) "KI" means Klauke Industriefanlagen GmbH; (b) "Customer" means the Person or organization buying or offering to buy Goods and/or Services; (c) "Goods" means a product constructed by KI or, in relation thereto to any piece, part, component, accessory, module, furnishing or other equipment of any kind which is installed in or attached to; (d) "Customer's Goods" means Goods supplied to KI by the Customer (including all accompanying documents) for the purpose of receiving or being quoted for Services; (e) "Services" means work performed on Goods delivered to the Customer (reconditioning, overhaul, repair, servicing, testing, and inspection work), and manufacture of Goods by KI or expressions of opinion (giving of advice; and (f) "Order Acknowledgement" means a written notice from KI to the Customer accepting an order for Goods and/or Services.

1.2. These Conditions are deemed to be incorporated in every agreement entered into by KI and the Customer for the sale of Goods and/or Services by KI to the Customer. These Conditions apply in place of and prevail over any terms or conditions contained or referred to in the Customer's order or in correspondence or elsewhere or implied by trade usage, custom, practice or course of dealing and any purported provision to the contrary is hereby excluded or extinguished.

1.3. To amendment or addition to these Conditions shall be binding on KI unless specifically agreed in writing by a director of KI.

1.4. The Customer's attention is particularly drawn to Conditions 7.11, 8 and 9 which exclude of limit KI liability.

### 2. ACCEPTANCE AND PERFORMANCE OF ORDERS

2.1. KI price lists, estimates and quotation constitute invitations to treat and not offers made by KI unless expressed to be fixed estimates or fixed quotations remaining open for the period specified therein or 3 months, whichever is shorter. KI reserves the right to withdraw or revise the same without notice at any time prior to issuing an Order Acknowledgement.

2.2. The Customer, by placing its order, makes an offer to purchase Goods and/or Services from KI subject to these Conditions.

2.3. No valid agreement for the sale of Goods and/or Services will come into existence until KI has accepted the Customer's offer by issuing an Order Acknowledgement relating to such an agreement is binding on KI or the Customer unless set out in these Conditions or an Order Acknowledgement.

2.4. Any Customer's Goods required by KI to fulfill an order for Services shall be delivered to an agreed KI facility together with all relevant information, data and records (made up to date) relating to such Goods. All delivery costs will be borne by the Customer.

### 3. PRICE AND PAYMENT

3.1. All prices referred to in an Order Acknowledgement are net and subject, where applicable, to the addition (at the applicable rate) of VAT and any tax or duty payable by the Customer including, without limitation, taxes or import/export duties.

3.2. Any deposit required by KI will be treated as security for completion of the transaction to which it relates and may be retained by KI if the Customer fails to pay the price due in full or fails to take delivery otherwise than as a result of KI's default.

3.3. KI may invoice for Goods supplied and/or Services completed on delivery to the Customer of the Goods or Customer's Goods concerned or, in the case of part delivery, on each delivery as if it were a separate order or contract.

3.4. KI may invoice for shipping/inspection work carried out on the Customer's Goods to prepare an estimate for Services plus the cost of preserving the Customer's Goods while the Customer considers a quotation, in each instance regardless of whether the Customer subsequently places an order for Services.

3.5. If KI agrees (at the Customer's request) to suspend performance of an order for Services and, within 6 weeks thereof, no request is received from the Customer to resume work, the Customer's Goods will be preserved and packed for long term storage an KI may invoice in respect of the amount of Services completed and, in the future, a reasonable charge for storage and preservation of the Customer's Goods.

3.6. Payment of KI's invoices shall be made in the currency stated therein without any deduction or set-off whatsoever on or before thirty (30) calendar days after the date of invoice.

3.7. If any payments becomes overdue KI may, without prejudice to its other rights, charge interest at 1.5% above the base rate of interest to run from the due date for payment until KI receives the full amount, whether before or after judgement.

3.8. If the Customer disputes an Invoice in good faith it shall provide KI with written details of the disputed element within 28 days of the date of the Invoice and pay the undisputed part in accordance with Condition 3.6. Failure to comply with this Condition shall result in deemed acceptance by the Customer of the correctness of the invoice in question.

### 4. DELIVERY

4.1. Any quotes delivery or completion date is only KI best estimate and not a contractual commitment. KI fulfils its obligation to deliver when it makes the Goods and/or Customer's Goods available to the Customer or its carrier for collection at a specified KI facility and gives notice thereof the Customer.

4.2. Risk in the Goods/Customer's Goods shall pass to the Customer on delivery by KI to the Customer or its carrier for collection at the KI facility specified by KI.

4.3. At the Customer's request and at its cost and risk, KI will arrange transportation of the Goods/Customer's Goods to any place other than the place specified in Condition 4.2 and/or apply for any permits or approvals specified by the Customer, but the Customer will always be responsible for their issue or renewal.

4.4. KI may make a reasonable charge for storage and preservation of any Goods/Customer's Goods, which the Customer fails to collect within 28 days of notice given pursuant to Condition 4.1 or which KI retains pursuant to Conditions 6 or 11.

4.5. Goods and/or Customer's Goods included in each delivery are deemed to be sold under a separate contract. Any non-delivery, shortage in delivery or any claim by the Customer in respect of any delivery shall not entitle the Customer to reject any balance of Goods or Services ordered.

### 5. PASSING OF TITLE

5.1. Title to Goods supplied (whether on their own or as part of the performance of Services and whether separate and identifiable or incorporated in or mixed with other goods) by KI to the Customer shall remain with KI until payment in full has been received by KI for these Goods, for any other Goods supplied by KI and of any other monies due from the Customer to KI on any account. Until this to the Goods passes to the Customer, the Customer shall keep the Goods separately and readily identifiable as the property of KI and the Customer will notify KI (at KI's request) of their whereabouts at any time.

5.2. Any resale by the Customer of Goods in which title has not passed to the Customer shall (as between KI and the Customer only) be made by the Customer as agent for KI.

5.3. The Customer shall immediately notify KI of the whereabouts of the Goods if KI notifies the Customer that the Customer is in breach of any of the terms of an agreement incorporating these Conditions or if KI considers, for any reasonable cause, that the Goods are in jeopardy, or on the happening of any of the events set out in Condition 11.

5.4. Forthwith upon receipt of notice from KI pursuant to Condition 5.3, the Customer's authority to possess the Goods shall automatically end (without any requirement for notice or any other act), and all Goods which are the property of KI shall be immediately delivered to KI.

5.5. KI, its employees and agents shall be entitled to enter upon or into any land, buildings where the Goods or part of them are situated or are reasonably thought to be situated, and may take repossession of them at any time. If the Goods have been fitted to or fixed to an engine, KI shall have the right to take possession of them and KI's title in the Goods shall not be affected by any stipulation or rule of law that the Goods have become part of an engine or other machinery.

### 6. CUSTOMER'S GOODS

6.1. Delivery to KI of the Customer's Goods for the purpose of ordering an estimate for Services authorizes KI to strip and inspect such Goods for the purpose of preparing an estimate. Risk in the Goods/Customer's Goods after delivery to KI will remain with KI until delivery to the Customer pursuant to Condition 4.2.

6.2. KI will comply, at the Customer's expense, with any instructions of the Customer accepted in an Order Acknowledgement regarding the disposal of unseviceable Customer's Goods. In the absence of such instructions, KI will not be liable in any manner whatsoever to return to the Customer or account for any of the Customer's Goods KI deems unseviceable.

6.3. KI is entitled to a general and particular lien on any of the Customer's Goods (including accompanying technical records) in KI's possession for all amounts whatsoever and howsoever outstanding due from the Customer to KI under any contract, even though such Customer's Goods may from time to time have been removed from KI's possession. Until proved otherwise KI is entitled to assume that such Customer's Goods are the absolute property of the Customer or, if not owned by the Customer, that it has authority to put them in KI's possession subject to these Conditions. KI may recover from the Customer all the costs and expenses of exercising such lien including (without limitation) storage charges.

6.4. If any amount due from the Customer to KI under any contract is outstanding KI, on giving not less than 28 days notice to the Customer, may sell to itself or a third party on such terms and at such price as it considers reasonable any of the Customer's Goods in its possession, save that the price will be the amount specified in an third party valuation (a copy of which will be sent to the Customer) where KI is the purchaser. On completion of the sale, KI shall apply the proceeds of sale in total or partial satisfaction of all amounts due plus all costs and expenses incurred in connection with the sale including (without limitation) storage, legal and other professional costs and charges. Any shortfall between amounts due to KI and the proceeds of a sale shall be paid, on demand, by the Customer to KI and any excess between the two will be returned to the Customer.

### 7. WARRANTIES

7.1. KI, so far as it is able, pass on to the Customer the benefit of any warranty given by any third party (whether manufacturer, sub-contractor or otherwise) in respect of Goods and/or Services. Subject only to that obligation, all Goods and Services are sold without any warranty whatsoever, save as specified in Condition 7.

7.2. KI warrants that it will perform all Services (including, for the purposes of this Condition 7.2 only, the manufacture and supply of Goods by KI) with reasonable care and still in accordance with all applicable laws, regulations, overhaul manuals, manufacturer's technical instructions and/or written instructions of the Customer accepted in an Order Acknowledgement, provided always that KI may make minor changes to Goods and/or Customer's Goods which do not affect price, installation or interchangeability.

7.3. If the Customer establishes to KI's reasonable satisfaction within 12 months, following delivery that, fair wear and tear excepted, KI has failed to comply with the warranty in Condition 7.2 in relation to Services, KI shall repair or, at its option, replace the subject Goods/Customer's Goods free of charge, such obligation to include secondary damage within the Goods/Customer's Goods, save that where betterment results from KI remedial action KI will be permitted to invoice the Customer in respect of the value of such betterment at KI's standard charges.

7.4. Warranty claims made pursuant to Condition 7.3 will be subject receipt by KI (at the Customer's cost) of a full report of claimed defects and details of any work carried out on and storage of the Goods/ Customer's Goods after delivery together with delivery to KI of the Goods/Customer's Goods to be remedied within 28 days of discovery of a claimed defect.

7.5. If KI rejects a warranty claim, KI will, on request, supply the Customer with a copy of its investigation report, following which the Customer will have 7 days to notify KI that it wishes to refer KI decision for review by an engineering expert appointed jointly by the parties or, failing agreement, by the President of the FIA. The expert shall be instructed to complete his review within 28 days. The determination of the expert on the validity of the warranty claim shall be final and binding on the parties. The expert appointed shall act as expert not as arbitrator, and shall hear submissions from each party within the prescribed time limit as in this sale discretion the considers appropriate before making his determination. The charges of the expert will be borne by the Customer in the first instance and reimbursed by KI if the expert decides in the Customer's favour.

7.6. If a warranty claim is accepted by KI, or if an expert determination is made in the Customer's favour pursuant to Condition 7.5, KI will reimburse the reasonable costs and expenses incurred by the Customer in connection with delivery of the subject Goods/Customer's Goods to KI for inspection. If an expert is unable to reach a conclusion on the validity of the claim, the parties will share equally the costs to KI of meeting the remedial action requirements of Condition 7.3 as well as the costs of the expert and the costs to the Customer of delivering the Goods/Customer Goods to KI.

7.7. KI has no liability whatsoever under Conditions 7.2 or 7.3 if the Goods/Customer's Goods concerned have been subject to misuse or neglect or not been maintained and operated in accordance with any applicable manufacturer's handbook/manual or instructions applicable to such Goods or if the Goods/Customer's Goods have been repaired or altered without KI's prior approval.

7.8. If the Customer establishes to KI's reasonable satisfaction within 12 months of the date of any expression of opinion or giving of advice by KI in writing that there was a material error in any expression of price paid in respect of such opinion or advice.

7.9. If a warranty claim is accepted by KI and rectification work carried out, the applicable KI warranty period specified in Condition 7.3 will be extended by the period of time taken to carry out such work. If a warranty claim is rejected KI may invoice the Customer for work carried out to investigate the claim, save to the extent provided otherwise in condition 7.5.

7.10. The warranty specified in Condition 7.2 will be transferable by the Customer to a third party provided such third party accepts in writing the warranty restrictions includes in these Conditions before making any claim against KI pursuant to such warranty.

7.11. The warranties in Condition 7 are given in lieu of and replace, exclude and extinguish all and every condition, warranty or representation whatsoever whether express or implied by statute, common law, trade usage, custom and otherwise in respect of the quality or fitness for purpose, description of Goods, standard of Services/workmanship or otherwise. Additionally, the General Product Safety Regulations 1994 shall not apply to any Goods supplied for repair or reconditioning before use.

### 8. LIMITATION OF DAMAGES

8.1. Nothing in these Conditions excludes or restricts any legal liability of KI for death or personal injury resulting from the negligence of KI or restricts any of KI's legal obligations.

8.2. Following delivery of the Goods/Customer's Goods to the Customer and save as provided in Condition 7, KI shall have no liability to the Customer for any damages or losses (direct, indirect or consequential including, without limitation, loss of profits, loss of revenue and increased costs) resulting from defects in design, materials or workmanship or from any act or default of KI (whether negligent or otherwise) unless by KI's recklessness or intent to cause damage.

8.3. Following delivery of the Goods/Customer's Goods to the Customer and save as provided in Conditions 7 and 8.1, KI's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the Goods and/or Services which give rise to such liability in respect of any occurrence or series of occurrences.

### 9. INDEMNITY

9.1. The Customer will indemnify KI, its employees, agents, sub-contractors and associated companies against all damages, losses, costs, claims and expenses (including reasonable legal fees) in respect of any liability of such parties towards a third party arising out of or in connection with any Goods or Services supplied by KI or Customer's Goods sold by KI pursuant to Conditions 6.3 and 6.4 unless arising by reason of the negligence of KI.

### 10. FORCE MAJEURE

10.1. Neither party shall have any liability to the other for any failure or delay fulfilling its obligations to the extent that fulfillment thereof is impeded by any event beyond its reasonable control including (without limitation) a flood, storm or other natural event; or any war, hostilities, revolution, riot or civil disorder; or any destruction, breakdown (permanent or temporary) or malfunction of, or damage to, or theft of, any premises, plant, equipment or materials (including any computer hardware or software or any records); or the introduction of, or any amendment to, a law or regulation, or any change in this interpretation by any authority; or any action taken by governmental or public authority or any agency of the European Union, including any failure to grant a consent, exemption or clearance; or any strike, lock-out or industrial action; or any unavailability of, or difficulty in obtaining plant, equipment or materials; or any breach of contract or default by, or insolvency of, a third party (including an agent or sub-contractor).

10.2. Condition 10.1 does not apply unless the party seeking relief promptly notifies the other party of the delay and its cause and takes reasonable steps to be in a position to resume performance with the least delay, except that in the event of shortages of goods, materials or available resources the non performing party shall have the right to allocate as it thinks fit the goods, materials and resources available between the parties with whom it has contractual obligations in respect thereof and shall not be obliged to purchase from non-standard suppliers or contractors to make good such shortages.

10.3. If a party cannot fulfill its obligations by reason of any event covered by Condition 10.1 for a period of 90 days, each party's obligations to the other will terminate on written notice of either party and KI shall be paid in proportion to the amount of completed Services and/or Goods delivered and, once paid, shall deliver any Customer's Goods in its possession to the Customer.

10.4. This Condition 10 shall not apply to the Customer's payment obligations.

10.5. The existence of any legal prohibition, whether at the time of issue by KI of an Order Acknowledgement or subsequently, applicable to the sale of Goods and/or Services by KI to the Customer, will relieve KI of from liability to fulfill its obligations and entitle KI to terminate all relevant contracts by notice with immediate effect. Condition 11.2 shall apply to the termination of such contracts, save to the extent KI is not permitted by any legal prohibition to receive monies from the Customer, in which event KI will be entitled to sell any Customer's Goods in its possession at a price specified in a third party valuation and apply the proceeds in satisfaction of amounts owing to KI and keep the balance for the benefit of the Customer and payment thereof onto KI is legally permitted to do so.

### 11. FINANCIAL CONDITION OF CUSTOMER

11.1. If the Customer wrongfully stops payment of any debt or is deemed to be unable to pay its debts, or in KI's reasonable opinion, KI considers that the financial condition of the Customer is such that the Customer is unable to meet its payment obligations to KI on completion of Services in progress or on delivery of Goods, KI may elect to proceed with the completion of such Services or delivery of Goods or to treat any contract for such Services or Goods as terminated.

11.2. If a contract for Services or Goods is terminated pursuant to Conditions 10.5 or 11.1, the Customer shall pay KI in proportion to the quantity of Services (and other ordered work) completed at the time of termination together with the cost of any KI reassembly and/or packing work necessary to put the Customer's Goods (and other property) in a condition suitable for redelivery to the Customer. In each instance, KI may retain the Customer's Goods pending payment of all KI invoices in full.

### 12. GENERAL

12.1. All notices hereunder shall be in writing and in English and deemed to have been given on the date of delivery of refusal if delivered by hand, on the date of dispatch if faxed correctly and legibly, and 7 days after posting if sent by first class post (airmail if posted to another country), in each instance to the last known address of the party concerned.

12.2. Neither party may assign any of its rights or duties, except to a subsidiary or affiliate, without the prior consent of the other.

12.3. The rights of neither party shall be prejudiced or restricted by any indulgence or forbearance extended by such party or by any delay in exercising or failure to exercise any right and no waiver by either party of any breach shall operate as a waiver of any other or further breach.

12.4. To avoid delaying or disrupting the provision of Goods and/or Services, the Customer shall promptly give its decision on all matters referred to it by KI.

12.5. All decisions made by KI on matters requiring a determination by KI pursuant to these Conditions shall, in the absence of manifest error, be final and binding on the Customer.

12.6. Each party's rights and remedies are cumulative and not alternative or exclusive of each other or any provided by law.

12.7. Any part of these Conditions found by any court or other competent authority to be unenforceable shall be considered capable of being cut out so as not in any way to affect the remainder.

12.8. These Conditions and any agreement between the Customer and KI to which these Conditions apply shall be governed by and construed in accordance with German law and the German courts shall have exclusive jurisdiction to adjudicate any dispute which arises in relation thereto save that, as the provision conferring jurisdiction is for the benefit of KI only, KI shall retain the right to bring proceedings against the Customer in any other court which has jurisdiction and in whose jurisdiction the Customer has a place of business or has a bank account or owns assets.