

Kerfa GmbH General Terms and Conditions of Business

1. General / Scope of Application

(1) The following terms and conditions of the company Kerfa apply exclusively.

Kerfa's terms and conditions apply without any further particular indication. The terms and conditions are valid for all current and future contracts, deliveries and other services unless they are cooperatively excluded or modified in a written document.

(2) Other terms and conditions the customer may use, which are in contradiction or deviation of those Kerfa uses, are invalid and not being recognized. Kerfa's terms and conditions apply even if delivery is executed to the customer without any reservations and even if Kerfa is aware of contradicting and deviating terms and conditions of the customer but does not explicitly disagree.

(3) Inclusion and interpretation of these General Terms and Conditions as well as conclusion and interpretation of contracts with the customer observes only the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the international Sale of Goods (CISG) is excluded.

(4) The legal inefficacy of any stipulation or part of these terms and conditions does not have any effect on the validity of the other terms and conditions. The contracting parties are obliged to replace the invalid stipulation by a new condition, which most closely represents the invalid condition. This rule also applies in case of a necessity for further regulations or in case any stipulation in these terms and conditions is unclear or incomplete.

(5) Place of fulfilment for all obligations of the contractual relation-ships is the business domicile of Kerfa in Hagen, Germany. This also applies to the payment liability.

(6) Place of jurisdiction is the location of the business domicile of Kerfa, or, in case Kerfa chooses so, a court of arbitration in Düsseldorf, which decides the case according to the arbitration regulations of the local chamber of commerce.

Kerfa is obliged to select the court before a pending litigation.

Kerfa is also entitled to bring legal action against the customer at any other competent court.

2. Offers / Documents relating to Offer/ Installation

(1) Offers are subject to alteration. The validity of declarations of acceptance and the validity of all orders requires a written confirmation of Kerfa by fax, mail or email. This also applies to modifications, additions, or supplementary agreements.

(2) Drawings, illustrations, specifications, densities, measurements, performances and other information contained in catalogues, leaflets, newsletters, price lists or documents pertaining Kerfa's offer do not

Kerfa GmbH
An der Kohlenbahn 30
58135 Hagen
Deutschland

Telefon: +49 2331 9461-0
Telefax: +49 2331 9461-49
E-Mail: info@kerfa.com
Internet: www.kerfa.com

Sitz der Gesellschaft: Hagen
Amtsgericht Hagen HRB 3184
Steuer-Nr.: 321/5714/0545
USt-IdNr.: DE126456025

Geschäftsführung:
Konrad Meyr

guarantee the actual condition of the good or its durability. They are unaccommodating unless their compliance is explicitly otherwise agreed.

Modifications of features, both before and after conclusion of the contract, are reserved, unless these modifications are contradictory to the order confirmation or the specification of the customer. The customer will agree to any other modifications proposed by Kerfa, as far as they are reasonable for him.

(3) In case after completion of the contract new regulations are introduced, which diverge from those valid when placing the order or when entering the contract, the resulting additional costs will be charged separately.

(4) Agreements or completions with visiting engineers/agents require explicit confirmation in writing.

(5) Special installation conditions are valid for any installation completed by Kerfa. These conditions are also part of the contract.

3. Prices

(1) Our prices apply “ex works”, excluding packaging, shipping costs and other freight costs, which will be charged separately as a special item.

The prices will be added with cost of freight and packing as well as VAT at the legally valid rate on the date of issuing the invoice.

(2) Prices are subject to change, if the delivery date agreed upon is changed for reasons, Kerfa is not responsible for. Price alterations take place on basis of increased costs of materials or of labour, or on basis of increased incidental costs. Changes in prices because of the reasons named above are as well permitted in case of fixed prices.

(3) Unless otherwise agreed, the customer has to bear any supplementary fees, public charges or taxes

(4) Disposal of packing materials and costs thereby incurred are fully at the expense of the customer. Costs incurred by the return of packing material also are to be borne by the customer.

(5) Providing the customer requests a delay of the delivery, the material will be invoiced and stored on risk of customer and charging extra cost.

4. Delivery period / Default

(1) Periods stipulated for delivery apply only approximately, unless a specific date for delivery is explicitly stipulated or confirmed in writing. The delivery period begins with delivery of the confirmation of the order and as soon as all details of its implementation are clarified.

The adherence to delivery dates requires the customer to fulfil the contractual obligations in time and properly. Especially the punctual delivery of the relevant technical and other documentation and obtained permissions, including those for construction drawings, and the adherence to terms of payment is

requested. The delivery period may be extended adequately if the customer fails to co-operate as it is required or agreed upon.

The defence of non- performance of the contract is reserved.

Delivery periods and dates of delivery refer to the date of completion. The dates and periods are met with announcement of the readiness for dispatch.

(2) In case of new conditions or legal regulations, enacted during the construction period, which diverge from those valid by the time of conclusion of the contract, or in case Kerfa agrees to additional modifications, the period of delivery will be extended as necessary.

(3) In case of acts of God and further unpredictable, extraordinary and unforeseen circumstances, such as the interruption of operations by fire, water and similar incidents, failure of manufacturing plants and machines, delays of delivery caused by suppliers and business interruption caused by a shortage of raw materials, of energy or of manpower, strike, lock-out, difficulties in ordering means of transportation, traffic disruptions or interference of authorities, Kerfa has the right to defer delivery for a reasonable time. This applies in case Kerfa is not responsible for the circumstances named above.

(4) If periods stipulated for delivery are exceeded because of circumstances, Kerfa is responsible for, the customer may withdraw from the contract after expiration of an adequate time limit he had set. This rule only applies, if the delayed delivery is not accomplished within extension of the time limit because of reasons, Kerfa is responsible for. Kerfa is not in default before extension of the set time limit.

The withdrawal of the contract must be told in writing.

Instead of withdrawal the customer has the right to demand compensation due to non-performance of the contract, in case Kerfa or its assistants or partners caused the default deliberately or through gross negligence. In case of negligence the customer has to prove the damage. The amount of compensation for damage must be estimated by the customer before completion of the contract; he can demand a maximum amount of the estimated compensation for damage of 1% for each complete week of delay, or 3% of the invoice net value of the delayed deliveries and services.

5. Transfer of risk

(1) Under exclusion of any liability, Kerfa has the right to name the carrier, the customer is obliged to engage.

(2) The delivery takes place at the customers' own expense ex works, the risk of transport is transferred to him, unless Kerfa and the customer have cooperatively stipulated another agreement in a written document.

In any circumstance, after delivery of the item to the customer or his representative, the risk of accidental perishing and deterioration is to be borne by the customer. At the latest the risk passes to the customer with the item leaving the factory of Kerfa. In case Kerfa delivers free of carriage charges or Kerfa concludes transportation insurance, the customer must also carry the risk.

If the customer wishes or causes the delivery item to leave the factory at a later date, he bears the risk from the date on the item is ready for shipping. In this case Kerfa has the right to store the item at the customers' risk and expense. The incurring costs will be charged each month of storage for the full amount of at least 4 % of the invoice value, minimum 100 EUR.

- (3) The customer must observe the conditions of the carrier and insurance companies engaged for the shipping.
- (4) In case of transport damages an assessment of damage has to be taken by the appropriate authority. Kerfa is to be informed immediately.
- (5) Should items have material defects or be faulty, the customer is to accept the delivery without limiting any further rights.

6. Warranty / Liability for Defects

(1) In case of a commercial transaction between the customer and Kerfa, the customer has to report apparent defects, wrong delivery and quantity deviations to Kerfa without undue delay, at the latest within four days after the item having been delivered by Kerfa. Kerfa must be notified about the deficiency in writing.

In case the customer fails to notify Kerfa about the defects, any warranty claim is invalid. The customer loses his warranty unless Kerfa concealed the defect in a fraudulent manner.

(2) The customer is only entitled to supplementary- performance, he has the choice of either rectification or replacement by delivery of a new item free of defects.

Rectification has priority, unless it is not reasonable due to the scope of work and the value of the item.

In case the supplementary performance failed thrice, the customer- at his own choice- is entitled to demand either cancellation of the contract or abatement of the purchase price.

Notifications of defects can only be considered if customer is submitting a documentation of the performed heating up period. In case Kerfa heating up regulations are not known prior to first start up it is the sole responsibility of the customer to gain it from Kerfa before starting the furnace.

(3) The limitation of claims with regard to deficits is 12 months and begins with the day of readiness for dispatch/dispatch note. Deviating periods of limitations stated in the purchase conditions of the buyer can only be effective if they are explicitly confirmed in written form by Kerfa.

7. Reservation of Title

(1) Kerfa reserves the right to retain its title to the object of purchase until all payments relating to the delivery contract have been received. This also applies until all- future or conditional- demands of the business connection are fulfilled, irrespective of legal basis. This also applies in case the customer makes a payment on a specific demand.

(2) The customer is not entitled to pledge the conditional goods or to assign them as a security. He may only dispose of the goods by usual commercial means. Herewith the customer assigns all resulting

claims against his business associate to Kerfa. These claims serve as security for all claims against the customer to the same extent as the conditional goods. In case the conditional goods are sold together with other goods, Kerfa did not deliver, the assignment is only valid to the amount of the final invoice amount of the sold conditional good. Kerfa herewith accepts the assignment of the claims.

(3) The customer has the right to collect claims against his business associates until Kerfa revokes this right. Kerfa will only revoke this right, if the customer does not attend his obligation to pay. On demand of Kerfa, the customer is obliged to inform his business associates about the assignment of his claims against them to Kerfa. He is obligated to give all information and documents required for the collection of debts.

(4) At the customers' request, Kerfa will release securities in case the realisable value of the existing securities exceeds the secured claims by more than 25%. The customer has the right to select the securities which are to be released.

(5) In case the reservation of title or the assignment is not legally effective according to the law of the country where the goods are sent to, the corresponding debt security of this country applies. The customer is obliged to participate in providing most extensive securities. He is required to make all arrangements necessary for constituting these rights.

(6) If the object of purchase is being processed by the customer, the reservation of title extends on the new item. In case, the object is processed together with other items not sold by or belonging to Kerfa, Kerfa acquires joint ownership of the new item.

The share of the joint ownership is based on the proportion of the value of the object of purchase to the value of the object processed with.

8. Terms of Payment

(1) Unless otherwise agreed, invoices are due for payment immediately and without any deductions.

(2) In case invoices are not paid immediately, the customer is in default without additional notice. If the payment period is culpably exceeded, interest to the amount of 8 % above the ECB base rate plus VAT will be added. Kerfa reserves the right to enforce further claims in case of delay of payment.

(3) Kerfa reserves the right, regardless of any contradicting conditions the customer may have, to set payments against the customers' outstanding debts. In this case the customer will be informed about the method of settlement. In case of accrued costs and interests, Kerfa reserves the right first to set the payment against the costs, then against the interest and at last against the main demand.

(4) Payment is not being accepted before Kerfa has access to the amount. In case of payment by cheque it will only be considered valid after the cheque has been cashed. Bills at maturity will not be accepted as payment.

(5) In case of outstanding invoices, exceeded terms of payment or critical pecuniary circumstances or in case Kerfa becomes aware of circumstances, which cast doubt on the financial standing of the customer, Kerfa has the right to demand the full remaining debt at once. In this case- regardless of

diverging agreements- Kerfa has the right to request advance payment or securities, or in case the item has already been delivered, payment of all outstanding debits of the same legal relationship.

This condition applies especially, if the customer suspends payment, cheques are not being cashed, insolvency or bankruptcy proceedings against the asset of the customer are submitted or instituted or a respective application has been rejected due to lack of funds.

9. Construction Drawings / Manufacturing Documents / Information / Data

- (1) The customer assumes liability for not violating third parties' rights by the use of provided drawings.
- (2) Any data, devices, supply or material provided by the customer for manufacturing or processing have to be sent in at the expense of the customer. They are stored on the customers' risk. Kerfa is not obliged to insure these items.

10. Patents / Copyrights

- (1) Without explicit and written consent, rights and claims against Kerfa, especially because of defects on goods produced and delivered by Kerfa or because of delinquencies committed by Kerfa, may not be assigned or pledged to third parties- neither all nor part.
- (2) In case Kerfa has to conduct experiments using drawings or devices the customer provided, the customer is responsible for not violating industrial property rights of third parties.
- (3) Kerfa has copyright and industrial property rights to the facilities, instruments, equipments, plans and drawings it has constructed.
- (4) The customer guarantees, that any survey, drawing, installation and calculation, especially measurement- and cost- calculations produced for executing the order are being produced for the own use only.

11. Limitation of Liability / Limitation of Claim

- (1) Kerfa is liable for damages or avoidable expenses- regardless of the legal nature of the claim- only if the damage or the avoidable expense results from grossly negligent or deliberate delinquency of Kerfa or one of his assistants. Kerfa is not liable especially for loss of profit and unforeseeable secondary damage, unless the liability is based on warranties, which are to protect the customer against this sort of damages.
- (2) The limitation period for claims relating to defects in goods or services contrary to duty –including claims for damages and claims for compensation of avoidable expenses- amounts to 24 months, calculated as from the time of transfer of risk or other service.
- (3) The customer shall exempt Kerfa from third party claims against Kerfa for defects in goods delivered or for wrongfully performed services-including compensation claims and claims for reimbursement of

expenses. This is especially true for delivery to the USA or Canada, regardless of whether Kerfa did know the location of production or not.