

**General Terms and Conditions**  
**Sales, repair, services,**  
**Karl Klein Ventilatorenbau GmbH**  
(hereinafter: GTC)  
Status 04/2017

**A. Scope of these GTC**

1. All rights and obligations between Karl Klein Ventilatorenbau GmbH (hereinafter: Klein or we or the supplier) and the purchaser/customer (designation applies to all contract forms), our GTC shall apply exclusively in their respective version at the time of ordering or commissioning. We would like to point out that we reserve the right to adapt the GTC in particular to changed legal requirements. The customer will not be informed separately.
2. We do not recognize any terms and conditions of the customer that conflict with or deviate from our GTC unless we have expressly agreed to their validity in writing. Consent can only be given in a separate letter and only by Klein's managing directors and/or authorized signatories. The GTC shall also apply if Klein accepts the order without reservation in the knowledge of conflicting or deviating terms and conditions of the customer. In particular, consent to other provisions shall not be given by silence or by delivery/performance.
3. Services within the meaning of these GTC are both deliveries and services of any kind.
4. These GTCs apply to the sale of goods (new and used parts) as well as to repairs and conversions and to the provision of services (e.g. consulting, engineering). The GTCs regulate in C. Regulations on the purchase and in D. Regulations on the repair of the customer's assets and in E. Special provisions for services. Common provisions are regulated in the remaining clauses.

**B. Common provisions for purchase, repair and services**

**I. Prices, terms of payment**

1. Unless otherwise agreed, our prices are ex works plus applicable VAT, packaging and freight costs, additional insurance and customs duties as well as any other fees. These will be charged separately.
2. Our claims are due for payment immediately after delivery/execution of the service. Individual contractual provisions shall take precedence insofar as earlier due dates are specified therein. Default in payment shall occur no later than 30 days after the invoice date, unless otherwise agreed. The customer shall pay all default costs. These are in particular our reminder costs of € 10.00 per reminder as well as interest from the date of default in the amount of 9.0 percentage points above the base interest rate, but at least 14.00%.
3. The customer may only offset undisputed or legally established claims.
4. The customer shall only be entitled to rights of retention insofar as they are based on the same contractual relationship and the underlying counterclaim is undisputed or has been legally established.
5. All claims arising from a contractual relationship shall become due immediately if the customer defaults on a partial payment within the scope of our contractual relationship.
6. If, after conclusion of the contract, we become aware of circumstances which are likely to reduce the creditworthiness of the customer and thereby jeopardize the customer's consideration, we may demand that the customer provide appropriate security or demand immediate payment of all claims.
7. If the customer is not in a position to provide the required security within a reasonable period of time, outstanding claims against the customer shall become due immediately.
8. If the customer is in default or fails to provide security, we shall be entitled to withhold further deliveries. The same shall apply in the event that circumstances become known which indicate the insolvency (including imminent insolvency) or credit unworthiness of the customer.
9. In the case of the preceding clauses, we shall also be entitled to perform outstanding deliveries and services only against cash payment or payment in advance and to withdraw from the contract after a reasonable grace period or to claim damages for non-performance.

**10.** In the event of the above clauses or in the event of breach of contract by the customer, in particular default of payment and suspension of payment, we may also prohibit the resale of the goods and demand their return or the transfer of indirect possession of the delivered goods at the customer's expense and revoke any authorization to collect that may have been granted. In addition, we are entitled to make use of statutory liens (in particular: contractor's lien).

**11.** The customer hereby authorizes us to enter the customer's premises in the aforementioned cases and to remove the delivered goods. Repossession or seizure of the goods subject to retention of title by us shall not be deemed a withdrawal from the contract. We are entitled to the usual type and scope of securities for our claims, even if they are conditional or limited in time.

## **II. Contract**

**1.** Our information on the goods (e.g. weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or markings of the goods. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements are permissible, provided that they do not impair the usability for the contractually intended purpose. We are entitled to replace components with equivalent parts if this does not impair the usability for the contractually intended purpose.

**2.** If the customer wishes to withdraw from the contract after conclusion of the contract without justification, this is only possible with our express written consent.

**3.** In this case, the customer undertakes to pay the contract price less the expenses saved by the termination plus a processing fee of € 150.00 for the processing.

**4.** Insofar as we make other arrangements with the customer in writing, these other arrangements shall take precedence.

## **C. Special regulations for the purchase**

### **I. Reservation of ownership**

**1.** The delivered goods shall remain our unrestricted property until full payment of the purchase price including all ancillary claims, in the case of repeated or ongoing business relations until the entire debt balance has been repaid.

**2.** The retention of title shall apply until all our claims have been settled in full, irrespective of the legal grounds (including, in particular, claims for damages such as damages caused by delay).

**3.** In the case of payment by cheque or bill of exchange, we shall retain title until they are honored and credited to our account; in the case of collection of the claim by direct debit authorization, we shall retain title until the collection is approved by the entitled party.

**4.** If we have agreed a current account relationship with you, the retention of title shall secure our balance claim from the time the balance is drawn.

**5.** The customer's claims arising from the resale of the goods subject to retention of title are hereby assigned to us. If the goods subject to retention of title are sold by the customer together with other goods not purchased from us, the assignment of the claim from the resale shall only apply to the amount of our invoice value of the goods subject to retention of title sold in each case. The customer is entitled to collect assigned claims from the resale until our revocation, which is permissible at any time.

**6.** We will make use of our right of revocation (in particular for the collection of claims by the customer) in the case groups specified in these GTC or comparable constellations. The customer is not authorized to assign claims to third parties under any circumstances.

**7.** After revocation of the collection authorization, the customer is obliged to name his contractual partners (customers) upon request, to inform them of the assignment and to provide us with the information necessary to assert the rights against the customer. Furthermore, the customer is obliged to hand over the documents required for collection.

**8.** We shall be entitled to disclose the assignment within the scope of the extended reservation of title ourselves and to demand payment of the claim assigned within the scope of the extended reservation of title by also presenting this payment agreement. If the required documents cannot be submitted, the fault of the customer for not submitting the documents and the resulting non-enforceability of the claim shall be rebuttably presumed.

**9.** In the event of enforcement measures, seizures or other access by third parties to the reserved goods or the claims assigned in advance, the customer must inform us immediately in writing, stating the documents necessary for an intervention. Intervention costs shall be borne by the customer unless they are to be recovered from third parties.

## **II. Execution of the deliveries**

### **1. delivery periods, delivery dates**

**1.1** For deliveries, Klein shall initially propose delivery periods, usually a specific calendar week, without obligation.

**1.2** The delivery dates and delivery periods stated are non-binding proposals; the following provisions apply:

- a) If all technical questions have not been clarified, there is no obligation to deliver and there can be no delay.
- b) Compliance with deadlines always presupposes the timely and complete fulfillment of the customer's obligations to cooperate.
- c) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we are entitled to demand compensation for the resulting damage (including any additional expenses). Further rights and claims remain reserved.
- d) If the customer is in default of acceptance, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.
- e) Events for which we are not responsible, in particular force majeure, entitle us to postpone delivery for the duration of the hindrance plus a reasonable start-up time or, if the hindrance is expected to be permanent, to withdraw from the contract in whole or in part due to the part of the contract not yet fulfilled.
- f) Force majeure shall include strikes, lockouts and other significant operational disruptions for which we are not responsible, export or import obstacles and/or difficulties, including the failure to deliver or late delivery by our supplier for which we are not responsible (reservation of own delivery), which make it impossible for us to deliver in accordance with the contract, irrespective of whether the case of force majeure or equivalent events occurs with us or our supplier or the delivery route. In such a case, the customer may demand a declaration from us, setting a reasonable deadline (of at least 14 working days), as to whether we will withdraw from the contract or deliver within a reasonable period; if we do not declare ourselves, the customer may withdraw. Claims for damages of any kind whatsoever shall not exist in such a case.

### **2. Default, delay in delivery, etc. due to delay in delivery by the upstream supplier**

**2.1** If we are in default, the customer may only withdraw from the contract after setting a reasonable grace period to the extent that the goods are not reported as ready for shipment by the end of the grace period.

- a) If a delay in delivery is due to the same delay on the part of the upstream supplier of the contractual goods, we shall, at the immediate request of the customer, assign any claims we may have against the upstream supplier to the customer up to the amount of the latter's loss; the customer shall have no further claims against us.
- b) In the event of a delay in performance or impossibility of performance for which we are responsible, the customer's claim for damages for non-performance shall be limited to typical and foreseeable damages. This shall only apply insofar as our delay in performance or the impossibility of performance for which we are responsible has not been caused intentionally or by gross negligence.

**2.2** In the event of withdrawal from the contract, the customer shall not be entitled to compensation for damages caused by delay. This shall only apply insofar as our delay in performance or the impossibility of performance for which we are responsible has not been caused intentionally or by gross negligence.

### **3. Shipment and transfer of risk**

**3.1** We will select the means of transportation and the shipping route according to our experience, excluding any liability.

**3.2** The risk - including the risk of accidental loss and, for example, confiscation - shall in any case pass to the customer when the goods are handed over to the forwarding agent / carrier or (in the case of self-collection) when they are handed over to the customer, but at the latest when they leave the factory or warehouse.

#### **4. Warranty for defects**

**4.1** In principle, properties are not warranted unless the contractual basis provides otherwise. We provide a warranty for defects in the delivered goods, including the absence of properties warranted in individual contracts, in accordance with the following provisions.

**4.2** Decisive for the contractual condition of the goods is the time of handover to the forwarding agent or carrier or (in the case of self-collection) to the customer; at the latest the time of leaving the factory or warehouse. For parts supplied by us which have not been substantially modified by us, we shall only assume a warranty within the scope of our own claims against our respective suppliers. We assign these claims to the customer. The enforcement of these claims against the supplier is the responsibility of the customer.

**4.3** Notices of defects by the customer must be received by us in writing (preferably on the shipping documents) immediately after collection of the goods by the customer or after receipt of the goods at the place of destination. Otherwise, warranty claims of the customer based on these defects are excluded. Reference is made to § 377 HGB.

**4.4** Notices of defects shall not entitle the customer to withhold invoice amounts.

**4.5** Insofar as subsequent performance takes place within the scope of Klein's warranty obligations, the customer shall deliver the goods to Klein's place of business at its own expense.

**4.6** The customer shall bear all costs of subsequent performance insofar as these costs are incurred by the transfer of the goods to a place other than Klein's place of business. In particular, the customer shall bear the costs for the installation and removal of the goods.

**4.7** If a defect is actually identified, Klein shall be entitled to choose whether a new delivery or a rectification of defects is carried out.

**4.8** The warranty is excluded if the defect is due to the fact that the customer has handled the goods improperly, in particular if the customer has not observed the relevant instructions in the operating instructions for maintenance, servicing and care or in the assembly instructions. The customer is obliged to inform himself about the proper and professional handling of the goods BEFORE any handling or processing of the goods, in particular BEFORE assembly and BEFORE commissioning via the operating and assembly instructions.

**4.9** If we have not remedied defects duly notified by the customer within two reasonable grace periods set by the customer and subsequent improvements or replacement deliveries have also failed on the second attempt, the customer shall be entitled to demand a reasonable reduction in the agreed remuneration or rescission of the contract. However, in the event of defects that are limited to parts of the service, the customer may only demand rescission with regard to defective parts of the service, provided that the remaining parts of the service are economically viable for the customer on their own.

**4.10.** If the customer does not give us the opportunity to convince ourselves of the defect despite a reminder, in particular if he does not make the rejected goods available immediately upon request, claims for defects shall lapse.

**4.11.** If the examination of a notice of defects shows that a warranty case does not exist, the expenses for the examination shall be charged to the customer. Klein shall be entitled to charge the usual and reasonable rates for employees, which are also charged to customers for other deliveries and repairs.

**4.12.** The limitation period for claims for defects shall commence when the goods are handed over to the customer or (in the case of delivery) when the goods arrive at their destination.

**4.13.** Warranty claims for new goods shall become time-barred one year after the beginning of the limitation period. The warranty for used items is excluded.

**4.14.** Further claims, in particular claims for compensation for damage that has not occurred to the goods themselves, are excluded. This shall not apply in cases of liability based on intent or gross negligence by us, our legal representatives or vicarious agents, or if a warranty given is intended to protect against damage that has not occurred to the goods themselves. This also does not apply to damage to life and limb.

**4.15.** Furthermore, any warranty on our part presupposes that the goods are properly and professionally unloaded and accepted, as well as put into use and properly used during operation, in particular in accordance with the relevant operating instructions or usage specifications and the recognized rules of technology. The above conditions shall also apply to the delivery of goods other than those in accordance with the contract.

#### **D. Special regulations for the repair of the customer's assets**

These special regulations apply exclusively to repairs and work on the customer's assets.

1. Price and deadline specifications are only valid if they are submitted by us in writing and expressly designated as binding.
2. The customer is obliged to inspect and accept the goods immediately after the work has been carried out.
3. We are always entitled to make use of our entrepreneur's lien.
4. We are authorised to carry out necessary tests during and also after completion of our work.
5. If the customer does not collect the goods despite completion and notification to him, we shall be entitled to charge a standard local demurrage fee.
6. The customer shall bear the risk of accidental loss or deterioration upon the occurrence of default of acceptance (in the event of non-collection or delayed collection). In the event of default of acceptance, we shall be entitled to store the goods elsewhere at the expense and risk of the customer, in particular if there is no space in our warehouses.
7. If parts have to be removed from the customer's asset during the performance of work, we shall be entitled to scrap or dispose of these parts. If the customer wishes to use the parts himself, he must inform us of this when placing the order.
8. Insofar as warranty claims exist, the customer shall transport the goods to Klein's place of business at its own expense for the purpose of remedying the defect. Costs arising from the difference in location between Klein and the goods shall be borne exclusively by the customer. In particular, the customer shall bear the costs for the installation and removal of the goods.
9. Warranty claims shall expire within one year of acceptance. Claims for material defects shall not exist if the customer accepts the goods despite being aware of the defect.
10. Warranty claims must be asserted immediately in writing.

## **E. Special conditions for services**

### **1. Scope of duties Karl Klein**

1.1 The services shall be provided under the conditions set out in the contract in accordance with the current state of the art and with sufficiently qualified personnel. No specific success is owed.

1.2 We do not provide legal advice. The customer is therefore responsible for the legal examination (in particular with regard to legal restrictions).

### **2. Duties of the customer**

2.1 The customer shall bear responsibility for the project.

2.2 The customer shall support us to the best of its ability in the performance of the service and shall, on its own initiative, provide us in advance and in good time with all information and documents required for the fulfilment of the order.

2.3 The Customer shall provide sufficient of its own informed personnel to ensure that the service runs smoothly. To this end, the customer shall appoint responsible contact persons and their representatives in good time before the start of performance and inform us accordingly. Should responsible persons be replaced, we must be informed immediately.

2.4 If the service is provided on the customer's premises, the customer shall provide adequate and suitable premises.

### **3. Copyrights and similar rights**

3.1 We grant the customer a permanent, irrevocable, non-transferable, non-exclusive right to use the service results provided within the scope of the contract. This applies to all results covered by the contract, insofar as they are accessible to such a grant of rights.

3.2 However, the transfer of rights shall not take place until the contractually owed remuneration has been paid in full.

### **4. Principles of remuneration**

**4.1** The contract shall be decisive for the remuneration.

**4.2** Insofar as the contract does not comprehensively regulate the remuneration, the remuneration otherwise agreed between the contracting parties shall apply mutatis mutandis. If the remuneration is not regulated or a mutatis mutandis applicable remuneration cannot be applied, the customary local remuneration for comparable services shall be deemed agreed.

**4.3** The timing of invoicing is at our discretion; as a rule, invoices are issued monthly.

**4.4** If the customer is responsible for waiting times, these waiting times shall also be remunerated.

**4.5** If invoicing is based on time-based performance records, the customer must check these immediately after receipt of the performance records and raise objections without delay, but no later than two weeks after receipt, otherwise the performance records shall be deemed approved.

## **5. Deficiencies in the service**

**5.1** If the service has not been provided in accordance with the contract or is defective and we are responsible for this, the service shall be provided in accordance with the contract or free of defects within a reasonable period of time at no additional cost to the customer.

**5.2** However, the customer must give notice of the defect within 14 days of becoming aware of it, otherwise such claims shall lapse.

**5.3** If a defect is not remedied even after a reasonable grace period has been set, the customer may withdraw from the contract.

**5.4** In this case, the claim to remuneration shall be limited to the part of the service that has been provided up to the time of withdrawal.

**5.5** There is no entitlement to remuneration for the part of the service that is not usable for the customer and only if the lack of usability is proven by the customer within 4 weeks of the notice of termination.

## **F. Liability**

The following guidelines apply to liability:

**1.** To the extent that we are liable in accordance with statutory provisions which we have caused through slight negligence, liability shall be limited. We shall then only be liable in the event of a breach of material contractual obligations (e.g. those which the customer expressly or impliedly wishes to impose on us). In addition, liability is then limited to the typical damage foreseeable at the time the contract was concluded.

**2.** We shall also be liable for gross negligence in accordance with the above clause. However, this limitation shall not apply if our legal representatives and executive employees have acted with gross negligence and in cases in which gross negligence is also covered by an insurance policy taken out by us.

**3.** To the extent that our liability is limited hereunder, this shall also apply to our employees.

**4.** There is no limitation of liability in the event of injury to life, limb or health.

## **G. Clarification of representation options**

Our employees are only authorized to represent Klein if the power of representation has been expressly granted by the managing director(s) or authorized signatory(ies) prior to the declaration of intent

## **H. Privacy policy**

**1.** Karl Klein is entitled to collect, use and process personal data for the proper execution of the contract initiation and processing, including for its own advertising purposes vis-à-vis the customer. The transfer of such data to third parties will of course not take place unless this is necessary for the proper execution of the contract or the consent of the customer has been obtained (e.g.: direct debit authorizations).

2. The customer can object to the use or processing of data at any time; the objection must be sent to us either by post to Karl Klein Ventilatorenbau GmbH, Waldstraße 24, 73773 Aichwald or by e-mail to [info@karl-klein.de](mailto:info@karl-klein.de)

## **I. Final provisions**

### **1. Application of German law**

The legal relationship between us and the customer shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

### **2. Partial ineffectiveness**

The above terms and conditions shall remain in full force and effect even in the event of the legal invalidity of individual parts.

### **3. Preparation of technical documentation**

**3.1** Advice, recommendations, execution proposals etc. are regularly non-binding and do not give rise to any liability. It is the customer's responsibility to carefully check the suitability of the goods, in particular in the case of special constructions and repairs, for the intended purpose of use and, if necessary, to obtain expert advice from third parties. Any elaborations prepared by us for the customer, any advice given by us and any recommendations made by us shall not be binding; they must be carefully checked by the customer himself - if necessary by obtaining expert advice from third parties - before they are implemented.

**3.2** The above exclusion of liability and the customer's obligation shall apply in particular with regard to the future use of the delivery items.

### **4. Place of fulfillment and jurisdiction**

The place of performance and place of jurisdiction for both contracting parties arising from all conceivable claims of both a contractual and statutory nature shall be Klein's registered office. We shall also remain entitled to take legal action at other permissible places of jurisdiction.

Aichwald, 04/2017