General Delivery Terms and Conditions (DTCs)
of KLEIN Anlagenbau AG and KLEIN Stoßwellentechnik GmbH
Obere Hommeswiese 53–57, 57258 Freudenberg, Germany

Last updated August 2022

A. GENERAL PROVISIONS

§ 1 Scope of DTCs, hierarchy

1. The following General Delivery Terms and Conditions ('**DTCs**') of KLEIN Anlagenbau AG and KLEIN Stoßwellentechnik GmbH, Obere Hommeswiese 53–57, 57258 Freudenberg, Germany ('KLEIN') apply to all business conducted between KLEIN and the customer and, in particular, for all deliveries and services from KLEIN (hereinafter also '**deliverables**'), and for all payments made by the customer. KLEIN does not recognise terms and conditions of business of the customer that deviate from or supplement these DTCs, unless KLEIN has confirmed these in writing. Unreserved services or acceptance of payment by KLEIN do not constitute, even without explicit objection, any acceptance of deviating or supplementary terms and conditions of the customer.

2. If other contractual provisions, especially those in individual contracts (such as the quotation or the order confirmation, or in delivery contracts), deviate from these DTCs, these other contractual provisions supersede those of the DTCs.

3. In the event of inconsistencies between the general provisions in Part A, and the special provisions in Part B and Part C of these DTCs, the special provisions take precedence. In other cases, the general provisions and special provisions apply collectively.

§ 2 Contract conclusion

All offers made by KLEIN are non-binding. A contract is concluded by the acceptance of the customer order by KLEIN. Such a conclusion may also be implicit, e.g. by the provision of deliverables or acceptance of payment.

§ 3 Customer duties of cooperation

1. The customer shall use the deliverables solely in accordance with the contract and applicable law.

2. The customer is responsible for the proper and correct technical condition, functional capability and compatibility of its operating equipment or plant, and for the corresponding supply of electricity, water, air, internet connectivity and other media.

3. The customer shall provide KLEIN with essential information affecting the deliverables without delay, and shall also inform KLEIN promptly about changes to contract-relevant data, such as in particular its name, legal form, place of business, bank details, name of contact partner and material changes affecting its financial circumstances (insolvency procedure, enforcement measures, etc.).

§ 4 Content of deliverables, guarantees, infringements of property rights

1. The content of the deliverables owed by KLEIN depends exclusively on the expressly agreed performance characteristics and specifications. KLEIN assumes a warranty beyond this quality, in particular for a specific purpose or a certain suitability of the services, duration of use or durability, only if this is expressly agreed; otherwise, the suitability and use risk lies exclusively with the customer.

2. Assurances and guarantees are effective only if KLEIN has given these expressly in writing and has designated them as such.

3. KLEIN may be unaware of the actual intended place of use for the deliverables. The customer shall therefore take steps to assess whether infringements of property rights or other rights may be contingent on the place where the deliverables are deployed or used.

§ 5 Prices, price changes

1. The agreed prices cover solely the scope of deliverables as due from the contract and are quoted ex works without exception. These prices are exclusive of statutory value-added tax, nor do they include any additional expenses as may be incurred by freight or packaging. Unless otherwise agreed, the customer shall bear the costs of an agreed goods-in-transit insurance policy or a similar such policy.

2. If no prices have been agreed at the time of contract conclusion, then KLEIN's prices valid at the time of contract conclusion apply.

3. If the prices and fees on which KLEIN's estimate has been based, such as for personnel, materials, raw materials, freight or energy, change after contract conclusion – also as a result of exchange rate fluctuations – then KLEIN will make changes to its prices. This price adjustment is to be made according to the original estimate from KLEIN while retaining the estimated profit, and with a clear and understandable rationale but with no obligation to disclose the estimate. KLEIN shall inform the customer of the price change without delay. The price change is valid on receipt of the notification, and becomes effective from the point in time of changes to the underlying prices and fees.

4. Insofar as the change in underlying prices and fees stems from circumstances for which KLEIN bears responsibility, and which are not in accord with good business practice, no price adjustment may be made.

5. If the price adjustment is more than 10%, then the customer has the right to rescind the contract within the period of two weeks from receipt of the notification from KLEIN. This right must be exercised in writing.

6. KLEIN is not obliged to initiate or investigate measures that lead to a reduction in prices.

§ 6 Invoicing, payment, offsetting

1. Invoices from KLEIN are due for payment immediately and in full. An early payment discount applies only if expressly agreed. An early payment discount agreement becomes effective and remains effective only insofar as the customer is not in default as regards any other payments.

2. Insofar as the customer does not object to invoices issued by providing a written justification of the same within one month of receipt of the invoice, the invoice regarding its content (especially in relation to the deliverables as ordered) is considered approved. This does not affect the legal rights of the customer, especially if defects are present.

3. Whether or not reminders are sent, the customer is considered in default if the issued invoice is not paid within 10 days of the invoice date, unless the issued invoice has not been received at this time, contains errors, is not due or is unenforceable. The customer may also be considered in default according to the provisions of the law. If the customer is in default, KLEIN is entitled to request payment of default interest according to the law. This provision does not affect KLEIN's rights to assert claims for a higher default loss.

4. The customer may not offset payment claims from KLEIN with any other receivable or assert a retention of title right except in cases where the receivable or customer's counterclaim is uncontested, recognised as legally binding or at least ripe for adjudication. Offsetting or the assertion of a retention of title claim is also possible in cases where the customer's receivable and KLEIN's receivable share the same legal basis of reciprocity.

§ 7 Charging-on of costs in the event of unjustified defect notices

Insofar as a customer's defect notice regarding the functional capability of the deliverables is unjustified, the customer is granted no rights to claim under warranty. KLEIN is entitled to invoice the customer according to KLEIN's valid prices for the performance that KLEIN provides as a result of such a defect notice at the customer' request or demand and for any expenses incurred as a result (in particular fees for analyses, repairs, logistics and travel).

§ 8 Acceptance, delivery dates, partial deliveries, delivery default

1. The customer shall not refuse the acceptance of deliverables that exhibit trivial defects.

2. Agreed delivery dates or lead times are understood as approximations, except in cases where these have been expressly identified as binding.

3. Partial deliveries are permitted if reasonable for the customer. A partial delivery is considered unreasonable if, for example, the customer has no interest in receiving it or if, prior to this delivery, only a small quantity is (yet) to be delivered or will remain outstanding as a result of the partial delivery.

4. In the event of KLEIN being in default for deliveries, liability for compensation is based solely on Part A.9 of these DTCs.

5. Vis major, particularly involving events that are unforeseen or unavoidable or for which KLEIN bears no responsibility (e. g. impacts of war, pandemics, strikes or lawful lockouts, disruptions to business, unforeseeable difficulties in procuring materials and energy, obstacles affecting KLEIN's upstream suppliers for which the latter bear no responsibility, logistical delays, shortages of labour, energy or materials, public authorities' interventions) extends the delivery lead time as appropriate. In such cases, agreed points in time for delivery are also postponed as appropriate. If vis major is such that events are not temporary, both parties to the contract are entitled to rescind the contract. Claims for compensation may not be made in this case, due to a lack of culpability. KLEIN will notify the customer of the start and end of the vis major event as soon as possible.

   Without prejudice to the above provisions, the parties to the contract are in agreement that, in consideration of the war in Ukraine since February 2022 and the coronavirus crisis that has persisted since 2020, a situation may always arise without warning for which KLEIN bears no responsibility and in which KLEIN, while still able to fulfil its obligations, experiences significant difficulties in doing so. As a result, KLEIN has a legitimate interest in ceasing contractual performance for the duration of this obstruction and resuming contractual performance immediately after the obstruction has been eliminated. The parties therefore agree that KLEIN has the right to temporarily cease contractual performance in such a case.

§ 9 Limited liability for compensation on the part of KLEIN

1. Insofar as KLEIN, its legal representatives, employees or vicarious agents exhibit wilful intent or gross negligence in breaching an obligation, of whatever kind and on whatever legal basis, and in particular as arising from the contractual relationship or as involving a tortious act, KLEIN is liable for the resulting losses suffered by the customer in accordance with the provisions of the law.

2. Insofar as KLEIN, its legal representatives, employees or vicarious agents exhibit solely simple negligence in breaching an obligation, of whatever kind and on whatever legal basis, and in particular as arising from the contractual relationship or as involving a tortious act, the customer is not entitled to assert any claims for compensation against KLEIN, except in cases where a fundamental breach of contract involving simple negligence applies. In such cases, KLEIN's liability is limited to foreseeable losses typical for the contract concerned. A fundamental breach of contract in this sense is taken to mean an obligation whose fulfilment is material to the due performance of the contract such that the customer can reasonably expect to be able to rely on its fulfilment.

3. The abovementioned exclusions of and limitations to liability do not apply to cases involving culpable injury to life, limb or health, nor to cases of liability due to a malicious failure to disclose a defect, nor to cases of liability due to the non-fulfilment of a quality guarantee, nor to cases of liability according to the German Product Liability Act.

4. The abovementioned provisions do not affect legal rules concerning the burden of proof.

§ 10 Intellectual property rights

1. KLEIN retains sole rights to industrial designs, trademarks, patterns, utility models and other property rights, including copyright, as applicable to the documents, specifications, texts, drawings and drafts developed by KLEIN, and to contractual performance (hereinafter: '**articles**'). In relation to these articles, the customer shall assert no claims in terms of property right registrations, right of prior use or licensing, nor support third parties in the assertion of such claims.

2. All articles passing from KLEIN to the customer remain the property of KLEIN except where KLEIN has transferred ownership to the customer according to the contract.

§ 11 Retention of title

1. In cases where the ownership of articles is intended to transfer to the customer according to the contract, these articles remain the property of KLEIN ('**retained goods**') until the customer's payment in full of all receivables from the business relationship. The customer shall treat these retained goods with due care, and shall bear the cost of insuring these appropriately at new value against theft and damage due to fire or water.

2. If the customer acts contrary to the contract, such as defaulting on payments, KLEIN is entitled to take back the retained goods after giving due warning and the customer shall surrender these accordingly.

§ 12 Place of performance, place of jurisdiction, applicable law

1. The place of performance for all deliverables from KLEIN and the customer is KLEIN's registered place of business.

2. The Federal Republic of Germany is the sole international place of jurisdiction for all disputes arising from the business relationship. The sole local place of jurisdiction is KLEIN's registered place of business, insofar as the customer is a merchant, a legal entity under public law or a special fund under public law. KLEIN may also sue the customer before another court of jurisdiction that is locally competent according to the law.

3. The business relationship between KLEIN and the customer is subject solely to the law of the Federal Republic of Germany with the exclusion of the UN CISG.

B. SPECIAL PROVISIONS FOR CONTRACTS OF SALE, CONTRACTS FOR WORK AND MATERIALS, AND CONTRACTS FOR WORK

§ 13 Liability for defects in contracts of sale and contracts for work and materials (delivery of an item to be manufactured or produced)

1. The customer shall inspect the item immediately after delivery. If a defect is discovered during inspection, the customer shall notify KLEIN of this defect without delay and no later than 8 working days after taking receipt of the item, at least in writing (email or fax is sufficient). If the defect is discovered later, the customer shall also notify KLEIN of the defect without delay and no later than 3 working days after discovery, at least in writing (email or fax is sufficient). The item is otherwise considered accepted. The provisions of section 377 of the German Commercial Code (HGB) otherwise apply.

2. In the case of a sales contract or a contract governed by sales law, a usage presupposed according to the contract exists only in such cases where this can be expressly derived from the contract, except in cases where the usage presupposed by the contract is patently obvious.

3. If a defect in the item exists in a legal sense, then this is covered by the product warranty. In this case, the following provisions take precedence over statutory legal provisions.

   A defect in a legal sense does not exist in the following cases in particular: unsuitable or inappropriate, incorrect or negligent treatment or usage, incorrect assembly by the customer or third parties, natural and typical wear and tear affecting the item, excessive usage, use of unsuitable process materials, inappropriate modification of the item or repair work conducted by the customer or a third party and without obtaining prior consent for the same from KLEIN.

4. In the case of a defect in a legal sense, KLEIN shall, as it sees fit, cure the defect either by rectifying the defect itself or delivering a new item free of defects (supplementary performance). Should one or both of these options for curing the defect prove impossible or disproportionate, KLEIN is entitled to refuse to perform them.

   KLEIN is entitled to refuse a cure until the customer has fulfilled its payment obligations vis-à-vis KLEIN to an extent equal to the defect-free portion of the deliverables, except and insofar as the customer has no interest in the defect-free portion of the deliverables.

   KLEIN shall bear the expenses incurred by providing the cure, and in particular the costs for freight, logistics, labour and materials. KLEIN shall not bear the expenses in cases where these are additional costs incurred by moving the item to a place other than the place of performance.

5. If the cure provided is negligible or a cure proves impossible or fails, or has been unjustifiably refused or delayed on the part of KLEIN, then the customer may, as it sees fit and in accordance with the law, choose to reduce the purchase price accordingly or rescind the contract. Rights to claim compensation are based solely on Part A.9 of these DTCs.

   A limitation period of one year from delivery of the item applies to rights to claim under warranty. In cases subject to BGB sections 438(1) no. 1 and 2, and 438(3), the period of limitation envisaged therein applies.

If KLEIN is liable for compensation under warranty based on Part A.9 of these DTCs, the warranty period for such rights to claim compensation is based on the statutory legal provisions.

§ 14 Liability for defects and acceptance in contracts for work

1. For defects in deliverables from contracts for work, the provisions in sections 13.3, 13.4 and 13.5 of Part B of these DTCs apply as appropriate.

2. A limitation period of one year from acceptance applies to rights to claim under warranty.

   In cases subject to BGB sections 634a(1) no. 2 and 634a(3), the period of limitation envisaged therein applies.

   If KLEIN is liable for compensation under warranty based on Part A.9 of these DTCs, the warranty period for such rights to claim compensation is based on the statutory legal provisions.

3. The customer shall perform acceptance without undue delay. If the customer fails to fulfil its acceptance obligations, works are considered accepted two calendar weeks after having been provided and becoming capable of acceptance.

C. SPECIAL PROVISIONS FOR THE PROVISION OF SERVICES

§ 15 Services are provided without warranty

Insofar as KLEIN provides services to the customer (possibly in addition to a sale or the performance of work), and especially customer service, training, etc., no warranty is offered in accordance with applicable law.