

**GENERAL TERMS OF SALE AND DELIVERY**  
of KAGA FEI EUROPE GmbH

**1. Exclusive validity**

- 1.1 These Terms of Sale and Delivery apply to the contractual relationships between KAGA FEI EUROPE GmbH (hereinafter "KAGA FEI") and entrepreneurs and other merchants, legal persons under public law and funds under public law as buyer, contracting party or service recipient (hereinafter the "Customer").
- 1.2 Unless expressly otherwise agreed in writing, only these Terms of Sale and Delivery apply to all of KAGA FEI's deliveries and services, in particular the delivery of hardware and software as part of purchase agreements (*Kaufverträge*), work and materials contracts or work and services contracts (*Werkliefer- und Werkverträge*) or services (*Dienstleistungen*) provided by KAGA FEI.
- 1.3 The offer, order confirmation, manufacture and/or the sale of any products as well as the provision of services are subject to these Terms of Sale and Delivery. The use of business or contractual terms and conditions providing otherwise is excluded; any business or contractual terms and conditions or contract-amending provisions from the Customer are rejected. They will only be effective vis-a-vis KAGA FEI if KAGA FEI expressly agrees to these terms in writing; reference to letters in which the Customer's business or contractual terms and conditions are referred to does not constitute KAGA FEI's agreement to these terms.
- 1.4 Agreements with Customer that differ from these Terms of Sale and Delivery require express written confirmation by KAGA FEI in order to be effective.
- 1.5 These Terms of Sale and Delivery also apply to deliveries and services provided free of charge by KAGA FEI, unless hereinafter or separately otherwise agreed.

**2. Conclusion of the agreement, resignation from contract**

- 2.1 KAGA FEI's offers are subject to change and non-binding unless they expressly include a specified acceptance period or are referred to as binding. We reserve intermediate sale of goods offered.
- 2.2 If offers from KAGA FEI contain license terms or other terms regarding rights of use to be granted to the Customer and their restrictions, these terms are binding.
- 2.3 Orders submitted by the Customer are only deemed to have been accepted by KAGA FEI if they are accepted in writing by KAGA FEI or its representatives within ten (10) working days of submission, unless otherwise agreed. Acceptance by KAGA FEI may also be effected by delivery of the goods to the Customer, unless otherwise agreed. The Customer is responsible for providing KAGA FEI with any necessary information regarding the order so that the order can be executed in accordance with the contract.
- 2.4 KAGA FEI will notify the Customer of the delivery deadlines at or before order confirmation.
- 2.5 The conclusion of the contract or the confirmation of the order is always subject to the correct and timely delivery by our suppliers. However, this reservation only applies in the event that we are not responsible for the non-delivery or the delay in delivery. KAGA FEI will inform the customer of any missing self-delivery immediately upon discovery and will also immediately reimburse all payments and other consideration already received in the same form.
- 2.6 KAGA FEI reserves the right to make any change to drawings, quotes, fact sheets or other documents it has provided and assumes no liability for completeness. KAGA FEI undertakes to inform the Customer of any changes immediately in writing.
- 2.7 KAGA FEI retains all intellectual and industrial property rights as well as ownership of drawings, quotes, fact sheets and other documents provided by KAGA FEI. The Customer shall treat these drawings, quotes, fact sheets and other documents provided as strictly confidential.
- 2.8 For products ordered, KAGA FEI is entitled to deviations customary in the trade and deviations which occur due to

legal requirements or which constitute technical improvements. In addition, KAGA FEI is entitled to replace components with parts of equal value if this does not impair usability for the purpose foreseen in the contract or the usual purpose. KAGA FEI will notify the Customer of such changes and give the Customer opportunity to comment on the changes within 45 calendar days. If the Customer does not submit any objection to KAGA FEI in writing within this period, this is deemed agreement to the change.

**3. Prices, unilateral Price adoption, currency risk and payment conditions**

- 3.1 Unless otherwise agreed in individual cases, the price stated by KAGA FEI shall apply or, where this has not specifically occurred, the price contained in KAGA FEI's price lists valid at the time of order shall apply.
- 3.2 In case of price rise due to developments outside KAGA FEI's control (changes in customs duties, a significant rise in the cost of materials and manufacture outside any prudent and careful planning), KAGA FEI is entitled to unilaterally raise the agreed price proportionally. Such raise in price requires the timely information of the Customer prior delivery. In case of a unilateral rise in price the Customer is free to cancel the agreed order.
- 3.3 If an exchange rate is provided in our commercial offering, in case of a currency fluctuation of more than 5% (reference [www.oanda.com](http://www.oanda.com)) from the date of the agreement, KAGA FEI is entitled to adjust the contract price accordingly.
- 3.4 Unless otherwise agreed in the offer or in writing between KAGA FEI and the Customer, all prices stated by KAGA FEI are understood to be in EURO plus packaging from the Langen site, the statutory value added tax, customs duties for export deliveries and fees and other public levies (EXW Langen, Incoterms 2020).
- 3.5 Unless otherwise agreed in the offer or in writing between KAGA FEI and the Customer, all prices and fees stated by KAGA FEI for work and services are understood to exclude any travel costs and expenses that may apply in accordance with the tax regulations applicable in each case.
- 3.6 Payments are to be made in full to the bank account specified by KAGA FEI within thirty (30) days of the invoice date.
- 3.7 In the assessment of timely payment, it is not the date of payment, but the date on which the bank account specified by KAGA FEI is credited, which is decisive.
- 3.8 If the Customer has not paid or has not paid in full within the aforementioned deadlines, if all other legal prerequisites are in place, it will go into payment default without any reminder. In the event of payment default, – without waving any further rights and claims – KAGA FEI is entitled at its discretion:
  - to suspend further deliveries to the Customer and/or to terminate the contract after expiry of an adequate extension period; and
  - to claim default interest in the amount of eight (8) percentage points above the base rate.
- 3.9 KAGA FEI reserves the right to claim higher damages; the Customer is likewise entitled to prove that no or less damages have occurred as a result of the payment default.

**4. Times for delivery; delays in delivery**

- 4.1 All delivery and service dates and deadlines are non-binding unless expressly otherwise agreed.
- 4.2 If a specific delivery time has been agreed in the contract and KAGA FEI does not deliver either within the agreed or extended delivery period, the Customer's claim to damages is limited in amount to 5% of the purchase price for any loss suffered as a result of the delay. This limitation does not apply if a transaction for delivery by a fixed date (*kaufmännisches Fixgeschäft*) has been agreed or if, in accordance with section 10 (liability), KAGA FEI has unlimited liability.
- 4.3 If KAGA FEI does not deliver on time, the Customer must set KAGA FEI an adequate extension period in writing, within which KAGA FEI may make the delivery. The

- Customer is entitled to damages within the limits of section 10 (liability).
- 4.4 If the Customer is in default of acceptance on the due date, it must nevertheless pay the purchase price. KAGA FEI will in these cases undertake storage at the Customer's risk and cost. If the Customer is in default of acceptance, KAGA FEI is in any case entitled to demand a set amount of damage caused by default in the amount of 0.5% of the purchase price per calendar week. KAGA FEI retains the right to prove higher damages; the Customer is entitled to prove that less damages have occurred.
- 4.5 Compliance with its delivery and service obligations by KAGA FEI requires that the Customer fulfils its duty of cooperation in a timely and proper manner.
- 5. Delivery and transfer of risk (contracts on the manufacture and/or delivery of products)**
- 5.1 Deliveries are made from the Langen site (EXW Langen, Incoterms 2010). The Customer will receive the products there as soon as it has been informed by KAGA FEI that the products are ready to be collected. The goods will be sent to a different destination at the Customer's request and expense (sales shipment).
- 5.2 The risk of damage, deterioration, destruction or loss of the goods is transferred to the Customer in accordance with the agreed upon Incoterm
- 5.3 If acceptance has been agreed, this is decisive for the transfer of risk. In all other respects, the statutory requirements under work and service contract law apply for agreed acceptance.
- 6. Retention of title (purchase agreements)**
- 6.1 Until payment in full of all amounts which are or will be due to KAGA FEI from the Customer under the respective contract, KAGA FEI retains title to all products delivered to the Customer (retained goods).
- 6.2 The Customer is required to keep the retained goods free from third party rights, and in particular not pledge retained goods or assign them as collateral. On selling the retained goods, the Customer is required to retain title to the retained goods until payment has been made in full.
- 6.3 The Customer is to inform KAGA FEI immediately in writing if retained goods suffer damage or are impaired through third party measures (e.g., attachment). In the case of attachment, the Customer must inform the attachment creditor immediately in writing of KAGA FEI's collateral rights. KAGA FEI is to be sent a copy of the attachment document and all other documents necessary for a third-party action against execution. The Customer bears the costs of a third party action against execution.
- 6.4 The Customer will, on demand, give KAGA FEI all information requested about KAGA FEI's retained goods.
- 6.5 The Customer's entitlement to sell the retained goods or to collect receivables assigned for collateral in proper business practice lapses if the Customer goes into payment default or does not fulfill its obligations from the business relationship in a proper manner despite receiving a reminder. In addition, KAGA FEI can revoke the entitlement if serious doubts arise or intensify regarding the Customer's creditworthiness.
- 6.6 After the Customer's entitlement has lapsed or been revoked, KAGA FEI is entitled to
- demand the provisional return of the retained goods at the Customer's cost even if the relevant purchase agreements have not been rescinded and no extension period has been set;
  - sell the retained goods at its reasonable discretion – also by way of a private or public sale, without previously having taking possession of them or in the Customer's name.
- 6.7 At KAGA FEI's discretion, the proceeds of selling the retained goods (including VAT) will be offset against the Customer's liabilities after the deduction of costs and any VAT liabilities. Any excess proceeds remain with the Customer.
- 6.8 KAGA FEI draws the Customer's attention to the fact that liquidation by KAGA FEI of certain retained goods, in particular of chips and other mass-produced goods, is not possible for reasons of quality.
- 7. Liability for defects/warranty (contracts on the manufacture and/or delivery of products)**
- 7.1 The Customer must inspect deliveries carefully immediately after receipt, and if defects or incorrect delivery are apparent, is to inform KAGA FEI immediately, however no later than within ten (10) calendar days of the transfer of risk, in writing, of the precise details of the defect. If the Customer fails to make said notification in writing, all claims concerning faults of this nature which were recognizable on proper inspection are excluded.
- 7.2 If defects become apparent later, KAGA FEI is to be notified in detail immediately, and no later than fourteen (14) calendar days after discovery of the defect. This section does not apply if an acceptance is planned.
- 7.3 KAGA FEI warrants to the Customer that the items delivered by KAGA FEI are free of faults relating to manufacture and materials at the time at which the risk is transferred to the Customer. KAGA FEI accepts no responsibility for the suitability of the products for a particular purpose unless it has expressly accepted this liability.
- 7.4 If parts, materials or other accessories (e.g. software) which were manufactured by the Customer or by third parties at the Customer's request were incorporated into KAGA FEI's products or services at the Customer's request, KAGA FEI is only liable to the extent that the Customer has unsuccessfully taken legal action against the third party for reparation of the damage. In this case, KAGA FEI is entitled to intervene in the proceeding in accordance with the measures of sections 64 et seq. of the German Code of Civil Procedure (Zivilprozessordnung).
- 7.5 KAGA FEI is not liable for product faults which arise due to incorrect installation or use, misuse, negligence or other reasons.
- 7.6 If there is a defect in the product for which KAGA FEI is at fault and KAGA FEI has been notified of this, KAGA FEI is entitled at its own discretion to make a replacement delivery free of charge or to correct the defect free of charge (supplementary performance). KAGA FEI is entitled to at least two (2) attempts at supplementary performance. KAGA FEI is entitled to refuse to effect supplementary performance until the agreed price due less an appropriate deduction for the defect has been paid by the Customer. If KAGA FEI is not prepared to correct the defect or is not in a position to do so, the Customer is entitled to rescind the contract or to reduce the purchase price. The Customer is entitled to damages only within the limits of section 10 (liability)
- 7.7 ALL WARRANTY CLAIMS WILL BECOME TIME-BARRED TWELVE (12) MONTHS AFTER THE TRANSFER OF RISK.
- 8. Use of open source software**
- If the subject of KAGA FEI's deliveries or services is software, even if such software is integrated within hardware or is embedded software, KAGA FEI issues no warranty and accepts no liability that open-source software has not been used or included in the software delivered.
- 9. Liability for infringement of IP rights**
- 9.1 In addition to the terms set forth under sections 7 and 8 above, the following terms also apply to KAGA FEI's liability for the non-infringement of its products and services from third-party intellectual and industrial property rights.
- 9.2 KAGA FEI is only liable for the infringement of third-party rights within the EU.
- 9.3 As part of supplementary performance (section 7.4), KAGA FEI is also entitled to remedy defects by delivering equally

performing software or hardware or a reasonable workaround.

- 9.4 Customer shall inform KAGA FEI immediately in writing if third parties claim violations of property rights. Customer authorizes KAGA FEI to conduct the dispute with the third-party on its own and Customer will support KAGA FEI in an appropriate manner. The Customer is not entitled to recognize claims by third parties or to make agreements in another form with third parties concerning the alleged violation of property rights.
- 9.5 If products are manufactured by KAGA FEI and the Customer has provided a specification for these, the Customer must release KAGA FEI from any loss, damage, costs or other expenses which KAGA FEI has to pay because the manufacture of the products in accordance with the contract has proven to be a violation of a patent, copyright, trademark or other third-party property right as a result of the Customer's specification.

## 10. Liability

- 10.1 KAGA FEI's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective goods or services, other breaches of contract and breaches of duty, is limited in accordance with the following terms:
- 10.2 KAGA FEI has unlimited liability for willful misconduct and gross negligence, for guarantees, for culpable injury to life, body or health and also in accordance with the German Product Liability Act (*Produkthaftungsgesetz*).
- 10.3 For simple negligence, KAGA FEI is liable only in the case of the violation of duties that are fundamental to the contract, and only in the amount of the typically foreseeable damage. The obligations fundamental to the contract are to deliver goods and perform services on time and free from defects, as well as duties to advise, protect and exercise proper care that enable the Customer to use the products or services in accordance with the contract or serve to protect the essential legally protected interests of the Customer and its staff against substantial damage.
- 10.4 The above exclusions and limitations of liability apply to the same extent for the benefit of KAGA FEI's boards, legal representatives, employees and other vicarious agents.

## 11. Force majeure

- 11.1 Neither party is liable for force majeure events which impede the provision of services, temporarily hinder or prevent proper implementation of the contract. Force majeure events include all circumstances beyond the control of the parties, such as natural disaster, war and other military conflicts, civil unrest, terrorist attacks, strikes and other circumstances occurring after conclusion of the agreement that are unforeseen, severe and not caused by the contracting parties. The agreed deadlines for services and delivery will be extended reasonably according to the duration of the force majeure event.
- 11.2 The party affected must inform the other contracting party in writing immediately after the force majeure event begins, of the nature of the event, the date and time it commenced and the expected effects on the party's ability to meet its contractual obligations. The affected party must inform the other contracting party without delay when the force majeure event has ended and resume fulfillment of its contractual obligations.
- 11.3 Agreed deadlines for services and delivery will be extended according to the duration of the force majeure event. In cases where adhering to the contract for the duration of the delay to services or a delivery caused by the force majeure is unreasonable for one of the parties, this party is entitled to withdraw from the contract or terminate the contract for cause without observing a notice period. Generally, adherence to the contract is unreasonable when the force majeure lasts longer than three (3) months.

## 12. Special terms for free of charge deliveries and services

- 12.1 If deliveries and services are provided free of charge
- KAGA FEI does not provide any warranty unless it has fraudulently concealed the defect or has given a guarantee of the nature of the item and
  - KAGA FEI is only liable for willful misconduct and gross negligence, for any guarantees assumed, for culpable injury to life, body or health and also in accordance with the German Product Liability Act (*Produkthaftungsgesetz*).
- 12.2 If software is made available free of charge for test purposes, the special license conditions communicated with the offer or the software apply.

## 13. Form requirements

- 13.1 Agreements to waive or amend a requirement for written form must be made in writing in order to be valid.
- 13.2 Offers and orders placed via electronic goods management systems or Internet portals (EDI messages etc.) are also valid.

## 14. Place of performance, jurisdiction

- 14.1 The place of performance is Langen.
- 14.2 The sole place of jurisdiction for all disputes arising from or in connection with the contract shall be Frankfurt am Main District Court. The right of KAGA FEI to sue the Customer in another place of jurisdiction shall remain unaffected.

## 15. Applicable law

The legal relationships of the parties are governed by the laws of the Federal Republic of Germany to the exclusion of provisions of private international law. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

## 16. Miscellaneous

- 16.1 The Customer may only set off against claims that are undisputed or declared enforceable by a final and binding court decision. This also applies to legal rights of retention or refusal to perform.
- 16.2 The Customer may only assign claims arising from this contract with prior written agreement from KAGA FEI.
- 16.3 The invalidity or unenforceability of one or more terms of this contract or of another agreement does not affect the validity of the remainder of the contract. The statutory regulations apply in place of an invalid or unenforceable term.

KAGA FEI EUROPE GmbH  
January 2021