



1. Scope

- (1) The contractual partner of the customer/buyer (hereinafter referred to as „Customer“) is KERSTING GMBH · SAMPLING + GROUNDING (hereinafter referred to as “KERSTING“), Gallbergweg 21, 59929 Brilon, Germany, represented by the managing director, Stefan Penno, MBP BA IBA.
- (2) The following terms of sales, which can also be called in the internet under www.kersting-sg.de at all times or can be made available upon request, apply to all current and future contracts and business relationships between KERSTING and the Customer. Deviating, opposing or supplementary General Business Terms shall not become a part of the contract even if they are known unless their validity is expressly approved in writing.
- (3) All agreements which are reached between KERSTING and the Customer in connection with the purchase contracts and/or contracts for work and services, are recorded in writing in the purchase contract or contract for work and services, these terms and conditions and the order confirmation of KERSTING.

2. Offer and conclusion of contract

- (1) The offers of KERSTING are without obligation and non-binding and can be revoked until our order confirmation unless KERSTING has expressly described these as binding in a written form. Collateral agreements, changes and supplements to the order are only valid if these have been confirmed in writing by KERSTING or have been agreed in writing between the parties.
- (2) Even if the Customer places the order following the KERSTING offer a binding contract shall only be concluded through our written order confirmation based on the KERSTING offer which renders all stipulated details and is deemed as processing guidelines and is binding for both parties.

3. Terms of payment

- (1) The prices stated by KERSTING are deemed pure net without cash discount or other discount in Euro „Ex Works“ excluding freight, packaging, insurance and handling plus the applicable rate of value added tax on the date of delivery.
- (2) If not otherwise agreed in writing with the Customer payments (without deduction) are to be made within 14 calendar days net. Cheques, payment instructions and bills of exchange will not be accepted instead of payments, but only as conditional payment. The additional costs incurred with these modes of payment for discount, collection charges, etc. shall be borne by the Customer.
- (3) Our invoices are deemed as acknowledged if not objected to in writing within 30 days after the invoice date.
- (4) The Customer shall also be deemed in default without a reminder from KERSTING if he does not pay the purchase price/wage within 30 days after due date and receipt of the invoice or an equivalent list of payments. If the Customer is in default with a payment KERSTING is entitled to demand interest from the relevant date in the amount of 8 percentage points above the respective base lending rate of the European Central Bank (ECB) KERSTING reserves the right to prove higher damages.
- (5) The Customer is only entitled to offset, even if complaints for defects or counter claims are asserted, if the counter claims have been determined final and absolute, were recognised by KERSTING or are undisputed. The Customer is only authorized to exercise a right of retention if his counter claim is based on the same purchase contract or contract for work and services.

4. Delivery and service time

- (1) Delivery dates or deadlines, which have not been expressly agreed as binding, are exclusively non-binding details.
- (2) In case KERSTING culpably cannot observe an expressly agreed deadline or is in default for other reasons, the Customer must grant a reasonable deadline – beginning from the date of receipt of the written notice of default at KERSTING or in the case of the deadline determined by the calendar. The Customer is entitled to cancel the contract after the unsuccessful expiry of this final deadline.
- (3) The agreed delivery deadlines shall be extended by the duration of the impediment for the duration of an impediment through force majeure, exceptional events or strikes and entitle both parties to cancel the contract in the event that it is impossible to make delivery.
- (4) The delivery time has been observed if the delivered object has left the company until expiry or if the Customer was informed that the goods are ready for shipment. Incidentally, the delivery time is only to be seen as approximate so that the Customer is only entitled to rights with special agreement should the delivery time not be observed.
- (5) KERSTING is liable towards the Customer according to the statutory provisions in case of delay in delivery if the delay in delivery is due to a wilful or grossly negligent breach of duty for which KERSTING is responsible. KERSTING shall be attributed a fault of its representatives or vicarious agents. If the delay in delivery is not due to a wilful or grossly negligent breach of duty for which KERSTING is responsible, the liability of KERSTING is limited to the foreseeable typically occurring damages.

5. Assumption of risk – shipment / packaging

- (1) Loading and shipment are carried out non-insured at the risk of the Customer. KERSTING shall make an effort to take the wishes and interests of the Customer into account with regard to the type of shipment and shipment route; additional costs caused thereby – even with agreed freight-free delivery – shall be for the account of the Customer. The Customer shall take out transport insurance at his costs.
- (2) The Customer shall bear the loading, transport and unloading risk no later than when the goods are handed over to the transport person. This shall also apply if KERSTING has assumed the transport costs. When the goods are picked up by the Customer at the plant of KERSTING the risk, e. g. of damage or destruction shall pass to the Customer when the goods are accepted.
- (3) If the goods to be processed are picked up by KERSTING at the Customer’s request, the Customer shall bear the transport risk. The Customer is at liberty to insure these risks. The stated provisions shall also apply if we have assured freight-free delivery.
- (4) If the goods are ready for shipment and if the shipment or acceptance is delayed for reasons for which KERSTING is not responsible the risk shall pass to the Customer with the receipt of the notification that the goods are ready for shipment. The Customer must order goods which are ready for shipment immediately, no later however than after expiry of a period of 10 days after notification. If no release order is placed we shall be entitled to store the goods at the costs and risk of the Customer at own discretion.

6. Warranty / Liability

- (1) The Customer must inspect the product / the software etc. immediately for errors and completeness. Obvious defects are to be reported in writing immediately after receipt; otherwise the assertion of warranty rights is excluded. The timely despatch is sufficient for observing the deadline. The Customer has the full burden of proof for all pre-requisites for the claim, in particular for the defect itself, for the time when the defect is determined and for the timely report of the defect.
- (2) KERSTING shall not assume any liability for the usability of the product within the whole system existing at the (end-) customer unless the usability was assured separately in writing by KERSTING.



(3) KERSTING is not obliged to assume warranty if the Customer has not complained about an obvious defect in writing in time. The Customer must grant KERSTING a reasonable deadline for the subsequent performance for each individual defect.

(4) We shall initially assume warranty for defects to the product / the software etc. through subsequent performance (at our choice subsequent improvement or replacement delivery). If it is determined over the course of the subsequent performance work undertaken by us that not our product, but rather another product and / or the system of the Customer caused the defects, the Customer must reimburse us the incurred expenses (e. g. travelling expenses, customer service hours, etc.) upon request against proof

(5) If the subsequent performance fails, whereby a subsequent improvement is deemed as failed with the second unsuccessful attempt or if KERSTING has refused the subsequent performance in full, the Customer can at his choice demand reduction of the remuneration (reduction) or declare cancellation of the contract. In case of just a slight breach of the contract, in particular with just slight defects, the Customer is however not entitled to any right of cancellation. KERSTING is entitled to refuse the type of subsequent performance chosen by the Customer if it is only associated with disproportionate costs. The reduction of the purchase price or the cancellation of the contract by the Customer is excluded during the subsequent performance.

(6) If the Customer chooses to cancel the contract owing to a defect of title or quality after the failed subsequent performance he is not entitled to any additional claim for damages owing to the defect. The Customer can only assert claims for damages owing to the defect if the subsequent performance has failed or subsequent performance is refused by KERSTING. The burden of proof for the failure of the subsequent performance shall be borne by the Customer.

(7) Claims for damages from follow-up damages from defects, missed profits and damages which are not foreseeable are excluded unless they are due to wilful intent or gross negligence, the absence of a warranted quality or breach of such contractual duties caused through simple negligence, the observance of which is of special significance for achieving the object of the contract (cardinal duties).

Irrespective of the above regulation KERSTING shall be liable to an unlimited extent for damages to life, body and health, which are due to a negligent or wilful breach of duty by us, our legal representatives or our vicarious agents, for damages, which are covered by the liability according to the Product Liability Act, as well as for all damages which are due to wilful or grossly negligent breaches of the contract and fraudulent intent.

Further liability is excluded – insofar as permitted by law – irrespective of the legal nature of the asserted claim. Insofar as the liability of KERSTING is excluded or limited, this shall also apply to the personal liability of our employees, workers, representatives and vicarious agents.

- (8) Warranty rights of the Customer shall become statute-barred, respectively beginning with delivery of the product/the goods
- a) in case of an object, which is used for a building in line with its customary method of use, 5 years unless it concerns mechanical and electrical/technical / electronic systems, in which the service has an influence on the safety and function; this is 2 years if the Customer has decided not to assign us the service for the duration of the statute of limitations,
 - b) with other objects from one contract 1 year.

This shall not apply if we can be accused of fraudulent intent. In this case the warranty rights of the Customer are subject to the regular statute of limitations.

7. Reservation of title

(1) KERSTING reserves the right to the property to the sold object until settlement of all outstanding claims from the business relationship with the Customer, no matter which legal grounds these result from.

For the duration of the reservation of title the Customer undertakes to inform us immediately of any access of third parties to the goods, for example in the event of a seizure as well as possible damages or the destruction of the goods, to provide us the information required for legal prosecution and hand over necessary documents. The Customer must inform us immediately of any change in ownership to the goods.

(2) If the Customer does not satisfy his payment obligation despite a warning KERSTING can demand that the reserved goods which are still in his possession are handed over without setting a prior deadline. The thus incurred transport costs shall be borne by the Customer. The seizure of the reserved object by KERSTING is always deemed as a cancellation of the contract. After it receives the reserved goods back KERSTING is authorized to sell these. The sales proceeds are to be offset against liabilities of the Customer – minus reasonable sales costs.

(3) We are entitled to a statutory entrepreneur's right of lien to the objects handed over to us. Irrespective thereof the Customer shall furnish us a contractual right of lien to the objects which were handed over, which serves to hedge all claims from the business relationship. If the parts are delivered to the Customer before full payment then it is hereby agreed with the Customer now already that he assigns us the property to these parts in the value of our claim for securing our claims and the hand-over of the possession is replaced by the fact that the Customer keeps the parts in safekeeping on our behalf. The same shall apply with regard to the entitlement of the Customer to objects handed over to us, which have been delivered to the Customer by a third party under reservation of title. We are entitled to obtain the lapse of the reservation of title. Re-assignment claims of the Customer against a third party, to whom he previously assigned the objects handed over to us as collateral, will be assigned to us. We hereby accept the assignment.

(4) If reserved goods are processed to a new movable object by the Customer then the processing shall be carried out in our name and order. If processing is carried out with objects which do not belong to us, we shall acquire the co-ownership to the new object as a ratio to the value of the goods delivered by us to the other processed objects. The same shall apply if the goods are mixed, combined or connected with other objects which do not belong to us. If the Customer acquires sole property through connecting, combining or mixing then he hereby now already assigns co-ownership to us according to the ratio of the value of the reserved goods to the other goods at the time of connecting, combining or mixing. In these cases the Customer must keep the object which is our property or co-ownership in safekeeping free of charge. If reserved goods are sold by the Customer, for which we have co-ownership, the assignment of the claims shall extend to the amount, which corresponds with the value of our co-ownership share. In the other cases the Customer shall assign the claims against the buyer incurred in the event of sale of the reserved goods to us in the amount of the reserved goods. We hereby accept the assignments.

8. Copyright

The Customer indemnifies and releases us from all claims of third parties in connection with industrial property rights, in particular copyright and similar property rights to drawings and documents handed over to us. KERSTING undertakes to exclusively use produced photocopies and other reproductions for purposes of calculation and production and not to forward these to third parties.

9. Drawings and other documents

The Customer must check or have checked technical plans prepared by us for customers, in particular technical drawings, circuit diagrams and electrical plans, technical calculations and sizing, safety- and measurement engineering concepts carefully and in a qualified manner immediately. Possible errors must be reported to us immediately after they are determined. We shall not be liable for the consequence of errors which could have been determined in case of proper examination of our plans.



10. Copyright

- (1) We expressly reserve our property rights, copyrights and other ancillary rights to offers, drawings, technical plans prepared by us and other documents, which are handed over to the Customer even after they are handed over to the Customer. The Customer may not further use and change the documents and other services of KERSTING for the contractual work beyond the object of contract without the assistance of KERSTING and by safeguarding possible personal copyrights, etc. In particular it is not permitted without the express prior written consent to personally further use or assign to third parties all rights of exploitation, use and change in the afore-mentioned sense.
- (2) The Customer may merely use co-delivered software programmes within the framework of the contractual relations. Each forwarding, provision for use, reproduction, etc. to third parties is not permitted without the prior written consent of KERSTING.

11. Trade secrets / data protection

- (1) The Customer undertakes to treat all documents handed over to the Customer by us confidentially. They may only be forwarded to third parties with our prior written consent. Planning and technical calculation documents remain our property and may only be used or changed by us or with our prior written consent. In particular the Customer undertakes not to forward trade secrets, in particular technical process information of our products to third parties. Drawings, production information and other agreements are subject to data protection. These data may not be forwarded to third parties either.
- (2) When accepting the business terms and conditions the Customer grants his consent that the data saved concerning his person/company within the framework of satisfying the object may be saved by KERSTING and processed by means of IT.

12. Applicable law / place of performance / place of jurisdiction

- (1) The relationships between the contractual parties are exclusively regulated according to the law applicable in the Federal Republic of Germany. The application of the uniform law governing the international purchase of movable objects and the law governing the conclusion of international purchase contracts for movable objects is excluded.
- (2) Place of performance for all claims from and in connection with this contract and the business relationships is the registered seat of our company.
- (3) The court in whose district our registered seat is located has exclusive jurisdiction for all disputes from this contract, its termination and the business relationships. The same applies if the Customer does not have a general place of jurisdiction in Germany or his domicile or usual place of residence is not known at the time when the action is filed.
- (4) The German text version shall apply as finally binding in case of ambiguities due to language with regard to translations of the General Terms of Sale or with other cases of doubt and interpretation problems.

13. Escape clause

Should one regulation of these General Terms of Sales be or become invalid or unenforceable this shall have no effect on the validity of the General Terms of Sales. In such a case the parties are required to reach an agreement in place of the non-performing provision, which shall as far as possible correspond with the lapsed provision.