

Standard Terms of Sales and Delivery of the Knorr-Bremse Group

These Standard Terms and Conditions of Sales and Delivery (hereinafter: Terms) shall be applicable to all contractual relations between merchants, public law legal entities or special public funds (hereinafter: Customer) and a company of the Knorr-Bremse Group (hereinafter: Supplier).

§ 1 Contractual terms

1. Only the Terms printed hereafter shall be applicable.
2. Deviations from these Terms shall not be valid unless confirmed by the Supplier to the Customer in writing. Conflicting standard terms are herewith expressly objected to.
3. Amendments and additions to these Terms shall become legally effective only when they are made in writing.
4. These Terms shall also be applicable, if the Supplier performs the contract without reservation and in awareness that these Terms conflict with or differ from the Customer's standard terms.

§ 2 Conclusion of the contract

1. The submission of an offer by the Supplier shall not create a binding contract. The contract shall not be concluded unless the order of the Customer is received, and the order acknowledgement of the Supplier is issued. In case of doubt, the order acknowledgement of the Supplier shall hold precedent.
2. Any offer is based on the regulations of law and statutes being in force at the time the offer was made. In case the Customer desires modifications of design or workmanship within the scope of what is technically feasible or acceptable to the Supplier, the Supplier shall submit an amended offer pertaining to the effects of such modifications, in particular with respect to increased or reduced cost or to the date of delivery. The acceptance of the first (partial or complete) delivery by the Customer shall be an acceptance of this extended offer.
3. The contract with the Customer shall be concluded subject to the correct and timely delivery by the Supplier's subcontractors depending on the fact that a congruent legal transaction has been concluded with the subcontractor and the Supplier is not responsible for the failure of delivery. The Customer shall be informed immediately, if services are not available. Thereupon, the Supplier shall return the quid pro quo without delay as far as it was already paid.
4. All declarations of the Customer (order acknowledgements, purchase orders, objections etc.) shall be made in writing and must be confirmed by the Supplier in written form or by fax to be legally binding.

§ 3 Delivery Items

1. The Supplier shall deliver the goods in accordance with the written contractual stipulations, in particular in conformity with the design freeze (final stipulation of the delivery items). Changes or alterations of the goods shall only be considered to be agreed upon, if expressly confirmed by the Supplier in writing.
2. The supporting documentation (e.g. illustration manuals) delivered with the goods may not always correspond with them, especially if, at the Customer's request, the supplied goods deviate from the goods usually delivered by the Supplier.
3. Illustrations of the documentation neither constitute an assurance of particular qualities nor represent a guarantee. Particular guarantees or qualities of the goods shall be designated as such and confirmed by the Supplier in writing. Without this written confirmation no obligation shall be entered into, neither by advertisement nor by other public statements.
4. Services not expressly described in specifications of the contract must be agreed upon separately. For such services the Supplier's standard terms of services are applicable, unless otherwise agreed upon.

§ 4 Collaboration duties of the Customer

1. The Customer shall name a person of contact who will serve as an authorized representative to the Supplier.
2. During the pre-contractual negotiations, the Supplier shall immediately be informed, as soon as circumstances will arise within the environment of the Customer that may lead to a break-off of the pre contractual relationship (e.g. cancellation of budget, short-term change or suspension of the project).
3. The Customer shall take into account the respective situation of the Supplier in his decision process.

§ 5 Delivery, Delivery time and time for the provision of Service

1. All documentation in Spanish language is considered to be comprehensive. If the documentation is not delivered together with the goods or not in time, the rest of the delivery is still considered to be complete. Thereby, claims of the Customer for subsequent delivery of the documentation shall remain unaffected.
2. The delivery date and time for delivery shall be agreed in writing. The time for delivery shall only commence at the moment of design freeze, otherwise with the conclusion of the contract. If the contract is amended subsequently (e.g. amendment after the finalization of design freeze), then the previous delivery date and / or time for delivery is cancelled. In this case the Supplier and the Customer shall agree upon a new date for delivery.
3. The observance of the agreed date and time for delivery presupposes that the Supplier receives the purchase orders and the respective calls for delivery, as well as all documents, necessary authorizations and final design appropriates to be furnished by the Customer, in due time.

4. If the Supplier waits for the collaboration or the information of the Customer, or if he is otherwise prohibited from the implementation without negligence or intention, the time for delivery and time for the provision of services is considered as extended during the period of prevention plus during an adequate period after the prevention has ended. Beforehand, the Supplier shall instruct the authorized representative (§ 4, No.1) of the prevention occurred.
5. The delivery deadline is deemed to be met, if the delivery item has left the Supplier's plant before the aforementioned deadline or if the Supplier has notified the readiness for shipment. This shall not be applicable if the contract provides that delivery is to be made at the Supplier's expense.
6. Partial deliveries are permitted to the extent that they are reasonable for the Customer.
7. In the event of the shipment being entirely or partly delayed at the request, or on the initiative of the Customer, the following regulation shall be applicable: The Customer shall be charged, beginning one week after the Customer or carrier has been advised that the goods were ready for shipment, all costs caused by delay, in particular the storage costs, but not less than 0,5 % per month of the invoice value of the goods transported, unless the Customer should evidence that the loss has been smaller. This shall also be applicable, if the Customer or carrier entrusted by the latter should refuse the goods to be transported in another way that can be expected from him other than the manner that had been agreed upon. The Supplier shall be entitled, however, to dispose of the goods to be delivered in another way and to supply the Customer within an appropriately extended period if an adequate grace period granted for taking delivery has expired without result.
8. The Supplier is in default only after having received a reminder. All reminders and deadlines shall be made in writing to become legally effective. A deadline shall have at least twelve working days.
9. If the Supplier is responsible for the non-compliance of binding periods or dates, any compensation for default shall be limited to 0,5 % per week, but not exceeding altogether 5 % of the invoice value of all delayed deliveries and services. Limitations shall not apply, if the delay has been caused intentionally or by gross negligence. In this case a compensation for default shall be limited to the foreseeable damage typical for the type of contract.
10. If the Customer intends to withdraw from the contract, due to non-compliance to agreed upon performance and/or intends to claim damages in lieu of contract (performance), he shall first set a reasonable time for the withdrawal of the contract, combined with written warning concerning withdrawal from the contract.
11. The Customer may not refuse to take delivery on account of minor defects in the goods.
12. If non-compliance with time for delivery is due to force majeure or other disturbances beyond the Suppliers control (e. g. war, terrorist attacks, import or export restrictions, labour struggles including such disturbances affecting subcontractors) the time for delivery agreed upon shall be extended appropriately.

§ 6 Passing of risk and acceptance

1. The risk shall pass to the Customer, as soon as the good has been shipped or collected. At the Customer's request and cost the Supplier shall insure shipments against customary transport risks.
2. If the delivery is delayed due to the responsibility of the Customer or if the delivery is delayed on account of the Customer's default of acceptance for other reasons, the risk shall pass to the Customer.
3. The Customer shall take the delivery item immediately after the authorized representative (§ 4, No. 1) has been notified that the delivery items are ready for shipment.

§ 7 Prices and payment

1. The agreed prices shall be fixed prices, which are understood to be for delivery ex works without packing and insurance and are subject to the additional of VAT (value added tax).
2. If the Supplier has undertaken the assembly of goods, the fixed price does not include ancillary costs, such as freight, transport and travelling costs or expenses.
3. Invoices will be charged for each single delivery or performed service. Discounts will not be granted.
4. Except as otherwise agreed in writing, payment shall be affected within 30 days of the invoice date without any deductions whatsoever. The Supplier may also, however, make delivery conditional upon simultaneous Matching Payment (for instance cash on delivery or bank direct debiting service) or on pre-payment, especially if no business relation has yet existed between the Customer and the Supplier, if delivery is to be made to a foreign country or if there is a high risk of late payment.
5. In case of delayed payment the Supplier is entitled to charge default interest amounting to 8 % above the base interest rate. The right to assert a claim on account of further damage is not excluded.
6. The Customer shall only be entitled to withhold payments or to offset counter claims in so far as the Customer's counter claims are undisputed or ruled with res judicata effect by court. The Customer shall not be entitled to assign his claims to third parties.

§ 8 Obligation of examination and of issuing complaints in case of disaccord regarding the goods of purchase.

1. The Customer shall be obliged to examine all goods or services of the Supplier, and to give notice of all defects. This shall also apply to documentation (e.g. operating instructions, instructions of assembly).
2. The notification of defects by the customer shall be made in writing and shall describe the deviation from the contractual stipulations in detail. Only the authorized representative (§ 4, No. 1) is authorized to issue a notification of defects.
3. Verbal notifications shall only be effective, if the Supplier has given a written permission for such action to the Customer.
4. The notification of defects shall not be considered valid if the authorized representative of the Customer (§ 4, No. 1) fails to give written notice about visible defects without undue delay and presents the defective goods at the same time. The same shall be applicable to such defects that cannot be discovered by careful examination.

§ 9 Defects and their remedy

1. The Supplier shall warrant that the condition of the delivered goods (§ 3) coincides with the contractual stipulation according to the Spanish Civil Code, unless a deviating agreement has been made.
2. The statute of limitations for claims for material defects shall be 12 months.
3. The time period for the statute of limitations commences at the moment of delivery.
4. Claims on account of defects shall not exist in cases of insubstantial deviation from the composition agreed upon or in case of only insubstantial impairment to the usefulness of the product.
5. The Supplier may support the Customer in searching for defects. If the defects cannot be directly attributed to the Supplier, he shall invoice such services to the Customer.
6. In case the Customer or a third person carries out modifications or repairs improperly and without prior approval of the Supplier, the Supplier shall not be liable for consequences resulting therefrom.
7. Primarily and by choice, the Supplier shall be allowed to subsequently perform the contract by remedying the material defect. Supposing that subsequent performance of the contract is only possible at disproportional cost, the Supplier shall be entitled to refuse the subsequent performance of the contract. In this case the Customer shall be entitled to claim a reduction of the purchase price. Only if a significant fault has occurred, a withdrawal from the contract by the Customer shall be possible. Before withdrawing from the contract, the Customer shall submit a written notice through the authorized representative (§ 4 No. 1) comprising an adequate term of preclusion combined with the threat of rejection of delivered goods.
8. Additional expenses which arise from the fact that the delivered goods have been transported to another place other than the original place of delivery, will not be born by the Supplier, unless he has been aware of the fact that such transport corresponds to the intended use of the goods.
9. The subsequent performance of the contract shall not initiate a new statutory period of limitations. The customer's rights to withdraw from the contract or to reduce the purchase price shall be maintained, if (after several times) the subsequent remedy of material defects definitely fails after an adequate term of preclusion combined with a threat to reject the contract with the expiry of the term of preclusion has been set by the authorized representative (§ 4, No. 1).
10. The Customer shall support the Supplier according to § 4, No. 3.
11. With regard to claims for damages and claims for reimbursement of extraordinary and additional expenditures § 11 shall be applicable.
12. The provision of this § 9 shall apply mutatis mutandis to defects and their remedy which are not constituted by the infringement of third party industrial property rights.

§ 10 Retention of Title

1. The Supplier retains title of the delivered products pending full performance of all claims to which the Supplier is entitled on the basis of the business relationship now and in future.
2. The Customer is entitled to process or connect the goods of the Supplier with other products within the due course of the Customer's business. By way of security for the Supplier's claims set forth in § 10, No. 1 the Supplier shall acquire joint ownership of the created products as a result of such processing or connection. The Customer hereby transfers such joint ownership to the Supplier. As an ancillary contractual obligation, the Customer shall store the goods to which the Supplier has retained title free of charge. The amount of the Supplier's joint ownership share shall be determined by the ratio between the value of the goods delivered by the Supplier and the value of the product created by processing or connection at the time of such processing or connection.
3. The Customer shall be entitled to sell the products in the normal course of business against payment in cash or subject to retention of title. The Customer assigns to the Supplier already now all claims in full together with all ancillary rights to which the Customer is entitled to from the further sale of the goods, irrespective of whether the product has been further processed or not. The assigned claims shall act as security for the Supplier's claims set forth in § 10, No. 1. The Customer shall be entitled to collect the assigned claims. The rights of the Customer in this § 10, No. 3 can be revoked by the Supplier, if the Customer fails to duly comply with his contractual duties towards to the Supplier, in particular, if the Customer is in default of payment. These rights shall also cease without any express revocation, if the Customer suspends payments for more than merely a temporary period.
4. Upon request of the Supplier, the Customer shall advise the Supplier immediately in writing of the parties to whom the goods, of which the Supplier has retained title or joint title, have been sold and of the claims to which the Customer is entitled on the basis of such sale and shall issue to the Supplier deeds officially authenticated at the Customer's expense relating to the assignment of the claims.
5. The Customer shall not be entitled to dispose of the goods to which the Supplier has retained title or joint property or of the claims assigned to the Supplier in any other way. The Customer shall notify the Supplier immediately of any attachments of or other impairments to the rights of goods or claims belonging to the Supplier either wholly or partly. The Customer shall bear the entire costs, which have to be expended in order to cancel the attachment of the Supplier's retained property or security by third parties and to re-create the goods insofar as it is impossible to retrieve it from the third parties.
6. In case of default of payment or any other culpable violation of material contractual obligations by the Customer, the Supplier has the right to demand the return of goods to which the Supplier has retained title or in which the Supplier holds an equitable lien. If he makes use of such right, this shall only constitute withdrawal from the contract, in case the Supplier expressly declares so towards the customer.

7. If the Customer files a petition for insolvency proceedings to be commenced, the Supplier is entitled to withdraw from the contract and demand the immediate return of the delivered goods. If the value of the security existing for the Supplier exceeds the amount of the Supplier's claims by over 10 % at the aggregate, the Supplier shall, at the customer's request, release security to this extent at his choice.

§ 11 Further liability

1. Unless expressly stipulated in § 9 or otherwise, demands on liability shall be excluded for whatever reason. This exclusion of liability shall explicitly be applicable to damages not resulting from the delivered goods themselves. The Supplier shall be liable for damages and reimbursement of additional expenditures according to § 284 of the German Civil Code on condition that the damage or vain additional expenditures have resulted from gross negligence or intention and has been caused by a statutory agent of the Supplier or by the Supplier's assistant accomplishing an instruction concerning the products.
2. The exclusion of liability in § 11, No. 1 shall not be applicable to damages resulting from the takeover of certain guarantees or risks of procurement, as well as from deadly injuries, bodily harm or other injuries to health. The exclusion of liability in § 11, No. 1 shall also not concern the mandatory liability laid down in the Spanish Statute of Liability for goods or any other coercive liability, as well as the infringement of essential contractual duties. The damages for a breach of material contractual duties are, however, limited to foreseeable damage typical for the type of contract except in the event of intended far gross negligence.
3. The preceding regulations (§ 11, No. 1 and 2) shall not result in an alteration to the burden of proof.
4. Claims for damages shall become time-barred within twelve months, at the latest, with the beginning of the statutory period of limitations regarding material defects of the goods (§ 9, No. 2).
5. The Customer shall not be entitled to claim damages with respect to the merchant's recourse according to § 478 of the German Civil Code.

§ 12 Rights

1. The subject matter of the contract, the data, proposals, documentation etc. shall be intellectual property of the Supplier (§ 3) and shall not be reproduced and / or be made accessible to a third party. In case a contract is not concluded or a contract was ended, all intellectual property shall be returned to the Supplier or shall be extinguished and shall not be made use of.
2. During the pre-contractual relationship or during the performance of contract and in relation to the Customer, all rights affecting the goods, particularly the extensive copyright including all objects, data, and information handed over to the Customer, exclusively shall rest in the Supplier, even if the rights have accrued from co-operation with the Customer or from the Customer's instructions. This shall expressly be applicable to patentable inventions, resulting within the scope of the Supplier during the contractual or pre-contractual relationship. The documentation delivered with the goods is also subject to the copyright.

§ 13 Rights of third parties

1. The Supplier warrants that the goods do not conflict with any rights of third parties.
2. In case of claims of third parties against the Customer due to the infringement of an intellectual or industrial property right or copyright according to § 12 (hereinafter: "Property Rights"), which has been infringed by the delivered goods used in accordance with the terms of the contract, the Supplier shall be liable to the Customer as outlined below.
 - a) The Supplier shall, at his own choice and at his own expense, obtain the right of use concerning the goods, modify the goods in such way that the Property Rights shall not be infringed or exchange the goods. If this is not possible to the Supplier under adequate conditions, he shall take back the goods and repay the purchase price.
 - b) The aforementioned obligations of the Supplier shall only apply, if the Customer has notified the Supplier forthwith of claims raised by third parties, does not acknowledge the infringement of the Property Right towards the third party and reserves all defensive measures and negotiations for conciliation. This notification to the Supplier shall be in writing. If the Customer ceases to use the goods in order to reduce the damage or due to other important reasons, he has to indicate to the third party that the termination of use shall not include any kind of acceptance of an infringement to Property Rights. As far as the Customer is liable for the infringement of Property Rights, claims of the Customer shall be excluded.
 - c) If the infringement of the Property Rights is caused through specifications by the Customer, claims of the Customer shall be excluded. The exclusion of claims also refers to infringements by the Customer's use unforeseeable to the Supplier. Additionally, the Customer may not raise claims, if he converts the consistency of the goods or uses the delivered goods together with other goods.
 - d) Further claims against the Supplier, shall be excluded. § 11 (Further Liability) shall, however, remain unaffected, as well as the right of the Customer to withdraw from the contract.
 - e) The contractual parties shall immediately notify each other of risks of breach of contract known to the parties as well as of alleged cases of breach of contract. They shall give each other the opportunity to prevent compliant claims by mutual agreement.

§ 14 Miscellaneous

1. When asserting their respective rights, the Supplier and the Customer shall, during the mutual search for solutions respect the situation of the other party. Thereby they will take into account the particular situation of each contractual party.
2. If one of the provisions of these Terms and the further contracts reached should become ineffective, this shall not affect the validity of the remainder of the Terms. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision
3. The venue for all controversies arising from or in connection with the present contract shall be San Sebastian or, at the discretion of the Supplier, the registered office where the order is performed, provided that the Customer is a registered merchant, a legal entity or a special public fund. This shall also be applicable, if the Customer transfers the registered office out of the national territory after the contract has been concluded.

4. These Terms shall exclusively be subject to Spanish law. The rules of conflict of law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not be applicable.
5. The Spanish and English version of these terms shall be for convenience purposes only. In case of any inconsistencies, the German version shall prevail.