

## 1. General - Scope

1.1 Our Terms and Conditions (T&C) shall apply exclusively to all legal relationships between KACO new energy GmbH (hereinafter referred to as KACO) and its contractual partners (hereinafter referred to as the Customer), particularly in the context of agreements, deliveries and/or services including consultation and supplementary work. In the context of these Terms and Conditions, Customers are entrepreneurs, legal persons under public law or special funds under public law within the meaning of Section 310 Para. 1 of the German Civil Code (BGB).

1.2 Any customer terms and conditions that deviate from, conflict with or supplement these Terms and Conditions shall not constitute a component of this contract, even if KACO takes note of said customer conditions or fails to reject them, unless KACO expressly agrees to their validity in writing. Additionally, the customer's terms and conditions shall be expressly rejected.

1.3 We are entitled to assign the claims from our business relationship.

## 2. Conclusion of Contract

2.1 All KACO offers are without obligation/non-binding. The written order confirmation from KACO shall define the content of the contract. Verbal declarations from representatives and employees, verbal supplementary agreements and subsequent changes to the contract shall only be effective if confirmed by KACO in writing. This requirement for a written format may only be removed if this is agreed in writing. Section 305b of the German Civil Code shall remain unaffected.

2.2 Specifications, diagrams, figures, technical data, and descriptions of weight, dimensions and performance found in brochures, catalogues, circulars, advertisements, price lists or documents associated with the offer are non-binding and provided solely for information purposes unless it is expressly stated that they are binding. They do not represent a guarantee of the properties or durability of goods or services to be provided by KACO.

2.3 Quotations, diagrams and other documents remain the property of KACO and are fully copyrighted and protected from exploitation. The documents may only be disclosed to third parties of KACO after prior consent has been obtained from KACO. If the order is not granted, they should be returned to KACO immediately upon request.

## 3. Prices, Terms of Payment and Set-off

3.1 The prices specified by KACO in the order confirmation shall apply. The prices shall apply in euros ex works or from a warehouse/external warehouse of KACO or a third party selected by KACO, excluding packaging, transport and transport insurance and subject to the statutory sales tax that applies in each case, unless otherwise agreed in writing.

3.2 Unless otherwise agreed in writing, KACO shall be responsible for assembly or installation and the Customer shall pay the agreed remuneration plus any incidental costs such as travel and transportation expenses and allowances.

3.3 The discount requires a separate written agreement.

3.4 Delivery shall be subject to prepayment by cash in advance, unless otherwise agreed. When due, all payments shall be made immediately to the bank account specified by KACO.

3.5 In the event that the Customer defaults on payment or circumstances become known that question their creditworthiness, KACO is hereby entitled to demand the entire outstanding debt, advance payments or securities, or to withdraw from the contract. The creditworthiness of the Customer shall be questioned in particular where the Customer fails to meet their payment obligations to KACO, commences insolvency procedures or insolvency proceedings are refused following a declaration of bankruptcy due to insufficient assets. In the event of a default on payment, the customer must pay default charges amounting to 8% above the base interest rate concerned. The right to furnish evidence of and assert claims for default damages remains reserved. For all other consequences of defaulting on payments, the statutory rules shall apply.

3.6 The Customer shall only be granted set-off rights if their counterclaims are established as final and absolute, are undisputed or are recognised by KACO. Additionally, the Customer shall be authorised to exercise a right of retention if their counterclaim is based on the same contractual relationship.

## 4. Retention of Title

4.1 The delivered items (retained goods), including any delivered to overseas locations, shall remain the sole property of KACO until full settlement of all claims against the Customer arising from the business relationship with KACO has been received. If the combined value of the security interests of KACO exceeds the value of all secured claims by more than 20%, KACO shall, upon receipt of a request from the Customer, release a corresponding part of the security interest; KACO shall exercise its own discretion when deciding between the security interests for release. Where there are retained goods in overseas locations, the Customer shall be obligated to assist with all measures and declarations required to provide KACO with securities equivalent to the value associated with the retention of title.

4.2 For the duration of the retention of title, the Customer shall be prohibited from transferring ownership or using the goods as security. The Customer may sell the goods exclusively to resellers, in the ordinary course of business and on the condition that the reseller receives appropriate payment from their client or states that the title is retained and shall only pass to the reseller's client upon fulfilment of their contractual payment obligations.

4.3 In the event that the Customer resells the retained goods, the Customer hereby assigns, as security, any future rights or claims resulting from the resale of the goods, and all ancillary rights – including accounts receivable – to KACO, without any requirement for a further declaration. If the retained goods are resold together with other items without an agreed separate price for the retained goods, the Customer shall assign KACO priority over the remaining debt, a proportion of the total price that corresponds to the value of the retained goods invoiced by KACO.

4.4 The Customer shall be permitted to process the retained goods or to mix and combine the goods with other items. The processing is performed on behalf of KACO. The Customer shall ensure safe storage of the resultant new product for KACO with the diligence of an ordinary businessman. The new product shall be considered a retained good. The Customer and KACO hereby agree that, if the goods are combined with or mixed with other items not belonging to KACO, KACO shall in all cases become joint owner of the new products, whereby its interest in the new product is determined by the value of the combined or mixed retained goods as compared to the value of the other goods at the time of the combination or mixing process. To this extent, the new product shall be considered a retained good. The rules governing subrogation

4.3 also apply to new products. The assignment shall only be valid up to the amount that corresponds to the value of the processed, combined or mixed retained goods invoiced by KACO.

4.5 If the Customer installs or incorporates the retained goods into land or movable property, the Customer hereby assigns to KACO by way of security, without any requirement for special notice, any claims for remuneration the Customer might have for the installation or incorporation, including all ancillary rights, at an amount corresponding to the ratio of the value of the installed or incorporated retained goods to the other installed or incorporated goods at the time of installation or incorporation.

4.6 Until further notice, the Customer shall be entitled to collect the assigned claims arising from the resale. Where good cause is demonstrated, in particular in the event of payment default, cessation of payment, the commencement of insolvency proceedings, protest or justified evidence of indebtedness or impending insolvency of the Customer, KACO shall be entitled to revoke the authority of the Customer to collect the assigned claims. Furthermore, following a prior warning and within a reasonable period, KACO may disclose the assignment, realise the assigned claims and require that the Customer discloses the assignment to their customers.

4.7 In the event of any seizure or other acts of intervention by third parties, the Customer must inform KACO immediately. Following validation of a justifiable interest, the Customer shall immediately provide KACO with all necessary information and documentation required by KACO to enforce their rights. The Customer shall notify the third party and enforcement agencies of KACO's ownership. The Customer shall inform KACO in writing immediately if there is a change in ownership of the goods or if they change their place of business. Should third parties gain access to the retained goods, the customer shall be required to bear all costs associated with revoking this access, particularly in respect of any third party actions against enforcement, and with replacing items.

4.8 If the customer breaches their duty, and particularly if they default on payment, KACO shall be authorised, after a grace period set for the customer has elapsed without successful performance, to withdraw from the contract and take back the retained goods; and to access the customer's property for this purpose and make use of the goods for the purpose of offsetting them against any outstanding amounts owed to KACO. This shall not affect the legal provisions concerning the possibility of waiving a grace period. The Customer shall be obligated to return the goods. The repossession or enforcement of the retention of title or the seizure of the retained goods shall not be deemed to constitute termination of the contract, unless expressly stated by KACO.

## 5. Scope of Delivery – Delivery – Default in Delivery

5.1 The scope of KACO's delivery obligation shall be exclusively based on the delivery specified in writing in the order confirmation from KACO.

5.2 Unless otherwise agreed in writing, the delivery shall be subject to the following conditions:

5.2.1 Either KACO shall provide the Customer with the products on KACO premises or at another location (such as a factory, production plant, warehouse or external warehouse of KACO or a third party specified by KACO), without clearing the goods for export and loading them onto a collecting vehicle, and shall inform the customer of this, or

5.2.2 KACO shall arrange for shipment of the products following prior agreement on behalf of the Customer. Additional costs (e.g. transport costs, storage costs) and risks associated with this shall be borne by the Customer. In this case, KACO shall hand over the original goods documents required for the provision and use of the goods (specifically the bill of lading, commercial invoice and packing list); this shall only take place once the payment agreed in writing and any additional outstanding costs have been received in the KACO bank account.

5.3 In order to fulfil its delivery obligation, KACO may engage the services of a subcontractor without consulting the customer beforehand.

5.4 KACO shall be authorised to carry out and invoice for partial deliveries and partial services to the extent that this is reasonable for the customer.

5.5 KACO may, without the consent of the Customer, alter the materials of the products to be delivered provided that this does not affect the properties or functionality of the products. In case of a non-delivery from a supplier, KACO shall be entitled to supply services which are equivalent in quality and price. Where this is not possible, KACO may withdraw from the contract. KACO shall inform the Customer immediately regarding any non-availability and refund the Customer for any payments already made.

5.6 Unless otherwise expressly agreed in writing, delivery deadlines shall be non-binding.

5.7 Adherence to delivery deadlines shall be on condition that a valid delivery address, as well as all documents, necessary permits and approvals (particularly concerning plans) to be supplied by the Customer, are received on time and that the agreed payment terms and any other obligations are adhered to by the Customer. If these conditions are not fulfilled on time, the deadlines may be extended as appropriate; however, this does not apply if KACO is responsible for the delay. The right to plead the defence of non-performance of contract remains reserved.

5.8 If the customer is in default of acceptance or culpably breaches any other obligations to cooperate, KACO shall be authorised to demand compensation for any damages arising from this, including any additional costs. Continuing claims or rights shall remain reserved.

5.9 The deadlines for deliveries shall also be extended as appropriate if a failure to meet deadlines is the result of

- a) acts of God such as natural disasters, mobilisation, war, terrorist acts, riots or similar events (such as strikes, lockouts)
- b) viruses and other attacks on KACO's IT system
- c) difficulties arising from German or international regulations of foreign trade legislation
- d) late or improper deliveries by KACO's suppliers
- e) other circumstances for which KACO is not responsible.

5.10 If KACO should default, the Customer shall be authorised to demand lump-sum compensation amounting to no more than 5% of the delivery value, if there is evidence of causal damages.

5.11 In addition to 5.10, KACO shall only assume liability for default:

- a) in accordance with legal provisions and if the underlying purchase contract constitutes business to be settled on a fixed date in the sense of Section 286 Para. 2 No. 4 of the German Civil Code or Section 376 of the German Commercial Code. KACO shall assume liability in accordance with legal provisions if, as a result of a delivery default for which KACO is responsi-

ble, the Customer is authorised to claim that their interest in performance of the contract as agreed has ceased;

b) if the delivery default is the result of a deliberate or grossly negligent breach of contract for which KACO is responsible; if caused by representatives or vicarious agents of KACO, blame shall be attributed to KACO. If the delivery default is the result of a grossly negligent breach of contract for which KACO is responsible, liability for damages shall be restricted to foreseeable and typically occurring damages;

c) if the delivery default for which KACO is responsible is the result of a culpable breach of a major contractual obligation; in this case, however, liability for damages shall be restricted to foreseeable, typically occurring damages.

**5.12** At the request of KACO, the Customer shall be obligated to state, within 5 working days of receiving the request, whether they wish to withdraw from the contract due to the delayed delivery or whether they insist on delivery.

**5.13** A later dispatch or delivery by more than 10 working days on the request of the customer is not permitted.

## 6. Passing of Risk – Default by the Customer

**6.1** The risk of accidental perishing and/or accidental deterioration of the goods shall be passed on with handover; in the case of sale by dispatch, it shall be passed on with handover of the goods to the shipping agent, carrier or person/establishment otherwise appointed to carry out shipment. The start of the loading process shall determine the point at which the risk is passed.

**6.2** If collection, shipment or delivery is delayed for reasons for which the customer is responsible, or the customer enters default of acceptance or debtor's delay for other reasons, the risk of accidental perishing and/or accidental deterioration shall pass to the customer.

## 7. Material defects

**7.1** If the purchased goods have a material defect and the cause of this was already present at the time of passing of risk, KACO may choose to remedy this by rectifying the defect or delivering a new, non-defective product.

**7.2** All claims relating to defective goods for subsequent remedy shall come under the statute of limitations after 12 months following delivery; the same applies for withdrawal and reduction. This shall not apply if longer periods apply according to Sec. 438 Para. 1 No. 2 (buildings and building materials), Sec. 479 Para. 1 (recourse claim) and 634a Para. 1 No. 2 (building defects) of the German Civil Code, in the event of wilful intent, fraudulent concealment of the defect and failure to comply with warranted characteristics. The legal regulations concerning suspension, interruption and restart of the limitation period shall remain unaffected.

**7.3** Claims of the customer based on defects are dependent on the customer duly undertaking the duties of examination and notice of complaint under Section 377 of the German Commercial Code (HGB). The deficiency must be precisely specified.

**7.4** The customer shall assume the burden of proof for all eligibility requirements; in particular, for the defect itself, the time at which the defect was identified and the fact that the notification of defects was submitted in a timely manner.

**7.5** In the case of notifications of defects, the Customer may withhold payment at an amount that reasonably reflects the proportion of the defects as to quality. The customer's right of retention shall not apply in the case of claims that are neither undisputed nor established as final and absolute. If a defect complaint is unjustified, KACO shall be entitled to reimbursement of the expenses from the Customer.

**7.6** KACO must be accorded the opportunity of subsequent remedy within a reasonable period.

**7.7** The subsequent remedy owed by KACO shall be deemed to have failed after the third attempt. If the subsequent remedy fails, the Customer may withdraw from the contract or reduce the remuneration.

**7.8** There shall be no claims for defects where the discrepancy from the agreed condition is minor, where the impairment is minor, where there is normal wear and tear, or where damages arise after the passing of risk as a consequence of negligent or careless handling, excessive operational demands, unsuitable equipment, or as a consequence of special exterior influences that were not assumed in the contract, and also where there are software defects that cannot be reproduced. If the Customer or third parties conduct improper modifications or repairs, they shall not be entitled to assert claims for defects on the consequences resulting from these.

**7.9** Claims of the Customer for the expenses necessary for the subsequent remedy, particularly transport, carriage, work and material costs, shall be excluded if the expenses increase because the delivered item was subsequently transported to a location different from the Customer's place of business, unless the transport is in keeping with the intended use of the delivered item. Goods that are the subject of claims shall be sent postage paid to KACO with the customer number, invoice number and order number specified. If the goods are indeed defective, KACO shall reimburse the postage charges for the least expensive form of shipment.

**7.10** The Customer's rights of recourse against KACO according to Section 478 of the German Civil Code (Recourse of the entrepreneur) only exist to the extent that the Customer has not reached any agreements with the purchaser that are beyond the scope of the legal claims for defects. Furthermore, Clause 7.9 shall apply with regard to the extent of the Customer's rights of recourse against KACO under Section 478 Para. 2 of the German Civil Code.

**7.11 a)** KACO shall accept liability within the scope of the legal provisions if the customer asserts a claim for damages that is based on wilful intent or gross negligence, including wilful intent or gross negligence of representatives or vicarious agents of KACO. If KACO cannot be accused of wilful breach of contract, liability for damages shall be restricted to foreseeable, typically occurring damages.

b) KACO shall accept liability within the scope of the legal provisions if KACO culpably breaches a major contractual obligation; in this case, however, liability for damages shall be restricted to foreseeable, typically occurring damages. A major contractual obligation applies in cases where the breach of duty relates to a duty whose fulfilment the customer has relied upon and was entitled to rely upon.

c) Liability due to culpable damage to life, body or health shall remain unaffected; this also applies to mandatory liability according to the German Product Liability Act.

d) Liability shall be excluded unless otherwise declared above.

## 8. Usage Rights and Intellectual Property Rights

**8.1** If a KACO service requires the use of KACO's intellectual property rights, KACO shall grant the customer usage rights that are restricted locally to the customer's establishment, are without a time limit, can be revoked at any time and are restricted to the contractual use of KACO services. This usage right is not transferable and does not cover the right to grant sub-usage rights.

**8.2** Unless otherwise agreed, KACO shall be obligated to render the delivery free of any intellectual property rights and copyrights of third parties (hereinafter referred to as Intellectual Property Rights) solely in Germany. If a third party asserts a justified claim against the Customer based on a breach of the Intellectual Property Rights with respect to the deliveries or services rendered by KACO and then used in conformity with the contract, KACO shall be liable to the Customer within the period stipulated in Clause 7.2 as follows:

a) KACO shall, at its own discretion and its own cost, effect usage rights, modify the affected deliveries or services in a way that ensures they do not violate Intellectual Property Rights, or replace the affected deliveries or services. If this, under reasonable conditions, would be impossible for KACO, the Customer is entitled to statutory cancellation or reduction rights.

b) The above obligations of KACO shall only apply if the Customer notifies KACO immediately that any such claim has been asserted by the third party in writing, it does not admit to a breach and leaves any protective measures and settlement negotiations to the discretion of KACO. If the Customer stops using the delivery or service due to reasons of lowering the damages or for any other important reason, they shall be obligated to point these out to third parties so that the discontinuation of use does not constitute a breach of Intellectual Property Rights being acknowledged.

**8.3** Claims on the part of the Customer shall be excluded insofar as the Customer is responsible for the breach of Intellectual Property Rights.

**8.4** Claims on the part of the Customer shall also be excluded if the breach of Intellectual Property Rights was caused by specific Customer requirements, an application that was unforeseeable by KACO, a change to the service by the Customer, or if the service was used together with products not delivered by KACO.

**8.5** In the event of breaches of Intellectual Property Rights, claims from the Customer governed by 8. 2a) shall also be subject to the provisions of Clauses 7.5, 7.6 and 7.10 accordingly.

**8.6** If there are any other deficiencies in title, the provisions of Clause 7 shall apply accordingly.

**8.7** Claims on the part of the Customer against KACO or its vicarious agents that go beyond or are not included in the claims governed by Clause 8 shall be excluded.

## 9. Place of Reservation

**9.1** Fulfilment of the contract is subject to the provision that this shall not be prevented by German, US (American) or other applicable nationals, by EU or international foreign trade regulations or by any embargoes or any other sanctions.

**9.2** The Customer shall be obligated to provide all the information and documentation needed for export, shipment and import in good time.

## 10. Contract Modifications

If events in the sense of Clause 5.9 a) to c) significantly change the economic meaning or the content of the delivery, significantly change the services to be rendered by KACO, or have a significant effect on the operation of KACO, the contract shall be amended in good faith. If this does not make economic sense for KACO, then KACO shall have the right to withdraw from the contract. The same applies when necessary export permits are not granted or are unusable. If KACO wishes to avail itself of this right of termination, KACO must notify the Customer of this immediately on recognising the implications of the event, even if an extended delivery time was initially agreed with the Customer.

## 11. Joint Liability

**11.1** Liability for damages other than that provided for in Clauses 5, 7 and 8 shall be excluded, regardless of the legal nature of the asserted claim. This applies in particular to claims for damages ensuing from negligence in concluding the contract, on account of other breaches of duty or on account of tortious compensation claims in respect of material damage in accordance with Section 823 of the German Civil Code.

**11.2** The limitation according to Clause 11.1 also applies if, instead of a claim for compensation for damage in place of performance, the customer demands compensation for futile expenses.

**11.3** If the liability for compensation is excluded or limited vis-à-vis KACO, this shall also apply with regard to the personal liability for compensation of KACO's salaried personnel, employees, co-workers, representatives and vicarious agents.

## 14. Jurisdiction and Applicable Law

**14.1** Where the Customer is a business, the sole place of jurisdiction for all disputes resulting directly or indirectly from this contractual relationship shall be Heilbronn, Germany. However, KACO shall also be entitled to commence proceedings in the jurisdiction where the Customer's registered office is situated.

**14.2** All legal relationships between the customer and KACO shall be governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).