

## Conditions of Sale, Supply and Installation of Kissing GmbH

### **1. Application of the Conditions of Sale, Supply and Installation:**

**1.1.** The Conditions of Sale, Supply and Installation shall apply for all transactions with parties buying, ordering or purchasing equipment (hereinafter „Customer“) from Kissing GmbH (hereinafter „KISSING“). General or special terms and conditions of business used by the Customer shall be waived and shall need to be expressly accepted in writing by KISSING to become effective.

**1.2.** Representations on technical features, agreements of commercial nature (such as prices, discounts etc.) as well as any modification to an order concerning technical specifications or the price, as well as any deviation from the Conditions of Sale, Supply and Installation shall require written consent by KISSING to become binding.

### **2. Purchase price / remuneration for work / travel expenses:**

**2.1.** Estimates shall be not binding.

**2.2.** Unless otherwise agreed or quoted in the applicable KISSING offer, all prices shall be ex works of the manufacturing site of KISSING, and do not include packaging and loading, and , are net prices exclusive of sales or value added tax. Discounts are subject to prior agreement in writing. In case of a delivery term of more than six months KISSING shall be entitled to make price adjustments to the extent of any increase of raw material or labor costs.

**2.3.** Customs and import duties, freight charges and travel expenses, daily allowances and expenses as well as payment for accommodation of KISSING staff in adequate quarters (single room of central European standard with shower/toilet) shall be borne by the Customer, who also undertakes to advance any expenses for medical care in case of accidents at work.

**2.4.** Without prejudice to price adjustments as provided for under 2.2 and to the binding character and the validity of an order, KISSING shall be entitled to make price adjustments in case of increases of raw material prices during manufacturing or as well as a result of technical or material-specific changes relating to the goods ordered, provided that the promised features of the goods are not thereby substantially impaired. All costs relating to any changes requested by the Customer or changes whose necessity becomes apparent only after delivery of the goods and which was beyond KISSING's prior knowledge, shall be borne by the Customer. In cases where changes proposed by the Customer or by KISSING could result in a price increase or reduction and/or changes in the delivery time schedule or a change of other project targets, KISSING shall be obliged to inform on such consequences as soon as reasonably possible after receiving such a proposal for change. Any additional expenses resulting from such changes and all related price increases and changes in the time schedule shall be detailed by KISSING in a separate offer. Any such change shall be considered binding only when a complementary agreement in writing between the Customer and KISSING, relating to the compensation for additional costs or the consideration of cost reductions, a modified time schedule or any changes of other project targets has been made.

KISSING shall bear no responsibility for any delays resulting of. Any costs and losses in connection with obtaining an operating license or compliance with local rules and regulations shall be borne by the Customer.

### **3. Retention of title:**

All goods supplied by KISSING shall remain the sole property of KISSING until full payment of the purchase price as well as all other claims in connection with the order, and shall not be resold, ceded, pawned or mortgaged before full payment. The customer already now assigns to KISSING any future claims resulting from a sale of products and a sale of the equipment delivered by KISSING and shall ensure that KISSING's retention of title will be recognized by third parties and that proceeds relating to such sales shall be kept separate from other funds.

### **4. Conditions of payment:**

**4.1.** Payment shall be due immediately after receipt of the goods or the rendering of services and the presentation of the invoice, without deduction and in the currency and to the bank account specified. Terms of payment differing from the above shall apply only if expressly confirmed in writing.

**4.2.** Down payments shall be due for payment upon receipt of the order confirmation.

**4.3.** Late payment shall extend the delivery time according to the delay in payment and shall entitle KISSING to demand payment or to withdraw from the contract after an additional grace period of fourteen days, or, when payment in installments has been agreed, to declare all outstanding future installments due immediately. In case of late payment KISSING shall be entitled to charge interest on arrears in the statutory amount under German law as well as claim compensation for the decrease in value of the goods as well as legal and debt recovery expenses.

With the exception of counterclaims acknowledged in writing or based on a legally enforceable court decision, the Customer shall have no right to withhold or offset payment.

## **5. Passing of risk, transportation:**

Unless otherwise agreed in individual terms, the goods shall be sold "ex works" - EXW according to Inco terms 2010 (ready for collection) - the risk shall pass to the Customer as soon as the goods have been handed over to the forwarder, collector or freight carrier, in case of transportation by means provided by KISSING the risk shall pass to the Customer upon leaving the factory or storage. In case of delays not within KISSING's responsibility, the risk shall pass as soon as the goods are ready for shipping, and payment of the agreed sales price shall become due as provided for in 4.1.

Transport insurance shall be borne by Customer. Unless otherwise agreed, packaging shall be charged to the Customer at cost.

An acceptance procedure as provided for in 6.1 shall be done as agreed, either at the KISSING factory or after the passing of risk at the Customer's site where the goods are installed.

## **6. Acceptance, shipment and time of delivery:**

**6.1.** All services and deliveries rendered by KISSING shall be considered commissioned and accepted as soon as the Customer has confirmed the rendering of such services in the presence of a KISSING employee. Unless certain individuals have been specifically designated for acceptance, acceptance may be done by any employee of the Customer. A service rendered shall be considered commissioned if the Customer does not proceed with the acceptance procedure within 14 days after notification of the readiness of an order and the invitation to proceed with acceptance in the presence of a KISSING employee during said period of time. Any quality or function tests required or provided for in the contract shall be carried out by KISSING no later than at the time of the invitation for the Customer to proceed with acceptance at its expense, unless otherwise agreed in writing. For goods supplied, no acceptance shall be performed; KISSING must be advised in writing of any defect including an exact description thereof within three months after delivery of the goods at the Customer's site (incoming goods inspection). After the elapse of that period the goods supplied shall be considered accepted and commissioned, and any warranty claims and other claims (damages, liability for mistake) shall expire.

**6.2.** Minor defects of the goods supplied shall not entitle the Customer to refuse formal acceptance or to withhold payments provided for in the contract.

**6.3.** Time of delivery must be agreed in writing. In case of delays of delivery due to circumstances beyond the control of KISSING, as delays caused by public authorities, strikes or events of force majeure, also affecting suppliers of components, as well as energy and raw material shortages, KISSING shall be entitled to extend the delivery time agreed in accordance with the duration and the effects of such delays, without giving rise to compensatory claims by the Customer. Any extensions of delivery time or delays resulting from modifications desired by the Customer after the signing of the contract, or a delay in partial or down payments, or resulting from changed circumstances which are within the Customer's control, shall be at the Customer's expense, as well as modifications desired by the Customer.

**6.4.** KISSING shall be entitled to terminate the contract without giving rise to compensatory claims by the Customer, if reasons beyond the control of KISSING give rise to frustration of the contract, or if performance of the contract does no longer correspond to the commercial and/or financial fundamentals prevailing at the time when the order was placed or the contract concluded. Withdrawal from the contract shall not give rise to claims for compensation by the Customer against KISSING.

**6.5.** KISSING shall bear responsible for a delay of delivery if the Customer is in full performance and if the delay of delivery continues despite written notice by the Customer extending delivery time by at least 25 working days.

**6.6.** In case of a delay in acceptance by the Customer, KISSING shall be entitled to store the goods at the Customer's expense and to dispose of the goods by self-help sale at the Customer's expense.

## **7. Service and fitting work:**

The terms and conditions stated below shall apply for the assignment of KISSING staff for fitting, putting into operation, preparing acceptance and repair purposes (hereinafter "Service Activities"). **7.1. Order volume** Unless otherwise agreed in writing, KISSING staff shall be employed only for work at machines and plants supplied by KISSING as well as according to the work specified in writing in the service order. Any activities beyond the agreed volume of activities shall require prior approval in writing by KISSING.

### **7.2. Staff**

For the performance of Service Activities, KISSING shall employ qualified specialist staff exclusively, who will perform the work correctly and properly. The selection of staff rests with KISSING.

### **7.3. Performance of Service Activities**

### **7.3.1. Deadlines**

Deadlines stated by KISSING regarding the beginning or the completion of Service Activities are for orientation purposes only, unless in individual terms such deadlines are expressly agreed. The meeting of firm deadlines is dependent on the Customer fulfilling all his obligations.

KISSING will perform Service Activities in good time. Any fixed deadline shall be considered met when the Service Activities are completed before the end of the deadline. The same shall apply when an acceptance or test of the Service Activities by the Customer is agreed.. In case of delay of completion due to circumstances beyond the control of KISSING, a reasonable extension of the deadline shall apply automatically. Any expenses resulting from such delay shall be borne by the Customer. This shall also apply when such circumstances arise after KISSING has already fallen behind schedule. There shall be no extension of deadline, however, if the Customer provides evidence that the circumstances have no material influence on the progress of the work.

In case of delays for which KISSING is responsible, the Customer shall be entitled to terminate the contract, provided however that the Customer has explicitly extended the deadline for a reasonable period which is sufficient for KISSING to make three efforts to remedy the defect and, expressly stating that the Customer will refuse acceptance of the services to be rendered after the lapse of the deadline for the third effort to remedy the defect, if KISSING is unable to render such services within the agreed deadline.

Further claims, such as compensation for consequential damages and loss in production in particular, shall be excluded.

### **7.4. Delay of acceptance**

#### **7.4.1. Service Activities**

The Customer shall immediately advise KISSING of any impending delay or prevention of Service Activities - irrespective of the reason. If agreed Service Activities are postponed or cancelled due to reasons for which the Customer is responsible, KISSING shall have the right to demand compensation for additional expenses resulting from (such as additional travel expenses and wait times).

### **7.5. Beginning of activities**

Should the rendering of Service Activities endanger life or health of the staff assigned by KISSING, KISSING shall be entitled to delay the beginning of work until circumstances have reasonably improved.

### **7.6. Interruptions**

If Service Activities need to be interrupted for an unreasonable period of time, KISSING shall be entitled to call back its staff. Any expenses resulting from shall be borne by KISSING only in cases where KISSING is responsible for such an interruption.

Wait times for which the Customer bears responsibility shall be compensated to KISSING according to the relevant fitters' rates.

### **7.7. Termination of Service Activities**

If, due to force majeure, Service Activities need to be terminated prematurely, KISSING shall be entitled to charge all expenses incurred until that moment including return travel of the fitters.

### **7.8. Replacement of staff**

During the course of Service Activities, KISSING shall be entitled to replace the staff assigned by equally qualified staff, at the expense of KISSING, if KISSING is responsible for the change. In all other cases the Customer shall bear the expenses related to a change of staff.

### **7.9. Cooperation obligations of the Customer**

#### **7.9.1. Preparation of Service Activities**

The Customer shall timely advise KISSING in writing of the desired time of the beginning of Service Activities. The Customer shall assure the timely completion of all preparatory works before the beginning of Service Activities so that the Service Activities may begin as soon as the staff arrives and may be carried out speedily and without interruptions. In particular, the Customer shall provide the required operating resources and energy supplies (such as electrical power, water, steam, compressed air etc.), so that KISSING may begin the Service Activities immediately. The locations where Service Activities are performed must be protected from atmospheric conditions, well lighted and adequately air conditioned to enable unhindered work. At the location of Service Activities, the Customer shall provide cleaning supplies, washing and sanitary facilities, at his own expense, as well as first aid in case of emergencies.

If KISSING deems it necessary, the Customer shall provide a dry and lockable storage room for the equipment of its staff. In case of Service Activities of major scope, the Customer shall provide adequate work and common rooms.

#### **7.9.2. Concrete and brickwork**

All civil engineering works and installations must be finished before the beginning of Service Activities. All concrete and brickwork must be completely dry and set.

### **7.9.3. Storage**

The Customer shall store all parts to be fitted properly and protected from the elements. Parts must be stored on the site where the plant is to be installed, or in its immediate vicinity, at the beginning of Service Activities. Disposal of packaging material on site shall be effected by the Customer's staff. KISSING shall not be liable for the consequences of inappropriate storage, inappropriate transportation and inappropriate handling of the machines/subject of Service Activities.

### **7.9.4. Helpers**

The Customer shall provide suitable helpers in sufficient numbers to ensure the speedy performance of Service Activities. In technical matters, KISSING staff shall be entitled to issue instructions to the helpers. When so requested by KISSING, the Customer shall provide suitable interpreters at its own expense. If, KISSING exceptionally provides interpreters, the Customer shall reimburse the cost to KISSING. Helpers provided by the Customer shall remain under its disciplinary supervision, responsibility and insurance obligation. KISSING is not liable for damages caused by such helpers..

### **7.9.5. Resources and equipment**

The Customer shall provide the resources, equipment and tools required for Service Activities. All those must be in good and safe condition.

### **7.9.6. Test runs and putting into operation**

Unless otherwise agreed, the Customer shall provide all materials required free of charge and shall ensure in due time all other actions necessary for the adjustment and testing of the subject of Service Activities. The Customer shall ensure, that waste and products resulting from test runs are removed at regular intervals to ensure the trouble-free putting into operation of the subject of Service Activities.

When so requested by KISSING, the subject of Service Activities shall be cleaned by the Customer's staff at its own expense.

### **7.9.7. Safety**

The Customer shall take all measures necessary for the prevention of accidents and the protection of KISSING staff and equipment provided by KISSING. The Customer will inform KISSING staff about individual operational safety guidelines and will instruct his own staff to point out particular dangers to KISSING staff and to inform them about the relevant safety regulations and local legislation.

Should works be carried out by other companies during the activities of KISSING staff, the Customer shall - at its own expense and responsibility - designate a person to coordinate and supervise the works to prevent any possible mutual endangerment.

### **7.9.8 Costs**

The Customer shall fulfill all his obligations at no expense for KISSING.

### **7.9.9. Violation of cooperation obligations**

If the Customer fails to fulfill its obligations, KISSING – after informing the Customer of its intention to continue - shall be entitled but not obliged to carry out the activities for which the Customer bears responsibility at the Customer's expense.

In all other cases, all legal and contractual rights and claims of KISSING shall remain unaffected. In particular, KISSING staff shall be entitled to return home if the Customer fails to fulfill its cooperation obligations. Any costs shall be borne by the Customer.

### **7.10. Illness**

The Customer shall advise KISSING without delay if a KISSING staff member becomes unable to work during his mission.

In case of a stay in hospital, the Customer shall ensure the safe storage of the luggage of the staff member. If staff members must be replaced due to illness, the Customer shall bear all expenses and shall help with organizing the repatriation.

### **7.11. Settlement of Service Activities**

#### **7.11.1. Service fees and conditions**

Activities by KISSING staff will be settled according to the relevant service fees and conditions (fitters' mission). If Service Activities are provided at a fixed price, any additional activities beyond the agreed extent will be charged at cost.

#### **7.11.2. Other**

If, for reasons beyond the control of KISSING, the weekly working time of 35 hours is not reached, the inactive time shall be calculated according to the conditions provided for under 7.11.5.

#### **7.11.3. Service time logs**

KISSING staff is obliged to keep a weekly time log sheet. The time log sheet is the basis for settlement and needs to be checked and signed by the Customer.



#### **7.11.4. Local transportation**

If no adequate accommodation or catering is available for KISSING staff, the Customer shall bear all relevant costs, in particular the cost of using suitable means of transportation. To the extent necessary, the Customer shall provide means of transportation free of charge for local transportation of staff between the accommodation site and the site of Service Activities.

#### **7.11.5. Invoicing**

Unless otherwise agreed in the relevant order, the fitters' missions will be settled on the basis of time spent working, whereby the following items will be invoiced separately:

- a) any travel expenses incurred for KISSING staff as well as expenses for the transportation of tools and personal luggage of reasonable volume according to the type and class of the means of transportation as may have been agreed in the contract;
- b) daily allowances, including reasonable pocket money for each day of absence from home of the fitters, including rest days and holidays;
- c) the working hours, calculated on the basis of the work hours confirmed by the Customer's signature on the time log sheets. Overtime hours, Sunday and holiday hours and night work hours are settled on the basis of separate rates. The rates are based on the contract; in the absence of such agreement, KISSING standard rates shall apply. Unless otherwise agreed, the hourly rates include wear of tools and minor equipment from KISSING;
- d) the time required for:
  - preparations and formalities required for outbound and return travel;
  - outbound and return travel, as well as other trips the staff is entitled to under applicable local laws, regulations or collective agreements in the Customer's country;
  - the daily trip to the installation site and back to the accommodation site, if the trip takes longer than a half hour per trip and if no closer adequate accommodation is available;
  - waiting time when activities are not possible for reasons for which KISSING bears no responsibility according to the contract; such times being subject to the rates stated under (c);
- e) expenses by KISSING, as specified in the contract, for the providing of equipment by KISSING, as well as charges, as the case may be, for the use of heavy equipment provided by KISSING;
- f) all taxes and duties KISSING is required to pay on the invoice total in the country of installation.

#### **7.12. Liability**

KISSING shall be liable for failures by the KISSING staff pursuant to 9.1 and within the limits specified there.

#### **7.13. Documentation**

KISSING shall be entitled to film and photograph the plants supplied during installation on site and, for documentary and quality control purposes, during operation in the presence of a responsible member of the Customer's staff, such recordings being subject to strictest confidentiality toward third parties.

#### **8. Claims:**

The Customer shall examine the subject of the contract for transport damage immediately after arrival (incoming goods inspection). Such inspection shall not release the Customer from ensuring suitable packaging and storage. Claims must be presented in writing as soon as possible, stating the exact nature of any defects, otherwise such claims are forfeited.

#### **9. Liability/warranty/guarantee:**

**9.1.** For claims presented for any legal reason whatsoever, KISSING shall not be liable for minor negligence except that the Customer provides evidence that essential obligations of the contract are violated, thus undermining the purpose of the contract. In any such cases liability shall be limited as provided for in 9.3. In all other cases any liability of KISSING for minor negligence shall be excluded and shall always require the providing of evidence by the Customer. If no acceptance of the plant was done in the presence of KISSING (as provided for in para. 6.1), the risk shall pass entirely to the Customer when the plant becomes operative (unless the passing of risk happened earlier on the basis of para. 5), and any subsequent claims (including product liability claims) and - in particular - claims for consequential damages and loss in production shall be excluded.

**9.2.** Product liability claims, which may arise without any fault of KISSING, shall be excluded, in particular in regard to damage to assets used for business purposes by the Customer.

The products supplied to the Customer are supplied for business purposes and provide safety only to the extent as may be expected on the basis of approval regulations, instruction manuals, and supplier instructions regarding proper handling, servicing and inspection of the assets supplied by KISSING.

Compensation by KISSING for any legal reason whatsoever shall be limited to 5% of the net order value, but not exceeding Euro 50.000. KISSING shall be liable only for typical and foreseeable damage. Compensation for pure financial loss, lost profits, missed business opportunities, frustrated material, personnel and financial expenses, machine downtimes, loss of data, loss of use as well as consequential damages as the result of defects, as well as damages resulting from claims against the Customer by third parties shall be excluded.

**9.5.** Claims against KISSING for any legal reason whatsoever are time bared and have to be filed by law suit with the competent court within twelve months after acceptance as provided for in para. 6.1., and are otherwise be forfeited. As soon as the plant has been in operation for 5000 hours, or after the elapse of 12 months at the latest, whichever comes earlier, all claims shall be excluded and cease to exist. That period of time shall be interrupted only by a written acknowledgement of a failure of performance by KISSING or by a court decision.

**9.6.** Notice of defects and damage relating to the delivered goods and services/works or other objects or persons shall be made immediately in writing, stating their exact nature, or otherwise be forfeited. The Customer shall required to prove that the defect claimed was already present before the passing of risk on the basis of para. 5.

**9.7.** As provided for in the following terms, KISSING shall be obliged to remedy any defect which impairs the use or relates to engineering, material or installation failures as well as the agreed qualifications within a period of twelve months after acceptance or before the elapse of 5000 operating hours, whichever comes earlier, when duly and timely advised as provided for under 9.5. KISSING shall be free to choose whether to repair the defective goods on site free of charge or to have them returned to KISSING for repair or to replace them. The cost of repairs arranged by the Customer himself shall be borne by KISSING only after prior approval in writing. KISSING warranty obligation shall apply only in case of defects as may appear under the designated operating conditions and normal use, but not in case of defects caused by the method of installation by the Customer, poor care, servicing and maintenance, or repairs and/or modifications performed by third parties without KISSING's prior approval in writing, and in no case for used goods.

**9.8.** No warranty shall apply for wearing parts or defects whose cause lies in the use of unsuitable detergents, recipes, batters or operating resources or the climatic conditions at the site of installation, nor when accepting repair/ adaptation/modification jobs relating to used goods or goods from other manufacturers. Any such warranty assumed by KISSING shall be subject to the conclusion of individual contracts with a term of no more than twelve months after commissioning or before the elapse of 5000 operating hours, whichever comes earlier. KISSING shall not be obliged to examine data provided by the Customer for suitability; this shall also apply to a possible infringement of third parties' rights, as may be the case when making use of such data. The exclusion or loss of warranty shall also include all competing grounds for claims, such as indemnities or error.

**9.9.** To the extent that the Customers enterprise suffers damage resulting from a product supplied by KISSING, compensation for the damage of any items shall be made by KISSING only when the terms of para. 9.1 apply and when the Customer provides evidence that KISSING is at fault. In case of a re-sale of products purchased from KISSING, KISSING shall be liable vis-à-vis the successor only to the extent of the Customer assigning the present terms in writing to the successor. Should such assignment not happen for any reason whatsoever or should it be legally invalid, the Customer undertakes to indemnify and hold KISSING harmless against all disadvantages and third party claims resulting of such re-purchase.

**9.10.** The Customer shall be responsible for obtaining and observing all applicable rules and regulations, in particular to the admission of the plant, official authorizations, local legal norms, especially health and safety at work regulations and foreign exchange regulations in connection with the order and shall indemnify and hold KISSING harmless in case of administrative or court proceedings. The Customer shall inform KISSING of special local circumstances that might prevent the timely and proper fulfilling of the contract.

## **10. Industrial property rights, intellectual property rights**

Plans, designs and other documents prepared by KISSING shall remain the sole property of KISSING and shall be used by the Customer only as defined in the relevant agreement and shall in no way be disclosed to third parties. The use of the know-how inherent in the machine(s) supplied to the Customer (including software) is exclusively limited to use in connection with such machines supplied by KISSING. In case of misuse the Customer agrees to indemnify and hold KISSING harmless. KISSING shall be entitled to store, adapt and communicate data relating to the Customer to the extent customary in business.

## **11. Place of performance and jurisdiction:**

**11.1.** Place of performance is Menden

**11.2.** The law of the Federal Republic of Germany applies in exclusion of UN buying law, even when the order is placed in another country or the order is to be delivered into another county.

**11.3.** Place of jurisdiction for all disputes resulting from the contract with the Customer, its valid conclusion, performance and termination, or relating to its violation, cancellation or nullity is, for both parties, Menden, Germany.

**11.3.** If the Customer is based in the European Union or the Single European Economic Area, it is agreed that all disputes resulting from the contract with the Customer, its valid conclusion, performance and termination, or relating to its violation, cancellation or nullity shall be settled exclusively by the relevant court in Menden.

**12. Validity**

Unless otherwise agreed, the present Conditions of Sale, Supply and Installation shall govern all existing and future transactions with KISSING and shall complement any individual contracts. In the event that any one or several provisions of the Conditions of Sale, Supply and Installation be invalid in any respect, the validity of the remaining provisions shall not be affected thereby. Invalid provisions shall be replaced by such provisions as come closest to the spirit and purpose of the invalid provisions.

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