

**1. Order**

- 1.1 Orders are placed according to the Purchasing Conditions mentioned below. Any contradictory or deviating conditions in the contractor's tenders and/or acceptance of order shall only be valid if these have been accepted in writing by KME Germany GmbH & Co. KG (following named orderer). This shall also apply if we do not contradict any other conditions. If we accept material without formal contradiction, the contractor can in no way derive, that the orderer has accepted the contractor's conditions. Verbal arrangements shall be subject to a written confirmation by the orderer.
- 1.2 Without orderer's prior written consent, the order documents may neither be copied, published nor made available to third parties nor used for any purpose other than those laid down in the order.
- 1.3 The contract will be fulfilled by KME provided that no national or international provisions of the foreign trade and payments law as well as no embargos and/or other sanctions are an impediment to performance.

**2. Acceptance of Order**

- 2.1 Upon receipt of the written order the duly signed acceptance of order shall be returned within 10 calendar days.

**3. Modifications**

- 3.1 In case of any modification/addition or supplement of the order, the contractor has to inform the orderer within 14 days concerning increases or decreases in prices as well as of effects in view to alterations of the fixed dates. The contractor shall determine new prices on the calculation basis of the order. The new prices as well as the effects in view to alterations of the fixed dates shall be subject to approval by the orderer.
- 3.2 Coordination meetings between the contractor and any party involved have to be reported in written form by the contractor and send to the orderer for approval within five working days. If necessary, intended modifications of the technical concept of the orderer - even if no additional or minor costs will occur - have to be marked thereby and, in any case, have to be obligatory agreed with the orderer.

**4. Scope of Delivery and Performance**

**4.1 Terms of Delivery:**

The goods must be despatched to the receiving place indicated by the orderer at the most favourable conditions.

The following conditions additionally apply:

SUPPLY	is to be effected to the indicated address, in the demanded manner, at the under point 7 advised delivery times.
METHODS OF DESPATCH in case of „carriage forward“	up to 31,5 kgs: as parcel by DPD, length max. 175 cm. Belt measure (scope plus longest side) max. 3 m. more than 31,5 kgs: Dispatch note, delivery indicating our order-no. and the respective dates, to be sent to our forwarding department by fax acc. to point H.7
FORWARDING ADVICES	are to be sent to our works on the day of despatch at the latest;
DELIVERY NOTES	in duplicate, easily reachable, attached to the goods;
INVOICES	in duplicate, to be directly sent to the orderer. <u>Any value added tax is to be indicated separately.</u>

**All paper work must show our order-no., otherwise acceptance may be refused.**

Weights taken at our works are binding.

- 4.2 Even without specific mention in the description given in the order, and taking into account any goods and work which have been expressly excluded from the contract scope, the contract goods to be supplied at the agreed price shall, after on-site assembly, constitute an effective self-contained functional entity of proper workmanship, safe and robust construction satisfying the operational and maintenance requirements to be met in order to attain the required continuous service performance. The data given in the order form and/or any annexed documents as well as in the standard specifications and any other instructions cited therein, are considered as agreed conditions.
- 4.3 The contract scope shall include all the documentation which may be required for the starting-up, operation and maintenance of the contract goods, irrespective of whether or not such documentation has been explicitly stated in the order.
- 4.4 The goods ordered are to be supplied at the latest „state of art“ as well as by applying the latest version of standards at the time of the placing of the order. You are to offer us new knowledge which may occur during the construction of the goods ordered and, if necessary, you will equip the goods ordered with them.

**5. Agreed Dates and Periods**

- 5.1 The contractor shall by all means adhere to agreed dates. Any circumstances relating to an actual or potential delay shall be notified to the orderer by giving reasons immediately upon their detection. In the event that the contractor fails to inform the orderer, the orderer reserves himself the right in case the delivery date is exceeded - without prejudice to other rights - to terminate the contract even without giving prior notice and period of time.
- 5.2 Pre-schedule deliveries are subject to agreement by the orderer.
- 5.3 Receipt or acceptance of supplies delivered late, defective or wrong and/or provided services does not mean any waiver of orderer's contractual or legal claims. Deliveries/services will be checked by the orderer in terms of identity, shortages and obvious transport damages on the basis of the delivery documents. No further inspections have to be performed by the orderer. In case any defects or deviations are detected, the contractor will immediately be informed in writing. The notice is considered as given in time if no culpable delay in handling by the orderer is provable. If any other defects/deviations are detected under the conditions of a proper course of business and process of production, the contractor will be immediately informed thereof in writing. The notice is considered as given in time if no culpable delay in handling by the orderer is provable. In so far as the contractor renounces the objection of the late notice of defects.
- 5.4 The provisions for fixed dates shall apply to term periods accordingly.

**6. Transport Insurance**

- 6.1 Special insurance costs are not to be taken into account, for KME Germany GmbH & Co. KG is generally insured against all transport risks.

**7. Delivery Addresses**

KME Germany GmbH & Co. KG		1	2
		Main Plant Osnabrück	Supsiary Plant Menden
a	Postal Address	Postfach/P.O.B. 3320 49023 Osnabrück Germany	Postfach/P.O.B. 3253 58690 Menden Germany
b	Delivery by Lorry  Time of Delivery	49074 Osnabrück Schlachthofstraße 11 Mo. - Fr. 06.00 - 12.30 Uhr	58706 Menden Carl-Benz-Straße 13 Mo. - Fr. 06.00 - 12.30 Uhr
c	Station of Destination for Railway Carriage	Osnabrück Anschlussgleis	Menden (Sauerland) Anschlussgleis
d	Shipping Notice Fax / E-Mail	0541-321-1474/OS-Versand-Disposition-Inland@KME.com	02373-161-362

**8. Acts of God/Force majeure**

- 8.1 Events unforeseeable and unsusceptible, such as natural catastrophes, wars, blockades, embargos and strikes rendering impossible or substantially impeding wholly or in part the punctual execution of the contractual obligations, relieve the contractor of his obligations for the duration and the extent of their consequences. The contractor shall to the best of his ability make every endeavour to remove the disturbances obstructing the execution of the contractual obligations. If, due to such events, the contractor is unable to fulfil the order for a continuous period of 2 months, the orderer is entitled to terminate the contract wholly or in part. The occurrence and cessation of such events is to be mutually notified immediately upon occurrence of same and, upon demand, certification by the Chamber of Commerce concerned is to be presented within 7 days. Failure to concur with this entitles the orderer to refuse recognition of such events Delivery of sub-standard goods assigned to scheduled dates does not constitute an Act of God.  
These regulations are also valid in the conversely case for the orderer.

**9. Progress checks, testing, inspections**

- 9.1 The orderer and/or his authorised representative(s) as well as the customers of the orderer and/or his authorised representative(s) shall have the right to enter the contractor's premises in order to make progress checks and to satisfy themselves that the requirements fixed by contract in view to the proper quality of the products will be observed. This applies to the condition of the goods and to all the materials used for the manufacturing of the products as well as for the completeness and correctness of the contractual documentation. The contractor shall provide, at his own expense, all assistance, labour, materials, electricity, fuels, media, apparatus instruments etc. necessary for the proper performance of the inspections and tests. If the inspection and/or a desired inspection at the supplier cannot be performed satisfactorily due to contractor's fault or negligence, all the costs resulting from the re-inspection (e.g. personnel, travelling and material costs) shall be borne by the contractor.

## 10. Dispatch of goods

10.1 The dispatch is to be effected strictly according to the indications of the orderer.

## 11. Invoicing/Withholding of Payments

11.1 The contractor will prepare a final account after fulfilment of his contractual obligations following the acceptance test under point 13.1. Subject to individual contractual provisions, partial invoice can also be made out which are released in total by a final invoice.

11.2 In the event that the orderer has any claims against the contractor deriving from this order or for other legal reasons different therefrom, he may set them off against payments due or withhold the latter.

## 12. Assignment; setting off of claims

12.1 The contractor shall not assign or transfer any claims against the orderer except as expressly authorised in writing by the latter.

12.2 The orderer shall have the right to set off contractor's claims against any matured or unmatured claims which the orderer - or any company in which the latter, either directly or indirectly, holds at least a 50 % interest - may now or in future have against the contractor, and/or which the contractor may have against any of the said companies. (Info about the respective holdings will be furnished to the contractor on inquiry. The contractor agrees that any security which he may provide to the orderer shall also serve as security for those claims which any of the companies referred to in the pre-mentioned paragraph may have against the contractor. Any security which the contractor may provide to such companies shall also serve as security for any claims which the orderer may have against the contractor for whatever legal cause.

## 13. Acceptance

13.1 The procedure of acceptance shall be carried out in accordance with the „Conditions for Acceptance“ fixed in the order. It can be requested at earliest upon successful starting-up of the goods ordered.

13.2 Acceptance of the subject of the goods ordered does not constitute a waiver by the orderer of his rights, in particular warranty claims, damage claims arising from delay, liquidated damages etc., § 341, Abs. 3, BGB (Civil Code) will not apply.

13.3 The orderer is entitled to use the goods ordered - upon receipt of the operating instruction - on trial - upon end of starting-up and prior to acceptance - for testing under production conditions. The same shall also apply correspondingly for purpose of damage minimization with the orderer in case that the acceptance of the goods ordered can not yet be carried out for reasons where the responsibility lies with the contractor.

This does not constitute a total or partial acceptance and has no effect on the period or extent of the contractor's warranty obligations.

## 14. Transfer of Property and Risk

14.1 Transfer of property to the orderer coincides with handing over/delivery on-site of the plant. No acceptance results from transfer of property.

14.2 The risk passes with the acceptance test.

## 15. Securities

15.1 In case of agreed down-payments as well as for ensuring of the guarantee obligations, the contractor shall raise unconditional, primary and absolute guarantees of a first class German banking house in favour of the orderer (similar to enclosed specimen). The content must be coordinated with the orderer. Any occurring costs for the guarantees will be paid by the contractor.

## 16. Warranty

16.1 The contractor warrants and proves on demand of the orderer that all his deliveries and his services

- are new and unused at the time of delivery;
- have the contractually agreed conditions;
- are in accordance with approved standards of technology and good engineering practice, with all technical documents and data upon which the order is based as well as all legal and official regulations and are free of any defects reducing or annulling the value or impairing the proper function of the installations for ordinary or those purposes indicated in the order;
- are free of any third parties' rights or claims

and that the documentation belonging to the scope of delivery and service is complete according to the contractual stipulations.

16.2 If quality and/or workmanship of any contract goods supplied are not in conformity with clause H.16.1 and/or if any defect arises within the limitation period for buyers in actions for breach of warranty in conformity with clause H.16.4, the orderer may immediately demand, without prejudice to any other rights, from the contractor the subsequent performance.

The contractor renounces the objection of the delayed notice of defects and grants claims he is responsible for irrespective of the date of the claims. Subsequent performance is to be done for the orderer - packed franco place of installation, transportation at orderer's choice - including dis- and re-assembly.

16.3 Where the goods ordered, even upon effected subsequent performance, fails to be in conformity with the contract in terms of on-time availability and/or in terms of workmanship, or in case of contractor's failure to fulfil his subsequent performance obligation promptly and with all possible speed, or if there is an emergency, the orderer shall have the right to perform the necessary repair work itself, or to cause such work to be performed by others, at seller's expense and to claim damages with respect to any resulting loss which the orderer may suffer. This shall be without prejudice to the ordering party's right to demand rescinding of the contract, reduction of the purchase price or claim damages.

If the contract is rescinded, the goods received by the ordering party shall be returned to the contractor at the place of installation.

Anything which the seller received from the ordering party shall be restored to the latter at the latter's registered place of business.

16.4 The quality and workmanship of all contract goods shall be warranted for a period of 24 months from successful acceptance test of the goods ordered. The limitation period for buyers in actions for breach of warranty in respect of all construction work done and/or steel construction work as well as documentation shall be 5 years from acceptance test. The statutory provisions are valid for the limitation of actions. As regards replaced/renewed and/or improved parts, the limitation period for buyers in actions for breach of warranty shall be 24 months when installed, however is expiring of the earliest with the expiry of the limitation period for buyers in actions for breach of warranty of the goods ordered.

For spare parts which are specially marked or, respectively, identified as those in this contract, the limitation period for buyers in actions for breach of warranty shall be 24 months from installation, however is expiring at the earliest with the expiry of the limitation period for buyers in actions for breach of warranty of the goods ordered.

## 17. Patent and other Industrial Rights

17.1 The contractor shall be liable for ensuring that no patents or other third parties' industrial rights are infringed through the application, utilisation or operation of the subject of the order.

17.2 In the event of contractor's own industrial rights being affected, the contractor grants to the orderer in conjunction with the execution of the order the irrevocable right to unconditional use of these patents or industrial rights in connection with the subject of the order. The right of use is paid for with the price of the order.

## 18. Secrecy, protected rights

18.1 All drawings, data systems, operating procedures, figures, illustrations and so on, irrespective of nature and origin, forwarded to or coming to the knowledge of the contractor shall be treated strictly confidentially and remain the property of the orderer.

18.2 All drawings and records which the contractor works out in connection with the order are subject to the unlimited right of possession and disposal of the orderer for his personal use.

18.3 In no way will the verification and/or the release of drawings by the orderer establish any claims against him, this applies especially to any claims for joint responsibility. Any alterations made by the orderer are to be verified in view to the technical execution and it will not disengage the contractor to guarantee the correctness of the dimensions, the construction, the calculation and the function of the subject of order.

## 19. Publications

19.1 Without orderer's prior written consent, the contractor may not make or originate any publications in connection with the order or the overall project.

## 20. Place of Fulfilment

20.1 For deliveries and services, place of order fulfilment shall be the place where the subject of the order shall be sent according to the orderer's instructions. For deliveries ex works, place of fulfilment shall be the place of transfer of product. For deliveries of documentation and for payments place of fulfilment shall be the orderer's domicile.

The place of fulfilment for all other services is the installation site unless otherwise mutually agreed

## 21. Partial application, loop holes in the contract

21.1 In the event that for any reason one or more provisions of the order should be or become ineffective or void, the validity of the other provisions shall not be affected thereby. The contracting parties shall in such an event replace the ineffective or void provisions with valid ones utmost approximate in meaning and purpose to the ineffective ones whilst not reducing or annulling thereby the use and/or purpose of the subject of the order as intended.

## 22. Jurisdiction

22.1 All points of law arising out of this contract shall be governed by the law of the Federal Republic of Germany. The agreement of the United Nations dated April 11th, 1980 for contracts concerning the international sale of goods does not apply.

Venue of orders with independent merchants/traders and artificial persons of public law is Osnabrück. The orderer is also entitled to go to law at the location of the contractor.