

General Terms and Conditions of Sale and Delivery for the division Drive Technology

Effective as of April 1st, 2021



§ 1 Scope of application

The following Terms and Conditions of Sale and Delivery of Klingelberg GmbH for the division Drive Technology, Peterstraße 45, 42499 Hückeswagen, Deutschland ("Klingelberg") apply, as far as not explicitly stipulated otherwise in writing, to all transactions and services undertaken between Klingelberg and the customer, and in particular in relation to offers, purchase and delivery contracts, orders, order confirmations and deliveries. They also apply to any future business relationships even if they have not been expressly agreed again. Any deviating general terms and conditions of the customer are not accepted, even if Klingelberg does not expressly object to them. The division Drive technology includes the production and distribution of gear components, which are designed for installation in transmission systems.

§ 2 Conclusion of contract

(1) Offers made by Klingelberg are non-binding provided they have not expressly been specified as binding in the wording of the offer. The contract only enters into force once it has been signed by both parties or once Klingelberg has confirmed the order to the customer by e-mail, by fax or in writing.

(2) Side agreements and amendments require mutual confirmation by e-mail, by fax or in writing in order to be effective.

§ 3 Scope of delivery, shipment and transfer of risk

(1) The scope of delivery is determined by the order confirmation supplied by Klingelberg.

(2) Delivery is made "Free Carrier" (FCA, Incoterms 2020), unless otherwise agreed. The risk passes to the customer no later than upon provision of the delivery item at the specified location. If delivery is delayed due to any conduct of the customer or due to any circumstance for which Klingelberg is not responsible, the risk passes to the customer once Klingelberg has communicated that it is ready to ship the item or for it to be collected.

§ 4 Delivery date and force majeure

(1) Delivery dates that are not expressly agreed in writing as binding shall be non-binding.

(2) If the order confirmation states a delivery date, Klingelberg will in general indicate a certain calendar week.

(3) A delivery date is deemed to have been met if the delivery item has left the production site of Klingelberg in Hückeswagen no later than on the last workday of the specified calendar week. The working days at the place of business of Klingelberg are decisive.

(4) Delivery dates become non-binding or are postponed - if not newly agreed upon - if circumstances occur for which Klingelberg is not responsible and which affect the production or delivery of the delivery item by such period for which the circumstances in question subsist in particular (i) force majeure events, natural disasters and labour disputes which affect Klingelberg or sub-contractors (disruptions to operations outside of a party's control), (ii) in the case of a valid contract amendment if Klingelberg does not receive the technical or commercial documents in time or if such documents have subsequently been changed by the customer with Klingelberg's consent or (iii) if the customer is in default in complying with its obligations.

(5) If, owing to the occurrence of such circumstances, it is impossible to amend the contract despite all reasonable efforts, Klingelberg is released from its performance obligations.

(6) If the delivery date is postponed due to the aforementioned circumstances or if Klingelberg is released from its performance obligations, the customer does not have any liability claims whatsoever against Klingelberg. Klingelberg is not liable for any disruptions to operations outside of its control even if they occur during a delay in delivery. Klingelberg is obliged to notify the customer in the event that such circumstances occur.

(7) Before the delivery date, Klingelberg is entitled to make partial deliveries and issue partial invoices to a reasonable extent.

(8) If the delivery is delayed or the delivery date is postponed for a period of more than 14 days compared with the agreed upon delivery date due to circumstances which originate in the customer's sphere of risk and responsibility, then Klingelberg is entitled to claim from the customer liquidated damages of 0.5 per

cent of the purchase price excluding VAT for the affected part of the delivery for every entire week up to a maximum total of 3.0 per cent excluding VAT of the purchase price for the affected part of the delivery. Payments received because of the foregoing stipulation are to be offset against any specific claim for expenses and damages raised by Klingelberg and based on default of acceptance of the customer.

§ 5 Industrial property rights

(1) Insofar as industrial property rights (inventions, copyrights or utility models) arise in the context of the cooperation between the contractual parties the following shall apply:

Knowledge and experiences in the field of the collaboration which were present or have arisen at one of the contractual parties before entry into force of the agreement as well as knowledge and experiences which arise at one of the contractual parties outside the collaboration, remain exclusive knowledge and experiences of the respective contractual party and are protected from the access of the other contractual party. This includes such patent applications, patents, copyrights and other protective rights, which stem from the aforementioned knowledge and experiences.

(2) The products resulting from the collaboration as well as the laboratory samples, prototypes, software products, functional models, drawings, reports or parts thereof shall be the unrestricted property of Klingelberg at the moment of the production in the respective stage of processing.

(3) All protectable and non-protectable knowledge and experiences in particular inventions and know-how, which arise from the performance of the collaboration belong exclusively to Klingelberg, and are herewith already transferred by the customer to Klingelberg. Klingelberg accepts such transfer.

(4) Insofar as the knowledge and experiences contain protectable inventions, only Klingelberg is entitled at its sole discretion and in its own name - while naming the inventor/sin accordance with the applicable statutory law - to apply for protective rights in any country of its choice, to pursue them further or to abandon them at any time.

(5) The customer is obliged, to acquire all rights in the inventions which arise out of the performance of the collaboration from his employees, sub-contractors or other third parties who participate in the performance of the collaboration. In particular the customer will not declare a release of the invention in accordance with § 6 par. 2 of the German Law on Employee's Invention (Arbeitnehmererfindergesetz). The customer herewith assigns to Klingelberg already now all claims in the context of the collaboration arising against its employees, sub-contractors and other third parties related to the transfer of rights or granting of licenses. Klingelberg accepts such assignment.

(6) Insofar as knowledge and experiences under par. 3 or products under par. 2 - in particular computer programs - are protected by copyright law, the customer herewith transfers to Klingelberg the following irrevocable, exclusive, unlimited usage rights which can be transferred or sub-licensed by Klingelberg alone: Klingelberg is entitled to use the copyright in any changed or unchanged form and in any type of use, to have it used by third parties and to grant third parties any rights of use. Such rights of use include in particular the copying, distributing, displaying, presenting and public performing.

(7) The customer will inform Klingelberg about any published or unpublished own protective rights and applications for protective rights and about any protective rights or applications thereto licensed to the customer by third parties, which are used when exploiting, manufacturing, using and/or distributing the knowledge and experiences pursuant to par. 3 and/or the products pursuant to par. 2.

(8) The contractual parties undertake to inform one another immediately in writing, by fax or by e-mail about any knowledge or experiences pursuant to par. 3 or products pursuant to par. 2 which are created during the performance of the collaboration.

(9) The customer shall support Klingelberg in the application, processing, assertion and defense of protective rights, in particular by submitting all necessary declarations in a timely and accurately manner. Klingelberg will reimburse the customer for costs

incurred in an adequate amount, if and to the extent to which the customer has spend more than marginal manpower e.g. when intensively processing draft applications for protective rights or official decisions.

§ 6 Cooperation obligations

(1) If the customer provides the raw material to be processed, such material has to be objectively suitable to fulfill the material specification required by the customer. Klingelberg is entitled to check and examine the material in advance to make sure, that the raw material is suitable. The customer is obliged to provide a material certificate in accordance with EN 10204 / 3.1 (or in case of an acceptance by a classification society with 3.2) together with the raw material.

(2) In general Klingelberg will create a manufacturing drawing for every delivery item, which will be sent for approval to the customer together with a list of the modifications to the drawing presented by the customer. The customer is obliged to either comment on or approve the submitted modification proposals within 7 calendar days per e-mail, per fax or in writing. Upon approval the customer acknowledges as binding the modifications included in the manufacturing drawing for the delivery item to be produced for him. If the customer does not provide the approval within the aforementioned time limit, the delivery date as stated in the order confirmation will become non-binding for Klingelberg.

(3) Should an acceptance by a classification society be required for an individual order, the customer shall be obliged to make available the necessary documentation for the acceptance upon conclusion of the contract, but at the latest before the thermal treatment of the work pieces. If the customer does not present the documentation within the aforementioned time limit, the delivery date as stated in the order confirmation will become non-binding for Klingelberg.

(4) If the parties have agreed on an on-site inspection of the delivery items by the customer at the production site of Klingelberg, the customer is obliged to meet the agreed date.

(5) Both contracting parties are obliged to immediately notify one another about any delays in the execution of an individual order by e-mail, by fax or in writing. Should there be any delays in Klingelberg providing the goods or services because the customer has failed to meet its cooperation obligations in a timely manner or fully, then all dates and deadlines that have been set for the provision of goods or services by Klingelberg shall be non-binding and shall require a review by Klingelberg and a new agreement between the contracting parties. The customer shall be obliged to reimburse any additional costs incurred by Klingelberg due to a failure to fulfill its cooperation obligations in accordance with the prices of Klingelberg applicable at the time in question.

§ 7 Prices and terms of payment

(1) Provided that an agreed upon price list between the parties does not exist, all prices for deliveries and services of Klingelberg will be determined by the respective order confirmation.

(2) All prices are quoted ex works or place of dispatch. They are quoted in Euro (EUR) or in any other currency specified in the order confirmation plus any transport, insurance, installation and instruction costs as well as value-added tax, excise duties, withholding taxes, duties or taxes on import and export, customs, duties or similar taxes applicable in law at the statutory rate from time to time in force.

(3) The price as invoiced by Klingelberg for the delivery items and – if ordered - any additional services has to be paid by the customer without deductions and free of charges within 30 days from the invoice date to the account as specified by Klingelberg, if the order confirmation has not stated a different due date. For compliance with this deadline, the receipt of payment at Klingelberg is decisive.

(4) Klingelberg is entitled, in the case of payments in instalments, to declare the whole of the outstanding purchase price immediately due and payable if the customer is in arrears with two or more consecutive instalments and the sum owed amounts to more than 10% of the purchase price.

(5) Klingelberg is entitled to claim for a payment in advance if there is a comprehensible reason for doing so. A comprehensible reason shall be deemed to exist in particular if the customer has already been in default of payment in the past.

(6) Any set-off or exercise of a right of retention by the customer is only permitted with regard to undisputed, acknowledged counterclaims or counterclaims that have been upheld and declared unappealable by a court of law.

§ 8 Retention of title

(1) Drawings, plans and system designs which Klingelberg produces in the context of contract initiation or implementation shall remain the property of Klingelberg. Any reproduction or transfer to third parties is prohibited; neither may these items be used by the customer or by a third party for the production of the delivery items in question or misused in any other way. The foregoing is not applicable if the parties agree that the drawings, plans and system designs are delivered to the customer.

(2) Klingelberg retains title to the respective delivery item until its complete payment. Furthermore, the retention of title shall continue until all claims resulting from the business relationship with the customer have been settled.

(3) While the retention of title is in place, the following shall apply:

a) The customer shall have the right to use the delivery item, but he shall not be entitled to transfer it to third parties, to sell it or place encumbrances on it.

b) The customer shall ensure, at his own expense, that the delivery item remains free from any encroachment by a third-party (e.g. seizure) and shall immediately notify Klingelberg of any impending encroachments in writing, including those that relate to the customer's business premises. The customer shall be entitled to transfer title of its prospective entitlement for security purposes only with the written consent of Klingelberg.

c) Moving the delivery item to a different location shall require the written consent of Klingelberg.

d) The customer shall ensure that the delivery item is kept in perfect condition. Furthermore, the customer shall insure the delivery item for the benefit of Klingelberg, at the customer's expense, against damage from mechanical breakdown, fire, theft and water, and provide proof of insurance and payment of insurance premiums to Klingelberg on request.

e) After prior notice and during usual business hours, the customer shall allow Klingelberg or its agents the right to inspect the delivery item and access to its premises for this purpose without claiming any payment in this regard.

f) The customer shall ensure that the ownership of Klingelberg is not lost by connection, mixture, installation or processing. Should this happen, nevertheless the retention of title shall proportionally extend to the newly created object. The share in the co-ownership of Klingelberg is determined according to the proportion of the value of the connected, mixed, installed or processed delivery item to the other objects connected, mixed, installed or processed.

§ 9 Claims for defects – limitation period

(1) If the delivery item is defective, the following shall apply:

a) Klingelberg undertakes to provide subsequent performance and provides this at its own choice either by remedying the defect or by delivering an item that is free of defects. The replaced parts shall become property of Klingelberg.

b) If any further attempts at remedying any defects are no longer reasonable and if supplementary performance finally fails, then the customer is entitled to withdraw from the contract or reduce the purchase price. Withdrawal from the contract is excluded if the breach of duty on the part of Klingelberg is merely insignificant.

c) The customer shall grant the time and opportunity required for Klingelberg to undertake all actions to remedy any defects and supply any replacements that Klingelberg deems necessary. Otherwise, Klingelberg is released from liability for any resulting consequences.

d) The limitation period for claims for defects is 18 months from the installation of the delivery item into a transmission system, but limited to a maximum period of 24 months from the passing of risk. The customer shall immediately notify Klingelberg of any defects.

(2) The customer remains solely liable for damage suffered as a result of inevitable and regular wear and tear, faulty or negligent handling, excessive use, unsuitable operating materials, lack of stability or inadequate storage, weather and other natural factors.

(3) Extra costs for supplementary performance, which result from shipment of the delivery item to a place other than the place of delivery, are borne by the customer.

§ 10 Liability for damages

(1) Klingelberg is liable for claims:

- due to a culpable injury to life, limb or health of individuals,

- under the German Product Liability Act (Produkthaftungsgesetz),
- as a result of non-compliance with a guarantee,
- due to the fraudulent concealment of a defect or
- as a result of an intentional or grossly negligent breach of duty

without limitation in accordance with statutory provisions.

(2) Apart from the foregoing, Klingelberg's liability shall be limited or excluded as follows:

- a) In the case of a breach of fundamental contractual obligations caused by simple negligence, liability is limited to the typical damage foreseeable at the time the contract is entered into. A fundamental contractual obligation is an obligation that the contract is meant to impose on Klingelberg in accordance with its content and purpose, or the performance of which is necessary to make the implementation of the contract possible and on the compliance of which the customer regularly relies and is entitled to rely.
- b) In case of a breach of non-fundamental contractual obligations caused by simple negligence and in case of any other breaches of duty caused by simple negligence, a liability of Klingelberg is excluded.

(3) Contractual damages claims of the customer against Klingelberg become time-barred in 12 months from the time the circumstances giving rise to the claim have become known. This does not apply to the claims referred to in paragraph 1.

(4) The aforementioned provisions in paragraphs 1 – 3 do not entail any change of the burden of proof to the customer's detriment.

§ 11 Liability for indirect losses or damages

Except in cases where Klingelberg has engaged in wilful conduct or gross negligence, Klingelberg shall not be liable for indirect loss or damage caused by a defective delivery item such as production downtime, lost profits or increased materials consumption.

§ 12 Limitation of liability by the amount

Insofar as neither a liability as stated in § 10 par. 1 nor any other statutory unlimited liability exists, the following limitation of liability by the amount for all damages caused by negligence of Klingelberg shall apply: the total amount of liability of Klingelberg resulting from or in connection with a delivery shall be limited to the net amount of such delivery.

§ 13 Assignment

The customer is not entitled to assign and / or transfer its rights and obligations under this contract without written consent of Klingelberg.

§ 14 Change requests

Should the customer ask for modifications or amendments to the agreed upon scope of delivery, the delivery items or additional services after the contract has been concluded, Klingelberg will examine such request in a timely manner and inform the customer at what terms and under what conditions the requested changes can be executed. A claim of the customer for a change of the delivery or service shall only exist if a written agreement has been concluded in such respect. Otherwise the originally agreed upon scope of delivery and services remains valid..

§ 15 Confidentiality

(1) The contracting parties shall both keep confidential any facts, documents and knowledge which the other contracting party discloses to them during the performance of the contract, provided the relevant contracting party has classified the respective information as confidential or has an obvious interest in its confidentiality ("Confidential Information"). The conclusion of this contract, its subject and content shall also be kept confidential by the contracting parties, with the exception of Klingelberg's list of references. Any publications regarding the conclusion of the contract may be issued by the customer only with the prior written consent of Klingelberg. Furthermore, the contracting parties

undertake to use Confidential Information only for the purposes of processing the contract and to only make Confidential Information available to those staff members and advisors who have a need to know it in order to implement the contract and who are subject to a confidentiality obligation in the same way. In particular, they will not base their own developments on Confidential Information received or use it for the further development of their own products, nor will they register any intellectual property rights in relation to the Confidential Information or use it to object to an intellectual property right registration of the disclosing party.

(2) The obligation to maintain confidentiality and the restrictions on usage do not apply insofar as the Confidential Information in question demonstrably

- constitutes state-of-the-art technology in the public domain or becomes part of state-of-the-art technology without any action on the part of the receiving party or
- was already known to the receiving party or is disclosed by a third party entitled to do so or
- is developed by the receiving party without an exploitation of the Confidential Information or
- must be revealed pursuant to mandatory statutory provisions or official orders.

(3) If the contractual relationship and the cooperation of the contracting parties have come to an end, then each contracting party shall be under an obligation, at the other contracting party's request, to return the Confidential Information received to the other contracting party or to destroy it at its request. In this case, any data stored electronically shall be deleted in full.

(4) These obligations and restrictions on usage commence upon the first receipt of Confidential Information and end 10 years after the respective contract, for whose implementation the Confidential Information was disclosed, has been performed in full.

§ 16 Export control provisions

The delivery items may be subject to export control provisions of the Federal Republic of Germany, the European Union, Switzerland, the United States of America or other countries. The deliveries and services are subject to the condition that there are no restrictions to fulfilment due to national or international regulations, in particular export control regulations as well as embargos or other sanctions.

§ 17 Marketing- and advertising

The customer shall only implement marketing and advertising in the context of which Klingelberg is being referred to (e.g. by use of Klingelberg trademarks), in particular brochure, internet and video advertising or the like, with the prior consent of Klingelberg given to the customer in text form. The foregoing applies in particular if the customer intends to use the Klingelberg logo.

§ 18 Place of jurisdiction and applicable law

(1) In the case of contracts with merchants, persons who at the time the contract is concluded are acting in a commercial or self-employed capacity (entrepreneurs) as well as with legal persons under public law, Cologne, Germany, shall be the exclusive place of jurisdiction.

(2) These General Terms and Conditions of Sale and Delivery for the division Drive Technology and all contracts entered into while they are effective are subject to substantive German law to the exclusion of the UN Sales Convention (CISG - United Nations Convention on contracts for the International Sale of Goods, entered into in Vienna on 11 April 1980).

§ 19 Severability clause

If a provision in this contract is or becomes ineffective in whole or in part, this does not affect the validity of the remaining provisions. The contracting parties shall work together to agree on a valid provision that reflects the invalid provision as closely as possible in commercial terms.