

General, sales, delivery assembly and payment conditions of MKN.

1. In General: Our general sales ,delivery, assembly and payment conditions are valid for all business relations, sales and other legal transactions in so far as other conditions have not been agreed in writing.

The general conditions of sale and purchase of the purchaser /orderer do not apply. Orders, verbal undertakings, assurances, etc. including those given by our on site or travelling representatives are invalid without our written confirmation.

The customer contractually agrees to engage a local disposal company to dispose of transport packaging in compliance with packaging regulations.

We pledge to bear the associated costs in return, in so far as no other agreement has been reached, in form of a proportional credit note in accordance with trade organisation stipulations.

2. Offers, sales contracts and prices: Our offers are subject to confirmation. The prices given in our offers or order confirmations only apply with acceptance of the offered or confirmed quantum, plus value added tax. For transactions from merchants we apply the price on the day of delivery. Also with transactions with non merchants when the service taken is a part of a continuous obligation or the service is to be brought more than four months after concluding the contract.

Custom made electric tubular heating elements are subject to long or short delivery. The delivery takes place ex factory plus packaging costs in accordance with the latest MKN price list. The goods are packed on our terms in accordance with customary trade standards unless expressly agreed otherwise. Extra charge will be made for special packaging. We do not take packaging back and it does not benefit from any credit note.

3. Delivery dates: The delivery date contained in an offer and / or order confirmation is to be understood as guide date unless it is specifically stipulated as binding. Delivery periods begin with the order confirmation, but never before clarifying all details of the models ordered and the submission of all necessary certificates and fulfilment of all obligations for which the purchaser/ orderer is responsible.

Events involving "force majeure" give us the right to delay delivery for the duration of the problem, or to partially or fully step down from the part of the contract that has not yet been fulfilled. "Force majeure" includes, strikes, lock outs, demonstrations, power shortages, fire, road blocks, operational or transport breakdowns and other events beyond our control. The purchaser /orderer must accept delayed deliveries.

In the event that we are responsible for the delay the purchaser/ orderer must give us an acceptable delivery extension. If delivery does not take place in the extended designated time, the purchaser /orderer can step down from the contract, if the goods have not been declared ready for dispatch.

Claims are excluded in case of business with commercial organisations, spare parts purchases or the withdrawal from a contract as a result of delay or non fulfilment; arising from the impossibility of providing the service, positive contract violation, from fault when concluding the contract and from impermissible actions, except as a result of deliberate or gross negligence on our part. In the case of transactions with non merchants, claims for non fulfilment as a result of delays or impossibilities are limited to a maximum of 10% of the relevant part of the total delivery; which, as a result of the delay or impossibility, could not be delivered on time or could not be delivered in full compliance with the contract, in cases where we were not responsible for deliberate or gross negligence.

4. Dispatch, risk transfer: we send the goods at the purchaser/ orderers' own risk without transport insurance unless we receive an order from the purchaser/orderer in their name and at their expense to insure the goods against theft and transport damage.

The goods are considered delivered according to contractually agreed conditions once the goods have been transferred to the freight or haulage company, at the latest when leaving our factory. Goods which have been declared ready for dispatch must be collected immediately. If not, we have the right to dispatch the goods at the risk and cost of the purchaser/orderer, or, if we consider it appropriate to store the goods for a fee which is implemented immediately. The goods are to be unpacked immediately any goods showing signs of transport damage are not to be refused or sent back.

The damage must be reported after delivery and confirmed by the transport company within the following periods.

Post within 24 hours, freight/haulage contractor within 4 days, others within 7 days.

5. Payment: Our invoices must be paid within 10 days of the invoice date with 2% discount where a discount has been agreed previously and all other outstanding invoices have been paid. Otherwise, when no other shorter deadline has been agreed, our invoices are due within 30 days without discount. The right to withhold payment or offset or transfer obligations is excluded.

In the case of customised appliances, 1/3 of the total price must be paid on confirming the contract, 1/3 when the goods are declared for dispatch, and 1/3 within 10 or 30 days after the invoice date.

Bills and checks will only be accepted for payment although we are not obliged to accept this form of payment.

Once the payment deadlines have been exceeded, the open invoice amounts will accrue interest amounting to 4.5 % p.a. over the valid bank rate of the Deutsche bank. No interest is paid in prepayments.

All claims will be deemed due immediately, independent of the terms of accepted and credited bills, when payment conditions are not complied with or when circumstances come to our attention which, according to our professional commercial opinion, justify downgrading the creditworthiness of the purchaser /orderer. Under these circumstances we are then justified ,not withstanding additional legal rights, to authorise that remaining deliveries only be executed on receipt of advance payment, or to demand appropriate security, or to take possession of delivered goods subject to retention of ownership, without taking advantage of the right to withdraw from the contract. Furthermore we also have the right to withdraw from the contract after issuing an appropriate extension or to demand damages for non fulfilment. If we are commissioned to plan, develop, design and/or to manufacture customised articles we will charge the engineering services according to HOAI (professional fees for architects and engineers).

6. Retention of ownership: All of the goods supplied by us including goods on commission remain our property until all claims have been fulfilled, including simultaneously or subsequently concluded contracts. The retained ownership is held as security until the balance has been received in the case of open invoices. Processing, finishing and installation prior to payment do not bind us in any way. In the case of goods installed to become major components of a property of a third party, the purchaser /orderer transfers his claim to us with respect to the property investor to the amount equivalent to the purchase price/payment. The

purchaser/orderer must only inform the final customer of our retention of ownership if we deem this appropriate and the same applies to the transfer of claims. Once all claims have been paid in full the ownership of the reserved goods is transferred to the purchaser/orderer.

If the purchaser/orderer incorporates the reserved goods into goods which are not our property, this transfers co- ownership of the new article in proportion to the value of the reserved goods to the value of the other goods. The resulting co-ownership rights are valid as reserved goods in the sense of these conditions. Resellers have the right to sell the delivered goods within standard transactions .However pledges or security agreements on reserved goods are excluded in all cases. The purchaser must inform us immediately in writing about any pledges or detraction from our security rights caused by third parties.

When the value of existing securities applying to us exceeds 20%, the purchaser/ orderer can oblige us to release the securities that we deem fit.

7. Return of goods: The return of customised goods or goods manufactured especially to the requirements of the customer is excluded. In the event that an exception is made and we take back series products then only on previously expressly agreed terms and with a flat rate reimbursement charge of up to 15% of the charged value of the goods.

This does not legally bind us to accept the return of properly delivered goods.

8. Warranty and notice of defects: notice of defects must be given by the purchaser/ orderer immediately or at the latest within 8 days of receiving the goods at the designated location, unless shorter deadlines are stipulated by law, and in so far as the goods are still in delivered condition. Notice of defects must be given in writing stating the precise defect. Defects which despite careful investigation cannot be identified till the deadline has run out must be reported immediately after identification in a formal written complaint, or at the latest before 3 more days have passed. The information dead line given in section 4 applies to transport damage. Warranty claims against us run out 12 months after risk transfer.

Warranty claims no longer apply when the delivered goods are operated in violation of our instructions, are repaired without our permission by non company staff, or after determination of a fault continue to be used, are modified, or continue to be installed. The same also applies when the purchaser /orderer does not give us the opportunity to access the fault ourselves or does not send the goods at our request carriage paid and well packed back to the factory for repair. The liability for faults excludes normal wear and tear, as well as damage not attributable to us after passage of risk arising from improper or negligent treatment, excess physical stressing, unsuitable operating materials, faulty construction work and chemical, electro-chemical, electrical or similar influences that are not our fault.

We provide a warranty for the products of subcontractors, in so far as they are not incorporated in our final product, by transferring our rights to make claims against subcontractors. This transfer of rights is agreed herewith.

Furthermore, no warranty is provided for damage caused by repairs carried out on the delivered goods by a third party without our permission. If repair by a third party is authorised, the defective parts shall be replaced. Whereby in every case the objectionable part must be sent to us carriage paid for assessment and in so doing become our property. Other costs for travel, assembly etc. are not borne by us. We have the authority to make available replacement goods with a similar current value, on a case by case basis, or to take back goods in return for the invoiced amount, whereby all other claims for damages become null and void.

All other rights not expressly laid down in these conditions, and in particular claims for damages arising from impossibility, delay, violation of supplementary contractual obligations, improper handling, are excluded in so far as is legally permissible, except when they are caused by deliberate or gross negligent contract violation on our part.

Diagrams, weights, dimensions, also those given in drawings, descriptions etc; in price lists, brochures, printed matter etc. are not binding and are therefore not subject to claims for liability.

9. Export deliveries: deliveries to other countries take place exclusively in accordance to regulations based on German law and only in response to payment in advance or by transfer of an irrevocable commercial letter or credit.

10. Assembly and repairs: If assembly is part of the scope of the contract, then adherence to all obligatory delivery times are conditional upon completion prior to assembly of all the brick laying ,electrical or other preparatory work required, so that assembly can be carried out without delay. If assembly or commissioning is delayed due to conditions on site for which we are not responsible then the associated additional costs must be carried by the purchaser/orderer.

Delivery and assembly are considered to be accepted at the latest at the time of commissioning or upon receipt of our final invoice.

On site work (creating openings in walls and ceilings, bricklaying, electric or gas installation work) must be carried out by or on behalf of the customer at the customer's expense. The purchaser /orderer is liable for the fault free work carried out on site in advance and exempts MKN from the responsibility of checking the work or any other obligation regarding warranties. All auxiliary work forces and equipment required for unloading, further transport to site, installation and assembly shall be made available free of charge by the customer in so far as not expressly agreed otherwise in writing.

11. Place of fulfilment and court of jurisdiction: The place of fulfilment for the delivery is our factory. In the event of dispute, including disputes involving bills and cheques, in so far as the customer is a fully qualified merchant, legal person according to public law, or a public law special asset; the place of jurisdiction will be the lower court in Wolfenbüttel, independent of the value of the disputed item, or, if we consider appropriate the upper court in Braunschweig.

12. Miscellaneous: In the event that any of the aforementioned provisions are or become invalid, they shall be replaced by regulations which come closest to the commercial purpose of this contract giving appropriate consideration to the interests of both parties.

MKN
MASCHINENFABRIK KURT NEUBAUER
GMBH & CO.
D-38300 WOLFENBÜTTEL

