General Terms and Conditions of the KMA Umwelttechnik GmbH

1 Preamble

These general terms and conditions of sale are only applicable to traders/merchants/business people. They are applicable only on the provision that they are not amended by a particular written agreement between the parties.

The offer, the acceptance of an offer, order confirmation or the sale of any product is subject to these conditions. Any conditional or contract-altering terms proposed by the buyer will be rejected; they will be only effective to the salesman when the salesman provides written consent.

These provisions are the basis for any future transaction between salesman and customer and exclude each and any other agreements.

2 Offer and order

Information and prices listed within the offers are not obligatory and non-binding, provided that there is nothing contradictory within the offer. The information contained in the document with the offer's details shall be the sole basis of the information to be provided. The customer should thoroughly check the offer before ordering for – in particular, but not exclusively – any possible information on capacity, response times, technical and customer-specific requirements, interoperability and technical application requirements. Technical and other standards shall be adhered to only if they are mandatorily standardized or are explicitly outlined in the offer document. This is the version implemented when placing an order.

Orders submitted by the customer are accepted as valid by the salesman only if they are accepted in writing by the salesman or a representative within 21 days starting from the submission.

With regards to the accuracy of the order, the customer is responsible and thus is also responsible for providing the seller any necessary information on the ordered goods within a reasonable time so that the order can be executed with the contract.

The salesman reserves the right to change the product description in respect of the specification, although the statutory requirements must be considered. This may only occur if the changes are not to the detriment of the order in terms of high quality and usability.

3 Delivery

The dispatch of the contractual items is for the account of and at the risk of the customers. Partial deliveries are allowed, as long as they are approved by the client.

The offered services are purely delivery services unless otherwise explicitly stated. In particular, although not extensively defined, KMA GmbH does not provide the following services:

- Unloading the trucks/vehicles
- In-house transport of the KMA- plant plants at the installation site
- Static calculations, architectural services and regulatory approval permits, all with the plant's equipment and associated earth works such as roof and wall sealing etc.
- Design drawings for on-site services
- Power supply to the switchboard and cabling
- Compressed air supply, water supply (inlet and outlet, the requirements for water hardness etc. are all outlined in the device manual)
- Lifting and, if necessary, assembly stage and crane
- Noise and light protection
- Clean gas and gas flow measurements with official assessment

4 Delivery delay and delay of acceptance

If the delivery of the KMA GmbH devices are delayed, the customer is entitled to rescind the contract as long as he has previously outlined a reasonable written deadline and at the same time announced the withdrawal of the contract's validity should the delivery not take place within the certain time-frame. If the customer proves that he has incurred financial losses due to the delay, he may receive a compensation of 0.5% per week for each week of delay. This will not exceed 5% of the price of the supplies, whose delay has meant the lack of proper operation. Further compensation claims in any case of delayed delivery after the expiration of the delivery-time extension period will be excluded unless otherwise outlined in section 20 of the General Terms and Conditions of Sale law. The KMA GmbH reserves the right to attaining evidence for minor damages. A change in the evidence is not connected to the detriment of the customer.

If the processing, approval or collection of the customer's goods is delayed, or there is a delay in the shipment or delivery, the KMA GmbH is – regardless of the assertion of subsequent claims – entitled to their choice of compensation:

To the extent of the un-reduced amounts from the contract, the client had written a determined deadline beforehand which included an indication of the withdrawal of the contract validity when this deadline is not observed, or if the goods are put in storage at the risks and cost of the client. Storage costs can amount to a minimum of 0.25% of which a non-reducing amount goes toward an allocated invoiced amount for every week of storage, whereby the customers reserve the right to evidence of any minor damages. In the case of cancellation, the customer is subject to additional damages; in any case, for any discrepancy between the agreed price and the actual gains to revenue accrued from any alternative sale.

5 Risk transferrance

The risk of damage or loss of the goods to the buyer is outlined as follows:

if the goods are not delivered to the salesman's premises at the agreed time of delivery or, if the client is delayed to the delivery appointment, in which case the seller offers another delivery time.

If the goods are delivered to the premises of the salesman ("ex works", Incoterms 2000) at a specific point in time, and the salesman then has informed the purchaser that the goods are available for collection.

6 Additional benefits

The KMA GmbH will provide the agreed services in compliance with the contract objectives and utilize industry knowledge and skills. Unless an alternative course of action is explicitly stated in the offer, the implementation and training of the customer's staff takes place without separate instruction and assessment.

KMA GmbH is entitled to involve third parties in consultation with the client as an executing aid, so long as the client's interests are not impacted. Moreover, the assignment of rights required from this contract as a whole, or entitlement of rights to certain benefits from a third party's explicitly-written consent of the other parties, which may only be withheld with good cause.

7 Subsequent request alteration

Changes will only be binding when a written agreement between the parties is signed. This includes the implementation of the change associated with the adjustments of the power scale, the remuneration of the timing, deadlines or other contractual arrangements. The parties will not refuse to consent to an amendment of the other party unless a good reason is provided. The KMA GmbH reserves the right to accept such demands for change or additional wishes. The KMA GmbH charges for any additional expenses which have may have occurred through amending or adding orders.

The customer shall ensure that only those of his staff who bring forward change and complimentary requests, which have required actual authority at their disposal.

KMA is also entitled and obliged to fulfil their contract until the written agreement changes on the basis of their performance.

The KMA GmbH reserves the right to change the customer a fee for altering their conditions as well as for the cost of the further calculations.

8 Co-operation of the customer

The customer will, in addition to the specifically offered co-operation duties, adhere to the general preconditions which enable the KMA GmbH's service provision. The customer will produce the provided supplies and services by the agreed deadlines. If these dates are not agreed, the customer will provide his services in enough time for the KMA GmbH to maintain their delivery and service dates. As the customer's participation is essential for KMA GmbH's successful implementation of services, the customer will treat all co-operative duties as a main obligation.

The customer will provide the necessary premises, storage and workstations, power points and other technical environments and KMA GmbH will grant or secure unimpeded access to the installation and power places. Information and documents which are necessary for the KMA's deliveries will be unsolicited and immediately provided by the customer. Technical documents will comply with the KMA GmbH regulatory outlines.

The customer has appropriately skilled employees who can fulfil their obligations and will inform KMA GmbH about all relevant occurrences in the workplace, especially those which might have an effect upon the KMA GmbH delivery. Provided that the KMA GmbH outlines that, for technical reasons, maintenance and/or cleaning services must be included, the customer will comply with this request without delay.

If the customer has not fulfilled his co-operative duties in the agreed manner or to the agreed deadlines, then the date for compliance with the implementation deadline is extended. In this case, the KMA GmbH is entitled to demand additional compensatory costs for the customer. Claims from KMA from § 643 BGB remain unaffected.

9 Installation and montage

For the installation and assembly, unless otherwise agreed in writing, the following terms and conditions apply:

1. The customer must provide, at his own expense and appropriate time frame:
All earth and construction work and other ancillary work, including the necessary skilled and unskilled labour, building materials and tools;

- The equipment necessary for installation and commissioning and materials such as scaffolds, lifting equipment, and other devices, fuels and lubricants.
- Energy and water at the point of use, including the connections, heating and lighting.
- The site for the storage of machine parts, equipment, materials, tools, etc. with sufficient and suitable dry and lockable rooms.
- For the installation staff, there should be adequate working and recreation rooms with proper sanitation facilities.
- Additionally, the customer must take measures to protect the property occupied by the supplier and assembly personnel, as he would to protect his own property.
- Protective clothing and protective devices, which are appropriate the particular circumstances of the installation site.

2. Before beginning the assembly/installation work, the buyer has the necessary information for the provision of electric power, gas and water lines, and the necessary static data must be readily available.

3. Before beginning the installation or assembly, the necessary tools and materials must be to hand and all of the prior-agreed preparatory work must have been carried out without interruptions. Access roads and the installation/assembly area must be level and cleared, ready for work.

10 Investigation of and obligation to give note of defects

The customer will inspect the products delivered immediately after delivery, including the accompanying operating manuals in accordance with § 377 HGB. This inspection will particularly focus on the completeness and the functioning of basic functions. If the defects are established or identifiable, the KMA GmbH must report the issue via recorded post within eight (8) working days. The complaint must contain a detailed description of

the defects.

If the defects are not obvious, they must be reported to the KMA GmbH within two weeks of the customer's realisation. Even if there is a violation of the obligation to investigation and give notice of defects, the products are considered to be permissible in respect of the pertaining deficiency i.e. defect.

11 Renumeration and terms of payment

Unless otherwise agreed in writing, the customer shall pay the invoiced amounts within 10 days from the invoice date without deduction.
Purchase price of the offer or to disintegration of supply and order confirmation referred to in the order confirmation and price, if not in writing between the parties otherwise agreed, plus statutory at the time of invoicing VAT.

Purchase price of the offer, or in case of disintegration of the offer or order confirmation, is the price referred to in the sales confirmation, unless agreed otherwise in writing between the parties, respectively plus the valid legal VAT, as at time of calculation. Services are specified in the offer with the daily or hourly rates billed monthly according to expenditure. Travel expenses or per diem, overtime and expenses (plus VAT) which are incurred in addition to the provision of ser-vices by the KMA GmbH will be charged separately.

If the output and delivery deadlines are longer than four months after the contract, the seller reserves the right to increase (after timely notification of the buyer and before execution of the service) the price in the manner required by external factors (such as currency fluctuations, currency regulations, tariff changes, increases in material or production cost) or due to price increases by suppliers. This applies only if the above changes would lead to price increases of at least 5%.

Unless otherwise stated in the offer or price list, or unless otherwise agreed between seller and customer in writing, all quoted prices by the seller are based on "ex works" Incoterms 2000. So long as the salesman is prepared to deliver the goods to other places, the buyer must bear the costs of transport, packaging and insurance.

Payments should be made by bank transfer: pay bills and checks are not accepted as means of payment. It may be agreed between the parties, that the buyer can get a documentary letter of credit from his bank or a bank which is acceptable to the seller. In this given case the letter of credit is determined to be in accordance with the General Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 5001.

12 Delay of payment and disputed items

In the case of non-compliance with the payment due date, the seller may – without the task of any further rights and entitlements - charge the buyer with interest on the unpaid amount, an interest of 8% of the applicable base rate amount per year (§ § 288 II, 247 BGB) to be paid in its entirety. The KMA GmbH reserves the right, to require evidence from the customer on which to base any compensation given.
On the other hand, if the customer of KMA GmbH proves that as a result of the delay, there has been no or limited damage, then the customer is only obliged to give compensation for the accidental loss of the product.
If the customer denies an item contained in the bill, he will pay all undisputed amounts to the KMA GmbH. The customer should inform the KMA company within 8 (eight) days of receipt of the invoice for the disputed items. Within the 30 (thirty) days of verification of the disputed items, the customer must pay the entire amount remaining due on this invoice to KMA, as well as a fee if overdue.
If an invoice is not paid within 60 (sixty) days of the due date, the KMA company has the right, after setting a grace period of another 10 (ten) days on top of the contracted date, if the customer still fails to pay the costs, then the KMA is entitled to insist that all amounts, including late charges, are paid.
The KMA GmbH retains the right (in place of the contract cancellation) after the expiry of the deadline, to reclaim the reserved products for future re-use.

13 Ban on the enforcement of the right of retention.

The off-set with others, as undisputed or legally established claims, is inadmissible.

The assertion of the right of retention of § 273 or § 320 BGB is excluded.

14 Contract terms and terminations

In contracts within which the KMA has to provide recurring services (continuing obligations), either party may terminate the contract three months from the end of the agreed contract period at the earliest. If the contract is not terminated within the agreed dates, the contract is extended for an indefinite period unless one of the parties announces the termination in writing a minimum of three months in advance.

The right of termination in different circumstances is important for both relevant contracted parties. Prior to a validly-requested termination, the terminating party must allow the other party a reasonable period of time to set the termination date. Valid reasons for dismissal are all circumstances in which further cooperation with the other party is impossible, such as recurring payment issues or persistent serious deficiencies in service delivery or participation.

The work carried out up to the termination of KMA GmbH is to be paid by the customer according to the then currently applicable rate of the KMA GmbH, plus the actual expenses incurred. The termination of § 649 BGB is excluded.

15 Ownership and the retention of ownership

Until full payment of all compensation claims of the KMA GmbH and other appropriate existing debts from ongoing business relationships with customers, KMA GmbH reserves the right to ownership of the services provided. The same principle applies for claims against injuring parties or insurers in connection with any damage, destruction or loss of the goods under the retention of ownership. In case of seizure or other interventions by third parties, the customer must notify KMA GmbH immediately.

The buyer can re-sell the retained goods in normal business operations. All the resultant claims against third parties means that the purchaser garners the full amount of the invoice, including VAT, in advance from KMA GmbH, who take on the task. By demand of the KMA GmbH, the customer is obliged to provide the information for the assertion of KMA GmbH's rights vs. the customer's client, distribute the necessary documents and announce the cession to the client, whereas the KMA GmbH can also announce the advance cession/assignment to the customer's clients instead.

The processing and transformation of the goods takes place exclusively for KMA. When processing goods not owned by KMA GmbH, the KMA is entitled to joint-ownership of the new products proportion to the invoice value of goods to the purchase of other goods at the time of processing.

When manufacturing a product which is not the sole property of KMA GmbH, KMA GmbH maintains the right of ownership of the parts of the product in question, and these will be valued in the proportion to the value of the new product.

If the security entitlements are valued by the KMA GmbH at more than 20%, the KMA GmbH - at the request of the customer – gives the excess part of the collateral free.

The customer is obliged to insure the goods - at his own expense -against all risks, including fire and burglary risks and must prove this on request.

16 Liability of defective materials for products

The KMA GmbH guarantees that the licensed products are free from defects which may have significantly diminished the value or suitability for contractually required use, and also offers an in-depth warranty. The guarantee is 12 months. The process of contract services begins with a successful acceptance and this is followed by the delivery of goods. For a partial acceptance, the warranty period begins with an explanation of each part of acceptance.

If a defect occurs, the customer shall immediately write the specifics of the problem to KMA GmbH, indicating the problem for diagnosis and information relevant to its solution. The customer will require its employees to provide comprehensive information to KMA GmbH for the purpose of error detection.

The customer will assist KMA GmbH in the removal process, and, in particular, with computer rooms and telecommunications facilities. The customer may also grant KMA permission to troubleshoot issues with the necessary time and opportunities. If this is refused, the KMA GmbH is exempt from liability.

The warranty is limited, both in terms of the entire delivery, but also in terms of individual parts. The repair and replacement of these parts is at the discretion of KMA. As long as the KMA GmbH complies with its obligations to remedy the defects, the customer has no right to price reduction (mitigation), the cancellation of the contract (withdrawal) cancellation or compensation, unless the repair is a failure.

A failure of repair or replacement must be assumed if the KMA GmbH has been given reasonable opportunity to repair or replace the goods, if it is impossible, if it is refused by KMA GmbH, or unreasonably delayed, if there are reasonable doubts regarding the success, or if something unacceptable or for miscellaneous reasons has occurred. As long as KMA GmbH is not delayed by this subsequent improvement and this does not also eventually fail, the customer is not entitled to have errors eliminated by third parties.

The warranty is not valid if:

a) The installation and commissioning of the entire facility was not carried out under the supervision of specialists from KMA
b) The failure of the delivery items was due to improper transport or improper handling by the customer or by third parties commissioned by the customer
c) If the customer has not complied with the specifications contained in the stipulated maintenance, care and cleaning regulations
d) Wear-and-tear parts and materials are affected

The defects have been caused by poor storage or improper use.
f) The delivery items have been processed or combined with third-party products, without this being covered by the given specifications.
g) The instructions given in the operating manual have not been met.
h) On the goods supplied, the serial numbers or the references to the time of production have been removed.
i) Errors due to the lack of involvement of the customer.

In the cases of a) to c) and e) to g), the claims for grants are omitted, if the customer provides evidence that the deficiencies have no causal relation to the above conditions. Instead of a refusal of rectification and the cancellation of the guarantee, KMA GmbH can also claim efficiency difficulties in such a case and thus claim additional expenditure, when operating in spite of the existence of the aforementioned exceptions.

If the examination of a defect notice on the part of customers concludes that no warranty applies, the KMA GmbH provides the customer the cost of the review charged at their then current sales prices.

A further liability is ruled out, in particular for any claim for damage not caused to the delivery item itself.

17 Third party product

A warranty for products manufactured by a third party vendor and delivered to the customer by KMA GmbH exists only in the scope granted by the third party vendor of the KMA GmbH - with the exception of the duration of the warranty. KMA GmbH will present relevant guarantee arrangements with the third party to the customer upon request. If a third party vendor offers a guarantee, as a rule KMA GmbH will remit this guarantee to the customer. If these products come with a manufacturer's warranty card, the customer will sign this bindingly and return it to KMA GmbH. In case an error occurs which falls under the manufacturer's guarantee, the customer will inform KMA GmbH with regard to possible enforcement of warranty claims and keep KMA GmbH up to date about the handling of the guarantee by the manufacturer.

18 Copyright and usage

Each party retains the exclusive rights to patents, copyrights, other intellectual property in addition to other know how, which the respective party held at (the time of) contract conclusion. All rights concerning estimates and other documents KMA GmbH provides to the customer for supply purposes, shall remain unconditionally/unrestricted by KMA GmbH. Only with explicit written consent of the KMA GmbH, may they be made available to the third party and in case the contract is not rewarded should be immediately returned to KMA GmbH upon request.

The customer acknowledges the KMA GmbH's exclusive right, to use intellectual property to the extent necessary for the completion of the job, under the provision of services required in the business relation. This includes, in particular the right to use a customer's existing systems and application program, in addition to patents.

19 Privacy and data protection

The contracting parties are obligated to keep confidential any private and legitimate affairs/information of the other party that have been entrusted or communicated to KMA GmbH because or in connection with the collaboration. Furthermore, such information should not be used for any other purpose besides the lawful fulfilment of the task/ completion of the project. Additionally, the confidential information should not be released to a third party without explicit prior consent of the respective party.

However, KMA GmbH is entitled to use the customer's name, brand and logo, as well as information about the project, in compliance with the confidentiality obligations mentioned/herein for reference purposes.

All information or documents of a party, which have been marked as confidential in writing or anything of confidential nature, in particular industrial or commercial secrets, shall remain confidential. Information or documents do not need to be kept confidential if the party can prove that they either:

a) are or have been generally available
b) were independently developed without the use of confidential information of another party
c) were acquired from a third party not bound to confidentiality
d) were in possession of the party, prior or without obligation to confidentiality
e) are or will be specifically intended for publication

In case of doubt, information and facts should be treated as confidential. The parties will respect each relevant data protection policy in question and only appoint appropriately committed employees for the completion of the work. The customer is responsible for the protection of personal data against unauthorized/unnecessary notice by KMA GmbH.

The foregoing/protruding confidentiality obligation shall remain for both parties even after termination of the contractual relationship.

20 Liability

For personal injury and product liability claims KMA GmbH shall be liable in accordance with the legal provisions. For other damages, the KMA GmbH is only liable to the extent to which their legal representatives or agents are charged with malice or serious negligence. Furthermore KMA GmbH is liable in cases of slight negligence in explicit assumption of a guarantee and breach of contract, upon which the customer may rely on. In cases of slight negligence of essential contractual agreements and serious negligence of such vicarious agents, KMA GmbH is only liable in the amount of the typical foreseeable damage. Moreover, KMA GmbH is not liable in cases of ordinary negligence.

A liability for consequential damages, such as loss of profit, absent savings or other indirect damages is excluded, except if the purpose of the agreement is thereby endangered. The foregoing liabilities also act on behalf of KMA GmbH's employees.

21 Storage of documents

Documents submitted to KMA GmbH by the customer or commissioned third parties in connection to the job, may be retained by KMA GmbH until the agreed work is completed or the contract is terminated; of the two dates, the later shall prevail.

A possible statutory or contractual right of retention of the KMA GmbH remains unaffected. Additionally, the KMA GmbH will save all produced or received documents for and during the business relationship, as long as required by law. After the expiration of the duty to preserve records, the documents are destroyed, unless the customer instructs in writing, up to one week before the retention period is up, the remittance of the records to the customer or for storage at the usual rate of the KMA GmbH.

22 Force majeure

If due to forces majeure (such as war or unrest, natural disaster or fire, epidemics or quarantine, strikes or lockouts, government action or similar circumstances) the company cannot fulfil its contractual obligations punctually or according to the full terms of the contract, then the concerned parties are, to the extent of the influence of the compliance of these duties and the other parties are freed from the equivalent obligations of service in return.

Any advance payments are to be immediately returned, if the force majeure will entail a permanent impediment to performance, or the other party - as a result of the impact of the force majeure – no longer has interest in the service. The latter applies only if this lack of interest, leading to a contractual termination, is for good reason. The parties must announce cases of force majeure immediately.

23 Protective rights

The KMA GmbH guarantees that the services provided are in contractual use and free of third party rights (e.g. patents, copyrights, made known patent applications, trademarks, utility models) in the Federal Republic of Germany, which limit or exclude its use significantly.

If a third party claims for infringement of property rights (due to customer claims that the KMA GmbH products supplied may affect the impair or prohibit use), the KMA GmbH has the right to, at its discretion, either amend the relevant contractual services so that they fall outside the scope of protection but nevertheless comply with contractual provisions, or to obtain the authority that allows them to be used in whole or without additional costs to the customer.

The pre-requisite for the above liability, however, is that the client notifies KMA immediately in writing about any third-party claims on account of the alleged infringement and acknowledges any disputes, including any out of court settlements, only in agreement with the KMA. KMA is entitled and obliged to perform all civil disputes arising out of third-party claims against the customer at their own costs. The customer is obliged to act in disputes with third parties in agreement with the KMA GmbH and to provide support at the appropriate level.

If the customer ceases the use of the products due to damage or for other good reasons, he is obliged to inform the third party, however this acknowledgement of a breach of the trademark rights or violation of property is not automatically acknowledged.

If the goods have been manufactured or otherwise processed or handled by the KMA GmbH and had the buyer submitted a specification, then the customer should pay or be willing to pay the KMA GmbH for any losses, damages, costs or other expenses' fees, because the contractual processing or handling of the product - due to the specification of the customer as a breach of a patent, copyright, trademark or other intellectual property right of a third party - has been exposed.

If the customer is responsible itself for a breach of trademark rights, claims against the KMA GmbH are excluded under the preceding paragraphs. The same applies if the infringement was caused by an unforeseeable change or similar by KMA GmbH, for example if the product was changed by the customer or used with products not delivered by KMA GmbH. As long as KMA GmbH is not obligated to their customers in terms of property rights, the KMA GmbH is exempt from third-party claims in respect of such alleged protective right damages.

24 Further provisions

The seller is entitled to change and improve the product without informing the buyer thereof in advance. This is only the case if the provided change or improvement neither deeply strains nor worsens form nor function of the commodity.

These conditions supersede all other written or oral agreements taken by the contractor in writing or orally, which are ineffective with the signing of these conditions.

25 Safeguarding clause

Should any of the aforementioned provisions of the General Terms and Conditions be or become invalid, the validity of the other conditions will not be affected. In the event that any provision of these General Terms and Conditions are invalid, the parties must enter into negotiations, which aim to replace the ineffective policy with a clause that comes closest to what the parties had aimed for with the previously valid economic policy.

26 Jurisdiction and applicable law

Both parties are in agreement to submit to the exclusive jurisdiction of the legal court at the headquarters of the KMA GmbH. All contracts are considered exclusively in the context German law. The policy of Article 19 of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) is excluded.

The General Terms and Conditions were translated from German into English. In the case of any queries or disputes, the original German version is available as a legal basis.