

# General Terms and Conditions of Sale and Delivery

Version dated January 2011

## 1 General, contractual ambit/scope, definition

1.1 The general terms and conditions of trade of KENTAX GmbH Ultra High Vacuum equipment (hereinafter referred to as KENTAX) shall apply to all offers, orders, contracts of sale, contracts for services and deliveries furnished by us to an ordering party, unless otherwise explicitly agreed. We do not make business with consumers in accordance to § 13 BGB (German law).

1.2 We do not accept general terms and conditions of trade of purchasers deviating from those below, even if we have not objected to say terms and conditions explicitly. Terms that deviate from these conditions shall only be considered binding if they have been confirmed by us in writing.

1.3 These terms are considered binding if they have been declared applicable in the offer or in the confirmation of an order. Terms of the ordering party that deviate from these shall only be considered binding if they have been confirmed by KENTAX expressly and in writing. Our general terms and conditions of sale and delivery shall also apply to future business connections, unless otherwise explicitly agreed.

1.4 The contract goes into force when KENTAX has given a written order confirmation. Any agreement or legally significant statement of the contracting parties which deviates from these general terms and conditions of trade shall only be valid if made in writing.

1.5 In the event that any provision contained in these general terms and conditions of sale and delivery should prove to be completely or partially invalid, the validity of these general terms and conditions of sale and delivery shall otherwise remain unaffected. The contracting parties shall replace this provision by a new agreement most suited to lead to the legal and economic results intended.

1.6 KENTAX reserves property rights and intellectual property rights to samples, preliminary cost estimates, designs and any other information of that kind, be it of a tangible or intangible nature, as well as in electronic form; they may not be made available to a third party. KENTAX agrees not to provide third parties with information and documents that have been classified as confidential in nature by the ordering party without the consent of the ordering party.

## 2 Scope of Deliveries and Services

2.1 The deliveries and services of KENTAX shall, upon conclusion, be stated in the order confirmation and its possible enclosures. Any service not stated in these documents will be invoiced separately.

## 3 Offer, offer documents, technical documents

3.1 Statements made in brochures and catalogues as well as our websites are not binding without an additional agreement. Information contained in technical documents is only considered binding if a warranty is explicitly given.

3.2 KENTAX reserves all rights to the technical documents given to the ordering party. These documents shall not be made available to third parties, either completely or partially, or be used beyond the purpose for which they have been given to the ordering party, unless KENTAX has previously given its consent in writing. The ownership of these documents does not entitle the holder to construct machines, installations, components or parts thereof using the technical data.

## 4 Confidentiality

4.1 Each contracting party is obliged to maintain strict secrecy regarding the other contracting party's manufacturing, experience and business secrets that have been made accessible or otherwise known to it. The contracting parties shall not communicate these secrets to any third party, either directly or indirectly, or publish them in any form whatsoever or use them for any other purpose (especially not for the construction of machines, installations, and components as well as of parts thereof).

## 5 Prices

5.1 Our prices are quoted net ex warehouse Seelze, they do not include value-added tax/ sales tax and packaging, and are payable without deductions of any kind. Additional costs of any kind (e.g. freight, insurance, export permit, transit permit, import permit and other permits as well as certifications and registrations) shall be borne by the ordering party. The ordering party shall also pay all kinds of taxes, charges, rates, duties and similar fees that are charged in connection with the contract. The ordering party shall reimburse KENTAX for these costs after proof of said costs has been given, in the event that KENTAX has been obliged to make payments belonging to the above categories.

5.2 An appropriate price adjustment will be made if:  
the term of delivery has been extended ex post facto for a reason attributable to the ordering party or

the type or amount of the deliveries or services agreed upon have been altered or

the material or the implementation has been altered because the documentation supplied by the ordering party did not correspond to the facts or was incomplete

## 6 Terms of Payment

6.1 Payments shall be made in accordance with the conditions stated in the order confirmation or invoice. The obligation to pay is considered fulfilled when the complete price of delivery agreed upon has been paid.

## 7 Retention of Title

7.1 The products supplied or sold by KENTAX shall remain the property of KENTAX until each and every claim KENTAX has on the client arising from the respective contract has been paid.

7.2 The retention of title also applies in the case of all claims KENTAX has on the client in connection with the subject of the contract (e.g. repairs, delivery of spare parts, as well as other services). The aforementioned provision shall not apply if repairs or delivery of spare parts by KENTAX have been delayed in an unacceptable manner or have failed altogether.

7.3 The objects must not be resold, let, lent, or given to a third party before the aforementioned claims of KENTAX have been satisfied. The use of the objects as a security or pledge in a financial transaction is prohibited without the consent of the company.

7.4 To the extent the contracting party of the company KENTAX re-processes the object of purchase, the following applies: Processing or transformation shall only be made for the company KENTAX as the producer, however, without any obligation for it. In case the (co-)ownership of the company KENTAX ceases due to association, it is already now deemed to be agreed that the (co-)ownership of the contracting party in the uniform item shall be transferred proportionally in terms of its value (invoice value) to the company KENTAX. The contracting party deposits the (co-) ownership of the company KENTAX free of charge. Goods, in which the company KENTAX possesses (co-) owner-ship, are hereinafter referred to as conditional goods. The contracting party is entitled to process and sell conditional goods in the course of the ordinary business, provided it is not in delay. Any accounts receivable (including any balance claims arising from current account) arising from re-sale or any other legal reason (insurance, wrongful acts) concerning the conditional goods, shall already now be assigned in full to the company KENTAX. The company KENTAX revocable authorizes the contracting party to collect the accounts receivable assigned to the company KENTAX in its own name on the company's account. This authority to collect may only be revoked in case the contracting party does not obey its payment obligations in due form.

7.5 For the duration of the retention of title, KENTAX's client is entitled to the possession and use of the object purchased only as long as he complies with his obligations arising from the contract and these general terms and conditions of trade, and as long as he does not default on payment.

7.6 If KENTAX's client defaults on payment or does not comply with his obligations arising from the retention of title, KENTAX shall be entitled to cancel the contract. KENTAX may demand the return of the object of contract from its contracting party and make use of it by selling it privately, after setting a reasonable deadline.

7.7 All costs for reclaiming and utilising the object of purchase shall be borne by KENTAX's contractual partner.

7.8 The client is obliged to inform KENTAX forthwith of seizure by third parties, for example in the case of distraint, or if the client is advised to commence an insolvency proceeding, or if such a proceeding is commenced. If there are grounds for. Insolvency, cancellation of the contract is not required to enforce and extend the retention of title.

7.9 KENTAX's contractual partner agrees to keep the object of contract in a proper state of repair and to have all necessary maintenance and repairs carried out during the term of retention of title.

7.10 KENTAX agrees to release the security to which it is entitled if the value of the as yet unsatisfied claims to be secured is exceeded by the aforementioned security rights by more than 10 per cent.

## **8 Delivery Period**

8.1 The delivery period begins when the order confirmation has been dispatched, but not before the ordering party has supplied the necessary documents, permits, and releases he is obliged to supply and not before the agreed payment has been received. The delivery deadline shall be considered met if the notice of the readiness for shipment has been sent to the contracting party by the time the delivery period has expired.

8.2 The ordering party shall be obliged to comply with the contractual obligations as a requirement for the deadline being met.

8.3 The delivery period shall be extended appropriately if there are impediments that KENTAX cannot avert despite due care, regardless of whether they have occurred at the site of KENTAX, of the ordering party or of a third party. As soon as the cause for delay has been removed, the delivery period shall be rescheduled in writing.

8.4 The ordering party shall have no rights or claims in case of delay in delivery or services. Above all, he shall not be entitled to cancel the contract. This restriction shall not be valid in cases of wrongful intent or gross negligence on the part of KENTAX. It shall, however, be valid in cases of wrongful intent or gross negligence on the part of temporary personnel.

8.5 If the delivery is delayed on request of the ordering party, he shall be charged with the monthly costs of the storage (at least 0.5 % of the amount invoiced for each month) one month after being informed about readiness for shipment. After an appropriate period for delivery has been set and expired unsuccessfully, however, the supplier shall be entitled to make other use of the subject of delivery and to send the order to the contracting party within a reasonably extended period.

## **9 Passing of the risk, Acceptance**

9.1 The risk passes to the ordering party after the subject of delivery has left the factory, also if partial deliveries are made or KENTAX has committed itself to further services/payments, e.g. delivery expenses or delivery and installation. If acceptance is required, this acceptance shall be the main criterion for the passing of the risk. It shall be carried out immediately on the date of accepting delivery, or, alternatively, after KENTAX's notice of readiness for acceptance. The ordering party may not deny acceptance due to an insignificant defect.

9.2 Should delivery or acceptance be delayed or not take place as a result of circumstances which are not under the control of KENTAX, risk shall pass to the ordering party as of the day of the notice of readiness for shipment or acceptance. KENTAX agrees to take out the insurance policy requested by the ordering party at the expense of the ordering party.

9.3 Partial delivery is admissible if acceptable to the ordering party.

9.4 KENTAX shall check the deliveries and services before the delivery, as long as this is standard procedure. If the ordering party demands further checks, these shall be agreed upon and paid for separately by the ordering party.

9.5 The ordering party is obliged to check the delivery and the service within an appropriate period and to notify KENTAX of any possible defects forthwith in writing. Transport damage must be reported within five working days to KENTAX. If the ordering party fails to report, the delivery and services shall be considered to have been accepted.

9.6 KENTAX shall repair the defects reported under section 10.2. as quickly as possible, and the ordering party shall give it the opportunity to do so.

9.7 A separate agreement is required in order to carry out an acceptance proceeding and to stipulate the conditions applicable to it.

9.8 With regard to defects of any kind in deliveries and services, the ordering party has no rights or claims apart from those mentioned explicitly in sections 10 and 11 (warranty, liability for defects).

## **10 Export**

The customer self is responsible for consideration of export instructions. If there are any barriers to export (restrictions on export) KENTAX is not bound to send the goods.

## **11 Warranty Claims, Limitation of Action**

KENTAX gives a warranty of merchantable quality of the delivery as follows without any further liability whatsoever:

11.1 All parts that have proven defective due to a circumstance that occurred before the passing of risk shall be repaired or replaced by a defect-free item without charge and at KENTAX's discretion. The discovery of any such defect must be reported to KENTAX forthwith and in writing. Replaced parts become the property of KENTAX.

11.2 After making arrangements with KENTAX, the ordering party shall allow KENTAX the time and opportunity required to repair any defect and to deliver any replacement products considered necessary by KENTAX. Otherwise, KENTAX shall not be liable for the consequences resulting from such failure.

11.3 It is not allowed to repair defected goods or to assign a third party to repair defected goods. Further claims shall be dealt with pursuant to section 11.2. of these terms and conditions.

11.4 There shall be no claim for defects of the object of the contract under any of the conditions stated below: inappropriate or improper use; faulty installation or faulty start-up on the part of the ordering party or a third party; normal wear and tear; faulty or negligent construction; construction on unsuitable soil; chemical, electrochemical or electrical influences not under the control of KENTAX.

11.5 If the ordering party or a third party has repaired a defect in a faulty manner, KENTAX shall not be liable for consequences resulting from such failure. The same is true if an alteration of the subject of delivery has been carried out without the previous consent of KENTAX.

11.6 Warranty claims for all new objects sold shall become statute-barred one year after delivery of the object. KENTAX must be notified of obvious defects within 2 weeks of delivery (referring to the dispatch of the notification); otherwise the seller shall be released from the warranty for defects. If the object of contract is defective, KENTAX 's contracting partner shall have the following claims: KENTAX shall be obliged to provide the required services subsequent to a complaint and shall have the option of repairing the defect or delivering a defect-free item. If these services subsequent to a complaint have not been provided or have been faulty, the contracting party is entitled to cancel the contract or to reduce the purchase price. Cancellation of contract shall not be possible if KENTAX's breach of its obligations is of an insignificant nature only.

## **12 Preclusion of Further Liability**

12.1 If the subject of delivery cannot be used by the ordering party in accordance with the contract due to a failure on the part of KENTAX, due to omitted or faulty implementation of proposals and consultations made before or after the contract goes into force, or due to the breach of other accessory obligations arising from the contract – especially the instructions for operation and maintenance of the subject of delivery – the regulations stated in sections 10 and 11.2 shall apply, precluding any further claims of the ordering party.

12.2 KENTAX shall be liable for damages other than those to the subject of delivery itself, and irrespective of the legal grounds, only in the case of:

Wrongful intent

gross negligence on the part of the owner/ corporate bodies or company executives,

culpable injury of life, bodily injury, damage to health,

defects in the subject of delivery, if, under the product liability law, liability exists for personal injury or property damage to personal items.

In the event of culpable breach of major contractual obligations, KENTAX shall also be liable in cases of gross negligence on the part of non-executive personnel or in cases of ordinary negligence; in this case, the liability shall be limited to damage typical of the given type of contract and reasonably foreseeable.

There shall be no other rights and claims.

## **13 Use of software**

Should software comprise part of the delivery, the ordering party shall receive the non-exclusive right of use to the delivered software, including its documentation. Said documentation shall be provided for the use in connection with the relevant items of delivery. It is prohibited to use the software on more than one system.

The ordering party shall be entitled to copy, process, translate or to convert the software from the object code into the source code only to the extent permissible by law (Paragraphs 69 a pp UrHG, short for the German Copyright Act). The ordering party agrees not to remove the manufacturer's product information – especially notices of copyright – or to alter them without having obtained the previous explicit consent of KENTAX.

All other rights to the software and the documentation, copies included, shall remain the property of KENTAX or the software supplier. The granting of sub-licences is prohibited.

## **14 Sale or return**

The customer doesn't have the right to return ordered goods. Without fail, returned goods will be declined.

## **15 Applicable Law, Place of Jurisdiction**

15.1 The legal relationship between KENTAX and the ordering party shall be governed exclusively by the law of the Federal Republic of Germany that applies to the relationship of domestic parties.

15.2 The court of jurisdiction shall be the court competent for the KENTAX headquarters. KENTAX is, however, entitled to initiate a court case at the court competent for the ordering party's headquarters.