

**General Terms and Conditions of Sale and Delivery  
of Fahrzeugwerk Bernard Krone GmbH & Co. KG for factory-new and used  
sales**

**I. General points, scope**

1. These General Terms and Conditions of Sale and Delivery apply to contracts with sole traders, corporate entities or incorporated business partnerships.
2. All supplies, services and offers from Fahrzeugwerk Bernard Krone GmbH & Co. KG (in the following also referred to as "the Vendor") shall be based solely on these General Terms and Conditions of Sale and Delivery. These General Terms and Conditions of Sale and Delivery form an integral part of all contracts which the Vendor enters into with contract parties (in the following also referred to as "the Buyer") in relation to the supplies or services offered by it. They shall also apply to all future supplies, services or offers to the Buyer even where not explicitly so agreed.
3. Any differing, contradictory or supplementary general terms and conditions of business of the Buyer shall not form part of the contract, even if the Vendor does not explicitly contradict them, unless the Vendor explicitly agrees to them in writing.

**II. Contract signing / Transfer of rights and obligations of the Buyer**

1. The offers publicised on the Internet or in brochures, advertisements and other promotional materials shall be subject to confirmation and non-binding, unless explicitly identified as binding or subject to a specific acceptance period. The Vendor accepts no liability for misprints or errors.
2. Orders may be communicated to the Vendor in any way, including informally, such as by input of data into the Vendor's computer system. The Vendor may accept the said orders within 21 calendar days of receipt. This period shall begin when the Buyer receives the notification of acceptance of

the order. Acceptance shall also be indicated by dispatch or delivery of the Contracted Items.

3. The sole basis of all legal relations between the Vendor and the Buyer shall be the contract of sale, including these General Terms and Conditions of Sale and Delivery. The contract of sale shall contain all agreements made between the contracting parties in relation to the Contracted Items. Any additions or amendments to the agreements made, including these General Terms and Conditions of Sale and Delivery, must be in writing in order to be legally effective. Any waiver of the said formal requirement shall likewise be affirmed in writing. Where the affirmation is transmitted by telecommunication means, the requirement of the written form shall only be considered as having been met if the transmitted copy contains the signature of the issuing party.
4. Data provided by the Vendor relating to the supply or service in question (such as weights, dimensions, consumption figures, load-bearing capacity, tolerances and technical specifications) as well as visual depictions of the item in question (such as drawings and diagrams) shall represent only approximations, unless usability for the contractually stipulated purpose requires exact conformance. They shall not represent warranted characteristics, but rather descriptions or identifying features of the supply or service in question. Variations in line with standard commercial practice, as well as variations based on legal requirements or by way of technical improvement, including the replacement of parts by equivalents, shall be permissible, provided they do not impair the usability of the item in question for the contractually stipulated purpose.
5. The Vendor reserves right of title or copyright in relation to all offers and cost estimates it issues, as well as to drawings, diagrams, calculations, brochures, catalogues, models, tools, dies, or any other documentation and aids provided to the Buyer. The Buyer may not make the said items, in whole or in part, available to third parties, publicise them, or use or reproduce them itself or allow third parties so to do, without the explicit consent of the Vendor. The Buyer shall return the said items to the Vendor in full on demand by the Vendor, and shall destroy any copies made when they are no longer required for its regular business operations, or if negotiations do not result in a contract being signed.

6. Any assignment of claims of the Buyer arising from the contract shall require the written consent of the Vendor in order to be legally effective. The said requirement of consent shall not apply to the assignment of claims for money of the Buyer arising from the contract where the contract is a commercial transaction for both parties. Where the assignment of claims of the Buyer is legally effective without the consent of the Vendor, the Vendor may make delivery to the Buyer as an existing creditor with discharging effect.

### **III. Prices and payment**

1. The prices shall apply to the scope of supplies and services specified in the order confirmations. Additional or special supplies and services shall be billed separately. If supplies or services are rendered without prior confirmation of order, the Vendor's latest applicable list prices shall be considered to have been agreed in respect of the supply or service in question. The prices are quoted in EURO, ex factory, excluding packaging, transportation/shipping, postage, statutory sales tax (VAT), duties in the case of exports, as well as fees, charges and any other public levies.  
Transportation containers and pallets, loading cages and other re-usable packaging and transportation materials shall likewise be charged at the prevailing applicable price. Where the items in question are returned, the amount charged for them – where appropriate less compensation for wear and tear – shall be credited and, if already paid for by the Buyer, refunded by the Vendor.
2. Where the agreed prices are based on the Vendor's list prices, and delivery is scheduled more than four months after signing of the contract, the Vendor's list prices applicable at time of delivery shall apply.
3. The invoice shall be issued on the date of delivery or provision of the Contracted Items. Unless otherwise agreed, the purchase price for factory-new Contracted Items shall be payable without deduction within 30 days of date of invoice. The payment date shall be determined as the date of receipt by the Vendor. Cheques shall be considered as payment only when honoured.

The purchase price for used Contracted Items shall be payable on transfer of the Contracted Items and handover of the invoice, or on receipt of invoice where the invoice is issued by post.

4. Any changes to payments (such as deduction of cash discounts) shall be subject to negotiation, and shall only be acknowledged following written confirmation by the Vendor.
5. If the Buyer does not make payment when due, late-payment interest at a rate of 5 percentage points above the base interest rate p.a. shall be charged on the outstanding invoice amount as from the due date; the right to claim higher interest rates and additional compensation in the event of delayed payment shall remain unaffected.
6. Setting-off against counter-claims of the Buyer, or retention of payments because of such claims, shall only be permissible where the said counter-claims are undisputed or legally established. Furthermore, the Buyer shall only be entitled to exercise a right of retention if its counter-claim is based on the same contractual relationship.
7. The Vendor shall be entitled to deliver or execute outstanding supplies or services only in return for payment in advance or provision of security if, after signing of the contract, it becomes aware of circumstances which are likely to materially impair the credit-worthiness of the Buyer and which put at risk payment of the outstanding claims of the Vendor by the Buyer arising from the respective contractual relationship (including from other single orders subject to the same framework contract).

#### **IV. Delivery and delivery lead times**

1. Deliveries shall be ex factory.
2. Lead times and scheduled dates for delivery of supplies and rendering of services indicated by the Vendor shall always represent approximations only, unless a fixed lead time or date has been promised or agreed. The delivery lead time shall be agreed in each individual case, and shall be notified by the Vendor on acceptance of the order. In the case of factory-new Con-

tracted Items, the agreed delivery lead times shall be subject to prompt delivery by suppliers and to definitive clarification of all technical issues.

Where separate shipping has been agreed, delivery lead times and delivery dates shall relate to the point of handover to the shipper, freight forwarder or other third party contracted to handle transportation. If the goods cannot be shipped promptly due to no fault of the Vendor, the delivery lead time shall be considered to have been fulfilled on notification of readiness for shipping. The Buyer shall pay the shipping costs. Unless otherwise agreed, the Contracted Items shall be shipped uninsured.

3. Notwithstanding its rights resulting from delayed payment by the Buyer, the Vendor may request from the Buyer an extension of lead times for contracted supplies and services or postponement of delivery and service execution dates for the period of time during which the Buyer fails to fulfil its contractual obligations to the Vendor.
4. Events of force majeure or other events beyond the control of the Vendor which were not foreseeable at the time the contract was signed and which impede fulfilment of the Vendor's obligations (such as operational disturbances of any kind; difficulties procuring materials or energy; transportation delays; strikes; legally authorised lock-outs; shortage of labour, energy or raw materials; difficulty in obtaining essential official approvals; governmental action; or failure to deliver, incorrect or delayed delivery on the part of suppliers) shall entitle the Vendor to postpone delivery by the period of the duration of the impediment and an appropriate restart time (lasting a maximum of 14 working days). The Vendor shall notify the Buyer as soon as it becomes aware of any such impediment. Where such events make it materially difficult or impossible for the Vendor to execute the supply or service in question, and the impediment is likely to be not merely of temporary duration, the Vendor shall be entitled to cancel the contract. In such a case the Vendor shall immediately reimburse to the Buyer any payments already made to the Vendor in relation to Contracted Items. Where the Buyer cannot be reasonably expected to accept the supply or service due to the delay, it may cancel the contract by immediate written notification to the Vendor.

5. The Vendor shall only be entitled to provide partial fulfilment if:
  - the partial fulfilment is usable by the Buyer for the contractually agreed purpose;
  - delivery of the remaining Contracted Items is assured; and
  - the Buyer incurs no substantial additional expense or labour commitment as a result (unless the Vendor declares itself willing to pay the costs incurred).
  
6. In the case of factory-new Contracted Items, the Vendor reserves the right to make modifications to the design or form, variations in colour and changes to the scope of supply during the delivery lead time, provided the changes or variations are reasonable to the Buyer, taking into account the interests of the Vendor. Where the Vendor uses symbols or numbers to identify the order or the Contracted Items, no rights may be inferred solely therefrom.
  
7. If the Vendor delays making a delivery or rendering a service, or if it becomes impossible for it to make a delivery or render a service, for whatever reason, the liability of the Vendor to pay compensation shall be limited in accordance with section IX of these General Terms and Conditions of Sale and Delivery.

#### **V. Place of performance, transfer of risk, acceptance**

1. Unless otherwise agreed, the place of performance in respect of all contractual obligations of the Vendor and the Buyer shall be Werlte (Germany).
  
2. The method of shipping and packaging shall be at the due discretion of the Vendor.
  
3. The risk of accidental destruction or deterioration of the Contracted Items shall be transferred to the Buyer at the latest on handover of the said Contracted Items. (The point of handover shall be deemed to be the start of loading). Where shipping of the Contracted Items has been agreed, however, the risk of accidental destruction or deterioration of the Contracted Items, and the risk of delay, shall be transferred to the Buyer at the latest on handover of the said Contracted Items to the shipper, freight forwarder or other third party contracted to handle transportation. (The point of handover shall be

deemed to be the start of loading). This shall also apply where partial deliveries are made or where the Vendor has agreed to provide other services (such as shipping, installation or final assembly at the Buyer's location). If shipping or handover is delayed due to circumstances for which the Buyer is responsible, the risk shall be transferred to the Buyer as from the day on which the Contracted Items are ready for handover or shipping, and the Vendor has notified the Buyer accordingly.

4. Storage costs after transfer of risk shall be paid by the buyer. Storage by the Vendor shall be charged at 0.25 % of the invoice amount of the Contracted Items being stored per full week. The right to claim and furnish evidence of additional or lower storage costs respectively shall remain reserved.
5. The Vendor shall insure the consignment against theft, breakage, damage in transit, fire and water damage or other insurable risks only at the express request of the Buyer, and at the Buyer's expense.
6. Where acceptance is required, the Contracted Items shall be considered accepted when:
  - the delivery – and where also required of the Vendor – the installation is completed;
  - the Vendor has notified the Buyer accordingly, advising of the requirement of acceptance pursuant to this section, and has requested the Buyer to declare its acceptance;
  - 12 working days have past since delivery or installation, or the Buyer has started to use the Contracted Items (such as by commissioning the delivered machinery into operation) and in this case 6 working days have past since delivery or installation; and
  - the Buyer has not explicitly declared its acceptance within this period for a reason other than due to a defect notified to the Vendor which materially impairs or renders impossible use of the Contracted Items.

## **VI. Retention of title**

1. The Contracted Items shall remain the property of the Vendor until all claims of the Vendor against the Buyer have been satisfied, including all balancing claims arising from open accounts. The Vendor shall be entitled

to hold the vehicle licence document, where issued for the Contracted Items, for the duration of the retention of title. If the Buyer contravenes the terms of the contract – in particular if it delays payment of a claim – the Vendor shall be entitled to recover the Contracted Items, after having granted the Buyer an appropriate period of grace. The transport costs incurred for recovery in such a case shall be paid by the Buyer. Recovery of the Contracted Items by the Vendor shall represent cancellation of the contract. Seizure of the Contracted Items by the Vendor by way of security shall likewise represent cancellation of the contract. The Vendor may realise the value of the recovered Contracted Item(s), including by means of sale by private contract. The revenue from the sale shall be set off against the amounts owed by the Buyer to the Vendor after the Vendor has deducted an appropriate amount to cover the costs of the sale. The cancellation shall not affect any other rights of the Vendor, in particular claims for compensation in respect of loss of profit.

2. Until transfer of title to the Buyer, the Buyer shall treat the Contracted Items with due care, and shall insure them adequately against any loss, at its own expense, providing new-replacement cover, in particular against fire and water damage, against theft, pilferage and non-delivery, and against vandalism. Where maintenance and inspection is required, the Buyer must carry out such procedures at its own expense. Other than in emergencies, such procedures shall be carried out at the Vendor's location or at a qualified workshop recognised by the Vendor.
3. The Buyer may use the Contracted Items still owned by the Vendor and may sell them on in the course of its regular business operations, provided the Buyer has not defaulted on payment and no material deterioration of its financial position has occurred or is impending. The Buyer may not pledge or assign the Contracted Items by way of security however. By way of security, the Buyer hereby assigns to the Vendor in full its claims against customers arising from selling-on of the Contracted Items, as well as claims relating to the Contracted Items on any other legal basis against its customers or third parties (in particular claims arising from unlawful acts, from rental agreements, and insurance claims), including all balancing claims arising from open accounts. The Vendor hereby accepts the said assignment.

The Buyer may collect the said claims assigned to the Vendor for its account and in its own name on behalf of the Vendor until such time as the Vendor revokes the authorisation to collect. The right of the Vendor to collect the said claims itself shall remain thereby unaffected. However, the Vendor shall only assert the claims itself and revoke the Buyer's authorisation to collect them where the Vendor has a justified interest in so doing (such as if the Buyer fails to duly fulfil its payment obligations, or if a material deterioration of the Buyer's financial position has occurred or is impending).

If the Buyer contravenes the terms of the contract – in particular if it delays payment of a claim – or if the Vendor asserts a justified interest, the Vendor may demand that the Buyer provide it with details of the assigned claims and the debtors concerned, notify the debtors concerned of the assignment, and provide it with all documentation and pertinent facts necessary for the Vendor to assert the claims.

4. Any processing or modification by the Buyer of the Contracted Items still owned by the Vendor shall always be carried out on behalf of the Vendor. If the Contracted Items are processed together with other items not belonging to the Vendor, the Vendor shall acquire co-ownership of the newly created item equal to the value of the Contracted Items (final invoice amount including sales tax) proportionate to the other processed items at the time of processing. In other respects the new item created by processing shall be subject to the same provisions as the Contracted Items.

If the Contracted Items still owned by the Vendor are inseparably joined to or combined with other items not owned by the Vendor, the Vendor shall acquire co-ownership of the newly created item equal to the value of the Contracted Items (final invoice amount including sales tax) proportionate to the other joined or combined items at the time of joining or combining. If the Contracted Items are joined or combined such that the item contributed by the Buyer can be considered the main component item, the Buyer and the Vendor hereby agree that the Buyer shall transfer to the Vendor proportionate co-ownership of the said item. The Vendor hereby accepts the said transfer.

The Buyer shall assert the Vendor's resultant rights of sole or co-ownership of an item on behalf of the Vendor until such time as the Vendor duly revokes its authorisation to do so based on its own justified interests.

5. If the Contracted Items still owned by the Vendor are seized by way of security by third parties, or in the event of any other action by third parties against the Contracted Items, the Buyer shall disclose the Vendor's right of title and immediately notify the Vendor in writing so that the Vendor can assert its rights. Where the third party in question is unable to reimburse the Vendor for the legal costs incurred in this regard, the Buyer shall be liable for the said costs, if the seizure or other action by the third party resulted from the fault of the Buyer.
6. In the event of loss or destruction of, or damage to, the Contracted Items still owned by the Vendor, the Buyer shall notify the Vendor immediately and on demand by the Vendor shall furnish all documentation relating to the damage to the Contracted Items, in particular loss adjusters' reports. The Buyer shall also disclose to the Vendor details of existing insurance policies and, at its discretion, furnish either the certificate of insurance or a certificate issued by the insurers in respect of the Contracted Items.
7. If the Buyer so demands, the Vendor shall be obliged to release the securities to which it is entitled to the extent that their realisable value permanently exceeds the value of the outstanding claims against the Buyer by more than 10%. The Vendor shall, however, be entitled to select which securities are to be released.

## **VII. Warranty, defects**

1. The warranty period for factory-new Contracted Items is one year from date of delivery or, where acceptance is required, from date of acceptance. In all other cases the sale/supply of the Contracted Items excludes any warranty in respect of defects, unless otherwise separately and explicitly agreed.
2. The delivered Contracted Items must be thoroughly inspected immediately on delivery to the Buyer or to the third party designated by it. If the Buyer does not submit a written claim to the Vendor within seven working days of

delivery, the Contracted Items shall be considered to have been approved by the Buyer with regard to apparent defects or other defects which would have been detectable if an immediate, thorough inspection had been carried out. With regard to other defects, the Contracted Items shall be considered to have been approved by the Buyer if the Vendor receives no claim within seven working days after the defect was revealed. If the defect was detectable by the Buyer in normal use at an earlier time, however, the said earlier time shall determine the start of the period allowable for submission of claims. The Contracted Items in respect of which a claim has been made shall be returned freight-paid to the Vendor on demand. In the event of a justified claim, the Vendor shall reimburse the cost of the cheapest shipping method. This shall not apply where the cost is increased because the Contracted Items are located other than at the place of their designated use.

3. In the event of defects in the delivered Contracted Items, the Vendor shall be obliged and entitled at its discretion initially to make repair twice within an appropriate period of time. If the repair definitively fails to take place – that is to say, is impossible, unreasonable, refused, or excessively delayed – the Buyer may cancel the contract or reduce the purchase price by an appropriate amount.
4. If a defect results from the fault of the Vendor, the Buyer may demand compensation for loss, notwithstanding the provisions of this section VII, subject to the preconditions set out in section IX.
5. The Buyer may assert claims for the remedying of defects against the Vendor. If the delivered Contracted Items are rendered inoperable by a defect, the Buyer shall contact the nearest service centre to the location of the inoperable items accredited by the Vendor as a provider of service support for the said Contracted Items.
6. If the Buyer is provided with defective installation instructions, the Vendor shall be obliged merely to furnish a defect-free set of installation instructions. This shall only apply, however, if the defect in the installation instructions prevents correct and proper installation.

7. In the event of defects in components from other manufacturers which the Vendor is unable to remedy for licensing reasons or for other de facto reasons, the Vendor shall, at its own discretion, assert its warranty claims against the manufacturers and suppliers on behalf of the Buyer or assign the said claims to the Buyer. Warranty claims against the Vendor shall be allowable in the event of such defects subject to the other preconditions and in accordance with these General Terms and Conditions of Sale and Delivery only if legal action in pursuit of the aforesaid claims against the manufacturer and supplier has failed or has no prospect of success, for example due to insolvency. The period determining limitation of the Buyer's warranty claims against the Vendor shall be suspended for the duration of the legal dispute.
8. The warranty shall be voided if the Buyer modifies the Contracted Items, or arranges for them to be modified by third parties, without the consent of the Vendor, thereby rendering remedy of the defects impossible or unreasonable. The Buyer shall in any event pay the additional cost of remedying the defects incurred as a result of the modification.

### **VIII. Intellectual property rights**

1. The Vendor shall be liable subject to this section VII for ensuring that the Contracted Items do not infringe against any intellectual property rights or copyright of third parties. Each party to the contract shall notify the other party immediately in writing if claims are made against it regarding infringement of such rights.
2. If the Contracted Items infringe against intellectual property rights or copyright of a third party, the Vendor shall, at its discretion and at its own expense, modify or replace the Contracted Items such that rights of third parties are no longer infringed but the Contracted Items continue to fulfil the contractually agreed functions, or shall furnish the Buyer with rights of use by means of a licence agreement. If this is not accomplished within an appropriate period of time, the Buyer shall be entitled to cancel the contract or reduce the purchase price by an appropriate amount. Any compensation claims of the Buyer shall be subject to the limitations set out in section IX of these General Terms and Conditions of Sale and Delivery.

3. In the event of contravention of laws by products from other manufacturers supplied by the Vendor, the Vendor shall, at its own discretion, assert its claims against the manufacturers and component suppliers concerned on behalf of the Buyer or assign the said claims to the Buyer. Claims against the Vendor shall be allowable in such cases in accordance with this section VIII only if legal action in pursuit of the aforesaid claims against the manufacturers and component suppliers has failed or has no prospect of success, for example due to insolvency.

## **IX. Liability**

1. The liability of the Vendor to provide compensation for damages, on whatever legal basis – in particular in respect of impossibility, default, defective or incorrect delivery, contravention of contract terms, infringement against obligations in contract negotiations and unlawful acts – shall, where fault is determined, be limited in accordance with this section IX.
2. The Vendor shall not be liable in cases of simple negligence of its executive bodies, legal representatives, employees or other agents in performance, unless by infringement of obligations material to the contract. Obligations material to the contract are the obligation to ensure prompt delivery and installation of the Contracted Items free of material defects, as well as duties of consultation, protection and care enabling the Buyer to use the supplied Contracted Items in accordance with the terms of the contract, or intended to protect the life and limb of the Buyer's personnel and to protect its property against substantial damage.
3. Where the Vendor is liable in accordance with IX (2) to provide compensation for damages, the liability shall be limited to damages which the Vendor, at the time of signing the contract, foresaw as possible consequences of its contravening contract terms or which it ought to have foreseen if applying customary due diligence. Indirect damages and consequential loss resulting from defects in the Contracted Items shall only be eligible for replacement where such damages are typically to be expected in regulation use of the Contracted Items.

4. In case of liability for simple negligence, the Vendor's obligation to provide compensation for damages and for consequential loss of assets shall be limited to an amount equivalent to the contract value, though to a maximum of EUR 50,000.00 per loss, even where by infringement of obligations material to the contract.
5. The above exclusions and limitations of liability apply to the same extent in favour of the executive bodies, legal representatives, employees and other agents in performance of the Vendor.
6. Where the Vendor furnishes technical information or provides advice, and the said information or advice does not form part of its contractual obligations, the information or advice shall be provided free of charge and excluding any liability.
7. The limitations set out in this section IX. do not apply to the liability of the Vendor in respect of wilful misconduct, warranted characteristics, endangerment of life, harm to the body or to health, or pursuant to the German Product Liability Act.

#### **X. Data protection, confidentiality**

1. The Buyer acknowledges that the Vendor will store data arising from the contractual relationship for the purposes of data processing and reserves the right to transmit the data as necessary to third parties (such as insurance companies) in fulfilment of the contract.
2. The Buyer consents that Buyer's business data transmitted to the Vendor in the frame and for the purposes of the business relation (e.g. balance sheets, progress reports, business plans, bank references etc.) may be processed, forwarded to third parties and used by the Vendor and Vendor's affiliated companies if in context with the business relation.

The Buyer gives the above consent by choice and has the right to revoke it any time. The above consent does not constitute consent to the use of personal data pursuant to the German Data Protection Act.

Unless agreed to the contrary in writing, the Buyer continues to hold the intellectual property in the data transmitted as well as the copyright for this data.

3. Where it has a justified interest (such as if the Buyer asserts warranty claims in respect of the Contracted Items), the Vendor or a third party contracted by it may read out the brake system log of the Contracted Item and access the telematics data relating to the Contracted Item. Access to this data shall be allowed for as long as, and as far as, necessary in order to preserve the justified interests of the Vendor.
4. The Buyer and Vendor may not utilise or disclose to third parties any of the other party's business or operational secrets of which they gain knowledge in the course of their business relations without the consent of the said other party, unless the said business or operational secrets are in the generally accessible public domain or there is a statutory requirement of disclosure. This shall also apply to the period after termination of the contract.

#### **XI. Applicable law, jurisdiction, concluding provisions**

1. The laws of the Federal Republic of Germany exclusively apply, excluding the United Nations Convention on Contracts for the International Sale of Goods.
2. At the discretion of the Vendor, jurisdiction in respect of all disputes arising from the contractual relationship between the Vendor and the Buyer shall lie with the courts of Werlte (Germany) or at the place of business of the Buyer. Mandatory legal requirements of exclusive jurisdiction shall remain unaffected by this provision.
3. If the provisions of the contract or of these General Terms and Conditions of Sale and Delivery are found to have omitted any points, in order to cover the omitted points the legally effective provision which the parties would have agreed in pursuance of the commercial objectives of the contract and the purpose of these General Terms and Conditions of Sale and Delivery if they had been aware of the omission shall be considered agreed.