

# General Terms and Conditions of Sale and Delivery / Data privacy protection

Version dated June 2024

## 1 General, contractual ambit/scope, definition

1.1 The general terms and conditions of trade of KENTAX GmbH Ultra High Vacuum equipment 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.

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 GmbH expressly and in text form.

1.4 Our general terms and conditions of sale and delivery shall also apply to future business connections, unless otherwise explicitly agreed.

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.

## 2 Offer, offer documents, technical documents, assumptions, supplementary offers

2.1 Our offers are subject to change. The contract is only concluded when KENTAX GmbH has expressly confirmed the customer's orders in text form or has carried out the delivery or service.

2.2 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.

2.3 KENTAX GmbH 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 GmbH 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.

2.4 The customer is obliged to check our offer carefully for correctness and expediency. This applies in particular to project offers in which we have made assumptions designated as such, which we have based our calculation and service description on. If such assumptions do not apply, the customer shall inform us so that we can correct the offer.

## 3 Condition of the goods or services

3.1 KENTAX GmbH 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 GmbH has previously given its consent in text form. The ownership of these documents does not entitle the holder to construct machines, installations, components or parts thereof using the technical data.

3.2 Until delivery, we reserve the right to make customary technical changes, in particular improvements, if these only result in insignificant changes to the quality and the customer is not unreasonably affected.

## 4 Prices, remuneration

4.1 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 GmbH for these costs after proof of said costs has been given, in the event that KENTAX GmbH has been obliged to make payments belonging to the above categories.

4.2 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

## **5 Terms of Payment**

5.1 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.

5.2 In the case of bank transfers, the timeliness of payments is determined by the date on which they are credited to our account.

5.3 All costs and fees charged by the customer's bank shall be borne by the customer. Any bank charges incurred by KENTAX GmbH shall be borne by KENTAX GmbH.

## **6 Confidentiality**

6.1 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).

## **7 Retention of Title**

7.1 The products supplied or sold by KENTAX GmbH shall remain the property of KENTAX GmbH until each and every claim KENTAX GmbH 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 GmbH 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 GmbH have been delayed in an unacceptable manner or have failed altogether.

7.3 KENTAX GmbH 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.

7.4 Until the aforementioned claims of KENTAX GmbH have been fulfilled, the items may not be resold, rented, lent, given away or transferred to third parties. Transfer by way of security and pledging are prohibited without the written consent of KENTAX GmbH. If third parties seize the reserved goods, in particular through seizure or the initiation of insolvency proceedings, the customer/orderer shall immediately inform the third party of KENTAX GmbH's ownership of the reserved goods and inform KENTAX GmbH of this in order to enable the enforcement of KENTAX GmbH's ownership rights.

7.5 Insofar as the contractual partner of KENTAX GmbH further processes the object of purchase, the following shall apply: Processing or transformation shall always be carried out for KENTAX GmbH as manufacturer, but without any obligation on its part. If the (co-)ownership of the company KENTAX GmbH expires due to connections, it is already now agreed that the (co-)ownership of the contractual partner in the uniform object is transferred to the company KENTAX GmbH in proportion to the value (invoice value).

7.6 The objects must not be resold, let, lent, or given to a third party before the aforementioned claims of KENTAX GmbH 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.

7.7 For the duration of the retention of title, KENTAX GmbH 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.

7.8 If KENTAX GmbH client defaults on payment or does not comply with his obligations arising from the retention of title, KENTAX GmbH shall be entitled to cancel the contract. KENTAX GmbH 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.

7.9 All costs for reclaiming and utilizing the object of purchase shall be borne by KENTAX GmbH's contractual partner.

7.10 KENTAX GmbH 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 GmbH cannot avert despite due care, regardless of whether they have occurred at the site of KENTAX GmbH, 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 text form.

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 GmbH. 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 GmbH 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 GmbH 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 GmbH, risk shall pass to the ordering party as of the day of the notice of readiness for shipment or acceptance. KENTAX GmbH 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 GmbH 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 GmbH of any possible defects forthwith in text form. Transport damage must be reported within five working days to KENTAX GmbH. If the ordering party fails to report, the delivery and services shall be considered to have been accepted.

9.6 KENTAX GmbH shall repair the defects reported under section 11.7 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 11 and 12 (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 GmbH 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 GmbH's discretion. The discovery of any such defect must be reported to KENTAX GmbH forthwith and in text form. Replaced parts become the property of

KENTAX GmbH.

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

11.3 Without the consent of KENTAX GmbH, it is not permitted to repair defective goods or to commission a third party to repair the defective goods. Further claims shall be dealt with pursuant to section 11.2. of these terms and conditions.

11.4 KENTAX GmbH shall bear the direct costs arising from the repair or replacement delivery - insofar as the complaint proves to be justified - the costs of the replacement part including shipping.

11.5 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 GmbH.

11.6 If the ordering party or a third party has repaired a defect in a faulty manner, KENTAX GmbH 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 GmbH.

11.7 Warranty claims for all new objects sold shall become statute-barred one year after delivery of the object. KENTAX GmbH 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 GmbH's contracting partner shall have the following claims: KENTAX GmbH 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 GmbH'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 GmbH, 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 11.1 shall apply, precluding any further claims of the ordering party. Further claims are excluded insofar as this does not conflict with statutory regulations.

## **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 GmbH.

All other rights to the software and the documentation, copies included, shall remain the property of KENTAX GmbH or the software supplier. The granting of sub-licenses 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 GmbH 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 These Terms and Conditions and the entire legal relationship between the parties shall be governed by substantive German law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

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

15.4 The contract language is German or English.

## 16 Data privacy protection

16.1 The company KENTAX GmbH stores and processes the data of its employees and customers according to the valid data protection law EU-DSGVO and the national implementation law BDSG of Germany.

For all questions regarding data protection, please contact:

Kentax GmbH  
Werftstr. 20e  
30926 Seelze  
Tel.: +49 5137 907884, E-Mail: info@kentax.de

16.2 Personal data is collected, processed and used exclusively for the following purposes:

Preparation of quotations  
Processing of a concluded sales contract including shipment  
Within the scope of the implied warranty.

16.3 Non-anonymized personal data will only be passed on to third parties if this is necessary in individual cases for the enforcement of rights of KENTAX GmbH and in particular for due payment claims against defaulting customers or if KENTAX GmbH is legally obliged to do so.

16.4 Data subject rights:

If your personal data is processed, you are a "data subject". You are therefore entitled to the rights described below vis-à-vis Kentax GmbH. Details can be found in Chapter III of the DSGVO.

a) Right to information according to Art. 15 DSGVO:

You may request confirmation from us as to whether personal data concerning you is being processed by us (so-called processing confirmation). If this is the case, you are entitled to further information rights mentioned in Art. 15 DSGVO. With regard to the right to information, the restrictions pursuant to Section 34 BDSG apply. In your request for information, you should specify your request as precisely as possible in order to make it easier for us to compile the necessary data.

b) Right to rectification according to Art. 16 DSGVO:

If the information concerning you is not (or no longer) accurate, you may request a correction. If your data is incomplete, you can request that it be completed.

c) Right to restriction of processing pursuant to Art. 18 DSGVO:

Under the conditions of Art. 18 (1) DSGVO, you may also request the restriction of the processing of personal data concerning you.

After the restriction, your data may - apart from being stored

- only with your consent or
- for the assertion, exercise or defense of legal claims, or
- to protect the rights of another natural or legal person, or
- for reasons of important public interest of the Union or of a Member State.

processed. We will inform you before the restriction is lifted.

d) Right to erasure according to Art. 17 DSGVO:

You may demand that we delete the personal data relating to you without delay if one of the reasons set out in Art. 17 (1) DSGVO applies. In the case of the right to deletion, the restrictions pursuant to Art. 17 (3) DSGVO and Section 35 BDSG apply.

e) Right to data portability according to Art. 20 DSGVO:

You also have the right to receive your personal data that you have provided to us in a structured, common and machine-readable format and to transfer the data to another controller without hindrance, provided that the requirements of Art. 20 (1) a DSGVO are met. You may also obtain that this data is transferred directly from us to another controller, insofar as this is technically feasible and no freedoms and rights of other persons are thereby impaired.

This right does not apply to processing of personal data which is necessary for the performance of a task carried out in the public interest, or for the exercise of official authority.

f) Right to object:

You have the right to object at any time to KENTAX GmbH to the processing of personal data relating to you in accordance with Art. 6 (1) f DSGVO (data processing on the basis of a balance of interests).

We will no longer process your personal data unless compelling legitimate grounds for the processing override your interests, rights and freedoms, or the processing serves to assert, exercise or defend legal claims. The objection can be made form-free and should preferably be addressed to one of the contact details mentioned in section 16.1.

g) Right to revoke the declaration of consent under data protection law:

You have the right to revoke your declaration of consent under data protection law at any time by providing KENTAX GmbH with an explanation. The revocation of the consent does not affect the lawfulness of the processing carried out on the basis of the consent until the revocation.

h) Right of complaint to a supervisory authority:

As a data subject, you have the right to lodge a complaint with a supervisory authority in accordance with Article 77 DSGVO if you believe that the processing of your personal data is unlawful.

16.5 Use of cookies:

The web pages of Kentax GmbH do not use cookies. Some of KENTAX GmbH's cooperation partners may also place cookies on this website. Kentax does not have access to these cookies and cannot control them. You have the option to disable the acceptance of cookies in the web browser. KENTAX GmbH does not accept any responsibility for the use of cookies by cooperation partners.

16.6 To prevent unauthorized access or disclosure and to ensure the accuracy of the data and the authorized use of the data, KENTAX GmbH uses appropriate technical and organizational procedures. Nevertheless, no electronic communication is completely secure. This means that all data and information that purchasers voluntarily provide to KENTAX GmbH in the course of preparing an offer and processing a contract could be obtained by third parties by way of unlawful data acquisition. KENTAX GmbH cannot accept any responsibility or liability for the disclosure of information due to errors and/or unauthorized access during data transmission by third parties.