

General Terms and Conditions of Assembly

I. Terms of a Contract, Scope of Application, Offer

1. All supplies and services of KOSME Germany GmbH shall exclusively be effected on the basis of the General Terms and Conditions of Assembly of KOSME Germany GmbH described here. Different terms and conditions of Customer will not be accepted by KOSME Germany GmbH unless KOSME Germany GmbH has explicitly consented to their application in writing. These General Terms and Conditions of Assembly of KOSME Germany GmbH shall also apply if KOSME Germany GmbH – knowing opposed conditions or conditions of Customer deviating from these present Terms and Conditions – completes the delivery to Customer without reservations.
2. These present Terms and Conditions shall apply to all services of KOSME Germany GmbH regarding, and in connection with, the installation, commissioning, acceptance (where required by law or contract), maintenance, servicing, repair and dismantling of machines and lines. In the present Terms and Conditions of Assembly, these works are referred to, without differentiation, as assembly or assembly work(s).
3. Any individual agreements concluded between the parties hereto concerning the rights and duties of these parties shall take precedence over the present Terms and Conditions.
4. All agreements entered into between KOSME Germany GmbH and Customer with regard to performance of the contract shall be made in writing.
5. These present Terms and Conditions shall only apply in relation to entrepreneurs, legal persons and/or special funds under public law (as defined in section 310 BGB [German Civil Code]).
6. These present Terms and Conditions shall also apply to all future business transactions between KOSME Germany GmbH and the Customer.
7. If an order can be legally qualified as an offer (as defined by section 145 BGB), KOSME Germany GmbH may accept such offer within four weeks of its receipt.

II. Documents, Business Secrets, Preparatory Work

1. KOSME Germany GmbH shall retain all rights, in particular property rights and copyrights, in all cost estimates, calculations, plans, illustrations, drafts, preparatory work, drawings and other documents. They shall not be made accessible to third parties without the written consent of KOSME Germany GmbH. Any documents designated as confidential by Customer shall not be made accessible to third parties by KOSME Germany GmbH without the written consent of Customer. Documents supplied by KOSME Germany GmbH shall be used solely to prepare the conclusion of the contract, and, thereafter, to execute such contract. Any other use is prohibited.
2. Customer shall not disclose to third parties any business secrets of KOSME Germany GmbH or of its associated companies (as defined by section 15 of the Aktiengesetz [German Stock Corporation Act]), which Customer has received knowledge of. KOSME Germany GmbH shall not disclose to third parties any business secrets of Customer or its associated companies (as defined by section 15 of the Aktiengesetz [German Stock Corporation Act]), which KOSME Germany GmbH has received knowledge of.
3. Both KOSME Germany GmbH and Customer shall use adequate means to ensure that their directors, officers and employees will also comply with the above obligations.

III. Time for Performance

1. The time for performance shall commence upon dispatch of the order confirmation and clarification of all technical questions, provided that Customer has supplied all plans, documents, approvals, releases and permits to be made available by him, and any agreed advance payment has been received.
2. A default in performance due to force majeure shall not entitle Customer to a claim (in particular, a claim for a contractual penalty or damages) against KOSME Germany GmbH. Any unforeseeable event or an event, which – though foreseeable – is beyond the influence and control of KOSME Germany GmbH and the effects of which cannot be avoided by the exercise of reasonable care shall be considered an event of force majeure. Such events include, but are not limited to, delayed performance by subcontractors/suppliers, acts of war (whether declared or not), war-like conditions, riot, revolution, rebellion, military or civilian coups d'état, insurrection, turmoil, outrages, blockade, embargo, government order, sabotage, strikes, go-slow strikes, lockout, epidemic diseases, fire, floods, storm tides, typhoons or other severe weather conditions, general lack of raw materials and supplies, shipwreck, insufficient port facilities and unloading capacity, delays resulting from transportation, non-availability of freight capacity, justifiable change/exchange of freight forwarder and/or carrier and/or ship owner and/or other commercial shipping company, accidents in transit, earthquakes, radioactive accidents, physical or man-made obstructions of any kind at the building site/production facility.
3. In all cases, where obstacles to performance – regardless of their nature – are not its responsibility, KOSME Germany GmbH shall be entitled to demand a reasonable extension of time for performance as well as additional remuneration to compensate for the additional performance and/or costs from Customer.
4. Where Customer is in default with regard to acceptance or is in violation of any other contractual obligation to cooperate, the risk of accidental loss, destruction or accidental deterioration of the machine or line assembled by KOSME Germany GmbH shall pass to Customer at the latest at the time such default arises.
5. This agreement shall not preclude any further rights that KOSME Germany GmbH may have.
6. Compliance with the time for performance shall be subject to Customer duly fulfilling its contractual duties in a timely manner.
7. Partial performance by KOSME Germany GmbH may only be rejected where they impose on Customer in an unreasonable manner.

IV. Acceptance, Remuneration and Payment

1. If there must be an acceptance, the object of contract shall be regarded as having been accepted as soon as
 - 1.1. the delivery and – if KOSME Germany GmbH also owes the installation – the installation are completed,
 - 1.2. KOSME Germany GmbH has informed Customer about this fact referring to the assumed acceptance according to this number 1 and has asked for Customer's acceptance,
 - 1.3. two weeks have passed since the delivery or installation or the Customer has started to use the purchased object (for example commissioned the line delivered) and in this case, one week has passed since the delivery or installation, and
 - 1.4. Customer has failed to accept the object of contract during this period for any other reason than a defect making the use of the item impossible or materially impairing it, of which KOSME Germany GmbH has already been informed.
2. KOSME Germany GmbH is entitled to receive payments on account of remuneration. These payments on account are due in intervals of two weeks. KOSME Germany GmbH may select longer intervals at its discretion. Billing of the remuneration and payments on account will be carried out by KOSME Germany GmbH after completion of the assembly work or, if the assembly work is interrupted, upon interruption of said work. Unless otherwise agreed, payment is due net upon receipt of the invoice. KOSME Germany GmbH shall be notified without delay of any advance payments made by Customer to service engineers.
3. Customer shall bear all costs of required remedial actions which become necessary as a result of faulty or incomplete drawings or other documentation or instructions issued by Customer.
4. Unless otherwise agreed – proof of such agreement shall be furnished by Customer – the remuneration for assembly works carried out by KOSME Germany GmbH shall be based on the relevant assembly rates of KOSME Germany GmbH as amended. In this connection, invoicing shall be based either on the number of working hours performed by the service engineers of KOSME Germany GmbH with regard to said works (hourly rates for service engineers) or, in case of an agreed daily lump sum, on the working days spent with regard to such works (daily rates for service engineers). The rates for service engineers (hourly rates or daily rates for service engineers) will be calculated according to the price list "Terms and Conditions of Field Service" valid as amended.
5. Additionally, KOSME Germany GmbH is entitled to "allowance rates" (lump-sum compensation for board and accommodation) and the reimbursement of travel expenses (lump-sum compensation for travel to and from as well as travels at the assembly location). KOSME Germany GmbH will invoice the allowance rates and travel expenses according to the lump-sum compensation set out in the price list "Allowance Rates per Country" valid as amended, both when it bills based on hourly rates for service engineers and when it bills based on daily rates for service engineers. Increased expenses for transporting parts and tooling will be charged separately.
6. The administrative fees which might arise and need to be compensated by the Customer as well as other possible conditions regarding assembly are based on the price list "Terms and Conditions of Field Service" valid as amended.
7. In cases where invoicing is based on the hourly rates for service engineers, the allowance will be charged pro rata temporis if assembly works, including travel to and from the place of performance, take less than six hours. If the six hours are exceeded, the allowances rates will be charged in full. In cases where invoicing is based on the daily rates for service engineers, the allowance rates per day will always be charged in full.
8. Separate remuneration is due from Customer for the time spent on preparation and formalities in connection with the outward and return trips; the outward and return trips themselves as well as other trips to which the service engineers are entitled by the applicable law, labour-management agreements or collective bargaining agreements in Germany; daily travel between the service engineers' accommodations and the assembly site if a single trip takes longer than 30 minutes and no adequate accommodation is available closer to the assembly site; bridging of times in which work is prevented due to circumstances beyond the control of KOSME Germany GmbH; for all these items remuneration is based on the assembly rates and allowance rates valid as amended. Outgoing and returning trips in the sense used above are journeys from Neutraubling to the assembly site and back again to Neutraubling.
9. Customer shall reimburse the costs incurred by KOSME Germany GmbH for making available any pieces of equipment and, where necessary, shall provide separate remuneration for the use of heavy tooling.
10. Foreign taxes and duties which arise for KOSME Germany GmbH on the invoice amount in the country of the assembly site shall be borne by Customer. Where possible and permitted by law, Customer shall pay said taxes and duties directly or else shall reimburse KOSME Germany GmbH upon first request.
11. If assembly is delayed due to violation of Customer's duty to cooperate and other Customer duties (see article VI) or for other reasons under the control of Customer or a third party commissioned by Customer, but not under the control of KOSME Germany GmbH, Customer shall compensate KOSME Germany GmbH for:
 - 11.1. Waiting times and additional travel times, which shall then be remunerated on the basis of the hourly rates for service engineers or daily rates for service engineers and allowance rates;
 - 11.2. Costs and additional working hours resulting from the delay, including the dismantling, safeguarding and erection of assembly equipment;
 - 11.3. Additional costs, particularly costs incurred by KOSME Germany GmbH due to its equipment being held up at the assembly site longer than expected;

- 11.4. Additional travel expenses for the service engineers;
 - 11.5. Additional costs of financing and insurance;
 - 11.6. Other verified costs incurred by KOSME Germany GmbH.
 12. Voluntary payments made by Customer to the service engineers without prior agreement with KOSME Germany GmbH need not be reimbursed by KOSME Germany GmbH.
 13. If on assembly jobs in Germany and neighbouring countries, service engineers are entitled to travel home after an assembly period of 2 weeks and at Easter, Whitsun and Christmas. For assembly jobs in the rest of Europe, the same arrangement applies for an assembly period of 3 weeks. For assembly jobs in other parts of the world, this arrangement applies for an assembly period of 6 weeks. Customer shall bear the costs thus incurred and will be charged by KOSME Germany GmbH accordingly.
 14. To the extent that KOSME Germany GmbH is obliged by the Verpackungsverordnung [German Packing Ordinance] to take back packaging used for transportation, Customer shall bear the costs of returning the used packaging and the reasonable costs for its recycling. To the extent that the packaging taken back cannot be reused, Customer shall bear the costs of the material processing incurred by KOSME Germany GmbH. In addition, the Customer shall pay any duties, clearance charges, taxes and other charges incurred as a result of taking back transport packaging.
 15. Containers used for transportation are not included in the scope of this contract and are not considered packaging. They shall remain property of KOSME Germany GmbH. They shall be imported, re-exported and sent back to KOSME Germany GmbH by Customer at Customer's expense (shipping costs, duties, clearance charges, taxes and other charges) and risk.
 16. Tools, excess material, welding supplies and other auxiliary equipment are not within the scope of this contract. They shall remain property of KOSME Germany GmbH. They shall be imported, re-exported and sent back to KOSME Germany GmbH by Customer at Customer's expense (shipping costs, duties, clearance charges, taxes and other charges) and risk.
 17. Customer shall credit the agreed remuneration and reimbursement to one of the bank accounts specified by KOSME Germany GmbH strictly net at its own risk and expense.
 18. KOSME Germany GmbH shall be entitled to interest on payments due and in arrears to the extent provided by law. A potential assertion of further rights and losses by KOSME Germany GmbH shall not be affected hereby.
 19. Customer shall not be entitled to any rights of set-off and retention, unless its counter-claims have become legally effective (res judicata), are uncontested or have been acknowledged by KOSME Germany GmbH, and KOSME Germany GmbH was given at least one month's advance notice of such counter-claim.
 20. If, after conclusion of the contract, KOSME Germany GmbH learns about circumstances giving rise to doubt regarding Customer's creditworthiness, KOSME Germany GmbH may – at its discretion – request advance payment or suitable securities.
 21. KOSME Germany GmbH shall be entitled to increase the agreed remuneration appropriately if cost increases occur after conclusion of the contract, in particular due to collective wage agreements, material price increases or the increase of transport and packaging costs. Upon request, KOSME Germany GmbH shall furnish proof for such increases to Customer.
 22. KOSME Germany GmbH shall be entitled to increase the agreed remuneration reasonably if – after the conclusion of contract – Customer requests that the object of contract be modified, and additional expenses and efforts are required for such modifications. Upon request, KOSME Germany GmbH shall furnish proof of such additional expenses and efforts to Customer.
- V. Transport Risk and Retention of Ownership**
1. The following shall apply in case of a damage in transit or a defect due to transportation affecting part of the assembly work performed by KOSME Germany GmbH: KOSME Germany GmbH shall assign its claims resulting therefrom, if any, against transport insurance(s) and carriers to Customer at the latter's request (with any liability for the existence of such claims being excluded); such assignment shall be concurrent with payment of the overall agreed remuneration and of all costs owed. Any further claims against KOSME Germany GmbH resulting from any damage in transit or a defect due to transportation shall be excluded.
 2. Any limitation periods, bar periods, exclusions of liability and limitations of liability under transport or maritime law which apply in favour of (natural or legal) persons entrusted with the transportation/loading/unloading/storage of the machine or line assembled by KOSME Germany GmbH in their relationship to KOSME Germany GmbH shall apply equally in favour of KOSME Germany GmbH in the contractual relationship between Customer and KOSME Germany GmbH.
 3. KOSME Germany GmbH shall retain ownership of items forming part of the assembly work owed by KOSME Germany GmbH until payment of all amounts owed by Customer has been received. The provisions set out in article VI "Retention of Ownership" of the General Terms and Conditions of Performance, Sale and Delivery of KOSME Germany GmbH shall apply in addition.
- VI. Duty to Cooperate, Other Duties of Customer**
1. The commissioning of machines, particularly the adjustment and fine tuning of units as well as instructing of operating personnel, shall principally be performed by experts field service of KOSME Germany GmbH.
 2. Where conveyors are connected by the Customer, the latter shall ensure correct and accurate feeding and discharging of bottles (or other containers).
 3. The Customer shall create the following conditions, on time and at its own cost and risk, in order to ensure smooth operation of the contracted work:
 - 3.1. Customer shall provide KOSME Germany GmbH with the drawings and other documentation needed to carry out the contracted work.
 - 3.2. The service engineers of KOSME Germany GmbH shall be allowed to commence their work at the agreed time and to conduct their work during the hours which are regarded as normal working hours.
 - 3.3. The service engineers of KOSME Germany GmbH are also permitted to perform their work outside the hours regarded as normal working hours should this appear necessary to KOSME Germany GmbH and provided this is not immediately forbidden by Customer.
 - 3.4. Customer shall complete the preparatory work on time. In particular, Customer shall ensure that the foundations are adequate for the load.
 - 3.5. The service engineers of KOSME Germany GmbH must have adequate and safe accommodation near the assembly site and receive healthy food and drink. They must have access to sanitary facilities and medical services of international standard.
 - 3.6. The access routes to the assembly site shall be suitable for the required transportation of items belonging to the assembly work, assembly equipment, assembly tools, cranes and other lifting equipment. Moreover, said access routes shall be safe.
 - 3.7. All items to be made available by the Customer shall be present at the respective assembly site when works commence.
 - 3.8. Customer shall make available to KOSME Germany GmbH, on time and free of charge, its own workshops and all cranes required at the assembly site, as well as lifting equipment and means of transport within the assembly site, auxiliary devices, machines, materials and operating materials (including petrol fuels, oils, greases and other materials, gas, water, electricity, steam, compressed air, heating, light, etc.), and Customer's measuring and testing instruments existing at the assembly site. Availability shall also be assured outside of those hours regarded as normal working hours.
 - 3.9. An air-conditioned room with lighting, washing facilities and lockers shall be made available to the service engineers during their breaks.
 - 3.10. The installation area shall be prepared so that the assembly and commissioning work can be carried out unhindered and the service engineers are protected from unhealthy or hazardous working conditions.
 - 3.11. Electrical connections shall be made exclusively by an authorised electrician working on account of the Customer.
 - 3.12. The sample materials (bottles or other containers, labels, glue etc.) needed for the commissioning of machines shall be made available on time and in full by Customer in order that machines can be test-run with all handling parts delivered.
 - 3.13. When assembly work is completed, the operating personnel shall be available on time for instruction. The staff which will later be responsible for monitoring, operating and servicing the line should be present – if possible – during the assembly work.
 - 3.14. Cleaning work shall be performed by Customer.
 - 3.15. Customer shall provide KOSME Germany GmbH with the necessary storage facilities at the assembly site to protect items belonging to the assembly work, assembly equipment and assembly tools, as well as the personal possessions of the service engineers of KOSME Germany GmbH from theft or deterioration.
4. The service engineers' working hours, performance and completion of works shall always be confirmed by Customer on the travel reports to be submitted by the service engineers.
5. Where performance of the contract requires public permits/ authorisations/ notices etc., the latter shall be obtained by Customer at its own expense and risk. Customer undertakes to obtain, on time and at its own expense and risk, all essential permits/authorisations/notices/visas etc. necessary for (a) the service engineers to enter, reside in, carry out their works, and leave the country, and (b) the (temporary) import and export of assembly equipment and assembly tools, and (c) the import of items required for the assembly work. Customer shall either directly pay duties, taxes and other levies, as well as fees, bonds, sureties and deposits etc. arising in this connection or reimburse KOSME Germany GmbH for them on first request.
6. Customer undertakes to give operating personnel careful instruction at its own expense concerning all safety regulations. Before assembly work commences, Customer shall inform the service engineers of KOSME Germany GmbH of all pertinent safety regulations in force at the assembly site. The assembly work shall not be performed in an unhealthy or hazardous environment. All necessary safety and protection measures shall be taken before the assembly work commences and shall be maintained while the assembly work continues.
7. The Customer shall continuously monitor, at its own cost and risk, all legally prescribed values and limits and shall conduct the requisite control testing. Type and scope of all the testing procedures shall be documented by the Customer.
- VII. Rights of Customer in Case of Defects**
1. KOSME Germany GmbH shall be liable to Customer for the assembly works being free from defects of quality and title at the time risk passes to Customer. Irrelevant deviations from qualities agreed upon shall not constitute defects. Standard deviations or deviations which are based on legal provisions or constitute technical improvements as well as the replacement of components by equivalent parts shall also be admissible unless they impair the usability for the contractually intended purpose.
 2. KOSME Germany GmbH shall not be held liable for defects or damage arising from:
 - Defects resulting from constructions prescribed or specified by Customer, defects resulting from materials (including sample materials) prescribed, specified or supplied by Customer, or defects resulting from other provisions by Customer.

Defects or damage arising after the passing of risk due to faulty or negligent treatment, operating by untrained staff, excessive use, unsuitable operating materials, faulty construction work, unsuitable foundation or such defects arising due to special external influences not stipulated in the contract, as well as non-reproducible software errors.

Where Customer or third parties undertake inappropriate modifications or maintenance work, any liability of KOSME Germany GmbH for these modifications, work or their consequences shall be excluded.

3. KOSME Germany GmbH shall not be liable for wear parts (definition to follow), which are part of the assembly works. Wear is the progressive loss of material from the surface of a solid object induced by mechanical causes such as contact and relative motion of another solid, fluid or gaseous object.

A wear part is a part that is used in places which unavoidably experience wear for operational reasons in order to protect other elements under consideration from wear, and which, by design, is intended for replacement.

4. Where a defect in the assembly works gives rise – while taking into account numbers 1 to 3, above – to the respective claims for defects of Customer, Customer shall, at first, only have a right to cure within a reasonable time. The expenses required for cure shall be borne by KOSME Germany GmbH. Replaced parts shall become property of KOSME Germany GmbH.

5. When requested to do so by KOSME Germany GmbH and at the latter's expense, Customer shall send the defective parts in question to KOSME Germany GmbH for repair or replacement by a spare part, unless the defect requires repair at the place of assembly.

In such case, KOSME Germany GmbH's obligation to provide cure with regard to the defective part shall be deemed to have been completely fulfilled once KOSME Germany GmbH returns the duly repaired part or sends a suitable replacement part to Customer.

Where costs have increased due to the object of assembly having been brought to a site other than the original place of assembly, contrary to the usage originally specified, claims of Customer for such additional costs, that are made necessary by the remedial performance, including, but not limited to, costs due to transportation and infrastructure, labour and material, shall be excluded.

6. Where the defective part of the assembly works is a product delivered or any other service rendered by a third party, liability of KOSME Germany GmbH shall initially be limited to an assignment of the liability claims which KOSME Germany GmbH is entitled to against such third party. Only once legal action has been taken against such third party by Customer, shall KOSME Germany GmbH's own liability be revived.
7. Customer shall examine the assembly works performed by KOSME Germany GmbH directly upon receipt thereof and notify KOSME Germany GmbH of any recognisable defects without delay. This duty of immediate notification shall also apply in case a defect becomes apparent at a later date. Where the Customer fails to give such notice, the assembly work shall be deemed accepted even in view of the defect.
8. Where Customer does not accept the cure offered by KOSME Germany GmbH under the contract, KOSME Germany GmbH shall be released from liability for the claimed defect after additional time has been set and expired without result.
9. Where cure has failed, Customer shall be entitled – subject to the conditions contractually agreed upon, including those resulting from the present Terms and Conditions of Assembly of KOSME Germany GmbH – to assert its other claims for defects. In particular, cure shall be deemed to have failed, where KOSME Germany GmbH has allowed reasonable additional time set by Customer to expire without result, or has unduly delayed or refused cure, or where a reasonable number of attempts at cure have been unsuccessful.
10. KOSME Germany GmbH may refuse to remedy a defect, if Customer does not make payment as agreed upon. Customer shall only be entitled to retain payments for cause where a notice of defect is asserted which is justified beyond all doubt. This right of retention shall be limited in its amount to four times the costs necessary to remedy the defect. Where Customer makes a claim based on a defect, and it is subsequently shown, in particular by means of an appropriate inspection by KOSME Germany GmbH, that the claim based on defect made by Customer is unwarranted for factual or legal reasons, KOSME Germany GmbH shall be entitled to reasonable payment and reimbursement of all expenses for services, particularly those rendered in relation to the inspection.
11. All claims for damages shall be subject to the limitations, modifications and exclusions provided by the following article VIII, as set out below.

VIII. Limitation or Exclusion of Liability of KOSME Germany GmbH

1. Customer shall carefully observe both the instructions for use and the operating instructions, as well as the safety information provided by KOSME Germany GmbH. In particular, Customer shall comply with the instructions of KOSME Germany GmbH on how the object of contract is to be used without risk, which precautions are to be taken regularly and individually, and which types of misuse are to be avoided. If Customer breaches this duty, KOSME Germany GmbH shall not be liable for any damage resulting therefrom.
2. Limitation of liability of KOSME Germany GmbH for damage, both direct and consequential, resulting from defects:
KOSME Germany GmbH shall neither be liable for any direct damage resulting from defects (including damage consisting of lost profit) nor for consequential damage resulting from defects, regardless of the legal ground. This exclusion of liability shall not apply to claims by Customer for damage based on gross fault (intent/gross negligence).
3. Limitation of liability of KOSME Germany GmbH for ordinary (as opposed to gross) negligence:
Any claims of Customer, regardless of the legal ground, for damages not arising from gross fault (intent/gross negligence) on the part of KOSME Germany GmbH

shall be excluded, unless the damage is due to the presence of a defect or the breach of material contractual duties the fulfilment of which is a prerequisite to the proper execution of the contract and on the compliance with which Customer has regularly relied and may rely (so-called "cardinal duties").

4. Limitation of liability of KOSME Germany GmbH for not typically foreseeable damage:

Unless any claims for damages by Customer are already excluded due to the limitations of liability of KOSME Germany GmbH for direct and consequential damage (number 2) and for ordinary negligence (number 3), where such claims – regardless of legal reason – are not based on gross fault (intent/gross negligence) on the part of KOSME Germany GmbH, such claims shall be limited in their amount to compensation for such damage which KOSME Germany GmbH, taking into consideration the circumstances that KOSME Germany GmbH knew or should have known at the time of conclusion of the contract, should have been able to foresee as a possible consequence of a breach of duty or a breach of contract (typically foreseeable damage).

5. Limitation of liability of KOSME Germany GmbH for improper performance:

Unless a claim by Customer has already been excluded due to the limitations of liability in favour of KOSME Germany GmbH with regard to direct or consequential damages (number 2) and for ordinary negligence (number 3), where – as a result of improper performance – Customer asserts a claim for either damages due to breach of duty or damages in lieu of performance against KOSME Germany GmbH, and where such claim is not based on gross fault (intent/gross negligence), this claim for damages shall be limited – beyond the limitation of liability of KOSME Germany GmbH for the typically foreseeable damage (number 4) – to a maximum amount of 10 % of the agreed remuneration. Improper performance shall be deemed to exist where obstacles arise during the contractual relationship that impede or prevent proper fulfilment of contractual duties or where one party to the contract causes injury to the other party.

6. Limitation of liability of KOSME Germany GmbH for damage caused by delay:

The above limitations of liability in favour of KOSME Germany GmbH with regard to direct and consequential damages (number 2), ordinary negligence (number 3), not typically foreseeable damage (number 4) and improper performance (number 5) shall also apply to claims for damages of Customer against KOSME Germany GmbH with regard to damage caused by delay, unless such damage is based on gross fault (intent/gross negligence). In excess of the foregoing, in all cases of delayed assembly work, including claims both for damages by Customer due to delay of assembly as well as damages in lieu of assembly, and even in cases where time for assembly may have been extended for KOSME Germany GmbH and has expired, damages shall be limited in their amount to 0.5 % per fully completed week of delay – to a maximum of 5 % – based on the agreed remuneration of that portion of the assembly works, which could not commence operations expeditiously due to such delay.

7. Limitation of liability of KOSME Germany GmbH for persons used to perform obligations:

Except where – due to gross fault (intent/gross negligence) of the person used to perform an obligation – such contractual duties were breached, the fulfilment of which was prerequisite to the proper execution of the contract, any liability for persons used to perform obligations (section 278 BGB [German Civil Code]) shall be excluded regardless of the legal ground. In no event shall the liability of KOSME Germany GmbH for a person used to perform an obligation exceed the liability of KOSME Germany GmbH for its own fault as provided for in the above limitations of liability. According to section 278 BGB [German Civil Code], a person used to perform an obligation is a natural person or legal entity whose services the obligor uses in order to fulfil its obligations.

8. Customer's right to rescind the contract due to non-performance or performance not in conformity with the contract shall be excluded. This shall not apply, where KOSME Germany GmbH has intentionally or grossly negligently failed to perform in conformity with the contract.

9. The preceding limitations of liability (number 1 to number 8) shall not apply to claims of Customer due to intentional or grossly negligent behaviour, to guaranteed characteristics, due to injuries to life, body or health or according to the Product Liability Act.

10. In cases where the freight forwarder is arranged for by the Customer, KOSME Germany GmbH will not be held liable for any costs incurred as a result of additional security checks or time delays occasioned by the requirements of the German Aviation Security Act and the Regulations (EU) 2008/300; (EU) 2010/185; (EU) 2012/173; (EU) 2009/272 or any other current national or international statutory provisions. Customer shall indemnify KOSME Germany GmbH on first demand from all costs and losses resulting from additional security inspections and related time delays in this respect.

IX. Limitation Period

1. Where claims arising due to defects would – by default – be subject to a statutory limitation period of two years (e.g. section 634a s. 1 no. 1 BGB), such limitation period shall be shortened to one year. Where the customer has claims due to defects which arise from the grant of a guarantee regarding a quality, these claims shall be excluded from such shortening of the limitation period. The limitation period shall commence upon completion of the assembly. Where the Customer's acceptance is in delay, the limitation period shall commence upon the occurrence of delay in acceptance.

2. Recourse claims in the supply chain according to section 445b s. 1 BGB will become time-barred within one year after KOSME Germany GmbH delivered the object to the Customer. The suspension of the limitation as defined in section 445b s. 2 BGB shall remain in full force and effect; it will end not later than five years after delivery.

3. For all other claims, the statutory limitation periods shall apply.

X. Software

To the extent that KOSME Germany GmbH provides Customer with software, the following shall apply:

1. KOSME Germany GmbH shall grant Customer a simple right of use pursuant to section 31 s.2 of the Copyright Law (UrhRG) regarding the software provided. Section 31, s.2 of the German Copyright Act reads: "The simple right of use entitles the holder thereof to make use of the work besides the author/originator or other persons entitled in the manner allowed to him." With regard to the software, KOSME Germany GmbH shall remain the sole owner/holder of the intellectual property rights at any time.
2. Customer shall only be entitled to use the software provided in connection with the plant or machine assembled by KOSME Germany GmbH.
3. Customer shall not be entitled to hand-over of the source program/source code.
4. Customer shall be entitled to make use of the software provided for an unlimited period of time for the entire operational life span of the plant or machine assembled by KOSME Germany GmbH.
5. Customer shall not be entitled to assign its right of use to third parties; in particular, the Customer shall not be entitled to sell, rent, sub-license or make available the software and the associated documentation to third parties by any other means. Where the Customer assigns its complete business enterprise to a third party, the Customer shall be entitled to assign its own right of use to such a third party. Where Customer sells the complete works to a third party in the normal course of business and such third party is not a competitor of KOSME Germany GmbH, upon request KOSME Germany GmbH shall consent to an assignment of the right of use granted to Customer, unless KOSME Germany GmbH presents reasons for the fact that such action will create the risk of providing competitors of KOSME Germany GmbH with secret knowledge (trade/business secrets) of KOSME Germany GmbH.
6. The right of use of the Customer shall be non-exclusive. KOSME Germany GmbH shall be entitled to grant any form of right of use regarding the software provided to any number of other customers.
7. With the exception of staff members, the Customer shall not make the software supplied available or accessible to any third party, neither temporarily nor free of charge.
8. The Customer shall not change in any manner whatsoever any markings, copyright or ownership notices applied to the software provided.
9. The Customer shall not create copies of the software supplied, with the exception that one backup copy may be created by a person entitled to use the program, where this is necessary to secure the future use thereof. The backup copy shall not be used concurrently with the original software.
10. The Customer shall not be entitled to photocopy, place on microfilm, electronically duplicate or otherwise copy, whether wholly or partially, the documentation associated with the software.
11. Any disassembly, reverse engineering or decompilation of the software shall be prohibited, and the Customer shall neither arrange for nor permit the above to be done, except in accordance with the conditions of section 69e of the German Copyright Act (UrhRG).
12. KOSME Germany GmbH shall be entitled to all proprietary rights, copyrights and other industrial property rights to the software, updates and documentation. The same shall apply to any modifications and translations/compilations of the programs.
13. KOSME Germany GmbH is entitled to carry out, at its own expense, any alterations to the software installed at the Customer's premises which may be necessary due to the assertion of proprietary rights by third parties. Customer cannot derive any rights from this.

XI. Data Protection and Data Usage

1. KOSME Germany GmbH processes personal data according to the provisions of the European General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG). For more information regarding the handling of customer data at KOSME Germany GmbH, please refer to www.krones.com. Customer is obliged to comply with all applicable data protection regulations.
2. KOSME Germany GmbH is entitled to collect, store, process and evaluate machine data and duly anonymized personal data. Such data can also be disclosed to KOSME Germany GmbH associated companies ("Subsidiaries") for the purpose of using such data for product improvement, performance enhancement applications and other services of KOSME Germany GmbH and/or Subsidiaries.
3. KOSME Germany GmbH is entitled to transmit customer data to third parties (including Subsidiaries) if and to the extent that this is required for the implementation of pre-contractual measures and for the contractual agreed supplies and services (e.g. for dispatch, invoicing or Customer support), or to fulfil statutory obligations.

XII. Place of Jurisdiction, Applicable Law, Place of Performance, Severability Clause

1. Where Customer is a fully qualified merchant registered in a German Commercial Register, a legal entity subject to domestic public law or a trustee of public funds, the registered place of business of KOSME Germany GmbH shall be place of jurisdiction for any disputes arising from or in connection with the contractual relationship. In legal proceedings brought against KOSME Germany GmbH by Customers with no general place of jurisdiction in the Federal Republic of Germany, the exclusive place of jurisdiction shall also be the registered place of business of KOSME Germany GmbH. In legal proceedings brought by KOSME Germany GmbH against Customers with no general place of jurisdiction in the

Federal Republic of Germany, the registered place of business of KOSME Germany GmbH shall be a further place of jurisdiction, in addition to the places of jurisdiction provided by law. Any arbitration agreements made between the parties take precedence.

2. The laws of the Federal Republic of Germany shall apply exclusively both with regard to the applicability of these General Terms and Conditions of Assembly of KOSME Germany GmbH and to all legal relationships of the contractual parties and their legal successors/assigns, that result from the contract and/or any possible ancillary or subsequent transactions. This choice of law and the agreement on jurisdiction above shall likewise be governed by the law of the Federal Republic of Germany.
The above choice of law shall not exclude application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
3. The registered office of KOSME Germany GmbH shall be the place of performance.
4. Should the contract or any one of the above provisions of these General Terms of Assembly of KOSME Germany GmbH be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The contracting parties shall rather cooperate to replace the ineffective provision by a legally admissible and effective provision suited to achieve the success at which the invalid provision was aimed. The same applies to the closure of any contractual loopholes or omissions.

Origin of goods (USP): 0 = Third country products 1 = EU-origin 2 = EFTA-origin