

Kiesel Group General Terms and Conditions for Sales, Deliveries and Customer Services

1. Scope and definitions

1.1. These terms and conditions apply to Kiesel GmbH and all affiliated companies as defined in § 15 of the German Stock Corporation Act (AktG), hereinafter collectively referred to as "Kiesel".

1.2. These conditions apply to all sales and deliveries of machines and the provision of customer services in commercial business transactions vis-à-vis merchants and entities and institutions governed by public law, but not in relation to consumers within the meaning of § 13 BGB (German Civil Code).

1.3. Amendments and subsidiary agreements will regularly be reconfirmed in writing by Kiesel.

1.4. Any deviating general terms and conditions specified by the customer do not apply.

1.5. Machines include all new and used machines, in particular, but not exclusively, construction, material handling and industrial machines as well as all replacement, exchange and attachment parts sold by Kiesel or for which Kiesel provides customer services.

1.6. Customer services includes all repair, maintenance, servicing, warranty and guarantee works performed on machines.

2. Conclusion of contract, prices, ordering of replacement parts, cost information, cost limits, cost estimates

2.1. All quotations issued by Kiesel are valid for 14 days. If a quotation is not accepted within this period, the quoted prices shall be deemed non-binding. If, by way of exception, a quotation remains valid for more than 14 days, Kiesel reserves the right to adjust the purchase price in the event of a price increase by the manufacturer affecting the item (or any of its components) between the date of the quotation and the expiry of the quotation period. Any such adjustment will reflect the new cost situation and will be based on the principle of fairness. The adjusted purchase price will be communicated to the customer in writing.

2.2. In the event of a manufacturer's price increase affecting the item (or any of its components) between the date of the order confirmation and the delivery date, Kiesel reserves the right to unilaterally adjust the purchase price, taking into account the revised cost situation and the principle of fairness. This right shall not exist if the agreed delivery date falls within four months of the conclusion of the contract. The adjusted purchase price will be communicated to the customer in text form.

2.3. The customer has no entitlement to return replacement parts that were ordered verbally or by telephone. The risk of incorrect orders lies solely with the customer. Should Kiesel agree to accept a return on a goodwill basis, the customer will receive a credit note amounting to 80% of the sales price. Electronic components are excluded from return on a goodwill basis.

2.4. A contract shall come into effect only upon written confirmation of the order by Kiesel. Any additions, amendments and subsidiary agreements must be confirmed in writing by Kiesel.

2.5. As far as is possible and reasonable, Kiesel will inform the customer of the anticipated customer service costs when the contract is concluded.

2.6. The customer may provide written confirmation of the cost limit for customer services which, subject to the following provisions, should not be exceeded.

2.7. The customer is hereby explicitly advised that it may not be possible to provide the customer services specified in the contract in full if the cost limit cannot be exceeded, in particular if Kiesel must determine the causes of any defects and errors, which may prove extremely time-consuming.

2.8. If the customer service cannot be carried out within the agreed cost limit, or if additional work, parts or materials are required beyond those originally anticipated when the limit was set, Kiesel may exceed the cost limit by up to 20% without prior notice, unless otherwise agreed in writing.

2.9. If the customer requires a binding cost estimate for the commissioned customer services before they are carried out, this must be expressly requested in writing. Any such cost estimate shall only be binding if it is issued by Kiesel in writing and expressly marked as binding.

3. Delivery location, deadlines for purchases and customer services

3.1. Delivery is effected by making the item available for collection at Kiesel's warehouse or at the manufacturer's works. The customer must collect the purchased item within two working days of receiving the delivery notification. This also applies to the collection of machines or machine parts for which Kiesel has provided customer services.

3.2. All delivery deadlines are approximate only and are not binding unless expressly agreed in writing.

3.3. Delivery deadlines are subject to timely delivery of the additional parts that the customer has asked Kiesel to install. If the purchased item is a new stock item, the delivery deadline is subject to timely delivery by the manufacturer.

3.4. The delivery deadline is deemed to have been met if the machine has left Kiesel's warehouse or the manufacturer's works prior to expiry of the delivery deadline or if Kiesel has provided notification that the item is ready for dispatch.

3.5. If, during the period before an agreed delivery deadline, any exceptional, temporary obstacles arise that are not the responsibility of Kiesel and Kiesel is also unable to respect the delivery deadline through the application of due care and reasonable effort, the delivery deadline shall be extended by a period corresponding to the length of the delay. Such exceptional obstacles include strikes, employee work absences, machine procurement difficulties and delivery delays caused by manufacturers or suppliers, official interventions, riots, natural events or force majeure. The delivery deadline shall also be extended accordingly if an advance performance required from the customer is still outstanding, and in particular if any documents required for delivery, such as permits and liability disclaimers, have not been delivered to Kiesel in full and on time.

3.6. All statements regarding the probable duration of customer services are based on estimates and are not binding unless expressly agreed in writing. In the event that the contracted work takes longer than the non-binding estimate provided by Kiesel, the customer is not entitled to derive any claims from this.

4. Transfer of risk, transportation and transportation costs, customer delay

4.1. Once the machine has been delivered to the forwarder, transportation company or other person or institution appointed to undertake the shipment, and at the latest on leaving the warehouse or manufacturer's works, the risk of accidental loss and accidental deterioration is transferred to the customer.

4.2. The cost of transporting the machine shall be borne by the customer. The customer shall also bear the risk of loss or damage to the machine occurring during transportation. Kiesel may procure a haulage contractor for the purposes of sending the machine on behalf of - and on the instructions of - the customer. Kiesel does not thereby enter into a contractual relationship with the transportation company. In the internal arrangement between Kiesel and the customer, Kiesel is nevertheless indemnified against any form of liability with respect to the transportation company.

4.3. If the customer is late in collecting the machine, the customer shall be liable to Kiesel for each week of delay in the amount of 0.1% of the gross order value (flat-rate compensation). The customer may provide proof that no or limited damage has occurred, or Kiesel may provide evidence that greater damage has occurred. The risk of accidental loss or accidental deterioration of the machine is transferred to the customer.

4.4. In the event of any insignificant defects, the customer is not entitled to reject a delivery item that has been sent or is being held for collection.

5. Customer obligations

5.1. The customer service will be carried out, as determined by Kiesel, on site at the customer's premises, at the location where the machine is currently being used or at one of Kiesel's own workshops. Kiesel may request that the machine is brought to one of its workshops, if this is necessary due to the nature and extent of the repair and maintenance work to be carried out. All travel, transportation and delivery costs shall be borne by the customer.

5.2. The customer must carry out all reasonable preparations necessary for implementing the order. The customer must describe the scope of the required services as identified by it, and in particular any occurring faults or machine defects, as accurately as possible before placing the order.

5.3. In the event that any customer services are performed on the machine on the customer's premises or at one of the customer's sites, the customer must inform Kiesel of any special requests, in particular relating to the specific applicable security, occupational protection and safety regulations, so that the services may be performed without hindrance. Where necessary, the customer must also take sufficient safety precautions with due regard for the applicable occupational protection and safety regulations and make the device available in a cleaned state.

5.4. The customer must facilitate the continuous implementation of the mandated customer service and order the required original replacement parts.

5.5. The customer must provide Kiesel with any assistance requested during the implementation of the customer service. The customer is responsible for the protection of persons and property. The customer must provide Kiesel with a lockable room, in which Kiesel can store tools and materials for the duration of the work in a dry and safe environment, secured against third-party access. The customer must provide Kiesel employees with a heated break room.

5.6. The customer must inform the customer service manager appointed by Kiesel of any safety regulations to be observed and inform him/her immediately of any breaches of the safety regulations.

5.7. In the event that Kiesel removes any machine parts within the scope of any guarantee or warranty claims, Kiesel shall be entitled to send them to the manufacturer for the purposes of verifying the guarantee claim. If these parts are replaced, the dismantled parts shall be retained indefinitely by the manufacturer.

5.8. If the customer orders the replacement parts from Kiesel, after installation the customer must deliver the dismantled exchange part to Kiesel within one week at its own cost. This exchanged part must be in an adequate condition for exchange and correspond to the delivered exchange part in every technical specification.

5.9. The customer must strictly comply with all import and export restrictions and any other applicable laws, regulations, provisions and instructions.

5.10. With regard to the machines (including software and/or any associated technology) made available to it by Kiesel, the customer guarantees that it will not use them to undermine international peace, including for (i) the construction, development, production or any kind of use of weapons of mass destruction, including for example nuclear, chemical or biological weapons or remotely controlled projectiles, (ii) any other military or (iii) any kind of support for such activities.

6. Technical assistance, test run for customer services and insurance

6.1. The customer must provide the power (e.g. lighting, operating power, lubricants, fuel, water) required for the customer services, including any necessary connections, at its own cost.

6.2. The customer must provide all fuel and materials, and perform all other actions required for adjustment of the machine and for carrying out testing once the work has been completed.

6.3. Kiesel may use the machine for test runs and test deployments in order to verify that the customer services have been correctly implemented.

6.4. The customer must ensure that the mandated customer services can begin immediately after the Kiesel employees have arrived on site.

6.5. Machines on which Kiesel performs customer services at its premises are not insured against fire and theft at that location. If customer services are performed at another location, in particular at a construction site or at the customer's premises, no insurance cover is provided through Kiesel and the customer must cover these risks itself via appropriate insurance policies.

7. Acceptance of a customer service

7.1. Kiesel must notify the customer once any mandated customer services have been completed. Sending of the invoice is deemed to be such notification.

7.2. The customer must accept the customer service immediately after receiving the notification. If the customer uses the machine this will be considered acceptance.

7.3. If no objections are raised by the customer on acceptance of the customer services performed, the machine shall be considered to have been duly accepted.

8. Due dates and payment of the invoiced amount

8.1. All prices are ex Kiesel's warehouse or, where an order from the manufacturer is required, ex works, and do not include packaging costs. The currently applicable VAT is added on to the prices and stated separately on the invoice. If the item is shipped, the customer must bear any additional packaging costs, freight costs, postage, etc. itself.

8.2. All payments must ordinarily be made within three working days of the invoice date. The invoiced amount must be paid without any deductions.

8.3. Kiesel may at any time request prepayment for purchases made or for the services specified in the contract, to a reasonable extent.

9. Retention of ownership and right of lien in favour of Kiesel

9.1. Kiesel retains ownership of any machines sold - provided that the installation process does not result in any loss of ownership - until they have been paid for in full by the customer.

9.2. Kiesel shall also retain ownership of any machines until all existing trade receivables due from customers and all future receivables arising within the context of the business relationship have been paid (current account reservation). Retention of ownership also continues if the price for purchases or customer services specified by the customer has been paid.

9.3. The customer must handle the machine with care, keep it in good condition at its own expense and carry out maintenance and inspection work in accordance with the manufacturer's specifications.

9.4. The customer must protect the reserved goods from damage and store them separately from goods owned by the customer or third parties.

9.5. The customer must take out machine insurance at the original value and at its own expense for any new machines, including coverage against damage caused by fire, flood, breakage and theft in particular, until the purchase price has been paid in full. Evidence of a current insurance policy must be presented on request. This applies accordingly to used machines, with the proviso that machine insurance should only be taken out at fair value.

9.6. Any markings on the machine may not be altered, covered or made unrecognisable. The customer must indicate Kiesel's ownership status by means of appropriate information in the business documents and on the machine itself. Kiesel is entitled to inspect both the relevant business documents held by the customer and the reserved goods during normal working hours for verification purposes.

9.7. If the customer fails to meet its payment obligations, Kiesel may collect the machine following an appropriate warning. The machine collection only constitutes a withdrawal from the purchase contract if this is explicitly stated by Kiesel. The customer is obliged to provide any assistance required; the customer must, in particular, grant Kiesel access to the machine and remove any obstacles to its collection.

9.8. The customer is only entitled to resell the machine during the normal course of business. The customer may not resell the machine if an effective prohibition has been agreed between the customer and its purchaser.

9.9. In the event that the machine is resold, any claims against its purchaser arising from the resale, or on any other legal grounds, in the amount of the purchase price or in the amount of the total claim (current account balance claim) shall be transferred in advance to Kiesel along with all ancillary rights without restriction. The customer retains the right to collect the amount receivable. Kiesel is entitled to collect the amount receivable if the customer fails to fulfil its payment obligations or if there is a significant deterioration in the customer's financial situation. In such cases, the customer must provide Kiesel with all information necessary to enforce the claim.

9.10. If the value of the existing collateral exceeds that of the claims secured by more than 20%, Kiesel must, at the customer's request, release collateral at its own discretion up to this value and transfer it back to the customer.

9.11. The customer may only transfer the machine as collateral property, give it in pledge or dispose of it by other means with written approval from Kiesel.

9.12. All alterations or reconfigurations made to the machine are performed for Kiesel.

9.13. The customer must inform Kiesel immediately in writing of any legal or tangible threats to the right of ownership, in particular in the case of seizure or any other interventions made by third parties on the machine and any damage or loss. The customer must inform third parties of Kiesel's ownership status.

9.14. Kiesel is entitled to a right of lien to the relevant machine on the basis of any payable claims arising from the customer services. A right of lien also exists if the machine in question is located on premises belonging to the customer or a third party or on a construction site.

9.15. Kiesel may also assert the right of lien in relation to customer services performed previously, insofar as they are related to the item being repaired. This relationship is deemed to exist if the customer has concluded at least two other contracts with Kiesel in the preceding two calendar years. The right of lien only applies to other claims arising from the business relationship if these claims are uncontested or have been established in law.

9.16. If the customer is not the owner of a machine, they hereby assign to Kiesel - as security - any claim to the transfer or retransfer of ownership against a third party, until all outstanding invoices for customer services have been paid in full. Kiesel hereby accepts the assignment. In addition, the customer hereby irrevocably authorises Kiesel to bring about the conditions for the transfer of ownership to take place. However, Kiesel shall be under no obligation to perform in the customer's place.

10. Disposal costs

10.1. The customer must dispose of used parts and any other items that are no longer useable at its own expense.

10.2. Insofar as Kiesel is legally obliged to carry out disposal, the customer shall reimburse Kiesel for any costs arising from this.

10.3. Each contracting party is entitled to have recourse to third parties in order to fulfil its recycling obligations.

11. Warranty

11.1. In the case of purchases of new machines, warranty claims are subject to a limitation period of one year after delivery; used machines are sold to the exclusion of any warranty. Limitation period reductions do not apply to the claims for damages specified in § 12.5.

11.2. The warranty for customer services ends 12 months after the services have been accepted. The warranty applies exclusively to those machine parts repaired, replaced or serviced as part of the customer services rendered, but not to the adjoining machine parts.

11.3. Kiesel may, at its own discretion, provide supplementary performance by remedying the defect or, in the case of purchase contracts, by delivering a new item. In the case of customer services, Kiesel may, at its own discretion, provide supplementary performance at its own workshops or at the machine location.

11.4. The transfer of any warranty claims is only valid if approved in writing by Kiesel.

11.5. All warranty claims are subject to the condition that the customer has correctly fulfilled its duty of inspection and notification of defects as defined by § 377 HGB. In the event that a defect occurs, the customer must immediately inform Kiesel of this in writing within three working days of the defect becoming known. This duty of notification also applies correspondingly to customer services. If the customer fails to give timely notice, it shall have no warranty claims against Kiesel in respect of such defects.

11.6. If all of the inspections prescribed at the factory for the machines have not been performed in a timely manner according to the maintenance schedule using the original replacement parts, oils, filters, etc., no warranty claims exist for defects caused by third-party parts or defects that could reasonably have been identified owing to neglected maintenance.

11.7. If the customer performs customer services itself, no warranty exists for any defects that can be attributed to the customer services performed by the customer.

11.8. Provided that Kiesel informs the customer of the necessary exchange of parts requiring renewal, the warranty shall lapse if the customer fails to replace them and a defect can be attributed to the part requiring renewal.

11.9. The costs associated with spare or replacement parts and their removal and installation will also be borne by the customer in the event of supplementary performance, provided that those parts and labour were not required for fulfilment of the originally commissioned customer service.

11.10. The customer shall bear any costs arising from an unjustified defect notification, in particular those costs associated with travel and from the site and the time required for inspecting the machine or parts.
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12.

Damages, other Kiesel liabilities and exclusion of liability
- 12.1.

Kiesel's liability for damages caused directly by minor negligence is limited to the amount of the foreseeable damages typical of this type of contract.
- 12.2.

The extent of this liability is based on the insurance benefits Kiesel already receives through an existing indemnity insurance policy. If requested by the customer, Kiesel shall transfer its claim against the indemnity insurance provider to the customer. In such cases, the customer is obliged to register a claim for compensation with the indemnity insurance provider. Any subsidiary liability on the part of Kiesel shall remain unaffected by this, provided that the customer immediately provides Kiesel with all the information required for Kiesel to submit an indemnity insurance claim.
- 12.3.

Any liability on the part of Kiesel for indirect and consequential damages is excluded, to the extent that such damages were not foreseeable. Unforeseeable damages are damages arising because the machine cannot be used or cannot be used at a certain time or for a use foreseen by the customer or the costs associated with determining the extent of the damage. Unforeseeable damage also includes damage caused by a partial or complete operational failure, as well as loss of profit on the part of the customer or a third party or damage accruing to the customer owing to its own default or contractual penalties that it is obliged to pay to third parties.
- 12.4.

In the case of delayed delivery, Kiesel shall not accept liability for any loss of profit or damages due to business interruptions incurred by the customer. Any claims for damages asserted by the customer for delayed delivery are limited to 0.5% for each full week of delay, up to a total of 5% of the order value.
- 12.5.

The aforementioned liability limitations and the limitation period reductions specified in 11.1 shall not apply to claims for damages based on injury to life, body, health or any other damage caused deliberately or through gross negligence by Kiesel or any of Kiesel's legal representatives or vicarious agents. Nor shall they apply in the event of a breach of essential contractual obligations, the fulfilment of which is a prerequisite for the proper execution of this contract and on which the customer regularly relies and is entitled to rely (cardinal obligations), or in cases of mandatory liability under the Product Liability Act.
13.

Termination by the customer, cancellation
- 13.1.

If the customer cancels the commissioned customer service, they shall be liable for all work and costs incurred up to the time of cancellation, including the cost of any replacement parts ordered or already procured. The customer must also compensate Kiesel for the loss of profit while taking into account any expenses saved.
- 13.2.

Without prejudice to the legal grounds for cancellation, Kiesel retains the right of cancellation in the event of any delivery difficulties owing to exceptional obstacles of considerable duration and if the customer delays payment.
- 13.3.

In the event of a unilateral price increase by Kiesel in accordance with clause 2.2 of these terms and conditions, the customer shall be entitled to withdraw from the contract within 30 days of receiving notice of the price increase. In the event of such a notice of withdrawal, Kiesel shall be entitled to offer the item for sale again at the originally agreed purchase price. In this case, the customer's right of withdrawal shall lapse retroactively, and the original contract shall remain valid.
- 13.4.

Furthermore, the customer may only withdraw from the contract – for any reason whatsoever – if it has provided Kiesel with an appropriate deadline in writing after the delay has occurred, together with a warning that the service will be rejected after the deadline has expired.
14.

Prohibition of offsetting, right of retention
- The customer may only assert the right of retention or offset claims against Kiesel if these claims are uncontested or have been established in law.
15.

Telematics
- 15.1.

Various manufacturers collect machine-related, non-personal data via a telematics system, either directly or through commissioned third parties. This data is stored and processed within the system and may be analysed by Kiesel and the respective manufacturers.
- 15.2.

By concluding this contract, the customer declares that it is aware of this data collection.
16.

Place of jurisdiction, place of fulfilment and applicable law
- 16.1.

The place of fulfilment for all services provided by Kiesel and payments made by the customer is Baienfurt.
- 16.2.

In commercial transactions, the place of jurisdiction shall be Baienfurt or, at Kiesel's discretion, the court with jurisdiction at the registered office of the Kiesel subsidiary commissioned by the customer.
- 16.3.

These terms and conditions are governed exclusively by the laws of the Federal Republic of Germany.
17.

Severability clause
- If any of the individual provisions should be or become wholly or partially ineffective, the rest of the contract shall remain valid; this also applies in the event that an omission or loophole is discovered in the contract.
18.

Privacy (GDPR)
- The purpose of collecting, storing and using personal data is explained in the [Privacy notice for customers and suppliers](#).