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Method Disposal  
Shredding

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General Conditions of Sale and Delivery  
**FEINTOOL SYSTEM PARTS**  
**SACHSENHEIM and JESSEN GMBH**



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## 1. GENERAL, NO ASSIGNMENT

1.1. The following Terms and Conditions of Sale and Supply shall govern exclusively all our contracts, offers, shipments and other deliverables, present and future. We will not accept standard terms and condition of business of the customer which conflict with or differ from our terms of sale and supply unless we have given our express written consent thereto. The customer's standard terms and conditions of business will not apply even if they have been sent to us in a letter of confirmation or in some other way and we do not expressly state that we will not accept them or if we execute the contract without reservation.

1.2. Oral agreements, modifications or additions made by our employees or other representatives to these terms and conditions and statements regarding warranty or other assurances are not valid unless they have been confirmed in writing by our management and only apply to the respective transaction for which they were agreed.

1.3. These Standard Terms and Conditions of Sale and Supply shall be interpreted according to the German version even if we provide the customer with a translation or if the translation is signed by the parties.

1.4. If any these Standard Terms and Conditions of Sale and Supply or other contractual provisions are or become invalid, this shall not affect the rest of the contract. Should that occur, the parties shall negotiate in good faith to replace the invalid term or condition by a valid term or condition which reflects as closely as possible the economic purpose of the invalid term or condition. The same shall apply in the event of a lacuna.

1.5. If the parties agree on a delivery term, the term shall be interpreted in accordance with the applicable version of the Incoterms which was valid when the contract was concluded unless otherwise stated in these Standard Terms and Conditions of Sale and Supply.

1.6. Claims which the customer has against us may not be assigned to third parties without our prior consent; this does not affect § 354a German Commercial Code.

## 2. OFFER, CONTRACT AND OFFER DOCUMENTS

2.1. Unless otherwise agreed in writing our offers are not binding.

2.2. A contract only comes into existence if we confirm the order or call-off order in writing (order confirmation) within 14 days of receipt or if we execute the contract within that period.

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2.3. We reserve all title and copyright in all drawings, illustrations, cost estimates and other documents attached to the offer. These documents may not be disclosed to third parties or put to commercial use without our prior consent and must be returned to us on request without undue delay.

### 3. QUANTITY, SUPPLY AND CALL-OFF ORDERS

3.1. We may supply more or less than the quantity agreed to the extent which is customary in commercial practice.

3.2. We may supply goods or service in instalments provided it is not unreasonable to expect the customer to accept this.

3.3. Our obligation to supply the goods and services shall be contingent on our having been supplied in a proper and timely manner by our own suppliers.

3.4. Any delivery periods or dates mentioned are approximate unless otherwise agreed. If such delivery periods or dates cannot be met, the parties shall negotiate an adjustment thereto. In the case of approximate delivery periods or dates we are not deemed to be in default until at least one month after the approximate delivery period or date agreed or prolonged pursuant to clause no. 3.6 has expired. In the case of approximate delivery periods or dates the customer must pick-up the goods within two weeks after we have provided notification that they are ready for collection/dispatch.

3.5. The delivery period will begin when the order confirmation is dispatched but not before all documents, permits, releases to be provided by the customer have been provided or before all technical issues have been resolved.

3.6. In the event of force majeure, including but not limited to measures related to industrial action such as strike and lawful lock-out, and in the event of any other hindrances which are outside our sphere of responsibility the delivery period will be extended by a reasonable period. This also applies if such circumstances occur at our own suppliers. We will notify the customer of the beginning and end of such hindrances.

3.7. In the event default on supply the parties shall negotiate and agree on how to proceed.

3.8. If the parties have not agreed on an alternative procedure in the context of discussions pursuant to clause no. 3.7, in the event of default on delivery the customer may demand compensation for the loss which it has suffered owing to the delay in addition to the performance. Such compensation may not exceed 0.5 % of the value of the deliverables concerned per week of default and no more than 5% on aggregate

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unless we have acted with intent or gross negligence. This does not affect the customer's right to withdraw from the contract and/or to assert compensation owing to non-fulfilment pursuant to clause no. 9 once a reasonable subsequent deadline has expired.

3.9. Both parties may demand an adjustment to the contract if, after it has been concluded, circumstances arise which we were unable to foresee (e.g. mobilisation, including measures introduced by a government authority related foreign trade) which make it more difficult for us to render the deliverables due under the contract for a period which is more than just temporary or if there is more than just a temporary imbalance between performance and consideration. If it is not possible to adjust the contract or if either party cannot be reasonably expected to accept such adjustment, the party concerned may withdraw from the contract in part or in full. The customer is not entitled to compensation owing to such withdrawal. This does not affect statutory provisions setting aside the obligation to perform, the debtor's right to refuse performance, frustration of contract and the right to terminate for good cause.

3.10. In the case of call-off contracts the customer must call-off the goods within two weeks after we have provided notification that they are ready for collection/dispatch. If, in the case of call-off-contract, the customer requests more than the quantity ordered, we may elect to supply only the agreed quantity or to charge the additional quantity at the current price.

3.11. If the customer does not pick-up or call off in good time we may – without prejudice to our claim for fulfilment or other rights – demand compensation for additional expenses incurred from submitting the offer in question and place the goods in storage at the customer's cost and risk. If such storage is on our own premises, we may charge a storage flat rate of EUR 8 per month per warehousing unit; the parties reserve the right to provide evidence that the actual costs are higher or lower.

#### 4. TRANSFER OF RISK, PACKAGING,

4.1. Unless otherwise agreed, we supply ex-works or ex-warehouse, at our discretion; this may refer to the works or warehouse of a third party.

4.2. Risk passes to the customer at the latest when the goods are released to the forwarding agent or other freight carrier; this also applies if the goods are delivered by our own staff. Unless we have been expressly instructed by the customer, we will select a suitable freight carrier. Risk also passes to the customer if the goods are stored on our premises at the customer's request.

4.3. Packaging can be returned to our works or warehouse at our discretion during normal working hours. Packaging shall be returned empty, free of foreign matter and

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contamination and segregated according to type of packaging. If the above-mentioned duties are not fulfilled we may charge the customer for any extra cleaning and segregation which this may cause.

## 5. PRICES AND COST

5.1. Unless otherwise agreed, the price list valid when the contract is concluded shall apply and prices shall be ex-works or ex-warehouse (this may be the works or warehouse of a third party) including the usual packaging for the goods concerned.

5.2. If the parties have agreed that the goods are to be delivered more than two months after the contract has been concluded or if they are not delivered until at least two months after the contract has been concluded owing to a delay falling into the customer's sphere of responsibility, we may alter the prices accordingly if, after conclusion of the contract, there are decreases or increases in costs including decreases or increases owing to collective wage agreements, changes in the price of materials and energy or transport costs. We will provide the customer on request with evidence of increases in costs.

5.3. Prices do not include VAT; VAT is charged at the rate applicable on the date of the invoice and shown separately on the invoice.

5.4. If we store goods on our premises at the customer's request, we will charge the customer the costs incurred.

## 6. PAYMENT

6.1. Unless otherwise stated in our order confirmation, the payments are due without deductions within 30 days of the invoice date. A payment is deemed to be timely if the amount due is received by us in full or unconditionally credited to our account by the date stipulated.

6.2. If the customer is in default it is liable to pay default interest of eight percentage points above the base interest rate for the default period unless we are entitled to interest at a higher rate under statutory provisions. We reserve the right to assert further compensation for losses and other statutory rights arising from default.

6.3. If payment is made using means of payment which the customer has obtained by discounting an acceptor's bill of exchange, the claim for payment shall be deemed to be satisfied only when the bill has been redeemed by the customer.

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6.4. If we have two or more outstanding claims against the customer and the customer makes a payment which is insufficient to cover all those claims, the crediting of performance shall follow the sequence set out in § 366 (2) German Civil Code even if the customer has stipulated that the payment is to cover a specific claim.

6.5. The customer may not offset or exercise a right of retention or a right to refuse performance using counterclaims which we dispute (for example owing to a defect in quality) or which have not been ruled final and absolute by a court of law. The customer may not exercise a right of retention where the counterclaims do not stem from the same contractual relationship.

6.6. If the customer fails to meet a payment date or if it becomes apparent after the contract has been concluded that for other reasons our claims for payment are endangered owing to the customer's financial capacity, we are entitled to all statutory rights, including without limitation the right to refuse performance, until the customer renders consideration or provides appropriate security, and – in the event that a reasonable deadline expires without result – the right to withdraw from the contract.

## 7. REPORTING DEFECTS, REMEDIES FOR QUALITY AND LEGAL DEFECTS, CUSTOMERS' INSTRUCTIONS, ADVICE

7.1. The Customer must inspect the goods without undue delay after delivery and in as far as this is practicable in the normal course of business. It must report any obvious defects in writing without undue delay, but in no event later than seven days after receipt, and any latent defects in writing without undue delay after discovery, but in no event later than seven days after discovery. Claims may not be asserted after these periods have expired. The report shall be deemed to have been made in a timely manner if it is sent by the applicable expiry date.

7.2. Unless otherwise agreed, the goods supplied shall be solely as set out in our product specifications which were valid when the contract was concluded. In the absence of such product specification, the quality and execution of our goods will comply with commercial standards. Production-related variations in dimensions, weights and quality conditions which are within commercial tolerances do not constitute defects.

7.3. If, on inspection, it transpires that an alleged defect does not justify a warranty claim, the customer shall bear any costs caused by the inspection unless this could not have been apparent to the customer.

7.4. Our warranty for third-party rights based on industrial or other intellectual property (Intellectual Property Rights) are limited to Intellectual Property Rights which validly exist in the Federal Republic of Germany. The customer has no claims to the

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extent that the Intellectual Property Right infringement is attributable to materials, information and specifications provided by the customer or to the customer having altered the goods or used them in conjunction with products which we did not supply. If the parties to the contract have agreed that the goods are to be sold on to another country (Foreign Country) or to be otherwise used in a Foreign Country, we are also responsible by statute for ensuring that there are no property rights in the Foreign Country which can be asserted against the customer. If the parties have not agreed on resale or use in a Foreign Country and the customer is domiciled in a third country, we are responsible by statute only to ensuring that there are no property rights in the Federal Republic of Germany and the country in which the customer is domiciled.

7.5. Any claim which the customer may have for any defect shall be limited to the right to subsequent performance subject to the terms and conditions set out below. Subsequent performance may take the form of remedying the defect or replacement with non-defective goods, at our discretion. In the event of Intellectual Property Right infringements, we may also, in the context of subsequent performance, acquire a licence for the customer from the third party at our cost or modify or replace the goods concerned such that the third-party rights are no longer infringed if and in as far as this does not adversely affect the goods' compliance with the contract. If subsequent performance is unsuccessful, does not take place within a reasonable deadline set by the customer, is refused in a manner which is unjustified or if the customer cannot be reasonably expected to accept subsequent performance, the customer may – at its discretion – withdraw from the contract or reduce the price. The customer shall inform us before asserting the above rights and the parties should try to negotiate a mutually acceptable settlement. The customer may only claim for compensation in accordance with mandatory statutory provisions and the following clause no. 9.

7.6. Any claims which the customer may have for compensation attributable to a defect for whatever legal cause including without limitation claims for compensation for positive violation of contractual duty, fault in contractual negotiations, tort, and any recourse claims which the customer may have pursuant to § 478 German Civil Code only exist as provided for in mandatory statutory provisions and clause no. 9 below.

7.7. The customer's rights do not apply to defects known to the customer when the contract was concluded. Nor are we liable for defects which are not known to the customer at the time the contract is concluded owing to gross negligence unless we have fraudulently concealed the defect or have assumed a guarantee for the quality of the goods.

7.8. We are only liable for defects attributable to a construction or specification issued by the customer subject to mandatory statutory provisions and these Standard Terms and Conditions of Sale and Supply if we have informed the customer in writing that we will assume the risk of defects attributable to such specification or instruction. The customer is liable to us for ensuring that instructions and specifications do not

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lead to a defect in the goods which we manufacture and supply unless we have stated in writing that we will assume the risk of such defects occurring.

7.9. Responsibility for verifying the suitability of the goods for the purpose intended by the customer lies with the customer itself. Any drafts which we prepare for the customer, any advice which we give or recommendations which we make do not give rise to any liability on our part; they must be carefully examined by the customer itself before being applied, if necessary, obtaining expert third-party advice.

7.10. The limitation period for any claims which the customer may have, other than claims pursuant to clause no. 9, is 12 months from delivery of the goods concerned. This does not apply to the extent that the goods are generally used in a building and have caused the defect. It does not affect statutory provisions on the limitation period for recourse claims (§§ 478, 479 German Civil Code).

## 8. SECURITY TRADE CONTROL RULES

8.1. The Purchaser shall not perform any of the following:

- i. Use these products/technology for activities disturbing international peace and security.
- ii. Resell or retransfer these products/technology to any party intending to disturb international peace and security.
- iii. Allow any other party to use these products/technology for activities disturbing international peace and security.

8.2. Also, as purchaser of these products/technology, you agree to follow the procedures for the export or transfer of these products/technology, under the applicable export regulations (e.g. Foreign Trade and Payments Ordinance) when you export or transfer the products/technology abroad.

## 9. LIMITATION OF LIABILITY

9.1. We shall be liable as provided for by statute to the extent that the customer asserts compensation claims which are attributable to intent or gross negligence including intent or gross negligence on the part of our legal representatives, key employees or vicarious agents. Where we are not responsible for breach of contract with intent, our liability for compensation is limited to foreseeable damage typical of this type of contract.

9.2. This does not affect liability for culpable injury to life, the body or health, statutory liability for the absence of a product attribute which we guaranteed, mandatory

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liability under the Product Liability Act (Produkthaftungsgesetz), for defects which we have maliciously concealed and for other cases of mandatory statutory liability. Where we have assumed a guarantee, the extent of liability depends on the scope of the guarantee.

9.3. We are liable subject to statutory provisions and limited to the foreseeable losses typical of this type of contract in the event of negligent breach of contractual duties which are essential to achieving the object of the contract and which the customer must therefore be able to rely on being strictly fulfilled.

9.4. Unless otherwise provided for herein above, the customer shall not be entitled to compensation for the direct or indirect loss irrespective of the legal ground including any claims for compensation owing to a breach of pre-contractual duties or tort.

9.5. The customer shall notify and consult us without delay and comprehensively if it intends to take legal recourse in accordance with the afore-mentioned provision. The customer must allow us to examine the loss occurrence.

## 10. RETENTION OF TITLE AND SECURITY

10.1. We reserve title in the goods supplied (Retained Goods) until all amounts, present and future, due to us under the business relationship with the customer have been settled in full. Where a current account is maintained with the customer, retention of title serves to secure any claim we may have on the current balance.

10.2. If the customer processes or alters the Retained Goods this shall always be performed for us without giving rise to any obligation on our part. If in processing the goods are combined with other items which do not belong to us, we shall acquire pro-rata co-ownership in the new item commensurate with the ratio of the value of the goods supplied to that of the other processed items at the time of processing. The customer hereby transfers this co-ownership to us, and we accept it. The customer shall also hold the new item created by processing in custody on our behalf.

10.3. In the event that the Retained Goods are combined, mixed inseparably or otherwise, in such a way that the customer's item must be considered the main item, the customer hereby transfers to us its ownership in the overall item pro-rata commensurate with the value of the Retained Goods to the value of the other combined or mixed items. The customer shall also hold this item on our behalf. If the Retained Goods are combined or mixed with movable items belonging to a third party in such a way that the item belonging to the third party must be regarded as the main item, the customer hereby assigns to us any claim for remuneration which the customer may have against third-party, the amount of that claim corresponding to the portion of the final invoice amount attributable to the Retained Goods.

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10.4. The item created as a result of combining or mixing (New Item) or the (co-)ownership rights in the New Item attributable to us pursuant to clauses nos. 10.2 and 10.3 and the claims of the remuneration assigned pursuant to clause no. 10.3 serve as security for claims in the same way as the Retained Goods themselves pursuant to clause no. 10.1.

10.5. The customer may re-sell the Retained Goods or the New Item in the usual course of business subject to reservation of title. The customer must ensure that amounts due owing to such resale are assigned to us pursuant to clauses nos. 10.6 and 10.7. The customer may not make any other disposals.

10.6. The customer hereby assigns to us its claims from the onward sale of the Retained Goods together with all ancillary rights. These serve as security for us to the same extent as the Retained Goods. If the customer sells the Retained Goods along with other goods which were not supplied by us, the claim shall only be deemed to have been assigned in the value of the final invoice amount for resale of the Retained Goods. As far as concerns the resale of goods in which we have co-ownership pursuant to clauses nos. 10.2 or 10.3 or statutory provisions on combining and mixing, inseparably or otherwise, the claim is deemed to have been assigned pro rata based on our co-ownership share

10.7. If the customer includes claims for amounts from resale of Retained Goods in a current account with any of its customers, it hereby assigns to us any balance or final credit balance which may exist in its favour, the amount assigned corresponding to the total amount of claims included in such account from resale of the Retained Goods. Clause no. 10.6 sentences 3 and 4 shall apply mutatis mutandis.

10.8. The customer is authorised to collect any claims assigned to us under the resale of the Retained Goods or the New Item. This shall not affect our right to collect the claim ourselves. However, we undertake not to collect such claim until the conditions set out in clause no. 10.9 have been satisfied. The customer may not assign claims from resale to third parties; this also applies to genuine factoring contracts.

10.9. We may revoke the authority to re-sell the Retained Goods or a New Item pursuant to clause no. 10.5 and the authority to collect claims assigned to us pursuant to clause no. 10.8 if the customer defaults on payment or ceases payments or in the event of an application to institute insolvency proceedings or in other cases where the customer's credit standing and trustworthiness is impaired. If we revoke the authority to re-sell or collect, the customer must inform its customers without undue delay that claims have been assigned to us and provide us with whatever information and documents necessary to enable us to collect such claims. Moreover, in such an event the customer must release and transfer to us any securities to which it is entitled with regard to customer claims.

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10.10. The customer must inform us without undue delay in writing of any attachment or other legal or actual impairment of the Retained Goods or of any other securities with which we have been furnished so that we can bring action pursuant to § 771 German Code of Civil Procedure, in order to prevent execution of a judgment. If the third party is unable to reimburse us for costs incurred in or out of court in action pursuant to § 771 German Code of Civil Procedure, the customer shall be liable for our loss.

10.11. The customer must treat the Retained Goods with due care. In particular, the customer must insure the Retained Goods adequately against the risk of fire, water damage and theft on a replacement-value basis at its own cost. It hereby assigns its claims under the insurance policies to us.

10.12. The customer grants us a lien in the material which it provides us to execute the order and in any rights resulting from this material as security for all present and future claims under our business relationship with the customer.

10.13. If the reservation of title or the claim assignment is invalid or unenforceable owing to mandatory foreign statutory requirements, the parties shall be deemed to have agreed to the security which corresponds to the reservation of title or the claim assignment in this jurisdiction. If this requires collaboration from the customer, the customer must take whatever measures are necessary to create and maintain the security.

10.14. We will release the securities to which we are entitled at the customer's request to the extent that the realisable value of our security exceeds the claim secured by more than 10 %; we will elect which securities to release at our discretion.

## 11. TOOLING

Insofar as tools are manufactured or procured by us for deliveries to the customer, these shall remain our property until they have been paid for in full by the customer. The tools shall be used exclusively for deliveries to the customer as long as the customer fulfills its contractual obligations towards us. If 24 (twenty-four) months have passed since the last delivery, we shall also be entitled to use the tools for other purposes or to scrap them, unless the customer has requested or informed us otherwise in writing.

## 12. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW

12.1. The place of performance for our deliveries shall be the plant or the warehouse from which the goods are held ready for collection or dispatched; this may also be the

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plant or warehouse of a third party. The place of performance for payments is the invoicing company.

12.2. If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the business relationship shall be our respective place of business of the Feintool company to which the order is addressed. We shall be entitled to invoke any other court having jurisdiction by law instead of the court of the place of jurisdiction agreed above. The place of performance for items supplied is the works or warehouse where the goods are awaiting collection or from which they are dispatched; this may be the works or warehouse of a third party. Place of performance for all payments shall be the invoicing company.

12.3. If the customer is a merchant, legal person under public law or a special public-law fund the exclusive place of jurisdiction for any disputes arising directly or indirectly from the business relationship shall be 74343 Sachsenheim. We may apply to any other court which is competent under statutory provisions instead of the court stated above.

12.4. The laws of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**IMPORTANT:**

**We save and process data of the customer and other third parties involved for IT purposes to the extent that this is necessary for proper handling of the contractual relationships.**

**Please also note the "Technical Information" provided on our website and in our online catalogue at <http://katalog.kienle-spiess.de>**

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