

KERN-LIEBERS

THAILAND

Terms And Conditions Of Sale And Delivery of KERN-LIEBERS (THAILAND) Co. Ltd.

I. Scope

1. These general terms and conditions of sale and delivery apply between KERN-LIEBERS (THAILAND) Co. Ltd., a Thai Juristic Person registered No. 0215538001405, located at 4/9 Soi Keree, Sukhumvit Road, Soi 7, Huaypong Sub-District, Muang Rayong District, 21150 Thailand. – hereinafter the “seller” and/or Individual Person/Juristic Person – hereinafter the “client” or “contract partner”.
2. All deliveries, services and offers provided by the seller are subject exclusively to these general terms and conditions of sale and delivery. These are an integral part of all contracts and agreements concluded by the seller with his contract partners with regard to goods or services offered by him. They also apply to all future deliveries, services or offers to the client, even if they are not agreed again separately.
3. The terms and conditions of the client or third parties are not applied, even if the seller does not separately dispute their application in individual cases. Even in cases where the seller makes reference to a letter that contains or makes reference to the terms and conditions of the client or a third party, no agreement with the application of those terms and conditions is implied.

II. Offer and conclusion of contract

1. All offers made by the seller are non-binding and subject to change unless they are expressly designated as binding or contain a specific term of acceptance. Orders or commissions may be accepted by the seller within fourteen days of receipt.
2. The legal relationship between seller and client is governed exclusively by the agreement concluded by the two parties, including these general terms and conditions of sale and delivery.
3. Supply cs (order and acceptance) and call-offs, as well as additions and amendments to written agreements and these general terms and conditions of sale and delivery, must be in writing in order to be effective. Transmission by fax is sufficient to satisfy the requirement of the written form. Transmission by email is sufficient if an ongoing business relationship already exists between the parties and there is no doubt about the origin of each individual email. To enable call-offs

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by remote data transmission, a prior written agreement between the parties is required.

4. Specifications provided by the seller with regard to the object of a delivery or service (e.g. weights, dimensions, practical values, capacity, tolerances and technical data) and our representations of these specifications (e.g. drawings and illustrations) are only approximate unless their usability for the contractually agreed purpose requires an exact specification. They provide no guarantee of quality characteristics and instead represent descriptions or characterisations of the goods or services. Provided they do not affect usability for the contractually agreed purpose, commercial deviations and deviations that result from legal requirements or that represent technical improvements, as well as the replacement of components by equivalent parts, are permitted.
5. The seller reserves ownership and/or copyright with regard to all offers and cost estimates submitted by him, as well as drawings, illustrations, calculations, brochures, catalogues, models, tools, and other documents and additional resources made available to the client. Without the express consent of the seller, the client may not make these materials available to third parties, either as such or in terms of their content, may not disclose them, and may not use or reproduce them internally or through third parties. At the request of the seller, the client must return these materials in full and destroy any copies that may have been made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

III. Confidentiality

1. From and after the Closing Date, the Client agrees to cause the Client Affiliate to treat all confidential data, reports, records, processes, know-how and other information it has developed or has in its control or possession relating to the Business, whether or not marked as confidential or proprietary (the "Information"), as confidential and to not disclose, discuss or reveal such Information to a third party without the prior written consent of Seller unless the Client or the Client Affiliate are required by applicable law or order of a Government Authority to disclose any such Information and the Client or the Client Affiliate have informed the seller of such requirement and given the seller a reasonable opportunity to contest such requirement or to seek a protective order or a stay of such disclosure order. The Client agrees to exercise all reasonable efforts to avoid the disclosure of such Information to any third party.

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IV. Compromise.

1. A contract of compromise is not enforceable by action unless there is some written evidence signed by the party liable or agent.
2. The compromise's effect is to extinguish each party's abandoned claims and secure to each party the rights which are declared to belong to him.

V. Prices, payment and price adjustment

1. Prices are valid for the specific goods and services listed in the order confirmations. Additional or special services are charged separately. Prices are in Thai Baht ex-works, plus packaging, VAT, customs duties, fees and other public charges for export deliveries.
2. In cases where the agreed prices are based on the seller's list prices and the delivery is scheduled for more than four months after the conclusion of the contract, the seller's list prices at the time of delivery apply (less any agreed percentage or fixed discount in each case).
3. Invoices are payable within fourteen days without any deduction unless otherwise agreed in writing. The date of payment is determined by the date of receipt by the seller. Checks are considered payment only after redemption. If the client fails to pay by the due date, the amounts outstanding from the due date will be charged interest in the amount of 15% per annum. The assertion of claims for higher interest rates and additional damages remains unaffected in the event of default.
4. The offsetting of client counterclaims or the withholding of payments due to such claims is allowed only to the extent that the counterclaims are undisputed or legally binding.
5. The seller is entitled to deliver outstanding goods or services only against advance payment or the provision of security if circumstances become known to him after the conclusion of the contract which are likely to significantly reduce the creditworthiness of the client and which endanger payment by the client of the seller's outstanding claims arising from the respective contractual relationship

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(including other individual orders to which the same framework agreement applies).

6. In the event of a substantial change in wage, material, or energy costs for contracts with a term of more than 12 months and in indefinite contracts, each party is entitled to a reasonable adjustment of the price to take account of these factors.
7. If a payment is expressed in a foreign currency, payment may be made in Thai currency.
8. The commutation is made according to the rate of exchange current in the place of payment at the time of payment.
9. If the time for payment is neither fixed nor to be inferred from the circumstances, the seller may demand the performance forthwith, and the client may perform his part forthwith.
10. If a time is fixed, the seller may not demand the performance before that time; the client, however, may perform the payment earlier.
11. When the client does not perform the obligation in accordance with its true intent and purpose, the seller will claim compensation for any damages caused thereby.
12. The client is responsible for all negligence during his default. The client is also responsible for the impossibility of payment arising accidentally during the default unless the injury would have arisen even if the client had performed in due time.
13. The client is responsible for the fault of his agent and of the person whom he employs in performing his obligation to the same extent as for his own fault.
14. The claim of damages is for compensation for all such damage as usually arises from nonpayment.
15. The seller may demand compensation even for damage arising from special circumstances if the client concerned foresaw or ought to have foreseen such circumstances.

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VI. Delivery, delivery time and delay

1. All deliveries are made ex-works. Unless otherwise agreed in these general terms and conditions of sale and delivery, the interpretation of any commercial terms agreed between the parties shall be with reference to Incoterms 2020.
2. Delivery may be made by doing anything that puts the property at the client's disposal.
3. If the contract provides that the property sold shall be sent from one place to another, delivery takes place at the moment when the property is delivered to the carrier.
4. Within a tolerance of plus/minus 10% of the total order quantity, production-related and industry-standard excess or short deliveries are permitted. The total price is adjusted accordingly.
5. The periods and dates announced by the seller for the delivery of goods and services are approximate in all cases unless a fixed period or a fixed date has been expressly promised or agreed. If shipment has been agreed, delivery periods and dates are with reference to the date of handover to the carrier, freight forwarder or any other third party commissioned to provide transportation.
6. The seller may – without prejudice to his rights in the event of default on the part of the client – require of the client an extension of the delivery and performance dates or postponement of the delivery and performance dates by the period in which the client fails to fulfil his contractual obligations to the seller. The same applies in the event that agents of the seller specified by the client fail to properly meet their contractual obligations.
7. In addition, the seller is liable for delayed delivery in accordance with the legal provisions, taking the limitations established in these general terms and conditions of sale and delivery into account. In the case of ordinary negligence, the liability of the seller for loss of profits and damages resulting from business interruption due to late delivery is excluded. In the case of slight negligence, the amount of damages is limited to extra freight costs, retrofit costs and, after an unsuccessful grace period or loss of interest in the delivery, additional expenses for covering purchases. If the expected loss or damage caused by delay exceeds 20% of the

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value of the quantity affected by the delay in delivery, the buyer is obliged to immediately seek an appropriate covering purchase or to accept the covering purchase options identified by us at the same time withdrawing from the contract for the quantity affected by the delay in delivery. In the case of delivery by sea, the seller's liability shall be limited to 10,000 Baht per shipping unit or thirty Baht per kilogram of gross weight of such goods, whichever is higher.

For the purpose of calculating the value of the goods lost or damaged, the following rules apply:

- a) If the goods have been wholly lost or damaged, the calculation shall be made by reference to the value of such goods at the time at which the goods are to be delivered at the port of discharge;
 - b) If the goods have been partly lost or damaged, the calculation shall be made on a pro-rata basis by comparing them with the value of the same.
8. If the value of the lost or damaged goods has been calculated in the aforementioned, and it appears that the value thereof is lower than the limitation of liability, the value revealed by such calculation shall apply.
9. The seller is not liable for impossibility of delivery or for delays in delivery caused by force majeure or by other unforeseeable events for which the seller is not responsible (including, for example, disruptions to operations of any kind, difficulty in obtaining materials or energy, transport delays, strikes, lawful lockouts, shortages of manpower, energy or raw materials, difficulty in obtaining necessary regulatory approvals, regulatory measures or missing, incorrect or late delivery by its own suppliers). If such events render delivery or performance by the seller significantly more difficult or impossible the hindrance is not only temporary, but the seller is also entitled to withdraw from the contract. For hindrances of a temporary nature, the delivery or performance periods are extended, or the delivery or performance dates are postponed by the period for which the hindrance persists plus a reasonable start-up period. If the client cannot be reasonably expected to accept the delivery or performance as a result of the delay, he may withdraw from the contract upon immediate written notice to the seller.

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10. The seller is not liable for loss sustained by the carrier or the actual carrier or caused to the ship and goods unless it was caused by the fault or negligence of the seller or seller agent or employee or from the nature of the goods themselves, whilst the seller has failed to comply with the law or trade usage relating to the carriage of such goods.
11. The seller is entitled to make partial deliveries if the partial delivery is usable for the client for the purpose agreed in the contract, if delivery of the remaining goods ordered is ensured, and if the client does not incur any significant additional overhead.
12. If the seller is delayed in providing delivery or performance or if a delivery or performance proves impossible, for whatever reason, the seller's liability for damages is limited pursuant to section XII of these general terms and conditions of sale and delivery.

VII. Long-term contracts and delivery call-offs

1. Unless otherwise agreed, indefinite contracts may be terminated by the seller within a reasonable period.
2. Where a binding order quantity is not agreed, the basis used for the seller's cost estimate is always the contract partner's expected, non-binding order amount (target amount) for a specified period. If the contractor purchases less than the target amount, the seller is entitled to increase the unit price accordingly.
3. For delivery on-call contracts, binding quantities must be notified to the seller using call-offs in good time before the delivery date unless otherwise agreed. The contract partner must ensure that a reasonable period for the procurement of raw materials by the seller is taken into account.
4. Additional costs arising from a delayed call-off or subsequent changes by the contract partner to a call-off with regard to either time or quantity are charged to the contract partner, with the cost estimate determined by the seller.

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VIII. Place of fulfilment, shipping, packaging, transfer of risk, acceptance

1. Unless otherwise specified, the place of performance for all obligations arising from the contractual relationship is the place of business of the seller. If the seller has undertaken to provide installation, the place of performance is the location at which the installation is to be carried out.
2. The shipping method and packaging are subject to the reasonable discretion of the seller.
3. The transfer of risk to the client takes place at the latest upon handover (defined as the start of loading) of the article of sale to the carrier, freight forwarder or other third party commissioned for the shipment. This also applies to partial deliveries or in the event that the seller has undertaken to provide other services (such as shipping or installation). If delivery or transfer is delayed due to circumstances for which the client is responsible, the risk is transferred to the client from the day on which the article of sale is ready for shipment, and the seller has notified the client that this is the case.
4. Storage costs after the transfer of risk are borne by the client.
5. The consignment will be insured by the seller against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the client and at his expense.
6. If acceptance is to take place, the purchased goods are deemed accepted when the delivery is completed and, if the seller has undertaken to provide installation, when the installation is completed when the seller has notified the client of this with reference to deemed acceptance as defined in this section VIII clause 6 and requested acceptance from the client, when fourteen working days have elapsed since the delivery or installation or the client has begun to use the purchased goods (for example started operating the delivered system) and in this case when seven working days have elapsed since delivery or installation and the client has refrained from making acceptance within this period for any reason other than a defect notified to the seller which renders the use of the purchased goods impossible or substantially impairs it.

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IX. Property rights

1. The seller guarantees, in accordance with the provisions of this section XI, that the article of sale is free of industrial property rights or copyrights of third parties in the country of manufacture. This warranty is expressly not provided outside the country of manufacture. The preceding sentence does not apply and the seller provides no warranty with regard to the property rights of third parties if and to the extent that the seller has manufactured the article of sale to drawings, models or other equivalent descriptions or specifications provided by the client, and is unaware that in doing so it is infringing third party property rights.
2. Each contract partner will notify the other contract partner immediately in writing in the event that any claims of infringement of such rights are asserted.
3. In the event that the article of sale infringes an industrial property right or copyright of a third party exclusively in the country of manufacture, giving rise to a warranty obligation of the seller, the seller will modify or replace the article of sale at his own discretion and at his own expense to ensure that no rights of third parties are infringed, while also ensuring that the article of sale continues to fulfil the contractually agreed functions or provide the client with the right of use through the conclusion of a license agreement. If this cannot be achieved within a reasonable period, the client is entitled to withdraw from the contract or reduce the purchase price accordingly. Any claims for damages asserted by the client are subject to the limitations laid out in section X of these general terms and conditions of sale and delivery.
4. In the event of infringements by products made by other manufacturers and supplied by the seller, the seller will, at his own discretion, assert his claims against the manufacturers and suppliers on behalf of the client or assign them to the client. In such cases, claims against the seller are subject to the provisions of this section IX, and then only if such claims are in accordance with statutory provisions and the legal enforcement of the above-mentioned claims against the manufacturers and suppliers was unsuccessful or has no prospect of success, for example due to insolvency.

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X. Liability

1. The seller is liable for damages or reimbursement of expenses in accordance with the legal provisions, taking the limitations established in these general terms and conditions of sale and delivery into account.
2. To the extent that fault can be established in each case, the seller's liability for damages, regardless of the legal basis, but due in particular to impossibility, delay, incorrect or defective delivery, breach of contract, breach of obligations in contract negotiations and tort, is subject to the limitations laid out in these general terms and conditions of sale and delivery.
3. The seller is not liable for ordinary negligence on the part of its bodies, legal representatives, employees or other agents insofar as there is no infringement of essential contractual obligations. Essential contractual obligations are primarily the obligation to provide delivery and installation of the article of sale on time and free of significant defects, as well as the consulting, protection and due care obligations required to enable the client to use the article of sale as agreed in the contract or to ensure protection of the client's staff from death or injury or protection of the client's property from significant damage.
4. To the extent that the seller is liable for damages on the merits, this liability is limited to damages foreseen by the seller on the conclusion of the contract as a possible consequence of an infringement of the contract or that should have been foreseen through the proper application of due diligence. In addition, indirect and consequential damage resulting from defects in the article of sale are only eligible for compensation if such damage is typically to be expected during normal operation of the article of sale for its intended use.
5. The aforementioned liability exclusions and limitations apply to the same extent to the benefit of the bodies, legal representatives, employees and other agents of the seller.
6. To the extent that the seller provides technical information and that such information or advice is not part of the seller's contractually agreed scope of performance, it is provided free of charge and to the exclusion of any liability.
7. The limitations laid out in this section X and these general terms and conditions of sale and delivery do not apply to the seller's liability for willful or grossly negligent

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conduct, for guaranteed characteristics, for injury to life, body or health, or under the Product Liability Act. B.E. 2551 (2008) and the Civil and Commercial Code of Thailand.

8. The Client is strictly prohibited from altering the Goods or removing any existing warnings regarding the potential risks associated with the improper use of the Goods. In the event of a violation, the Buyer must indemnify and protect the Seller from any product liability claims made by third parties to the extent that the client is accountable for the defect that caused the liability.

XI. Retention of title

1. The seller retains title to all goods delivered by the seller until all claims resulting from the business relationship with the client (including but not limited to payment of purchase price, processing fees and packaging cost) have been satisfied ('Retained Goods'). In the case of current accounts, the retained property shall be deemed to be collateral for the claim in relation to the balance of the account.
2. If the Retained Goods become part of a new item by way of incorporation and if such item is owned by the client, it is hereby agreed that the client transfers co-ownership to the new item to the seller and acts as bailee in this regard without compensation. The seller's co-ownership share shall be determined by the relationship of the value of the Retained Goods to the value of the new item.
3. The client is entitled to resell the goods within the ordinary course of business. The client hereby assigns to the seller all claims against its customers that result from the sale of the Retained Goods. The seller hereby accepts such assignment. If the Retained Goods are sold together with other goods that are not owned by the seller, then the client assigns to the seller such part of the claim resulting from the sale that is equal to the invoiced amount for the Retained Goods. If Retained Goods are only partially owned by the seller and are sold, the part of the claim resulting from the sale that is assigned to the seller will be equal to our percentage of the ownership in the Retained Goods.
4. The client shall remain entitled on a revocable basis to collect any claims resulting from the resale of the Retained Goods. If requested, the client must notify its customers of the assignment of the claim and provide the seller with all information and documents required to enforce our rights.

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5. The seller shall release the collateral to which the seller is entitled to the extent that the value of such collateral exceeds the claims to be secured by more than ten per cent (10%). The client must notify the seller without undue delay if the Retained Goods are attached or if the seller's rights are adversely affected by a third party in any other way.
6. To the extent that mandatory legal provisions of Thailand do not contemplate retention of title within the meaning of this clause but do provide for other forms of security in relation to claims arising from invoices of suppliers, we hereby reserve the rights to such. The client shall cooperate with the seller with respect to all measures the seller may reasonably request to be undertaken in order to protect the seller's rights of title or other substitute rights in relation to the Retained Goods."

XII. Final provisions

1. The place of jurisdiction for any disputes arising from the business relationship between the seller and the client is, at the seller's discretion, the place of business of the seller or the place of business of the client. For claims against the seller, the exclusive place of jurisdiction is the Civil Court, District Court and Central Intellectual Property and International Trade Court. Mandatory statutory provisions concerning exclusive jurisdiction remain unaffected by this provision.
2. Any dispute arising from or in connection with the Sales and Delivery Contract shall be settled through friendly negotiation. In case no settlement can be reached, the dispute shall be submitted to the Thai Arbitration Center, Thai Arbitration Institute, for arbitration in accordance with its rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.
3. The relationship between the seller and the client is subject exclusively to the law of the Kingdom of Thailand. The Civil and Commercial Code, The CARRIAGE OF GOODS BY SEA ACT, B.E. 2534 (1991), the International Road Carriage of Goods Act, B.E. 2556 (2013), the International Air Carriage of Goods Act, B.E. 2558 (2015), and the Arbitration Act, B.E. 2545 (2002) shall be applied.
4. If the contract or these general terms and conditions of sale and delivery contain loopholes, the legally effective provisions to fill these loopholes that are deemed to be agreed upon are those that the parties would have agreed had they been aware of the loopholes, in order to fulfil the economic objectives of the contract and the purpose of these general terms.