

# General Terms and Conditions for the Delivery of Machines and Spare Parts of KASTO Machinery & Systems (Taicang) Co. Ltd. Dated 12/2018



## I. General Information

1. All deliveries and services shall be based on these conditions as well as any separate agreements. Deviating purchase conditions of the Purchaser shall not be part of the contract even with acceptance of the order.  
In the absence of any special agreement, a contract shall come into existence upon the Supplier's written order confirmation.
2. The Supplier shall reserve the rights to samples, cost estimates, drawings and similar tangible or intangible information - even of electronic nature; such information may not be disclosed to third parties. The Supplier shall agree not to disclose information and documents specified as confidential by the Purchaser to third parties without the express consent of the Purchaser.

## II. Payment Terms

The payment terms are defined within the main document (quotation or order confirmation).

## III. Delivery Period and Delivery Delays

1. The delivery period shall be based on the agreements between the contracting parties. Compliance with these agreements by the Supplier presupposes that all commercial and technical questions between the contracting parties have been clarified and the Purchaser has fulfilled all his obligations, such as providing the required official licenses or approvals or performance of a down-payment. Should this not be the case, the delivery period shall be adequately extended. This shall not apply if the Supplier is responsible for the delay.
2. Compliance with the delivery period shall be subject to correct and timely deliveries of materials to the Supplier (self-supply). The Supplier shall notify the Purchaser of any anticipated delays as soon as possible.
3. The delivery period shall be deemed complied with if the delivery item has left the works of the Supplier or the item has been reported as ready to ship. Should an acceptance be required, the acceptance date shall apply, alternatively the notification of readiness

for acceptance - except for a justified refusal of the acceptance.

4. If shipment or acceptance of the delivery item is delayed due to reasons for which the Purchaser is responsible, the costs incurred as a result of such delays shall be charged to the Purchaser beginning one month after notification of the shipment or readiness of acceptance.
5. Should the failure to comply with the delivery period be due to force majeure, labour disputes or any other events beyond the control of the Supplier, the delivery period shall be adequately extended. The Supplier shall notify the Purchaser of the beginning and end of such circumstances as soon as possible.
6. The Purchaser shall be entitled to withdraw from the contract without notice if the Supplier is unable to provide the complete services before the transfer of the risk. Furthermore, the Purchaser shall be entitled to withdraw from the contract when at the time of placing the order the performance of a part delivery becomes impossible, and he has a justifiable interest in refusing the partial delivery. If this is not the case, the Purchaser shall be obligated to pay the applicable contractual price of the partial delivery. This shall also apply to the Supplier's inability to perform. Otherwise section VII.2 shall apply. Should such an impossibility or inability to perform arise during a delay of acceptance or the Purchaser is solely or largely responsible for these circumstances, the Purchaser shall be obligated to provide consideration.
7. Should the Supplier fall behind in delivery and such a delay results in damage to the Purchaser, the Purchaser shall be entitled to claim liquidated damages. The liquidated damages shall amount to 0.5% for each full week of delay, however, not exceed 5% of the value for the part of the complete delivery that cannot be utilised promptly or according to the contract as a result of the delay.  
If the Purchaser issues the Supplier an adequate period to complete the service - taking into account the statutory exceptions - and this period is not fulfilled, the Purchaser shall be entitled to withdraw from the contract in the scope of the statutory regulations. The Purchaser shall be obligated to inform the Supplier within an adequate period,

whether he intends to exercise his right to withdraw from the contract.

Further claims due to the delay in delivery shall be exclusively based on section VII.2 of these conditions.

## IV. Transfer of Risk, Acceptance

1. The risk shall pass to the Purchaser when the delivery item has left the works of the Supplier, even in the case of partial deliveries or if the Supplier has assumed other obligations, for example, shipping costs or the delivery and installation. Should an acceptance be required, the date of acceptance shall be decisive for the passage of risk. The acceptance shall take place immediately by the agreed date of acceptance, alternatively after notification by the Supplier of the readiness for acceptance. The Purchaser shall not refuse acceptance if an immaterial defect is detected.
2. If the shipment or acceptance is delayed or is not performed for reasons for which the Supplier is not responsible, the risk shall pass to the Purchaser on the date of the notification of the shipment or readiness for acceptance. The Supplier shall be obligated to obtain insurance for the items upon request and at the sole expense of the Purchaser.
3. Partial deliveries shall be permitted provided they are reasonable for the Purchaser.

## V. Retention of Title

1. The Supplier shall retain ownership of the delivery item until all payments under the delivery contract have been received - also for any additional ancillary services owed.
2. The Supplier shall be entitled to obtain insurance for the delivery item against theft, breakage, fire, water, and any other damages, unless the Purchaser can provide proof that he has obtained such insurance himself.
3. The Purchaser may not sell, pledge or assign the delivery item by way of security. If the delivery item is pledged or seized or otherwise possessed by third parties, the Purchaser shall notify the Supplier immediately.
4. If the Purchaser violates the contract, in particular in the case of delayed payment, the Supplier shall, after issuing a reminder, be entitled to take back the delivery item and the Purchaser shall be obligated to surrender it.

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Reg. No. / 纳税人识别号 91320585MA1PY40N61

Unless agreed otherwise, the General Terms and Conditions, the Terms of Delivery and the Terms of Installation of KASTO Machinery & Systems (Taicang) Co., Ltd. apply to any sales and services, including those addressing KASTO's limited warranty and buyer's exclusive remedies. They can be downloaded from [www.kasto.cn/gtc](http://www.kasto.cn/gtc).

除非另有约定，卡斯托机械系统(太仓)有限公司的《通用条款和条件》《交货条款》《安装条款》适用于任何销售业务和服务业务，包括声明卡斯托有限维保和买方排他补救的业务。以上条款下载地址 [www.kasto.cn/gtc](http://www.kasto.cn/gtc)。

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SWIFT Code - BIC / 银行国际代码	PCBCCNBJS
RMB Account No. / 人民币账户	32250199733600000463
EUR Account No. / 欧元账户	32250199733609330273
USD Account No. / 美元账户	32250199733609140272

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Dated 12/2018

5. Due to the retention of title, the Supplier may only demand the return of the delivery item after he withdraws from the contract.

## VI. Claims for Defects

The Supplier shall be liable as follows for material damages and damage to title regarding the delivery excluding other claims - subject to section VI:

### Material damage

1. The Supplier shall at his discretion rework or replace parts damage-free which prove to be defective as a result of circumstances occurring before the passage of risk. The Supplier shall be notified immediately in writing if such a defect is detected. Spare parts shall be the property of the Supplier.
2. The Purchaser shall, in coordination with the Supplier, grant the Supplier the required time and opportunity to perform the necessary rework and replacement deliveries; otherwise, the Supplier shall be released from the liability for the resulting consequences. Only in urgent cases in which the operational safety is at risk or to prevent disproportionately serious damage, whereby the Supplier shall be notified immediately, shall the Purchaser have the right to remedy the defect or have it remedied by third parties, and to demand compensation of the necessary costs from the Supplier.
3. The Supplier shall bear - provided the complaint is deemed justified - the direct costs of the rework or replacement delivery including shipment fees. Furthermore, the Supplier shall bear any possible required installation and removal costs, provided it is the object of the original service, as well as the costs of any other provision of personnel including travel costs, as long as this does not impose a disproportionate burden on the Supplier.
4. If the Purchaser issues the Supplier an adequate period to complete the rework or replacement due to any material damage - taking into account the statutory exceptions - and this period is not fulfilled, the Purchaser shall be entitled to withdraw from the contract within the scope of the statutory regulations. If the defect is just minor, the Purchaser shall only be entitled to a reduction of the purchase price. The right of reduction of the purchase price shall otherwise be excluded.

5. Further claims shall be exclusively based on section VI. 2 of these conditions.
6. Liability shall not be assumed in the following cases, in particular: Unsuitable or improper use, incorrect installation or commissioning by the Purchaser or third parties, natural wear and tear, improper or careless handling, improper maintenance, unsuitable operational materials, poorly performed construction, unsuitable building site, chemical, electrochemical or electrical factors - provided the Supplier is not responsible for them.
7. If incorrect rework is performed by the Purchaser or third parties, the Supplier shall not be liable for the resulting consequences. The same shall apply to modifications made to the delivery item without previous consent from the Supplier.

### Damage to title

8. Should the use of the delivered items result in an infringement of industrial property rights or copyrights in the country, the Supplier shall at his own expense provide the Purchaser the right to continue to use or modify the delivery item in a manner acceptable to the Purchaser ensuring that no infringement of industrial property exists. If this is not possible under reasonable economic conditions or within a reasonable period, the Purchaser shall be entitled to withdraw from the contract. Under the provisions cited above, the Supplier shall likewise be entitled to withdraw from the contract. Furthermore, the Supplier shall indemnify the Purchaser from any undisputed or legally enforceable claims of the respective holders of the intellectual property rights.
9. The obligations of the Supplier stated in section V. 8 shall be exclusively subject to section VI.2 in the event of industrial property or copyright infringement. These exist only when
  - the Purchaser immediately informs the Supplier of any industrial property or copyrights claimed,
  - the Purchaser supports the Supplier to a reasonable extent in defending asserted claims or enables the Supplier to conduct modifications in accordance with VI. 8,

- the Supplier retains the rights to all defence measures including any settlements out of court,
- the damage to title is not based on an instruction by the Purchaser,
- the legal violation was not caused as a result of the Purchaser modifying the delivery item without authorisation or used the item in a manner contrary to the terms of the contract.

## VII. Supplier's Liability, Exclusion of Liability

1. Should the Purchaser be unable to use the delivery item as per the contractual agreement due to the fault of the Supplier as a consequence of the failure to provide suggestions or consultation or faulty suggestions or consultation that was provided before or after entering the contract - in particular, instructions on operation and maintenance of the delivery item, the provisions of the sections V and VI.2 shall apply to the exclusion of further liability.
2. In the case of damages that are not incurred on the delivery item himself, the Supplier shall be liable - for whatever legal reasons - only
  - a. in the event of willful intent,
  - b. in the event of gross negligence on the part of the owner/corporate bodies or executives,
  - c. in the event of culpable injury to life, limb or health,
  - d. in the event of defects that the Supplier has maliciously concealed.
  - e. in the scope of a guarantee promise,

In the event of culpable breaches of essential contractual obligations, the Supplier shall also be liable in the event of gross negligence on the part of non-executive employees and in the case of minor negligence, whereby the latter instance shall be limited to the reasonably foreseeable damage that is typical of the contract, but may not exceed 10% of the net order amount in such cases.

No further entitlements shall exist.

## VIII. Statute of Limitations

All claims on the part of the Purchaser - regardless of the legal grounds - shall be

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subject to a statute of limitations of 12 months. For damage claims according to section VI. 2 a-d of these conditions, the statutory terms shall apply. They shall likewise apply to defects to buildings or for delivery items that were used, pursuant to their customary use, for a building and have caused the defectiveness thereof.

## IX. Software Utilisation

If software is included within the scope of delivery, the Purchaser shall be issued a non-exclusive right to use the delivered software, including its documentation. It shall be provided for the use of the delivery item intended for this purpose. The utilisation of the software on more than one system shall be prohibited.

The Purchaser shall not copy, revise, translate or convert from one object code to the source code. The Purchaser agrees not to remove or change the manufacturer's specifications - in particular, copyright references - without the prior express consent of the Supplier.

All other rights to the software and documentation including copies thereof shall remain with the Supplier or with the software supplier. The issuance of sub-licenses shall not be permissible.

Any utilization of the software in violation of or outside the application regulations as indicated in the specifications of the system as well as any change, modification or adaptation of the software through the purchaser (as for instance software database request or similar) will cause the right to claim

defects by the purchaser to be cancelled.

If systems with several operating stands (network licence) are delivered, the utilization of the as-signed software shall only be permitted at the agreed number of data processing units.

The installation of external software in the delivered system components shall only be permitted after prior approval by the supplier.

## X. Applicable Law, Place of Jurisdiction

1. All legal relationships between the Supplier and the Purchaser shall be subject exclusively to Chinese Law.
2. The venue shall be the court of law having jurisdiction for the Supplier's domicile. However, the Supplier shall be entitled to file suit at the Purchaser's domicile.

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