



## § 1 Contractual Terms and Conditions

1. The following Terms and Conditions of Sale and Delivery (hereinafter 'Terms and Conditions') apply exclusively to all sales of goods and provision of other services (hereinafter 'Delivery Item') by Knorr-Bremse.
2. Any terms and conditions of the Customer in conflict or deviation from these Terms and Conditions are expressly rejected unless Knorr-Bremse agrees to them in writing.
3. Amendments and additions must be made in writing whereas text form shall be sufficient.
4. These Terms and Conditions also apply if Knorr-Bremse carries out the delivery or service to the Customer without reservation despite being aware of the Customer's deviating terms and conditions.

## § 2 Conclusion of Contract

1. Offers from Knorr-Bremse are subject to change and non-binding.
2. A quotation from Knorr-Bremse does not constitute an offer. The Customer may submit an offer based on it, which Knorr-Bremse may accept within a reasonable period of time.
3. The contract is concluded subject to correct and timely delivery to Knorr-Bremse by its suppliers.
4. Verbal agreements become effective with the content of their confirmation in writing whereas text form shall be sufficient.

## § 3 Goods and Services

1. Knorr-Bremse shall provide the Delivery Item in accordance with the agreed specification and the final definition of the Delivery Item (hereinafter 'Design Freeze'). Changes are only agreed if Knorr-Bremse expressly confirms them in writing whereas text form shall be sufficient and an agreement on the remuneration adjustment has been reached.
2. The documentation enclosed with the Delivery Item does not always fully correspond to the Delivery Item. Lack of conformity may particularly exist if the Delivery Item deviates from Knorr-Bremse's standard Delivery Item at the Customer's request.
3. Unless expressly marked as such, Knorr-Bremse makes no guarantees in the documentation of the Delivery Item or other documents.
4. Services are only owed by Knorr-Bremse if they are expressly agreed.

## § 4 Obligation of the Customer to Cooperate

1. The Customer shall appoint a contact person for Knorr-Bremse.
2. The Customer shall support Knorr-Bremse in the realisation of the Delivery Item as far as this is possible and reasonable. This includes that the Customer provides Knorr-Bremse with any necessary and useful information, documents, data, manufacturing parts and components as well as software (hereinafter 'Material') for the realisation of the Delivery Item.
3. If the Customer provides Knorr-Bremse with Material, the Customer guarantees to be entitled to transfer and use the Material and that Knorr-Bremse's use of the Material does not infringe any third-party intellectual property rights. If the Customer provides Material electronically, it must be done in a technically flawless condition; in particular, free of viruses, Trojans, malware or other malicious software.
4. If Material required for the realisation of the Delivery Item is not provided in a form suitable for the contract purpose, in particular not in a customary form (e.g. file formats customary in the industry), Knorr-Bremse can demand adequate reimbursement of any additional expenditure caused by this inconvenience.

## § 5 Delivery; Delivery and Performance Period

1. Documentation owed may be in German or English at Knorr-Bremse's discretion.
2. Delivery and performance deadlines stated by Knorr-Bremse are non-binding unless Knorr-Bremse expressly confirms the exact delivery or performance date in writing whereas text form shall be sufficient. The delivery or performance period does not begin until all business-related and technical questions between the parties have been clarified. This presupposes the timely and proper fulfilment of the obligations incumbent on the Customer. If a Design Freeze takes place, the delivery or performance period shall begin at the earliest with the Design Freeze. If the Customer has obligations to cooperate and provide information and does not fulfil these requirements after the start of the delivery or performance period or only fulfils them with delay, the delivery and performance period shall be extended by at least the duration of the delay.
3. Compliance with the delivery or performance period is subject to correct and timely delivery to Knorr-Bremse itself. Knorr-Bremse's performance of the contract with respect to those parts of the delivery or service that are covered by government export or import regulations is subject to the necessary approvals being granted.
4. If the legal requirements are met, Knorr-Bremse may assert rights of retention, including the defense in case of non-performance of contractual obligations.
5. Knorr-Bremse will send prompt notice of any impending delay. Knorr-Bremse's liability for any damage caused by delay is governed by § 9 of these Terms and Conditions.
6. Unless otherwise stated in the order confirmation, delivery EXW (ex works) from Knorr-Bremse (Incoterms 2020) is agreed. The Customer is obliged to accept the Delivery Item immediately upon receipt of the delivery notification.
7. Partial deliveries or services are permissible insofar as they are not unreasonable for the Customer.
8. The Customer may not refuse to accept the Delivery Item due to insignificant defects.
9. If non-compliance with the delivery periods is attributable to force majeure or similar disruptions, provided they are unforeseeable, unavoidable and extraordinary (e.g. war, terrorist attacks, import and export restrictions, operational disruptions, shortages of raw materials, industrial disputes, strikes, lockouts, epidemics and pandemics), the agreed delivery periods shall be extended accordingly, but never longer than 6 months. Knorr-Bremse's liability is excluded in these cases, provided Knorr-Bremse is not responsible for the disruption.
10. If Knorr-Bremse is responsible for the non-observance of bindingly agreed deadlines and dates, compensation for delay is limited to 0.5% per week, but the total shall never exceed 5% of the invoice amount of the affected delivery and service. This does not apply in the cases of intent and gross negligence. In this case, however, compensation for delay shall be limited to the foreseeable damage typical for the contract.
11. If the Customer wishes to withdraw from the contract due to non-compliance with binding deadlines or dates and/or to claim damages instead of performance, the Customer must have set a reasonable deadline for delivery and warned about the consequences if the deadline is not met.

## § 6 Price, Payment

1. The agreed net prices apply and are payable in Euros, plus statutory VAT, EXW (ex works) from Knorr-Bremse (Incoterms 2020).
2. If Knorr-Bremse handles the assembly, the corresponding work hours, travel costs and other expenses must be paid separately.
3. Payment for partial deliveries and services is due upon completion of the respective partial delivery or service and corresponding invoicing.
4. The owed remuneration shall be paid without deduction within 30 calendar days from the date of the invoice.



5. If, after the conclusion of the contract, there is a significant deterioration in the Customer's assets or if there are reasonable doubts about the Customer's solvency or creditworthiness that jeopardise Knorr-Bremse's claim to payment, Knorr-Bremse may make the delivery dependent on the Customer's advance payment or a security deposit. The Customer has the right to prove that Knorr-Bremse was aware of this situation or should have been aware of it before concluding the contract.

6. Knorr-Bremse may change the remuneration accordingly if, between the conclusion of the contract and the delivery or performance, unforeseeable significant cost increases or reductions occur affecting the relevant price components for which Knorr-Bremse is not responsible and which were part of the original price calculation. Such significant increases or decreases may especially be based on new, additional or changed duties or taxes, changes in legal regulations, material or manufacturing costs, in particular energy costs, transport/freight costs including customs duties, import and export taxes as well as changes due to exchange rate fluctuations. The relevant price components are shown in the respective offer. The price of the Delivery Item shall be adjusted in accordance with the price change of the relevant price component proportionate to the respective reference point and the share of the relevant price component in the Delivery Item. For example, if copper is listed as a relevant price component and it accounts for 10% of the Delivery Item, any change in the selected copper price index or another selected reference point shall be reflected in the purchase price of the Delivery Item by 10%; correspondingly, if the change in the selected reference point is 5 percentage points and the Delivery Item consists of 10% copper, the change in the price of the Delivery Item shall be 0.5 percentage points.

7. If the Customer is in default of payment, Knorr-Bremse is entitled to demand interest on arrears per year in the amount of 9 percentage points above the base interest rate. The right to claim higher damages remains unaffected.

8. The Customer is only entitled to offset or retain if its counterclaim is legally established, undisputed or recognised by Knorr-Bremse. Any assignment of claims against Knorr-Bremse, except for payment claims, requires the prior written consent of Knorr-Bremse.

## § 7 Defects and Rectification

1. Knorr-Bremse's warranty is limited to compliance with the agreed specification and the definitively defined Delivery Item (§ 3 no. 1 of these Terms and Conditions). Knorr-Bremse does not warrant for objective requirements.

2. In the case of a purchase agreement or a contract for labour and materials, the Customer must inspect the Delivery Item immediately upon receipt and notify Knorr-Bremse of any obvious defects without delay. If the Customer fails to notify Knorr-Bremse, the Delivery Item shall be deemed to have been approved, unless it is a defect which was not recognisable during the inspection. If such a defect is discovered later, the notification must be sent immediately after discovery; otherwise, the Delivery Item is deemed to also have been approved in view of this defect.

3. Whether supplementary performance is provided by repair or subsequent delivery is at Knorr-Bremse's discretion. A supplementary performance period to be set by the Customer must be reasonable. In the event of subsequent delivery or replacement for the purpose of supplementary performance, the Customer must return the delivered or performed Delivery Item to Knorr-Bremse to the extent possible. If supplementary performance is only possible at disproportionate cost, Knorr-Bremse may refuse it.

4. In the case of a purchase agreement or a contract for labour and materials, the Customer is entitled in accordance with the statutory provisions to withdraw from the contract, reduce the purchase price and/or claim damages if supplementary performance fails twice.

5. Additional expenses incurred because the Delivery Item has been taken to a place other than the agreed delivery or fulfilment location will not be borne, unless Knorr-Bremse was aware that this was in accordance with the intended use.

6. Claims for defects are subject to a limitation period of 12 months. The warranty period begins with delivery. The supplementary performance does not restart the limitation period.

## § 8 Retention of Title

1. Knorr-Bremse retains title to the Delivery Item until all claims arising from the business relationship have been met in full.

2. The Customer is entitled to process or combine the Delivery Item in the ordinary course of business. Knorr-Bremse acquires co-ownership of the items resulting from the processing or combination as security for its claims referred to in no. 1, which the Customer hereby assigns to Knorr-Bremse. The Customer must store the items subject to Knorr-Bremse's co-ownership free of charge as a contractual secondary obligation.

3. The Customer is entitled to resell the Delivery Items in the ordinary course of business. The Customer assigns to Knorr-Bremse all claims to which the Customer is entitled from the resale with ancillary rights in the full amount as security for the payment claims, regardless of whether the Delivery Item has been further processed or not. The Customer is entitled to collect the assigned claims. Knorr-Bremse may revoke the Customer's right to resell and the right to collect the assigned claims if the Customer is in default of payment of two average invoice amounts.

4. After exercising the right of revocation, the Customer must, at Knorr-Bremse's request, immediately notify Knorr-Bremse in writing whereas text form shall be sufficient, to whom the Customer has sold the items owned or co-owned by Knorr-Bremse. The Customer must also indicate to which claims the Customer is entitled from the resale and provide Knorr-Bremse with publicly attested documents on the assignment of the claims at the Customer's expense.

5. The Customer may neither pledge nor assign the Delivery Item prior to the transfer of ownership and must clearly mark it as Knorr-Bremse's property. The Customer must treat the Delivery Item with care before the transfer of ownership and insure it adequately at the Customer's own expense against damage by fire, water and theft at the replacement value. Maintenance and inspection work that becomes necessary must be carried out by the Customer in good time at the Customer's own expense.

## § 9 Liability

1. Knorr-Bremse is liable without limitation for intent and gross negligence. Knorr-Bremse's liability for ordinary negligence is limited to the foreseeable damage that is typically associated with the contract and only if an obligation is breached, which is essential for the proper fulfilment of the contract and on which the Customer may regularly rely (material contractual obligation).

2. The aforementioned limitations or exclusions of liability do not apply in the event of fraudulent concealment of a defect, from the assumption of a guarantee and for claims under the Austrian Product Liability Act (Produkthaftungsgesetz) and in the event of damage to life, limb or health.

3. Insofar as Knorr-Bremse's liability is excluded or limited, this also applies to the personal liability of its employees, workers, representatives and vicarious agents.

4. Except for the entrepreneurial recourse pursuant to section 933b ABGB (Austrian Civil Code), if the object of the performance is a building or building materials used in such a building, and if the defect is based on rights in rem of third parties or rights registered in the land register, the limitation period is one year after knowledge of the damage and the perpetrator.

## § 10 Third-Party Rights

1. Knorr-Bremse warrants that the Delivery Item is not subject to any third-party rights.

2. If a third party asserts a justified claim against the Customer for infringement of an intellectual property right or copyright within the meaning of § 11 (hereinafter: 'Property Rights') by a Delivery Item supplied by Knorr-Bremse and used in accordance with the contract, Knorr-Bremse is liable to the Customer as follow: a) Knorr-Bremse



shall, at its own discretion and expense, obtain a right to use the Delivery Item, modify it so that the Property Right is not infringed or replace the Delivery Item. If Knorr-Bremse cannot do so under reasonable conditions, the Delivery Item must be taken back against reimbursement of the purchase price. b) Knorr-Bremse's obligations set out in a) only exist if the Customer notifies Knorr-Bremse immediately in writing of the asserted claims of third parties, does not acknowledge an infringement and reserves Knorr-Bremse the right to all defensive measures and settlement negotiations. If the Customer ceases the use of the Delivery Item to mitigate damages or for other reasons, it must point out to the third party that the discontinuation does not constitute an acknowledgement of an infringement of Property Rights. Insofar as the Customer is responsible for the infringement, the Customer's claims are excluded.

3. Claims of the Customer are excluded if the infringement of Property Rights is caused by specifications of the Customer, by an application not foreseeable by Knorr-Bremse or by the fact that the Delivery Item is modified by the Customer or used with Delivery Items not supplied by Knorr-Bremse.

4. Further claims against Knorr-Bremse are excluded; however, § 9 (Liability) remains unaffected, as does the Customer's right to withdraw from the contract.

5. The contracting parties will inform each other without delay of any risks of infringement and alleged cases of infringement that become known and give each other the opportunity to counteract corresponding claims by mutual agreement.

#### **§ 11 Intellectual Property, Reverse Engineering, Data**

1. Knorr-Bremse retains title and copyright to samples, cost estimates, illustrations, drawings, calculations, films, templates, slides, repros, tracings and other documents (collectively hereinafter 'Documents'); they may not be reproduced, made available to third parties, or used by the Customer directly or for third parties without Knorr-Bremse's written consent. This applies regardless of whether the Documents have been marked as confidential. Knorr-Bremse is entitled to claim damages without prejudice to further rights.

2. Insofar as Documents are part of the contractual scope of delivery or service owed by Knorr-Bremse, the Customer is granted a simple, non-exclusive right of use in connection with the respective Delivery Item. Utilisation for other purposes is excluded.

3. The Customer is prohibited from reverse engineering the Delivery Items and Documents received from Knorr-Bremse, for example, by observing, examining, disassembling, testing or in any other way.

4. To the extent that the Delivery Item collects and stores data about its own condition during operation that is not personal data (hereinafter 'Machine Data'), Knorr-Bremse is the sole owner of such Machine Data. Knorr-Bremse is entitled to use and exploit the Machine Data without restriction for any purpose, including for the maintenance and continuous development of the Delivery Item. Knorr-Bremse is entitled to retrieve the Machine Data. For this purpose, the Customer grants Knorr-Bremse physical or virtual access to the Delivery Item, unless this is impossible or unreasonable for the Customer.

5. If the Delivery Item contains software, it may be subject to special terms of use to which reference is made in the service description. By placing an order, the Customer also accepts these terms of use. If third party software is supplied, the terms of use of the third party shall apply. The user agreement shall be concluded directly with the third party and rights of use shall be acquired directly from the third party. Unless otherwise agreed, the Customer acquires only a simple right of use to the software in compiled format with the Delivery Item. The Customer shall have no claim to surrender the source code. Outside the rights of the Urheberrechtsgesetz (Austrian Copyright Act), the Customer is not entitled to reproduce, distribute, edit or reverse engineer software.

#### **§ 12 Confidentiality**

1. 'Confidential Information' refers to business, marketing, technical, scientific, financial and other information, specifications, designs, plans, drawings, software, prototypes or process techniques that are marked confidential (or similarly identified) when disclosed by Knorr-Bremse, are communicated under confidential circumstances or would be considered confidential under reasonable business judgment. This applies regardless of whether the information was disclosed in physical, verbal or electronic form.

2. The Customer is obliged to keep all Confidential Information strictly confidential, not to disclose such Confidential Information, nor to use such Confidential Information for any purpose other than its business relationship with Knorr-Bremse. This applies to all third parties, including unauthorised employees or freelancers, if the disclosure is not necessary for the fulfilment of the obligations under this Agreement. Confidential Information shall not be disclosed to any persons or companies based in Russia or Belarus. The use of Confidential Information in Russia or Belarus is not permitted under any circumstances. This also applies to employees and affiliated companies of the Customer.

3. Confidential Information does not include information (i) that was generally known or in the public domain or became so without Customer's input, (ii) that was already in the possession of the Customer prior to the receipt from Knorr-Bremse, (iii) that was lawfully obtained from a third party, or (iv) that was independently developed by the Customer without access to the Confidential Information.

#### **§ 13 Export Control**

1. The Customer shall comply with all export control, customs, sanctions and embargo regulations applicable to Knorr-Bremse and the Delivery Items.

2. If the Customer does not have its registered seat in a member state of the European Union, USA, Canada, Australia, Great Britain, Iceland, Japan, South Korea, Liechtenstein, New Zealand, Switzerland or Norway, additionally it must not sell, export or re-export, provide or in any other way make directly or indirectly available any Delivery Item to any person in or for use in Russia or Belarus.

3. Knorr-Bremse is entitled to withdraw from the respective contract in case of violation of the aforementioned obligation.

#### **§ 14 Place of Jurisdiction and Governing Law**

1. The sole place of jurisdiction for disputes arising from and in connection with these Terms and Conditions shall be Wiener Neustadt or, at Knorr-Bremse's discretion, the registered seat of the Customer or the place of business that fulfils the order.

2. The laws of Austria shall apply exclusively, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).