**General Terms and Conditions for Deliveries and Services of**

**Maschinenfabrik Bernard Krone GmbH & Co. KG, Spelle**
**Heinrich-Krone-Str. 10, 48480 Spelle**
**Local Court of Osnabrück, HRA 204871**

**and**

**mykrone.green GmbH, Spelle**

**Heinrich-Krone-Str. 10, 48480 Spelle**
**Local Court of Osnabrück, HRA 213775**

**(Last amended: 1 November 2019)**

## § 1
## General matters – scope

1.1 Our offers and all of our deliveries and services are made exclusively in accordance with the following General Terms and Conditions for Deliveries and Services (hereinafter, the "**General Terms and Conditions**"). These General Terms and Conditions apply, in particular, to the sale of agricultural machinery, consumables (such as nets, yarns, and foils), telemetry and diagnostic items, merchandise items, and replacement parts, as well as to the making of related deliveries and the rendering of related services and to all future transactions between the contracting parties, including Software Products according to Section 8 of these General Terms and Conditions. The General Terms and Conditions also apply where we do not expressly refer to them for subsequent contracts or services, particularly where we make deliveries or render services to the customer despite being aware that its general business terms and conditions conflict with, diverge from, or go beyond our General Terms and Conditions. General business terms and conditions of the customer that conflict with, diverge from, or go beyond these General Terms and Conditions do not become a part of the contract unless we have expressly approved their validity in writing.

1.2 The concluded agreement, including these General Terms and Conditions, is solely controlling for the legal relationship between us and the customer. Individual agreements concluded verbally with the customer take precedence in a given case. A contract or our confirmation in text form is controlling with respect to the content of such agreements.

1.3 Legally relevant declarations or notices that are required to be submitted by the customer after contract conclusion (e.g. the setting of deadlines, notices of defects, declarations concerning termination or reduction of the purchase price) must be given in text form in order to be effective.

1.4 Notices concerning the applicability of legal provisions are given for the purposes of clarification only. Therefore, even without such a clarification, statutory provisions are applicable unless they are directly modified by or expressly excluded in these General Terms and Conditions.

1.5 Our General Terms and Conditions apply only with respect to entrepreneurs within the meaning of section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), to legal entities under public law, and to special funds under public law.

## § 2
## Offers and contract conclusion

2.1 Our offers to the customer are non-binding, unless they are expressly characterised as binding or include a specific acceptance deadline. We assume no liability for typographical errors or mistakes. Offers constitute merely a request to the customer to submit a binding offer itself. The customer's order constitutes a binding offer. This offer may be accepted at our discretion within a reasonable period (at least two weeks) by sending an order confirmation or by making the ordered deliveries or rendering the ordered services without reservation.

2.2 Performance of the contract with respect to delivered parts that are covered by governmental export regulations is subject to the proviso that the requisite approvals are issued to us.

2.3 We reserve all property rights and copyrights, as well as any and all other existing rights, in and to all cost estimates, drawings, plans, depictions, specifications concerning weights and dimensions, and performance and consumption data, as well as other technical data and descriptions and all other information, software programs, and documentation (collectively, the "**Information**"). The Information must be kept strictly confidential. In particular, it may not be disclosed or otherwise made available to third parties without our prior express written consent. Where we so request, the customer must return the Information and all reproductions (including digital copies) to us in full and/or destroy same, at our discretion. Moreover, even where we do not make such a request, the customer must return the Information and all reproductions (including digital copies) and/or destroy same, at our discretion, when the relevant order has been completed, when the customer no longer needs the Information in the ordinary course of business, or if negotiations do not result in conclusion of a contract.

2.4 The documents forming part of the offer, such as depictions, drawings, specifications concerning weights and dimensions, and performance and consumption data, as well as the technical data and descriptions in the respective product information or promotional materials, are non-binding. They are descriptive only and constitute neither agreed qualities nor guarantees as to the quality or durability of the goods to be delivered by us pursuant to section 443 BGB. Deviations that are customary in the trade, as well as those that are attributable to legal requirements or constitute technical improvements, are permissible, as is the replacement of components with equivalent parts, provided that this does not interfere with the use for the purpose envisaged in the contract.

2.5 In the case of sales based on samples or specimens, we warrant only that the specimens were professionally manufactured, and they do not constitute any guarantee as to the quality or durability of the goods to be delivered by us.

## § 3
## Prices, payment terms, default in payment

3.1 The applicable prices are those agreed upon at the time the respective contract was concluded, particularly those listed in the purchase order or in the order confirmation. Absent special agreement, prices are ex works (EXW – Incoterms 2010). In addition, the services rendered by us are charged on a time-and-materials basis at the hourly billing rates currently in effect. Where prices are not listed in the order confirmation, our current price lists are applicable, which we will gladly send upon request. All prices are net of value-added tax. Any customs duties, taxes, and other public charges are for the account of the customer. In the case of deliveries made outside of Germany, other country-specific charges may be incurred. In the case of shipments by regular mail, courier, or rail, delivery is made at the risk and expense of the recipient or customer. The deduction of discounts for prompt payment, rebates, or other allowances requires an express agreement.

3.2 We reserve the right to reasonably adjust our prices in the event that costs change after conclusion of contract, particularly as a result of higher wage costs, price increases by input suppliers, or fluctuations in currency exchange rates. We will demonstrate the reasons for the price adjustment to the customer upon request. The adjustment normally will not exceed 10% of the order value. If an adjustment in excess of this is necessary, we must first give the customer written notice thereof. The customer is then entitled to terminate the contract within 14 days of receipt of the notice. In such case, it must compensate us for the costs we have incurred and the effort we have expended up to that point. The right to adjust prices does not apply to goods that are to be delivered or services that are to be rendered within three (3) months of contract conclusion, unless same are delivered or rendered in connection with continuing obligations. If products are first delivered three months after contract conclusion for reasons for which KRONE is not responsible, KRONE is entitled to reasonably adjust the prices. If a new price list is in place at the time of delivery, the new prices are deemed agreed upon.

3.3 Unless different payment terms have been agreed upon, our invoices are payable immediately following receipt of the goods and the invoice. Controlling for the date of payment is receipt of the funds into one of our accounts. If the customer fails to pay by the due date, the outstanding amounts bear interest thereafter at the rate of nine percentage points above the basic rate of interest set by the Deutsche Bundesbank (section 288 BGB, section 353 of the German Commercial Code (*Handelsgesetzbuch*, HGB)). We reserve the ability to assert more extensive damage from default.

3.4 The customer is entitled to rights of set-off and retention only if its counterclaim is undisputed by us, has been acknowledged by us, or has been reduced to an enforceable judgment. Defects in delivery or service have no effect on the customer's counterclaims.

3.5 If the customer is in default with a payment, or if the customer's financial circumstances experience a material deterioration after contract conclusion so as to jeopardise payment, or if such a deterioration is imminent, we are entitled the accelerate the due date of the customer's entire remaining debt and, under modification of concluded agreements, demand advance payment or the posting of security or, if delivery has already been made, the immediate payment of all of our claims that are based on the same legal relationship. The foregoing applies, in particular, where the customer discontinues making its payments, where the customer's cheques are not honoured, where insolvency proceedings have been commenced in respect of the customer's assets, or where an application for commencement of insolvency proceedings was lodged and insolvency proceedings were not commenced for lack of assets. The same applies in the event of a deterioration in the customer's credit rating with relevant credit insurers or credit reporting agencies. Any understandings concerning deferral of payments lapse when the customer is notified accordingly.

3.6 If doubts exist as to the customer's creditworthiness or solvency and/or if retention of title pursuant to Section 6 of these General Terms and Conditions cannot be effectively agreed upon (for instance, because the foreign legal system applicable at the place of delivery does not recognise a non-possessory security right, at least not without additional formalities), we are entitled to make delivery, either in whole or in part, only against advance payment or other appropriate method for securing advance performance by KRONE (such as through conclusion of a credit insurance policy, issuance of documentary security, issuance of a bank guaranty, etc.), with the costs associated therewith being for the customer's account.

## § 4
## Delivery and service period, default in performance

4.1 Agreed delivery dates and periods are approximate only, unless a specific date has been expressly agreed upon in writing. Specially agreed delivery periods begin to run when our order confirmation is sent. The delivery period is complied with if the goods have left the plant on or before expiry of such period or if we have given notice of readiness for shipment or have rendered the service.

If, however, agreed delivery periods are exceeded due to circumstances for which we are responsible, the customer may terminate the contract after having twice set reasonable grace periods that went unmet. Notice of termination must be given in writing.

4.2 Unless, as an exception, a specific fixed delivery date was agreed upon, we are first in default after expiry of a reasonable grace period set by the customer. We are not in default in the case of force majeure or other unforeseeable, extraordinary circumstances for which we are not responsible, such as operational disruptions due to fire, water, or similar circumstances, breakdown of production equipment or machinery, failure of our suppliers to deliver or meet delivery deadlines, or operational interruptions due to lack of raw materials, energy, or labour, strikes, lock-outs, difficulties in procuring means of transport, traffic disruptions, or interventions by public authorities. Instead, and insofar as we are prevented by the aforementioned circumstances through no fault of our own from fulfilling our contractual obligations in a timely manner, we are entitled to postpone the making of the delivery or the rendering of the service for the duration of the impediment, plus a reasonable ramp-up time. If as a result of this, the making of the delivery or the rendering of the service is delayed by more than two months, both we and the customer are entitled to terminate the contract with respect to the quantity affected by the delivery disruption, under exclusion of all claims for compensation of damages.

4.3 In every case of default, our obligation to compensate damages is limited in accordance with Section 10 of these General Terms and Conditions.

4.4 We are entitled to make partial deliveries and render partial services during the agreed delivery and service periods, provided that the customer can be reasonably expected to accept them.

4.5 Compliance with our delivery and service obligations presupposes that the customer has properly met its obligations in a timely manner, particularly that it has supplied the workpieces that are required to be provided and the documents, approvals, and releases that are required to be procured, and that any agreed down payments have been received. We reserve the ability to raise the defence of unperformed contract.

## § 5
## Transfer of risk, transport and packaging, acceptance

5.1 Unless expressly agreed otherwise in writing between us and the customer, our deliveries are ex works (EXW – Incoterms 2010). In such case, the risk of accidental loss or deterioration of the goods after they have been made available for pick-up passes to the customer when it receives notice that the goods are ready for shipment. However, we are entitled to load our products on the respective means of transport. If the customer desires to have the goods shipped, the risk of accidental loss or deterioration of the goods passes to the customer when they are handed over to the carrier. The customer also bears the risk of accidental loss or deterioration of the goods where we make partial deliveries or, by way of exception, have handled other services, such as shipping costs. If shipment is delayed due to circumstances for which the customer is responsible, risk passes to the customer starting on the date of readiness for shipment.

5.2 Where the goods are shipped to the customer, we choose the method of shipment, unless agreed otherwise in text form. At the customer's request and expense, we will insure the shipment against damages due to theft, breakage, transport, fire, and water, as well as other insurable risks.

5.3 Notwithstanding the rights in Section 9 of these General Terms and Conditions , the customer must accept delivered goods, also if they have minor defects.

5.4 If the customer is in default in acceptance, or if it fails to cooperate, including by not accepting the goods or not picking them up from us following receipt of our notice of readiness for shipment, we are entitled to demand compensation for the damages we suffer as a result, including any additional expenses (such as storage costs, expenses for futile delivery attempts, etc.).

## § 6
## Retention of title

6.1 We retain title to the delivered goods until payment in full of the purchase price and all other current or future claims against the customer to which we are entitled under the business relationship. Inclusion of the purchase price claim in a current account and acknowledgement of a balance does not affect retention of title.

6.2 The customer is obligated to treat the delivered goods with care for as long as we retain title to them. In particular, it is obligated to adequately insure them at their replacement value at its own expense against loss, damage, and destruction, such as against damages due to fire,

water, or theft. The customer hereby assigns to us its claims under the insurance policies. We hereby accept such assignment.

6.3 The customer may neither pledge the goods to which we retain title nor assign them for the purposes of security. However, it is entitled in accordance with the following provisions to resell the delivered goods in the ordinary course of business. The foregoing entitlement does not exist where the customer has made an effective advance assignment or pledge to a third party of its claim against its contract partner from the resale of the goods or has agreed with such third party on a prohibition of assignment.

6.4 For the purpose of securing the satisfaction of all of our specified claims, the customer hereby assigns to us all claims, including future and contingent claims, from the resale of the goods delivered by us, together with all ancillary rights, in the amount of the value of the delivered goods, with such assignment to have seniority over all of its other claims. We hereby accept such assignment.

6.5 If and as long as the customer is meeting its payment obligations to us, it is authorised to collect, in the ordinary course of business, the claims against its customers that have been assigned to us. However, it is not entitled to agree with its customers on a current-account relationship or on a prohibition of assignment with respect to such claims or to assign or pledge them to third parties. If contrary to sentence 2, a current-account relationship is in place between the customer and the purchasers of our goods subject to retention of title, the claim that was assigned in advance also relates to the acknowledged balance and, in the case of the purchaser's insolvency, also to the balance existing at that time.

6.6 Where we so request, the customer must provide information about each of the claims assigned to us and disclose the assignment to its debtors, with the instruction that they are to make payment to us up to the amount of our claims against the customer. We are also entitled at any time to notify the customer's debtors about the assignment and to collect the claims ourselves. However, we will refrain from making use of these powers provided that the customer is meeting its payment obligations in a proper and timely manner, an application has not been lodged for the commencement of insolvency proceedings against the customer, and the customer does not discontinue making its payments. If however one of the aforementioned cases arises, we may demand that the customer disclose to us the assigned claims and their debtors, provide all information necessary to collect the claims, and turn over the related documents.

6.7 The customer must give us prompt written notice of liens or other interventions by third parties.

6.8 Where so requested by the customer, we undertake to release the collateral to which we are entitled to the extent that (i) the estimated value of our collateral exceeds our secured claims against the customer by more than 50% or (ii) the realisable value of our collateral exceeds our secured claims against the customer by more than 10%. We are entitled to choose the collateral to be released.

6.9 In the case of conduct by the customer in breach of contract, including being in default with the payment of more than 10% of the invoiced amount for a period of at least 30 days following the due date and receipt by the customer of the invoice, we are entitled to place a lien on the goods delivered by us for the purpose of realisation or to set a deadline for the customer to remedy the breach, which in the case of payment default by the customer need not exceed a further two weeks. In the case of realisation of the goods, the realisation proceeds are to be set off pursuant to section 366 (2) BGB against the customer's existing liabilities to us, less reasonable realisation costs.

6.10 The arrangements set forth in this Section 6 apply *mutatis mutandis* to goods to which we acquire sole title or co-title through processing, combination, or intermixture.

## § 7
## Proprietary rights

7.1 The customer must give us prompt written notice if claims are asserted against it for infringement of industrial property rights or copyrights in connection with our deliveries or services or if it otherwise becomes aware of such claims.

7.2 If the goods infringe an industrial property right or copyright of a third party, we will, at our discretion and expense, either modify or substitute the goods in such a way that third-party rights are no longer infringed but the goods still fulfil the contractually agreed functions or obtain for the customer the right to use the goods through conclusion of a licence agreement with the third party. If we are unable to do so within a reasonable period of time, or if we legitimately refuse to do so due to unreasonable costs, the customer is entitled to terminate the contract or reasonably reduce the purchase price. Any claims of the customer for compensation of damages are subject to the limitations in Section 10 of these General Terms and Conditions.

7.3 If products of other manufacturers that are delivered by us are in violation of the law, we will, at our discretion, either assert our claims against the manufacturers and input suppliers for the account of the customer or assign them to the customer. In such cases, the customer has claims against us in accordance with this Section 7 only if legal enforcement of the aforementioned claims against the manufacturers and input suppliers was unsuccessful or is likely to be unsuccessful, for example, because of insolvency.

## § 8
## Software

8.1 If our offers, deliveries or services also include Software Products, the following provisions of this Section 8 shall apply additionally. The term "Software Products" within the meaning of these General Terms and Conditions shall include the operating system programs and the application programs for the solution of special operational tasks, including the source and machine programs together with the entire associated manufacturer or user documentation, intended or suitable for promoting the understanding or application of a Software Product, in particular problem descriptions, system analyses, user instructions, data flow and program flow charts, testing aids etc., as well as the associated granting of rights of use and associated services and/or work, in particular digital content made available via the customer portal mykrone.green. This applies regardless of the program language and the type of embodiment of the Software in written form or the fixation on any data carriers such as read-only memories, main memories, flash memories, diskettes, microprocessors etc.

8.2 If the customer acquires Software Products offered by us on a permanent or temporary basis or wishes to acquire such Software Products, the following provisions shall apply to the sale, delivery and transfer of them to the customer and the granting of rights of use:

a) Prior to placing an order, the customer has verified that the Software Products' specification meets his wishes and needs by inspecting the essential functional features and conditions. The product description and the state of the art are primarily decisive for the quality. As a rule, we only deliver respectively provide the customer with standard software; the technology for the delivery of the Software Product is subject to the respective agreements. The customer is not entitled to receive the source code.

b) The Software Products have either been developed by us directly or on our behalf or have been licensed to us by other companies for commercial use and transfer. These programs and data for the computer-controlled automatic operation of delivered machinery and equipment usually consist of work that is protected by copyright pursuant to section 2 (1) no. 1 of the German Copyright Act (*Urhebergesetz*, UrhG). In addition, the programs and supporting documentation have been developed by the licensor, by us, or for us at a considerable expenditure of time and money. They are not common knowledge but instead constitute business and trade secrets that are entrusted to the customer, who commits to us to keep them confidential.

c) Upon full payment of the owed remuneration according to Section 3 of these General Terms and Conditions, we grant the customer a basic, non-exclusive right of use of Software Products only for his own purposes and only for his own business. This includes the right to correct errors in accordance with the respective specifications and conditions of use and, additionally, in accordance with the requirements set out in these General Terms and Conditions. All other rights to the Software Products are reserved. To the extent that the Software Product refers to the control of machines or to other products,
   - the right of use is limited to this specific purpose and for the lifetime of the machine or product;
   - the customer undertakes to keep the Software Product entrusted to him confidential and commits to destroy it when the delivered machine or product is taken out of service.

d) In the interest of confidentiality, the customer shall make the Software available within its company only to persons who absolutely need to work with it, are trustworthy, and have committed to maintain confidentiality. The customer is obligated to deny third parties access to an object that stores or launches the Software Product and to ensure through suitable measures that this possibility is ruled out; the transfer according to lit. j remains unaffected.

e) Unless we have expressly agreed to this in writing beforehand, the customer undertakes to refrain from:
   - making changes to the content of the Software Products supplied and removing or changing manufacturer's details;
   - copying or reproducing the Software Product, irrespective of the form or the means used;
   - decoding or reverse engineering the Software Product and/or its underlying source codes or otherwise making it public, unless this is legally permitted under section 69e of the German Copyright Act and unless the information necessary for this purpose is not made available by us or by the manufacturer of the software at the customer's request;
   - with the exception of a transfer in accordance with lit. j below, selling, leasing or subletting, or licensing the Software Product – or otherwise allowing third parties to use it in a physical or non-physical form or make it available, or using the Software or an unauthorised copy or reproduction of the Software Product for the purposes of controlling a machine with information-processing abilities, other than the machinery delivered by us for which the respective program is intended.

f) The customer's obligations under the foregoing Section 8.2. lit. c to lit. e continue to exist after the termination of the respective contract as well as the decommissioning of the delivered machinery. They only end with extinction of the intellectual property rights or if the trade secrets become public knowledge.

g) The customer is entitled to make a backup copy if this is necessary to secure future use. As far as technically possible, the customer shall visibly affix the note "backup copy" as well as a copyright notice to the backup copy created or the version transmitted online. The backup copies must be kept in a safe place. Copies that are no longer required must be deleted or destroyed.

h) If the customer uses the Software Product to an extent that qualitatively (with regard to the type of permitted use) or quantitatively (with regard to the number of purchased licenses) exceeds the acquired rights of use, the customer shall immediately acquire the rights of use necessary for the permit of use. In case of failure to do so, we shall assert the rights to which we are entitled.

i) We may terminate the granting of the right to use to a Software Product for good cause. Good cause shall be deemed to exist if, taking into account all circumstances of the individual case and weighing up the interests of both parties, we cannot reasonably be expected to continue to keep the Software at the customer's premises permanently, in particular because he has violated the provisions of these General Terms and Conditions in a substantial manner. In this case, the customer shall immediately and completely discontinue the use of the Software Product, delete all copies installed on his systems and delete or hand over to us all backup copies that may have been created; additionally, Section **Fehler! Verweisquelle konnte nicht gefunden werden.** shall apply to the return of the Software Product.

j) The customer shall be entitled to transfer on a permanent basis without the right of return or repurchase option a purchased Software Product to a third party including handing over the documentation; this shall also apply in the event of the sale of the machine or product to which the Software Product relates. In this case, the customer must completely terminate the use of the Software Product, remove all installed copies of the program from his computers and delete all copies on other data carriers or hand them over to us, unless he is legally obliged to keep them for a longer period. The customer shall notify us in writing of the completion of the deletion process. Likewise, the third party acquiring the Software Product must make the following declaration to us in writing:

   *"We would like to purchase the Software Product (exact designation) from (company and address of the customer). We have a copy of the documents from which the rights of use and obligations of the previous acquirer/customer have been determined. We undertake to you to comply with these rules of use. Our right of use shall commence at the earliest when the previous acquirer/customer has informed you in writing that he has deleted the program, as far as possible and reasonable, and that he no longer has any right to use the Software Product with the commencement of our right of use. In the event of a sale of the Software Product by us, we undertake to observe the same rules as those that apply to our predecessor in title vis-à-vis you."*

   In the event of a breach of these rules by the customer, the customer shall owe us a contractual penalty amounting to half the amount that the third party would have had to pay to us according to the then current price list for the Software Product, at minimum half of the agreed purchase price.

k) If a Software Product is provided to the customer for a limited period of time ("Software Lease"), the software is provided for an indefinite period of time, unless otherwise agreed. The Software Lease Agreement may be terminated by either party by giving written notice six (6) weeks to the end of a calendar quarter, but no earlier than to the end of the quarter in which is the first anniversary of the date on which the Lease Agreement was concluded. In addition, the Software Lease Agreement may be terminated in writing by either party without notice for good cause. A good cause entitling us to terminate the contract shall be deemed to exist in particular if the customer infringes our rights of use by using the Software Product beyond the extent permitted under the Lease Agreement and does not remedy the infringement within a reasonable period of time following a warning letter from us. In the event of termination, the customer shall immediately and completely stop using the Software Product, delete all copies installed on his systems and delete or hand over to us any backup copy that may have been created; additionally, Section 2.3. shall apply to the return of the Software Product.

## § 9
## Warranty, rights of the customer in the event of defects

9.1 Solely applicable as agreement as to the quality of the goods is the description of the goods, which forms a part of the individual contract. If quality was not agreed on, the determination of whether a defect exists is to be evaluated in accordance with the statutory rule (section 434 (1) sentences 2 and 3 BGB).

9.2 The customer's claims for defects presuppose that it has met its statutory duties to inspect and object. If the customer is a merchant within the meaning of the German Commercial Code, the following also applies:

The goods delivered by us must be carefully inspected by the customer without delay following delivery to the customer or to the third party specified by it (section 377 HGB). The goods delivered by us are deemed approved unless we receive a written notice of defects with respect to obvious defects, or other defects that were identifiable in the course of prompt inspection, within a reasonable period of time, but not later than five business days after delivery of the goods, or otherwise within five business days of discovery of the defect or any earlier point in time at which the defect was identifiable by the customer in the course of normal use of the goods without closer inspection. In addition, the customer is obligated to notify us of defectiveness in the case of any identifiable defects in quality. If the customer fails to properly inspect the goods and/or to send a notice of defects, our liability is excluded for identified defects and for defects identifiable in the course of proper inspection but not notified.

9.3 The customer is not entitled to defect warranty rights in the case of used products and those agreed to be of second-tier quality, as well as in the case of minor reductions in the value of the delivered goods or their suitability for use. The same applies to deviations, particularly in terms of dimensions, weights, performance data, or colour shades, that are within tolerances customary in the industry. Also excluded are the customer's warranty claims where damage to the delivered goods or other protected interests of the customer is attributable to improper use of the goods, defective assembly or commissioning by the customer or third parties, normal wear and tear, improper or negligent treatment of the goods, the use of improper operating supplies, substitute materials, defective construction work for which we are not responsible, or chemical, electro-chemical, or electrical influences for which we are not responsible.

9.4 If the goods delivered by us are defective, we are first entitled to remedy the defect through delivery of defect-free goods (substitute delivery) or eliminate the defect (cure), at our discretion. Notwithstanding (( 475 (4) BGB, the foregoing does not affect our right to refuse the chosen type of secondary performance under the statutory requirements. The customer must give us the necessary time and opportunity for the owed secondary performance, including turning over the objected-to goods for testing purposes. It must cooperate in the secondary performance, including loading the defective goods if they are picked up by us.

9.5 If a defect actually exists, we bear the expenses required for the purpose of testing and the secondary performance, including the costs of transport, travel, labour and materials, as well as expenses under section 439 (3) BGB. However, if a request by the customer for elimination of a defect turns out to be unjustified, we may demand that the customer compensate us for the costs incurred as a result of such request.

9.6 If after the third attempt, the secondary performance has failed, or if a reasonable deadline set by the customer for the secondary performance expired without result or can be dispensed with in accordance with statutory provisions, the customer may terminate the contract or reduce the purchase price. However, there is no right of termination for a minor defect.

9.7 The customer is entitled to compensation of damages or to reimbursement of fruitless expenses based on fault on our part only in accordance with Section 10.

9.8 The customer is entitled to recourse claims against us pursuant to sections 445a and 478 BGB (recourse of the entrepreneur) only insofar as the customer did not conclude an agreement with its customer going beyond the statutory defect claims. If solely entrepreneurs are involved in the supply chain, including the ultimate purchase contract, the applicability of section 445a (1) and (2) is excluded.

9.9 Insofar as the goods are Software Products, they are suitable for the contractually stipulated use, otherwise for normal use. They have the suitability customary for this type of Software Product, but – like any software – they are not error-free. Functional impairments due to hardware defects, environmental conditions, incorrect operation and the like are not defects.

In the case of Software Products that are provided or made available on a permanent basis, the rectification of defects shall be done by the delivery of Software Products that do not have the defect or by showing possibilities of how the effects of the defect can be avoided. An equivalent new program version or the equivalent previous program version without the defect shall be accepted by the customer, if this is acceptable for him. The customer must cooperate regarding the rectification of defects, in particular by describing any problems that arise in concrete terms and by giving us the time and opportunity necessary to remedy the defect. We may demand reasonable compensation for additional expenses arising from the fact that the Software Products have been modified, incorrectly used or incorrectly operated or if no defect is found and the customer has negligently notified us of the defect.

In the case of a Software Lease Agreement, we warrant that the contractually agreed quality of the Software Product will be maintained during the term of the contract and that no third-party rights conflict with the contractual use of the Software Product. We shall remedy any defects of quality and title in the leased item within a reasonable period of time after the customer has notified us of such defects in writing, describing the time of occurrence and the circumstances in detail. A possible existing right to reclaim leasing rates paid subject to reservation remains unaffected.

**§ 10**
**Liability**

10.1 We are liable without limitation – irrespective of the legal basis – for reimbursement of expenses and compensation of damages caused by wilful misconduct or gross negligence.

10.2 In the event of simple negligence, we are liable only

a) for damages suffered as a result of loss of life, physical injury, or damage to health;

b) for damages suffered as a result of breach of a material contractual duty. A material contractual duty means an obligation the fulfilment of which is essential for proper performance of the contract and on the observance of which the contractual partner normally relies and is entitled to rely and the violation of which endangers the achievement of the purpose of the contract. In that case, however, our liability is limited to the compensation of damages that, at the time of contract conclusion, were, in objective terms, typically foreseeable for this kind contract as a potential consequence of a breach of contract, applying due care and attention. In such case, we are in particular not liable for the customer's lost profit that is typically not foreseeable for this kind of contract or for other indirect consequential damages that are not foreseeable.

10.3 If we are liable pursuant to Section 10.2(b) for the breach of a material contractual duty that does not involve gross negligence or wilful misconduct, our liability is limited in terms of amount to twice the amount of the invoice. In accordance with the understandings of the parties, greater damages are not typical for this kind of contract.

10.4 In the case of a Software Lease Agreement, the liability without fault according to section 536a (1) BGB is excluded.

10.5 We reserve the right to object to contributory negligence. In particular, the customer has the obligation to back up data and to defend against malware according to the current state of the art.

10.6 Subject to the meeting of all other preconditions, the customer may claim compensation of damages for contractual penalties and flat-rate compensation of damages that it owes to third parties in connection with goods delivered by us only if this was expressly agreed upon with us or if prior to our concluding the contract with it, the customer made us aware of this risk in writing.

10.7 The exclusions and limitations of liability contained in these General Terms and Conditions apply to the same extent in favour of our governing bodies, statutory representatives, employees, and other persons we use to perform an obligation (*Erfüllungsgehilfen*).

10.8 To the extent that we provide technical information or, as an exception, act in an advisory capacity, and such information or advice does not form part of the contractually agreed scope of performance owed by us, this takes place gratuitously and under exclusion of all liability.

10.9 The limitations of liability contained in these General Terms and Conditions do not apply if we have fraudulently concealed a defect or have provided a guarantee with respect to the quality of the material. The same applies to the buyer's claims under the German Product Liability Act (*Produkthaftungsgesetz*).

**§ 11**
**Limitation of claims**

11.1 The customer's claims against us, particularly those for defects in goods delivered by us and services rendered by us – including claims for compensation of damages and claims for reimbursement of fruitless expenses as a result of such defects – shall become time-barred (*verjähren*) one year after commencement of the statutory prescription period, unless provided otherwise in Sections 11.2 and 11.3, below.

11.2 If as a result of defects in newly manufactured goods delivered by us, the customer, or another customer in the supply chain, satisfies claims of its buyer, and if the ultimate transaction in the supplier chain is a purchase of consumer goods, the customer's claims against us under sections 437 and 445a (1) BGB shall become time-barred not earlier than two months after the date on which the customer, or another customer in the supply chain, satisfied the consumer's claims, unless the customer could have successfully relied on the defence of prescription (*Verjährung*) against its contract partner. The customer's claims for defective goods delivered by us are in any case time-barred when the claims of the customer's contract partner against the customer for defective goods delivered by us to the customer are time-barred, but not later than three years after the date on which we delivered the respective goods to the customer.

11.3 In the case of the purchase of a defective Software Product, the period of limitation for claims for reimbursement of the purchase price due to withdrawal or price reduction is one year from the delivery of the Software Product, however no less than three months from the effective declaration of withdrawal or reduction in case of validly notified defects.

11.4 The provisions in Sections 11.1 and 11.3 do not apply to the prescription of claims based on loss of life, physical injury, or damage to health or to the prescription of claims under the German Product Liability Act or for legal defects in the goods delivered by us, consisting of an in-rem right of a third party that enables it to demand surrender of the goods delivered by us. In addition, they do not apply to the prescription of claims of our customer that are based on the fact that we fraudulently concealed defects in the goods delivered by us or the services rendered by us or that we breached a duty as a result of wilful misconduct or gross negligence. In such cases, statutory prescription periods apply to the prescription of such claims

**§ 12**
**Place of performance; place of jurisdiction**

12.1 Our registered office in Spelle, Germany is the place of performance.

12.2 Unless contrary to mandatory statutory provisions, Spelle is the exclusive place of jurisdiction for all disputes between us and merchants, legal entities under public law, or special funds under public law. The foregoing also applies in cases where the customer does not have a general place of jurisdiction in the Federal Republic of Germany or where it moves its place of jurisdiction to a location outside of Germany prior to suit being brought. However, we also have the right to bring suit against the customer at its statutory place of jurisdiction.

12.3 The law of the Federal Republic of Germany applicable between merchants is exclusively applicable to the legal relationship between us and the customer or between us and third parties. The applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) and German conflict-of-law rules is expressly excluded.

**§ 13**
**Export control**

13.1 We as well as our customers must comply with the export control laws and sanction provisions of the Federal Republic of Germany, the European Union, and the United States, as well as any other mandatory, applicable foreign trade rules and regulations. This includes, in particular, Council Regulation (EC) No 428/2009 and its annexes, the German Foreign Trade Act (*Außenwirtschaftsgesetz*, AWG), the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*, AWV) and its annexes (Part I, Sections A and B of the German export list), as amended in each case from time to time, and any restrictions under Council Regulation (EC) No 881/2002, Commission Regulation (EC) No 553/2007, Council Regulation (EC) No 2580/2001, and Council Regulation (EU) No. 753/2011, as well as restrictions that result from the U.S. OFAC lists.

13.2 The customer undertakes to refrain from directly or indirectly selling, exporting, re-exporting, delivering, transferring, or otherwise making available goods delivered by us to persons, companies, institutions, or organisations to the extent that this infringes German, European, and/or U.S. export provisions or other embargo rules. If the customer resells our products or otherwise involves third parties in contract performance, it must check whether the name and identify of its customers, business partners, and employees appear among the natural and legal persons, groups, and organisations contained on the current lists published as annexes to the regulations set forth in Section 13.1. If the name and identity appear on these lists, the customer must refrain from conducting business with these persons, groups, or organisations.

13.3 Where we so request, the customer must provide us with the necessary information about the end use of the goods to be delivered by us. In particular, it must issue what are known as "end-use-certificates" and send the originals to us so that we can verify the end use and the purpose of use of the goods to be delivered and demonstrate same to the competent export control authorities.

13.4 We are entitled to terminate the contract with the customer, as well as individual delivery and services obligations and ongoing obligations, if and to the extent that KRONE needs to do so in order to comply with national or international legal provisions within the meaning of Section 13.1. In the case of termination in accordance with sentence 1, the customer cannot assert a claim for compensation of damages or other rights on account of termination.

**§ 14**
**Confidentiality, data**

14.1 We and our customers agree that a party's business and trade secrets that become known during the business relationship may be neither exploited nor disclosed to third parties without the consent of the other party, unless the business and trade secrets are publicly available or there is a statutory obligation to disclose them. This also applies after the corresponding contract has ended.

14.2 However, in the case of legitimate interest (e.g. if the customer asserts warranty claims with respect to the goods), we and our agents are allowed to read the operating data of the goods (e.g. operating hours, area output, running time) and are to be given access to the telematic data documentation concerning the goods. Access to such data is permissible for as long as and to the extent that this is necessary in order to safeguard our legitimate interests.

14.3 In addition, the customer agrees that its business data that are provided to us in connection with and for the purposes of the business relationship (e.g. balance sheets, management

reports, business plans, banking information, etc.) may be processed by us and by companies affiliated with us and be transmitted to and used by third parties to the extent that this is related to the business relationship, particularly where the customer desires assistance with financing. The foregoing declaration of consent is given voluntarily and may be withdrawn by the customer at any time. It is not deemed to be consent to the use of personal data under applicable data protection laws. The customer continues to hold the intellectual property rights relating to the provided data and to maintain the ownership of copyrights with respect to such data, unless agreed otherwise in writing.

**§ 15**
**Final provisions**

15.1 If any of the foregoing provisions should be ineffective, unenforceable, or excluded by special agreement, this does not affect the effectiveness of the remaining provisions.

15.2 Absent our express written consent, our customer may not assign or pledge to third parties, either in whole or in part, its rights and claims against us, including based on defects in the goods delivered by us or based on breaches of duty committed by us. Section 354a HGB remains unaffected by this.

15.3 We store data of our customers within the scope of our mutual business relationships pursuant to the General Federal Data Protection Act (*Bundesdatenschutzgesetz*) and the EU General Data Protection Regulation. Please note our data protection information for customer transactions at https://landmaschinen.krone.de/english/art-13-and-art-21-gdpr/ and for the use of mykrone.green at https://mykrone.green/control/cms/datenschutz.

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