

Kiener Maschinenbau GmbH Terms of Sales and Supply

I. Quotation

Our quotations are always subject to changes. We especially reserve the right to correct any price errors. Documents appertaining to the quotation such as illustrations, drawings, weight and dimensional data are only roughly binding as far as they are not explicitly designated as binding. We reserve the right of ownership and proprietary rights for cost estimations, drawings and any other documents; they must not be made available to third parties.

II. Delivery volume

1. For the delivery volume, our written order acknowledgement is the only binding document. Any other agreements and modifications require our written confirmation.
2. Dimensions, weights, illustrations and drawings are only binding for realization if this is explicitly confirmed in written form. Packing will be realized according to usual and special aspects as one-way packing against invoicing.
3. If deliveries are carried out according to instructions, drawings, specifications and other data of customer and if thereby proprietary rights of third parties are infringed, the customer engages already now to indemnify us against any claims by third parties and any claims which might be incurred by a possible defence.
4. If assembly is agreed upon and if the assembly is delayed for reasons attributable to the customer, the customer has to assume the costs for waiting times and possibly required repeated travel of the assembly personnel.

III. Pricing and payment

1. Unless otherwise agreed, the prices are to be understood for delivery ex our works Lauchheim, packing and any other expenses excluded. Independent of the price agreed we are entitled to invoice any wage increase and increase of material prices as well as any other not foreseeable costs until delivery. The applicable VAT must be added.
2. Unless otherwise agreed, payment is due within a fortnight on invoicing date, cash without any deduction.
3. On delay in payment we are entitled to invoice interest at a rate of 3 % above the corresponding discount rate of the Deutsche Bundesbank, at least, however, 8 % per year.
4. We reserve the right to decide on the acceptance of bill of exchanges from case to case. The credit note will only be effected under the usual caution. For bill of exchanges we will charge the usual discount and collecting expenses. We do not accept any deduction of cash account for payment by bill of exchange.
5. Withholding the payment or set-offs due to potential claims of the customer are excluded. This will also apply if they are included in a commercial open account.

IV. Delivery

1. The delivery time shall start with the dispatch of the order acknowledgement, however not before receipt of the documents, approvals, releases to be provided by customer and receipt of an agreed down-payment.
2. The delivery time shall be considered as respected if until its expiry the deliverables have left the site or if the readiness for dispatch has been advised. Cancellation of contract by buyer or indemnification due to delay are excluded.
3. The delivery time shall be correspondingly extended due to labour disputes, especially disputes and lockouts and if unforeseeable events occur which are outside of supplier's responsibility if such events considerably influence the completion or delivery of the deliverables. This shall also apply if the events occur on sub-suppliers' side. The supplier shall not be responsible for the aforementioned circumstances if they occur during an already existing delay. The supplier shall inform the customer as soon as possible on beginning and end of such circumstances.
4. If the dispatch is delayed on customer's request, the costs being incurred by the storage of the goods on supplier's site will be invoiced, starting one month after notification of readiness for shipment, at least, however, ½ % of the invoice amount for every month. The supplier shall however be entitled to dispose of the deliverables after having announced a reasonable period and its expiry and to supply to the customer in a reasonably extended period.
5. The respect of the delivery time is based on the respect of customer's contractual obligations.

V. Passing of risk and receipt of deliverables

1. The risk shall pass at latest with the dispatch of the deliverables to the customer, even if partial shipments are effected or if the supplier has assumed any other services e.g. the shipping costs or the delivery and installation. On customer's request, the delivery will be insured by supplier against such risks as theft, break, damages caused by transport, fire and water as well as other insurable risks.
2. If the dispatch is delayed due to circumstances for which the customer can be made responsible the risk shall pass to the customer on the day of readiness for dispatch; however, the supplier is obligated to effect any insurances on request and costs of customer if required by him.
3. Goods supplied shall be received by customer without prejudice to the rights of article VII, even if they represent irrelevant deficiencies.
4. Partial deliveries shall be admissible.

VI. Reservation of ownership

1. The supplier reserves the right of ownership of the deliverables until receipt of all payments from delivery contract.
2. The supplier is entitled to insure the deliverables on customer's account against theft, damages by break, fire, water and any other damages if the customer has not made the insurance himself.
3. The customer may neither pawn nor transfer the ownership of the deliverables. He has to immediately inform the supplier on levies and seizures or any other orders by third parties.
4. On violation of contract by the customer, especially on payment delay, the supplier shall be obliged to take back the deliverables after reminder and the customer shall be obliged to give up the possession. The assertion of the proprietary right as well as the levy of the deliverables by supplier shall not be considered as repudiation of contract as far as the instalment law is not applied.

VII. Liability for deficiencies of delivery

For deficiencies of the deliverables, which also include the missing of explicitly promised features, the supplier is held liable not including any further claims as follows:

1. All parts are to be replaced or supplied as new parts free of costs at equitable discretion of supplier which within 6 months (for multi-shift operation within 3 months) since commissioning appear to be useless or as considerably affected in their usefulness due to a circumstance prior to passing of risk, in particular due to faulty construction, bad material or faulty realization. The detection of such defects shall be immediately advised to supplier in written form. Replaced parts will become property of the supplier. If the dispatch, the installation or commissioning are delayed without supplier's fault, the liability will expire at latest 12 months upon passing of risk. For considerable products of other makers, supplier's liability shall be limited to the assignment of claims to which he is entitled towards the supplier of the product of the other maker.
2. Customer's right to assert any claims due to defects shall be statute-barred in all cases in 6 months from time of timely objection, at earliest, however, on expiry of the warranty period.
3. No guarantee is accepted for any damages which are caused by the following reasons:
Unsuited or unprofessional use, faulty assembly and/or commissioning by customer or by third parties, natural wear, faulty or negligent treatment, unsuited operating media, exchange material, faulty construction, unsuited building ground, chemical, electro-chemical or electrical influences as far as they are not due to supplier's fault.
4. For realization of repairs and spare supplies which seem to be necessary according to supplier's reasonable discretion, the customer has to grant the required time and occasion upon agreement with supplier as else the supplier is exempt of liability for defects. It is only in urgent cases of risk of operating safety and to avoid unreasonable big damages whereby the supplier must be immediately be informed or if the supplier is in undue delay with the correction of the defect that the customer has the right to correct or have corrected the defect by third parties and to demand a compensation for the costs incurred from the supplier.
5. As far as the claim shows up to be justified, the supplier will bear the costs of the replacement part including the dispatch as well as reasonable costs of disassembly and assembly; moreover, if this can be required depending on the corresponding case the costs of the potentially required dispatch of his service engineers and unskilled workers, considering the direct costs due to the repair and/or replacement delivery. All other costs shall be borne by customer.
6. The warranty period for the replacement part and the repair is 3 months, however, it will run at least until the expiry of the original warranty period of the deliverables. The period of liability for defects of deliverables will be extended by the duration of interruption of operation caused by repair works.
7. For any modifications or repairs incorrectly realized by customer or third parties without prior approval of supplier, the liability for consequences incurred will be repealed.
8. Any further claims of customer, especially the claim for compensation for damages not incurred on the deliverable itself are excluded.

VIII. Place of jurisdiction

Any dispute arising out of the contract, where the customer is established merchant, a legal entity of public law or a special fund under public law, shall be settled by the Court competent for the headquarters or the branch realizing the delivery of the supplier. The supplier is also entitled to take legal actions at head office site of customer.

IX. General

Purchase conditions enclosed by customer in the enquiry or the purchase order shall not apply. Special conditions of customer which are conflicting with our Terms of Sales shall only apply if we have explicitly agreed upon in written form. By the unequivocal acceptance of our Terms of Sales your acceptance of our Terms of Sales is expressed in such a way that any pleas to your purchase conditions are excluded for you even if you have declined the acceptance of other terms and conditions.