

General Terms and Conditions of Purchase of Kiener Maschinenbau GmbH

1. Application

(1) The present Terms and Conditions of Purchase apply exclusively. Any divergent or conflicting terms shall not be recognised by us unless we explicitly consent to them in written form.

(2) The present Terms and Conditions of Purchase also apply for all future transactions between the Parties, even then if we accept the goods unrestrictedly in full awareness of divergent or conflicting terms.

(3) The present Terms and Conditions of Purchase shall only apply in respect of companies, bodies corporate governed by private law or special entities under German public law in the sense of Section 310 subsection 1 BGB (German Civil Code).

2. Offer, Acceptance, Order Confirmation

(1) In submitting its offer, the Seller shall adhere exactly to the specifications of our enquiry in terms of quantity and properties and, in the event there are differences, make explicit mention thereof.

(2) Offers shall be made free of charge

(3) The documents, which go with the offer, drawings and samples that we have provided are our property and shall be returned unsolicited and free of charge to our works after the offer has been submitted.

(4) The Seller undertakes to accept the order within an appropriate period of time, at the most, however, inside two weeks; this shall be in the form of a written order confirmation. If the order is not accepted on time in written form, we shall be entitled to revoke our order.

3. Order, Prices, Terms of Delivery

(1) The prices featured in our order are binding and are understood to be free to destination as "DDP" (delivered duty paid pursuant to INCOTERMS 2010) plus value added tax in the respective amount, unless explicitly otherwise agreed.

(2) Price amendments shall be subject to our written approval.

(3) Only orders and transactions that are written and signed shall be deemed legally binding. Orders placed verbally or over the telephone shall require subsequent written confirmation in order to be legally binding. The same shall apply for subsidiary agreements and amendments made verbally.

(4) All machinery, plants and devices delivered to us shall comply with the accident prevention regulations of the liability insurance associations, the regulations of the authorities (VDE, TV bT, DIN etc.) and those of the German automobile industry

(5) Any return of faulty goods shall take place at the risk and expense of the Seller inasmuch as the return is obligatory at all.

4. Offsetting, Retention

We shall be entitled to offset and withhold payments to the full extent of the law.

5. Delivery

(1) All delivery dates featured in the order or otherwise agreed upon shall be deemed binding

(2) The Seller undertakes to inform us immediately of any imminent or actual non-compliance with a delivery date, the reasons for this and the likely duration of said delay. The occurrence of a default in delivery shall not be affected hereby.

(3) In the event of a default in delivery we shall be entitled to all options available under the law

6. Passage of Risk

The risk of accidental loss or deterioration of the goods shall pass to us upon proper and complete delivery thereof at the specified destination.

7. Checking for Faults

We undertake to check the goods within an appropriate period of time for any quality or quantity faults; the Seller shall be notified of any defect in good time, namely inside five workdays as from receipt of the goods or, if the fault is concealed, upon discovery thereof.

8. Quality Assurance and Licences

The Contractor operates a quality assurance system, evidence of which is shown to us if so requested. Evidence of an existing quality assurance system pursuant to DIN ISO 9001 (latest revision) or another recognised licensing system shall be provided to us without this being requested. We shall be entitled to check this on site ourselves or have it checked by authorised third parties.

9. Documents, Drawings, Samples, Models, Tools, Non-disclosure

(1) All information, documents, drawings and samples that are left with the Bidder/Contractor in order to prepare the offer, draft, production etc., and the documents, drawings and samples prepared by the Bidder/Contractor in line with Kiener specifications, are the property of Kiener and shall not be used, duplicated or rendered available to third parties for any other purpose whatsoever. This likewise shall apply for all models and tools owned in whole or in part by Kiener.

(2) At the request of Kiener, Kiener models and tools shall be handed over to Kiener or its authorised parties immediately.

(3) The Bidder/Contractor deems enquiries, orders, deliveries or services to be business secrets that are to be treated confidentially and shall only be able to refer to business relations with us in advertising material after we have given our written consent thereto.

(4) The Contracting Partners undertake to treat all not manifestly commercial or technical details of which they become aware during business relations as business secrets.

(5) Sub-contractors shall be bound accordingly.

10. Invoice

(1) We require invoices in duplicate featuring all the order data; they shall match the order in the sequence of items and prices and give the item numbers.

(2) Payment deadlines are subject to ISO 9000 subsequent to full performance. Failure to comply with this shall mean it will not be possible to settle an invoice.

(3) The value of invoices for precursory deliveries not arranged with us shall be fixed for the delivery date we specified without any specific notification to the Seller.

11. Declaration of Supplier

The Seller shall provide us with a delivery declaration as required by the EC Regulation 3351/83. In this, the Seller declares that the goods it delivered were manufactured in the EC and that they comply with the regulations on the designation of the customs term "certificate of origin".

On the invoices, the Seller undertakes to flag the goods that are not in the "certificates of origin" with the clear reference "No certificate of origin."

12. Advance Payment

(1) In exceptional cases we accept advance payments. However, this shall only be in return for a down-payment invoice and a directly enforceable, unrestricted bank guarantee to be procured by the Seller from a reputed German bank at no expense to us.

(2) Upon delivery, the full scope of the delivery shall be billed. Payment shall be offset against the down-payment.

13. Modalities of Payment

The invoice shall be paid inside 14 days subject to 3% discount or inside 30 days net.

This deadline shall start to run from the moment of proper billing and full delivery, performance or acceptance.

14. Liability for Defects, Warranty

(1) In any case, warranty shall amount to 24 months following delivery or start-up operations without any work-shift restrictions.

(2) The delivered goods shall reflect the technology detailed in our order placement and in our documents, descriptions, drawings, specifications and customer regulations.

(3) We are entitled unrestrictedly to rights of warranty under the law. In particular we shall be entitled to choose whether the fault is to be eliminated or whether the delivery of a faultless item is to provide replacement or whether we require compensation for damages

(4) If danger is imminent, we shall, after notifying the Seller, be entitled to eliminate the fault ourselves or have it rectified by others at the expense of the Seller.

(5) When spare parts are delivered or a fault is remedied, the period of warranty for said replaced parts shall start to run anew.

15. Product Liability, Insurance

(1) The Seller undertakes on first demand to hold us harmless from any and all liability towards third parties or third-party claims that arise from the production, delivery, storage or use of the delivered goods. An obligation to release from liability shall not apply if the claim is derived from gross negligence or intentional breach of duty on our part.

(2) During the term of the present Contract, the Seller undertakes to maintain a product liability insurance policy with sufficient minimum coverage for injury to persons or damage to property. Any farther-reaching claims to compensation for damages shall not be affected hereby.

16. Defects of Title

(1) The Seller guarantees that the goods are delivered free from third-party rights and that the delivery does not breach any third-party rights. The Seller hence holds us harmless on first demand from any third-party claim.

(2) Claims from defects of title shall become statute-barred in line with paragraph 14 (6)

17. Supplementary Terms of Purchase for Computers, Electronic and Control Software of Kiener GmbH

(1) The development and production of the computer software are based on the specification sheets prepared by Kiener or Kiener customers and all other know-how (contractual know-how) communicated verbally or in written form by Kiener for this purpose.

Specification sheets and contractual know-how are the unrestricted property of Kiener.

Kiener is and moreover shall remain the exclusive holder of all proprietary rights, copyrights, usage and exploitation rights as well as all other rights to the specification sheets and contractual know-how.

(2) The Contracting Parties agree that the computer, electronic and control software, in particular the flow charts, schedules, production documents and source programs as well as all respective descriptions, documentation and data storage media (digital tape, disks etc.), developed and produced by the Seller, shall pass into the exclusive and unrestricted ownership of Kiener.

The Parties further agree that all copyrights, usage and exploitation rights to the computer, electronic and control software and the respective descriptions, documentation and data storage media shall be transferred to Kiener subject to the proviso that Kiener shall be the sole owner of all said rights and that neither the Seller nor any other third party shall be able to dispose thereof in any form whatsoever, whether in whole or in part, without the written consent of Kiener. More specifically, the Seller shall not be permitted to use the computer, electronic or control software or the respective descriptions, documentation and data storage media for its own purposes or pass these on to third parties, unless Kiener has agreed thereto in written form.

(3) The Seller undertakes by way of suitable arrangements with its employees working on the development and production of the computer, electronic and control software or with any subcontractors or freelancers appointed by the Seller to ensure that the aforementioned rights to the computer, electronic and control software and the respective descriptions, documentation and data storage media are transferred to Kiener in accordance with the aforementioned provisions.

18. Place of Fulfilment

Unless otherwise agreed, the place of fulfilment for deliveries and performance shall be 73466 Lauchheim.

19. Choice of Law, Venue

(1) The present Contract is subject to the law of the Federal Republic of Germany (to the exclusion of the UN Convention on Contracts for the International Sale of Goods).

(2) Exclusive venue for all disputes derived from or in connection with the present Contract shall be 73479 Ellwangen.