

General Conditions

for the supply of Plant and Machinery for export form Co. KILIA Fleischerei- und Spezial-Maschinen-Fabrik GmbH). (valid from 01.05.2010)

I. General Conditions

1. These General Conditions shall apply, save as varied by express agreement accepted in writing by both parties. Purchasing conditions of the Purchaser that differ from these General Conditions are not becoming object of agreement through acceptance of order. When no other agreement exists, the contract shall be deemed to have been entered into with the order confirmation in writing from the Vendor (company KILIA GmbH).
2. Any pattern, estimates, drawings, technical documents or other material / immaterial information - also in electrical form - submitted to the Purchaser prior or subsequent to the formation of contract remain the exclusive property of the Vendor, who remains the owner of all connected copyrights. The Vendor obliges himself not to communicate any information or documents, which are part of the contract, to a third party without consent of the Purchaser.

II. Contract Conclusion

1. Information, especially on output, consumption and other machine data, given before order placement, are only binding, when they have been confirmed as binding in writing. The same is true for any information given in brochures or advertisement. Oral conclusions, agreed upon individually, are invalid.
2. Quotations as well as technical items of the products from the Vendor are subject to change.

III. Price and Payment

1. When no other agreement exists, prices shall be deemed to apply to unpacked goods ex works.
2. When no other agreement exists, payment is due without any deduction to the account of the Vendor as follows: 40% down payment with placement of order, 30% at begin of production (latest 4 weeks after first down payment), 30% before delivery. Any advance payments made by the Purchaser are payments on account and do not constitute a deposit, the abandonment of which would entitle either party to terminate the contract.
3. The Purchaser has the right to keep back payments or set them off against counter claims only insofar as his counter claims are undisputed or have been legally binding determined. If the Purchaser falls behind with payments, the Vendor is entitled to charge interest in a height of 8% above the respective announced base rate. The Vendor shall be at liberty to assert further damage caused by delay.
4. Also, if regulations of the Purchaser should be different, the Vendor is entitled to credit payments of the Purchaser against his older debts. The Vendor has to inform the Purchaser about this. In case, costs and interest have already arisen, the Vendor has the right to credit payments of the Purchaser first against the costs, then against the interest and last against the principal claim.

IV. Delivery

1. The delivery time follows from the agreement of both contract parties. The Vendor can only keep the delivery time as agreed, when all commercial and technical questions between both contract parties have been cleared and if the Purchaser has fulfilled his obligations, e.g. to procure required official certifications / approvals, or to make the required down payment. Has the Purchaser not fulfilled his obligations in time, the delivery time is prolonged in an appropriate way. This is not valid, in case the Vendor has to answer for the delay.
2. The Vendors keeping of delivery time is subject to correct and in-time delivery of his suppliers.
3. The delivery time is deemed to have been kept, if the goods to be delivered have left the Vendors factory before its expiry or if the readiness for delivery has been announced before that date. In case, that a final inspection has been agreed upon, the date of inspection is valid (except in case of justified rejection), by substitution the date of announcement of readiness for inspection.
4. When delivery or final inspection of the contracted goods are delayed due to reasons the Purchaser has to answer for, the costs arising from the delay will be charged to the Purchaser beginning one month after the announcement of readiness for delivery / inspection.
5. When delivery is delayed due to force majeure, strike or other incidents, not in the sphere of influence of the Vendor, delivery time is prolonged appropriately. The Vendor will inform the Purchaser about beginning and ending of such incidents as soon as possible. The Purchaser has the right to terminate the contract without fixing of a term, if before the passing of risk the Vendor is finally unable to fulfil the complete contracted delivery. The Purchaser can also terminate the contract, if the Vendor is finally unable to fulfil a part of the contracted delivery and if he has a justified interest in rejecting a partial delivery. If the latter is not the case, he has to pay the part of the contracted price that applies to the partial delivery. Otherwise section VII.2 is valid. If the impossibility or inability occurs during delay in acceptance or if the Purchaser is alone or by far predominantly responsible for these circumstances, he remains obliged to fulfil his contract duties.
6. If the Vendor comes in default and if a damage arises thereof to the Purchaser, what he has to improve, the claims of the Purchaser governed by section VIII.2 of these General terms and Conditions.

V. Passing of Risk, Taking of Contracted Goods

1. The risk shall pass onto the Purchaser, when the contracted goods have left the Vendors factory. This is valid also for partial deliveries and also in case, that the Vendor has additional contract duties, like e.g. to pay for the transport or to do the installation. In case, a final inspection has been agreed upon, this inspection is relevant for the passing of risk. The inspection has to be carried out immediately at the appointed time of taking, by substitution immediately after the Vendors announcement of readiness for inspection. If the delivered goods have a fault, that is not essential, the Purchaser does not have the right to reject the delivery.
2. When delivery of taking of contracted goods is delayed or does not take place, due to circumstances, the Vendor has not to answer for, the passing of risk onto the Purchaser takes place on the day of the Vendors announcement of readiness for risk / taking. The Vendor obliges himself, to effect all insurances, the Purchaser demands, on the Purchasers costs. Partial deliveries are permissible, as long as they are reasonable.

VI. Property Reservation

1. Until all payments according to the supply contract as well as to the complete business relationship have reached the Vendor in full, the contracted goods remain the exclusive property of the Vendor.
2. The Vendor has the right to effect an insurance of the contracted goods against theft, break, fire, water and other damages, to be paid for by the Purchaser, in so far as the Purchaser has not ascertainably effected such an insurance himself.
3. The Purchaser is not entitled to sell, mortgage or transfer the contracted goods as security. In case of seizure or other decrees of third parties, the Purchaser has to inform the Vendor immediately thereof.
4. If the Purchaser commits a breach of contract, especially in case of default, the Vendor has the right to take back the contracted goods after dunning letter. In such case, the Purchaser is obliged to give the contracted goods back. Neither the assertion of the property reservation nor the seizure of the contracted goods through the Vendor pass for a contract termination.
5. The application for an insolvency procedure entitles the Vendor to terminate the contract and to demand immediate restitution of the contracted goods.

VII. Guarantee

Under foreclosure of any further claims and under reservation of section VII, the Vendor gives guarantee for functional faults and for defects of title as follows:

Functional Faults:

1. All parts, that have been found faulty, due to a circumstance before the passing of risk, have to be mended, or replaced according to the choice of the Vendor, free of charge. The Vendor has to be

informed in writing about the ascertainment of such faults immediately. Parts replaced, become property of the Vendor.

2. After communication with the Vendor, the Purchaser has to grant the required time and possibility for all mendings and replacements, the Vendor thinks to be required; otherwise the Vendor is released from any liability for the consequences thereof. Only in cases of imminent danger for the safety in operation or for the protection against excessive damages, the Purchaser has the right to remove the fault on his own or by the help of a third party, while he is obliged to inform the Vendor of this immediately. In such cases, the Purchaser has the right to ask the Vendor for compensation for the necessary expenses.
3. In case, that the Purchaser reclamation has been found to be justified, the Vendor carries the costs arising from amendment or replacement as follows: costs for the replacement piece including its delivery as well as reasonable costs for the exchange work. In case, this can be justly claimed for according to the circumstances, the Vendor also carries the costs for making available his assembly men and helpers.
4. Within the scope of the legal prescriptions, the Purchaser has the right to terminate the contract, if the Vendor -under consideration of the legal exceptions -lets fruitlessly pass a reasonable time-limit, which the Purchaser has set for amendment or replacement of a functional fault. In case, that the functional fault is insignificant, the Purchaser has in only the right to reduce the contracted price. Otherwise, the right to reduce the contracted price is excluded.
5. No guarantee is given under the following circumstances:
 - Not suitable or not appropriate use; faulty mounting / installation through Purchaser or any third party;
 - natural wear and tear; faulty or negligent treatment; no orderly maintenance;
 - unsuitable factory supplies; faulty construction work; unsuitable foundation; chemical, electrical or electrical influences -insofar as these have not to be answered for by the Vendor.
6. In case, that the Purchaser or any third party carries out amendments in an inappropriate way, the Vendor is not liable for any consequences thereof. The same is true for all changes on the contracted goods, when carried out without prior approval of the Vendor.

Defects of title

7. In case that using the contracted goods by the Purchaser leads to the violation of patent rights or copyrights in Germany, the Vendor will provide the Purchaser with the right to further use the contracted goods. Alternatively, the vendor will modify the contracted goods in a reasonable way, so that the violation does no longer exist.
8. In case it should neither be possible to provide the right of further usage nor to modify the contracted goods in a reasonable way during a reasonable time period, the Purchaser has the right to terminate the contract. In this case, the Vendor also has the right to terminate the contract.
9. Additionally, the Vendor will exempt the Purchaser from undisputed, legally binding ascertained claims from the owner of the patent right.
10. The duties of the Vendor, as mentioned in section VII. 7 are final for the case of patent or copyright violation subject to section VIII.2.
These duties exist only, if
 - The Purchaser informs the Vendor on any assertion of patent or copyright violation immediately,
 - The Purchaser supports the Vendor in a reasonable extent in his efforts to protect the Purchaser from ascertained claims, respectively if the Purchaser allows the Vendor to carry out modifications according to section VII.7,
 - All protecting measures including extra-judicial regulations are subject to the Vendors decision,
 - The defect of title has not been caused by an instruction of the Purchaser and
 - The violation of rights has neither been caused by the Purchaser changing the contracted good without authorization to do so, nor be the Purchaser using the machine in a non-contracted way.

VIII. Liability

1. If the Purchaser cannot use the delivered goods as contracted, due to a fault of the Vendor either as a result of neglected or faulty suggestions / counsel before or after the signature of contract, or as a result of violating other collateral obligations, such as e.g. manual for operation and maintenance of the delivered goods, the regulations in sections VI and VII.2 are valid under exclusion of any further claims of the Purchaser.
2. For damages, that have not occurred to the contracted goods themselves, the Vendor is liable -no matter based on what kind of legal title -only:
 - The Purchaser informs the Vendor on any assertion of patent or copyright violation immediately,
 - In case of malice aforethought,
 - In case of gross negligence on the part of the owner or leading employees,
 - In case of culpable injury to life, body or health,
 - In case of faults of the contracted goods as far as liability for personal injuries or material damages on privately used objects follows from product liability law.

In case the Vendor has culpably violated essential contract obligations, he is liable also in case of gross negligence of non-leading employees as well as in case of simple carelessness. In case of the latter the liability is restricted to damages, which are typical regarding the contract and could have reasonably be foreseen. Any further claims are explicitly excluded.

IX. Limitation

All claims of the Purchaser - no matter based on what kind of legal title - become prescriptive after 12 month. For deliberate or malicious behaviour as well as for claims following from the product liability law, the legal time periods are valid. These legal time periods are also valid for faults of a building or for delivered goods, which usually are used for a building, and have caused its faultiness.

X. Utilization of Software

1. As far as software is included in the extent of supply, the Vendor concedes the Purchaser a non-exclusive right to use the delivered software including its documentation. The software is conceded for the use with the contracted good only. Using the software for more than one system is explicitly forbidden.
2. The Purchaser is allowed to copy, revise, translate or transform the object code into source code only in the range of the legal admissibility (§§ 69 a ff. copyright law). The Purchaser obliges himself neither to remove any manufacturer information -especially copyright information - nor to modify any manufacturer information without prior explicit consent of the Vendor.
3. All other claims on software and documentation, including the copies, remain with the Vendor, respectively with the Programmer of the software. It is not admissible to place any sub-licences.

XI. Applicable Law, Legal Domicile

1. For both contract parties the place of fulfilment shall be Neumuenster, Germany and the court of jurisdiction shall be the court responsible for Neumuenster, Germany
2. The standard terms and condition of sale and the contract between the parties shall be government by law of Federal Republic of Germany. The UN convention on contract for the international sale of Goods (CISG) shall be excluded. The contract language is German / English.

XII. Should any provision in these General Conditions or a provision within the framework of any other agreement be or become ineffective, this shall not affect the effectiveness of all other provisions or agreements.