

# General Terms and Conditions of Kuhn Schweiz AG

## 1. General information

The following terms and conditions apply to all deliveries and services of Kuhn Switzerland Ltd [hereinafter: the supplier] arising from all contractual relationships. Deviations are only valid if they have been agreed in writing between the contracting parties.

Should individual provisions of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. Invalid provisions shall be replaced by valid provisions that come as close as possible to the invalid provisions in economic terms.

## 2. Offer

### a) Technical basics

The technical basis of the offer is binding for the supplier and the customer. We reserve the right to make changes by mutual agreement. All documents remain the property of the supplier. They may not be copied or reproduced, nor made accessible to third parties or used for self-production of the objects concerned. They are to be returned at the suppliers request.

### b) Subject to prior sale

Until the contract has been legally concluded, the supplier remains free to resell objects offered for sale to a third party at any time.

### c) Project planning costs

If the customer has commissioned the supplier to prepare a project, but does not entrust him with its execution after submission of the offer, the customer shall be entitled to demand payment of the project planning costs from him in accordance with the SIA tariff.

### d) Structural measures

All constructional measures associated with the installation of the objects to be delivered (determination of the location of the machine, clarification of the ground conditions, procurement of the construction plans and official permits, construction of foundations, including tracks and electrical installations, provision of water, creation of an unobstructed access road, provision of the load-bearing working area for any interim storage and pre-assembly, provision of the required crane capacity, supply of operating materials [e.g. fuel, compressed air, etc.] and execution of other construction work are the responsibility of the customer and are not part of the offer. e.g. fuel, compressed air, etc.] and the execution of other construction work) are the responsibility of the customer and are not included in the offer.

### e) Utilisation

The manufacturer's and/or supplier's operating and maintenance instructions as well as instructions regarding proper use and permissible load must be strictly adhered to.

The active resale of goods purchased from Kuhn outside Switzerland and resale in general outside the EU, Great Britain and EFTA is not permitted.

## 3. Conclusion of contract

Purchase contracts and contracts for work and labour shall only be binding on the parties once they have been mutually signed. The supplier shall only be bound by contracts concluded by a travelling representative (travelling salesman, agent or similar) if he has not rescinded his agreement in writing within 10 working days of conclusion of the contract.

As part of the processing and use of personal and company-related data that is necessary for the conclusion or fulfilment of a contract, the supplier may exchange or transfer data with authorities or companies that provide credit information or are involved in debt collection, provided this serves to check creditworthiness or to assert claims. The provisions of the Swiss Data Protection Act are complied with.

## 4. Prices

Unless otherwise agreed in writing, the following shall apply:

- a) The prices quoted are net ex supplier's warehouse. The supplier shall invoice additional costs and services for VAT, packaging, customs duties, import charges, transport and the like.
- b) Price increases after conclusion of the contract can only be passed on with the agreement of the customer.
- c) Order processing in the contract for work and labour is regulated separately (currency, inflation, transport, packaging, insurance, customs duties, taxes and levies).
- d) If the customer wishes to trade in a second-hand machine as part payment, the value of the Trade-in shall be as defined in the suppliers offer including free delivery by the customer to the supplier's branch agreed in the contract (3627 Heimberg; 1614 Granges; 9506 Lommis). The customer guarantees that the Trade-in machine is his property and free of defects. If it turns out otherwise, the supplier may, in addition to the options under the Swiss Code of Obligations, return the second-hand machine at any time at the customer's expense and insist on payment of the full contractual amount excluding any second hand machine in exchange.

## 5. Cancellation

If the Customer cancels a contract concluded with the Supplier, it shall pay the Supplier compensation amounting to 20% of the contract amount (exception: non-marketable products or custom-made products specially tailored to the order, see below). The compensation is due for payment within 15 days of cancellation (expiry date). We reserve the right to assert claims for actual damages incurred - insofar as they exceed the sales compensation.

Insofar as non-marketable products or custom-made products specially tailored to the customer are the subject of the contract,

the customer must reimburse the supplier in full (contract amount) in the event of cancellation.

## 6. Delivery

### a) Delivery time

The delivery period begins with the conclusion of the contract, but at the earliest after receipt of all information and documents to be procured by the customer as well as any advance payments to be made. It shall be determined in accordance with the circumstances existing at the time of the conclusion of the contract and shall be binding subject to all conditions met at that time (e.g. timely payment of the down payments, availability of the material without delays in delivery, etc.). In the event of unforeseen events beyond the control of the Supplier - such as force majeure, difficulties in procuring materials, operational disruptions, etc. - **the delivery period shall be** extended accordingly. It shall also be suspended as long as the Purchaser fails to fulfil its payment obligations on time.

If the customer suffers damage due to a delay caused by at least gross negligence on the part of the supplier, he shall be entitled - after a waiting period of 2 weeks - **to** claim compensation for delay, to the exclusion of any further claims. This shall amount to 0.5 % for each full week of delay, but in total not more than 5 % of the value of that part of the total delivery which cannot be used on time or for its intended purpose as a result of the delay or, in the case of work performance, of the price of the work performance. This only applies if the supplier does not offer the customer a valid replacement solution. If the Supplier is in default even after the aforementioned maximum compensation for delay of 5 % has accrued due to at least gross negligence, the Purchaser shall be entitled to withdraw from the contract after setting a reasonable grace period. Earlier cancellation of the contract by the purchaser is excluded. Any bonus/penalty regulations for changes to delivery dates can be regulated individually in the purchase contract/works contract.

### b) Transport

Transport costs shall be borne by the customer. Dispatch shall be at the risk of the customer, even if carriage paid delivery has been agreed. The risk shall pass to the customer as soon as the consignment is made available to the carrier, forwarding agent or customer loaded for transport from the supplier's warehouse.

If the customer discovers damage or defects on arrival of the consignment, he is obliged to report these immediately to the carrier or forwarding agent of the supplier and the insurer and, where necessary to secure the evidence, to have a report signed by the parties involved. The quantities must be checked against the delivery notes. If no written notice of defects is received by the supplier within 8 working days, the consignment shall be deemed to have been approved.

Subsequent complaints will only be accepted if the defects were not recognisable at the time of delivery despite proper inspection and the customer complains in writing within one week of discovering the defect, but no later than the expiry of the warranty period.

### c) Storage

If the ordered goods cannot be delivered on time after completion and notification of readiness for dispatch through no fault of the supplier, they shall be stored at the supplier's or a third party's premises at the customer's expense and risk.

### d) Assembly and disassembly

The Supplier shall only undertake the assembly or disassembly of the delivered objects if expressly agreed. In other cases, the Supplier shall make qualified technicians available to the Purchaser on request against payment of the travelling, working and waiting time, travel expenses and accommodation costs, in accordance with the Supplier's applicable rates.

If the technicians are unable to start or continue work through no fault of their own or the supplier, all additional costs incurred as a result shall be borne by the customer, even if a lump sum has been agreed for the assembly and disassembly work. The Purchaser shall also provide the necessary labour and assembly equipment (e.g. crane) as agreed and in good time. If the Purchaser is obliged to provide the Supplier with fitters or assistants, their wages, social benefits, insurance premiums and expenses shall be borne by the Purchaser.

The times specified by the Supplier in connection with assembly and disassembly work to be carried out by the Supplier are binding. Circumstances beyond the Supplier's control (e.g. obstacles, force majeure, bad weather, site preparation not in accordance with the contract, etc.) may result in an extension of the deadline. Non-compliance with the assembly and dismantling times due to the above-mentioned reasons shall not entitle the customer to cancel the order or claim compensation.

## 7. Machine control / maintenance and services

### a) Position control

The Customer is solely responsible for checking the position of the machines and equipment purchased from the Supplier. The Supplier is not authorised to determine measurement points itself and does not determine such points (except for training and service purposes). It is pointed out that there is a risk of incorrectly executed work if the position check is omitted.

The position check must be carried out by the customer at regular intervals (at least daily) using a defined measuring point. The measuring point must be determined by a surveyor trained for this purpose and authorised in Switzerland. The customer shall be solely liable for any damage caused by failure to carry out or inadequate position checks.

### b) Transfer of planning data

Insofar as the supplier imports or converts data (in particular dwg or dxf files) to the respective maintenance and/or service objects within the scope of maintenance or service work or is involved in this process, this shall not be accompanied by any control of the content of the source data or the converted data. The supplier accepts no liability whatsoever for the correctness of this data or any resulting damage. The customer shall check the result of the data conversion himself before starting work.

### **c) Localisation**

Insofar as the Supplier carries out preliminary localisations on maintenance and/or service objects within the scope of maintenance and service assignments, these shall serve the sole purpose of the maintenance and service work. The Customer shall check the localisation before commencing work with the involvement of a surveyor trained for this purpose and licensed in Switzerland.

### **d) Radio data transmission**

If devices and machines are operated or used by radio, it is the sole responsibility of the customer to ensure that the selected radio frequencies and signal strengths comply with the relevant regulations and can be used without risk to persons or property before commissioning. The customer shall obtain any necessary authorisations at his own expense. The customer shall be solely liable for any damage resulting from radio operation for the customer or third parties. The supplier assumes no liability for this.

## **8. IMC remote support system**

If the Customer buys, sells, repairs, has serviced, uses or otherwise utilises KOMATSU PRODUCTS equipped with the IMC Remote Support System, all provisions of the "Declaration of Consent Regarding Access and Use of IMC Remote Support System Data" shall expressly take precedence over these GTC in the event of a conflict.

## **9. Terms of payment**

Unless otherwise agreed, the following terms of payment shall apply:

**a) for purchase contracts, spare parts deliveries, repairs, maintenance and services 15 days after invoice date, free of all deductions.**

**b) for work contracts**

⅓ upon conclusion of the contract

⅓ on notification of readiness for dispatch

⅓ 15 days after operational readiness

Payments shall always be made free of deductions, even if the delivered items have to be reworked or parts have to be replaced or if the goods cannot be delivered on time for reasons for which the customer is responsible.

In the event of incorrect deliveries or massive defects for which the supplier is responsible and which do not permit commissioning, the final third shall only be paid after receipt of the delivery in conformity with the contract or rectification of the defects.

## **10. Default of the customer**

Invoices that are not paid as agreed shall become due immediately and an annual default interest of 5 % shall be charged from the due date without prior notice of default.

If payment in installments is agreed, but installments are not paid within 10 days of their due date, the entire remaining amount shall become due without further ado.

In the event of incorrect deliveries or massive defects for which the supplier is responsible and which do not permit commissioning, the customer shall be entitled to demand an extension of the due payment dates.

The supplier expressly reserves the right to withdraw from the contract in the event of default of payment and to reclaim the delivered items.

In the case of instalment and instalment transactions, the supplier is entitled to demand the remainder of the purchase price in a single payment or to cancel the contract. The supplier may cancel the contract and reclaim the delivered items if the purchaser is in arrears with the instalment payments.

**a)** If the Supplier cancels the contract, the Purchaser shall be obliged to provide the following services, **in** addition to the immediate return of the items already delivered:

- to pay a rent of 5 % of the agreed purchase price for each full or partial month from delivery until the return of the delivered item;
- to pay compensation for any extraordinary wear and tear and for damage to the delivered item;
- to pay the dismantling, transport and insurance costs for the return of the delivered item and any other associated expenses. The customer shall owe these services even if he is not at fault.

**b)** If the damage suffered by the supplier exceeds the payments stipulated under a), the customer shall compensate him for the additional amount, unless he proves that he is not at fault.

**c)** The above provisions shall apply also to other cases of non-fulfilment of the contract by the customer, e.g. non-acceptance of ordered objects.

## **11. Retention of title**

The delivered goods remain the property of the supplier until the agreed price with all additional costs and interest has been paid. Until this time, they may not be pledged, sold or leased without prior notification of the supplier. However, liability shall remain with the contractual partner. The supplier is authorised to enter the retention of title in the retention of title register at the customer's registered office. Furthermore, the customer is obliged to inform the supplier immediately if he changes his domicile or place of business.

## **12. insurance**

The Purchaser is obliged to take out all insurance policies, such as theft, fire, explosion, natural hazards, transport, machinery and/or machinery hull and assembly insurance, with effect from the transfer of risk for the items not paid for or not paid for in full. He assigns his resulting claims for insurance benefits to the supplier.

If the Purchaser is not in a position to provide evidence that it has taken out the necessary insurance, the Supplier shall be entitled to take out such insurance itself at the Purchaser's expense. The Purchaser must notify the Supplier immediately of any claim. The provision of equivalent securities can be agreed between the purchaser and the supplier.

## **13. Guarantees and liability**

### **a) Scope**

The supplier guarantees the correct design, appropriate quality of the material used and faultless workmanship for 12 months or 1000 operating hours, whichever comes first. If the delivered objects change ownership before the expiry of the ordinary warranty period, the warranty shall end at the time of the transfer of ownership.

The supplier rejects any guarantee:

- for used objects or parts thereof,
- for material not supplied by him,
- for assembly and disassembly work not carried out by him as well as for objects on which modifications or repairs were carried out without his consent,
- in the event that the customer makes changes, in particular additional installations on the object, without the prior written consent of the supplier,
- for damage of any kind caused by normal wear and tear, incorrect or violent handling, excessive use, inadequate foundations, unsuitable operation and maintenance, freezing, use of unsuitable materials and lubricants, accidents or force majeure and the like,
- for merchandise or material from subcontractors, such as electrical equipment, tyres, etc. (In this case, the supplier is only liable within the scope of the warranty provisions of the manufacturers concerned),
- for any other claims beyond the described warranty obligation. In particular, all further warranty claims (such as reduction or cancellation) and any further liability of the Supplier for direct or indirect damages of the Purchaser (such as those arising from the unusability of the contractual object and the Purchaser's claim for third-party damages in connection with the delivery and operation of the contractual object) are expressly excluded. This shall not apply to damage caused by the Supplier personally, demonstrably through gross negligence or with unlawful intent.

### **b) Recourse**

If a claim is made against the Supplier by a third party as a result of a loss event and if joint and several liability exists between the Supplier and the Customer, the Supplier may take full recourse against the Customer for all expenses resulting from the loss event, provided that the Supplier personally cannot be proven to be guilty of gross negligence.

### **c) Warranty services**

Defects covered by this guarantee will be rectified as quickly as possible free of charge and the relevant parts replaced.

The additional operational checks by the supplier's fitters requested by the customer are not covered by the warranty services, but will be invoiced.

## **14. Applicable law**

The contracts concluded are subject to Swiss law. In case of discrepancies between the language versions of these conditions, the German version takes precedence.

## **15. Place of fulfilment and jurisdiction**

The place of fulfilment for all obligations arising from this contract shall be the supplier's registered office. The place of jurisdiction for the judgement of all possible disputes arising from this contract is the registered office of the supplier.

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