



Kubitz Vertriebs GmbH

Hauptstr. 17-21 * 64720 Michelstadt

CNC Equipment for Technical Profiles
Development and Manufacture



punching



cutting



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accessories

Date: 13.12.21 Doc.-n°.: 211213180 Page: 1

General Terms and Conditions of Business

I. General

1. Business transactions between us and our commercial buyers shall be solely subject to the following General Business Terms for the duration of the business relationship, even in respect of future orders and spare parts supplies, unless the content of an order confirmation issued by us differs from these General Business Terms, or unless we have agreed- in writing, via telex or telefax – to our customer amending our General Business Terms or the terms of our order confirmation.
2. We herewith already oppose any deviating or supplementary regulations to our terms and conditions. We shall not be bound by such terms even if we do not expressly oppose them in each individual case, and even if we execute delivery after receipt of purchase terms which differ from our General Business Terms.
3. Supplementary agreements and warranties within the scope of the contract negotiations and after completion of the confirmation of order, as well as changes or supplements to a written contract or contract closed per teletype or these GBT must either be in writing or via teletype.
4. All information, such as dimensions, weight, illustrations, descriptions, assembly sketches and drawings in pattern books, price lists and other printed materials are only approximate, albeit determined as well as possible, is not binding for us.

II. Offer, Conclusion of the contract, Written form

1. Our offers are always non-binding. After Customer's order, the contract shall come about as a result of our written order confirmation. Information provided in the context of order processing prior to placement of the order – particularly relating to performance, consumption or other individual data – is binding only if it is confirmed as such by us with the order confirmation or subsequently in text form.
2. No commissioning or training are included at the delivery unless agreed otherwise.

III. Price and payment

1. The prices stated in the order and in the order confirmation plus VAT apply. Costs for packaging and transport as well as transport insurance will be charged separately. If any unforeseeable increases in the prices of materials, wage costs, taxes or duties, we shall be entitled to make a price adjustment corresponding to these factors unless the scheduled date of delivery is within four months of the conclusion of the contract. If the customer implements changes after the conclusion of the contract, we can adjust the prices according to the additional costs caused by the charges.
2. Withholding payment, or the partial withholding of payment, due to eventual counter-claims of the customer and disputed by the supplier are not permitted.
3. The following additions apply to deliveries abroad:
Prices shall exclude all applicable taxes (as well as sales, use, VAT, customs duties and so on). Our prices do not include state or local taxes or fees. The price is valid for a period of 3 months.

IV. Delivery deadline and delay in delivery

1. The delivery period is individually stipulated or indicated by us when accepting the order. If this is not the case, the delivery period is approximately six months from conclusion of contract.
2. Insofar as we cannot observe binding delivery deadlines for reasons for which we are not responsible (non-availability of the service) we shall inform the Buyer hereof immediately and at the same time inform it of the expected new delivery deadline. If the service is not available within the new delivery deadline, we are entitled to withdraw from the contract in whole or in part; we will reimburse an already provided consideration of the Buyer immediately. The unavailability of goods or services in this sense particularly includes our suppliers failing to deliver in good time if we have entered into a congruent covering transaction, neither we nor our suppliers are at fault or, in particular cases, not obliged to provide.
3. The occurrence of a delay in delivery shall be determined in accordance with legal provisions. In each case, however, a reminder is required from the purchaser. Should we be late with delivery, the Buyer can demand flat rate compensation for damage. The lump sum compensation for each completed calendar week of delay amounts to 0,5% of the net price (delivery value), in total not more than 5% of the delivery value of the delayed delivered goods. We reserve the right to prove that the Buyer has suffered no loss at all or only a substantially smaller loss than the above lump sum.
4. The rights of the Buyer acc. to the Chapter VII of the present AGB and acc. to our statutory rights especially the exclusion of the obligation (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance) remain unaffected.

V. Passing of the risk and acceptance

1. The risk is transferred at the latest when the delivered parts are dispatched to the Buyer, also in the event of partial deliveries or even when the supplier assumes other services e.g. shipping costs or delivery and installation. At the request of the ordering party the consignment will be ensured against theft, breakage, damage due to transport fire and water damages as well as other insurable risks.
2. If dispatch is delayed due to circumstances that the Buyer is responsible for, then the risk is transferred to the Buyer from the day of readiness for shipment; however, the supplier is obliged to effect insurance requested by the buyer at the latter's wish and expense.
3. Delivered items have to be accepted by the Buyer even if they show insubstantial defects, without affecting his rights deriving from paragraph VII.
4. Partial deliveries are permissible.

VI. Reservation of proprietary rights

1. All delivered goods shall remain our property (reserved goods) until the satisfaction of all claims, regardless of the legal reason, including future or contingent claims – also from contracts concluded at the same time or contracts concluded at a later date. This also applies to payments for particular denominated claims.
2. Processing and finishing of reserved goods shall be carried out by us as manufacturer in accordance to § 950 BGB without obligation. The processed goods are considered as proviso goods as defined by paragraph 1.
In the event that the reserved goods are processed and joined with other goods by the Buyer, we shall be entitled to the new product at the rate of the invoice amount of the goods subject to retention of title to the invoice amount of the other goods used. In the event that our propriety ceases to exist through of combining or processing, the Buyer shall immediately transfer his title to the new stock or goods in the invoice amount of the goods subject to retention of title and shall hold it in safe custody for us free of charge. The joint ownership rights resulting therefrom shall be deemed as goods in which title is retained pursuant to paragraph 1.
3. The Buyer is only permitted to resell the reserved goods within the normal course of business on his normal terms and conditions of business and if he is not in default provided that the claims arising from the resale under the terms of paragraphs 4 and 5 are transferred to us. The Buyer shall not be entitled to dispose of the reserved goods.
4. The claim of the Buyer from the resale of the reserved goods are hereby assigned to us. They serve in the same circumference for the protection like the reservation product. In the event that the goods are resold by the Buyer together with other goods not sold by us, then the assignment of the accounts receivable resulting from the resale only applies to the value of the goods sold. In case the claim arising from the resale by the Buyer in a current account relationship with its customer, the claim of the Buyer from the current account relationship to the amount of the sale value of the reserved goods is assigned. For the resale of goods, for which we become co-owners pursuant to clause 2, the assignment of claims is valid up to the amount of the co-ownership share.
5. In case of payment by cheque, the ownership passes to us as soon as the customer acquires it. If payment is made by a bill of exchange, the Buyer shall assign his rights to us in advance. The handover of these papers shall then be replaced by the fact that the Buyer keeps them for us or, if he does not gain direct possession of these papers, by assigning in advance to us his rights vis-à-vis a third party for these to be handed over for him. He will endorse these papers and immediately deliver them to us.



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- If the reserved goods are used by the Buyer to fulfill a contract for work or for services, then the claim from the contract for work and services is transferred to us in advance as determined by clause 4.
- The Buyer shall be entitled to collect receivables from the resell until we revoke that right, which we may do at any time. The Buyer is only entitled to assign the receivable payment claims – including the sale of the claims to factoring banks – with our prior written approval. Upon our request, the Buyer shall be obliged to notify its customers of the assignment straight away – insofar as we do not do this ourselves – and to pass on to us all information and documents required to collect the claims.
- If we claim the reservation of property rights, this shall only be considered as a rescission of the contract when we expressly confirm it by written statement. The right of ownership of the Buyer to the goods subject to retention of title ceases to exist when his obligations in respect of this or another contract are not fulfilled.
- The Buyer shall not be entitled to pledge or to transfer the goods by way of security. The Buyer must inform us without delay of any encroachment by third parties.
- In case of confiscation or other dispositions by third parties the buyer is bound to inform about the propriety of von MK Kubitza Vertriebs GmbH instantly.
- In case of the Buyer's conduct in violation of the contract, especially in case of delay in payment of a claim arising from the business relationship, the entire remaining debt shall become immediately due. In these cases, we are entitled to demand the delivery of the goods and to collect them from the buyer. Then, the Buyer shall have no right to possession.
- We shall reserve the unrestricted right to ownership and copyright exploitation rights in cost estimates; these shall not be made available to third parties without our express written consent. We reserve the right to make modifications to the design and execution on the basis of new experience and improvements.

VII. Liability for defects of delivery

In case of defects to the delivery, which shall include the lack of expressly warranted qualities, the supplier is liable for defects including the lack of assured properties with the exclusion of further claims as follows acc. to clause IX:

- The warranty period is 12 months starting with the delivery of the equipment. If the dispatch, installation or commissioning is delayed without fault on part of the supplier, our liability shall expire no later than 12 months after passage of risk (clause V).
The notification of defect required acc. to the German Commercial Code § 377, 378, 381 clause 2 (commercial obligation of examination and notification of defects) must be made in writing no later than 10 days after the receipt of goods at the destination by specifying the delivery note and invoice number. For essentially foreign products, liability of the supplier is limited to the assignment of liability entitlement to which he can claim under the terms of his agreement with the external supplier of products.
The technical machine availability is 85% depending of the machine classification; i.e. 85% production readiness; i.e. 15% machine retro-fitting, machine maintenance, machine fault a.s.o. The technical failure rate amounts to 5%; i. e. of 100 pcs. of the manufactured products may only 5 pcs. be manufactured due to machine-related errors. If different products are produced on the machines, then the technical failure rate will be averaged according to the different products.
- No warranty shall be undertaken for impairments of the object of delivery due to natural wear, damage after the transfer of risk or improper handling.
- The selling of used equipment or items takes place under the exclusion of any warranty/liability for material defects.
- No warranty is given for damage resulting from any of the following causes:
The customer itself or a third party without our previous consent have carried out reworks, modifications or repair works on our delivery. The same shall apply to the use of parts not supplied or released by us. Furthermore, we assume no liability for unsuitable or improper use, incorrect installation and setting into operation by the customer or third party, natural wear, incorrect or negligent handling, unsuitable operating components, replacement materials, defective construction works, unsuitable foundation, chemical, electro-chemical or electrical influences, as long as they cannot be traced back to a fault of the supplier.
- The customer must ensure that the products used with the machine are of good quality and meet the same specifications as the samples that we received. The warranty for certain wearing parts is excluded, if these are explicitly mentioned in the wearing parts list of the machine documentation.
- The supplier carries the direct costs created by the repair or replacement delivery – insofar as the complaint has proven to be justified – the costs for the replacement part including the shipment as well as the appropriate costs for removal and installation, plus, in case this can be demanded in the situation of the individual case can be justifiably demanded, the costs for any required provision of his service technicians and assistants. Any other cost shall be borne by the customer.
- The warranty period for the replacement part and the repair part will be three months, but no less than the original warranty period offered for the delivered object. The termination for the defect liability for the delivery item is extended by the duration caused by the operational interruption due to the rectification.
- Liability for hard and software. The supplier assumes no liability for damages and consequential damages of any kind that occur in connection with the supplied hardware or software. The working programs provided by the supplier require that the customer to carry out a practical application of a test run on the appropriate machine or equipment.
- All further claims for damages of any kind – especially regarding compensation for damages which have not occurred to the delivery item itself – vis-à-vis the supplier, his legal representatives, executive employees, employees or vicarious agents, are hereby excluded, unless otherwise agreed in the contracts concluded with the supplier or in the present General Terms of Business. These include, above all, consequential damages, e.g. downtimes and damages due to delay. This shall not affect the liability of the supplier for damages resulting from injuries to life, physical injury and health injury as well as liability for other damage brought about fully or by negligence.
- The customer must provide together with the order final CAD drawings and final samples of the profile. The patterns must correspond as close as possible to the production state. If the customer does not meet this obligation, the supplier does not guarantee the efficiency of the machine.

VIII Terms of payment

If contractually agreed payment deadlines are exceeded, we are entitled to change default interest, in case of mutual trading operations, to the amount of 8% over the respective base rate of interest of the Deutsche Bundesbank without proof of loss.

The reserve the right to claim compensation for any additional loss. The payment deadline is deemed adhered to when the payment is received by us within the payment term. In case of a payment scale that was previously agreed upon which implies a down payment as well as part payments for delivery and commissioning, therefore each part payment is due no later than 10 days after the completion of each service (delivery and commissioning). Should commissioning be delayed without fault of the supplier, the partial amount for the commissioning is still due 10 days after the originally agreed commissioning date. For delays of the delivery applies clause IV.

IX. Purchaser's Right of Revocation, Compensation for damage and other Supplier's Liabilities

- The Customer can withdraw from the contract, if the complete performance finally becomes impossible for the supplier before the passing of risk. The same applies to the supplier's inability to perform. The purchaser may also withdraw from the agreement if in case of an order of items of the same type, execution of a part of delivery becomes impossible in terms of quantity and the supplier has a justified interest in refusing a partial delivery; if this is not the case, the purchaser may curtail the return service accordingly.
- If performance default exists within the meaning of clause IV of the Terms and Conditions of Delivery and the Customer grants the Supplier in default a reasonable extension of time with the express declaration that it will refuse to accept performance after the expiry of this period and the time extension is not complied with due to the Supplier being at fault, the Customer shall be entitled to withdraw.
- If the impossibility begins during the delay in reception or is caused by a fault of the ordering party, the payment remains obliged to grant consideration.
- The Customer shall also be entitled to revoke the contract when the Supplier, after having been granted a reasonable extension of time for repair or replacement in conjunction with a defect he is responsible for in the sense of the terms and conditions of delivery, lets the said extension pass to no avail due to his fault. The Purchaser's right of revoking the contract shall also be enforceable in all other events of repair or replacement failures on behalf of the Supplier.
- All further claims of the Buyer shall be excluded and, in particular for termination or price reduction as well as for compensation for damages of whatever type, including for such damage as has been caused to items other than the supplied item itself. The claims for damages due to breach of contractual or legal accessory obligations are excluded. The exclusion of liability is not valid for intent or severe recklessness of the owner or of the vicarious agents and in the case of culpable breach of fundamental contractual obligations. In cases of culpable breach of major contractual obligations, the Supplier shall only be held liable for damages that are typical and reasonably foreseeable for the type of contract except in cases of intent or grave negligence on the part of the owner or vicarious agents. This liability disclaimer also does not apply in cases of liability for according to German product liability law injury or damage to property from privately used objects resulting from defects in the delivered goods. Furthermore, it shall not be applicable if properties are missing which have been expressly warranted, provided that the warranty was specifically given in order to protect the Customer against damages not occurring on the installed delivery item itself.



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X. Right of the Supplier to withdraw

In the case of unforeseen circumstances within the meaning of Section IV, insofar as they considerably change the economic significance of the content of the performance or considerably affect the Supplier's operations and in the case of an impossibility of performance that subsequently becomes evident, the contract shall be amended accordingly. Where is this economically unjustifiable, the Supplier shall have the right to withdraw wholly or partly from the contract.

Claims for damages of the Buyer due to such resignation shall not apply.

If the Supplier intends to make use of the right of rescission, he shall be compelled to notify this intention to the Buyer in writing, as soon as the significance of the event will have fully come to his knowledge, i.e. also in such cases when an extension of the time of delivery was agreed formerly with the Buyer.

XI. Liability due to delay and acc. to the German Civil Code § 325,326

We shall not be held liable for lost profit. The claims and rights based on delay can only be asserted as from a default duration of one month.

The compensation for damages is limited to 1% of the order amount of each complete week of the default, subject to a maximum of 10% of the order amount.

If we have been in default for more than one month, the Customer grants us a reasonable additional period accompanied by a warning of rejection, thus shall the Customer be authorized to withdraw as soon as the expiration of the deadline. The compensation for damages due to non-fulfillment shall be limited to 10% of the amount of the order.

XII. Copyright

Acc. to the „Law on Copyright and Related Rights“ (ORG. I.S. 1273 issued on 09th of September 1965), MK Kubitza Vertriebs GmbH is the author of all works - area of development, construction, software a.s.o. – and, therefore, it is solely entitled right to use them.

XIII. General Limitation of Liability; turnover tax

1. Our liability is determined exclusively according to the agreements stated in the paragraphs above. All claims that have not been explicitly granted, including damage claims, indifferent to which legal ground, as well as claims related to the warranty rights of the buyer are excluded unless we shall be liable of intent or general negligence.
2. All claims against us, regardless of the legal ground, shall be time-barred one year from the passing of the risk to the Buyer unless the statutory limitation period or the limitation period agreed by these terms and conditions is shorter.
3. In case of recourse of the Supplier due to sales tax offense from the part of the Buyer, the Supplier is entitled to take full recourse to the Buyer.

XIV. Place of Performance, Jurisdiction and Applicable Law

1. The place of performance for our deliveries is our delivery factory in Würzburg. The exclusive Court of Jurisdiction for all disputes (including those arising from bills of exchange or cheques) arising directly or indirectly out of this contractual relationship shall be Darmstadt.
The Supplier shall retain the right to take action against the Buyer even at the Court relevant for his location.
2. All legal relationships between us and the Buyer shall be governed by the substantive law of the Federal Republic of Germany with the exclusion of an eventual referral of German International Private Law as well as the UN Convention on the International Sale of Goods.
This also applies if the Buyer has its headquarters abroad.

XV. Partial invalidity

Should any term or clause of these General Terms and Conditions prove wholly or partly invalid then the remaining provisions remain fully valid. The parties involved agree that the invalid provision shall be replaced by a valid provision which will economically come closest to the purpose of the arrangement aimed at and acceptable for both parties.