



Kubitza Vertriebs GmbH

Hauptstr. 19-21 * D-64720 Michelstadt

CNC equipments for technical profiles
Development and manufacture



punching



cutting



coiling



accessories

Date: 01.09.05 Com.-no.: 05090180 Page: 1

General Terms of Business

I. Miscellaneous

1. The below mentioned general terms of trade (AGB) apply to the business relationships between us and our orderers for the duration of the business relationship and also for the upcoming orders as far as our order confirmation does not include any content to deviate from it or if no written or e-mailed modification of our order confirmation sent by us, respectively AGB has been approved.
2. Hereby we object deviations or supplementary modifications to our AGB conditions. They won't be binding to us even if we have not explicitly objected back or if we carry out the delivery after having received the deviating purchase conditions.
3. Supplementary agreements and warranties within the scope of contract negotiations and after already effected sales confirmation as well as modifications to the supplements of the written or an e-mailed signed contract or of this AGB need to be forwarded in writing or e-mailed.
4. All indications regarding dimensions, weight, illustrations/drawings, descriptions, assembly sketch- and drawings within pattern-books, price lists and other printings are only approximate, however issued at the best, but insofar not binding to us.

II. Offer, conclusion of the contract, written forms

1. Our offers are always non-binding. After receiving the order forwarded by the client, the contract comes out through our written order confirmation. Specifications regarding purchase order processing made prior to the order, especially on performance-, consumption- or on other additional data are binding if they will be certified by us together with the order confirmation or afterwards, in writing.
2. In the absence of particular agreements, no commissioning or training will be carried out at the delivery.

III. Price and payment

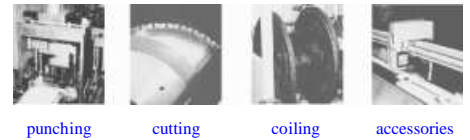
1. The prices specified within the contract and order confirmation plus value-added tax are valid. The charges for packaging and freight as well transport insurance will be separately specified within the invoice. If unpredictable increases of material costs, labour costs, taxes or duties come up between the contract conclusion and delivery or no delivery should occur within four months after contract conclusion, we are authorized to carry out a price alignment related to these factors.
If the client carries out modifications after the contract conclusion, we can manage to adapt the prices to the extra costs occurring due modifications.
2. The reserve of payments or the set-off due to possible counterclaims of the purchaser denied by the supplier is not admissible.
3. The following are valid for overseas delivery:
Prices do not include any applicable tax (as selling, use, VAT, custom duties etc.). Our prices contain neither national nor local taxes or fees. The price is valid for 3 months.

IV. Delivery period

1. The delivery period starts with the forwarding of the order confirmation, however not before furnishing the documentations, authorizations, releases as well as the receipt of a contracted prepayment supplied by the purchaser.
2. We will comply to our best effort with the dates and terms of delivery specified within the order confirmation; however they refer only to an estimated and not to a definite calendar agreed to delivery time.
The delivery time is kept to if the delivery item has left the plant prior to the expiration period or the readiness for shipment is notified.
3. The delivery time can be adequately extended by measures concerning labour disputes, especially strikes and lock-outs as in case of unscheduled obstacles which are against the will of the supplier, as far as such obstacles are demonstrable of significant influence for the completion or delivery of the delivery item. This applies also if such circumstances occur for the sub-supplier. We are not responsible for delayed or deliveries remained undone caused by our suppliers.
The delivery time can be extended - without prejudices to our rights due to delay from the part of the purchaser - about the period with which the purchaser is behind schedule towards us with his obligations specified within this agreement. The previous applies for the delivery dates.
The previously described circumstances are also not to be represented by the supplier if they do not arise during an already present delay. The start and end of suchlike obstacles will be communicated as soon as possible to the purchaser by the supplier in most important cases.
4. If the shipment is delayed at the request of the purchaser, or due to other reasons specified by the purchaser, the terms of payment will be suspended accordingly. 40% of the asset value will be evaluated with each consecutive month until the equipment is completely paid. Further more, one month after the notification of readiness for shipment there will be invoiced however not less than 0,5% of the invoice amount for each lapsed month for charges with stocking of wares within the plant of the supplier. Otherwise, the supplier is also entitled to dispose of the delivery item after the setting of an appropriate deadline and its effectless course and to provide the purchaser with the appropriate extended deadline.
5. If a contractual penalty is stipulated, its amount will be limited to max. 5% of the contracted sum.
6. The compliance of the delivery time sets the fulfilment of the contracted obligations of the orderers ahead.

V. Transfer of perils and acceptance

1. The danger passes over to the purchaser, at the latest, with the dispatch of the supply components as well as if the partial shipments had been carried out or if the supplier had accepted other payments such as e.g. supply costs or delivery and assembly. At the request of the purchaser the delivery will be carried out on his costs and insured by the supplier against theft, breakage, transport-, fire- and water damage as well as other insurable risks.
2. If the delivery must be delayed due to circumstances represented by the purchaser, eventually the danger passes over to the orderer from the day of readiness for shipment; however the supplier is bound to carry out the insurances on demand and charges of the purchaser, which the latter has required.
3. The delivered articles, even if they exhibit insignificant lacks, are to be accepted by the purchaser without any prejudice to the rights mention in chapter VII.
4. Partial deliveries are permissible.



VI. Title retention

- All delivered goods remain our property (retention commodity) until the fulfilment of all demands, shortly of whose legal ground, incl. the future emerging or conditional demands, even those originating simultaneously or subsequently to the signed contracts. This applies also if payments are carried out particularly on designated demands.
- The development and manufacture of the retention commodity are carried out for us as manufacturer in terms of § 950 BGB, without any obligation from our part. The manufactured ware is considered as retention commodity in terms of cipher 1.
With the manufacture and connection of the retention commodity with other wares through the purchaser we are entitled to the co-ownership of the new affair in relation with the invoice value of the retention commodity to the invoice value of other used wares. If our ownership lapses through the connection or manufacture, thus the purchaser entitles us the ownership of the new store or the affair within the amount of the invoice value and stores it for us gratuitously. The thereafter originating co-ownership is considered retention commodity in terms of cipher 1.
- The purchaser may sell the retention commodity only under usual business connections with his normal terms of trade and as long as he is not in delay, provided that the demand of the resale acc. to cipher 4 and 5 is devolved to us. The purchaser is not entitled to other regulations over the retention commodity.
- The demand of the seller from the resell of the retention commodity will be already transferred to us. They are used in the same extent for the protection as the retention commodity. Should the purchaser sell the retention commodity together with other wares not bought from us, the cession of demand from the resell will be set only in the height limit of the resell value of each sold retention commodity. Should the demand from the resell through the purchaser be ceased in a current account relationship with his account debtor, the demand of the purchaser from the current account relationship will be transferred in height limit of the resell value of each resold retention commodity. With the selling of wares at which we have co-ownership shares acc. to cipher 2, the transfer of the demand is valid in height limit of the co-ownership shares.
- If the payment occurs by means of check the ownership of this passes over to us as soon as the purchaser gains it. If the payment occurs by means of exchange, the purchaser cedes the rights emerging therefrom to us in advance. The delivery of papers will be replaced thereby so that the purchaser can keep them safe for us or, in case he does not get them immediately into possession his delivery claim against the third party will be ceded to us. He will put his endorsement on these papers and immediately deliver it to us.
- If the purchaser uses the retention commodity for fulfilling a contract for work and materials, the demand for work out from the contract for work and materials is ceded to us to the same extent in advance as mentioned on cipher 4.
- The purchaser is entitled to retract the demands of the resell up to the anytime permissible cancellation.
For cession of payment request— including the factorization at factoring banks— the purchaser is entitled with our previous written acceptance only. By our request the purchaser is bound to immediately brief his customers about the transfer to us – provided that we don't do that ourselves – and to forward us information and documentation regarding the withdrawal.
- If we claim the retention of title and specify this explicitly in writing, thus this will be only valid as rescission from the contract. The right of the purchaser to own the retention ware lapses if he does not fulfil his obligations specified in this or other contract.
- The purchaser can neither put the delivery item in pledge nor transfer it to safety. The purchaser must announce us immediately of the infringement of a third party.
- In case of confiscation or such decrees through third party, the purchaser is bound to point out the property of MK Kubitza Vertriebs GmbH.
- If the behaviour of the client is contrary to the contract especially in case of payment delay with a claim from the business connection, the total residual debt will be immediately payable. In this case we are entitled to request the release of the delivery and pick the wares up from the customer. Thus, the client does not have any right on possession.
- We reserve ourselves the right to ownership and copyright on cost propositions, drawings and other documentations; you cannot make this accessible to third party without our expressed consent. We also reserve ourselves the right to carry out modifications to construction design and execution in terms of new experience and betterment.

VII. Liability for deficiencies of the delivery

The seller is liable for deficiencies of the delivery, to which the absence of the expressly warranted qualities appertains, under the exclusion of further claims without prejudice of chapter IX as follows:

- The warranty period is 12 months and commences with the delivery of the machine. If the shipping, the installation or the startup of the machine delays without any guild from the part of the supplier, thus the liability expires at the latest 12 months after the passing of risk (cipher V).
The prescribed notification of defects acc. to § 377, 378, 381 paragraph 2 of the commercial code (commercial investigation and obligation to give notice of defects) must be immediately claimed in writing at the observance of deficiencies no later than 10 days after the acceptance of the ware at the place of destination with the specification of the delivery receipt and invoice number.
The buyer must explain and prove the real existence of the deficiency. In case of foreign products, the liability of the supplier restricts to the cession of liability claims which are entitled to him against the supplier of the foreign product.
The technical machine uptime depends on the machine classification 85%; i.e. 85% production stand-by and 15% retooling, machine maintenance, machine control etc. The technical failure rate is 5%; i. e. only 5 out of 100 produced pieces may be non-functional due to machine-determined failures. If different products are produced on the machine, the technical failure rate is averaged according to the different products.
- If the delivery item was damaged due to natural wear, the damage after the passing of risk or improper treatment will accept no warranty.
- The selling of used machines or items occurs excluding any warranty/liability for material defects.
- No warranty is taken over for damages emerging from following:
The buyer himself or the third party cannot carry out any reconditioning, modifications or repair works to our delivery without our prior authorization. The same applies when using our not delivered or released components. Furthermore, we do not take over any liability for an improper or inappropriate use, defective assembly e.g. startup carried out by the buyer himself or by third parties, natural wareout, erroneous or neglectful treatment, improper equipment, replacement materials, inadequate constructive works, improper building site, chemical, electrochemical or electrical influences provided that they are not to be put down to a fault of the supplier.
- The buyer must ensure that the products which will be used with the machine are of good quality and have the same specifications and conform to the sample sent to us. The warranty for certain wearing parts is excluded if they are explicitly mentioned within the machine documentation at wearing parts lists.
- The supplier pays all direct costs resulting from repair and/or compensation delivery- insofar as the complaint turns out to be justified- the costs resulting from replacements incl. shipment as well as the appropriate costs for assembly and disassembly, furthermore, if this can be required cheaper acc. to the situation of the individual case i.e. the costs of a framework required by his fitter and assistance. For the rest, the orderer pays all costs.
- For the spare part and repair the warranty time adds up to three months; it is valid at least until the expiration the original warranty period of the delivery item. The time limit for the responsibility for defects of delivery item will be extended about the duration of the work implying the rectification of defects which caused the service interruption.
- Liability for hard- and software. The supplier takes over no liability for damages and consequential damages of any nature which occur in relation with the supplied hard- or software. The machine language programs installed by the supplier require a test run before the practical application.
- All types of advanced claims for damages- especially the compensation of damages not self-emerging at the delivery item- are excluded vis-à-vis the supplier, his legal representatives, salaried personnel, employees or proxies, as far as it is not agreed on with the supplier in the closed contracts or AGB at hand. In addition, thereto appertain also consequential harms caused by defects and/or downtimes and delay damages. The liability of the purchaser for damages from life injury, body and health injury as well as liability for roughly negligent or deliberately caused damage will not be affected.
- The client must provide together with the purchase order definite CAD drawings and profile samples. The samples must correspond as close as possible to the production condition.
If the client does not comply with these obligations, the supplier takes over no warranty for the efficiency of the equipment.

VIII Payment terms

If contractually agreed payment terms are exceeded, we are entitled to claim interest for delay from bilateral commercial transactions amounting to 8% over the respective prime lending rate of the German National Bank without proof of loss. We reserve the proof of an advanced damage. The payment terms will be adhered to only if the payment reaches us within the time limit. If a payment grading whereas the down payment as well as the partial payments at the delivery and startup are included was agreed on, the respective partial amount must be paid no later than 10 days after the completion of the respective service (delivery and startup). Should the startup be delayed without to be represented by the seller, the payment of partial amount for the startup will fall due for 10 days after the initially agreed startup. In case of delays with reference to delivery see cipher IV.



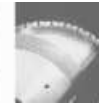
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IX. Buyer's right of rescission, recovery of damages and other liabilities of the supplier

1. The purchaser can resign from the contract if the entire service becomes eventually impossible. The same applies for the inability of the supplier. The purchaser can resign from the contract also if, at the order of a similar item the execution of a partial delivery, acc. to the number won't be possible and he has a legitimate interest in rejecting the partial delivery; is this not the case, the purchaser can decrease the return service accordingly.
2. Should a service delay in the purpose of paragraph IV. of the delivery terms occur and the purchaser grants the supplier in delay a reasonable extension of time with the explicit explanation that he will decline the service acceptance after the lapse of this period of time, and will not comply with the extension of time, the purchaser is entitled to withdraw from the contract.
3. If the impossibility during default acceptance or the encumbrance with debts of the purchaser occurs, this remains bound to return service.
4. Furthermore, the purchaser has also a right to withdraw from the contract if the supplier grants him a reasonable extension of time for reparation or compensation delivery with regard to a deficiency within the meaning of the delivery specifications due to his fault. The right of contract rescission from the part of the purchaser, in such cases, consists of the failure of reparation or compensation delivery from the part of the supplier.
5. All other ongoing claims from the part of the purchaser, particularly those on withdrawal or decline as well as those on replacement of damages of any nature, namely also from such damages not emerging from the delivery item itself are excluded. Claims of damage due to breach of contractual or legal collateral duty are excluded. The disclaimer of liability does not apply due to premeditation, gross negligence from the part of the owner or auxiliary persons as well as due to culpable breach of essential contractual obligations. In case of culpable breach of essential contractual obligations the supplier is liable – excepting the premeditation and gross negligence of the owner or auxiliary persons- only for typically contractual, reasonably predictable damages. The disclaimer does not apply in cases where, acc. to the Product Liability Law is liable at defects of the delivery item for persons- or property damage on privately used items. It also does not apply for defects of qualities expressly warranted when the warranty has just aimed at ensuring the purchaser against damages not emerging from the delivery item.

X. Supplier's right of rescission

In case of unscheduled incidents occurring in terms of paragraph IV of the delivery terms provided that they considerably modify the economical impact or the content of service or considerably act on the plant of the supplier and, in case of later exposing impossibility of execution, the contract will be properly adapted. As long as this is not economically maintainable, the supplier is rightly entitled to withdraw from the contract, partly or totally.

It won't develop any claim for damage from the part of the purchaser regarding such a rescission. If the supplier wants to avail himself of the right of rescission, thus he has to immediately communicate it to the purchaser after taking notice of the importance of incident, and namely even if, initially, an extension of the delivery time was agreed upon with the purchaser.

XI. Liability due to delay and acc. to § 325,326 BGB

We are not liable for escaped profit. Claims and rights from delay can be asserted only after a delay time span of one month.

The compensation for each completed week of delay will be limited to 1% and, altogether, to 5% of the total order value. If the client puts to us an adequate time extension with threat of declination due to our falling behind longer than one month, thus he is entitled to resign after the expiration of time limit. The compensation due to non-performance is limited to 10% of the total order value.

XII. Copyright

MK Kubitza Vertriebs GmbH is the originator of all workings– in the processing-, construction-, and software field etc.– according to the „Law of copyright and related rights“ (GBL. I.S. 1273 from September the 9th, 1965) and, therefore, is entitled with the exclusive right to use these workings.

XIII. General limitations of liability; purchase tax

1. Our liability exclusively complies with the agreements reached within the preceding paragraphs. All claims not expressly entitled, including the claims for damage, independent of which legal ground, as well as claims relating to the guarantee rights of the purchaser are excluded, unless, we are constrained to be liable in the event of resolution or of gross negligence.
2. All claims against us, independent of which legal ground, become time-barred 1 year after the passing of risk on purchaser if the legal agreed limitation period is not shorter. In case of claims from the part of the supplier due to purchase tax misdemeanour shown by the purchaser, the supplier can subrogate with the purchaser.

XIV. Place of delivery, place of jurisdiction and usable right

1. The place of delivery for our shipments is our supplier plant in Würzburg. The venue for all disputes arising from the contractual relationship directly or indirectly (incl. such as exchange or check) is Darmstadt.

The vendor reserves himself the right to take the purchaser also to the court which is responsible for his seat.

2. The physical right of the Federal Republic of Germany applies for all privities between us and the purchaser excluding a possible further reference according to the German International Private Law as well as the UN Convention on Contracts for the International Sale of Goods (CISG). This applies also if the principal office of the purchaser is overseas.

XV. Partial inefficacy

Should the individual stipulations of this General Terms and Conditions be fully or partly ineffective, these stipulations remain fully effective for the rest. Both parties agree that the ineffective agreement will be replaced with an effective regulation, reasonable to both contractual partners, which efficiently comes next to the ineffective regulation of the aimed at object.

MK Kubitza Vertriebs GmbH, issued on 1st of September, 2005.