



§ 1 Scope of Application

- (1) These terms and conditions shall govern all orders and contracts in respect of which KUENZ is customer, buyer or party ordering a work. These Terms shall also apply to all future transactions.
- (2) We will not accept the contracting party's commercial terms and conditions, and these do not apply. KUENZ is not required to object to these terms.
- (3) The contracting party acknowledges in the context of any supply or service the exclusive application of these Terms and Conditions for the Purchase of Goods and Services.
- (4) Any written agreements made with the contracting party in a particular case shall prevail over these Terms and Conditions for the Purchase of Goods and Services.

§ 2 Purchase Order

- (1) KUENZ shall be bound by a purchase order only if the purchase order is placed in writing (by letter, email, fax).
- (2) Any materials enclosed to KUENZ's inquiries or orders, such as plans, drafts, data, samples, forms, models, printing plates, artwork, lithographs, setting jigs, patterns or specimens shall remain KUENZ's property, may be used only for KUENZ's purposes and may not be made available to third parties. Those materials shall be returned to KUENZ without solicitation along with the invoice at the latest or at any time upon KUENZ's request at the contracting party's cost and expense. The contracting party shall bear any risk of accidental loss of or damage to the auxiliary items until return thereof.
- (3) KUENZ will not pay any compensation for the preparation of quotes and offer documents (plans, technical specifications, etc.). When accepting our order, the contracting party states that it possesses all information, data, descriptions, plans and technical specifications required for the execution of our order as well as sufficient knowledge of the local circumstances.

§ 3 Supplies/Services

- (1) The delivery/service target date shall be the date indicated by KUENZ on which the ordered goods shall be delivered to the delivery location along with all transport, customs and accompanying documents or on which the service shall be provided at the location where the service is performed.
- (2) KUENZ may refuse to accept early or delayed supplies/services and return the goods for the supplier's account and at the supplier's risk or it may store the goods at KUENZ premises or with third parties.
- (3) If the contracting party becomes aware that it will not be able to provide all or part of supplies/services in due time, it shall immediately give notice thereof, indicating the date when it will provide the supplies/services (new delivery/service target date).

KUENZ may cancel the contract after having set an appropriate grace period or accept the new delivery/supply target date. In cases of urgency, KUENZ may cancel the contract also without granting a grace period.

- (4) KUENZ may refuse to accept partial, insufficient or additional supplies/services.
- (5) KUENZ may cancel the entire order even if services are divisible.
- (6) KUENZ may cancel parts of the agreed scope of supplies by unilateral declaration also after the conclusion of a contract. In this event, the compensation shall be reduced by the share attributable to the cancelled portion of the order.
- (7) A delivery/service shall be deemed complete only if the contracting party has provided KUENZ with all agreed or customarily expected documents (e.g. invoices, freight documents, certificates of origin, declarations of conformity, guarantee letters, technical documentation, instructions of use). The compensation is payable only if these documents were delivered.

The supplier shall enclose to every delivery/service at least two copies of a delivery note and in case of deliveries/services from abroad, also all documents required for proper customs clearance. In case of dangerous goods, a delivery/service shall be accompanied by relevant documents according to applicable laws or other provisions and these documents shall be handed over to the forwarding agent, with the contracting party being strictly liable for any incorrect consignment note declaration.

The contracting party will hold harmless and indemnify KUENZ for and against any claims for which KUENZ may be held liable by third parties, including but not limited to KUENZ customers or authorities, on the grounds that the contracting party did not completely or timely deliver to KUENZ an agreed or customarily required document.



- (8) The contracting party shall promptly provide KUENZ on KUENZ's request with any information which KUENZ or a KUENZ customer may need to prove to any person whatsoever the compliance with laws or other regulations, including but not limited to Regulation 1907/2006 (REACH). That information includes especially any documentary evidence of tests, calculations and analyses and the related results.
- (9) If the contracting party is in default, KUENZ may in any case demand an immediately payable penalty equal to 1% of the purchase order sum for each commenced week of delay; that penalty shall not exceed 10%. Any additional loss shall be compensated.
- (10) No retention of title may be asserted against KUENZ.

§ 4 Transport

- (1) The contracting party shall comply with the shipping policies of KUENZ and those of the forwarding agent or the carrier. The shipping papers shall state the order number and the order date. In connection with the delivery, the contracting party shall deliver to KUENZ all necessary declarations of conformity.
- (2) Goods will be shipped for the account and at the risk of the contracting party, who shall also bear all costs of insurance and packaging.

§ 5 Place of Delivery/Service, Transfer of Risk

- (1) The place of delivery/service shall be the business premises of KUENZ for which the supplies/services are intended.
- (2) Any risk shall transfer not until after unloading of the goods at the delivery destination and provision of any other service at the service destination.

§ 6 Prices, Invoice and Payment

- (1) Prices are fixed prices and include all expenses arising for the complete provision of the supplies/services.
- (2) Invoices shall become due and payable only if they quote KUENZ's purchase order number.
- (3) If a delivery/service is inadequate, KUENZ may retain payment until complete performance.
- (4) Provided that supplies/services are defect-free and properly invoiced, payment will be made within 14 days after receipt of the invoice with 3 % cash discount or within 90 days without deduction, unless otherwise agreed.
- (5) Default interest is charged at a rate of 4% p.a.

§ 7 Warranty

- (1) The contracting party warrants that the supplies/services are consistent with the agreement and the customarily expected properties, including but not limited to the relevant laws (e.g. the Regulation(EC) 1907/2006) and the state of the art. Any machinery and facilities shall particularly comply with the functional specifications and the product-specific safety and functional standards.

Furthermore, the contracting party is aware that its deliveries/services are used worldwide for/in hoisting equipment and/or hydro steel structures.

- (2) The contracting party shall verify the quality and quantity of its supplies/services. KUENZ is expressly not required to inspect supplies/services and to give notice of defects.
- (3) Notwithstanding KUENZ's other claims, the contracting party shall be required, at KUENZ's election, to rectify defects within a reasonable period of time or to grant KUENZ a price reduction.
- (4) In cases of urgency, KUENZ may rectify defects itself or procure the rectification of defects by third parties. All related costs will be borne by the contracting party.
- (5) Notwithstanding any longer statutory or contractual time limits, the warranty period for defects of quality shall be 36 months, commencing on the date on which the risk is transferred (Section 5 (2)). The warranty period for hidden defects shall not commence until after those defects are identifiable. Defects of title shall be governed by the statutory provisions.



§ 8 Property Rights

The contracting party warrants that its supplies/services will not infringe upon any rights of third parties, and it shall hold harmless and indemnify KUENZ for and against all claims that are asserted on the grounds of an infringement of such rights. It shall also reimburse KUENZ for any expenses arising in connection with an infringement of these rights.

§ 9 Confidentiality

The contracting party shall not disclose its business relationship with KUENZ and shall keep confidential any information received from KUENZ, including but not limited to that about KUENZ, its distributors or customers, also after the performance of the contract.

§ 10 Tools and other parts

- (1) Kuenz will retain title to any tools provided by Kuenz or made in whole or in part at Kuenz's cost and expense, or title to any such tools shall be transferred to Kuenz at its request. Those tools may be used only for goods made for or delivered to Kuenz. The contracting party is obliged to insure the tools at their replacement value at the contracting party's cost and expense. The latter hereby assigns to Kuenz already at this point in time any of its compensation claims under any such insurance.
- (2) The contracting party shall test, maintain and service the tools at its own cost and expense and shall report to Kuenz without delay any loss or damage.
- (3) The contracting party shall promptly return the tools to Kuenz at Kuenz's request. Pending such return, the contracting party shall bear the risk of the tools' accidental loss or accidental damage.
- (4) Kuenz will also retain title to other parts provided by Kuenz. If those parts are combined or processed, Kuenz will obtain co-ownership to the new item, corresponding to the value of its parts (cost of acquisition) in proportion to the other combined or processed items.

The contracting party shall separately store and manage those parts free of charge and pursuant to Kuenz's instructions and clearly identify those parts as being the property of Kuenz. Furthermore, the contracting party shall order in due time and keep a sufficient stock of those parts to ensure that the contracting party is able to timely and fully fulfill its delivery obligations towards Kuenz.

Also other parts provided may only be used for goods or services made for or delivered to Kuenz. The contracting party shall ensure those parts at their replacement value. It assigns to Kuenz already at this point in time any of its compensation claims under such insurance.

If the production of the subject-matter of contract should fail in whole or in part, the contracting party shall pay other parts provided by Kuenz which he used for the failed production.

§ 11 Damages

- (1) The contracting party shall be liable to KUENZ for any drawback arising from a violation of the contract, including, without limitation, disadvantages from delays or defects in supplies/services. This liability also covers any supply/service of subcontractors and up-stream suppliers. The contracting party shall also bear all costs that may arise in connection with any recall action. KUENZ shall be entitled to claims arising from product liability also if KUENZ mainly uses the delivery/service within its business.
- (2) The contracting party shall purchase, and maintain for at least five years after the provision of supplies/services, liability insurance that provides insurance cover of at least EUR 5 million. The contracting party shall evidence that insurance to KUENZ upon request.

§ 12 Change of (Basic) Materials etc

The contracting party shall give timely and non-solicited advance written notice to Kuenz of any changes in (basic) materials, production processes, suppliers, and supplier parts. It may only change (basic) materials, production processes, suppliers, and supplier parts upon Kuenz's advance written notice and, prior to the change, shall timely allow Kuenz to call the delivery/service off one last time at the agreed prices, otherwise it shall deliver at appropriate prices. If the contracting party has changed the (basic) materials, it shall non-solicitedly provide Kuenz with a declaration of compliance.



§ 13 Final Provisions

- (1) KUENZ may set off claims not yet payable with the contracting party's claims, whether or not these are already payable. KUENZ may also set off claims, whether or not payable, which the other members of the KUENZ Group, including but not limited to Hans Künz GmbH, Kuenz-SK s.r.o. und Kuenz America Inc., may have against the contracting party, against claims of the contracting party, whether or not these are already payable.
- (2) All legal relationships between KUENZ and the contracting partner shall be governed by and construed in accordance with Austrian substantive law, without giving effect to the UN Sales Convention.
- (3) If the contracting partner is seated in the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship between Künz and the contracting partner shall exclusively be referred to the courts in 6800 Feldkirch, Austria.
If the contracting partner is seated outside the European Union or EFTA, all disputes arising out of or in connection with the contractual relationship between Künz and the contracting partner shall be referred to the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules). The place of arbitration shall be Vienna, Austria. The language to be used in the arbitral proceedings is German. If the contract is executed in a language other than German, the language to be used in the arbitral proceedings shall be English. Notwithstanding the jurisdiction of the arbitral tribunal, a party may seek preliminary or injunctive measures from a state court and a court may order those measures prior to or during the arbitral proceedings.
However, in all cases Künz may sue the contracting partner also before any other court having jurisdiction for the contracting partner.
- (4) If the contract is drawn up in English, the English text shall be authoritative for the interpretation of that contract and its terms and conditions.
- (5) Should any term of the contract or of these Terms and Conditions be or become invalid or unenforceable, this shall not affect the remaining terms of the contract and these Terms and Conditions. Any invalid or unenforceable term shall be deemed replaced by a term reasonable parties would have agreed on to achieve the economic purpose of the invalid term.
- (6) The contracting party may rely upon KUENZ and/or its supplies/services for advertising purposes or as a reference only with KUENZ's prior written consent.
- (7) KUENZ is entitled but not obliged to state the contracting party's name when using its services or to otherwise refer to the contracting party.
- (8) The contracting party agrees that KUENZ collects and processes its data on an (automated) computer-assisted basis.