

General Business Terms and Conditions of Kienzle Automotive GmbH

I. Area of application

The Terms of Business contained in the following shall apply between the company Kienzle Automotive GmbH (hereinafter referred to as "Kienzle"), and companies or legal entities as defined by public law or by the public separate estate (hereinafter referred to as "the Customer"), for all services provided by Kienzle, insofar as no terms of business to the contrary have been agreed on the basis of special product-related circumstances.

Terms of business of the Customer that are contrary to or that differ from the present Terms of Business of Kienzle Automotive GmbH shall not be recognized, unless Kienzle has expressly approved their application. The present Terms of Business of Kienzle shall also apply, even though Kienzle may perform services while having knowledge of contrary or different terms of business of the Customer.

The validity of the terms of business of vendors and/or suppliers is furthermore herewith expressly superseded: such other terms of business shall not apply, even though contradiction not be expressed in a particular case. These excluded, differing general terms of business of contractual partners, or of third parties, shall likewise not be recognized under the following conditions: if the appliers of such different terms of business intend to expressly obligate themselves only under application of these different terms of business, if such appliers actually deliver supplies, if Kienzle in fact accepts the deliveries, or if Kienzle pays for the delivered goods.

II. Quotations and conclusion of contracts

1. The quotations and estimates provided by Kienzle shall in all cases be subject to change without notice. Kienzle shall be entitled to make technical modifications to the design and the execution of its products, as well as to make modifications in form, colour, and/or weight, which may be carried out before execution of an order on the items being supplied, or to any other services, without impairment of the functional capability in general, and which modifications can be reasonably accepted by the Customer. Only the product description provided by Kienzle shall be basically considered as agreed as binding for the characteristics of the goods.

2. Additionally provided public statements, promotion, or advertising of the manufacturer shall not represent contractually binding indication of the characteristics of the goods.

3. Contracts become legally binding only upon their written confirmation by Kienzle. Side agreements and modifications require written confirmation by Kienzle before they become effective.

4. Kienzle retains all rights to the following materials that it may provide: documents and other materials, especially designs, logos, brand materials, copy-righted items, registered designs, utility models, artwork, and any other commercial proprietary rights, as well as cost estimates, drawings, and any other documents and like materials. These materials may be further used or provided to third parties only after express, prior, written consent from Kienzle. In the event that a particular contract not be awarded by Kienzle, all such materials provided by Kienzle shall, as requested by Kienzle, be returned to Kienzle in the original, including all copies made thereof.

Kienzle reserves the right to apply its company name or a logo at an appropriate place on the item being delivered. The Customer may remove such names or logos only upon prior consent by Kienzle. Kienzle furthermore reserves the right to utilize images of items manufactured for the Customer for advertising purposes.

5. The Customer agrees that Kienzle may store and process the required personal data of the Customer, as required for execution of the contract awarded, and within the context of applicable legislation.

III. Prices and payment

1. Prices

a) Kienzle prizes are net prices. The value-added tax (German: *Umsatzsteuer*) must be added.

These prices apply ex works. They do not include packing, freight, postage, insurance, any other forwarding costs, as well as installation material, installation labour, the training of persons in operation of the items provided, or any other charges or expenses.

b) In the event that, after conclusion of the contract, the product costs accruing to Kienzle increase by more than 5%, and if such price increase was not foreseeable at the point in time at which the contract was concluded, a price increase shall be considered to be agreed in the amount of the percent increase of costs, minus 5%, insofar as Kienzle requests such a price increase. Kienzle shall be entitled to request a price increase less than the actual increase in costs. In such event, this lesser price increase shall be considered to be agreed. In the event that the requested price increase exceeds 5%, the Customer shall be entitled to withdraw from the contract.

c) Modifications requested by the Customer after conclusion of the contract shall be invoiced additionally to the Customer, including costs accruing to any machine down time occasioned by such modifications.

d) In the case of net invoice amounts less than EUR 50.00, Kienzle shall additionally invoice a surcharge for below-minimum order quantity, in the amount of EUR 12.00.

2. Payment

a) All invoices from Kienzle due for payment shall be paid immediately, free of all charges at the place of payment, and without any deduction from the invoiced amount. Promissory notes, bills of exchange, and cheques shall be accepted only

for purposes of payment, and only after prior agreement, and shall be considered valid as payment only after they have been credited to the account of Kienzle without reservation, condition, or restriction. Any fees or other charges arising with respect to banks, discounts, promissory notes, or the like shall be borne by the Customer.

b) In the event of delay in payment, the Customer shall be charged interest for his pecuniary debt in the amount of 8 percent points above the official base lending rate (German: *Basiszinssatz*). Kienzle reserves the right to provide evidence of greater damages accruing to delay in payment, and to lodge claims for such damage.

c) If the rendering of payment by the Customer in discharge of a debt to Kienzle is endangered by a worsening of the financial situation of the Customer, which occurs or which becomes known after conclusion of the contract, Kienzle shall be entitled to retain the ordered goods until receipt of an advance payment on the contract value, and to terminate further work on the contract still in progress.

Kienzle shall likewise be entitled to exercise these rights if the Customer continues to fail to render payment by one week after his receipt of a reminder to pay an overdue amount.

d) The Customer may offset amounts only for uncontested claims that have become legally final and valid.

IV. Delivery, periods for delivery and installation, freight forwarding, transfer of risks

1. Kienzle shall, with due diligence, forward the consigned articles on behalf of the Customer, with costs and risks to be borne by the Customer. The forwarded goods can be insured at the Customer's expense. Upon the Customer's request, Kienzle will insure the consignments against theft, and against damages due to breakage, transport, fire, water, and other insurable risks. In case of damages, Kienzle shall assign to the Customer its claims against the insurance company, in stages according to the payments as paid by the Customer to Kienzle, and according to payment of any insurance premiums that may be due to Kienzle. The transfer of risk shall pass to the Customer at a point in time no later than that of consignment of the parts supplied to the Customer, also in cases in which partial consignment of goods takes place, as well as in cases in which Kienzle has also agreed to pay forwarding costs, or has agreed to accept responsibility for delivery or for setting up the equipment.

2. Kienzle is entitled to execute and to invoice for partial performance of services.

3. If the item is being delivered to another member country of the European Union, the Customer agrees to send Kienzle his VAT number – i.e., the number through which delivery is to be processed – before consignment of the goods, and to inform Kienzle of the branch of business in which he is active. This stipulation shall apply analogously in the event of inclusion of additional countries into the regulations applying to this arrangement.

4. Delivery dates and time limits shall be valid only if they have been expressly confirmed by Kienzle. If the contract is concluded in written form, confirmation of the delivery dates is likewise necessary in writing.

5. An agreed delivery or installation date shall begin only:

- If an agreed advance payment has been rendered, and
- If all declarations, information, and documents required for performance of the delivery or installation have been turned over, provided, or procured by the Customer, and
- If, in the case of installation work, all equipment and/or other units and systems that must be supplied and/or installed by the Customer are present in fully satisfactory condition, or have been properly installed, and only if those installation prerequisites have been fully and satisfactorily fulfilled by the Customer at his own cost that, according to agreement with Kienzle, must basically be fulfilled by the Customer.

6. Also in cases involving legally agreed time limits and target dates, Kienzle shall not be held responsible for delays in deliveries and in performance of services in cases in which such performance is rendered significantly more difficult or impossible owing to force majeure or to circumstances beyond the control of Kienzle, especially entailing strikes or labour lockouts within the context of legal industrial labour action, or owing to the effects of fire, water damage, trade embargos, catastrophes, interruptions in transportation, and other cases of force majeure of any kind, to include such disturbances that may occur among sub-contractors. This stipulation shall also apply if Kienzle is already behind schedule and the above-stated hindrances arise during this delay. In such cases, Kienzle shall be entitled to postpone the performance of services by the period of time during which such hindrances prevail, in addition to a reasonable start-up period. Kienzle shall immediately inform the Customer of the onset as well as the termination of the above-stated circumstances.

7. In all cases, Kienzle reserves the right to deliver subject to correct and timely availability of the required subcontracted supplies. This reservation shall apply under the condition that Kienzle on its part had closed the required covering business in due time, and/or that Kienzle itself is not responsible for the delays in subcontracted delivery by its own suppliers. In such cases, Kienzle shall be entitled to entirely or partially withdraw from the contract. Kienzle shall without delay inform the Customer of the non-availability of the services, and shall without delay recompense the Customer for any payment that Kienzle may have received.

8. In the event that forwarding of goods is delayed upon the wish of the Customer, or as a result of circumstances beyond the control of the Customer, the risk shall be transferred to the Customer beginning with the day on which the goods were ready for forwarding. Kienzle shall furthermore be entitled, in case that it has set a reasonable time limit, and after unsuccessful expiry of this time period, to take other action with the items ready for delivery, and to deliver to the original

Customer by a reasonably extended date. Kienzle agrees to provide the insurance policies requested by the Customer, at the Customer's cost.

9. Insofar as delivered goods exhibit only insignificant shortcomings, the Customer shall accept such goods, irrespective of any claims owing to the rectification of shortcomings, damages, or expenses suffered by the Customer.

The Customer agrees to formally accept without delay, if so required by Kienzle, the services provided by Kienzle, and to confirm such acceptance in writing, as soon as the functional effectiveness of the goods has been evidenced – if applicable, by means of a function-test program provided by Kienzle.

V. Defects

1. Kienzle shall be liable for defects in accordance with legal stipulations, insofar as the following Paragraphs 2 to 5 do not preclude or restrict such liability. The following Paragraphs 2 to 5 do not affect negligence-related claims for restitution of damages or for compensation of expenses incurred, or the Customer's legally stipulated claim under a right of recourse in the chain of delivery (§§ 478, 479 German Civil Code, BGB).

2. Claims for damages owing to defects shall not exist under the following conditions:

a) In cases of normal wear and tear of expendable parts after transfer of risk: e.g., drive shafts for motor vehicles, light bulbs, glass parts, printing ribbons, rubber rollers, tiebacks, magnetic tapes, printing type, magnetic heads, filters, and batteries.

b) In cases in which damages or malfunctions arise in the items delivered after transfer of risk, and in which such damages or malfunctions are the result of improper handling, excessively harmful operational demands, insufficient maintenance contrary to the instructions provided (i.e., in the Operational Manual) for handling, maintenance, and care of the item purchased; programs prepared in faulty manner by the Customer or by third parties; the use of unsuitable operating conditions (to especially include deviations from the conditions of installation, use of improper tools and production aids, and unsuitable foundations); the influences of other equipment; or faulty services provided by the Customer or third parties (to include installation and/or connection of the items delivered).

3. In the case of trade purchases, the Customer must notify Kienzle in writing of apparent shortcomings within a period of two weeks, beginning from receipt of delivery. Otherwise, the Customer shall have no resource to lodging claims for restitution of damages due to defects, insofar as Kienzle has not in bad faith concealed the presence of such faults. Prompt sending of such notification shall suffice to meet the time limit set herein.

4. a) Insofar as liability is not precluded, Kienzle shall rectify shortcomings, as it chooses, either by repairs or by substitute delivery (replacement). The parts replaced within the context of the guarantee shall become the property of Kienzle.

b) In the event that replacements are not successful, the Customer can, as he/she chooses, request a reduction in price, or nullification of the contract (revocation of the contract). The Customer shall not, however, be entitled to withdraw from the contract in cases of only minor violations of the contract, especially in cases of merely minor defects.

5. The legally stipulated time limit for used exchange parts is six months. For all other cases, the time limit is one year, from the beginning of the legally stipulated time limit. This stipulation shall not apply insofar as Kienzle has in bad faith concealed the defect, or if Kienzle has provided a guarantee for the properties of the item, or if a fixed construction or the delivery of an item that has, according to its customary mode of application, been used for a fixed construction, represents an item to be provided by Kienzle, and if such item of delivery caused a deficiency in such fixed construction. In such cases, the legally stipulated time limitation shall apply.

VI. Restitution of damages and recompense for expenses resulting from shortcomings on the part of Kienzle

In the event of claims for restitution of damages and recompense for expenses as a result of shortcomings on the part of Kienzle, the following shall apply:

1. Liability shall not be accepted for damages and for expenses (hereinafter referred to as "damages") on the basis of minor negligence of contractual responsibilities by simple agents, as well as for damages which can be prevented by conduct of daily backup of data.

In the event of minor negligence by Kienzle, its legal representatives, or its executive employees, as well as of minor negligence of significant contractual obligations by simple agents of Kienzle, Kienzle shall be liable only to the amount of typically foreseeable damages.

2. These stipulations shall have no effect on liability to be borne by Kienzle in cases of intentional actions and gross negligence.

3. The exclusion of liability in Paragraph 1 above shall not apply to bodily harm and damages to health that are caused by Kienzle, to the loss of life, as well as to claims in accordance with the German Product Liability Act, and within the context of guarantees of product characteristics granted by Kienzle.

VII. Retention of title to products sold

1. Delivery of products shall take place exclusively on the basis of retention of title to the products until payment in full has been rendered. The Customer shall be responsible for providing safe and appropriate accommodation of items owned or jointly owned by Kienzle, and shall insure them at the Customer's expense against theft, fire, and other dangers.

Title to the delivered items shall transfer to the Customer only when he has discharged his total obligations for all deliveries rendered. In the case of ongoing invoicing, reservation of title to goods shall apply as security for balances due.

2. The processing and other handling of goods subject to retention of title shall take place for Kienzle as manufacturer in the sense of § 950 of the German Civil Code (BGB), without obligation to Kienzle. In the event of processing, combination, or mixing of the goods subject to retention of title, with other goods by the Customer, Kienzle shall be granted joint ownership of the new product, in the proportion of the invoiced value of the goods subject to retention of title to the invoiced value of other goods used. In the event that Kienzle's title to the goods terminates owing to such combination or mixture, the Customer shall already then transfer to Kienzle the rights of ownership to which he is entitled for the newly created entity or item, on the basis of the invoiced value as presented by Kienzle for the items to which title is reserved. The Customer shall at his own cost additionally safeguard for Kienzle these newly created items. The rights of joint ownership thereby created shall, in the sense of this contract, be considered as goods subject to retention of title.

3. Until revocation of this right, the Customer shall, in the sense of usual trade in goods, be entitled to sell goods subject to retention of title. The Customer shall not be entitled to further assign ownership or to transfer security. In the event of garnishment or other impairment of rights by third parties, the Customer shall inform Kienzle immediately.

4. The Customer shall immediately, for the sake of security, completely transfer any claims involving goods subject to retention of title, if such claims arise from the further sale of such items, or for any other legal reason (e.g., insurance or inadmissible actions). Kienzle hereby revocably authorizes the Customer to collect on any claims assigned to Kienzle, for invoicing in its own name for Kienzle. This authorization can be revoked only if the Customer fails to properly discharge his payment obligations. If so requested by Kienzle, the Customer agrees to immediately inform his customers concerning the assignment of claims to Kienzle – insofar as Kienzle itself does not inform – and to submit to Kienzle the information and documents required for such collection of claims.

In the event that the goods subject to retention of title are sold by the Customer together with other items not delivered by Kienzle, the assignment of claims arising from the further sale shall apply only in the invoiced amount evidenced by Kienzle for the respectively sold goods subject to retention of title. In the sale of goods for which Kienzle holds joint ownership shares, the assignment of claims shall apply to the amount of these shares of joint ownership. In such case, that share of the claims not assigned to Kienzle shall initially be considered to be redeemed through payment by the third-party debtor to the Customer. If the goods subject to retention of title are used for fulfilment of a project contract (German: *Werkvertrag*) or project-delivery contract (*Werklieferungsvertrag*), this paragraph shall analogously apply for claims arising from such a contract.

5. In the event of action by the Customer in violation of this contract, and especially in case of delay in payment, Kienzle shall be entitled, after a reasonable period, to withdraw from the contract and to request surrender of the goods. The Customer hereby declares his agreement to this stipulation, insofar as persons assigned by Kienzle to retrieve goods shall be authorized for this purpose to enter and to drive motor vehicles on the premises at which the goods are located.

6. If the value of the existing securities exceeds the value of the secured claims by a total of more than 10%, Kienzle agrees, upon request by the Customer, to release securities as selected by Kienzle.

7. If the reservation of title to goods, or the assignment of such title, is not valid in accordance with the law prevailing in the area in which the goods are located, then it shall be considered that security is hereby agreed as corresponds to the reservation of title or the assignment of title in this geographical area. If collaboration of the Buyer is necessary in this context, the Customer shall undertake all efforts required for substantiation and furtherance of such rights.

VIII. Place of performance, legal venue, applicable law, and severability clause

1. The place of performance and the legal venue for any claims and or disputes arising from this contractual relationship, including legal proceedings involving promissory notes, bills of exchange, and documents, shall be Düsseldorf, Germany. Kienzle shall also be entitled to initiate legal proceedings at the registered offices of the Customer.

2. The law of the Federal Republic of Germany shall exclusively apply to these contractual relationships. The application of international laws regulating trade is not admissible. The binding version for contracts and general terms of business is in all cases the German version.

3. In the event that one or more stipulations of this contract prove to be or to become legally inoperative, or if this contractual text contains lacunae or loopholes, the parties to this contract shall supplement or replace the invalid or incomplete stipulation by an appropriate stipulation that will correspond to the commercial purpose of the original intent. The validity of the remaining stipulations shall thereby remain unaffected.

Kienzle Automotive GmbH
Registered office: Düsseldorf, Germany
Entry in the Commercial Register of the Düsseldorf Local Court (Amtsgericht):
HRB 38079
Managing Director: Axel Backof, Dr. Ralf Kolb
VAT number: DE 812825044
Tax number: 120/5763/0537

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