

General Terms and Conditions of Sale, Delivery and Payment of Kuenle Antriebssysteme GmbH & Co. KG



I. General

1. These General Terms and Conditions (GTC) apply to all goods and services, including repairs, of Kuenle Antriebssysteme GmbH & Co. KG ("Kuenle" herein) insofar as the customer is a merchant (person who transacts the agreement in the exercise of the person's trade or independent profession), a legal entity under public law or a fund under public law.
2. For all existing and future claims arising from the business relationship with merchants, legal entities under public law or funds under public law, including bills of exchange and claims on checks, the courts of competent jurisdiction for the registered office of Kuenle shall be the exclusive judicial venue. The same venue applies if the Customer has no general judicial venue in Germany, relocates the Customer's registered office or usual place of residence out of the country after entering into the agreement or the Customer's registered office or usual place of residence is unknown at the time legal proceedings are commenced. However, Kuenle is also authorized to bring suit against the Customer in the courts of competent jurisdiction at the Customer's general judicial venue.
3. German law applies in each case to the legal relationship between Kuenle and the Customer. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
4. All agreements shall be committed to writing. This also applies to ancillary agreements, warranties of specific qualities and to subsequent amendments to the agreement.
5. The inclusion of GTC of the Customer is expressly objected to.
6. The Customer's claims against Kuenle arising from the agreement may not be assigned. The Customer may only offset Kuenle's claims with undisputed counterclaims or with claims having at least provisionally enforceable title. The assertion of a right of retention is unavailable to the Customer for such rights and claims as are not based on this contractual relationship.
7. The possible invalidity of one term or another in these GTC shall not bring about the invalidity of the remaining terms.
8. The offers of Kuenle are subject to change. Documents such as diagrams, sketches, reports of dimensions and weight and the like that are included with the offer are only approximations. Kuenle reserves the ownership rights and copyrights to estimates, sketches and other proposal and contract documents. The documents may neither be copied nor made accessible to third parties without the consent of Kuenle.

II. Prices and payment terms

1. Prices are net exclusive of VAT, which is calculated and accounted for separately at the rate applicable when the tax liability arises.
2. Prices are applicable ex works, thus without freight and other additional costs. Even if free delivery is agreed to, the goods travel at the risk of the Customer.
3. If the Customer desires transport insurance, the Customer must indicate this in writing. The costs are chargeable to the Customer.
4. Unless otherwise expressly agreed to in writing, invoices from Kuenle are payable without deduction within 14 days of receipt of the invoice. A 2% discount is allowed for cash payment within one week of the date of the invoice.
5. The Customer shall be in default without the necessity of a warning 14 days after the due date and receipt of an invoice. The consequences of default are governed by the statutory provisions.
6. Kuenle is not obligated to accept checks and bills of exchange. Checks and bills of exchange are only accepted contingent upon final settlement. Costs and expenses incurred through issuing and cashing the commercial paper shall be borne by the Customer.

III. Delivery time, periods, deadlines

1. Delivery deadlines or delivery periods that can be stipulated to be binding or nonbinding must be stated in writing. Delivery periods commence upon execution of an agreement. If contract amendments are later agreed to, a new delivery deadline or delivery period must, if necessary, be agreed to at the same time.
2. Four weeks after a nonbinding delivery deadline or a nonbinding delivery period passes without result, the Customer may request in writing that Kuenle deliver within a reasonable period.
3. Force majeure or interruptions of operations incurred by Kuenle or its suppliers (e.g. through civil unrest, strike or lockout) that temporarily prevent Kuenle, without fault of its own, from completing the delivery by the agreed deadline or within the agreed period shall extend delivery deadlines and delivery periods by the length of the period of interrupted performance caused by these circumstances.
4. The Customer may not refuse partial deliveries.

IV. Passing of risk

1. The risk of accidental destruction or deterioration of condition passes to the Customer at the time the goods leave the factory. The Customer shall bear the risk of transportation.
2. When shipping, delivery or commencement or performance of installation or assembly is delayed at the request of the Customer or for reasons attributable to the Customer, the risk passes to the Customer for the time of the delay; however, Kuenle is obliged to procure any insurance requested by and at the cost of the Customer.

V. Retention of title

1. All deliveries are made exclusively subject to retention of title. Title to the delivered goods does not pass to the Customer until the invoice for the delivery of goods, together with all ancillary claims (packaging costs, interest on late payments, etc.) and other present and future claims arising from the ongoing

business relationship, have been paid. The presentation of checks and bills of exchange is only considered to be payment within the meaning of subparagraph 2 when the Customer's check or bill of exchange is honored.

2. The Customer is, despite the agreed retention of title, authorized to work, process, and sell the goods delivered by Kuenle in the ordinary course of business. Kuenle may revoke such permission if:
 - a) The Customer is more than 14 days in arrears in paying the consideration for the delivered goods;
 - b) Proceedings for a debtor's exam (*eidesstattliches Versicherungsverfahren*) are instituted against the Customer;
 - c) A judicial insolvency proceeding is instituted by the Customer or one of its creditors;
 - d) Other significant reasons exist which create concern that the Customer's financial situation is deteriorating.

Revocation of permission to work, process and sell the goods must occur in writing. Upon receipt of the revocation, the Customer is obliged to separate goods originating from deliveries from Kuenle—whether unprocessed, worked or processed—and to store them apart from other goods.

3. Kuenle shall also retain ownership of the delivered goods in the event of
 - a) sale by the Customer;
 - b) processing and subsequent sale by the Customer;
 - c) Commingling and/or combination by the Customer;
 - d) Commingling and/or combination and subsequent resale by the Customer.

As a matter of clarification, any working, processing, commingling and/or combination of goods which continue to be owned by Kuenle occurs for and in the name of Kuenle without obligating Kuenle to pay any compensation.

Should the Customer combine or commingle the goods which are subject to retention of title ("Retained Goods") with other goods (§ 947, § 948), Kuenle is entitled to joint ownership of the combined article or in the commingled or commixed product in the relation of the value of Kuenle's goods to the value of the rest of the combined or commingled goods at the time of the combination or commixture. If Kuenle's article is to be viewed as the primary article, Kuenle shall have sole ownership.

In the event processing occurs (§ 950 of the German Civil Code (*Bürgerliches Gesetzbuch*—BGB)), Kuenle shall receive a fractional ownership of the new article that resulted from the processing in the relation of the article to the value of the manufactured new article.

4. The following applies when the Customer sells the article or articles delivered by Kuenle in which Kuenle holds rights of ownership or joint ownership:
 - a) The Customer hereby and thus forthwith assigns to Kuenle its rights from the sale of that portion equal to the value of the Retained Goods delivered by Kuenle that have been resold by the Customer, irrespective of whether they have been worked, processed, commingled, commixed or remain unchanged. The value of the Retained Goods is the value of the goods charged the purchaser by Kuenle (including value-added tax).
 - b) If there are additional advance assignments for the benefit of other suppliers of goods with respect to the Customer's claim arising from resale, all advance assignments shall have equal priority.
 - c) Should it be stipulated in a resale agreement that assignment of the Customer's rights arising from the resale is not permitted, the Customer is obliged to inform Kuenle immediately. In such case, the Customer may not assume that Kuenle will permit the Customer to resell the goods belonging (solely or jointly) to Kuenle. The Customer is obliged to refrain from completing a sale on such conditions.
 - d) The Customer is obliged to provide Kuenle all information concerning the resale transaction which is necessary to assert the rights arising from the advance assignment pursuant to the requirements of subparagraph V.6.
5. If the value of Kuenle's security exceeds the claims against the Customer by more than 20%, Kuenle shall release excess security at its discretion upon application by the purchaser. Kuenle is in any event obligated to release its security when the claims against the Customer have lapsed.
6. The Customer may not assign or pledge as collateral goods that are subject to the agreed retention of title or extended retention of title. The Customer shall immediately notify Kuenle of levies of execution on Retained Goods which belong (solely or jointly) to Kuenle.
7. Should a petition for institution of insolvency proceedings be filed concerning the assets of the Customer or should the Customer undergo a debtor's exam, Kuenle shall be entitled to rescind the agreement and to demand the immediate return of the delivered goods.

VI. Customer's rights in the event of defects

1. Liability for defects and damages in case of inappropriate or improper use, incorrect assembly or placement in service by the Customer or third parties, normal wear and tear, improper or negligent handling or use and for defective work on the part of the Customer is excluded.
2. Provided that the Customer notifies Kuenle in writing, Kuenle shall be liable for defects in the goods as follows to the exclusion of all other claims:
 - a) All parts for which the Customer is able to demonstrate, within the limitation period for defects, that their use is impaired as the result of a circumstance that existed prior to the passing of risk, particularly due to deficient construction, poor materials, defective fabrication or defective assembly, shall, at the option of Kuenle, either be repaired or replaced with new parts without charge. In all cases, Kuenle must be permitted to effect cure. Kuenle shall be allowed reasonable time and opportunity to effect the changes Kuenle finds necessary and to deliver replacement parts without charge.
 - b) Should the cure fail or if the Customer cannot be expected to make further attempts at cure, the Customer may demand a decrease in the consideration (reduction) or rescind the agreement.
 - c) Article VII. of these GTC contains a definitive provision for damages liability for defects.
 - d) The limitation period for the Customer's defect claims is 12 months from the delivery date. For intentional and fraudulent acts and claims under the product liability law, the statutes of limitations shall apply. They shall also apply to structural defects or to deliverables that were used for a structure consistent with their accustomed manner of use and caused their defective condition.

VII. Liability

Kuenle's liability for damages is excluded, irrespective of the legal reason, unless the following exceptions apply.

Kuenle's liability for intentional and grossly negligent acts remains unaffected by the foregoing exclusion of liability. Similarly unaffected by the foregoing exclusion of liability is Kuenle's liability for the negligent breach of obligations which must be met to enable the proper performance of the agreement and the fulfillment of which the contracting party (Customer) may regularly rely on. In the case of the breach, through slight negligence, of obligations which must be met to enable the proper performance of the agreement and the fulfillment of which the contracting party (Customer) may regularly rely on, the liability of Kuenle is, however, limited to typically foreseeable damages.

Also unaffected by the limitation of liability is the liability of Kuenle for warranties of specific qualities, for injury to the life, limb or health of a person, for fraudulent intent and liability under product liability law.

To the extent the liability of Kuenle is excluded or limited under the foregoing subparagraphs, this shall also apply to the personal liability of the employees, representatives and vicarious agents of Kuenle.