

# Purchasing Conditions

kurtz ersa Corporation

---

## 1. General Conditions

- 1.1 For orders placed by the companies Kurtz Holding GmbH & Co. Beteiligungs KG, Kurtz GmbH, Ersa GmbH, MBW Metallbearbeitung Wertheim GmbH or Ph. Kurtz Eisenhammer GmbH & Co. KG (hereinafter referred to as Customer) these Purchasing Conditions shall apply exclusively. The confirmation or meeting of the order shall be considered as recognition of these Purchasing Conditions. Deviating or supplementary conditions of the Contractors shall not be recognised by the Customer, unless they have been approved in writing, even if the Customer does not expressly reject them.
- 1.2 These Conditions apply vis-à-vis companies (Section 14, Sub-section 1 BGB), public law corporations and special public law assets.
- 1.3 These Conditions also apply for future transactions with the Contractor arising out of the current business relations.

## 2. Orders and Confirmation of Orders

- 2.1 Our commercial agents with authority to sign sales contracts are authorised to place written orders only. Verbal agreements therefore require written confirmation in order to become valid.
- 2.2 Orders are to be confirmed by the Contractor within five working days, specifying the reference number and the order number with stipulation of the binding price and delivery date. If no confirmation of order is received within this period, the data on the order shall be considered to have been accepted.
- 2.3 Tenders from the Contractor shall always be submitted free of charge, this applies in particular to any necessary foundation drawings, scheduling or other engineering plans or other documentation.
- 2.4 All tender documentation of the Customer, in particular engineering drawings, plans, calculations and technical specifications, shall remain the property of same and may not be made accessible or disclosed to third parties without written approval.
- 2.5 Tools supplied by the Customer, and models made to the Customer's specifications, may not be made accessible to third parties. Furthermore, the Contractor is obliged to refrain from producing items for third parties with the tools supplied by the Customer. The Contractor shall be liable for all losses incurred by the customer or third parties resulting from a failure to comply with this regulation.

## 3. Delivery Dates and Contract Penalties

- 3.1 The agreed period for delivery is binding. It commences on the day of placement of the order.
- 3.2 Where delivery is not made within the agreed period, the Contractor shall be liable for all losses incurred by the Customer as a result of the delayed delivery. Notification of any delays in delivery is to be given immediately. Additional costs for special and express deliveries, which result from the failure to observe the agreed delivery times, shall be borne by the Contractor. In the event of a delay in delivery, the Customer shall be entitled, after fruitless expiry of an appropriate period of grace, to withdraw from the contract or to make a covering purchase. If, in individual cases, the granting of a period of grace is unreasonable, it may be dispensed with.

---

**Kurtz Holding GmbH & Co. Beteiligungs KG**

# Purchasing Conditions

## kurtz ersa Corporation

---

- 3.3 Where a contract penalty has been agreed for the event of a delayed delivery, the Customer's right to withdraw from the contract and to assert further claims, such as further-reaching indemnity claims, shall remain unaffected.
- 3.4 The Customer may demand a contract penalty up to the final payment, even if he has accepted the delivery or service without prior special reservation.
- 3.5 The Contractor shall be subject to the contractual secondary obligation to inform the Customer immediately in writing of any delays in delivery dates with regard to the total order or parts thereof giving details of the reasons and the probable duration of the delay. In the case of culpable infringement of this obligation to provide notification, the Contractor shall be liable for any resulting losses. The liability for losses resulting from delayed performance shall remain unaffected.

### **4. Risk Assumption / Prices**

- 4.1 In the absence of a deviating written agreement, the price "carriage paid named address of destination" includes all ancillary costs such as packaging.
- 4.2 Until the point of transfer of risk (delivery or acceptance, provided same has been foreseen or agreed) the danger of accidental destruction or accidental deterioration shall be borne by the Contractor. This also applies when the consignment has already reached the agreed delivery address.

### **5. Acceptance and Examination of the Goods**

- 5.1 Cases of force majeure, as well as other unforeseeable events for which the Customer is not culpable such as strikes, lock-outs or natural disasters shall entitle the Customer to postpone the acceptance for the duration of the events.
- 5.2 In the case of extra deliveries greater than  $\pm 10\%$  or consignments arriving more than 10 days before the due date, the Customer shall reserve the right to send back the goods delivered in excess or too early at the expense of the Contractor.
- 5.3 Any duty to inspect on the part of the Customer shall be limited to the immediate examination of the consignment for any externally-recognizable transport damage and externally-recognizable defects. Where the Customer is obliged to make immediate complaint, this duty shall be considered to have been met when externally-recognizable defects are reported within ten working days after transfer of risk or receipt (whichever be the later) and concealed defects reported within ten working days of discovery. Where a longer period is necessary for the examination of the goods or service, a longer period shall apply.

### **6. Payment and Invoices**

- 6.1 Where not otherwise agreed, payment shall be made by the Customer within 14 days with 3% cash discount or within 30 days net, calculated, however, from receipt of the invoice and complete receipt of the goods. Up to this point, the Customer cannot be in arrears with payment. Where a time limit can be determined, the Customer shall only be in arrears after prior reminder by the Contractor. The invoices show the Customer's order data and are to be submitted in duplicate. Where not otherwise agreed, a separate invoice must be presented for each order transaction.

# Purchasing Conditions

## kurtz ersa Corporation

---

- 6.2 The date of invoice receipt shall be considered to be the date of receipt at the delivery address specified in the order documentation. Payment periods begin at this time, but under no circumstances prior to the agreed or actual delivery date (whichever be the later).
- 6.3 Any down payment or interim payment does not constitute recognition of either performance or correct performance of the contract by the Contractor.

### **7. Warranty**

- 7.1 The Contractor undertakes to observe the recognized engineering rules as well as, in particular, regulations, norms and guidelines issued by legislators, supervisory authorities, the Accident Prevention and Insurance Association and VDE and VDMA regarding construction, accident prevention and environmental protection. The norms and guidelines specified by the Customer shall apply in their latest version at the time of delivery.
- 7.2 At the point of delivery, the Contractor shall submit a manufacturer's or EU conformity declaration for all the relevant goods.
- 7.3 The Contractor undertakes to supply goods with original quality in accordance with EC Directive 1207/01. The country of origin, the commodity code for foreign trade and the preference zones must be specified annually in a long-term supplier's declaration. Goods from non-member countries are to be clearly identified as such on the invoice.
- 7.4 Legal stipulations such as the End of Life Vehicles Directive (2000/53/EC) and Waste Electrical and Electronic Equipment Laws (EC Directives WEEE and RoHS) exclude the placing on the market of certain substances in defined applications. A list of the prohibited substances which are of relevance for the electro technical industry is published on the Internet. The Contractor undertakes to ensure that all the parts/products supplied by him are free of prohibited substances and will continue to be so in the future.
- 7.5 In the event of the supplied product containing hazardous substances or dangerous preparations within the meaning of the Chemicals Act, Section 19 (2) and Ordinance on Hazardous Substances, Section 4, the Contractor is obliged to transmit a safety data sheet in written or electronic form as a word file to the clerical officer specified on the order form, prior to the first delivery. This sheet must comply with the valid norm for safety data sheets.
- 7.6 The Customer is entitled to the legal warranty claims in unrestricted form. In particular, the Customer rejects any restrictions of the legal warranty claims, including the indemnity claims resulting from them.
- 7.7 Provided no deviating agreement has been reached, the limitation for warranty claims shall be 24 months from the date of delivery or, where a limitation of this kind is prescribed by law or agreed, the date of acceptance. Where longer statutory time limits exist, these shall apply.
- 7.8 According to the statutory stipulations, in the event of a fault, and following ineffective expiry of a reasonable period of grace for supplementary performance, the Customer may redress the defect himself and demand reimbursement of the necessary expenses, provided the Contractor has wrongly refused to undertake supplementary performance. Grace period notification is dispensable where

# Purchasing Conditions

## kurtz ersa Corporation

---

this is unreasonable for the Customer. The Customer shall notify the Contractor immediately, where possible, before carrying out measures of his own.

### **8. Product Liability**

8.1 The Contractor shall exempt the Customer from indemnity claims on first demand, made against the Customer as a result of defects in a product supplied by the Contractor, provided the defect lies in the domain of the Contractor and the Contractor is liable himself towards third parties.

8.2 The Contractor shall also indemnify the Customer for all reasonable expenses within the meaning of Sections 683, 670 and Sections 830, 840, 426 BGB, for any product recall or information campaigns (for example warnings in media) necessitated by a defect for which the Contractor is culpable. Notification of the extent and content of the measures to be carried out shall be given by the Customer to the Contractor – where possible and reasonable – and the opportunity to respond. All other statutory claims shall remain unaffected.

8.3 The Contractor undertakes to maintain a product liability insurance policy with an appropriate cover sum. At the Customer's request the Contractor shall be obliged to provide proof of an appropriate insurance policy and the payment of the corresponding premiums. Where, between the parties, the Contractor is liable vis-à-vis the Customer due to a product defect, the Contractor shall be obliged at first request, to cede his insurance claims to the Customer to the value of the losses incurred by the Customer. Payments to the Customer from these ceded insurance claims shall be set off against any claims on the part of the Customer vis-à-vis the Contractor.

### **9. Industrial Property Rights**

9.1 The Contractor shall be obliged to bear responsibility for defects of title, in particular for ensuring that the delivery item is not the subject of third party rights in Germany, or, where he has knowledge of an other country of destination, in that country. In the event of an infringement of the industrial property rights of a third party for which the Contractor is culpable, the Contractor shall be obliged to reimburse the Customer for any losses incurred as a result. Where the Contractor is unable to remove the property rights of third parties within an appropriate period, the Customer shall also be entitled to obtain, from the holder of such property rights, in particular, the license to supply, commission, use and sell-on the delivery item or the service to the extent necessary in accordance with the purpose of the contract, at the expense of the Contractor, for a customary and reasonable sum.

### **10. Confidentiality – Engineering Drawings**

10.1 The Contractor shall be obliged to treat the Customer's order and all commercial and technical details relating to it in strictest confidentiality. The Customer's particulars, and engineering drawings, etc. made by the Customer or the Contractor based on data of this kind may only be used or exploited for purposes other than those relating to the contractual relationship with the written approval of the Customer.

10.2 Acceptance or approval of engineering drawings, plans and samples submitted by the Contractor shall not affect the Contractor's sole responsibility for the correct nature of the performance.

# Purchasing Conditions

kurtz ersa Corporation

---

## 11. Assignment, Prohibition of Set-off, Retention Rights

- 11.1 Rights associated with the order may only be assigned to third parties by mutual consent. The Customer's approval shall be considered to have been given when the Contractor has granted his suppliers an extension of rights of retention in the regular course of business.
- 11.2 Charges and off-sets vis-à-vis the Customer are permissible only when the claims of the Contractor are undisputed or have become res judicata. The same shall apply for retention rights and right to refuse performance.
- 11.3 Further retention of title is impermissible.

## 12. Vicarious Agents

- 12.1 The Contractor shall be obliged to bear responsibility for the deliveries and performance of his suppliers to the same extent as for his own deliveries and performance; the Contractor's suppliers shall be considered to be the vicarious agents of same.

## 13. Place of Performance, Applicable Law and Court of Jurisdiction

- 13.1 Place of performance for deliveries and service shall be the place of delivery, for settlement of accounts the domicile of the Customer.
- 13.2 German law shall apply to all claims arising from, and in connection with, this contract, excluding the German international conflict of laws. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 13.3 The sole court of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall be the domicile of the Customer.
- 13.4 Should individual terms of this contract be or become invalid, the validity of the remaining terms shall remain unaffected.