

**LAST UPDATED: 15 NOVEMBER 2022**

**GENERAL TERMS AND CONDITIONS  
FOR CONTRACTS OF SALE**

**1. General Provisions:**

Kuhn Baumaschinen GmbH (hereinafter referred to as “Kuhn”) shall enter into contracts for sales, work and services **exclusively on the basis of these general terms and conditions**. They shall form an integral part of the contractual relationship; they shall apply throughout and until the end of the business relationship and, unless otherwise agreed in writing, they shall also apply to any future contracts (in particular for repairs, spare parts, additional equipment, servicing, etc.). The terms and conditions of the customer shall not apply. If individual provisions of these general terms and conditions prove to be legally ineffective, this shall have no bearing on the validity of the remaining provisions. The ineffective provisions shall be replaced by clauses that best reflect the original economic purpose.

The relevant contracts shall be concluded by the **customer as an entrepreneur** for his company.

The **place of performance** shall be Eugendorf.

All agreements must be made in writing to be legally effective. This written form requirement may only be waived in writing. The agreements shall be signed by Kuhn’s management or authorised signatories. No employees, representatives and/or commercial agencies shall be authorised to provide legally binding signatures or receive money on behalf of Kuhn.

**2. Data Protection, Komtrax:**

Kuhn shall save and process your **data** for the purpose of performing the contract and asserting its claims and/or if you consent to further processing overleaf. Your data shall be stored for seven years in accordance with the legal requirements; the data may be stored for longer if this is necessary to perform the contract and assert legal claims. After this period, your personal data shall be anonymised or erased. If you consent to data processing overleaf, you may informally withdraw your consent at any time by post (Kuhn Straße 1, AT-5301 Eugendorf) or by email (office-bm@kuhn.at). You may assert your rights as a data subject by sending a notification to one of the addresses indicated above at any time; you may particularly request (i) the rectification of your data, (ii) the restriction of data processing, (iii) the deletion of your data, (iv) access to your data, and (v) the assertion of your right to object. Kuhn has appointed Christian Barth (c.barth@kuhn.at) as its data protection officer. You may also lodge a complaint with the Austrian Data Protection Authority.

The customer confirms that he has been fully informed about **Komtrax** and agrees to accept the “Terms of Use – Customer Consent” electronically via the Komtrax® web application (www.komtrax.eu). Komtrax is pre-installed and automatically activated on

every Komatsu device – even if the customer does not accept the “Terms of Use – Customer Consent” – and shall send machine data to Komatsu, unless the customer submits a written request to the seller to disable Komtrax. If the customer submits such a written request, Komtrax shall be disabled for the customer’s entire machinery.

The customer agrees to receive **news from Kuhn** and its affiliates about products, special offers and other corporate information via advertising emails (e.g. newsletters). The customer may withdraw his consent at any time.

### 3. **Prices:**

Unless otherwise agreed in writing, the prices shall be quoted as **net prices** ex works from the supplier, excluding value added tax and delivery and without packaging. They shall be subject to price increases from the supplier, increases in customs duties, fluctuations in official exchange rates and other import charges and taxes. Any additional costs arising from the contract shall be borne by the customer.

If **used machines are exchanged**, the price shall include free delivery from the customer to the nearest Kuhn branch for used machinery (AT-5310 Mondsee or AT-2325 Himberg). The agreed exchange price shall be indicated in the offer for the used machinery; the machine must be free from any defects that were not discovered during the local inspection or were not reported by the customer in writing before signing the contract of sale.

### 4. **Terms of Payment:**

Unless otherwise explicitly agreed in writing, the purchase price must be paid when the goods are reported as ready for delivery at the place of performance and, at the latest, **three working days** before the delivery date announced by Kuhn. Kuhn shall be entitled to refuse to surrender the goods until it has received the purchase price (in cash or credited to its bank account). Bills of exchange and cheques shall not be accepted in lieu of performance.

If the customer defaults on the payment of the purchase price or the acceptance of the goods, he agrees to pay **default interest** at a rate of 1% per month. If the customer defaults on these obligations, Kuhn shall be entitled to refuse all services (e.g. improvement work under warranty) and to keep all goods in its custody until the purchase price has been paid in full, including all interest and charges.

Any payments shall first be used to settle expenses, other additional claims and interest – and only then to settle capital claims. If Kuhn has only filed some of its claims before court, the partial payment shall first be used to settle the claims that are not yet pending in court (in the order indicated above).

In the event of default, the customer agrees to fully reimburse all (standard) **fees incurred to issue reminders for the payment of the purchase price**, including any additional claims, as well as any cash expenses and other costs incurred for the same purpose, and to indemnify Kuhn against any claims and damages that might arise when collecting the claims.

If this contract is terminated as a result of the customer’s failure to accept the goods and/or pay the purchase price on time, regardless of whether the customer is at fault, Kuhn shall

be entitled to charge a **cancellation fee** amounting to its lost profit or at least 20% of the gross purchase price. Kuhn reserves the right to assert further claims (in particular for non-marketable goods or custom-made products). In particular, Kuhn shall be entitled to invoice the customer for a usage fee amounting to 5% of the purchase price for every month in which the goods were available to the customer (i.e. from the time the goods were handed over to the customer until they were properly returned to Kuhn). The general terms and conditions for rental contracts shall also apply in such cases.

The customer shall not be entitled to withhold outstanding payments due to **counter-claims** (e.g. warranty or compensation claims). Kuhn's claims may only be offset against any outstanding counterclaims held by the customer that are undisputed or have been determined in a court of law.

If the customer is granted the right to settle his debts in instalments, he shall be deemed to have **missed the deadline** if only one instalment is incomplete or not paid on time. In such cases, the customer shall be obliged to immediately return the goods to Kuhn at his own expense as a temporary security and for the subsequent satisfaction of the creditor.

## 5. Proprietary Rights:

The ownership of the goods shall only be transferred to the customer when the purchase price has been paid in full, including any additional claims. If a uniform payment agreement has been made for several items, Kuhn shall **retain ownership** of all items until the entire claim has been settled in full. The customer may only resell the goods before the purchase price has been paid in full, including interest and debt collection costs, with the express written consent of Kuhn. The customer hereby assigns to Kuhn any claims that might arise from the resale of goods to third parties. The customer agrees to immediately inform the third party that the claims have been assigned to Kuhn and to include a corresponding note in his books. The customer shall be obliged to hand over all documents related to the resale and to immediately invoice all outstanding claims if requested to do so by Kuhn. In the event of a resale, Kuhn shall also be entitled to inform the third party of the agreed assignment of claims.

The customer must **insure** the goods against all risks (incl. machine breakage and fire) until the purchase price has been paid in full, including any additional claims; the insurance must cover the total value of the goods and the transferability of the insured amounts must be restricted in Kuhn's favour. In addition, the customer must maintain the goods in their proper condition and immediately arrange for any necessary repair and servicing work to be carried out by specialists.

If an item is not returned to Kuhn **in its proper condition**, Kuhn shall be entitled to restore its proper condition – or to have its proper condition restored by a third party – at the expense of the customer; the item shall only be deemed to have been returned when this condition has been restored.

If the goods are **seized**, the customer shall be obliged to immediately inform Kuhn by phone and in writing. In such cases, all costs and cash expenses incurred to enforce Kuhn's claims (e.g. inquiries, interventions, attachment proceedings) shall be borne by the customer.

Before the ownership of the goods has been transferred to the customer, or if the customer defaults on payment, Kuhn and the companies in the KOMATSU Group shall be entitled – at any time and without notifying the customer – to inspect and check the goods, and they shall be entitled to **decommission** them if the customer is in default. In such cases, the customer must immediately share the location of the goods; if he fails to do so, he must reimburse all costs and cash expenses incurred by Kuhn to determine the location. The customer hereby explicitly and irrevocably grants Kuhn permission to enter his property, buildings and other premises where the goods might be located and to have such areas opened if they are locked. The customer hereby explicitly declares that he shall not take any legal action whatsoever as a result. The customer particularly agrees to refrain from filing trespassing claims and from revoking this waiver for whatever reason.

If the customer defaults on payment, the full amount of the costs and cash expenses incurred by Kuhn to assert its retention of title (determination of whereabouts, towing, transportation, unlocking, etc.) shall be borne by the customer.

The customer shall not be permitted to actively resell goods purchased from Kuhn outside of Austria or to resell such goods in general outside of the EU, Great Britain and the EFTA.

## 6. **Delivery:**

Kuhn shall only be able to adhere to the **delivery times** if the customer performs all his obligations, particularly by making all payments and satisfying all requirements for Kuhn to make the delivery. If the order is changed or the goods are modified, the delivery times shall be reset. Kuhn shall endeavour to meet the delivery date, but it shall not be binding. The customer shall still be obliged to accept the goods if the agreed delivery date is missed. The customer shall only be entitled to withdraw from the contract after a grace period of at least six months set by the customer has expired to no avail. All loading, transportation, unloading and deliveries shall be carried out at the risk and expense of the customer.

Kuhn reserves the right to **make changes to the design and shape of the goods**, provided this does not bring about fundamental changes to the goods. The performance, weight, operating costs, speed and other features contained in product descriptions should be seen as approximations.

If the collection of the claims is potentially **jeopardised** by circumstances that exist, arise or become known before the goods are handed over to the customer, Kuhn shall be entitled to request a cash payment within one week or a security. If the customer fails to meet this obligation, Kuhn shall be entitled to withdraw from the contract and demand compensation or a cancellation fee, as described in Section 4.

## 7. **Terms of Performance and Acceptance:**

The customer must inspect and accept the goods as soon as they are reported as ready for collection at the agreed location. The statutory obligations for entrepreneurs to **report defects** shall apply.

Even if free delivery or collection has been agreed, the **risk** shall be transferred to the customer as soon as the goods leave the warehouse.

## **8. Warranty and Guarantee:**

The agreed **warranty period** shall be six months from the moment the goods are dispatched from the factory or reported as ready for dispatch, but no later than the moment the goods are handed over. If the customer has previously rented goods, the warranty and guarantee periods for such goods shall begin at the point when they were first rented.

Contrary to the **burden of proof clause stipulated in Section 924 of the Austrian Civil Code (ABGB)**, if a defect emerges within the warranty period, the parties shall not assume that the defect already existed at the time the goods were handed over; the burden of proof shall lie with the customer.

**The customer shall not be entitled to assert any form of warranty, repair or compensation claims for used equipment.**

The customer shall be responsible for ensuring that the **performance parameters** specified by Kuhn or the manufacturer are suitable for the intended use or compatible with the attachments or other components used by the customer. If the operating conditions change, Kuhn shall not guarantee that the goods will meet the new requirements. In any case, the customer must observe the operating instructions and the specifications and restrictions contained therein; Kuhn shall accept no liability for any use that deviates from the operating instructions.

All warranty claims shall be honoured at the **place of performance**, but Kuhn may choose between its headquarters and a branch; in the case of fixed installations, any work to be performed under warranty shall be carried out on site.

If the customer has not fully performed his own obligations, Kuhn shall be entitled to **refuse to remedy a defect**.

Any **manufacturer's guarantee obligations** shall be performed by the manufacturer itself, not by Kuhn. Kuhn shall support the customer as far as possible.

Any work performed by Kuhn on the goods shall be subject to a fee, even if the customer has previously asserted a claim under warranty. The **obligation to pay for Kuhn's services** shall only lapse if Kuhn agrees in writing that the services are to be provided free of charge under warranty or guarantee.

Any warranty and guarantee claims shall expire if **seals** are removed from the goods by third parties or changes are made through the installation of parts supplied by third parties. The customer may only assert such claims if he has observed all the supplier's regulations, as determined by the **usage guidelines stipulated by the manufacturer** and/or Kuhn, and has used and stored the goods with care. If the customer asserts warranty claims, he must give Kuhn at least six weeks to rectify the issue from the handover of the goods or the beginning of the on-site rectification of defects.

The customer may only request **a discount or the rescission of the contract** if all Kuhn's attempts to remedy the defect within this period have proven ineffective.

## **9. Limitation of Liability**

**The customer shall not be entitled to assert claims for damages against Kuhn, unless the damage is caused by the latter's grossly negligent or intentional actions.** In any case, Kuhn shall not be held liable for the compensation of any consequential damage, lost profits, damage caused by disruptions in the customer's operations, the cost of procuring replacements, or for futile expenses. In addition, Kuhn shall not be liable to pay compensation on any legal grounds (particularly on the basis of claims asserted under the Austrian Product Liability Act [PHG]), provided this is legally permissible.

## **10. Bankruptcy**

If bankruptcy or administration proceedings are opened in relation to the customer's assets and there is an outstanding claim, Kuhn shall be entitled to rescind the contract. The contract shall be rescinded in such a way that the goods must be returned to the place of performance or one of Kuhn's branches within one week after it has declared its intention to rescind the contract; the location shall be determined by Kuhn. The obligation to return the goods shall arise when the declaration to rescind the contract is submitted; if the customer has filed for bankruptcy, the obligation shall form part of his insolvency estate. If the goods are used beyond the event that causes Kuhn to declare its intention to rescind the contract, for any reason whatsoever and particularly in accordance with Section 11 of the Austrian Insolvency Code (IO), a monthly fee of 5% of the gross purchase price shall be deemed appropriate and agreed for such use.

## **11. Applicable Law, Place of Jurisdiction:**

The contractual relationship between the parties shall be subject exclusively to the substantive law of Austria to the exclusion of the international rules on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG). The competent court in the city of Salzburg is hereby agreed as the sole place of jurisdiction for any disputes arising from the business relationship between the contracting parties.