

# General Terms of Business of KUBOTA (Deutschland) GmbH

## Preamble

These General Terms of Business of KUBOTA (Deutschland) GmbH ("KUBOTA") shall have sole applicability to businesspeople, entrepreneurs, public law corporations or public law assets [Sondervermögen] pursuant to Art. 310 of the German Civil Code [Bürgerliches Gesetzbuch or BGB] ("Purchaser") who buy products from KUBOTA ["Purchased Article(s)"].

## I Offers and Contracts

- 1.1 All offers, contracts and deliveries shall be subject solely to KUBOTA's General Terms of Business, which shall be deemed as recognised as of order placement, even if Purchaser's terms of business prohibit the recognition of other parties' terms of business.
- 1.2 Should KUBOTA fail to object to or state an opinion regarding Purchaser's general business terms, this shall not be deemed recognition of or consent to them. KUBOTA's order confirmation on a Purchaser's order documentation shall not affect the exclusive applicability of KUBOTA's General Terms of Business.
- 1.3 The recognition of one, more or all of the clauses of Purchaser's general business terms shall be subject to specific prior written agreement.
2. An order shall be deemed a legally binding offer pursuant to Art. 145 BGB. The contract shall only come into existence if and when KUBOTA accepts such offer by means of confirmation. Oral confirmation of order by an unauthorised employee of KUBOTA's shall require written order confirmation from KUBOTA. Only those persons who have express power of representation for KUBOTA shall be deemed authorised. KUBOTA's order processing employees do not have power of representation. The contractual relationship shall be governed by the contents of the order in connection with KUBOTA's General Terms of Business. Should no written order confirmation as described above be given – e.g. for small or spare parts or accessories – Purchaser's written order shall determine the scope of the delivery after acceptance of such order has been given in the form of delivery or notification of intent to deliver.
- 3.1 Modifications or additions to or cancellations of confirmed orders shall require KUBOTA's written consent.
- 3.2 KUBOTA reserves the right to submit a new offer adjusted according to changed circumstances. Purchaser shall bear all costs for parts specifically procured to implement the order, freight costs and/or the administrative costs of changing the order.
4. With respect to information in the product descriptions regarding capabilities, weight, operating expenses, speed, etc., KUBOTA reserves the right to make modifications due to technical advances or modifications.
5. Conclusion of the contract shall be based on the precondition that KUBOTA receives correct and timely delivery from its suppliers. This shall not apply if KUBOTA is responsible for a supplier's failure to deliver or deliver correctly, particularly if it has failed to implement a matching cover transaction. KUBOTA shall immediately inform Purchaser of the

unavailability of any Purchased Article and reimburse Purchaser for any counterperformance without delay.

6. KUBOTA reserves the right to perform partial deliveries and issue partial invoices to the extent standard for the industry.

## **II Prices and Payments**

1. Unless otherwise expressly agreed, all prices are ex-work Nieder-Roden plus packaging and the amount of VAT then currently legally mandated. No special discounts or advantages of any kind shall be granted.
2. Purchaser shall bear all transportation insurance, loading, transportation and similar costs.
3. KUBOTA's bills shall be payable upon receipt with no deductions of any kind. Bills of exchange or drafts shall be accepted as undertakings to pay but on no account in lieu of payment.  
KUBOTA is not obligated to accept bills of exchange/drafts; however, should it accept a bill of exchange or draft, Purchaser shall bear the costs in cash of any bank discount and/or collection fees immediately upon payability.
4. KUBOTA's employees are not authorised to receive payment without express collection authorisation.
5. Purchaser shall only be allowed to set off its claims against KUBOTA's claims or withhold amounts due to KUBOTA if Purchaser's counterclaim is undisputed or has been upheld in court.
6. Unless an express fixed price agreement has been reached, KUBOTA reserves the right to make appropriate price adjustments due to changes in payroll, material or distribution costs for deliveries carried out two months or more after conclusion of a contract. If the prices agreed upon are based on list prices and the delivery is only made more than four months after the contract has been entered into, the list prices in effect as of the delivery date less an agreed-upon rebate amount shall apply.

## **III Deliveries and Delivery Periods**

1. The prospective delivery dates quoted by KUBOTA are approximate. They are based on best estimates, taking into account the delivery situation and production capabilities existing on the date of quote.
2. A delivery period quoted by KUBOTA shall begin under the condition that Purchaser has ordered properly and the parties have reached agreement on all terms and conditions. If additions or modifications are made to a confirmed order, the new delivery period shall begin as of the date specified by KUBOTA for the reconfirmed order containing modifications or additions. If Purchaser has failed to fill out or fill out completely previous purchase agreements, KUBOTA reserves the right to claim non-performance of the contract [Einrede des nichterfüllten Vertrages].
3. Should unanticipated delays in deliveries result from technical or other circumstances beyond KUBOTA's control, e.g. strike, fire, raw material shortage or other interruption of operations or force majeure that make filling the order either impossible or significantly more

difficult, KUBOTA shall have the right to extend the delivery period by the length of such interruption; this shall not apply in case of lockout of employees not in the context of a regular labour dispute and in cases of delivery by a fixed date. Should a delivery date be delayed by more than six weeks for legitimate reasons, either party shall have the right to rescind the contract; this shall not constitute the basis for a claim to later delivery or compensation for damages on the part of Purchaser. KUBOTA shall inform Purchaser without delay of any such situation, including the essential facts.

- 4.1 KUBOTA is obligated to keep any agreed delivery date. Should delivery be delayed more than two weeks beyond the stipulated delivery date, Purchaser shall have the right to set an appropriate delivery deadline. Should KUBOTA fail to meet this deadline as well, Purchaser shall have the right to rescind the contract by means of a written declaration.
- 4.2 Should KUBOTA fail to meet the delivery deadline, be in default and be responsible for the cause of such default, Purchaser shall have the right to claim a default penalty of 0.5 % for each complete week of delay, but not more than a total of 5 % of the value of the bill for the deliveries and services affected by the default. No further claims shall be permitted unless the default is the result of at least gross negligence on the part of KUBOTA. KUBOTA shall have the right to prove that Purchaser has suffered a lesser extent of damages due to the delay in delivery than the default penalty described in Sentence 1 above.
5. KUBOTA's delivery obligation shall be suspended if and as long as Purchaser is in not unsubstantial arrears with obligations. Costs accruing to KUBOTA in this context shall be borne by Purchaser.
6. KUBOTA reserves the right to change the construction or form of the Purchased Article during the delivery period if the Purchased Article and its workmanship are reasonably acceptable and/or lie within standard industry allowable deviations.
7. Should the Purchased Article be sent at Purchaser's request to Purchaser or another place designated by Purchaser, the risk of accidental loss or destruction and/or accidental impairment of the Purchased Article shall devolve to Purchaser as soon as the Purchased Article leaves KUBOTA's factory or warehouse. This shall apply regardless of whether the Purchased Article is sent from the place of fulfilment and which party is to bear the transportation costs.

#### **IV Acceptance Default/Violation of Duty by Purchaser**

1. Should Purchaser be in default of acceptance or negligently violate any other cooperation obligation, KUBOTA shall be entitled – notwithstanding other additional claims – to demand without any further evidence 0.5 % for each complete week of default or violation of obligation, up to a maximum of 5 % of the invoice total as a flat sum for compensation for damages. Should KUBOTA withdraw from the contract due to Purchaser's culpable violation of an obligation, KUBOTA shall be entitled to demand without further evidence 5 % of the invoice total as a flat amount for compensation for damages. This shall not affect KUBOTA's right to provide evidence of a higher amount of damages, nor shall it affect Purchaser's right to provide evidence that no damage or substantially less damage has occurred.
2. Upon occurrence of the acceptance default, the risk of accidental impairment and/or accidental loss or destruction shall devolve to Purchaser.

## V Retention of Title

1. KUBOTA retains title and ownership of the Purchased Articles until complete payment of all accounts payable, including all future accounts payable arising from the entire business relationship including all side claims and until the redemption of any and all bills of exchange or checks. Such retention of title shall remain valid for all claims arising in connection with the Purchased Article, i.e. claims arising from the provision of repairs, spare parts, accessories or operating supplies as well as other services. For running accounts, this retention of title shall be deemed security for the open balance. At Purchaser's request, KUBOTA shall be obliged to waive retention of title if Purchaser has fulfilled all claims in association with the Purchased Article and there is appropriate security for the remaining claims arising from the ongoing business relationship.
2. During the period of retention of title, at KUBOTA's request, Purchaser shall, at its own cost, insure the Purchased Article against destruction, damage and loss, including the condition that KUBOTA be entitled to the rights arising from such insurance. Purchaser shall be entitled to choose the insurer.
3. Purchaser shall be obliged, during the retention of title period, to keep the Purchased Article in proper condition and to implement all maintenance work and necessary repairs recommended by KUBOTA without delay at its own expense.
4. Purchaser shall have the right to resell or lease the Purchased Article in a proper transaction as long as it is not in default. Purchaser hereby cedes to KUBOTA any and all claims regarding the goods to which title is retained arising from a resale or another legal basis (insurance, tort). KUBOTA hereby revocably authorises Purchaser to collect for KUBOTA's account the claims ceded to KUBOTA. At KUBOTA's request, Purchaser shall disclose the cession and provide KUBOTA with all necessary information and documents.
5. Any reworking, changing or transformation of the Purchased Article by Purchaser shall be done in the name and at the request of KUBOTA. In such a case, Purchaser's expectant right to the Purchased Article shall continue in respect of the transformed article. If the Purchased Article is reworked or inseparably combined with other objects not originating from KUBOTA, KUBOTA shall acquire a percentage of co-ownership of the new object equal to the ratio of the value of the Purchased Article to the other reworked or integrated objects as of the date of reworking and/or integration. In all other aspects, the same shall apply to the object resulting from the reworking as to the original Purchased Article. Should Purchaser's part of the object be the main component of a combination or integration, Purchaser shall transfer co-ownership of an appropriate proportion to KUBOTA. Purchaser shall preserve sole or co-ownership for KUBOTA.
6. KUBOTA shall release the security to which it is entitled under Nos. 1 and 4 above upon request if the value of the security exceeds KUBOTA's claims by more than 20% for a sustained period.
7. Upon any third-party attachment, especially if the Purchased Article is pledged or a workshop exercises its realisation right under lien to satisfy a claim, Purchaser shall immediately inform KUBOTA in writing and inform the third party of KUBOTA's retention of title without delay. Purchaser shall bear all costs not billable to third parties involved in obtaining the release and return of the attached article.
8. For the duration of the title retention, neither any change nor any pledging, chattel

mortgage, leasing or similar transfer of possession of the Purchased Article that could negatively influence KUBOTA's security interest shall be permissible without KUBOTA's prior written consent; any sale permitted pursuant to No. 4 above shall be excepted.

9. Should Purchaser default on its payments or fail to fulfil its obligations arising from the title retention, KUBOTA shall have the right to rescind the contract and repossess the Purchased Article or, if applicable, to demand that Purchaser transfer to KUBOTA its right to claim return from a third party.

## **VI Warranty/Limitation Period**

1. KUBOTA warrants that Purchased Articles are free from defects if new. A Purchased Article shall be deemed free of defects if it corresponds to the characteristics stipulated in the order confirmation, product specifications and/or instruction and/or maintenance manual. Public statements, blurbs and advertising shall have no effect on stipulated characteristics.
2. In the event of defects, Purchaser shall be entitled to assert the claims found in the appropriate Specific Terms of Business within the warranty periods stipulated therein.
3. KUBOTA shall only be liable for Purchased Articles that are maintained and operated according to the corresponding instructions for use and maintenance and (in the case of accessories and spare parts) are so installed. Another prerequisite is that only accessories and spare parts approved by KUBOTA have been used.
4. Wear and tear parts shall be excluded from the defect liability unless they bear a manufacturing or material defect.
5. As for the rest, no defect shall be deemed to exist in the cases set forth in the appropriate Special Terms of Business.
6. Installation of accessories and/or parts shall not extend the warranty period for the Purchased Article into/onto which they are installed.

## **VII Obligation to Inspect and Report Defects**

Purchaser shall bear the obligation to inspect and report defects as set forth in Art. 377 of the German Commercial Code [Handelsgesetzbuch or HGB]. Purchaser shall inspect the Purchased Article for recognisable defects immediately upon having received it, but within 30 calendar days at the latest. Recognised defects shall be reported immediately, but at the latest within a calendar week. Such defect report shall be made by means of the "Kubota.Net" warranty application of the "Kubota.Net" website and shall describe the defect as clearly and exactly as possible.

## **VIII Warranty Periods for Defect Claims**

Should KUBOTA reject a defect claim by a Purchaser as unfounded, such Purchaser's claims regarding such defect shall expire if Purchaser does not assert them in court within three months of having received such rejection if and to the extent that KUBOTA's rejection has been made in writing (fax shall be acceptable; email shall not) and expressly includes mention of this legal consequence.

## **IX Substitute Delivery, Defect Remediating, Payment Reduction by End Customer**

1. Purchaser shall give KUBOTA an opportunity to either investigate defect reports itself or have them investigated by a third party. Should the defect report prove to be unfounded, Purchaser shall reimburse KUBOTA for its expenses unless the unfounded defect report is not Purchaser's fault.
2. In the event of a defect, KUBOTA shall either remedy such defect or provide a replacement at its discretion. KUBOTA shall also be entitled to permit Purchaser to have its own workshop or a KUBOTA specialised workshop remedy the defect; Purchaser shall choose whichever option is less costly. Should Purchaser be permitted to have repairs made to the Purchased Article, such repairs shall be carried out solely by trained experts.
3. Purchaser shall send any Purchased Articles or parts thereof that are to be replaced by KUBOTA upon KUBOTA's request (email is acceptable) free of postage or shipping costs to KUBOTA. If the Purchased Article or part is defective, KUBOTA shall bear the costs of the least costly shipping method. Only the defective parts and the parts that necessarily have been damaged due to the defect despite proper handling shall be replaced. Replaced parts shall become the property of KUBOTA.
4. Purchaser shall inspect any Purchased Articles delivered as replacement, remedied or repaired immediately as described in Part VII and report any defects. Purchaser shall also provide KUBOTA with comprehensive information on any repairs by means of a Kubota.Net warranty application.
5. Should such subsequent performance fail, be unreasonable or be refused, Purchaser shall be entitled to reduce the price or – in the case of not unsubstantial defects – rescind the contract and/or demand compensation for damages as per Part XI below.
6. In cases in which Purchaser seeks recourse against KUBOTA pursuant to Art. 478 BGB due to an end customer's legitimate and successful reduction in price, KUBOTA shall bear the difference between the original purchase price and the reduced price received from the end customer or other purchaser.

## **X Retention Obligation, Reporting Obligation**

1. Purchaser shall retain the Purchased Article or the parts damaged by such Purchased Article until the warranty claim has been completely processed.
2. Purchaser shall immediately inform KUBOTA should any claims be asserted against Purchaser either by an end customer or in the form of recourse on the part of a businessperson due to a defect in a Purchased Article. Recourse against KUBOTA shall only be possible if Purchaser has not entered into an agreement with its customer that extends beyond the legally mandated defect claims.

## **XI Limitation of Liability**

1. KUBOTA shall have no liability for slightly negligent violation of non-essential contractual obligations. In cases of slightly negligent violation of essential contractual obligations – including those committed by representatives and implementation agents – liability shall be limited to those damages which are foreseeable in such contracts. However, KUBOTA shall

bear unlimited liability for damages caused to Purchaser's body or health by culpable behaviour on the part of KUBOTA, its legal representatives or implementation agents as well as for intent and gross negligence and any lack of warranted properties.

2. This shall not affect KUBOTA's liability under the Product Liability Act [Produkthaftungsgesetz].

## **XII Place of Fulfilment and Jurisdiction, Miscellaneous**

1. The place of fulfilment shall be the registered office of KUBOTA.
2. The sole place of jurisdiction shall be the court having jurisdiction at the place of KUBOTA's registered office; however, KUBOTA shall also be entitled to assert claims before the court having jurisdiction over the place where Purchaser has its registered office.
3. These General Terms of Business shall also apply to all future transactions with Purchaser that are similar legal transactions.
4. The contractual relationship shall be subject to German law; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
5. Complementary, any of KUBOTA's Special Terms of Business applicable to a certain situation and in effect at the time shall also apply.
6. Should one of these clauses be invalid, this shall not affect the validity of the remaining terms.

KUBOTA (Deutschland) GmbH, February 2009