

<p><i>KTM</i> Kühler A-5230 Mattighofen</p>	<p>Quality management – checklist <b>Conditions of purchase</b></p>	<p><b>CL-06-01-EKB-er</b> Edition 06: June 09 Page 1 of 7</p>
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## 1. SCOPE

- 1.1. The following general conditions of purchase apply to all orders from KTM Kühler GmbH. Any conflicting general conditions of business from the supplier will be objected to. One-sided declarations, notes and references to general conditions of business which appear on invoices, delivery notes or other documents drawn up by the supplier are invalid.
- 1.2.1 Any of the supplier's conditions of sale and delivery which deviate from this document are only binding for KTM-Kühler if these have been expressly approved in writing. Where these contradict the supplier's conditions of sale, the KTM-Kühler conditions of purchase will always apply. By accepting, confirming or carrying out the order, the supplier accepts our conditions of purchase and is aware that a reference by the supplier to his conditions of sale and delivery on order confirmations, delivery notes or invoices are invalid for KTM-Kühler.

## 2. OFFERS

- 2.1 The supplier must comply with the exact quantities and conditions requested by KTM-Kühler and must expressly point out any discrepancies. If the request is for rough quantities („circa“), the supplier agrees to the purchaser exceeding or lowering the order to a marginal extent relative to the sum of the order (roughly 5%).
- 2.2. The supplier is bound by an offer made to the purchaser for at least 180 days following its receipt.
- 2.3 Offers and quotes by the supplier are free of charge to KTM-Kühler and are non-binding, even if they were prepared at our request.

## 3. ORDERS

- 3.1 Orders are only binding in writing. Alterations made verbally or by telephone only become binding when they have been confirmed in writing.
- 3.2. The order date is deemed to be the day that the order is sent. The order number contained in the order should be quoted in all further correspondence relating to the handling of the order, including invoices, dispatch papers or delivery notes.

## 4. JOB CONFIRMATION

- 4.1. An order from KTM-Kühler must be confirmed in writing immediately and without exception. If the order confirmation does not reach the supplier within three calendar days from the day of the order (for orders with a shorter delivery deadline, on the following day) – the time for posting is not taken into account – the contract will be completed, with the contents listed in the order, unless the purchaser withdraws from the job in writing. Deviances from the order must be expressly pointed out in the job confirmation and must, in turn, be accepted in writing by KTM-Kühler GmbH.

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- 4.2. If prices and other conditions (e.g. delivery time) are not stipulated in the order, then the supplier must give these details in the order confirmation.  
KTM-Kühler reserves the right to cancel the order within 7 working days if the contents of the order confirmation are not satisfactory.

## 5. DELIVERY

- 5.1. The place of delivery is the destination given by the purchaser, otherwise the location given in the order or the given purchaser's processing sub-supplier. Delivery and shipping to the place of deliver is to take place according to KTM-Kühler's instructions, free of any charges, with any costs and risks borne by the supplier. Where applicable, any specifications given by KTM-Kühler must be followed.
- 5.2. The goods must be packed appropriately for transportation. If requested, the cost of packaging material may be reclaimed by the purchaser from the supplier. If, due to a special agreement, the purchaser is to bear the packaging costs, only the cost price will be invoiced, and listed separately in the invoice. In this case, the purchaser is entitled to claim back any reusable packaging materials and demand a corresponding credit note.
- 5.3. The supplier must, at his own cost, ensure that the delivery is sufficiently insured. Payment on delivery will not be accepted. A detailed delivery advice slip must be sent out at the same time as the shipment. The delivery must also be accompanied by a packing slip and a separate delivery note for each order number.
- 5.4. The supplier must attach any necessary customs clearance documents to the freight documents and, for deliveries outside the EU or EFTA region, ensure the correct completion of the goods transport permits required for customs clearance.
- 5.5. If a delivery is made up of several combined orders, these must be packed separately or sub-packed and marked as such. A corresponding note must be attached to the delivery note and the packing slip.
- 5.6. By delivering the goods, the supplier accepts our order and thus our conditions of purchase.
- 5.7.1 The delivery papers must be received by KTM-Kühler with the delivery and should allow the clear identification of our orders in the delivery, as well as the date of production or purchase by the supplier.
- 5.7.2 When commissioning the production and/or use of tools, the general guidelines for tools and appliances may apply, along with the checklist for dealing with tools.
- 5.7.3 For the production of parts with additional tools or with tools belonging to KTM-Kühler, the KTM-Kühler tool leasing contract may apply.

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## 6. DELIVERY DATES AND DEADLINES

- 6.1. The supplier is obliged to accurately observe the agreed delivery dates and deadlines. In order to comply with the delivery deadline or the delivery date, the goods must have arrived at the place of delivery, or, for services, the work been completed by that day. Delivery deadlines begin on the day of the order and, unless otherwise agreed, are set at eight days.
- 6.2. If a delay in delivery is anticipated, the purchaser must be informed immediately in writing, giving reasons and the expected extent of the delay. The supplier is obliged to compensate for any expense caused by a delay. KTM-Kühler is entitled to refuse to accept goods delivered before the agreed delivery date, to return the premature delivery at the supplier's expense and risk, or to place the delivery in third-party storage.
- 6.3. The delivery is also not deemed as being on time if the goods are defective, and these defects are not remedied by the agreed delivery date.

## 7. DELIVERY DELAYS

- 7.1. If the delivery date or deadline is not kept for a delivery or part thereof, then KTM-Kühler is entitled to withdraw from the contract immediately, set a fourteen day extension, or insist on fulfilment of the contract. Claims to compensation or warranty are not affected by this. Delayed delivery is deemed equal to delivery in breach of the contract.
- 7.2. In the event of a delayed or breaching delivery, in part or in full, regardless of blame, the supplier must pay KTM Kühler a contractual penalty of one per cent per commenced calendar day of delay of the delivery or service – limited at ten per cent of the total price. If the purchaser exercises his right of withdrawal due to delayed delivery, or if the supplier is no longer able to complete the service according to the contract, then a contractual penalty of ten percent of the total price is also due.
- 7.3. Further to the contractual penalty, any damages must be compensated by the supplier, irrespective of blame. The supplier is also liable for his aids and suppliers. Any advance payments made by the purchaser to the supplier must also be returned immediately to the purchaser in the case of a withdrawal from the contract due to delayed delivery, at the expense and risk of the supplier.

## 8. PAYMENT

- 8.1. All prices are fixed prices. Price increases of any kind – even legally authorised prices – must be reported to KTM-Kühler sufficiently in advance, and require a separate written agreement between the contractual partners.
- 8.2. KTM-Kühler is entitled to make payment by bank transfer, cheque or by acceptance of a bill of exchange and offset the purchase price against money owed, in particular from contractual penalties, compensation or warranties – without this constituting a late payment.
- 8.3. Payments will be made within 30 working days, less 3 % discount or net within 60 days. The deadlines for payment are effective from receipt of a proper invoice, but not before the goods have been delivered or the services completed.

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- 8.4. Invoices must be sent separately from the delivery of the goods, to the Accounts department. Invoices which are not addressed to Accounts are not deemed as being submitted and will not be taken into account for payment. Invoices from the supplier which do not appear to correspond to KTM-Kühler orders will be returned and will not be included in the payment run.
- 8.5. The payments will be released, with consideration of the payment deadlines, in a weekly payment run. If the date of receipt for an invoice means it is shifted to the following week, exceeding the discount period, KTM-Kühler will reject any supplementary claims of a discount on the part of the supplier.
- 8.6. Following the new regulations for charges for EU payment transaction, any bank charges invoiced by the supplier will be rejected by KTM-Kühler without exception.

## 9. GUARANTEE - WARRANTY

- 9.1. The supplier guarantees that the delivered products comply with the best available technology, the relevant standards (e.g. ÖNORMs,<sup>1</sup> ÖVE regulations,<sup>2</sup> EU standards, KTM specifications etc.), guidelines, laws and safety regulations. They must also feature the CE mark when required by European guidelines and effective legislation.
- 9.2. The supplier further guarantees the ownership of the delivered goods will be transferred without limitations or liabilities, and promises to clear KTM-Kühler of liability should any claims be made with regard to the matter of this point. When requested by KTM-Kühler, the supplier will provide proof of unrestricted ownership – for example, with a confirmation from the preliminary supplier.
- 9.3. The supplier guarantees that the delivered goods do not infringe any third-party rights, particularly no national or international patent, trademark, prototype, intellectual property or other commercial property rights, and clears KTM-Kühler of liability should any claims made by third parties in this respect.
- 9.4. The period of warranty is two years for movable goods, and three years for immovable goods. Defects which are only shown during the proper use of the goods are also covered by the three-year warranty period. Deviant from § 933 ABGB (Austrian Civil Code), the contractual parties agree that defects can be claimed in writing, and not merely through legal proceedings. Warranty claims made in writing during the warranty period can therefore also be made through legal proceedings after the warranty period has expired.
- 9.5. § 377 UGB (Business Enterprise Code) does not apply. KTM-Kühler is therefore not obliged to inspect or make a claim in respect of a defect immediately on receipt of the goods. The implicit acceptance or payment of delivered goods considers the warranty rights of the buyer without receipt.
- 9.6. In the case of a defect, KTM-Kühler has the right to demand that the contract is withdrawn without notice, that the price is reduced, that the defects are rectified by amending or replacing the goods with faultless goods. Any rectification of defects will be carried out by the supplier at his expense within a reasonable period of time set by

<sup>1</sup> Austrian Standards

<sup>2</sup> Österreichischer Verband für Elektrotechnik – Austrian Electrotechnical Association

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KTM-Kühler. If this period passes – and earlier in particularly urgent cases – the purchaser is entitled to arrange alternate rectification of the defects, at the supplier's expense.

- 9.7. The supplier is also liable for hidden defects, even if these are only shown during the use or processing of the goods, or during the use of the product produced by ourselves, within the warranty period given to our customers.
- 9.8 KTM-Kühler is relieved of the legal obligation to immediately inspect the delivered goods and immediately report any defects, with respect to possible defects, both hidden and visible.

## 10. QUALITY ASSURANCE AND PRODUCT CHANGES

- 10.1. KTM-Kühler is entitled to request access to the supplier's production facilities and to view the equipment, tools and documentation for the delivery of the ordered goods, during usual business hours and to a reasonable extent. The supplier must, when requested to do so, grant KTM-Kühler access to all documents relating to the ordered product, such as construction plans and calculations.  
KTM-Kühler in turn is obliged to keep the information gained as such confidential.
- 10.2. Before any changes to an ordered product, the supplier must first seek written authorisation from KTM- Kühler, regardless of whether or not the change affects the functionality of the product.
- 10.3. The supplier commits himself to be able to deliver the goods affected by this contract for at least 10 years after the last delivery, and to announce the phasing out or changes in a product in writing at least 6 months in advance.
- 10.4. If requested by KTM-Kühler, the supplier must provide a sealed copy of all comprehensive technical documentation for the product, construction plans and all other available documents – including those made available to him by the preliminary supplier – as well as all source codes in the event of a software delivery, at the supplier's expense. In the event that the ordered product can no longer be delivered, KTM-Kühler is entitled to use the above documents, without a resulting claim from the supplier.
- 10.5 In the event of a reclamation which results in a loss of production at KTM-Kühler, the supplier is obliged to compensate for the resulting costs, for KTM-Kühler as well as for its end customers. He is further obliged to promptly deliver a replacement for the failed or reclaimed goods.  
In the event of reclamation, the supplier must send an 8D-Report to KTM- Kühler as soon as possible.
- 10.6 In terms of random inspections, KTM-Kühler dictates a tightened inspection according to AQL 0,4 / c=0. The inspection protocol should be included with the shipment papers.
- 10.7 Initial prototypes should principally be backed up in writing with an inspection report such as a VDA<sup>3</sup> template, with reference and actual values. This also applies to the establishment of

<sup>3</sup> German Association of the Automotive Industry

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underdeliveries. Initial prototypes should be accompanied with all protocols and material certificates.

If deliveries have been discontinued over a period of more than one year, this will require a new initial prototype.

Changes in the production process must be reported to us in advance, in order to arrange a new prototype if necessary.

- 10.8 KTM-Kühler is expecting certification according to ISO 9001 or ISO TS 16949 from his suppliers. If this has not been completed upon conclusion of the contract, this certification should be planned or carried out within one year.

## **11. PRODUCT LIABILITY**

- 11.1. The supplier must inform KTM-Kühler immediately and comprehensibly if there are any possible risks associated with the delivered goods, as well as any new insights or changes in production, construction and instruction of the delivered goods, even before any damage occurs.
- 11.2. The supplier is obliged to pay KTM-Kühler compensation for all damages in the sense of the Austrian Product Liability Act, as well as clear KTM-Kühler in all product liability claims from third parties in connection with the delivered goods.

## **12. CONFIDENTIALITY**

- 12.1. The contractual partners agree to treat as confidential all commercial and technical matters which are not publicly known and which emerge as a result of the business relationship, and to extend this obligation for confidentiality to its staff. This obligation will remain effective for an unlimited period beyond the business relationship.
- 12.2. All plans, models, sketches, materials, tools, prototypes or information of any other nature financed by KTM-Kühler or released to carry out a job, also come under the obligation for confidentiality, and remain the property of KTM-Kühler, to be returned immediately after the end of the business relationship.
- 12.3. Without written agreement from KTM-Kühler, the documents, materials and tools made available under point 12.2 may not be reproduced, published or otherwise made available to third parties.

## **13. MISCELLANEOUS**

- 13.1. If KTM-Kühler's ability to fulfil its contractual duties (including to third parties) is made impossible or considerably impeded by a force majeure, KTM-Kühler may cancel the contract in full or in part, or demand the completion or delivery be carried out at a later date, without this resulting in any claims from the supplier. If, in such an event, the completion of the job is unreasonable, he may in his turn withdraw from the contract. Incidents of force majeure particularly include war, national disturbances, acts of terror, industrial action, equipment breakdowns and other circumstances beyond KTM-Kühler's control.
- 13.2. KTM-Kühler is entitled to withdraw from the contract in part or in full, without this resulting in a compensation claim from the supplier, if the job requiring the ordered goods is cancelled in part or in full by KTM-Kühler's customer due to a different model, other construction or technical changes, or due to other grounds beyond KTM-Kühler's control.

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- 13.3. Without written agreement from KTM-Kühler, the rights and obligations of the supplier may not be transferred to third parties.

#### **14. CHANGES TO THE CONDITIONS**

- 14.1 New or changed legal standards as well as the abolition or revision of economic or political foundations of business entitle KTM-Kühler to change these conditions of purchase. There were no additional verbal agreements.
- 14.2. If one or more of the clauses in these conditions of purchase be found to be ineffective, this does not affect the validity of the remaining clauses. Furthermore, they shall be amended in accordance with the intent expressed by the parties in this contract.

#### **15. APPLICABLE LAW – COURT OF JURISDICTION**

- 15.1. Possible legal disputes resulting between the contractual parties as a result of their business relationship will be settled in accordance with Austrian law.
- 15.2. The application of the United Nations Treaty on Contracts for the International Sale of Goods (UN Purchasing Convention) is expressly ruled out.
- 15.3. It is agreed that the exclusive court of jurisdiction will be the applicable court for KTM-Kühler GmbH's principle office.

#### **16. OTHER APPLICABLE DOCUMENTS**

The following documents, in their respective effective edition, are an integral part of these conditions of purchase: confidentiality agreement, general quality agreements, procedure for the inspection of the initial prototype, tools leasing contract, general tool guidelines, material specifications, drawings as well as the questionnaire for the self-evaluation of the supplier.

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