

## General Terms and Conditions of Sale and Delivery of Kyburz Pty Ltd

### 1. Contractual conclusion

These General Terms and Conditions of Sale and Delivery (GTC) shall be exclusively binding along with the purchase agreement. Differently worded terms and conditions of the Buyer shall not be valid in the absence of the written consent of Kyburz Pty Ltd ("Kyburz").

The purchase agreement concluded by and between Kyburz and the Buyer must be made in writing in order to be valid. In the event of contradictions between the purchase agreement and the GTC, the purchase agreement shall prevail.

### 2. Sales product characteristics

Measurements and data detailed in Flyers and lists are approximate values.

Minor, reasonable changes relative to the sales product ("product") described in the agreement in terms of form, colour tone or scope of delivery remain reserved. Kyburz is however not obliged to deliver an amended version.

### 3. Prices and terms and conditions of payment

The prices are given for deliveries ex works. Packaging and the cost of forwarding shall be borne by the Buyer. The payment period is 30 days from the invoice date in the case of corporate customers; in the case of consumers, cash payment upon receipt of the product shall be deemed to have been agreed.

The basis for the purchase price is the price agreed between the Parties at the time of the signing of the agreement. If changes occur and if more than 3 months elapse between the conclusion of the agreement and the delivery, then Kyburz shall be entitled to amend the price to the same extent that its production costs have risen or fallen since the agreement was concluded.

The protective period of 3 months shall not be applicable to all price changes that are associated with changes to value added tax or other fees and duties.

In the case of special models, Kyburz shall be entitled to charge up to 10% more than is set out in the cost estimate.

### 4. Delivery period and checks

The delivery period shall commence at the time of the signing of the purchase agreement or the written confirmation thereof by Kyburz. Its duration shall be recorded in writing by Kyburz.

The delivery period shall in particular be reasonably extended if:

- the Buyer does not deliver the information required for the manufacture of the product in good time, or if he amends this retrospectively;
- the Buyer fails to adhere to the payment periods, if documentary credits are opened too late, or if import licences are not received by Kyburz in good time;
- obstacles arise that Kyburz is unable to avert, despite the application of due diligence, irrespective of whether the obstacle occurs at Kyburz, at the Buyer or at a third party.

Such obstacles include e.g., force majeure, delayed or defective delivery of the required raw materials, semi-finished and finished products, defects on important work pieces as well as official measures or omissions.

The Buyer must check the product within eight days of receipt and must report any possible defects to Kyburz in writing. Once this deadline has expired, the product shall be deemed to have been accepted.

### 5. Reservation of title and ownership of construction drawings

Up until the complete payment of the owed purchase price, including any possible default interest and costs, the ownership of the products remains with Kyburz.

Construction drawings and other documents drawn up by Kyburz shall remain the property of Kyburz. Reproduction, including of extracts, is prohibited, and the forwarding thereof to third parties shall be permitted only with the express written consent of Kyburz.

### 6. Replacement product

In the event of the replacement of a used product for a new (or another used) product, the Buyer declares that no third-party claims or reservations of title pertaining to this product exist.

### 7. Warranty and liability for material defects

Kyburz grants a material warranty of two years for new products and of one year for second-hand products. Within the context of the warranty the Buyer shall have exclusively the rights listed below:

In place of other material warranty claims, the Buyer shall be entitled vis-à-vis Kyburz to demand the rectification of defects (subsequent rectification) in accordance with the following clauses:

- The warranty is limited to the repair or replacement of defective components and to the rectification of further damage to the product, insofar as this has been directly caused by the defective components. The original warranty obligation continues to apply for any repaired or replaced components.
- Components dismantled during the course of the rectification shall be the property of Kyburz.
- The Buyer must report defects to Kyburz without delay once they have been discovered, or must cause these to be ascertained by Kyburz, otherwise he forfeits the warranty rights. The Buyer must hand the product over to Kyburz upon request for the purpose of the repair work. Kyburz shall be entitled to cause the subsequent rectification to be performed by a third party, without thereby being exempted from its warranty obligation.
- Each warranty obligation shall lapse if the product is improperly treated, serviced, maintained, excessively utilised, unilaterally modified or altered, or if the operating instructions have not been adhered to.

- The warranty shall also lapse if the Buyer, in the event of a defect, fails to take suitable damage limitation measures without delay and fails to provide Kyburz with the opportunity to rectify the defect.
- Natural wear is excluded from the warranty.

In place of the subsequent rectification, Kyburz may within a reasonable period choose to deliver another contractually compliant product.

If a serious defect cannot be rectified, despite repeated subsequent rectification, then the Buyer shall be entitled to demand a reduction of the purchase price or the rescission of the agreement. The Buyer shall not under any circumstances be entitled to bring a claim for a replacement delivery. In the event of the rescission of the agreement, the driven kilometres shall be charged (EUR 0.30/km).

A subsequent rectification shall not cause the warranty period to be extended. The warranty shall apply to newly fitted components only for as long as the warranty applies to the product as a whole.

All further warranty and liability claims, contractual or noncontractual, in particular claims for compensation arising out of indirect and/or direct damages, shall be herewith excluded, subject to mandatory statutory provisions.

In the event of the sale of the product, the warranty entitlement shall be transferred to the buyer, insofar as this is assignable, up until the expiry of the warranty period.

Kyburz may invoice transport costs for repairs performed within the context of the warranty.

## 8. Default

### 1. Default by Kyburz

In the event of delayed delivery, the Buyer may assert the statutory default consequences only after a written reminder has been sent as well as following the fruitless expiry of a written grace period of 30 days.

The assertion of compensation for damage that was not caused by Kyburz shall be excluded. In particular damage caused by delivery delays attributable to the supplier or importer, strikes etc.

### 2. Default of the Buyer

If the Buyer is in default with the acceptance of the product following a written reminder, then Kyburz shall grant a 30-day period of grace in writing. Once this has fruitlessly expired Kyburz may:

- a) insist upon fulfilment and demand compensation, or
- b) waive the retrospective performance and demand 15% of the price of the sold product as compensation, whereby the assertion of further compensation shall not be excluded, or
- c) withdraw from the agreement.

Kyburz shall be entitled to the same rights if the Buyer, following a written reminder, defaults on the payment of the purchase price or of more than half of the purchase price, and if Kyburz has fruitlessly granted the Buyer a grace period of 30 days in writing.

The interest payable by the Buyer in the event of default or deferral shall be 5% p.a.

If Kyburz withdraws from the agreement, then the compensation payable by the Buyer, in case of vehicle sales, shall be calculated as follows: 15% of the price for the loss in value of the product caused by registration, plus 1% of the price for each month completed since the delivery of the product, plus EUR 0.30 for each driven kilometre.

## 9. Transfer of risk

Kyburz shall bear the risk for the destruction or reduction in the value of the purchased product up to the time of its handover ex works. In the event of consignment, the Buyer shall bear the transport risk, even if carriage-paid delivery has been agreed.

The Buyer shall bear the risk for the destruction or reduction in the value of a replacement product up to the time of its handover to Kyburz.

## 10. Data protection

Personal data, which the buyer provides via forms, online orders or in other ways, are stored in Kyburz's internal customer database. Kyburz treats the data confidentially and uses it for processing to fulfil the contract or to send information to the buyer. The data will only be passed on to third parties for the purpose of fulfilling the contract.

Data collected with Kyburz Fleet Management Systems will be used exclusively for contract fulfillment and are anonymized for statistical analysis.

The buyer has the right to assert his data protection rights at any time and to receive information about his stored personal data, to correct them, to supplement them, to object to the processing or to demand the deletion of his personal data. In this context, Kyburz reserves the right to correspond electronically (in particular by e-mail) with the buyer. The data protection regulations of Kyburz KYBURZ Pty Ltd apply ([www.kyburz.com.au](http://www.kyburz.com.au)).

## 11. Law and place of jurisdiction

These GTC as well as each respective legal agreement pertaining to purchase and delivery with Kyburz Pty Ltd will be governed by and construed in accordance with the laws of the State of Victoria.

*Version of 1 January 2021*