

General Terms and Conditions of Küberl Tuning GmbH.

This edition (09-2005) shall supersede all previously issued General Terms and Conditions.

- 1) **Scope:**
Unless modified or excluded by means of concluding an express written agreement with us the following General Terms and Conditions shall apply to all our present and future supplies and services. Conditions of the buyer shall be expressly rejected. Such conditions shall also not bind us if we do not contradict them again after their receipt. You can find our current General Terms and Conditions in the Internet under www.kueberl.com or on the reverse of our business forms.
- 2) **Effectiveness of orders and agreements:**
Purchase agreements and other orders shall come about by acceptance of the declaration of intent of the buyer. Therefore a written confirmation by the seller shall not be required. However, all agreements concluded between the customers and the employees of the seller shall come about subject to the suspensive condition of approval by the management. Küberl Tuning GmbH shall be entitled not to approve legal transactions initiated by its employees. In such an event, the customer shall be notified within three weeks time about the fact that the legal transaction initiated with him shall be deemed not to have taken place.
- 3) **Quality details:**
Unless certain properties are contracted Küberl Tuning GmbH shall supply products in a merchantable quality. Details of measurements and analyses shall represent approximate values which may be slightly exceeded or fallen short of. If properties of goods sold under a certain designation are modified (e.g. as in the case of subsequent models) Küberl Tuning GmbH shall be entitled to supply the modified product.
- 4) **Delivery:**
Küberl Tuning GmbH shall select the type of shipping and the means of transport to be used at its own discretion. Unless fixed transaction dates have been expressly agreed in writing the notified delivery dates shall merely be considered to constitute an approximate estimate. If an agreed delivery date is exceeded by more than three weeks the buyer may set a period of grace of three weeks and withdraw from the agreement upon its expiry. In such an event it shall be assumed that the agreement could not be fulfilled without Küberl Tuning GmbH being culpable for this and, therefore, the assertion of any claims for damages against Küberl Tuning GmbH shall be excluded. Küberl Tuning GmbH shall be at liberty to make partial deliveries. The buyer shall be under obligation to accept partial deliveries which can also be charged separately. Cases of force majeure shall release Küberl Tuning GmbH from the obligation to supply. The same shall apply to all unforeseen disturbances and complications relating to the possibilities of supply which are independent of the intentions of Küberl Tuning GmbH, such as operational disturbances of all kinds, shortage of raw material and measures of any kind taken by authorities. Particularly included into these shall also be the partial or total loss of an existing supply source or of a supply source envisaged by Küberl Tuning GmbH. Upon the occurrence of the said circumstances there shall also be no obligation imposed on Küberl Tuning GmbH to stock up on the goods which form the subject matter of the agreement or on goods of the same type from supply sources of third parties. The seller shall inform the buyer about this within a reasonable period.
- 5) **Shipping:**
All shipping expenses shall be borne by the buyer. The shipping shall take place on the account and at the risk of the buyer. The risk shall pass over to the buyer as soon as the shipment is handed over to the enterprise carrying out the transport. If the shipping is delayed at the request of the buyer then the risk shall pass over to the buyer upon the reporting of the readiness to ship. Unless agreed otherwise the shipping route and the means of shipping shall be selected by us. Transport insurance shall only be taken out by us upon the express instruction and cost of the buyer. Transport damage shall be recorded immediately upon the reception of the goods by taking minutes together with the person delivering the goods and be reported within three days in writing. Unless this is done any claims against the seller shall lapse.
- 6) **Price:**
The deliveries made by Küberl Tuning GmbH shall be based on the prices shown in the respective list of prices most recently issued. If no fixed prices are agreed the Küberl Tuning GmbH shall be entitled to charge the list prices in force on the day of the delivery. If public levies are included into the sales prices which are increased after the conclusion of the agreement, however, prior to the payment of the purchase price then Küberl Tuning GmbH shall be entitled to charge the buyer the additional ancillary costs.
- 7) **Payment conditions:**
Deliveries shall be made against cash payment, cash on delivery, credit cards or pre-payment, **without any deductions.** Otherwise payment shall be made within seven days from the date of invoice. In the event of defaulting on payment default interest at 1% per months as well as possible costs of reminders and collection shall become payable.
- 8) In the event that one of these conditions is or becomes invalid due to changes in the statute, etc. then it shall be deemed to have been agreed between the parties that the invalid provision shall be replaced by such a valid provision which approximates closest to the void provision in legal and commercial terms.
- 9) **Copyright:**
Copyright protection shall apply to all graphics, fitting instructions, forms, videos or soundtracks used or prepared by Küberl Tuning GmbH. Reproduction, copying and translation, even if only in the form of excerpts, shall only be permitted with express prior written consent and not without quoting the source! Any modification and distribution without prior written consent shall also be prohibited!
- 10) **Guarantee and warranty shall extend exclusively to the tuning chip supplied:**
The **guarantee period on the product itself shall be one year**, commencing on the date of purchase on which Küberl Tuning GmbH has brought the chip into circulation for the first time.

Thus invoices of intermediaries are irrelevant as only the customer or the dealer who has obtained the goods directly from Küberl Tuning GmbH shall have a guarantee claim against Küberl Tuning GmbH. The burden of proof for the purchase (invoice/purchase date) shall rest with the buyer; otherwise there shall be no entitlement to any guarantee. The warranty claims are regulated by statute. The goods supplied by Küberl Tuning GmbH shall be examined for defects within three days after delivery. If a defect is determined this shall be immediately notified to us in writing. If no notification is made then the goods shall be deemed to have been accepted. In the event of a timely and justified complaint about a defect Küberl Tuning GmbH shall decide at its own discretion whether it engages into rectification or provides a replacement for which a reasonable period of time shall be provided. Damage arising at the buyer or at a third party owing to improper treatment, fitting, wear, unusual external influences, humidity, heat or cold shall not be covered by the warranty. The buyer shall be deemed to be aware of the corresponding risks. Küberl Tuning GmbH shall only be liable for consequential damages arising from defects or from the violation of the duty to protect third parties and to apply appropriate care in the event of intent or of conspicuous carelessness (qualified gross negligence). For the examination of possibly existing damage the buyer shall make the goods available to the seller.
- 11) **Liability for possibly existing damage, consequential damage or product liability:**
Express attention is drawn to the fact that our scope of supply shall not include any liability for possible damage or consequential damage (e.g. damage arising from fitting, damage to the engine, etc.)! Any obligation to pay damages or compensation in accordance with the Product Liability Act or product liability claims derived from other provisions governing the damage to property to the motor vehicle or other objects or persons shall be excluded. However, the customer shall have the right to take out an additional insurance policy, e.g. at Pro-Car Garantievertriebssysteme, Schlitzer Straße 87, D-36039 Fulda (Tel:+49/661/9528710, Fax:+49/661/53393, Web: www.pro-car-garantien.de), for example, for the engine, gearbox and rear axle in accordance with the guarantee provisions thereunder (**by not later than upon the ordering of the tuning chips!**) **The fitting of chips may lead to the loss of the works guarantee and the warranty obligations of the vehicle manufacturer. The increasing of the vehicle performance requires re-typing! Upon selling on the buyer undertakes to pass on the exclusion of the product liability in accordance with the Product Liability Act, including these provisions. Upon the purchase of tuning products without an approval of the German Technical Inspection Agency (TÜV) we expressly draw attention to the fact that the additional controller device is not homologated and upon its use the permission to operate shall lapse!**
- 12) **Approval of the German Technical Inspection Agency, (TÜV):**
Küberl Tuning GmbH expressly draws attention to the fact that upon the purchasing of tuning products the **purchase price shall not include the approval by the German Technical Inspection Agency (TÜV).** The approval, inasmuch as it is available for the respective type of vehicle or country, shall be charged extra and must be ordered together with the ordering of the tuning products at the latest as the approval of the German Technical Inspection Agency (TÜV) imposes the requirement of a parameterisation or marking of its own.
- 13) **Reservation of title:**
The goods supplied shall remain our property up to the full payment of all receivables arising from the underlying business transaction, regardless of their cause and up to the encashment of all bills of exchange and cheques which are provided to us as payment. The goods may neither be pledged nor assigned as collateral without our consent prior to the payment of all receivables or the encashment of the bills of exchange or cheques used for payment. Claims arising from selling-on the goods subject to the reservation of title shall already be assigned to us now together with all ancillary rights to secure all receivables from the business connection. If the buyer includes the receivables arising from the selling on of the goods into a current account relationship which exists with a third party then the respectively assignable balance shall be deemed to have been assigned. At our request the buyer shall be under obligation to disclose the assignment to the ordering third party for payment to us or to disclose the name and address. Up to the full payment of the goods the buyer shall notify us immediately about any change of residence as well as any levy of execution of the goods and about any other impairment of our rights.
- 14) **Cancellation of the purchase or returning of goods (e.g. for purposes of examination):**
Cancellation of the purchase or returning of goods shall require the express prior consent of the seller. In the event of a consent of Küberl Tuning GmbH to the cancellation of the purchase a cancellation fee of 15% of the purchase price shall be charged! **Returns shall be made without costs for the recipient.** The same shall also apply to the returning of goods which are returned for purposes of repair or control. Only new parts in original packaging, which can also be resold, shall be taken back. In the event of an unsuccessful fitting of the chip by the customer or the re-seller no claims may be asserted against Küberl Tuning GmbH for remuneration of working times (e.g. fitting costs, times spent on assembly and dismantling or exchanging, trouble shooting) or reimbursement of expenses arising from reselling, storage, dispatch, interest or other processing costs. The seller may in the event of a possible recall action of the sold goods (e.g., in the event of patent infringement) reclaim the purchase price without any additional costs or claims for damages.
- 15) **Not allowed to sell to Skandinavia and England (GB):**
Please be informed, that it is not allowed to export Küber products to **Schweden, Norwegen, Finnland, Dänemark, England, Scotland, Wales, Northern Ireland, Southern Ireland**, because there we have general distributor. Do not export to there directly or indirectly.
- 16) **Place of jurisdiction**
Place of performance, place of payment and place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship shall be the geographically and materially competent court for A-6330 Kufstein.