



# Kolzer

VACUUM TECHNOLOGIES



**KOLZER S.r.l.**

## **GENERAL CONDITIONS PVD\_PLASMA machine sales**

revis. 1/2009

### **1. CONTRACT**

The following terms and conditions ("General Conditions") regulate the sales of machines and relevant components ("Products") between the KOLZER S.r.l. seller ("Seller") and any Purchaser. Any agreements conflicting with these General Conditions will only apply if expressly accepted in writing by the Seller.

Every Order/Job Order issued by the Purchaser is subject to written acceptance ("Confirmation") by the Seller and the sales contract ("Contract") is intended completed, binding the parties, when the Purchaser receives Confirmation. Confirmation sent by the Seller defines and lists all Contract conditions and final and binding content, fully replacing the Order/Job Order. Should the Confirmation contain supplements, restrictions or changes to the original Order/Job Order, the Purchaser's consent to these variations is intended tacitly given, unless disputed in writing received by the Seller within 48 business hours from Confirmation receipt. Failure to dispute the Confirmation is intended as the Purchaser's full acceptance of the General Conditions which exclusively regulate the Contracts and which, in any case, shall take precedence over any purchase conditions proposed by the Purchaser.

Delivery of invoice against the Order/Job Order to the Purchaser, even prior to written confirmation receipt, shall, in any case, complete the Contract.

### **2. PAYMENT**

The Purchaser must pay the price of the Products to the bank account indicated by the Seller, case by case. The Purchaser hereto accepts that the Seller can nominate a third party as the sole individually authorised to receive payment to settle the relationship, whose information shall be promptly communicating in writing to the Purchaser.

### **3. FAILURE TO WITHDRAW GOODS**

Should prepared goods not be physically shipped for reasons independent of the Seller, fifteen days from "goods ready and in stock" notice sent in writing to the Purchaser, the Seller has the right to charge the Purchaser late payment interest as of the date the "goods ready and in stock" notice is received, at 12 month Euribor 365 interest rate on that date, increased by 2%. For delays over sixty days from receipt of the "goods ready and in stock" notice, the Seller shall have the right to unilaterally terminate the contract and withhold, as indemnity, any amounts paid by the Purchaser, plus any identifiable additional damages.

The Seller shall have the right to all legal recourse regarding the Purchaser's default.

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#### 4. WARRANTY

The Seller shall only provide the Purchaser with a warranty covering product mechanical flaws for twelve months from the first date of shipment/inspection. The warranty may not extend over 15 months from the date of Product shipment.

The warranty shall exclusively cover the replacement or repair, at the Seller's discretion and expense, of the structural parts and other Product components found broken or non compliant due to factory defects. Parts must be returned for replacement ex-works (IncoTerms 2000). The Seller shall replace or repair defective parts as soon as possible, to be set by the parties case by case, and shall have the right to request the Purchaser promptly returns replaced parts.

The warranty does not cover parts subject to normal wear nor damages caused by incorrect or poor maintenance, by incorrect handling by the Purchaser's personnel, by the use of inappropriate raw materials, by defective or negligent processing, by excessive device use, by damages or wear caused or aggravated by failure to stop use in the event of technical problems, electrical or working temperature changes or any other cause not directly attributable to the Seller.

The warranty is null and void when equipment or devices or spare parts not supplied by the Seller are installed and when modifications are made without the Seller's prior written consent. For Products delivered unassembled by the Seller, the warranty is null and void should the assembly or commissioning not be conducted by the Seller's personnel.

The Seller shall not be liable, unless pursuant to law, for damages caused by any Product defects or, in any case, all additional damages including, for example, those derived from missed or reduced industrial production, indirect and consequential damages as well as those consequent to Contract termination.

The warranty is subject to written Product flaw claims, communicated to the Seller within 8 days of the discovery by the Purchaser as well as express warranty service request, or is null and void.

In the even in which – even without factory defects covered by this warranty – assembly/repairs are required, it is agreed that:

(a) the Purchaser shall directly conduct the repairs and/or assembly with his personnel, at his expense and without the Seller's assistance which, according to the Seller, have low technical complexity;

(b) for repairs and/or assembly with significant technical complexity, the Seller shall directly send a specialised technician to the Purchaser to supervise assembly/repairs physically conducted by the Purchaser's personnel and at the Purchaser's expense. All travel and mission expenses for technicians sent by the Seller shall be at the Purchaser's expense.

#### 5. EXCLUSIONS

The following items are excluded from Product supply:

- Foundations, if necessary, and any brick work and/or civil works in the Purchaser's building.
- Raw materials required for Product tests and inspection.
- Specialised and non-specialised personnel to assist our technicians during work, including interpreters, if necessary.
- Lifting and transport means to transfer Products from the warehouse to the installation site.
- All the tools required to open packaging and place Products in the set room.
- All the conduits/pipes for electricity, compressed air, etc. supply according to the flows and consumptions required by Products.
- Positioning Products in the set site, as well as utility connections.
- Spare parts, if not otherwise specified.
- Any other supply or service not expressly specified.

#### 6. SUBSEQUENT MODIFICATIONS

Any modification made by the Purchaser to the executive drawings signed on Order/Job Order as well as any technical and/or layout modification, may implicate, at the Seller's discretion, the extension of expected delivery schedules as well as a review and increase of the price.



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## **7. ACCIDENT PROTECTION**

The Seller guarantees that the Products are equipped with accident protection in compliance to current European regulations on accident prevention.

## **8. DOCUMENTATION**

Product supply includes the instruction manuals, spare parts catalogue, wiring and pneumatic diagrams, as per regulations CE 98/37 and EN 60204.

## **9. CONTRACT TERMINATION OR SUSPENSION**

The Seller shall have the right to suspend and/or terminate this Contract, by simple written communication, and effective immediately, should the Purchaser not routinely and fully meet price payment obligations (including down payment and suitable payment guarantees).

The Seller may also immediately terminate this Contract, by simple written communication, in the event the Purchaser is subject to bankruptcy proceedings, or in the event his financial situation drastically changes, jeopardising payments (i.e.: seizures of significant amounts, outstanding payments, bounced checks, etc.).

## **10. DISPUTES**

Any disputes on the execution of this Contract and/or quality and quantity of goods supplied shall not give the Purchaser the right to suspend or delay payments due at due dates. The Purchaser shall have the right to have the Contract suspended for suitable reasons directly attributable to the Seller, upon the Seller's consent.

## **11. SELLER'S RESPONSIBILITIES**

Should goods shipment be significantly delayed for reasons attributable to the Seller, the Purchaser who has demonstrated to have suffered damages may request, as full compensation and waiving any other rights and claims, indemnity equal to 0.5% for each week, with a 30-day deductible. In any case, the overall amount of the indemnity may never exceed 3% of the amount invoiced on the part of supply subject to production/delivery delay. This limit is the maximum liability limit and, therefore, compensation due by the Seller to the Purchaser against any Seller default on the Contract.

Any other settlement and reimbursement for additional damages are expressly excluded.

The Seller shall not be liable for damages due to missed or reduced production or indirect and consequential damages.

## **12. PROPERTY RIGHTS**

In the event full or partial payment is made in instalments after delivery, Products delivered to the Purchaser remain property of the Seller until the price is fully paid (i.e. last instalment paid), as per Civil Code Articles 1523 and subsequent.

Failure to pay even one instalment at the set terms that exceeds an eighth of the price, or failure to pay two instalments, even non-consecutive, shall give the Seller the right to terminate the Contract effective upon written communication to the Purchaser, and the right for the Seller to declare that the Purchaser's acceleration clause has come into effect. In the event of termination for causes attributable to the Purchaser, the Seller shall have the right to obtain the immediate return of delivered Products and withhold, as indemnity for the Purchaser's use of the Products, the paid instalments and received down payment in addition to any further damages.

The Purchaser agrees to fulfil all necessary obligations (i.e.: registration of the confidential domain agreement in the specific register at the Court where the Products are installed, Contract registration at the Registry Office, where necessary, obligation not to transfer Products to sites other than those of destination, etc.) in order to avoid third party claims to the Seller's property rights. The Purchaser also agrees not to sell Products, even temporarily, to third parties and not rent or grant them in free use to third parties, or remove/transfer the same, without the Seller's prior written consent. The Seller shall have the right to expressly waive, in writing, the provisions in article 12 hereto.



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### **13. DISPUTES – APPLICABLE LAW**

All disputes derived from this sales contract shall be submitted to a Board of Arbitration made up of three arbiters. Arbitration shall be held in Milan and regulated by the Regulations of the Arbitration Chamber of Milan. Arbitration shall be held in Italian or English mutually agreed by the parties. The Seller shall have the right to file legal proceedings at the Court of jurisdiction of its offices or factory, or in the one where the Purchaser's offices are located, for precautionary and/or urgent provisions. The Contract is regulated by Italian Law.

### **14. TECHNICAL IMPROVEMENTS**

The Seller reserves the right to make any changes, technical and/or aesthetic, deemed necessary to promote the safest operations of the Products ordered by the Purchaser.

### **15. FORCE MAJEUR**

Force majeure means any unexpected action and/event, independent of the contract parties' direct will, out of their control and without prompt adequate solution (i.e.: war, terrorist acts, revolt and rebellion, shipping and/or custom's strikes, communications breakdowns, embargo, fire, sabotage, calamity or adverse natural events such as snow storms, landslides, flooding, gas leaks, impedimental provisions by government or tax or customs authorities, suspension of raw material, equipment, electrical or fuel supply and labour).

When a force majeure event occurs, the parties' obligations that cannot be fulfilled due to these causes are considered automatically suspended, without penalties, for the duration of the force majeure situation.

The parties agree to undertake initiatives in their power to attempt to ensure the routine fulfillment of their obligations as soon as possible.

Should the parties not be able to provide services for a period of time over six months due to the persistence of force majeure causes, they shall meet to adopt suitable decisions on the Contract.

### **16. CONFIDENTIALITY – INDUSTRIAL PROPERTY RIGHTS**

The Purchaser must keep all information of technical nature (i.e.: drawings, technical diagrams, documents, formulas and correspondence in general) received from the Seller and, in any case, acquired during the execution of the Contract, confidential. The Purchaser is required to fulfill this obligation for three years from the date the Purchaser receives the last lot of sold Products. Any industrial or intellectual property rights regarding the sold Products shall remain the exclusive property of the Seller.

### **17. PAYMENT DELAYS**

In the event of payment delays from the dates set in invoices, the Purchaser shall be automatically in default and the Seller shall have the right to charge the Purchaser late payment interest at the rate set by art. 5 of Legislative decree 231/2002 (BCE rate + 7% surplus). Where payment delays exceed thirty days from the set due date, the Seller shall also have the right to receive, pursuant to art. 3, paragraph 3 of the Law dated June 18, 1998 as amended by art. 10 of Legislative decree 231/2002, to a penalty of 5% (five) of the amount concerned in the delayed payment.

### **18. MISCELLANEOUS**

Any sudden total or partial inapplicability of any clause in these General Conditions does not jeopardise the validity of the other clauses.

Data listed in offers, catalogues, bulletins and advertisements such as weights, prices, timing, delivery schedules, etc. are purely indicative and do not bind the supplier/seller in any way.



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## **19. PRIVACY (Legislative decree 196/2003 “Privacy code”)**

The Seller process the personal data provided by the Purchaser, or otherwise acquired even from third parties, with computer and/or manual means; procedures and logic are decided according to the purpose of the processing. Data is processed to execute/complete the Contract, apply, defend rights and fulfil current regulations. Data provided for the execution of this Contract is necessary and mandatory for legal purposes; this Contract may not be executed without this data. The Seller's assigned personnel and the Manager, if nominated, have access to data; the Purchaser may request the updated list of Managers and individuals to whom data is communicated and include: authorities, public institutions, credit institutions, associates, third parties for technical services and organisation used for the above stated purposes, other group companies, the legitimate addressees according to law who process data such as the data Controllers, Managers or processors, accordingly, for the above stated purposes. At any time the Purchaser may exercise the rights stated in art. 7 of the Privacy Code, addressing the Controller to obtain, for example, confirmation on whether or not information that concerns him exists, check its content, origin, correctness, request it to be supplemented, updated, corrected, cancelled, converted in anonymous form, blocked due to violation of Law or object to processing for legitimate reasons. The data controller is KOLZER S.r.l., via dell'Aprica, 4 I – 20158 Milan (Italy). For the processing required to meet legal obligations as well as to exercise a right and execute this sales contract, consent is not required (art. 24 Privacy Code).