

General Conditions of Purchase



1. General

1.1 The terms and conditions apply to all present and future business relations with natural and legal persons or incorporated partnerships with whom we enter into business relations, who carry out commercial or self-employed activities.

1.2 Deviating, conflicting, or additional general terms and conditions will not be part of the contract unless agreed to in writing by us.

2. Orders

2.1 Orders only take place as the result of written agreements. Offers are only legally binding for us if they are made in writing. The order only takes place if our offer is immediately confirmed in writing by providing our order number, the price, and the fixed date of delivery. Subsequent agreements, side agreements, and changes require our written consent.

2.2 We can demand changes in the delivery items even after conclusion of the contract, as far as this can be reasonably expected of the supplier. In respect to the contract changes, the consequences will be appropriately considered for both parties, in particular in terms of any changes in the prices as well as the delivery dates.

2.3 The conclusion of the contract is to be treated confidentially. The supplier is only allowed to refer to business relations with us in advertising materials after we have agreed to in writing. Both contract parties are obligated to treat all non-evident commercial and technical details, which become known to the supplier through our business relations, as a business secret.

2.4 At our request the supplier must issue all relevant certificates for the supplied goods.

2.5 The supply contract is concluded exclusively with the supplier agreed upon in writing. Transferring the supply contract to a third party is only permissible with our written approval. The same applies to transferring debt claims from the supply contract.

3. Remuneration

3.1 The prices are understood as fixed prices. Products are to be properly packaged, shipped, but not insured to the place of reception. For inland business (FCA, Incoterms 2011) sales tax is to be included in the prices, unless the contrary is explicitly stated in the written contract agreement.

3.2 Remuneration for company visits or for preparing offers, projects etc. will not be granted.

4. Shipments

4.1 The written agreement is essential for the extent of the shipments. We will only accept the amounts or number of items ordered by us. Overshipments and undershipments are only allowed if they were previously agreed with us in writing.

4.2 The supplier is responsible for defects in the shipments including damage during transport provided transport has been included in the scope of supply. In the case of defective shipments, we are entitled to retain a proportion of the payment until the order is properly fulfilled. We will only accept partial shipments following an expressed written agreement. In the case of agreed partial shipments, the remaining amount is to be listed on the delivery note.

5. Period of Delivery

5.1 The agreed delivery dates are binding and are to be observed. Written notification of completion of the goods and/or the receipt of the goods at the place of reception and use determined by us is essential in confirming the delivery date.

5.2 In the case of delayed performance, the legal regulations apply or the separate agreements established in the written contract.

5.3 If the agreed delivery date cannot be observed, we are to be notified in writing before the agreed deadline expires. In the case of early delivery, we will store the goods until the delivery date at the cost and risk of the supplier.

6. Packaging

In certain cases, where special packing is invoiced according to a special agreement, we are entitled to return the packaging, which is in a useable condition, prepaid to the seller in exchange for a refund of 2/3 of the amount invoiced for the packaging.

7. Payment

7.1 Unless stated otherwise payment is made after receipt of the proper invoice. If the invoice is incorrect, then receipt of the corrected invoice is essential.

7.2 Payment will be made only after complete delivery and after all documentation of services additionally agreed upon such as test reports, etc. have been properly submitted.

7.3 Unless stated otherwise payment will follow within 60 days after receipt of a proper invoice. If payment is made within 30 days, we are entitled to a discount of 3 %.

7.4 We reserve the right to select the means of payment.

7.5 The date of payment instructions is essential for payment within the time stipulated, regardless of the means of payment selected. In paying by check or a similar means, consignment by us is essential.

7.6 In the case of advanced payment, the supplier must provide appropriate collateral upon request, e.g. through a bank guarantee.

8. Warranty

8.1 The supplier warrants the shipments without defects. The supplier is particularly liable for missing features guaranteed as well as faults with regard to grade and extent of the shipments.

8.2 A warranty period of 36 months is required on goods provided by this purchase order beginning on the date the goods are received.

8.3 A time limit for lodging a complaint according to Article 377 of the German Commercial Code (HGB) is applicable to the parties only for defects that are obvious upon receiving the shipments.

8.4 If the supplier culpably does not fulfill his warranty obligation within the reasonable deadline established by us, we are entitled to take necessary steps to eliminate the defect at the cost of the supplier (substitute performance). In addition to eliminating the defect, we also have the right to secure a substitute delivery through a third party.

8.5 The supplier guarantees that the shipments are free from the protected rights of third parties, and that, in particular, patents, licenses, and other protective rights of third parties are not violated through the shipments and use of the delivery items provided.

8.6 The supplier is obligated to release us completely from any claims by the respective holder of the rights in the case of violation of this provision. In particular, this includes the obligation to exempt us from possible claims for contract penalties by third parties and the accumulated costs in connection with possible legal action. In this respect, existing warranty claims remain unaffected. Once notified of the protective rights of third parties, the supplier is obligated upon request to immediately furnish a security through an absolute bank guaranty which corresponds to the amount of the anticipated right of indemnity.

8.7 In those cases in which we assert claims towards the supplier, the supplier is obligated to transfer to us, notwithstanding our other rights, any claims that the supplier can make towards an insurance company. The amount of insurance received is to be offset by us against the claims made by us.

9. Drawings, Patterns

Unless stated otherwise, drawings, patterns and calculations remain the property of Kalenborn and must be returned upon request after completing the order.

10. Right to Withdraw from the Contract

We are entitled to withdraw from the supply contract if an application to initiate insolvency proceedings concerning the assets of the supplier is handed in and not taken back within a period of 2 months. The same applies if insolvency proceedings are opened or the opening of an insolvency proceeding is denied because of insufficient assets.

11. Final Provisions

11.1 The law of the Federal Republic of Germany applies. The provisions of the UN sales law (UNCITRAL, CISG) are not applicable.

11.2 The exclusive place of jurisdiction for all litigation resulting from this contract is our business location. The same applies if the supplier does not have any place of general jurisdiction in Germany or if the address or normal residence is not known at the time of filing the suit.

11.3 If individual provisions of this supply contract are or become entirely or partially invalid including these general terms and conditions, the validity of the remaining terms and conditions hereby remain unaffected. The entirely or partially invalid provision shall be replaced by a provision whose economic consequence comes closest to that of the invalid provision.

Vettelschoss, 01.01.2011