

## General Conditions of Purchase

Kufferath Group | H.Kufferath GmbH | Prüf- und Vorrichtungstechnik

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### 1. Area of validity.

- (1) The present conditions shall apply to all supplies and services (hereinafter referred to as services) made to or rendered for us.
- (2) With reference to the seller's General Terms of Business, our General Conditions of Purchase shall apply exclusively; this shall be applicable even if we fail to expressly contradict the seller's General Terms of Business or other contractual conditions. Contractual conditions of the seller which conflict with or deviate from our orders or from the present General Conditions of Purchase will neither be acknowledged nor considered unless we have expressly agreed in writing in an individual case.
- (3) Execution of our order will be considered as unrestricted approval of our conditions of purchase.

### 2. Quotations, orders and other declarations.

- (1) The quotations shall be in line with our inquiries; alternatives are welcome. They shall be free of charge to us and not binding.
- (2) Orders, agreements and other declarations shall be binding only if given or confirmed by us in writing. A copy of an original signed by us and remaining within our company shall also be sufficient to fulfil the written form requirement. Completely machine-made orders which are marked as such shall be excluded from the above written form requirement.

### 3. Prices.

- (1) The agreed prices are fixed prices and shall be inclusive of packing and carriage to our place of use, plus the statutory value-added tax. In the event of prices "ex works" or "ex warehouse" being agreed, we shall only bear the lowest possible freight cost. The seller shall bear all costs up to the point of delivery to the carrier including loading, but excluding transport cost. The method of pricing shall be without prejudice to the parties' agreement as to the place of performance.
- (2) We reserve the right to approve or reject delivery of a greater or lesser quantity of goods.

### 4. Place of performance.

- (1) Our administrative headquarters shall be the place of performance for claims for payment by the parties; for all other claims, the respective place of delivery stated in our order form under "Shipping address" shall be the place of performance.

### 5. Packing, shipping.

- (1) If the packing remains the property of the seller, he shall take it back at his own cost.
- (2) In any case, the risks of carriage shall be borne by the seller.
- (3) The seller shall carefully safeguard our interests during shipping. We shall not be obliged to deal with lorry loads before the delivery documents have arrived.
- (4) Any freight costs that come up are to only be charged and shown separately in the goods invoice. We will reject any freight forwarders' invoices.

### 6. Trade terms.

- (1) INCOTERMS as valid on conclusion of the contract shall apply to the interpretation of trade terms used in the contract.

### 7. Certificates of origin, proof of turnover tax, export restrictions.

- (1) The seller shall promptly make available any certificates of origin requested by us, complete with all necessary details and properly signed. This also applies to documents relevant to matters of turnover tax where supplies are made within the EU or from a foreign country.
- (2) The seller shall inform the buyer without delay when the goods to be delivered are partly or wholly subject to export restrictions under German or any other law.

### 8. Drawings, documents, tools.

- (1) Documents (e.g. drawings), fixtures, models, tools and other manufacturing equipment and templates made available by us shall remain our property. They may be used, copied or transmitted to third parties only for preparing the quotation and for executing the order. They shall be returned to us without delay and free of charge after execution of the order.
- (2) We shall be entitled to demand the making available free of charge and without delay of all templates (e.g. models, tools) and documents used by the seller for executing the order. After payment, the property of such templates and documents shall pass to us. Without requiring a special permission, we shall be entitled to use them, if the seller is in default, to achieve successful contract execution and to procure accessory systems, to carry out maintenance and repair work as well as subsequent modifications and to manufacture spare parts ourselves or to have such spare parts manufactured by subcontractors and to hand them over for such work. The seller shall also

make other information required to achieve successful execution of the contract available to us if necessary.

**9. Impediments to performance; Limitation of actions regarding buyer's claim to performance; Legal position of subcontractors.**

- (1) In the event that the seller is impeded or if he believes to be impeded in executing the contract, he shall inform us without delay in writing, stating the reasons and the expected duration of the impediment.
- (2) The usual limitation period for the buyer's claim to performance is five years from the conclusion of the contract.
- (3) The seller shall be liable for subcontracted goods as he is for his own deliveries. In case of a defect or a damage is suspected in connection with subcontracted parts included in the service which is subject-matter of the contract or with subcontracted services, the seller shall be obliged to provide us information about the subcontractor or the intermediate dealer upon request and to provide any details and information required for asserting claims against the latter.
- (4) If an application for insolvency proceedings is filed regarding the seller's property (in foreign countries: a comparable procedure) or if there are sufficient grounds to assume that the preconditions for filing an application for insolvency proceedings exist, we shall have the extraordinary right to terminate the contract with immediate effect, excluding any claims for compensation by the seller.

**10. Defects.**

- (1) At the time of passing of the risk, all services provided by the seller must meet the quality characteristics specified in our order, must be suitable for the period of use usual for such operations without any restrictions and must fulfil the contractual purpose or, if such purpose is not defined, be suitable for the ordinary application.
- (2) The services must be in line with the recognized rules of technology, the European and German technical standards, with all legal and sub-legal regulations in force at the place of performance, in particular the regulations concerning occupational safety, the requirements made in the law on the safety of equipment, the accident prevention and fire protection regulations and the regulations regarding environmental laws.
- (3) In case of material defects and defects of title in services provided by the seller, the legal stipulations shall apply provided that with purchase contracts, contracts for work and materials and contracts for work and services, we shall have the right to choose the way of subsequent contract fulfilment, i.e. rectification of defects or substitute delivery. We shall be entitled to fix a reasonable deadline for subsequent contract fulfilment unless such subsequent fulfilment is intolerable to us. Such intolerable situation may result not only from the cases established by law, but also and in particular

from a threatening unreasonable delay or from uncertain success in case of devices, systems or facilities which are safety-relevant or essential to operations or the business. Fixing of a period for subsequent contract fulfilment by mutual agreement shall have the same legal consequences as a deadline set by us.

- (4) In the event of material defects, notwithstanding the statutory claims, we shall have the right to remedy those defects ourselves and to claim advance money even in case of purchase contracts and contracts for work and materials, after expiry without results of a deadline fixed for subsequent fulfilment according to § 637 BGB (German Civil Code).
- (5) As far as we are entitled to terminate the contract due to provisions by act of law or contractual stipulations because of seller's failure to provide the services or to provide the services properly, the termination can be limited to this part while maintaining the remaining contract provided that the failure to provide the services or to provide the services properly is limited to a delimitable portion of the services.
- (6) After exercising the right to terminate due to seller's failure to provide the services or to provide the services properly and in case of claims for damages instead of the services, we shall be entitled to claim advance money to a reasonable amount, to cover the cost to be expected, plus an extra security charge of 50 per cent if an order for the service or the remaining service must be placed with another party, notwithstanding the legal rights. In this case, we shall be obliged to request several proposals only if this does not result or threat to result in considerable time delays or disturbance of the operational, production or business procedures. We will invoice services rendered for own account at market prices usual with third parties.
- (7) If the inspection of the services and the notification of defects is incumbent on us according to § 377, subparagraph 1 of HGB (German Commercial Code), we shall be entitled to use two weeks from the date of delivery for fulfilment in due time. The notification of a defect which is discovered only at a later date shall be considered in due time according to § 377, subparagraph 3 of HGB up to the expiry of two weeks after its discovery.
- (8) If a material defect is discovered within six months from the passing of the risk, it shall be presumed that the object has already been defective at the time of passing of the risk, unless this presumption is inconsistent with the type of object or defect.

**11. Industrial property rights.**

- (1) The seller shall be liable for the non-violation of third parties' industrial property rights by his services and their use by us. The same shall apply to the procurement of accessory equipment, for maintenance and repair, for subsequent modifications and the manufacture of spare parts by us or by subcontractors.

- (2) Notwithstanding our legal claims, the seller shall release us from all claims by third parties and all damage, expenses and other disadvantages in this context. This shall in particular comprise disadvantages which arise from any required modification of buildings, machinery, plants and data processing systems and programs and from delays in the construction, project or operational procedures.

#### **12. Invoicing.**

- (1) Each order requires one separate invoice. The invoice must meet the requirements of the applicable tax laws, in Germany especially the turnover tax law and shall describe the services rendered in a clear and understandable manner, stating our order number. If acceptance of the service has been agreed, the acceptance protocol shall be enclosed.
- (2) The quantities, contents and numbers of prices we have recognized shall be decisive for the calculation. In case of weight differences, we will only recognize the weights determined by our master scales.

#### **13. Payment.**

- (1) We will pay within 14 days after delivery on receipt of invoice including a discount of 3 % or within 90 days after full delivery and receipt of invoice without deduction. In case of the acceptance of early deliveries, the due date shall depend on the agreed delivery date.
- (2) Payments by us shall not be considered as acknowledgement of the seller's calculation.

#### **14. Provision of security.**

- (1) If we effect down-payments for our order, we shall be entitled at any time to demand the assignment as security of the corresponding materials, in particular the ordered objects which are being processed.

#### **15. Assignment, transfer of contract, change of registered trade name.**

- (1) The seller shall not be entitled to assign claims against us either in whole or in part without our express prior written consent; however, we will not refuse our consent without a substantial reason.
- (2) As far as assignments due to extended reservation of title are concerned, the consent shall be deemed as granted provided that we reserve all rights towards the assignee which would be due to us towards the seller without the assignment. We will not accept direct debit authorizations.
- (3) The seller shall not be entitled to transfer fulfilment of his contractual duties to third parties either in whole or in part without our express prior written consent. If such consent is granted, the seller shall remain responsible towards us as the joint and several debtor.
- (4) The seller shall notify us without delay of any transfer of the contract arising by act of law and of any change of his registered trade name.

#### **16. Set-off and retention by the seller.**

- (1) The seller shall be allowed to set off only claims which are undisputed or recognized by declaratory judgement.
- (2) The seller shall only have such rights of retention which are based on the same contractual relationship.

#### **17. Place of jurisdiction; Applicable law.**

- (1) Both parties submit to the jurisdiction of the court (Amtsgericht or Landgericht) having general jurisdiction at the place of the buyer's headquarters; we may, however, sue the seller in the seller's own jurisdiction.
- (2) In addition to the contractual stipulations, the laws relevant for legal relations between domestic parties of the Federal Republic of Germany shall apply exclusively, excluding the Hague Conventions Relating to a Uniform Law on the International Sale of Goods.

#### **18. Partial invalidity; Advertising ban; Data protection.**

- (1) Even in case of legal invalidity of individual parts of the above conditions, the remaining conditions shall fully remain in force.
- (2) The use of our inquiries and orders for advertising purposes is not allowed.
- (3) Data produced in connection with the business relationship will be stored in files by Kufferath-group companies and transmitted between them.