

1. Scope of Application

1.1 All our orders shall be subject exclusively to the following terms and conditions of purchase payment (hereinafter referred to as „Purchase Conditions“). We do not accept any Supplier's terms and conditions contrary hereto or deviating herefrom, or relating to matters which are not regulated in these Purchase Conditions unless we have expressly agreed in writing. This shall also apply if, in full awareness of such contrary or deviating Supplier's terms and conditions or of matters not laid down herein, we accept delivery without reservation or, if the Supplier refers in its request respectively in its order to the application of its terms and conditions. Within the scope of current business relations, the Purchase Conditions shall also apply to repeat orders.

1.2 Our Purchase Conditions shall only apply to an entrepreneur as defined in Article 14 BGB (German Civil Code).

2. Quotation - Order - Execution of Contract

2.1 In making its quotations, the Supplier shall adhere to the particulars our inquiry. The Supplier shall expressly point out in writing any deviations in the quotation - particularly in the event that the Supplier is not able to fulfil one or several particulars of our inquiry.

2.2 Our orders will only be placed in writing. Preliminary orders communicated verbally or by phone will be acknowledged in writing (including transmission by telefax or e-mail).

2.3 The Supplier shall acknowledge acceptance of our order immediately in writing, stating the date of delivery and the price, and quoting our order number.

2.4 When the Supplier leaves illustrations, drawings, calculations and any other documents relating to products, applications or projects we are entitled to reproduce those documents or to make them accessible to third parties.

3. Delivery Conditions - Time and Periods

3.1 Unless otherwise agreed, the delivery shall be made DAP (INCOTERMS 2010) referring to the place named in our order. If there is named no place in our order the delivery shall be made DAP Besigheim, Germany.

3.2 The lead times and dates stated in our order shall be binding. The date of delivery shall be the date on which we receive the goods or on which they arrive at the delivery address named by us, on performing acceptance.

3.3 The Supplier shall inform us immediately in writing if it becomes aware of circumstances which will render adherence to agreed lead times or dates impossible, even if the Supplier is not responsible for such circumstances.

3.4 We shall not agree to exemptions of any kind from and to any exclusion, limitation or restriction of the Supplier's liability in the event of a delay in delivery.

4. Prices

4.1 All prices shall be fixed prices for the total contractual time of performance, exclusive of VAT which shall be charged separately. This shall also apply to unit and lump sum prices.

4.2 Unless otherwise agreed, the price shall include freight (delivery „free domicile“), transport insurance and packaging.

5. Intervention of Third Parties - Partial Deliveries - Packaging

5.1 The Supplier has to inform us in writing if he intends to pass on the order to third parties or to call in subcontractors.

5.2 At the request of our ordering department, notice of shipment shall be given by sending an advice of dispatch at the latest on the departure of the goods.

5.3 A delivery note in duplicate shall be enclosed with each delivery.

5.4 Our dispatch address, our order number and the date of the order must be specified in advices of dispatch, delivery notes, consignment notes and parcel addresses.

5.5 Partial deliveries or partial services shall be permitted only with our express written consent.

5.6 The Supplier must pack the goods properly. In any way the Supplier must pack the products in such a way that a damage of the goods is impossible.

Unless otherwise agreed, the Supplier must load, retain and fasten the products securely for transport. The loading must be made in such a way that it is impossible that during the discharge the products dedicated for us, other products which will not be delivered to us and other objects may be damaged.

The agreements between the Parties regarding transfer of risk remain unaffected by this Section 5.6.

5.7 The Supplier shall take back transport packaging at our request at any time, free of charge even if we have asked for delivery in transport packaging. If transport packaging is not taken back when delivery is made, or collected within two weeks thereof, we shall have the right to send back or dispose of the packaging material at the expense of the Supplier.

6. Invoicing - Terms of Payment - Set-Off

6.1 The invoice shall be sent under separate cover together with a duplicate clearly marked as such. The invoice shall show our reference number, our order number and the date of our order; all invoices shall comply with the provisions of the Umsatzsteuergesetz (German Sales Tax Law).

6.2 Unless otherwise agreed, payment shall be made within fourteen (14) days with a 3% discount, or within thirty (30) days net. The period shall commence on the date on which we receive the correct and plausible invoice but not before the date of delivery or provision of the service.

6.3 The deduction of agreed discounts shall be permitted also if we offset or if we are entitled to withhold payments due to defects of quality or title.

6.4 Our payments shall always be made subject to correction or to return of the goods in the event that the calculation later turns out to be incorrect or objections are raised, and on condition that the goods are duly received. Payment shall not be construed as an acknowledgement that a delivery or service is in conformity with the contract.

6.5 We shall have the right to make all payments by cheque/bill of exchange.

7. Inspection of Incoming Goods - Notifications of Defects

7.1 Our obligations of inspection of incoming goods require only the following examinations: quantity, identity and transportation damage. The Supplier waives any possible defence on grounds of a breach of an obligation to inspect incoming goods (especially pursuant to § 377 HGB (German Commercial Code)).

7.2 When we assess in connection with a sampling inspection a defect we shall have the right at our option, either to reject the whole delivery without any further inspection or to perform another inspection by us or by a third party. The Supplier shall bear all costs of the additional inspection.

7.3 The Supplier has to deliver the goods 100% inspected. Prior to delivery, the Supplier shall especially check that the goods comply with the specifications given in the order and that they are free of defects.

8. Standards of Quality - Defects of Quality - Damages

8.1 All delivered goods must be in accordance with specifications, drawings and other particulars laid down in the order as well as statutory provisions, safety regulations, relevant rules and guidelines of professional associations, trade supervision authorities and the TÜV (technical inspection association) and the most recent version of VDI guidelines, their sub-groups, as well as national and international standards (e.g. DIN, CEN, or ISO standards) in their respective applicable version, such as are in force at date of delivery. In particular, the Supplier shall also comply with and adhere to all environmental protection provisions within the scope of the obligations it must perform especially the list of materials to be declared according to VDA 232-101 or any similar or follow-up regulation.

8.2 Insofar as we or our customer requires the introduction, preparation and management of data sheets for materials, and other certificates relating to products and/or production, the Supplier shall also fulfil this obligation with respect to the products it is to deliver to us, and shall provide us with all the information, data and documents that we need for ourselves respectively that we need in order to satisfy our customer's expectations.

8.3 At our request, the Supplier shall provide a sample, a first sample inspection report, a specimen and specification sheets. The characteristics of the sample or specimen and the data in the specification sheets shall be deemed agreed. The same shall apply to data in works certificates. The Supplier shall carry out all the checks required for manufacturing safety and for achieving the warranted quality and characteristics, and shall furnish proof thereof to us on request. It shall agree to enter into a quality assurance agreement with us at our request.

8.4 In case of doubt the Supplier has to make inquiries about the intended use or the way of further processing.

8.5 Claims on grounds of defects of quality shall be subject to a limitation period of two years commencing with the passage of risk, unless a longer limitation period is legally required or agreed.

8.6 A limitation of our statutory claims on grounds of defects is barred. In the case of sales contracts and contracts for work and materials, we may immediately demand, at our option within a reasonable time period, the elimination of the defect or the delivery of a defect-free product. In urgent cases if the Supplier is in default regarding the elimination of a defect or when we are facing extraordinary damages we shall be entitled - even if Sales Contract Law is applicable - to eliminate the defects ourselves or to have them eliminated by third parties at the expense and risk of the Supplier. If Sales Contract Law is applicable this does not apply if the Supplier is not responsible for the defect.

In such cases, the Supplier shall reimburse us for the required costs and expenses.

8.7 We shall not agree to a limitation of our statutory claims for damages either with respect to fault criteria or with respect to the scope and the amount of liability.

8.8 In addition, the statutory provisions concerning the delivery of defective materials shall apply. The enforcement of further claims resulting from the delivery of defective materials remains unaffected.

9. Product Liability - Indemnity - Liability Insurance Coverage

9.1 The Supplier has to save us harmless against claims for damages of third parties made with regard to producer's liability if the defect is caused by a product delivered by the supplier and insofar as the Supplier cannot disprove that the cause occurred within its area of manufacture or its organization. This claim does include the costs of a recall action.

9.2 Supplier shall also draw our attention to the risks involved in the event that its product is not used for the intended purpose.

9.3 The Supplier undertakes to maintain product liability insurance with an yearly insured sum of at least Euro 2.5 million per bodily injury/damage to property and pecuniary damage on a global basis. This shall not affect more extensive claims which may be due to us.

10. Prohibitions against Withholding and Off-Set - Assignment

10.1 In the event of defective delivery or service, we shall have the right to withhold payments in full unless good faith otherwise requires.

10.2 The assignment of claims against us shall be legally effective only with our written consent.

10.3 We shall not agree to any limitation of our statutory rights to offset and withhold payments.

10.4 The Supplier is only entitled to exercise a right for retention if its counterclaims have been confirmed by final court judgement, are uncontested or acknowledged by us. Furthermore the Supplier is entitled to exercise a right of retention only if his counterclaim is based on the same contractual relationship.

11. Manufacturing Equipment and Manufacturing Materials - Drawings

11.1 All manufacturing equipment we have provided to the Supplier, particularly tools, measuring and manufacturing devices (hereinafter referred to as „Manufacturing Equipment“) and manufacturing materials (hereinafter referred to as „Manufacturing Materials“) shall remain our property; the Supplier shall use the Manufacturing Equipment exclusively for the manufacture of our order and shall insure the Manufacturing Equipment at its replacement value against damage by fire, water and theft at its own expense.

11.2 The parties hereby agree that title to all Manufacturing Equipment and all Manufacturing Materials that we ask the Supplier to manufacture or have manufactured shall pass to us insofar as we pay the costs of manufacture to the Supplier as agreed.

11.3 Until full completion of the order, the Supplier shall store Manufacturing Equipment and Manufacturing Materials for us free of charge, service it at its own expense and keep it in good working condition by timely repairs and subsequent certification at its own expense. If the Manufacturing Equipment cannot be restored to good condition, we shall supply a replacement at our expense if the Manufacturing Equipment has become useless through normal wear. The Supplier is liable for all damages of the Manufacturing Equipment and Manufacturing Materials due to intentional or negligent breach of duty; in this case the Supplier is obliged in particular to reimburse us for the costs of the replaced Manufacturing Equipment and Manufacturing Materials. The Supplier must hand over the Manufacturing Equipment and the Manufacturing Materials to us free of charge at our request at any time.

11.4 Unless otherwise agreed, illustrations, drawings, calculations and any other documents relating to products, applications or projects which contain valuable know-how shall remain our property and shall be subject to our copyright even if we place them at the Supplier's disposal. Without our express prior consent, they may be neither reproduced nor made accessible to third parties.

12. Reservation of title

We shall not agree to stipulations of reservation of title which go beyond a simple reservation of title, in particular, to expanded or extended reservations of title or group reservations of title.

13. Industrial property rights

13.1 The Supplier shall warrant that no rights of third parties, particularly no industrial property rights are infringing in connection with its delivery. This applies to the place of production and the place of delivery as well as for all countries in which the products of the Supplier or KOMET-products - in which the products of the Supplier are contained or integrated - will be distributed or placed.

13.2 If a third party asserts a claim against us on grounds of an infringement of such rights, the Supplier shall save us harmless against such alleged or actual claims unless the Supplier is not responsible for the infringement. In such a case the Supplier has to reimburse us for all damages and the necessary costs and expenses we have incurred through or in connection with the claims made by the third party.

13.3 Furthermore our claims for defects of title shall be governed according to Article 8.

14. Concluding provisions

14.1 The parties hereby mutually and irrevocably give their consent to all independent procedures of taking evidence with respect to the contract and its performance including the present terms and conditions of purchase and their performance.

14.2 The contractual relationship shall be subject to the laws of the Federal Republic of Germany without giving effect to its conflict of laws principle. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

14.3 In transactions with entrepreneurs, the Amtsgericht (local court) Besigheim is agreed to be the place of jurisdiction for legal actions falling within the subject-matter jurisdiction of Amtsgerichte (local courts), and the Landgericht (regional court) Stuttgart for legal actions which fall within the subject-matter jurisdiction of Landgerichte (regional courts). We are also entitled to start a legal action at Supplier's domicile.

14.4 The data provided by the Supplier shall be stored and processed by means of EDP insofar as this is permissible under Articles 28, 29 of the Bundesdatenschutzgesetz (BDSG, German Federal Data Protecting Act).