

# **General Terms and Conditions of Purchase of MN Kaltformteile GmbH & Co. KG**

**Issued: August 2016**

Applicable in business transactions with companies, legal entities under public law, and special funds under public law.

## **1. General Provisions**

Our Terms and Conditions of Purchase shall apply exclusively; we shall only recognise general terms and conditions of the supplier that conflict with or deviate from our Terms and Conditions of Purchase insofar as we have expressly agreed to them in writing. Acceptance of goods or services from the supplier (hereinafter: contractual item) or their payment does not constitute consent to conflicting, deviating or additional terms and conditions of the supplier.

## **2. Conclusion of Contract and Contract Amendments**

2.1. Orders, acceptances, delivery call-offs, delivery contracts and other legal transactions to be concluded between us and the supplier as well as any amendments and supplements thereto must be made in writing. However, orders, acceptances and delivery call-offs may also be made electronically.

2.2. Enquiries by us to the supplier are merely invitations to the supplier to submit an offer.

2.3. Cost estimates are binding and shall not be remunerated unless expressly agreed otherwise.

2.4. The supplier must confirm our order in writing promptly, at the latest within 3 days of receipt, otherwise we shall be entitled to cancel our order.

2.5. We may demand changes to the design and execution of the contractual item within the scope of what is reasonable for the supplier. Impacts that result, particularly with regard to additional or lower costs as well as delivery dates, are to be settled suitably by mutual agreement. Changes by the supplier require our prior written authorisation to be effective.

2.6. The supplier is obliged to check drawings, calculations, specifications and other requirements from us for errors and inconsistencies within the scope of its general and special expertise and to notify us immediately of any concerns and to explain them in writing.

2.7. The supplier bears the procurement risk for the goods.

### **3. Delivery Dates, Transfer of Risk and Transport**

- 3.1. The delivery dates and deadlines stated in the order or delivery call-off are binding.
- 3.2. Unless otherwise agreed, delivery shall be made DDP Incoterms 2010 to us or to the place of delivery specified by us.
- 3.3. Compliance with the delivery date or the delivery period shall be determined by receipt of the contractual item and of the shipping documents by us or the receiving site designated by us.
- 3.4. If agreed deadlines are not met, the statutory provisions shall apply. If the supplier has difficulties regarding production, the supply of primary materials, adherence to the delivery date or similar circumstances which prevent it from delivering on time or in the agreed quality, the supplier must inform us immediately.
- 3.5. Unconditional acceptance of the delayed delivery or service shall not constitute a waiver of the claims for compensation to which we are entitled due to the delayed delivery or service; this shall apply until full payment of the charges owed by us for the delivery or service concerned.
- 3.6. Partial deliveries are generally not permitted unless we have expressly agreed to them or they are reasonable for us. Any unavoidable partial delivery must be coordinated with us. The service shall only be deemed to have been rendered when the goods have been received in full. Partial deliveries will lead to points being deducted from the supplier rating.
- 3.7. If the supplier is responsible for installation or assembly and unless otherwise agreed, the supplier shall bear all necessary ancillary costs, such as travelling expenses and provision of tools, unless otherwise agreed.
- 3.8. We reserve the right to refuse acceptance of the delivery at the supplier's expense or to value-date the invoice accordingly in the event of over- and/or under-deliveries of ordered quantities as well as in the event of premature delivery.
- 3.9. The supplier must pack the goods in a suitable manner.
- 3.10. The supplier assures that the goods do not contain any substances that fall within the scope of the substance bans of Directive 2011/65/EU (RoHS2). The supplier further assures that the substances contained in the goods and their use(s) are either already registered or that there is no obligation to register under Regulation (EC) No. 1907/2006 (REACH) and that, if necessary, an authorisation under the REACH Regulation is available. The supplier shall also, if necessary, prepare the safety data sheet in accordance with Annex II of the REACH Regulation and make it available to us. If goods are delivered that are to be classified as dangerous goods in accordance with international regulations, the supplier shall inform us of this at the latest when confirming the order.

3.11. The supplier shall provide us with reasonable assistance in obtaining customs and other governmental benefits and shall provide us with evidence and documents requested by us, in particular certificates of origin.

#### **4. Force Majeure**

Force majeure, unrest, official measures or other unavoidable events shall release us and the supplier from the obligation to perform for the duration of the disruption and to the extent of its effect.

#### **5. Prices and Terms of Payment**

5.1. The prices are fixed prices. All ancillary procurement costs (customs duties, packaging, transport, insurance) shall be itemised separately by the supplier in its offer and shall be borne by the supplier, with the exception of statutory VAT, unless otherwise agreed in writing. Price increases for the contractual item, including increases in ancillary purchase costs, require our prior written consent to be effective.

5.2. If no special agreement has been made, the invoice shall be settled either within 14 days with a 2% discount or within 30 days without discount from the payment due date and receipt of both the invoice and the goods or performance of the service. Payment is made subject to invoice verification.

5.3. We shall be entitled to rights of set-off and retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are entitled to claims against the supplier arising from incomplete or defective performance.

#### **6. Reporting Defects**

We must notify the supplier of any defects in the contractual item within 10 working days once they are discovered in the ordinary course of business. In this respect, the supplier waives the defence of late notification of defects. Our obligation to inspect and report defects is limited to the inspection of the quantitative information on the relevant delivery note and to transport damage that is visually recognisable on delivery (visible defects). In all other respects, the obligation to inspect and report defects is waived and the supplier expressly waives the defence of improper notification of defects in accordance with Section 377 of the German Commercial Code (HGB).

Payments made by us do not constitute acknowledgement the delivery is free from defects.

#### **7. Warranty**

7.1. The supplier is responsible for ensuring that the contractual items are free of defects. In particular, the supplier shall ensure that the contractual items comply with the state of the art, the generally recognised technical safety regulations of authorities and professional associations and are in accordance with the relevant legal provisions.

7.2 The statutory provisions on material defects and defects of title shall apply, unless otherwise agreed below.

7.3 In principle, we shall have the right to choose the type of subsequent fulfilment.

7.4 In the event that the supplier does not begin to remedy the defect immediately after our request to do so, we shall be entitled in urgent cases, in particular to avert acute danger or avoid major damage, to remedy the defect ourselves or have it remedied by a third party at the supplier's expense.

7.5 In the event of defects of title, the supplier shall also indemnify us against any existing third-party claims, unless the supplier is not responsible for the defect of title.

7.6 Claims for defects shall become time-barred after 3 years – except in cases of fraudulent intent – unless the item has been used for a building in accordance with its normal use and has caused its defectiveness. The limitation period begins with the delivery of the contractual item (transfer of risk).

7.7 For contractual items that could not remain in operation during investigation of the defect and/or rectification of the defect, the current warranty period shall be extended by the time of the interruption of operation.

7.8 In cases of replacement or in cases in which an improved contractual item has the same defect or a defect is the result of the rectification of defects, the limitation period shall begin to run anew. If the supplier has delivered defective goods during the warranty period, we may require the supplier to carry out a 100% inspection before delivering new goods. The supplier must declare to us that a corresponding inspection has been carried out.

7.9 If we incur costs as a result of the defective delivery of the contractual item, in particular transport, travel, labour, installation, removal, material costs or costs for an incoming goods inspection exceeding the usual scope, the supplier shall bear these costs.

7.10 Other claims by us for breach of contract or breach of other obligations shall remain unaffected.

## **8. Product Liability**

8.1. In the event that claims are asserted against us on the basis of product liability, the supplier shall be obliged to indemnify us against such third-party claims if and to the extent that the damage was caused by a defect in the delivery item supplied by the supplier. In the case of fault-based liability, this shall only apply if the supplier is at fault.

8.2. In the cases of Section 8.1, the supplier shall bear all costs and expenses, including the costs of any legal action.

8.3. In all other respects, the statutory provisions shall apply.

8.4. Prior to a recall action which is wholly or partly the result of a defect in the contractual item delivered by the supplier, we shall inform the supplier, give the supplier the opportunity to cooperate and exchange information with it regarding efficient implementation, unless the information or participation of the supplier is not possible due to particular urgency. If a recall action is the result of a defect in the contractual item delivered by the supplier, the supplier shall bear the costs of the recall action.

8.5. The supplier undertakes to take out business and product liability insurance to cover the risks arising in connection with the delivery of the contractual items, which also includes recall measures with a worldwide scope of cover and a cover contribution of at least EUR 10,000,000 per loss event, and to maintain this insurance cover for the duration of the supply relationship plus five years after expiry. The supplier will provide us with a corresponding insurance certificate on request.

## **9. Performance of Work**

Persons of the supplier who, in fulfilment of the contract, perform work on our premises or on the premises of the third party named by us, must observe the provisions of the respective company regulations of us or of the named third party. Liability for accidents that occur to these persons on the factory premises is excluded unless caused by wilful or grossly negligent breach of duty by our legal representatives or vicarious agents.

## **10. Provision/Retention of Title**

Materials, parts, containers and special packaging provided by us shall remain our property. These may only be used as intended. The processing and machining of materials and the assembly of parts is carried out for us. It is agreed that we shall be co-owners of the contractual items manufactured using the materials and parts provided by us in the ratio of the value of the materials and parts provided to the value of the overall product, which shall be kept in safe custody for us by the supplier.

## **11. Secrecy**

11.1. The contracting parties undertake to treat all non-public commercial and technical details that become known to them through the business relationship as business secrets.

11.2. Drawings, models, templates, samples and similar objects may not be made available or otherwise made accessible to unauthorised third parties, may only be used for the purposes of the respective contract between the supplier and us and may not be used for any other purposes of the supplier. Reproduction of such items is only permitted within the scope of operational requirements and copyright regulations.

11.3. Subcontractors shall be obligated accordingly.

11.4. The contracting parties may only advertise their business relationship with prior written consent.

## **12. Compliance**

12.1. The supplier undertakes to comply with the relevant statutory regulations on the treatment of employees, environmental protection and occupational safety and to work to minimise adverse effects of its activities on people and the environment. To this end, the supplier shall establish and further develop a management system in accordance with ISO 9001 as far as possible and shall endeavour to establish a management system in accordance with ISO 14001. Furthermore, the supplier shall observe the principles of the UN Global Compact Initiative. These primarily concern the protection of international human rights, the right to collective bargaining, the abolition of forced labour and child labour, the elimination of discrimination with respect to hiring and employment, environmental responsibility and the prevention of corruption.

12.2. In the event that the supplier repeatedly and/or despite a corresponding notice behaves contrary to the law and does not prove that the violation of the law has been remedied as far as possible and that appropriate precautions have been taken to avoid future violations of the law, we reserve the right to withdraw from existing contracts or to terminate them without notice.

## **13. Transfer and Use of Resources for Performance**

Devices, models, tools, samples, drawings or other documents manufactured by the supplier according to our specifications shall become our property after payment by us. From this date, the supplier is borrowing the item from us.

Operating resources may only be used to process the offer or to realize the ordered contractual items or services. These may not be made accessible to third parties or used for deliveries to third parties without our prior written consent. They shall be stored carefully by the supplier free of charge and at its own risk and returned at any time upon request by us, without the supplier being able to invoke a right of retention, unless the supplier is entitled to a contractually granted right of possession.

## **14. Other Provisions**

14.1. The place of fulfilment for payments is our registered office as entered in the commercial register.

14.2. The law of the Federal Republic of Germany shall apply to the exclusion of the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

14.3. If the supplier is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office. We are also entitled to bring legal action at the supplier's registered office.