

General Purchase Conditions 09/2011

- Kolman & Haberland GmbH –

A. Order placement

1. We only place order acc. to the Purchase Conditions mentioned in the following, however, also if a reference will not expressly be made at a later date in case of continued business relations. We expressly contradict to any modification, in particular differing or additional conditions of the supplier. A non-reaction on our part to order acknowledgements referring to differing or additional terms and conditions must not be considered as acceptance. Also with realisation of the order, such conditions will not become valid. In fact, the supplier accepts our Purchase Conditions with execution of the order. We consider every modification contained in an order acknowledgement as disaffirmation of our order. If the delivery will nevertheless be effected, our Purchase Conditions are regarded to be accepted.

2. Our orders have to be acknowledged by the supplier without delay, using our form "order acceptance". In case we will not receive the acknowledgement within 8 days, we reserve the right to cancel the order exempt from charges.

3. Our purchasing department has to set up in writing any modified or additional perimeters resulting in additional costs of more than € 500,00. Our technical- or assembly personnel is not empowered to act as representative.

B. Prices, range of delivery and performance

1. The agreed prices are fixed prices and are understood free destination indicated by us, including packing and all extra charges. If nothing else is agreed, our ordering company is the receiving one.

2. All performances required for a correct delivery or an efficient flow of production and assembly also belong to the scope of performance if they are not explicitly mentioned in the contract.

3. Any claims for compensation regarding modified or additional performances, independent on the legal claim, are excluded if the supplier does not announce his claim before execution. In individual cases, this announcement can be dispensable in good faith, for example, if the claim is obvious or if it is a matter of urgency. In case of modified performances, increased or decreased performances have to be considered. Furthermore, a possible claim for compensation is based upon the price basis of the contractual performance.

4. If we will supply or provide the material required for the fulfilment of the supplier's performance, the performance of the supplier also comprises the de-loading of the truck as well as the transport of the parts from stock ground to place of assembly. With installations, maintenance works and assemblies, the range of performance also implies the customary documentation.

5. If the order also comprises research, construction- and development works, designs or similar performances, the supplier is obliged to hand out all results, in particular construction- and manufacturing drawings, documentation, user manuals, etc. With the development of software, the delivery scope comprises the delivery of software in source- and object programmes as well as the documentation of the program development- and application; this also applies to future updates within the scope of a maintenance contract.

C. Delivery schedule, penalty

1. The dates mentioned in our orders are delivery receipt dates and mandatorily to be respected. Partial deliveries are only permitted subject to our acceptance.
2. If the supplier is delayed, we are entitled to demand a penalty amounting to 1% of the order value per week delayed, however, maximum 5%, irrespective of further claims for compensation and if not differently agreed. We are entitled to claim the proviso of the penalty acc. to § 341, par. 3 BGB until the final payment, based upon the relevant contract, however, at least within 14 days after acceptance of the fulfilment.
3. If there are justified doubts, before or after the settlement date, with regards to the supplier's capability and his willingness to perform, in particular as the supplier already now announces not to be able and not to want to deliver in time and if we do have an urgent interest in clarification, we are entitled to set a target for him, before or after the settlement date, clarifying his capability and willingness to perform. After an unsuccessful expiry we are entitled to withdraw from the contract and/or demand compensation as per §§ 280, 281 BGB instead of the performance. All other demands remain unchanged.

D. Delivery and passing of risk, adherence of works- and accident preventive directives, Force Majeure

1. The delivery has to be accompanied by our prepared delivery note. In case of a direct delivery to our customer, a neutral delivery note has to be used and a despatch note signed by the carrier submitted to us for invoice control.

2. With purchase contracts, the risk will be passed to us only with delivery of the goods at the place of destination mentioned by us; with works contracts, only after acceptance.

3. With installation- and assembly work carried out at customer's site or with us, the supplier is responsible for the adherence to all accident preventive directives, works directives known to him or any other relevant directives. In particular, he has to respect our safety sheet for employees of outside companies. The supplier has to inform himself of the contents of any directives disclosed to him.

4. We are released from the acceptance of the delivery / performance in case of industrial conflicts, official interventions, operational irregularities, difficulties in providing materials or energy or any other unforeseen, extraordinary, unavoidable circumstances through no fault of our own, independent on occurring with us or with third parties (e.g our customers). We have to immediately inform our supplier on the occurrence and the probable duration of such circumstances. If the fulfilment of the contract becomes impossible or economically unreasonable as a result of these circumstances, we are entitled to cancel the contract extraordinarily. The claims of the contractor for performances fulfilled up to this notice accordingly refer to § 645, par. 1, sent. 1 BGG; any further claims do not exist. Our legal rights remain unchanged.

E. Issue of invoice, Terms of Payment

1. After delivery the invoice has to be submitted in 2fold version. It must in no case accompany the goods and has to mention all order references. Partial deliveries are only allowed if partial quantities have been ordered.

2. Payment will be effected within 14 days, 3% discount or at 90 days net, if nothing else has been agreed. Payment time starts with receipt of invoice, at the earliest, however, with acceptance of delivery or performance and not before receipt of an agreed security.

3. In case of claims we are entitled to postpone the payment in an appropriate amount until the complete clarification and to also deduct discount after this period acc. to item 2 for the retained amount.

4. Down payments and instalments are subject to a special agreement and have to be secured in advance by the supplier by an unlimited bank guarantee directly enforceable. The bank guarantee is subject to German law and shows Gaggenau as Court of Jurisdiction. For the remaining, § 239 BGB is binding.

F. Defects, elimination

1. For his deliveries and performances, the supplier has to respect the approved engineering rules, existing safety directives and the technical data agreed, sizes, weights and other configurations. Any fabrications based upon drawings or approved samples have to correspond with the parameters given. If the order does not specify any further requirements, the performances have to be realised in accordance with the customary quality and DIN, VDE, VDI or equivalent national- or EC standards, if applicable. They have to be realised in such a way that they correspond with the legal provisions applicable at the destination fixed for the delivery to the customer, in particular concerning technical working means, accident preventive regulations, protection of working place, hazardous substances, emission protection, water pollution control and waste laws. The exemption from defective titles also refers to the final destination indicated by us.

2. The supplier has to verify our plans, drawings and other documents required for executing the performance or material and components provided by us or performances of other suppliers, as far as they are related to him, with regards to their completeness, correctness and suitability for the intended purpose. In case of any doubts the supplier has to immediately inform us. In case of neglect he is responsible for granting guarantee.

3. If we require supplementary performance, we are entitled to choose the type even with works contracts. We are also entitled to carry out the work ourselves in case of purchase contracts. In urgent cases there is no need to fix a date in advance.

4. The limitation period is 36 months. By our written claim, the limitation period of our claims will be blocked until one of the parties will decline negotiations or their continuation.

5. The delay of examination and reproval (§§ 377, 381 par. 2 HGB) is three weeks from delivery to destination and three weeks for defects not noticeable at time of examination from detection of the defect. If a longer delay is appropriate for individual cases, same is binding.

6. We are entitled to inspect the supplier's production (also accompanied by our customer).

G. Defects and security deposit

Up to the limitation period of our claims, we are entitled to an amount retained of 10% of the contract price. If the supplier will become insolvent before our final invoice, we are entitled, irrespective of further rights, to an additional security deposit of 20% of the contract price up to the limitation period of our claims. Amounts retained for defects and security can be released by the supplier by an unlimited absolute bank guarantee. Par. E No. 4, sentences 2 and 3 refer

H. Producers' liability

If we are claimed against due to national or international law, the supplier is obliged to exempt us from claims of third parties, as far as he is responsible for the failure causing the liability. Within this scope the supplier is also obliged to compensate such expenses occurring with recall actions carried out or other failure eliminating or preventive actions. The supplier refrains from every defence of the limitation period, unless we are able to appeal to limitation versus the applicant.

I. Assignment of claim, sub-suppliers

1. Any claims resulting from deliveries and performances can only be assigned to third parties subject to our approval. As far as the claims do result from a mutual business anyway and their effects refer to sent. 1 acc. to § 354 a HGB, the following applies:

We commit to agree if the supplier grants to his suppliers rights on a prolonged retention of title or assigns claims to his bank for security and the debtee commits to exempt us from claims of the supplier (or his trustee) and to hand out to us a directly enforceable guarantee of a German major bank or savings bank with payment of the claim.

2. In general, the supplier has to fulfil his obligations resulting from contracts made with his own company and his own employees. Sub-suppliers can only be assigned prior to our approval.

K. Provisions of material

1. Any material / components provided remain our property, have to be stored separately by the supplier and only be used for our order. The supplier is responsible for damages or loss even without his default.

2. The supplier will carry out for us machining and alteration. Should the stuff provided by us be processed with other stuff not belonging to us, we will acquire co-ownership at the new stuff in relation to the value of our stuff at time of processing.

3. Should the stuff be altered with other stuff not belonging to us, we will acquire coownership at the new stuff in relation to the value of our stuff at time of alteration. If the alteration is effected in such a way that the supplier's stuff is considered as main stuff it is agreed that the supplier transfers to us co-ownership on pro-rata basis; the supplier stores the co-ownership for us. The afore-mentioned rules are binding if the supplier mixes the stuff provided by us with others.

4. The supplier will insure the stuff for which we have sole or co-ownership, against material damage, loss, etc., including the new stuff created by the machining.

L. Secrecy, property rights, right of use

1. The supplier is obliged to confidentially treat all information as well as all knowledge received during order execution also beyond this period and to not personally make use of them.

2. All items, especially models, tools, samples, drawings, plans and documents of any kind remain our property. The supplier has to keep secret all such items and hand them out to us upon request at any time free of charge. The supplier is neither allowed to show such items to third parties, nor grant access to them in any way, nor to copy them, no to use them for his own purposes.

3. The same refers to moulds, tools or similar equipment or auxiliaries for the production of the delivery item which have been produced according to these documents or totally or partly manufactured on our costs. Any modifications must only be carried out prior to our approval. It has been agreed that the above mentioned items will pass into our property (as far as compensation has been agreed) and that they will be stored free of charge in a proper way. If we have paid the relevant items before completion, we already will acquire the ownership of the semi-finished products according to the afore-mentioned regulation.

4. The supplier is obliged to insure the items, mentioned in par. 2 and 3 being in our property, against damage, loss, etc.

5. Regarding par. B. No. 5, we have the exclusive right, not restricted with regards to time and place, to make use of any results obtained. If applicable, we are entitled to apply for trademark rights. If the supplier uses standard software for his deliveries and performances, we have a non-exclusive right, not limited to time and place, to use this software at least within the legal scope. We are in particular entitled to use such software not limited to individual systems and to grant a basic right to use to our customers.

6. If there will be any improvements with the supplier in connection with the order, we have a free-of-charge, non-exclusive right of commercially utilizing the improvement and possible trademark rights.

M. Insolvency

1. We are entitled to extraordinarily withdraw from the contract if the supplier has got into financial difficulties, especially if insolvency proceedings have been initiated. Compensation of the supplier will be calculated based upon § 645, par. 1, sent. 1 BGB. Due to the extraordinary cancellation we are entitled to demand compensation instead of the performance.

N. Place of fulfilment, court of jurisdiction and applicable law

1. Place of fulfilment is the place where the delivery items should be delivered or the work performance has to be realised. If nothing else has been agreed, the place of fulfilment is the site of the ordering Kolman & Haberland company.

2. If our suppliers are merchants or legal persons of public law or do not have a court of jurisdiction in the FRG, the courts relevant for the ordering Läßle companies will be assigned. We are, however, entitled to assert claims at any other courts.

3. The contract is subject to law of the Federal Republic of Germany. The application of the UN purchase right is excluded. The regulation for a work contract of the BGB will apply for a contract whose object is the delivery of items to be produced or moveable items to be produced not being justifiable.

O. Ineffectiveness

If individual parts of these Purchase Conditions should not apply due to law or individual contract, the effectiveness of the remaining regulations remain unchanged.

Additional regulations for the right to use cranes, hoists or other technical equipment

If the supplier also provides the operating personnel, he is obliged to transport all items and goods to be lifted and transported to the place indicated by us by means of his relevant auxiliaries and supervise the transport. This is a matter of work contract, also applicable if the supplier is only responsible for mounting and demounting of the equipment.

In all cases, the supplier has to contract a personal liability insurance with a limit of indemnity of min. one million EUR and if he also provides the operating personnel, a hook load insurance with a limit of indemnity of min. EUR 250.000,--, respectively for personnel, material damage or incurring financial loss. We only grant a special compensation if this has been agreed with us. We are always entitled to have the insurance coverage proved and have a look into the insurance contracts.