



## **GENERAL TERMS AND CONDITIONS OF PURCHASE\***

### **1 Conclusion of a contract**

- 1.1.** KUNSTSTOFF-FRÖHLICH GMBH (hereinafter KF) orders exclusively on the basis of its General Terms and Conditions of Purchase. Other conditions shall not become the subject matter of a contract even if they are not expressly contradicted on the part of KF. Other conditions shall not become the subject matter of a contract even if they are not expressly contradicted on the part of KF. The supplier must expressly consent to KF's General Terms and Conditions of Purchase when it makes an offer. If no such express declaration is made, the execution of the order shall at all events be considered as recognition of the General Terms and Conditions of Purchase. These General Terms and Conditions of Purchase shall also apply to all future contractual relationships with the supplier.
- 1.2.** If the supplier submits an offer in response to an enquiry by KF, he shall comply exactly with the request by KF and must expressly refer to any deviation from such terms.
- 1.3.** If the order is not acknowledged by the supplier in writing within 10 working days after its receipt, KF is allowed to cancel the order.
- 1.4.** Only orders placed in writing are binding. Orders placed in person or by phone must be validated subsequently by a firm letter of confirmation. Verbal collateral agreements, amendments and supplements of the contract require the written form. Any services or deliveries performed without a written order shall not be accepted. Orders, delivery calls as well as changes and amendments may also be done via data transfer or electronic data carriers upon prior written approval. In the case of an informal business conclusion the order shall be deemed as a business acceptance letter.
- 1.5.** No remuneration shall be paid for visits or the preparation of offers, projects, etc. unless such remuneration has been agreed expressly or entitled by law.
- 1.6.** If KF can prove that it has sent a statement by fax or remote data transmission by presenting a dispatch report, it shall be assumed that the statement reached the supplier.
- 1.7.** The supplier has to treat the conclusion of the contract confidential and shall only be allowed to indicate business relations with KF only after a written approval granted by KF.
- 1.8.** The parties to the contract commit to treat as a business secret any not obvious and/or generally known economic and technical details/information which they become aware of through their business relationships. Subcontractors must be committed accordingly.
- 1.9.** KF is entitled to demand modifications to the product also after contract conclusion if this is reasonable for the supplier. At this contract modification, the effects on both parties, particularly with regard to additional or reduced expenses and delivery dates must be taken into consideration appropriately.
- 1.10.** The supplier is only entitled to assign orders to subcontractors / sub suppliers upon written consent by KF, either in full or parts thereof.
- 1.11.** Der The supplier recognizes the standards of the supplier code of conduct (<http://www.f-plast.com/de/downloads/>) and strictly adheres to them when fulfilling the orders.
- 1.12.** Equipment (forms, tools, machines), which are manufactured by the supplier or acquired by a third party on account of KF shall become property of KF directly upon their creation or acquisition by the supplier. Any equipment which



KF makes available to supplier within the framework of an order processing shall remain the exclusive property of KF. KF is entitled to request its return at any time. The supplier does not have any right of retention. The supplier undertakes to label all items as "Property of KUNSTSTOFF-FRÖHLICH." No labels already placed may be removed. The equipment may only be used for KF orders. Supplier is liable for their maintenance and repair. The supplier is liable for all damages arising from these equipments and undertakes to insure them appropriately at own expense against damage and theft, at the minimum at their replacement value.

## **2 Prices, delivery, packaging**

- 2.1.** The agreed upon prices are fixed and exclude additional claims of any kind. Costs for packaging and transport to the shipment address and/or place of use indicated by KF as well as for all customs formalities and customs are included in these prices. In the absence of deviating written agreements, the price shall include the delivery by train "free train station Bad Lauterberg" for all other deliveries "free Bad Lauterberg plant," including packaging. If a price "ex plant," "ex plant" or similar has been agreed the standard carrier prescribed by KF must be engaged. The supplier shall bear all costs incurred including loading up to the point of transfer to the carrier. If the order does not specify any prices, the supplier's current price lists shall apply with the usual trade discounts. The pricing shall not in any way affect the agreement on the place of performance.
- 2.2.** Any delivery bills, consignment notes, invoices and all correspondence shall specify the order number of KF. Offers shall bear the enquiry number.
- 2.3.** KF shall only take delivery of the quantities or numbers of items ordered. Any higher or lower deliveries are only admissible upon advance agreement KF.
- 2.4.** The shipment shall be at the risk of the supplier. The risk of any deterioration, including accidental loss shall, therefore, remain with the supplier until delivery to the delivery address and/or place of use requested by KF.
- 2.5.** The supplier's obligation to take back the packaging shall be governed by the statutory provisions. The goods shall be packaged in such a way that damage to the goods in transit is avoided. Packaging materials shall only be used to the extent necessary to meet this purpose. Only ecologically sound packaging materials may be used. If KF is invoiced packaging separately by way of exception, KF shall be entitled to return packaging which are in good condition at two thirds of the value derived from the invoice.
- 2.6.** If delivery is not covered by the supplier, KF hereby waives the indemnity insurance as provided by ADSp (General Terms and Conditions of German Forwarders).

## **3 Invoicing and payment**

- 3.1.** If needed for clarification, invoices must be submitted separately in proper form and have to include all agreed information and documents. Until the submission of a proper invoice KF is entitled to a right to withhold performance. Relevant for the payment are the actual amounts, weights or other units on which the delivery is based as well as the agreed prices.
- 3.2.** Payment will be made in the standard commercial way. Unless not otherwise agreed in writing KF shall pay the purchase price within 14 days, counting as of delivery and receipt of payment, with 3 % discount or within 30 days net. The payment shall be deemed as on time if on the last date of the payment deadline a bank transfer order was issued.
- 3.3.** Insofar as certificates on material tests have been agreed upon, they shall constitute an integral part of the delivery and shall be made available to KF together with the delivery. They must, however, be available to KF no later than five days after receipt of the invoice. The term of payment shall not commence before the agreed certificate has been received.



- 3.4.** The settlement of an invoice shall not be deemed to be a waiver in respect of a notification of defects in the invoiced goods. In the event of a defective delivery, KF shall be entitled to withhold payment in the proportion of the corresponding value pending proper performance.
- 3.5.** In the event of advance payments, the supplier shall furnish appropriate collateral in the form of a bank guarantee of a generally recognized German major bank.
- 3.6.** In the event of default in payment by KF, the supplier may not rescind the contract unless he has set a deadline with a threat of rejection.
- 4. Delivery dates, delays in delivery, force majeure**
- 4.1.** The dates of delivery agreed upon shall be binding; the supplier shall be in default if a fixed date of delivery is missed, without this requiring any reminder. In the case of obligations to be performed, compliance with the date of delivery or the delivery period shall be determined by the receipt of the goods at the place of receipt and/or use specified by KF. If acceptance is necessary, the supplier shall be in default without reminder if he has not performed the work or provided the service by the date agreed upon in a way that acceptance cannot be refused. (§ 640 para 1 sentence 2 BGB [German Civil Code]).
- 4.2.** If a supplier becomes aware of any possible reasons which could cause a delay in delivery he is obliged to inform the buyer without delay in writing, by giving the reasons for the delay and by notifying the expected length of the delay.
- 4.3.** If the supplier defaults by exceeding the date of delivery, KF shall be entitled to impose a penalty of 0.1% of the amount of the order per working day and no more than 5% of the amount of the order. The reservation as to the assertion of a penalty can be made pending payment of the invoice. The penalty shall be offset against any claim to damage caused by default. The penalty shall be deemed to be merely the minimum value of damage claims.
- 4.4.** The supplier may only invoke failure by KF to submit any necessary documents if he requested such documents by way of a reminder in writing and did not receive them within an appropriate period of time.
- 4.5.** Force majeure shall exempt the contracting partners for the duration of the interference and within the scope of its impact from their obligations. The contracting partners shall be obliged to provide the necessary information as soon as reasonably possible and adjust their obligations to the changed circumstances in accordance with the principle of good faith. KF shall be exempt from the obligation to accept the delivery/service ordered as a whole or in part and shall be entitled to rescind the contract in that respect if the delivery/service/work can no longer be utilized because of the delay caused to KF as a result of force majeure - taking into account economic aspects.
- 4.6.** In the case of a delivery arriving earlier than agreed, KF retains the right to return the parts at the supplier's expense. In the case of the consignment not being returned but accepted, the goods will be held on stock at the supplier's expense and risk. In the case of an early delivery KF reserves the right to pay only on the agreed due date.
- 4.7.** KF will only accept part deliveries after explicit agreement. In the case of agreed partial deliveries the remaining amount must be listed.
- 5. Liability**
- 5.1.** The supplier shall be liable for any form of contractual violations in accordance with the statutory provisions unless otherwise agreed upon in these General Terms and Conditions.



**6. Remedies in case of faulty goods**

- 6.1.** The specification agreed upon shall be an integral part of the order and may not be amended without the mutual consent of the contracting partners. Any description of the scope of delivery or any drawing to be considered as binding shall also be deemed to be a specification. Deviances from the specification shall always be deemed as a fundamental breach of contract, unless KF is able to bring about the state of product as provided by specification by applying only totally insignificant efforts.
- 6.2.** The supplier undertakes to use ecologically sound products and processes in his deliveries/services/work and also for subcontracted work and deliveries from third parties within the framework of economic and technical possibilities. The supplier shall be liable for the environmental compatibility of the products delivered and the packaging materials as well as for all consequential damage or loss caused by a violation of his statutory disposal obligations. At the request of KF, the supplier shall issue a certificate of inspection for the goods delivered.
- 6.3.** KF shall notify the supplier without delay in writing of any apparent defects in the delivery/service/work and transport damage as soon as they are identified in accordance with the conditions of proper ordinary business. But not later than within 10 working days of receipt of the delivery by KF.
- 6.4.** KF shall be obliged to inspect any incoming goods within 10 working days of receipt of the delivery for transport damage.
- 6.5.** The condition of an item or a work agreed upon shall also be deemed to include properties which KF may expect as a result of public declarations of the seller, the company, the manufacturer (§ 4 paras 1 and 2 German Product Liability Act) or any vicarious agents particularly in advertising or labelling in respect of certain properties unless they are in contradiction with properties agreed upon. This shall not apply if the contracting partner was not aware and did not need to be aware that the declaration had been corrected in an equally valid manner at the time of conclusion of the contract or that it could not influence the purchasing decision.
- 6.6.** As a matter of principle, KF shall have the right to choose the kind of subsequent performance, even for contracts for work, unless the contracting partner has the right to refuse subsequent performance or KF chooses a right of subsequent performance which is unreasonable for the entrepreneur to accept.
- 6.7.** In the event of a defect in the product delivered or work performed, KF can remedy the defect itself after unsuccessful expiration of a period deemed to be appropriate for subsequent performance and request compensation for the necessary expenses unless the supplier is entitled to refuse subsequent performance. In this respect, the statutory provisions on self-performance in the case of contracts for work (§ 637 German Civil Code) shall apply mutatis mutandis to the purchase contract. Notwithstanding the statutory provisions, KF may in urgent cases particularly to avert any acute risk of considerable damage even without determining a period for subsequent performance remedy the defect itself at the expense of the supplier.
- 6.8.** The warranty period is 24 (in words: twenty four) months, unless otherwise agreed explicitly. It starts with the transfer of the delivered item to the third party stated by KF at the point of receipt and/or acceptance prescribed by KF. Insofar as dates for the acceptance have been agreed upon, the guarantee and warranty period shall commence with the successful acceptance. If acceptance is delayed through no fault of the supplier, the warranty period shall be a maximum of 12 (in words: twelve) months after provision of the delivery item for acceptance.
- 6.9.** If a defect occurs during the first 12 months (guarantee period) of the warranty, a presumption shall exist that this defect was already present on the date of the transfer of the risk unless such a presumption is inconsistent with the nature of the defect or object.



- 6.10.** In the case of spare parts that cannot remain in service during analysis of the defect or elimination of the defect, a current warranty and guarantee period shall be extended by the period of operational interruption.
- 6.11.** The term of warranty/guarantee for repaired or newly delivered parts shall commence anew from the date of repair or delivery notwithstanding statutory provisions.
- 6.12.** Claims that already exist at the beginning of the warranty period or arise during the warranty period shall become barred by the statute of limitations. The limitation period shall commence on the date the claim arises.
- 6.13.** With respect to defects of title the supplier shall indemnify KF against any claims of third parties which may exist. The statutory period of limitation with respect to flaws in a title is three years. This period of limitation starts with the end of the year in which the claim occurred and in which KF learned about the facts and circumstances justifying the claim and the person of the person held liable or should have known without gross negligence, without regard to knowledge or grossly negligent lack of knowledge.
- 6.14.** In the case that KL is obliged, as a result of the defectiveness of the goods or work delivered by the supplier, to take back the good or work delivered by the supplier, to accept a reduction of the purchase price or remuneration or pay damages or a compensation for costs to its customer, it shall not be necessary to fix the usual time limit for the rights described in § 437 BGB against the contracting party. In such cases the above-mentioned term of warranty shall commence on the transfer of the risk to the customer of KF. The above-mentioned claims shall be time barred at the earliest two months after the date on which KF satisfies the claims. This suspension of the limitation period shall terminate no later than five years after the date on which the contractual partner has delivered the product or work to KF.
- 6.15.** If a claim is filed against KF due to the violation of official safety regulations or based on domestic or foreign product liability regulations or laws for a product defect that is attributable to goods of the supplier KF shall be entitled to request from the supplier compensation for the damage to the extent that such damage has been caused by the products supplied. This damage also includes the cost of any recall action which may be required. To the extent that a defect arises at a part delivered by the supplier it is presupposed that the defect lied exclusively within the realm of responsibility of the supplier.
- 6.16.** The supplier shall implement a quality assurance system of an adequate type and scope complying with the latest state of the art and provide evidence of the same to KF upon request. If KF deems it necessary, then the supplier agrees to sign a respective quality assurance agreement with KF. The quality management guideline of KF shall be a component of the agreement.
- 6.17.** The supplier shall get himself insured against any and all risks arising from product liability including the recall risk to an adequate amount and make the insurance policy available for inspection if requested by KF.
- 7. Guarantee**
- 7.1.** The supplier guarantees and represents that all deliveries/services/work correspond to the state of the art, comply with the relevant legal provisions as well as the provisions and guidelines imposed by public authorities, employers' liability insurance associations and specialised associations. If deviations from these provisions are necessary in individual cases, the supplier must obtain a corresponding written consent. The warranty obligation of the supplier shall not be restricted by such consent. If the supplier has any concerns in respect of the type of execution requested by KF, the supplier shall notify KF without delay in writing.
- 7.2.** The supplier guarantees and represents that all deliveries shall be free of proprietary rights of third parties and, more particularly, that the delivery and use of the subject matters of the delivery shall not infringe any patents,



licenses or other proprietary rights of third parties within Germany. If the supplier knows that his products are distributed by KF in certain countries, this shall also apply to these countries.

## **8. Spare part supplies**

- 8.1.** The supplier undertakes to supply KF with all spare parts for the duration of the average service life of the delivered product.
- 8.2.** The price for a spare part must not be higher than the price for a corresponding part on the free market.
- 8.3.** If the spare part production was discontinued after the expiration of the period mentioned in clause 8.1, the supplier undertakes - at the request of KF against an appropriate remuneration- to surrender construction documents/drawings to KF and to use such documents for the manufacture of spare parts exclusively for KF own use. KF undertakes not to make these documents accessible to third parties.

## **9. Heavy metal ban**

- 9.1.** The supplier undertakes to deliver to KF only products which meet the European Council Directive 2000/53/EC of June 18, 2000, taking into account the decision by the European Commission dated June 27, 2002 (2002/525/EC).
- 9.2.** If the supplier delivers products which include substances covered by the afore-mentioned EU Directive, the supplier undertakes to expressly inform KF of such substances.

## **10. Obligations of and rights to information**

- 10.1.** If the supplier offers a product has already obtained from him, the supplier has to inform KF without request, regardless of any further obligations of information, about any changes, if the specification has changed compared to products having been formerly delivered under the same identification.
- 10.2.** Under section 4 paragraph 1 of the German Law on the Security of Devices and Products ("Geräte- und Produktsicherheitsgesetz") the supplier is obliged to provide KF with all information relevant for the assessment of dangers to security and health of the users of the product of third parties. This refers in particular to
  - The characteristics of the product including its composition, package, instruction of assembly, installation, attendance and service life
  - Its effects on other products, as far as an application together with other products is to be expected
  - Its presentation, conditioning in commerce, labelling, warning notices, instructions for use and operating, specifications of disposal and all other product related information and details
  - The group of users that is exposed to a higher danger than others when using the product.

## **11. Proprietary rights**

- 11.1.** The supplier shall indemnify KF and customers of KF against any claims of third parties for any infringements of proprietary rights and shall bear all costs incurred by KF in this connection.
- 11.2.** Taking into consideration the due care of a diligent merchant, KF is entitled at the expense of supplier to obtain the permission for the use of shipped products and supplied services from the rightful holder.

## **12. Extraordinary right of rescission**

If insolvency proceedings are instituted against the assets of the supplier, KF shall be entitled to rescind the agreement within a period of 12 months following the institution of the insolvency proceedings.



**13. Business in foreign countries**

If the supplier has his branch establishment outside Germany, the following shall apply in addition:

**13.1** For the relationship between the supplier and KF, German law shall be the exclusive applicable law, under exclusion of the Convention on the International Sale of Goods (CISG).

**13.2** The contractual language is German. If the contracting partners use any other language, the German wording shall prevail.

**14. Final provisions**

**14.1** Should individual parts of these General Terms and Conditions of Purchase be legally invalid, the validity of the remaining provisions shall not be impaired.

**14.2** The supplier shall not be entitled to transfer the order or essential parts thereof to third parties without the prior written consent of KF.

**14.3** The supplier is not authorized to assign his claims against KF without any prior written approval by KF which cannot be denied unreasonably.

**14.4** KF shall handle supplier's personal data in accordance with the General Data Protection Regulation (GDPR) .

**14.5** Unless otherwise expressly agreed upon, the place of performance for the delivery obligation shall be the shipment address and/or place of use requested by KF; for all other obligations by both parties Bad Lauterberg.

**14.6** For all disputes arising out of the contractual relationship and if the supplier is a fully qualified merchant, a legal entity under public law or a federal special fund under public law, the place of jurisdiction shall be the main registered office of KF. KF shall also be entitled to sue the supplier at any other admissible place of jurisdiction.

\* Unless otherwise agreed in writing the German Standard Terms and Conditions / Purchase Conditions apply to any disputes arising with reference of the translation of these General Terms and Conditions / Purchase Conditions.