

## **Standard Purchasing Terms of Kluge & Neumann GmbH (status 03/2024)**

### **Section 1 Scope**

(1) The following Purchasing Terms apply exclusively to all orders and other contracts with our (Kluge & Neumann GmbH's) suppliers or contractors (referred to collectively hereinafter as the 'Suppliers'), provided that the Supplier is an entrepreneur (Section 14 of the German Civil Code (hereinafter 'BGB')), a legal entity under public law, or a public-law corporation.

(2) Our Standard Purchasing Terms shall also apply if we are aware of terms and conditions used by the Supplier that conflict with or differ from our own and accept or pay for delivery from the Supplier without making reservations in this respect. Differing, conflicting or supplementary terms of business of the Supplier are not binding on us unless we have expressly consented in writing or in text form to their applicability. The requirement for consent applies in whatever case, for example even if the Supplier refers to its own standard terms of business in the confirmation of order and we do not expressly object to them.

(3) A written contract and/or our written confirmation of order are authoritative for the content of side agreements and supplements to our Standard Purchasing Terms. Any changes in the Standard Purchasing Terms shall apply to the future in each case, after the Supplier has been notified thereof. If the Supplier is executing its first order, it accepts our Standard Purchasing Terms with each subsequent order, without us having to draw attention to them again in each separate case.

(4) We publish our Standard Purchasing Terms on our website at [www.kluge-neumann.de](http://www.kluge-neumann.de)

### **Section 2 Enquiry, offer and order**

(1) Our enquiries are non-binding until we submit a binding order as an offer or acceptance which is valid in written form only. The results of verbal discussions or agreements made by telephone must also be confirmed in writing to obtain effect.

(2) The Supplier's offer shall be made free of charge and does not constitute any obligation on our party; unless otherwise agreed in writing, the offer shall be submitted in writing and shall comply precisely with our specifications regarding quantity, quality of the goods and other details; any differences must be clearly indicated in writing.

(3) If we order by submitting an offer, the order shall be confirmed in writing by the Supplier without delay, stating our order number and without any changes to our order.

We are no longer bound by the order if confirmation is not received within ten working days after the order date or if changes have been made to it. Shorter commitment periods may also be agreed in writing. Late acceptance of our order shall be deemed a new offer and shall require our written acceptance.

(4) If the confirmation of order differs from our order, a contract shall be concluded only on condition that we expressly approve the Supplier's confirmation of order again in writing. Payments, or the express written acceptance of deliveries and services in advance shall not be deemed to constitute approval.

### **Section 3 Prices**

(1) Unless otherwise agreed in writing, the prices stated in the order are fixed prices that shall also apply even if the basis for pricing (wages, prices for materials, etc.) has changed. We do not accept any kind of reservation of rights to adjust prices. Changes in prices require our express written consent. All prices are net of value-added tax, which must be paid in addition at the applicable statutory rate on presentation of an invoice that complies with VAT regulations.

(2) Unless otherwise agreed in writing, prices specifically include all the services and ancillary services provided by the Supplier (e.g. packaging, transport costs, customs duties, transport and indemnity insurance, etc.) and are understood to be DDP Schiffdorf, Im Gewerbepark 2.

### **Section 4 Terms of delivery**

(1) Our order number must be stated in all correspondence, on all invoices and on all shipping documents (wagon stickers, waybills, delivery notes, express labels, parcel cards, etc.). The same principle applies to the order date and to any item number. A note regarding the delivery point must also be included on request. In the case of intra-Community orders for technical goods, the Supplier shall also state the customs tariff number on the invoice. If delays or misrouting occur due to non-compliance with instructions, the Supplier shall be liable for any losses that result (demurrage, shunting fees, etc.).

(2) The delivery date or delivery period specified in the order or the confirmation of order is binding. Unless otherwise agreed in writing, the delivery period shall start from the date of our order. Receipt of the goods at the destination specified by us is the decisive criterion for compliance with the delivery date or delivery period.

(3) If delivery is earlier than agreed, we reserve the right to refuse acceptance or to return the goods at the Supplier's expense. We may also store the goods on our own premises until the delivery date at the Supplier's cost and risk, until the goods can be stored on the delivery date at the location intended when the contract was concluded.

(4) A delivery note in duplicate, specifying the order number and order date shall be attached to the delivery. Invoices do not count as delivery notes.

(5) The delivery shall comply precisely with the order with regard to quantity and quality of goods. Any excess or short deliveries shall require a separate written agreement. Unless otherwise agreed in writing, we do not accept part-deliveries.

(6) As soon as the Supplier can realise that it may not be able to execute an order on time, either in whole or in part, regardless of the causes of the delay, it shall notify us immediately and in writing, stating the reasons and the expected duration of the delay. If notification is made immediately, we shall grant the Supplier a reasonable grace period. If the Supplier fails to notify us immediately, it cannot invoke any hindrance; in such a case, we have the right to withdraw from the contract in whole or in part without setting a grace period, even if the delay is beyond the control of the Supplier. For the rest, we are entitled in full to our statutory claims in the event of any delay in performance by the Supplier.

### **Section 5 Packaging and shipping**

(1) All goods must be packed with utmost care in such a way that transport damage is avoided as far as possible.

(2) At our separate request, we shall be notified of the dispatch of each delivery by means of a single dispatch note, separately from the delivery note, on the day that delivery commences.

(3) The Supplier shall be liable for ensuring that all deliveries subject to mandatory identification are properly identified. The identification details must also be included in the confirmation of order and in all shipping papers.

(4) The Supplier is obliged under the packaging regulations to take back the transport packaging at its own expense. We are under no obligation to store, return or reimburse packaging material (such as pallets and the like).

### **Section 6 Transfer of risk and retention of title**

(1) The risk of accidental loss or deterioration of the goods does not pass to us until they have been unloaded and handed over at the destination we have specified. If acceptance is necessary or has been agreed upon in writing, that shall be the criterion for the transfer of risk. In the case of acceptance, the statutory provisions in the contracts for work and services shall apply accordingly.

(2) In the event that we default on acceptance, the statutory regulations shall apply. The Supplier must expressly offer us its services even if a specific or determinable calendar date has been agreed for an action or cooperation on our part. If the contract relates to a non-fungible item to be manufactured by the Supplier, the Supplier shall be entitled to further rights only if we have agreed to cooperate and are responsible for our failure to cooperate.

(3) A retention of title by the Supplier shall become an integral part of the contract only on condition that the retention of title expires on payment of the agreed price for the retained-title goods and we are authorised to resell and process them in the ordinary course of business. We will not accept any further-reaching retention of title (extended retention of title) by the Supplier.

### **Section 7 Invoice and terms of payment**

(1) Invoices showing the order number indicated in the order shall be sent as single copies and separately for each order to the address specified by us, and if the latter is not otherwise agreed in writing to our address Im Gewerbepark 2, Schiffdorf. They may not be enclosed with the deliveries of goods. Part-deliveries and any excess or short deliveries must be clearly and separately itemised in writing on the invoice. The Supplier shall be liable for any losses arising from non-compliance with these obligations.

(2) Unless otherwise agreed in writing, the agreed price shall be due for payment within 30 calendar days after receipt of a proper invoice. If the invoice has already been received prior to delivery or acceptance, the payment period shall not commence until the goods have been handed over and/or accepted, but in no case before an agreed delivery date; if incomplete or defective goods are handed over, the payment period shall not commence until full performance and/or acceptance.

(3) We shall not owe any due-date interest. This is without prejudice to the Supplier's claim to default interest. However, a written reminder from the Supplier is required in any case before we can be deemed in default.

(4) To the extent permitted by law, we have set-off and retention rights and the right to assert equitable defence due to late, mal and/or non-fulfilment. In particular, we have the right to withhold due payments as long as we can still assert claims against the Supplier due to defective deliveries.

(5) The Supplier has a right of set-off or retention only on the basis of counterclaims that are proven or undisputed or have been established by a final court decision. It may dispose of its claim against us by assignment, pledging or in any other way only if it has previously obtained our written consent thereto.

(6) The place of performance for our payment obligation is our registered office in D-27619 Schiffdorf.

### **Section 8 Warranty**

(1) Unless otherwise stipulated below, our claims for defective deliveries and services (warranty obligation) against the Supplier shall be governed by the statutory regulations.

(2) Any product descriptions of the Supplier, manufacturer or ourselves to which reference is made in our order shall also be deemed to be an agreement on the quality of the goods for which the Supplier must accept liability in accordance with the statutory regulations.

(3) Our obligation to inspect the respective goods delivered and services performed is limited to defects that become clearly apparent when we conduct our incoming goods inspection with external examination of random samples, including the delivery documents. If acceptance has been agreed or is required by law, there is no obligation to inspect. We shall notify the Supplier of any obvious defects immediately and in writing, but no later than ten working days after we have received the delivery.

The above is without prejudice to our duty to report hidden defects that become apparent at a later date, for which our notice of defects shall be deemed to be immediate and in good time if it is received by the Supplier within six working days of their discovery.

(4) The limitation period for warranty claims is three years as from the transfer of risk, unless the law prescribes a longer period (warranty period).

(5) The Supplier shall be liable for replacement deliveries or remedies of defect to the same extent as for the original delivery item. In the event of subsequent remedy, the warranty period shall be extended by the period in which the delivery item cannot be used in accordance with the contract.

(6) If, during the warranty period, the delivery item is or becomes defective, or if the absence of a guaranteed quality is or becomes apparent, we may demand, at our own discretion, that the defect be remedied within a reasonable period or that a defect-free item be delivered, or that the order price be reduced, or we may withdraw from the contract in accordance with the statutory regulations. The Supplier shall compensate us for the losses incurred as a result of the defective delivery, in accordance with the statutory regulations. A remedy shall be deemed to have failed after the first unsuccessful attempt.

(7) If the Supplier fails to fulfil its obligation to remedy the defect within a reasonable period set by us, we shall have the right to remedy the defect ourselves or have it remedied by a third party at the Supplier's expense, and to claim the costs necessary to remedy the defect from the Supplier. If the remedy of defect has failed or is unreasonable for us to accept due to special urgency, no deadline needs to be set.

(8) In derogation from Section 442 (1) Sentence 2 BGB, we shall also be entitled to warranty claims without restriction even if we had no knowledge of the defect at the time the contract was concluded due to gross negligence on our part.

### **Section 9 Recourse to suppliers**

(1) In addition to warranty claims, we are also entitled to our statutory rights of recourse within a supply chain (recourse to suppliers pursuant to Sections 478, 445a, 445b BGB). We have the right, in particular, to demand exactly the same kind of subsequent fulfilment (remedy or replacement delivery) from the Supplier as we owe to our customer in the individual case.

This does not limit our statutory right to choose (Section 439 (1) BGB).

(2) Our claims arising from recourse to suppliers shall also apply if the goods have been further processed by us or by one of our customers prior to their being sold to a consumer.

(3) Before we acknowledge or satisfy a warranty claim asserted by one of our customers, we shall inform the Supplier with a brief description of the factual situation and request a written statement. If the statement is not received within a reasonable period (generally within five working days), then the warranty claim actually granted by us shall be deemed to be owed to our customer; in such a case, the Supplier shall be responsible for providing evidence to the contrary.

### **Section 10 Product liability and subcontracted suppliers**

(1) The Supplier shall at our first written request hold us free from and harmless against any third-party claims for damages due to product damage, if the cause of damage lies within the Supplier's: sphere of control and organisation and it itself bears external liability.

(2) In such a case, the Supplier shall also reimburse us for any expenses outlays and disbursements that arise from or in connection with any recall measures we take. We shall inform the Supplier – to a reasonable and feasible extent – about the content and scope of any product recall measures and shall give it an opportunity to state its position. The above is without prejudice to other statutory claims.

(3) The Supplier shall be liable for subcontracted deliveries to the same extent as for its own goods and services.

## **Section 11 Drawings and documents**

Drawing and documents, in particular those which we require to install, operate, maintain or repair the delivery item, shall be provided to us by the Supplier in a timely manner, of its own accord and free of charge, before invoicing and no later than when the main performance has been rendered by the Supplier.

## **Section 12 Capital goods**

When ordering capital goods, we may monitor the execution of the order at the Supplier and its subcontracted suppliers at any time. The equipment, aids and services required for the inspection shall be provided free of charge by the Supplier. Such an inspection is not an acceptance procedure and does not release the Supplier from the obligations incumbent on it. Nor does it deprive us of the right to give notice of defects that are subsequently discovered. If the Supplier does not produce the object of the order primarily in its own undertaking, it shall notify us thereof without delay before production begins, obtain our consent thereto and ensure that we have the same rights its subcontractor as we have vis-à-vis the Supplier.

## **Section 13 Force majeure and equivalent circumstances**

If, as a result of force majeure or other circumstances (e.g. strike, lockouts, pandemics, power shortages, unforeseeable operational disruptions, etc.), the fulfilment of our contractual obligations is made substantially more difficult or impossible, we may withdraw from the contract in whole or in part within a reasonable period of time, but no later than one month after the order has been granted, or demand that the order be executed at a later date. If the Supplier has already begun to execute the order after it has been granted, we are under no obligation to reimburse it the costs already incurred.

## **Section 14 Confidentiality, offer documents, copyright and other intellectual property rights**

(1) The Supplier shall treat as confidential our know-how and any of our trade secrets that the Supplier obtains knowledge of in connection with its execution of the order. It shall take all reasonable precautions to ensure that our know-how and our trade secrets are not compromised and are used only in connection with the order and the subsequent use of the goods in accordance with the order. The Supplier shall bear the burden of proof that our know-how and our trade secrets were known beforehand or were in the public domain.

(2) We reserve unlimited rights of ownership and exploitation of copyright in respect of figures, drawings, cost estimates and other documents. Our express written consent is required before such know-how or trade secrets may be disclosed to third parties.

(3) Only with our prior written permission may the Supplier analyse or utilise the data known to it from the business relationship for advertising purposes.

(4) The Supplier shall ensure that no third-party intellectual property rights are infringed by the delivery, use or sale of the goods delivered and services performed by it, and shall hold us free, at our first written request, from any third-party claims arising from the infringement of intellectual property rights.

(5) The Supplier shall commit its subcontractors accordingly to compliance with this Section 14.

## **Section 15 Assignment of Supplier's claims against sub suppliers**

The Supplier hereby assigns to us all its present and future claims to fulfilment, subsequent performance and damages that accrue to it against its own suppliers and subcontractors, as security for any claims for fulfilment, subsequent performance and damages that accrue to us against the Supplier, insofar as the latter claims relate to goods and services we have commissioned. We hereby accept said assignment.

## **Section 16 Place of jurisdiction, governing law**

(1) The place of jurisdiction for any disputes arising from the business relations, if and insofar as the Supplier is a business person ('*Kaufmann*'), a legal entity under public law or a public-law corporation (Section 310 (1) BGB), is our registered place of business.

Our registered place of business shall otherwise be the place of jurisdiction if the Supplier either relocates its place of residence or habitual residence to a foreign country or its place of residence or habitual residence is not known at the time the court action is filed. However, we may also sue the Supplier in the courts at its general place of jurisdiction.

(2) The laws of the Federal Republic of Germany shall govern exclusively, under exclusion of the UN conventions relating to the international sale of goods, the regulations of international private law and any other treaties for determining the governing law.