

# General Purchasing Conditions of KLINGER SCHÖNEBERG GmbH

Last updated: 01 September 2023

## 1. Scope

- 1.1 The following conditions apply exclusively to all deliveries, services and offers – including future deliveries, services and offers – of companies, legal entities under public law and public law special funds as our suppliers or companies working for us (hereinafter referred to only as suppliers).
- 1.2 Any terms and conditions of our suppliers or third parties shall not apply unless we agree to them in writing. Terms and conditions of our suppliers and third parties shall likewise not apply if we refer to a document that contains or refers to such terms and conditions, or if we accept goods from the supplier without objecting to its terms and conditions.
- 1.3 For deliveries to us and for our orders for deliveries made on the basis of Incoterms®, the Incoterms® 2020 rules by the International Chamber of Commerce (ICC) shall prevail.

## 2. Inquiries, orders and conclusion of contract; information in documents

- 2.1 Our inquiries are non-binding. Any offers submitted by the supplier in response to our inquiries must be submitted to us free of charge. Unless expressly agreed in writing, we will provide no compensation for visits, developing plans, drawings, and similar services.
- 2.2 Only orders issued by us in writing are binding. If no binding term or a different binding term is indicated in our order, we will be bound to the order for one week from the order date. Our receipt of the acceptance declaration shall be decisive in determining prompt order acceptance. After the end of the binding term, we are entitled to revoke the order without this resulting in any claims on the part of the supplier.
- 2.3 Our employees are obligated to confirm oral ancillary agreements or commitments in writing if they go beyond the content of the written contract or change these purchasing and order conditions to our disadvantage.
- 2.4 We reserve the right to change the originally ordered quantity or quality or the delivery deadline through written notification to the supplier at least 14 calendar days before the agreed delivery deadline, if the changes can be carried out as part of the supplier's normal production process without significant additional expense. We will reimburse the supplier for verified, reasonable additional costs incurred due to the change. If such changes result in delays in the delivery that cannot be avoided through reasonable effort by the supplier in their normal production and business operations, then the originally agreed-upon delivery deadline shall also be delayed accordingly. The supplier is obligated to carefully estimate and provide prompt notification of the expected additional costs or length of delay in delivery before the delivery deadline, and at least within 5 business days after receiving our change notification.
- 2.5 Our order number, the date of the order, the article number, the delivery quantity and the delivery address must be indicated in all acceptance declarations order confirmations, delivery documents and invoices.

## 3. Delivery term and deliveries; transfer of risk

- 3.1 The agreed delivery and service terms are binding. Receipt of the delivery or completion of the service at the intended destination is decisive for determining compliance with the delivery or service deadline. If acceptance has been agreed or is required by law, then successful acceptance by a person authorised to do so by the customer shall be decisive.

- 3.2 The supplier must promptly inform us of any expected delays in the delivery or service, stating the grounds and expected duration of the delay. This shall not affect the obligation to comply with the agreed delivery or service term.

- 3.3 The supplier can only refer to any necessary documents to be provided by us that are not in its possession if it has requested the documents promptly and in writing.

- 3.4 Additional costs which result because the agreed delivery or service term is exceeded or if it may be exceeded shall be borne by the supplier, if this delay results in a faster shipping method being required.

- 3.5 If the latest date on which the delivery or service must be completed can be determined under the contractual agreement, then the supplier shall fall into default from this date even without a warning, unless the delivery is not made because of circumstances for which the supplier is not responsible.

- 3.6 If the agreed delivery or service term is exceeded, we are entitled to withdraw from the agreement, regardless of any other rights and in accordance with the law, even if the delay was caused by reasons for which the supplier is not responsible.

- 3.7 We are entitled to assert 0.5%, and a maximum total of 5% of the net invoice value of the delayed delivery or service as a contractual penalty for each full or partial week of delay of the delivery or service. The contractual penalty shall be offset against any default damages for which the supplier must reimburse us. We can even assert the contractual penalty upon payment of the invoice issued for the late delivery or service.

- 3.8 Unconditional acceptance of late deliveries shall not be considered a waiver of any rights resulting from exceeding the delivery or service term.

- 3.9 If we are prevented from accepting the delivery or service due to circumstances for which we are not responsible, then this shall not result in any default of acceptance. We will inform the supplier about such issues and the expected length of the issue.

- 3.10 If not otherwise agreed in writing, early deliveries and partial deliveries are not permitted.

- 3.11 The risk shall not pass to us, even if shipment has been agreed or we engage our own transport persons, until the delivery is handed over to us at the agreed destination. If acceptance has been agreed or is provided for by law, the risk shall pass to us when a person authorized by us has confirmed successful acceptance in writing.

## 4. Shipping; delivery documents

- 4.1 We are entitled to specify the shipping method and freight carrier. If not otherwise instructed or agreed, the supplier shall select the least expensive shipping option for us.

- 4.2 A delivery slip must be enclosed with every delivery. All delivery slips must list not only the information indicated in clause 2.5 but also the shipping type (such as rail, ship, truck) and transportation company, as well as the quantity and weight of the delivery.

- 4.3 The supplier is obligated to provide us with all import and export documents without requiring a request to do so. The invoice shall not be considered a shipping notification.

- 4.4 If third parties are involved in carrying out the shipment, the supplier shall be liable for compliance with these shipping regulations by the third party. The third party must indicate their client in all documents.

- 4.5 The supplier shall be liable toward us for all damages and costs, including demurrage charges and shunting costs we incur due to failure to comply with the above shipping conditions.
- 4.6 The supplier has not fulfilled its delivery obligations until we receive proper delivery and shipping documents. We are entitled to store the delivery at the cost and risk of the supplier until they do so.

## 5. Prices, invoices, and payments

- 5.1 If not otherwise agreed in writing, the agreed prices include delivery and transportation to the agreed destination, including packaging, customs charges, fees and other public duties.
- 5.2 In case of deliveries expressly agreed to be ex works or from the shipping point, all costs incurred up to handover of goods to the main freight forwarder shall be borne by the supply chain, while we will bear the simple freight costs.
- 5.3 If packaging is not included in the agreed prices in an individual case under a special agreement, and if no price has been expressly agreed for packaging that is provided, not lent, then the packaging shall be invoiced at the verifiable cost price.
- 5.4 We are entitled to return the packaging to the supplier carriage paid.
- 5.5 Agreed prices are fixed prices.
- 5.6 If reservations are agreed in writing that prices may be changed in an individual case, then the supplier must inform us promptly of any pricing changes, before sending the delivery or performing the service. In case of price increases, we are free to withdraw from the agreement. Any price increase asserted only after the delivery is sent or service is performed shall not be taken into consideration.
- 5.7 When calculating by weight, the weight we have determined is decisive unless an official weight is determined at the shipping location.
- 5.8 The invoice may not be enclosed with the goods; instead, two copies of the invoice must be sent to the invoice recipient indicated in the order immediately after goods are sent, with the information indicated in clause 2.4. Copies of the invoice must be clearly marked as such.
- 5.9 Payments shall be due within 30 days of receipt of the invoice and delivery or service. We are entitled to deduct a discount of 3 % if payment is made within 14 days after receipt of the invoice and the delivery or service.
- 5.10 If one or more pieces of information indicated in clause 2.4 are missing from the invoice and if this delays processing within the framework of our normal business, then the payment deadlines indicated in clause 5.9 shall be delayed.
- 5.11 We reserve the right to freely select the payment method. Our bank's receipt of our transfer order shall be decisive in determining whether a payment is made promptly.
- 5.12 In case of default of payment, we will be liable for default interest at five percentage points above the basic rate according to Sec. 247 BGB (German Civil Code).
- 5.13 The payment shall not be considered acceptance of any defects in the delivery or service.

## 6. Retentions of ownership

Any retention of ownership asserted by the supplier shall apply only if it refers to our payment obligation for the corresponding delivery to which the supplier is retaining ownership. Expanded or extended retentions of ownership are not permitted.

## 7. Liability for defects

- 7.1 The supplier shall guarantee that goods are free from material defects or defects of title. They shall carefully inspect the goods for defects before shipping, so that only goods free from defects are shipped.
- 7.2 Goods must conform to the contractually agreed-upon properties and generally accepted engineering practice as well as regulations for accident prevention, occupational protection, generally recognised safety and occupational medicine regulations valid at our company headquarters and at the destination.
- 7.3 The agreed properties shall include the shelf life as well as performance and consumption figures.
- 7.4 The supplier shall guarantee that usage of the delivered goods shall not violate any protected rights of third parties in countries within the European Union or in another country where we are known to sell or use the goods for them, or where they manufacture the goods or have them manufactured. They must release us in this respect from any claims by third parties and reimburse us for all expenses resulting from claims asserted by third parties. This is not the case if they verify that they were not responsible for the violation of protected rights, nor could have recognised the violation had they taken the care expected in the course of commercial dealings at the time of the delivery. Any further statutory claims for the delivered goods due to defect of title shall remain unaffected.
- 7.5 Acceptance or approval of submitted samples or specimens shall not be considered a waiver of rights related to defects.
- 7.6 After receipt, we will inspect the goods for obvious defects and damage in transit, as well as check their identity based on the delivery documents. We are not subject to any further inspection obligation. We will notify the supplier of defects within a reasonable time period after they are discovered.
- 7.7 In case of defects, we can request delivery of new, non-defective goods in lieu of repair. Furthermore, after we have set a reasonable grace period and this has passed without success, or if supplementary performance would be unreasonable for us, for instance due to the particular urgency of the situation or because operational safety is endangered, we are entitled, after informing the supplier and regardless of any other claims, to correct the defect ourselves at the cost of the supplier, have it corrected by a third party or otherwise replace the delivered goods or services.
- 7.8 The supplier shall bear all costs related to supplier, including costs for removing and installing the goods at the corresponding usage location. We will share the usage location with the supplier upon request.
- 7.9 The limitation period for defect claims is 36 months, or 63 months for goods typically used for a building that caused it to be defective. This period shall start upon delivery or upon acceptance, if agreed.
- 7.10 If the supplier repairs the delivered objects or replaces them in whole or in part, then the limitation period stated in clause 7.9 shall be restarted for these parts, unless the work required for supplementary performance is not significant or this is explicitly a goodwill service on the part of the supplier.
- 7.11 We reserve the right to offset claims for damages or other claims against the supplier's own claims.
- 7.12 Otherwise, statutory defect and product liability provisions apply.

## 8. Product liability

- 8.1 The supplier shall release us from any liability towards third parties due to personal injury or property damage, if

and insofar as the damages result in whole or in part from a fault in their delivered goods. In cases of liability depending on culpability, this shall not be the case if the supplier is not culpable.

- 8.2 If the supplier is responsible for the cause of the damage, then it is sufficient to verify that the fault caused the damages; the supplier shall also bear the burden of proof.
- 8.3 If we are obligated to carry out a recall campaign towards third parties due to a fault in a product delivered by the supplier, then the supplier shall bear associated costs.

## 9. Replacement parts

- 9.1 The supplier is obligated to reserve replacement parts for goods delivered to us for at least five years after the delivery.
- 9.2 If the supplier intends to halt production of such replacement parts, they must inform us of this promptly after making the decision to do so. The notification that they are halting production must be made at least six months before doing so, conditional on clause 9.1.
- 9.3 If production of such replacement parts is halted, the supplier must provide us with drawings of the replacement parts and grant us the right to use these drawings to manufacture replacement parts, to modify the delivered objects, or similar, or have a third party do so, without additional cost.

## 10. Tools, production materials and products

- 10.1 Ownership of tools, production materials and models manufactured on our behalf and paid for by us shall be transferred to us after they are paid for in full. The transfer of ownership shall be replaced by the supplier storing the objects on our behalf with the care of a prudent merchant.
- 10.2 Tools, production materials and models we provide to the supplier for contractual purposes shall remain our property.
- 10.3 The supplier shall store the objects owned by us and indicated in clauses 10.1 and 10.2 separately from other objects not belonging to us. Our ownership must be marked on the objects themselves and in business records. The supplier shall conclude an insurance policy for the objects against loss and damage at their new value, and shall provide us with proof of insurance and ongoing premium payments at our request. The supplier shall return the objects to us upon request after the end of the business relationship.
- 10.4 The supplier may only use objects manufactured for us or provided to the supplier by us according to clauses 10.1 and 10.2, as well as products manufactured according to documents created by us (such as drawings, models and similar) or manufactured according to our information or with our tools or copies of our tools for the purpose of fulfilling the contract; they may not use them for their own purposes or offer or deliver them to third parties.

## 11. Transfer of rights and obligations; offsetting and retention

- 11.1 Without our prior written approval, the supplier is not entitled to have any services it owes performed by subcontractors or other third parties or to transfer any other obligations to third parties.
- 11.2 Any assignment or pledging of the supplier's rights under the agreement may be carried out only with our prior written approval. This shall not apply to monetary claims. However, we can make payment to the supplier with debt-discharging effect.

- 11.3 The supplier shall only have a right of retention or right to offset against counter-claims if their counter-claims are undisputed or have been established in a court of law.

## 12. Ownership and copyrights, confidentiality

- 12.1 We reserve ownership or copyright to all documents, data and other objects of all kinds, such as samples, drawings, tools, models, etc., including in electronic form, which we provide to the supplier in conjunction with an order or with processing a contract. They must be returned to us free of charge and without requiring a request to do so once they are no longer needed to carry out an order issued by us. The supplier may not use such objects for their own purposes nor make them available to third parties.
- 12.2 The supplier hereby undertakes to treat all non-public, confidential information and data that they receive intentionally or incidentally from us or that are otherwise disclosed to them through the business relationship, in particular trade secrets in the sense of Sec. 2 no. 1 GeschGehG (German Law on the Protection of Trade Secrets) and all details of our orders (such as quantities, technical execution, conditions, etc.) as confidential towards third parties for a term of three years after the time of delivery. Our company may only be included in a list of references or used for advertising purposes with our prior written approval.
- 12.3 The supplier hereby undertakes to pay a reasonable contractual penalty to be determined by us at our discretion for each individual violation of the confidentiality obligation in clause 12.2. This is not the case if the supplier is not responsible for the violation. In case of a dispute, the responsible court shall determine whether the contractual penalty is reasonable.
- 12.4 Otherwise, in case of violations of this obligation, after requesting that the supplier correct the breach of duty within a reasonable term without success, we are entitled to dissolve the entire contractual relationship with the supplier without compensation. In case of particularly severe violations, it is not necessary to set a deadline. Particularly severe violations include, in particular, if the supplier provides or discloses knowledge gained from us to a third party in competition with us.

## 13. Compliance with statutory regulations, data protection

- 13.1 The supplier is obligated to comply with all applicable statutory regulations, in particular anti-corruption and money laundering laws and antitrust, labour law and environmental law regulations.
- 13.2 The supplier shall ensure that the products delivered by it fulfil all relevant requirements for marketing within the European Union and the European Economic Area. They must provide us with verification of conformity upon request by submitting suitable documents.
- 13.3 The supplier hereby assures and guarantees that they are not subject to any economic or financial sanctions imposed by a state authority, and that they do not commission or deploy persons or subcontractors who are listed in sanctions lists or affected by embargo regulations.
- 13.4 The supplier hereby assures that no goods, materials, equipment, components, parts, technologies or services that are installed or contained in delivered goods or connected to them come from a country or region that is subject to an embargo imposed by a state authority.
- 13.5 The supplier is obligated to comply with international trade regulations, in particular export controlling and customs regulations applicable in the destination country or at the supplier's headquarters as well as – if applicable – with the regulations of the United States of America. If the products are subject to export controls in the destination country or at the supplier's headquarters, then the corresponding national export list number or sub-

number from the EU dual use list must be indicated and, if the products or services are subject to USA export controlling regulations, the relevant Export Control Classification Number (ECCN) or the International Traffic In Arms Regulations (ITAR) classification number must be indicated.

- 13.6 The supplier is obligated to provide all declarations and information necessary in conjunction with the relevant international trade regulations at their own cost, to permit inspections by the responsible authorities and to obtain any necessary official confirmations.
- 13.7 The supplier shall make reasonable efforts to ensure compliance with the obligations set forth in clauses 13.1 to 13.6 that apply to it by its subcontractors as well.
- 13.8 The supplier shall release us from any claims by third parties, including official requirements related to a violation of statutory regulations by it.

#### **14. Data protection**

If the supplier and we collect personal data in conjunction with providing or carrying out orders or deliveries and carrying out the contractual relationship, then the applicable data protection regulations must be observed.

#### **15. Protective regulations and accident prevention**

- 15.1 The supplier shall deliver goods or perform its services with all instructions, recommendations, warnings and other notifications necessary for proper use of the goods and services and optimal protection of personnel and property, in particular if the goods contain hazardous substances or require special safety precautions. In particular, the supplier must provide us with all information, instructions and warnings necessary in order to comply with applicable health, safety and environmental regulations, and shall release us from all consequences, complaints, or costs resulting from their failure to comply with these obligations.

- 15.2 If employees or agents of the supplier work on the premises of the customer, then they must observe the accident prevention regulations and all other safety regulations, as well as the relevant company regulations. They are personally responsible for complying with regulations at the work site.

#### **16. Applicable law, place of fulfilment, place of jurisdiction**

- 16.1 The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between us and the supplier.
- 16.2 The place of fulfilment for payments is Graben-Neudorf. The place of fulfilment for all other services and obligations resulting from the contractual relationship is our specified delivery destination, even if we accept the costs of transportation or insurance of the goods.
- 16.3 The place of jurisdiction for all disputes arising from the contractual relationship is Bruchsal, if the supplier is a full merchant, legal entity under public law, or special fund under public law. However, we are also entitled to file complaints at the supplier's headquarters.

#### **17. Severability clause**

- 17.1 If one of the above provisions is legally invalid, this shall not affect the validity of the remaining provisions and the agreement.
- 17.2 If provisions become invalid or are deleted from the contract, then the content of the contract shall be interpreted in accordance with the law.
- 17.3 If the agreement or these delivery conditions contain a loophole, then the parties hereby agree on the legally effective regulation to close the loophole which they would have agreed to based on the economic objectives of the agreement and purpose of the delivery conditions, had they been aware of the loophole.