

General Terms and Conditions of Purchase

Version as of: 04/2018

1. General

1.1 These General Terms and Conditions of Purchase (hereinafter referred to as the "Terms and Conditions") shall apply to all purchase contracts, contracts for work and materials [Werklieferungsverträge], contracts for work and labour [Werkverträge] and similar contracts concluded between Klubert + Schmidt GmbH (hereinafter referred to as "K+S") and suppliers, unless their applicability is expressly excluded in writing in the contracts themselves or in the purchase orders from K+S.

1.2 Any general business, delivery or payment terms and conditions applied by the supplier are void if they contradict the Terms and Conditions of K+S. Such terms and conditions of the supplier will also be excluded from the contract if they are sent to K+S in an order confirmation letter or a commercial confirmation letter and the supplier performs the contractual service without any objection on the part of K+S.

1.3 Should the supplier not accept these Terms and Conditions, the supplier must object to them expressly in writing within ten (10) days starting from the date of sending the purchase order to which these Terms and Conditions were attached. In any case, these Terms and Conditions will form an integral part of the contract between K+S and the supplier if the latter starts performing the contractual service without objecting to them in a timely manner.

1.4 The supplier asserts and declares that neither the organization with its employees nor subsidiary organizations with their employees are mentioned in sanctions lists as published by the United Nations, the EU or the Federal Republic of Germany. The supplier asserts that K+S will be informed immediately in case of any change. The supplier recognizes that K+S reserves the right to resign from existing contracts if a supplier will be added to one of the mentioned sanctions lists.

1.5 The supplier is obliged to observe the law, regulations and directives for all deliveries. Particularly with regard to EU-end-of-life-vehicle directive, REACH (registration, evaluation, authorization and restriction of chemicals), conflict minerals and RoHS-directive.

2. Purchase Orders

2.1 All contracts with the supplier (both the placement of the purchase order and its acceptance) and delivery call-offs, including any changes and supplementations thereto, must be made or submitted in writing. Delivery call-offs may also be submitted by means of remote data transmission.

2.2 The supplier undertakes to examine the purchase order immediately after its receipt and to reply within three (3) working days by sending a purchase order confirmation. If the supplier is not able to perform the purchase order from K+S, it shall inform K+S thereof and provide K+S with a specific alter-native offer also within three (3) working days. If K+S receives no reply within the above time limit, it will be entitled to revoke its purchase order.

2.3 K+S reserves the right to demand changes in the design and execution of the item to be supplied or the service to be performed within reasonable limits. Should such changes be requested, the parties will mutually agree on the effects of those changes, including any increases and reductions in costs and any changes in delivery dates that such changes may imply.

2.4 If the supplier realizes that it cannot comply with the specifications requested by K+S in a purchase order or a batch order, including those presented in drawings or otherwise included in the order, the supplier basically will not be allowed to normally supply the goods concerned. In such a case the supplier may complete the "Deviation Approval Request" form [Antrag auf Abweichungsgenehmigungen] and email it to "quality@klubertundschmidt.de". The relevant "Deviation Approval Request – Supplier" [Antrag auf Abweichungsgenehmigung – Lieferant] form can be downloaded from "www.klubertundschmidt.de". The supplier may deliver the goods only when K+S expressly approves the proposed deviation. In such a case a copy of the Deviation Approval form must be attached to the goods and the delivery note must contain a remark "delivery according to the deviation approval".

3. Delivery Deadlines and Quantities

3.1 Delivery deadlines and quantities specified in the purchase order are binding. The supplier's principal obligation is to observe those deadlines and quantities. Decisive for the observance of the deadlines and quantities is the receipt of the goods at the point of delivery specified by K+S or the fact that K+S is enabled to accept the contractual service in due time. Delivery time limits start from the date of the purchase order. If no delivery deadline or time limit has been agreed, the supply must be effected immediately upon receiving a delivery call-off from K+S.

3.2 Delivery call-offs submitted under a current supply contract are binding unless the supplier objects in writing to the quantities or deadlines specified in those schedules as being unreasonable. The objection must be sent to K+S within one working day (twenty four (24) hours) from receipt of the delivery call-off. In such cases the supplier must notify K+S in writing, within two (2) working days, of the earliest possible delivery date.

3.3 Unless otherwise agreed in the delivery call-off, the time limits under delivery call-offs are as follows: the time limit for the approval of the item for production is four (4) weeks and for the approval of materials eight (8) weeks from the date of the last respective delivery call-off. The supplier must ensure to have at all times sufficient capacities to meet its supply obligations under the delivery call-off, including the supply of forecast quantities, if any. In particular, the supplier must keep, at its expense and risk, an appropriate quantity of contractual items as buffer stock.

3.4 Should the goods be delivered earlier than the agreed date, K+S reserves the right to send them back to the supplier at the supplier's expense. If K+S does not send back the goods that were delivered too early, the goods will be stored till the agreed delivery date in the premises of K+S at the supplier's expense and risk.

3.5 K+S accepts partial deliveries only if they are subject to an express written agreement. If partial delivery was mutually agreed, the supplier must specify the remaining quantity to be delivered.

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4. Delivery Delays

4.1 If the supplier realizes that it will probably not be able to keep the agreed delivery deadline, it must immediately inform the contact person from K+S indicated in the purchase order and, at the same time, specify the reasons for and the expected duration of the delivery delay. The supplier undertakes to immediately examine and eliminate the factors that cause delivery delays.

4.2 The supplier may dispute a delay by invoking the failure of K+S to provide necessary documents only when the supplier reminded K+S about such documents in writing and did not receive them within an appropriate time limit.

4.3 The supplier is liable to compensate K+S for any damage or loss caused by the delay in the scope provided for by the law. In the case of delay by the supplier, K+S is additionally entitled to set an appropriate additional time limit for the supply, and should such time limit expire without effect to withdraw from the contract and demand damages for non-performance.

4.4 The acceptance by K+S of a delayed delivery without any reservations does not constitute a waiver by K+S of its claims arising from the delay.

4.5 K+S will be also entitled to withdraw from the contract in whole or in part without prejudice to other rights of K+S due to force majeure, industrial actions, disruptions of operations not caused by the fault of the supplier, administrative measures and other unforeseeable and unavoidable events, if such events are of quite significant duration and result in a significant decrease in demand on the part of K+S. However, K+S is entitled to claim damages in such cases only if the supplier does not notify K+S of the force majeure event immediately after its occurrence and, in doing this, does not specify the expected period of the delivery delay.

5. Prices

5.1 If a purchase order is placed without specifying a price, the contract is effectively concluded if both parties expressly agree on the price and K+S confirms the price in writing.

5.2 The prices proposed by the supplier are fixed prices unless the supplier makes a general reduction in the prices concerned. Price increases or other changes in costs or cost components are allowed only with prior express written consent of K+S. The same applies to unexpected trends in prices of raw materials or increased development, labour or transport costs.

6. Transport, Transfer of Risk

6.1 The supplier must dispatch and deliver the goods to the agreed point of destination free of all charges and at its own expense and risk, or, if no such point of destination has been agreed, to the main office of K+S.

6.2 If the parties have agreed to calculate a price ex works or ex warehouse of the supplier, the supplier must deliver the goods at the lowest cost unless K+S expressly demands a specific mode of transport of the goods. Also in such cases the risk is transferred to K+S no earlier than at the time of receipt of delivery at the agreed point of delivery or, if no such point of delivery has been agreed, at the main office of K+S. Article 447 of the German Civil Code [BGB] does not apply.

7. Payment Due Dates, Payment Implications

7.1 The supplier's receivables from K+S will become due after the supplier has issued a verifiable invoice that complies with the requirements of K+S and after the supplier has performed its contractual services in full and free of defects. This applies to all receivables of the supplier from K+S. Any terms and conditions of payment and payment due dates that deviate from the above stated, will apply only if expressly agreed in writing.

7.2 Discount and payment deadline countdown will start no earlier than on receipt of a defect-free delivery and/or acceptance of the service, and on sending a verifiable invoice that complies with the requirements of K+S. Any deviating terms and conditions apply only if expressly agreed in writing.

7.3 In the case of early deliveries, K+S reserves the right to make the payment as late as on the agreed due date.

7.4 In no case will the payment made by K+S to the supplier serve as a confirmation of a contestable or void legal transaction. Neither will it be considered an acknowledgement of an invoice issued for, or acceptance of, a potentially defective service.

8. Retention of Title (ROT)

K+S becomes the full owner of the supplied goods upon payment of the purchase price for those goods. From that moment, any retentions of title in whatever form, in particular the so-called "extended right of retention" are excluded.

9. Quality, Documentation and Environmental Protection

9.1 The supplier is obliged to mark the goods delivered by it in such a way that they are permanently identifiable as the supplier's products.

9.2 K+S reserves the right to block the relevant batch of goods should K+S discover significant defects during the examination of the delivered goods. In such a case K+S will notify the supplier of the discovered irregularity. The supplier is obliged thereupon to immediately block the goods prepared for delivery to K+S and carry out a full inspection of those goods. After the inspection, the goods that meet the required specifications can be delivered to K+S according to the agreed guidelines.

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9.3 Should the goods delivered or services performed by the supplier have significant defects, K+S reserves the right to demand that the supplier complete and submit in due time an "8D Report". The relevant "8D Report" form has to be requested via mail from "Quality@KlubertundSchmidt.de".

9.4 The supplier undertakes to implement a quality management system that is suitable in terms of type and scope and consistent with the latest technological standards. K+S reserves the right to audit, or have audited by a third party, the relevant quality management system and procedures and products of the supplier. To this end, the representatives of K+S after a relevant notification or after arranging an appointment shall be granted unlimited access to the supplier's production facilities during normal business hours.

9.5 The supplier is obliged to fully comply with relevant laws, regulations and provisions applicable to any possible storage of hazardous materials and transport of hazardous goods.

9.6 Furthermore, the supplier is obliged to comply with the relevant requirements set in the Regulation on the Avoidance and Recycling of Packaging Waste [Verpackungsverordnung]. This includes, in particular, the proper returning and recycling of the delivered packaging materials at the supplier's expense.

10. Duty to Inspect the Goods and Report a Complaint

In view of the supplier's comprehensive quality assurance measures, K+S is exempt from all of its duties to inspect the goods and report a complaint as stipulated in Article 377 of the German Commercial Code [HGB]. K+S will only inspect the quantity and identity of the goods, check the goods for visible damage caused by transport and for apparent defects during further processing in the facility of K+S, and will be obliged to notify the supplier of such defects immediately upon their identification.

11. Warranty

11.1 The supplier warrants that its products are free from defects in accordance with the statutory provisions, unless agreed otherwise below.

The supplier assures K+S that its products comply with the latest recognized rules of technology, all relevant standards and provisions, the applicable specifications of K+S, and the samples and/or descriptions that have been delivered by the supplier or accepted by K+S, and that they are free from defects and are suitable for the specific purposes intended by K+S.

Furthermore, the supplier warrants that each delivered item of goods has been sufficiently checked for quality. The supplier shall apply suitable checking and control procedures to ensure that the goods and contractual items supplied by it comply with the agreed specifications and fit for the intended application.

11.2 Any report of a defect filed by K+S will be regarded as a demand to immediately cure the defect. K+S is entitled to choose the manner in which the supplier should cure the defect; if the supplier fails to do so, it must basically deliver a defect-free item. At the same time, the supplier acknowledges already by accepting the order that the keeping of the notified deadlines is crucial for the proper performance of the contract by the supplier, and will use all reasonable efforts to cure the defect as soon as possible.

11.3 The supplier will reimburse K+S for all costs, losses and damage caused by contractual goods that were defective or did not comply with the contract. Defective goods will be returned to the supplier at the supplier's expense and risk.

11.4 If the supplier is not able to, or does not immediately, cure the defect despite a request of K+S, K+S is entitled to withdraw from the contract without setting any additional time limit for the cure or to reduce the purchase price for the goods concerned. In such a case, K+S is also entitled at the supplier's expense to either remove the defect by itself, or have it removed by a third party, or acquire the goods elsewhere.

The supplier is deemed to be incapable of curing a defect if a defective part is already in production or has been sent for or is in external use. The defect will be then removed, as a substitute measure, either by K+S, or its customer, or a third party. The supplier shall bear all costs that K+S will incur or claim from the supplier on this account.

11.5 If the supplier repeatedly delivers defective goods, and if after receiving from K+S a warning letter the supplier once again delivers defective goods, K+S will be entitled to withdraw from the contract also in respect goods that have not yet been supplied. In such a case the supplier shall reimburse K+S for the requalification costs, the costs of the assembly and dismantling of tools, transport costs and the costs of the adaptation of tools incurred by K+S.

11.6 In the case of statutory recalls or similar replacement actions, the supplier is liable for costs and losses incurred by K+S on this account, notwithstanding the expiry of the limitation periods specified in item 11.8, if the recall results from the non-compliance of the delivered goods, packaging and services with the parameters specified in item 11.1 or other contractual assurances or warranties and if such non-compliance is caused by the fault of the supplier (and if this finding is confirmed by the results of appropriate statistical analyses and spot checks). As far as possible and reasonable, K+S will inform the supplier of the content and scope of the measure to be taken and will give it the opportunity for a response.

11.7 The claims due to defects of goods delivered by the supplier and installed in K+S products become time-barred, in respect of goods installed in vehicles: upon the lapse of forty-eight (48) months from the first vehicle registration or installation of the replacement part in the case of vehicles intended for the North-American market (USA, Canada, Mexico), upon the lapse of thirty-six (36) months from the first vehicle registration or installation of the replacement part in the case of goods intended for all other markets. In the case of goods installed in final products other than vehicles, the claims due to defects become time-barred upon the lapse of twenty-four (24) months from the first sale of the final product to the end customer.

Should K+S agree a shorter limitation period with its customers, such limitation period will be also considered as agreed with the supplier.

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The statute of limitations in the case of legal defects is ten (10) years. The statute of limitations begins from reporting a defect to the supplier and is suspended for the period between reporting a defect and defect removal; however, in respect of contractual items delivered or contractual services performed to cure a defect within the period of limitation set for claims due to defects the period of limitation starts to run anew from the moment in which the supplier fully satisfied all claims for cure. In all other respects the statutory provisions shall apply.

12. Replacement parts

12.1 Unless otherwise expressly agreed in writing, the supplier is obliged to deliver, on market terms, replacement parts for a period of the useful life of the end product, however, for not less than fifteen (15) years from the last serial delivery. Market terms mean the price set for the last serial delivery plus other documented costs, such as packaging and processing costs.

12.2 If the supplier stops delivering the replacement parts upon the lapse of the time limit specified in item 12.1 hereof, it must provide K+S sufficiently in advance with the opportunity to place the last purchase order for such parts. The scrapping of tools and devices requires the express written consent from K+S also after this time period.

13. Product Liability, Insurance

13.1 Should K+S be held liable for a defective service in the light of domestic or foreign product liability rules or laws or applicable official safety regulations, and should such claim be attributable to a service provided by the supplier, the supplier shall pay K+S damages for the damage or loss suffered on this account if such damage or loss was caused by the items delivered by the supplier. This obligation also applies to indirect damage or loss. On request, the supplier will indemnify K+S from all such product liability claims if such claims are attributable to goods delivered or other services performed by the supplier.

13.2 The supplier warrants to K+S that it will take out and continuously maintain a business liability insurance policy (product liability scheme which additionally covers vehicle recall expenses) with a cover-age of at least EUR 5 million (in words: five million euro). This insurance coverage must be documented to K+S by presenting a relevant confirmation from the insurance company no later than 30/06 of each calendar year.

14. Third-Party Rights

14.1 The supplier is liable for claims resulting from the violation of intellectual property rights and applications for the registration of intellectual property rights (hereinafter referred to as "IP rights") of third parties referring to the products used according to the contract. On request, the supplier will indemnify K+S and its customers from all claims resulting from the use of such IP rights.

14.2 The supplier undertakes to immediately notify K+S of any risk of or a supposed violation of any applicable IP rights that comes to his notice.

14.3 On request, the supplier will inform K+S of the use of its own (whether or not given to public notice) IP rights, of IP rights licensed by it, and of third-party applications for the registration of intellectual property rights regarding the delivered products.

15. Non-disclosure obligation

The supplier undertakes to treat as confidential all not publicly available information and knowledge that the supplier obtains during its business relationship with K+S. In addition, the supplier undertakes not to disclose such information and knowledge to third parties without prior written consent of K+S or to use them for any purpose other than the purpose for which such information and knowledge were disclosed to the supplier. This non-disclosure obligation shall survive the completion or termination of the business relationship between the supplier and K+S.

16. Documents, Drawings, Samples

16.1 During its business relationship with K+S, the supplier must independently inform itself about the use of its product and about its subsequent processing and envisaged applications. The supplier shall immediately notify K+S of potential risks and hazards that may arise from the supplier's products and that are identifiable to the supplier.

16.2 The supplier shall verify the documents and drawings of K+S and shall inform K+S in writing whether they are safe based on the results of a feasibility study. The supplier shall notify K+S of any doubts in this respect immediately, in any case before the performance of the order.

16.3 Unless otherwise expressly agreed in writing, the performance of the order is solely based on the product specifications of K+S (drawings, CAD records, technical delivery instructions, data sheets, samples, models, packaging and delivery instructions, etc.). K+S will remain their owner also when they are made available to the supplier.

16.4 The serial production may start only after K+S informs the supplier thereof in writing and gives approval for the serial production. If K+S requests the preparation of type samples, the serial production may be started only after express written approval by K+S of the initial samples of items to be serially manufactured. The supplier will bear the sampling costs.

16.5 If the supplier is liable to prepare a new type sample due to incomplete sampling documentation or deviations, it will also bear the full costs of preparing such a new type sample and of executing new qualification tests/preparing new qualification protocols.

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16.6 On completion of a given contract, or in the event of an early termination of business relations between K+S and the supplier or, as the case may be, non-performance including incomplete performance of the contract for whatever reason, the supplier shall immediately return to K+S all tools, drawings, samples, models or documents and any copies thereof unless the parties have otherwise agreed in writing or the supplier must retain the document copies based on documentation obligations stipulated by mandatory law. The supplier is not allowed to use the documents for its own purposes. Neither may the supplier let a third party use the documents or disclose them to third parties.

17. Assignment, Offset

17.1 The supplier is allowed to assign its receivables from K+S only after K+S consents to such assignment in writing.

17.2 Any offsets by the supplier of its receivables against those of K+S are excluded unless the supplier's receivable in respect of which the supplier demands an offset is not contested by K+S or has already been established as legally valid.

18. Termination with good cause

18.1 In addition to and as a supplement to the statutory or otherwise contractually agreed termination rights, K+S is entitled to terminate the contract, in whole or in part, for a compelling reason whenever:

- the supplier violates a significant contractual obligation and does not cure the violation within an appropriate period, which, however, may not be longer than thirty (30) days from receiving a letter informing the supplier that it has violated the obligation;
- the supplier's financial situation significantly deteriorates or threatens to significantly deteriorate, which creates a risk that the obligations to K+S under this contract will not be fulfilled. A significant deterioration of the financial situation means in particular a situation where the supplier does not pay the invoices it receives, its cheques cannot be redeemed or its bills of exchange are protested;
- an admissible petition for instituting insolvency proceedings is filed, the supplier discontinues its business operations, or the supplier's legal entity is dissolved for reasons other than the institution of insolvency proceedings or dismissal for insufficiency of assets;
- there is a significant change in the ownership or the shareholding structure or the management of the supplier, or similar serious changes on the part of the supplier occur which according to a reasonable assessment of K+S may jeopardize the proper performance of the contract.

18.2 In the event of termination, the supplier is obliged to continue to fully perform its existing contractual obligations till the termination effective date and also beyond that date in cases where the termination does not apply to such obligations.

19. Applicable Law, Place of Jurisdiction, Place of Performance, Severability Clause

19.1 The contractual relations between K+S and the supplier, including all past and future legal relationships, shall be exclusively governed by German law excluding private international law and the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) unless this is in conflict with mandatory law.

19.2 Bayreuth shall be the exclusive place of jurisdiction for all legal disputes arising directly or indirectly from a contractual relationship between K+S and the supplier, unless another place of jurisdiction is stipulated by mandatory law. However, K+S is also entitled to file a legal action with the court competent for the supplier's registered office or branch office, or the place of performance.

19.3 Where permitted by law, the place of performance for all contractual claims shall be exclusively the registered office of K+S.

19.4 Should any of the provisions of these Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions of the contract. The parties undertake to replace the invalid provision with a legally permissible rule or procedure which corresponds, or comes as close as possible, to the intended economic purpose of the invalid provision. This also applies to provisions of other agreements between K+S and the supplier.

Klubert + Schmidt GmbH
Am Langen Berg 30
D-91278 Pottenstein