

# General Terms and Conditions of Purchasing of the Kesseböhmer Group

Last Revised 08/2010

The following Terms and Conditions become a component of any and all contracts concluded with our suppliers and contractors (hereinafter: "Suppliers"), extending to and including as well current or future business relationships. Deviating agreements, in particular, but not limited to, contrary terms and conditions of business of our Suppliers, will not become components of the contracts unless we give our express, written, prior consent.

## 1. Offer and Conclusion of Contract

- 1.1 In preparing his offers, the Supplier shall conform with our query/tender specifications with regard to quantity, characteristics and design; he shall expressly point out any deviations.
- 1.2 Orders and statements will be binding on us solely if and when we have submitted them in writing.

## 2. Prices

The agreed prices are fixed prices, excluding value-added tax. They include the compensation for any and all deliveries and services (including transport costs, insurance, customs duties and packaging) assigned to the Supplier and are shown free to the destination we have specified in the order (place of performance).

## 3. Products

- 3.1 Our order is authoritative for the content, type and scope of the delivery or service.
- 3.2 Any drawings, descriptions, etc. belonging to the order are binding on the Supplier; however, he shall examine them for any inconsistencies and immediately point out to us in writing any errors which he discovers or suspects. The Supplier remains solely and exclusively responsible for any and all drawings, plans and calculations which he has prepared, even if we have released them.

## 4. Provided Materials

- 4.1 The Supplier is liable for the loss of or damage to any materials we have provided and shall notify us without delay of any legal or material impairment of such products.
- 4.2 Materials and substances we have provided are worked and processed on our behalf, and we retain title to them at each and every stage of working and processing. In the event of their processing in combination with other products which do not belong to us, we are entitled to co-ownership in the ratio of the value of the materials we have provided to the value of all of the products used in the manufacture and of the Supplier's expenditures for the processing. In this respect, the Supplier also stores the products safely on our behalf at no charge to us.

## 5. Documents / Production Means / Confidentiality

- 5.1 Any and all work documentation (e.g. drawings, samples, models, etc.) and data provided to the Supplier or which he has prepared in accordance with our specifications may be used by the Supplier solely for the execution of the offer and the performance of the ordered delivery. He shall safeguard them with the greatest possible care and protect them from access by third parties. They shall automatically be returned to us — including any and all copies or reproductions — without delay upon the completion of our order or after performance of the ordered delivery.
- 5.2 The work documentation and data may not be used by the Supplier for any other purpose, be reproduced or be disclosed to third parties. If and when drawings or other documents must be handed over to third parties or business secrets must be disclosed to third parties within the framework of the execution of the order, the Supplier is responsible for ensuring that the third party also complies with the above provisions.
- 5.3 Production means (e.g. models, samples, dies, tools, etc.) which we have provided to the Supplier or which he has prepared in accordance with our specifications may not be sold, pledged or otherwise passed on to third parties nor used in any way on behalf of third parties without our consent. The above provision also applies to any items manufactured with the aid of these production means. They may be delivered solely and exclusively to us unless we have expressly declared our agreement with other uses. All of the production means which we have provided or which have been prepared for our account shall automatically be returned to us upon the completion of our order. Products which we have developed or developed further in collaboration with the Supplier may be delivered solely and exclusively to us.

## 6. Production Inspections / Final Inspections

- 6.1 We reserve the right to inspect the quality of the materials used, measurement and quantity precision and other quality criteria of the manufactured parts as well as compliance with any other specifications of our order on the Supplier's premises and on the premises of his pre-suppliers. Material costs for production inspections and final inspections will be charged to the Supplier if and when we have had reason to believe that such inspections were necessary.
- 6.2 The production inspections and the final inspections do not release the Supplier from his fulfilment and warranty obligations.

## 7. Deadlines and Periods

- 7.1 Agreed delivery periods commence upon conclusion of the contract.
- 7.2 The day on which the ordered products and the shipment papers arrive at the place of performance shall be deemed the day of delivery.
- 7.3 If and when it becomes clear that compliance with the delivery deadline will not be possible, the Supplier shall notify us in writing immediately of the cause and of the presumed duration of the delay. Regardless of the notification, failure to comply with the delivery period leads to the statutory consequences of default.
- 7.4 The Supplier shall comply exactly with so-called fixed delivery dates, i.e. dates which we have defined as "fixed" or as a specific point in time or a specific period, or if circumstances clearly indicate to the Supplier that the success or failure of the transaction is contingent upon compliance with the agreed delivery dates. Failure to comply with such dates entitles us to rescind the contract immediately and to claim damage compensation.
- 7.5 We are not obligated to accept partial, surplus or shortfall deliveries to which we have not agreed or premature delivery. The values for quantities, dimensions and weights which we determine during the incoming goods inspection are authoritative. In the event of culpable default of the Supplier, we are entitled to request payment of a contractual penalty in the amount of 0.5% of the net price agreed for the pertinent consignment per business day, but not exceeding 5% in the aggregate; this provision is without prejudice to the statutory consequences for default and the rights to which we are entitled pursuant to such statutes.

## 8. Packaging / Shipping / Acceptance

- 8.1 The Supplier shall provide secure packaging of the products within the framework of what is customary in trade.

- 8.2 Delivery shall be made to the address we have stipulated in the order (place of performance). Risk transfers to us upon the handover of the product at the place of performance.

- 8.3 Notification of shipment shall be submitted immediately on the day of shipment. A delivery note which does not contain prices shall accompany each and every consignment. The delivery note must contain the product name, date of manufacture, quantity, Kesseböhmer document number and Kesseböhmer identification number.

- 8.4 We may refuse acceptance of the products if and when an event of force majeure or other circumstances beyond our control, including industrial action, temporarily make our acceptance of the products impossible or unreasonable. In such cases, the Supplier shall store the products at his expense and risk.

## 9. Invoices and Payments

- 9.1 Invoices which include our order and parts numbers shall be sent to us.
- 9.2 We effect payments to the Suppliers after receipt of the defect-free products at the place of receipt/utilisation we have specified in each case and after receipt of an auditable invoice, either subject to deduction of a cash discount of 3% within 30 days of the receipt of the invoice or net within 60 days of receipt of the invoice.

## 10. Assignment / Offset and Retention

- 10.1 The Supplier is not entitled, without our written consent, to assign his contractually owed performances, in whole or in part, to third parties or to engage third parties to carry them out. The Supplier remains liable for the fulfilment of the contract even if we have given such consent.
- 10.2 The assignment of claims arising from deliveries by the Supplier is subject to our written consent.
- 10.3 The Supplier is not authorised to offset our claims against any counterclaims unless such counterclaims are undisputed or have been finally determined by a court of law. Rights of retention may be asserted solely if and when they are based on counterclaims which are undisputed or have been finally determined by a court of law.
- 10.4 We are entitled to transfer at any time any order placed with the Supplier, including any and all rights and obligations, to a company affiliated with us. We remain liable for fulfilment of the contract in such cases.

## 11. Complaint of Defects / Warranty / Liability

- 11.1 The Supplier is liable pursuant to statutory provisions; in particular, he warrants the delivery of the products in the agreed quality and, if and when statutory or technical standards or other protective provisions such as DIN, VDE, VDI or the provisions of the Machinery and Product Safety Act are relevant, in conformity with any such provisions and standards.
- 11.2 The warranty period amounts to 36 months, beginning upon delivery to the place of performance. This limitation period commences anew for any replacement parts provided within the framework of a warranty.
- 11.3 Our incoming goods inspection is limited strictly to the determination of any obvious defects and transport damage to the consignment. The Supplier is obligated to document his functional and quality inspections, to archive these documents for a period of 15 years and to allow us to view the documents at any time upon request. Application of the inspection and complaint periods pursuant to Section 377 HGB (German Commercial Code) is expressly excluded.
- 11.4 Immediately after being notified of defects, the Supplier shall, at his expense and at our discretion, subsequently improve the defective products or replace them with defect-free products. The above provision also applies in the event that the product is no longer located at the place of performance. We expressly reserve any rights to reduction of the price, damage compensation and/or rescission to which we are entitled. In urgent cases in which especially significant damage or loss is imminent, we are entitled, at the Supplier's risk and expense, to remedy the defects ourselves or to have them remedied by third parties or to procure replacement from another source.
- 11.5 The Supplier also warrants that there are no infringements on third-party rights, in particular, but not limited to, patent rights or other industrial property rights, as a consequence of the delivery or utilisation of the delivered product. The limitation period for any claims of infringement on third-party industrial property rights does not begin until such claims have been asserted against us.
- 11.6 If and when third-party claims are asserted against us on the basis of a defect of any kind for which the Supplier is accountable, the Supplier is obligated to indemnify and hold us harmless upon our first request. This provision applies especially, but is not limited to, product damage. Should recall measures be or become necessary as a consequence, we are entitled to carry out the measures after notifying the Supplier.

## 12. Rescission

We are entitled to rescind the contract immediately or to terminate it without notice if and when a petition for the initiation of bankruptcy proceedings against the Supplier's assets has been filed, such proceedings have been initiated or have been dismissed due to lack of assets or the Supplier suspends payments, and after we have announced to the Supplier our intention to rescind or terminate the contract and he has not provided to us a guarantee of performance for any and all services to which he is obligated under the contract within a period of 5 business days, beginning upon receipt of the announcement.

## 13. Data Protection

The Supplier is in agreement that his data which we require within the framework of the business relationship will be saved and utilised by us.

## 14. Final Provisions

- 14.1 Venue is that of the place of performance. However, we are entitled to file legal actions at our registered office or at the Supplier's registered office as well. Applicable law is the law of Germany. The application of the United Nations Convention on the Sale of International Goods (CISG) and of German law regarding international private law is excluded. Should any provision of these Terms and Conditions of Purchasing be, or become, invalid or unenforceable, the applicability of the remaining Terms and Conditions of Purchasing will not be affected.