

GENERAL TERMS AND CONDITIONS OF PURCHASE OF KERB-KONUS-VERTRIEBS GMBH

(applicable from 01 January 2014)

1. General – scope

Our General Terms and Conditions of Purchase apply exclusively to our purchases and orders; we do not recognize any conditions of the supplier contradicting or deviating from our General Terms and Conditions of Purchase unless these have been expressly approved by us in writing. Our General Terms and Conditions of Purchase also apply in cases where we accept the supplier's delivery without reservation in knowledge of purchasing conditions of the supplier which contradict or deviate from our General Terms and Conditions of Purchase.

All understandings between us and the supplier with regard to the execution of this Agreement shall be laid down in writing in this Agreement.

Our General Terms and Conditions of Purchase only apply to companies in accordance with § 310 Clause 1 German Civil Code (BGB).

2. Offer and price

Offers shall be free of charge and non-binding for us. The offer shall indicate any deviations from our enquiry. Prices always apply free receiving plant inclusive of packaging, and are fixed. The offer shall stipulate the amount which will be reimbursed if the packaging is returned freight paid.

If the prices have not been determined yet at the time of our order, the supplier shall indicate such prices before delivery of the goods. In this case, we reserve the right of acceptance.

We shall not be bound in the case of any obvious typing or calculation errors by us. Reservations by the supplier as to the price are excluded.

3. Order and confirmation of order

Written (fax/e-mail) orders only are binding for us. The acceptance of our order shall be confirmed in writing without delay with a single copy. If the confirmation of order has not been received by us within 10 days, we reserve the right to withdraw our order.

4. Delivery dates

The supplier shall inform us in writing without delay should circumstances occur or become known to the supplier which will make it impossible to adhere to the stipulated delivery time.

In the event of a delay in delivery, we shall be entitled to demand flat-rate damages due to delay in performance of 1 per cent of the value of the goods per full week, but no more than 10 %; any further-reaching statutory claims shall be reserved. The supplier is entitled to provide evidence that no damage or a significantly lower damage arose due to the delay.

5. Deliveries

All deliveries shall be made free destination.

The supplier shall have all deliveries intended for us insured at its own expense.

We are not obliged to accept partial and excess deliveries.

A workshop test or inspection certificate of our choice shall be enclosed free of charge with every delivery.

6. Delivery note; invoice

Delivery notes shall be enclosed with every delivery in duplicate. These delivery notes shall indicate our order text, our article number and our order number. Should one of these numbers be missing or incorrect, we shall be entitled to refuse acceptance.

Invoices shall be sent separately in duplicate to our place of business in Amberg. The invoices shall indicate our article and order numbers in conformity with our delivery notes. If one of these numbers is missing or incorrect, the invoiced amount shall not fall due.

7. Warranty, marking

The supplier warrants that the goods supplied by it conform to the regulations applicable to their sale and use and do not violate any third-party rights. The supplier assures that the goods supplied by it are not encumbered by third-party rights and that the supplier is free to dispose of the goods.

At our request, the supplier shall provide evidence of the origin of the raw material supplied by it with a certificate of origin.

The supplier warrants that the goods supplied by it conform to the specifications on which the order is based. The supplier warrants that its supplied goods comply with the applicable regulations including any regulations for the prevention of accidents and VDE regulations. The supplier shall also be responsible for the proper execution of any agreed tests and the existence of any warranted characteristics.

8. Warranty claims

We shall examine the goods for any deviations in quality or quantity within a reasonable period; a complaint is deemed to have been sent in due time if it is received by the supplier within a period of 5 working days from the day of receipt of the goods, or in the case of hidden defects from the day of detection. If a quality assurance agreement has been or will be concluded between the supplier and us, the separate conditions of the quality assurance agreement shall apply with regard to our obligations to examine and give notice of any defects.

We are entitled to assert the full statutory claims based on defects; in any case we are entitled, at our own discretion, to demand the rectification of the defect by the supplier or the delivery of a new product. The right to damages, in particular the right to damages instead of performance, shall be expressly reserved.

We are entitled to rectify the defects ourselves at the supplier's expense if the supplier is in default.

Warranty claims are subject to a limitation period of 24 months from the time of delivery unless the mandatory stipulations of §§ 478, 479 German Civil Code (BGB) apply.

In the event of third-party claims against us due to violation of the industrial property rights of such third party, the supplier shall indemnify us against such claims at our first written request; we are not entitled to conclude any agreements with the third party – without the supplier's agreement – and in particular we are not entitled to come to any arrangement with such third party.

The supplier's indemnification obligation shall include all expenses incurred by us of necessity due to or in connection with the claims of a third party, unless the supplier is able to demonstrate that it is not responsible for the violation of duty on which the violation of the industrial property right is based. The period of limitation for this claim is 3 years starting with the transfer of risk.

If defects of any kind are found and if we elect not to reject the goods immediately, we shall be entitled to have the goods stored by a haulage or storage company at the supplier's expense if storage space is scarce, after a period of 8 days. The supplier shall bear the incurred costs of a laboratory examination in the case of defective products.

9. Product liability – indemnification – liability insurance cover

The supplier shall notify us without delay if it has reasons to assume that goods brought into circulation by it do not conform to regulations intended to protect life, body and health, and the supplier shall take all required measures for a recall. The supplier shall provide us with all necessary information without delay.

In as far as the supplier is responsible for any product damage, it shall indemnify us against third-party claims for damages at our first request to the extent that the cause lies within its sphere of control and organisation and that the supplier is liable itself vis-à-vis third parties. Within the framework of its liability for damages as defined by Clause 2 the supplier shall also reimburse any expenses in accordance with § 683, § 670 German Civil Code (BGB) and in accordance with § 830, § 840, § 426 German Civil Code (BGB) which arise from or in connection with a recall campaign executed by us. We shall inform the supplier – in as far as possible and reasonable – of the contents and scope of the recall measures to be carried out and offer it the opportunity to respond. Any other statutory claims remain unaffected.

The supplier shall maintain a product liability insurance with an insured lump sum of at least 10 million € for each case of personal injury/material damage during the term of this agreement, i.e. until the relevant end of the limitation period for defects; if we should be entitled to additional claims for damages, such claims shall remain unaffected.

10. Obligation to inform

The supplier shall inform us without delay if during the term of the business relationship

- the production process (the production method) is changed
- the manufacturing location is relocated
- the procurement sources of primary products are changed
- the formulations of raw materials are changed

11. Quality agreement

For quality assurance purposes, the supplier shall perform in-process and final inspections based on instructions. The results shall be documented in a test report. The supplier shall allow us to examine its quality assurance system for its suitability and effectiveness. For this purpose, the supplier shall grant us access, at our request, to quality records and to its production sites within the framework of a system audit. The supplier shall be informed of any planned audit in due time. All additional information – in particular the results of the assessment – will be processed within our company only and treated confidentially.

The supplier states that its applied quality inspections and the packaging materials used conform to the latest state of the art.

12. Protection of intellectual property rights

We reserve rights to the title and copyrights with regard to any technical documentation, specifications and other information; these shall not be made accessible to third parties without our approval in writing. They shall be used exclusively for the production of our order; on completion of the order, they shall be returned to us without further request together with the assurance that no copies, reproductions, back-ups on data carriers or similar will be retained – whether in whole or in part. They shall be kept strictly confidential towards third parties. This obligation to maintain confidentiality shall survive the termination of this agreement. It shall cease if and to the extent that the know-how contained in the transferred technical documentation, specifications and other information has become public knowledge through no fault of the supplier.

13. Payment

Payment shall be made, at our discretion, as follows, calculated from the day of receipt of invoice and acceptance of the goods

less 3 % cash discount within 30 days

net within 60 days.

Rights to offset and retention shall be available to us as provided by law.

14. Place of fulfilment

The place of fulfilment for the supplier is the place to which the supplier is required to deliver the goods (destination).

Place of fulfilment for our payments is Amberg.

15. Assignment of rights; reservation of title

Rights – in particular receivables and obligations – under the agreement concluded with us shall not be assigned to third parties unless with our approval in writing. We only recognize the ordinary retention of title until settlement of the invoice for the respective goods.

16. Legal venue, severability

Legal venue is our place of business if the supplier is a merchant. We are entitled, however, to also bring a legal action against the supplier at the court with jurisdiction for the supplier's place of residence. This also applies to claims within the context of legal action concerning bills of exchange/cheques if these were based on a delivery to us. The law of the Federal Republic of Germany applies under exclusion of United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.

Should one or several stipulations of this agreement between us and the supplier be or become invalid or contestable, this shall not affect the validity of the remaining stipulations. The other stipulations shall instead be interpreted taking into account the economic intention pursued with the invalid or contestable stipulation.