

# General Terms and Conditions of Purchase of Wilhelm Kächele GmbH

## 1 Scope

- 1.1 Unless otherwise agreed upon, these general terms and conditions of purchase apply to deliveries and services that you provide to us.
- 1.2 The standard business terms of the supplier that contradict our standard business terms shall only be applicable if this has been approved by us in writing.
- 1.3 Our general terms and conditions of purchase also apply in situations in which we unconditionally accept the delivery or services provided by a supplier, in spite of the fact that the supplier's conditions run counter to our general terms and conditions of purchase or deviate from them.

## 2 Orders

- 2.1 Our orders necessitate the written or textual form, as do the changes or additions made to the orders. The same condition applies to all agreements that are concluded between us and you and which relate to the execution of the respective transaction.
- 2.2 We shall be entitled to cancel our order free of charge if you do not confirm the unchanged version of the order within a period of two weeks after you receive it.

## 3 Deadlines and consequences of failure to meet deadlines

- 3.1 The deadlines that have been agreed upon for the deliveries and services are binding. If delays are expected to arise or have arisen, you must promptly inform us to that effect in writing.
- 3.2 If you do not make the delivery or provide the service within a grace period set by us, we shall, without making any threats, be entitled to refuse acceptance, withdraw from the contract or demand that compensation be paid on account of non-fulfilment. We shall even be entitled to withdraw from the contract if you were not responsible for the delay. The additional costs that accrue to us as a result of your delay, especially the costs associated with the alternative coverage necessitated by your delay, are to be borne by you.
- 3.3 We retain the right to demand liquidated damages on account of improper execution (§ 341 of the Civil Code) until the final payment has been made.

## 4 Prices

The prices declared in the order are binding, and include the legally mandated value-added tax. The prices include all the expenses that are associated with the deliveries and services that are to be provided by you.

## 5 Execution and delivery

- 5.1 You may only award sub-contracts if we have approved of such a course of action, insofar as the situation does not simply involve the delivery of marketable parts. Delivery schedules are binding, with regard to the types and quantities of the respective goods and the delivery period. Partial deliveries can only be made if we have approved of such a course of action.
- 5.2 Each delivery should be accompanied by a delivery receipt that specifies our order number and identifies the contents with respect to type and quantity.
- 5.3 The goods are usually delivered in standard packaging. If reusable packaging is used, you have to make the packaging available on a loan basis. The return operation is carried out at your expense and risk. If, by way of exception, we agree to bear the packaging costs, these costs should be calculated vis-a-vis the verifiable cost price.
- 5.4 A technical description and an instruction manual should be delivered for equipment. In case of software products, the delivery obligation is only considered to have been fulfilled after the complete set (system-technical documentation and user documentation) of documentation has been handed over. In case of programmes that have been created exclusively for us, the respective programme should also be delivered in the source format.
- 5.5 When you make deliveries to our premises or provide services on our premises, you are obligated to adhere to the valid versions of the safety instructions, the environmental protection instructions and the fire protection instructions that apply to outsiders.

## 6 Bills, payments

- 6.1 Invoices shall be sent to us via separate post; they must contain our order number and / or the name of the person in-charge of the order.
- 6.2 After the receipt of goods and the invoice, the payment shall be made within 30 days with a discount of 3% or within 60 days net, unless otherwise agreed

upon. The day on which our bank received the order for transfer shall be considered the date of payment.

- 6.3 The making of payments is not equivalent to a recognition that the delivery or service in question is as per the contract. If the delivery or service turns out to defective or incomplete, we shall, regardless of our other rights, be entitled to withhold, to the appropriate extent, payments associated with claims arising from the business relationship until the respective obligations have been properly discharged.
- 6.4 Your claims against us may not be ceded to external parties.

## 7 Safety, environmental protection

- 7.1 Your deliveries and services must correspond to the respective legal regulations (especially the safety and environmental protection regulations, including the directive associated with hazardous substances), the Electrical and Electronic Equipment Act and the safety-related recommendations of the respective German expert committees or professional associations, e.g. VDE, VDI, DIN etc. The applicable certificates, test certificates and records should be supplied free of charge.
- 7.2 You are obligated to determine, with regard to material-related restrictions, the current status of the regulations and laws that apply to your components, and to comply with the said regulations and laws. You are obligated to ensure that you do not use banned substances. The substances that are considered, in accordance with the applicable laws and regulations, to be hazardous substances or substances that should be avoided should be declared by you in the specifications. When applicable, the safety data sheets should be handed over along with the respective products. When it comes to the very first delivery, the safety data sheets should be handed over along with the delivery receipt (at least in German or English). Information regarding violations of material-related restrictions and the delivery of prohibited materials should promptly be imparted to us.
- 7.3 In terms of the provision of deliveries and services, you alone shall be responsible for compliance with the accident prevention regulations. Safety devices necessitated by the accident prevention regulations should be supplied by you, as should any potential instructions issued by the manufacturer.

## 8 Import and export regulations, customs duty

- 8.1 In case of deliveries and services that originate from a country other than Germany that belongs to the EU, your EU VAT identification number should be specified.
- 8.2 Imported goods should be delivered duty paid. You are, within the framework of directive (EC) no. 1207 / 2001, obligated to provide the requested declarations and information at your own expense, allow inspections to be carried out by the customs authority and produce the required official certificates.
- 8.3 You are obligated to provide us with detailed, written information regarding any potential authorisation requirements for (re-)export operations that correspond to German, European and American export and tariff regulations, and the export and tariff regulations of the country from which the respective goods and services originated.

## 9 Passing of risk, acceptance, rights of ownership

- 9.1 Regardless of the agreed-upon pricing term, if the delivery process does not include installation or assembly, the respective risk is passed over to us when the goods in question are received at the delivery address specified by us. If the delivery process includes installation or assembly, the said risk is transferred to us after the acceptance test has successfully been completed. Activation or utilisation is not considered to be a substitute for our declaration of acceptance.
- 9.2 We acquire ownership of the delivered goods after payment has been made. Any extended or expanded retention of ownership is ruled out.

## 10 Inspection obligation and obligation to give notice of defects, inspection expenses

- 10.1 An incoming goods inspection process is carried out with regard to overt defects. We shall provide notice of hidden defects as soon as the said defects are detected under the circumstances associated with the normal course of business. Your right to raise an objection on account of a delayed notice of defects is null and void for all defects

- that are pointed out within a period of fourteen days after the point in time at which the said defects were detected.
- 10.2 If we return defective goods to you, we shall be entitled to charge you the invoice amount, in addition to an expense fee amounting to 5% of the price of the defective goods. We reserve the right to produce evidence of higher expenses. You have the right to produce evidence that proves that lower expenses were incurred, or that no expenses were incurred at all.
- 11 Warranty for material defects and defects of title**
- 11.1 Defective consignments should promptly be replaced with defect-free consignments, and services provided in a defective manner should be provided in a defect-free manner. In case of design defects or constructional flaws, we shall be entitled to promptly exercise the rights specified in paragraph 11.3.
- 11.2 Rectification of defective shipments or services requires authorisation from us. When the item associated with the respective delivery or service is not in our custody, the respective risk is borne by you.
- 11.3 If you do not rectify the defect within an appropriate grace period, we shall, at our own discretion, be entitled to withdraw from the contract or reduce the remuneration amount and demand additional damage compensation.
- 11.4 In urgent situations (especially situations involving the endangerment of operating safety or situations in which exceptionally severe damage is to be avoided), situations in which minor defects are to be rectified and situations in which your defect rectification operations are delayed, we shall, after you have been provided with the respective information and a brief grace period that is commensurate to the situation in question has elapsed, be entitled to rectify the defect and any resultant damages at your expense or get the defect and the damage rectified at your expense by an external party. The same condition applies to situations in which there is a delay in the provision of your delivery or service, and we have to rectify the defects immediately in order to prevent ourselves from making a delayed delivery of our own.
- 11.5 In accordance with paragraph 9.1, the statutory period for our claims that emerge as a result of material defects amounts to 36 months from the point in time at which the risk is transferred; as per paragraph 9.1, the statutory period for our claims that emerge as a result of defects of title amounts to ten years from the point in time at which the risk is transferred. The progression of the statutory period is considered to be obstructed during the period of time that begins with the dispatch of our notice of defects and ends with the fulfilment of our claim for defects.
- 11.6 If you are to make a delivery or provide a service in accordance with our plans, diagrams or other special requirements, the compliance of the delivery or service with the requirements in question is considered to be guaranteed. If the delivery or service deviates from the requirements, the rights specified in paragraph 11.3 immediately become due to us. 11.7 Unsere gesetzlichen Rechte bleiben im Übrigen unberührt.
- 12 Repeated impairments of performance**
- After a written warning has been supplied, if you provide defective or delayed deliveries or services and if the said deliveries or services are roughly identical or similar to those for which the written warning was sent, we shall be entitled to immediately withdraw from the contract. Under such circumstances, our right of withdrawal also covers deliveries and services that you are, as a result of this contractual relationship or another one, obligated to provide in the future.
- 13 Indemnification for material defects and defects of title**
- Irrespective of the legal basis for the claims, you hereby indemnify us against any and all claims raised against us by external parties on account of a material defect, a defect of title or any other defect associated with a product delivered by you. Under such circumstances, you shall compensate us for the expenses that we incur as a result of the associated legal proceedings.
- 14 Technical documents, tools, manufacturing equipment**
- 14.1 Technical documents, tools, works standard sheets, pieces of manufacturing equipment etc. that are made available by us remain our property; all trademark rights, copyrights and other proprietary rights remain with us. All of the aforementioned items should, along with all the copies that have been produced, pre-emptively be returned to us after the order has been executed; in this respect, you shall not be entitled to exercise a right of retention. You may only use the said items to execute the order. You may not hand them over to unauthorised external parties or make them available to such parties in any other manner. The objects in question may only be copied to the extent that such a course of action is necessary for the order to be executed.
- 14.2 Please produce for us the objects specified in sentence 1 of paragraph 14.1. The said objects are to be produced at our expense (either completely or partially). Paragraph 14.1 applies correspondingly, whereby we shall, in conjunction with the production of the items in question, obtain (co-) ownership, with respect to our share of the manufacturing costs. You shall store these items for us free of charge; we can, at any time, acquire your rights vis-à-vis the said item in a manner that involves compensation for expenses that have not yet been amortised, and reclaim the item in question.
- 14.3 You are obligated to take care of and maintain the aforementioned items free of charge. You are also obligated to rectify the normal wear and tear of the said items. If, within the framework of the execution of our order, you engage a sub-contractor to manufacture tools and models, you hereby cede to us all the claims associated with the transfer of the tools and models that you may have against the said sub-contractor.
- 15 Provision of material**
- 15.1 Material that has been provided by us remains our property. You must, with the diligence displayed by a prudent businessman, store the said material free of charge in a manner that ensures that it is kept separate from your other materials. Furthermore, you are to mark the said material as our property. It may only be used to execute our order. You are to compensate us for any damage that may be suffered by the said material.
- 15.2 You may only process or transform the material provided if the activities in question are carried out for us. In such a case, we immediately obtain ownership of the resultant items. If the provided material only constitutes a part of the new items, our share in the co-ownership of the new items shall correspond to the value of the provided material that is contained within the said items.
- 16 Confidentiality**
- 16.1 You are obligated to maintain the confidentiality of all confidential business data and technical data that becomes known to you as a result of the mutual business relationship. You are also obligated to ensure that the said data is not imparted to external parties.
- 16.2 Manufacturing operations that are carried out for external entities require prior written authorisation from us, as do activities involving displays of products that have been manufactured for us, especially if the said products have been manufactured in accordance with our schemes, diagrams or other special requirements, and activities involving announcements regarding the orders and services. Furthermore, a reference may only be made to the said order within the framework of communication with an external party if we have authorised such a course of action in writing.
- 16.3 We would like to point out that we save personal data that relates to our business relationship with you, and that we also share this data with companies belonging to the Kächele Group that are associated with us.
- 17 Trademark rights**
- 17.1 You are responsible for ensuring that your deliveries and services are not associated with any violations of the rights of external parties.
- 17.2 If claims are raised against us by an external party, you shall be obligated to free us from the said claims as soon as we submit a written request that you do so. Your indemnification obligation relates to all any and all expenses that we may incur as a result of or in association with the claim raised by an external party.
- 18 Miscellaneous**
- 18.1 The place of fulfilment is the specified delivery address.
- 18.2 If you are a businessman, a corporate body under public law or an institutional fund governed by public law, the place of jurisdiction is the place of business of the company belonging to the Kächele Group that makes use of these conditions. However, we are also entitled to make a claim on you at your place of business.
- 18.3 German law shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and the referral regulations under German international private law.
- 18.4 If individual clauses of these general terms and conditions of purchase are found to be either completely or partially invalid, it shall have no effect on the validity of the other clauses or, as the case may be, the validity of the other parts of the said clauses.