

**1. Scope**

Our Terms and Conditions of Purchase apply exclusively; general business terms and conditions of the supplier conflicting with or deviating from our Terms and Conditions of Purchase are only recognized insofar as we expressly agreed to them in writing. Acceptance or payment of goods and services from the supplier (hereinafter referred to as Products) does not constitute agreement.

The present Conditions of Purchase also apply to all future business relations with the supplier, even if not explicitly and separately agreed upon.

**2. Conclusion of and Modifications to the Contract**

- 2.1 Orders, contracts and order releases as well as modifications and supplements thereto must be placed and made in writing.
- 2.2 Verball agreements of any kind – including subsequent modifications and supplements to our Terms and Conditions of Purchase – must be confirmed by us in writing to become effective. The written form requirement is also deemed complied with if communications are sent by email, remote data transmission or facsimile transmission.
- 2.3 Cost estimates are binding and are not to be compensated unless otherwise expressly agreed.
- 2.4 We are entitled to cancel the order if the supplier does not accept the order within two weeks of receipt thereof.
- 2.5 Delivery demands shall become binding upon receipt by supplier. Any deviation, supplement or other modification made by supplier to our orders shall be effective only if explicitly and separately pointed out as deviation, supplement or modification and expressly approved by us in writing.

**3. Prices and Terms of Payment**

- 3.1 The price stipulated in the order shall be binding.
- 3.2 Prices specified in the order are fixed prices. Prices include the delivery of the goods “free delivery place of destination” as well as any packaging, transport, insurance and all other costs of delivery, unless agreed upon otherwise in writing. Value Added Tax (VAT) as applicable by law from time to time shall be separately shown, otherwise it will be considered as included in the price.
- 3.3 Unless otherwise agreed upon in writing, in cases where supplier has taken over the responsibility for the erection, assembly and/or the putting into operation of a delivery, the supplier shall bear all necessary costs related thereto, e.g. travel expenses and the cost of provision of tools.
- 3.4 Invoices shall be made out in the currency used in the order. Payments will be made only in this currency.
- 3.5 Unless otherwise agreed upon, we shall pay at our discretion either within 14 days with a 3% discount, within 30 days with a 2% discount, or within 60 days net, each calculated from the day of receipt of a proper invoice.
- 3.6 The payment period shall commence as soon as the delivery has been effected in full and the correct invoice has been received. In case of work contracts, time of failure-free acceptance will take place of receipt of goods.

**4. Delivery / Default in Delivery**

- 4.1 Deliveries deviating from our contracts and orders are only admissible if given our prior written approval.

- 4.2 Partial deliveries before requested delivery date are generally inadmissible in principle unless we expressly agreed to them.
- 4.3 Deliveries are only possible at the times indicated in the order.
- 4.4 Agreed periods and dates are binding. Punctual compliance with the delivery periods and delivery dates is determined by the date of receipt of the goods by us. Unless “Delivered at Place” or “Delivered Duty Paid” is agreed (DAP or DDP Incoterms 2010), the supplier shall make the goods available in good time, taking account of the time for loading and shipment to be agreed with the forwarder.
- 4.5 The supplier shall notify us in writing without delay in case he expects that delivery dates or deadlines will be delayed or exceeded, explaining the reasons therefore and specifying their expected duration.
- 4.6 The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled due to the delayed delivery or service; this applies pending full payment of the amounts owed by us for the delivery or service in question.
- 4.7 In case of delivery delays we shall be entitled to impose a contractual penalty of 0.5% for each commenced week of delay, however not more than a total of 5% of the order value. The right to assert exceeding damages shall be reserved.
- 4.8 The values established by us during the incoming goods inspection shall determine the quantities, weights and measurements subject to the reservation of different values being proved.
- 4.9 We have the right to use software belonging to the scope of delivery, including the software documentation, to a legally permissible extent (§§ 69a ff. UrhG [German Copyright Act]) as well as the right to use such software, including the software documentation, with the agreed performance characteristics and to the extent necessary for the use of the product in accordance with the agreement. We also have the right to make a backup copy even without an explicit agreement.
- 4.10 Force Majeure like Acts of God, labor disputes, operational disturbances without fault, unrest, governmental measures and other unavoidable events discharge us from our obligation to take punctual delivery for the duration of such event. During such events and for a two week period thereafter we are entitled – notwithstanding our other rights – to withdraw from the contract in whole or in part, provided that such events are not of inconsiderable duration and our requirements are considerably reduced as the goods have to be procured elsewhere as a result thereof.

**5. Place of Performance, Passage of Risk, Acquisition of Ownership**

- 5.1 Place of performance for the goods to be delivered and the services to be rendered shall be the place where, according to the order, the goods have to be delivered or the work has to be performed or the services have to be rendered (“place of destination”).
- 5.2 Deliveries shall be made with adequate transport packaging “free delivery place of destination”. The risk of accidental perishing or deterioration of the delivery shall pass on to us only as of receipt of the delivery by us or by our forwarding agent at the place of handover of possession of the goods or upon final acceptance of the delivery, whichever is later, even if we have taken over the organization of the transport.

- 5.3 Upon passage of risk at the place of destination or upon handing over of the goods to a forwarding agent specifically appointed by us, we shall acquire ownership of the goods without retention of any rights of whatsoever nature by the supplier.
- 6. Acceptance of the delivery / Claims Based on Defects**
- 6.1 The merchandise must be free of material defects or defects in title; i.e. in particular, it must conform to the stipulated quality and our approved samples. The supplier shall provide the guarantee that the merchandise possesses the stipulated quality. If this is not the case, we shall have the right to reject the acceptance of the delivery and return the merchandise at the expense and risk of the supplier. Other warranty claims shall remain unaffected therefrom.
- 6.2 The acceptance of the delivery does not constitute an acknowledgement that the merchandise is free of defects.
- 6.3 Acceptance is effected subject to the reservation of an examination for faultlessness, in particular also including accuracy and completeness, insofar and as soon as this is pertinent in the ordinary course of business. We will give notice of any defects found immediately after their discovery. To this extent the supplier waives the objection to delayed notification of defects.
- 6.4 In principle we have the right to select the type of supplementary performance. The supplier may refuse the type of supplementary performance chosen by KEYMILE only if it is possible at disproportionate expense.
- 6.5 In the event that the supplier does not commence rectifying the defect immediately after our request to remedy it, in urgent cases, especially to ward off acute danger or to prevent greater damage, we are entitled to undertake such rectification ourselves or to have it undertaken by a third party at the expense of the supplier, without having to grant a period of grace before.
- 6.6 In case of defects of title, the supplier shall also hold us harmless from any third party claims possibly existing, unless the supplier is not accountable for the defect of title.
- 6.7 The limitation period for claims based on defects is 2 years – except in cases of fraudulent misrepresentation – unless the thing has been used in a building construction in accordance with its customary use and caused the defectiveness thereof. The limitation period commences when the Product is delivered (passing of risk).
- 6.8 If the supplier performs its obligation to effect supplementary performance by supplying a substitute product, the statute of limitations of the goods delivered in substitution shall start to run anew after delivery thereof unless, when effecting the supplementary performance, the supplier explicitly and appropriately made the reservation that the substitute delivery was effected purely as good will, to avoid disputes or in the interests of continuation of the delivery relationship.
- 6.9 Should we incur expenses as a result of the defective delivery of the Product, in particular transport, carriage, labor costs, costs of material or costs of incoming goods control exceeding the normal scope of the control, such costs shall be borne by the supplier.
- 7. Product Liability**
- 7.1 Supplier shall indemnify and hold us harmless from and against any third party claims arising out of or related to personal injury or damage to property, if and to the extent the cause therefore was under supplier's control. The supplier is, within such scope, also obliged to reimburse us for all expenses according to Sec. 683, 670 German Civil Code (BGB) incurred by or in connection with a recall action or any other measure initiated by us.
- 7.2 The supplier is under obligation to take out a product liability insurance, which covers a reasonable insurance sum. If requested, the supplier must provide us with proof of such product liability insurance.
- 8. Compliance with Intellectual Property Rights and all Laws**
- 8.1 Within the limits imposed by statutory provisions, the supplier must guarantee that when the delivery items are delivered or used in accordance with the contract, industrial property rights, copyrights or other rights of third parties are not impaired as a result of items manufactured by the supplier or by third parties. The supplier shall release us from all claims in the event of any assertion of claims.
- 8.2 Within the limits imposed by statutory provisions, the supplier shall be liable to us for all the damages that we may sustain due to the infringement of a right. The supplier must inform us that there are existing foreign industrial property rights applicable to export goods. This shall not apply to the infringement of foreign industrial property rights if and as long as the supplier does not know that the merchandise will be delivered to the country in question.
- 8.3 If the supplier holds industrial property rights whose subject matter is the application of the products delivered and produced by the supplier for a specific use, then the supplier shall grant us the right to jointly use its industrial property rights within the scope of the delivered products.
- 8.4 The supplier undertakes to take all measures required to prevent occupational accidents, occupational diseases and work-related health risks, as well as effective first aid.
- 8.5 The supplier has the obligation to manufacture and deliver in compliance with the applicable laws, regulations and guidelines (including REACH, RoHS etc.).
- 8.6 The supplier shall indemnify us from and against any and all claims raised by third parties against us by reason of or in connection with the delivery or its use (including but not limited to claims based on a breach of this Section 8). Supplier's obligation to provide indemnification extends to all expenditures incurred by us in connection with third party claims raised against us.
- 9. Proprietary Rights**
- 9.1 All objects, which are owned by us and transferred to the supplier, shall remain our property and must be labeled as such. In the absence of a written consent to the contrary, the use of these furnished goods shall be solely limited to the manufacture of the products ordered by us.
- 9.2 Process descriptions, drawings, drafts, models, tools and other similar items, which the supplier manufactures according to our specifications, shall pass into our ownership. The delivery is replaced by the fact that the goods are held for us by the supplier without any charge.
- 9.3 During the period of safekeeping, the supplier must insure the manufactured goods as well as tools made available to the supplier against fire, theft, etc and bear the costs of such insurance.
- 9.4 Any software, which is developed for us (either separately or in connection with hardware), shall pass into our ownership. This shall also include the transfer of the coding and documentations required for the use and maintenance of the software. We shall have the right to grant licenses in the case of software developed especially for us.

9.5 With respect to merchandise produced by third parties for our account, the supplier may call off the merchandise only at its own address or at the address specified by us. We shall directly acquire the ownership from the third party upon delivery of the merchandise to the supplier. The supplier is merely the holder of the merchandise.

9.6 In the event of any infringement of proprietary rights, we shall have the right to demand compensatory damages and/or to rescind the contract within the limits imposed by statutory provisions.

## 10. Quality Assurance

The supplier shall, during the entire business relationship with us, maintain a quality management system according to DIN EN ISO 9001. We have the right to inspect the supplier's quality assurance system at any time upon prior notice. At our request the supplier shall permit us to examine certification and audit reports as well as inspection procedures including all test records and documents relevant to the delivery.

## 11. Confidentiality

11.1 Any information, formulae, drawings, designs, tools, technical records, processes, software as well as any other technical and commercial know-how made available by us or acquired by the supplier through us, and also any work results obtained therefrom?? (hereinafter "confidential information") shall be maintained in secrecy by the supplier towards third parties, may be used in the supplier's business exclusively for deliveries to us and may be made available only to such persons which need to have access to confidential information in connection with the business relation and have been obliged to maintain secrecy as if they were a party hereto. These obligations shall also apply beyond the term of our contractual relationship with the supplier if, as long as and to the extent that the supplier fails to prove that the confidential information was known to him already before or was in the public domain at the time of disclosure to supplier or was made public later without his fault

11.2 Any documents (e.g. drawings, illustrations, test specifications), samples, models etc. made available by us to the supplier during the business relationship remain our sole property and shall, at our sole discretion, be returned (including any copies, extracts and replicas) to us upon our request at any time, however no later than upon termination of the business relationship, or be destroyed at supplier's cost. The supplier has no right of retention or lien whatsoever.

11.3 The disclosure of confidential information as well as any possible delivery of documents, samples or models does not create, result in or convey any right of or to the supplier with regard to industrial property rights, know-how or copyrights and constitutes no prior publication and no right of prior use in terms of the applicable law on patents and utility models..

11.4 The supplier shall not be permitted to supply parts to other companies if these parts are manufactured according to KEYMILE customer's specifications or display even the slightest deviations. This shall also apply to parts that were returned by us due to defective delivery.

11.5 In the event of any violation of these provisions, we shall have the right to demand compensatory damages.

## 12. Export Control and Customs

The supplier shall be obliged to inform us about any applicable (re-)export licence requirements for the Products under German, European or US export control law and cus-

toms regulations as well as the export control law and customs regulations of the country of origin of the Products. Therefore, at least in his offers, order confirmations and invoices the supplier shall provide the following information with respect to the Products:

- Export classification number (Ausfuhrlistennummer) according to Annex AL to the German Foreign Trade and Payments Regulation (Außenwirtschaftsverordnung) or any comparable export list information of applicable export lists,
- ECCN (Export Control Classification Number) for US-goods (including technology and software) pursuant to the US Export Administration Regulations (EAR),
- country of origin of the Products and of the components thereof, including technology and software,
- any transport of the Products through USA, manufacture or stocking of the Products in the USA and whether the Products have been manufactured by using US technology,
- HS-Code (customs tariff code) of the Products, and
- a contact person in his organization to provide further information to us upon request.
- Upon our request the supplier shall provide any other foreign trade data with respect to the Products and their components in written form and shall inform us on all changes to such data without undue delay and prior to supply to us.

## 13. Termination of Contract

We may terminate the contract without prior notice, either wholly or in part, or we may rescind the unfulfilled part of the contract, and such right of termination or rescission shall apply especially to the following cases: if the creditworthiness of the supplier deteriorates to such an extent that the fulfillment of the contract appears to be jeopardized according to our viewpoint; if there are cheque or bill protests lodged against the supplier, if we consider the supplier to be threatened by insolvency, unless the supplier can refute this presumption through appropriate means; if insolvency proceedings or similar legal or official proceedings are instituted against the supplier; if the opening of insolvency proceedings is rejected for lack of assets; if the supplier persistently violates contractual obligations despite being called upon to refrain from or omit this act of infringement within the allotted grace period; if there are significant changes in the ownership and participating interests of the supplier.

## 14. General Provisions

14.1 If one of the provisions of these Terms and Conditions and of additional agreements reached should be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The parties hereto are obliged to agree upon a provision to replace the ineffective provision that approximates as closely as possible the economic intent of the ineffective provision.

14.2 The contractual relationships shall be governed exclusively by German law excluding the conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).

14.3 The venue for all legal disputes arising either directly or indirectly out of contractual relationships based on these Terms and Conditions of Purchase shall be Hannover. We further have the right to take legal action against the supplier at a court with jurisdiction over the registered office or branch office of the supplier or at the court with jurisdiction over the place of performance at our discretion.