

General Terms and Conditions of Purchase of TKM GmbH

1. Scope of application

1.1. All supplies and services are governed not only by the relevant order but also exclusively by these Terms and Conditions of Purchase. Deviations from them require express written acceptance by TKM. References by the supplier to his own terms of delivery are hereby expressly rejected; they become part of the contract neither by implication nor by conclusive action, such as acceptance of the goods. Quotations are free of charge and subject to confirmation and therefore do not create any obligations for TKM. If work is performed, the TKM GmbH conditions of work and materials apply in addition.

2. Orders and their acceptance

2.1. Only written and signed, or digital (machine generated, not signed) orders are valid. Their acceptance shall be effected by a written order confirmation of the Supplier. Orders placed verbally, by telephone or by telex must always be confirmed in writing by TKM, e.g. by an order with the addition "confirmation only". The supplier must ensure that no duplicate deliveries are made as a result. Should such nevertheless occur, TKM reserves the right to return the excess at the supplier's expense and risk. Purchase orders, delivery call-offs and their amendments and supplements are made in writing and signed, or digitally (typed, unsigned).

2.2. If the supplier does not accept the order or call-off from TKM within 2 working days of receipt, TKM is entitled to cancel it at any time free of charge. The supplier is not entitled to pass on the order or significant parts of it to third parties without TKM's prior written consent.

2.3. If products are ordered from TKM's design drawings, the supplier must supply a sample product free of charge. Series production may not take place until the sample product has been approved by TKM. The supplier is obliged to point out any reservations regarding design, functionality, materials used, etc. Prior to any change in the manufacture of the sampled product, written approval must be obtained from TKM. Products based on design drawings may be supplied exclusively to TKM unless TKM expressly agrees to delivery to third parties.

3. Delivery, deadlines

3.1. The delivery item must comply with the specifications given by TKM and the latest recognized rules of technology as well as the relevant safety recommendations (VDE, VDI, DIN etc.) and statutory provisions. Furthermore, the supplier ensures that TKM has the currently valid processing instructions and notes for the items ordered at the time the order is placed. Otherwise the conditions of the warranty apply in the event of a complaint.

3.2. The supplier must comply with the agreed delivery dates or delivery periods in a binding manner. Decisive for compliance with the delivery date or delivery period is receipt of the goods at the place of receipt or use specified by TKM. Deliveries and services are not deemed to have been made in full and on time until they show the agreed quantities and properties in accordance with the investigations and checks carried out by TKM's incoming goods inspection department. The supplier can invoke the absence of necessary documents to be supplied by TKM only if he has sent a written reminder for the documents and has not received them within a reasonable period. Partial deliveries or partial services require TKM's prior written consent.

3.3. If delivery is made earlier than agreed, TKM reserves the right to return the goods at the supplier's expense. If no return is made in the case of early delivery, the goods are stored at TKM until the delivery date at the supplier's expense and risk. In the event of early delivery, TKM reserves the right to make payment only on the agreed due date. If the supplier identifies circumstances which may adversely affect proper execution of the contract, he must notify TKM immediately in writing, stating the reasons.

3.4. A detailed despatch advice or delivery bill must be submitted for each consignment. A packing slip must be enclosed with each consignment. Any partial deliveries which are only permissible on the basis of a special agreement shall be marked as such. The TKM order and supplier numbers must always be stated on shipping documents, delivery bills, packing slips and invoices. Failure to comply with the above requirements may delay acceptance and payment. In such cases TKM may refuse acceptance of delivery.

4. Prices, terms of delivery and payment

4.1. The agreed prices are fixed prices exclusive of value-added tax. Value-added tax is to be shown separately. Cost increases after the order has been placed shall not entitle the Supplier to subsequent price increases. Reservation or adjustment clauses with regard to changes in conditions on the basis of collective wage agreements, changes in material prices, fluctuations in non-ferrous metals, etc. shall not apply and shall be excluded for the duration of the realization of the business transactions. Delivery is made in accordance with the terms of Incoterms 2020 DDP at the supplier's risk and expense, free of charge including packaging, insurance and duty paid, to the destination specified by TKM.

4.2. Goods originating outside the EU must be delivered duty unpaid. No value-added tax may be shown on the invoice to TKM GmbH for the delivery of duty unpaid goods (§ 41a UStDV) or for intra-Community deliveries of goods (Art. 28c, A, (a) of the VI. EC Directive). The VAT identification number (VAT ID) of TKM GmbH is DE 120 830 430. The VAT ID number of TKM GmbH must be stated on all invoices for intra-Community deliveries made to TKM GmbH. The TKM VAT ID number is deemed to have been notified to the supplier with these General Terms and Conditions of Purchase.

4.3. Payments shall be made within 14 days with 3% discount or within 30 days net. The payment period shall commence upon receipt of the invoice, but not before receipt of the delivery or acceptance. It shall be extended accordingly if clause 3.4 is not complied with. In the event of defects, the payment period shall commence upon their rectification by the Supplier. Payment shall be made subject to inspection for freedom from defects, in particular for correctness, completeness and suitability of the delivery or service. Payment does not imply acceptance of conditions and prices and has no influence on TKM's claims for defects.

5. Transfer of risk and ownership

5.1. Risk and ownership of the delivery item pass to TKM on arrival of the consignment at the receiving point, in the case of delivery with installation or assembly and in the case of other work services after formal acceptance. The supplier guarantees that no rights of retention of title or third party rights exist in the delivery item.

6. Warranty, claims for defects

6.1. If defective goods are supplied, TKM is entitled, without prejudice to its other rights under statutory provisions, at its discretion to claim free replacement delivery or rectification, to demand reduction of the purchase price (abatement) or to demand full or partial cancellation (withdrawal). In urgent cases TKM may carry out the rectification itself or have it carried out by a third party. Any costs incurred in this connection are borne by the supplier.

6.2. TKM reserves the right of recourse against suppliers if products manufactured and/or sold by TKM are returned by their customers as a result of the defectiveness of the contract goods supplied by their suppliers, or if the purchase price is reduced as a result or TKM is held liable in any other way. No otherwise customary deadline need be set in this connection. In the event of recall, TKM is entitled to demand reimbursement of the expenses incurred by the defective delivery which TKM had to bear in relation to its customers.

6.3. The warranty period ends on expiry of 24 months from acceptance.

6.4. TKM is entitled to give notice of obvious defects within one month of receipt of delivery. In the case of hidden defects, notice must be given within two weeks of discovery.

7. Product liability

7.1. In the event of claims being made against TKM on the basis of product liability, the supplier is obliged to indemnify TKM against such claims if and insofar as the damage was caused by a defect in the contract goods supplied by the supplier and - in cases of fault-based liability - if the supplier is at fault. If the cause of the damage lies within the supplier's area of responsibility, the supplier shall bear the burden of proof. In such cases, the supplier shall bear all costs of any legal action or recall action. In all other respects, the statutory provisions shall apply.

8. Contractual penalties

8.1. If the supplier is in default, TKM is entitled, unless otherwise agreed in the contract, to claim a contractual penalty of 1% of the delivery value for each completed calendar week of default, but not more than 5% of the total or pro rata purchase price of the goods with which the supplier is in default. TKM reserves the right to prove that greater damage has been incurred. The supplier retains the right to prove that no damage at all or substantially less damage has been incurred. Acceptance of a delayed delivery does not constitute a waiver of the right to claim contractual penalties or damage caused by delay. Reservation of the contractual penalty is timely if TKM deducts the contractual penalty from the next invoice due. Partial deliveries are in principle inadmissible unless TKM has expressly agreed to them. Acceptance of a part delivery not requested by TKM does not affect TKM's rights in respect of the whole delivery, even if this is not expressly reserved at the time of acceptance. TKM is not obliged to accept deliveries before the agreed delivery date.

9. Provision of materials etc.

9.1. All drawings, documents, models, devices, tools, equipment and materials provided for the execution of orders remain the sole property of TKM. They must be clearly marked as the sole property of TKM GmbH and may be passed to third parties only with TKM's prior written consent. Damage to this property must be repaired by the supplier at his own expense. These items may be used only for fulfilling TKM orders and must be returned immediately on TKM's request. If material provided is processed, TKM is deemed to be the manufacturer; if it is combined or mixed, TKM becomes sole owner of the new item.

10. Industrial property rights

10.1. The supplier ensures that TKM does not infringe third-party industrial property rights by using the supplies and services in accordance with the contract. The supplier indemnifies TKM against all claims asserted against TKM for infringement of industrial property rights. License fees, expenses or costs incurred by TKM in avoiding or eliminating infringement of industrial property rights are borne by the supplier.

11. Secrecy

11.1. The supplier undertakes to treat all confidential information received by TKM under the contractual relationship as strictly confidential and not to disclose it to third parties unless this information has been expressly released by TKM or has become generally known without a breach of duty by the supplier. The supplier will not make the confidential information usable outside the contractual relationship or for his own purposes. The information remains the exclusive property of TKM - TKM reserves all rights to it. On request the supplier must return to TKM without delay and in full or destroy all information originating from TKM (including, where appropriate, all copies or records made) and items provided on loan.

12. Other contractual conditions

12.1. This agreement is governed exclusively by German law, to the exclusion of UNICITRAL sales law.

12.2. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is, at TKM's option, the head office or branch office of TKM.

12.3. There are no verbal collateral agreements. Amendments or additions to this agreement must be in writing to be effective. This also applies to any waiver of this requirement for writing.

12.4. The Buyer is not entitled to transfer rights under the contract to third parties without TKM's consent.

12.5. The contract and these General Conditions of Purchase are to be interpreted on the basis of the German text, even if the contract and/or these General Conditions of Purchase have been translated into another language.

12.6. Should individual provisions of this contract be invalid or unenforceable or become invalid or unenforceable after conclusion of the contract, the validity of the remainder of the contract shall not be affected thereby. The same shall apply if a loophole is found in this contract. The invalid or unenforceable provision or the gap shall be replaced by a valid and enforceable provision whose effects come closest to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete.

12.7. In the event of disputes arising from this contract, the partners undertake to conduct a mediation procedure with the aim of reaching an amicable settlement with the help of a jointly commissioned mediator before taking legal action. The mediation procedure shall be initiated by written notification of one of the partners. The partner shall thereby propose a mediator. The proposal is not binding for the other partner. If the partners are unable to agree on a joint mediator within one month of receipt of the notification, the mediation proceedings shall be deemed to have failed.

Contents - Status: December 2015

Last layout revision - Status: June 2022