

# General Purchasing and Ordering Conditions

Valid for all purchase orders from 1st July 2007.

**Our Purchasing Conditions only apply with respect to companies in the sense of § 14 BGB.**

## 1. Validity

- 1.1. These Purchasing Conditions apply exclusively to all present and future contractual relationships between KFV Karl Fliether GmbH & Co. KG and the supplier, unless otherwise agreed in writing. Our purchasing conditions also apply if we accept a delivery from the supplier, without reservation, in the knowledge of conflicting supplier's conditions or ones which deviate from our Purchasing Conditions.
- 1.2. Any secondary agreements made verbally are invalid. Alterations or supplements to the contract will be made by the management or by specific supplier's representatives. Verbal agreements or clarifications by other persons are only valid if they are confirmed in writing by the supplier's management.

## 2. Purchase orders.

- 2.1. Our Purchase Orders and also changes or supplements to the Purchase Orders require to be in written form. This also applies to any change to the requirement for the written form.
- 2.2. We are entitled to cancel our Purchase Orders without charge if the supplier does not confirm them unchanged within a week of receipt.

## 3. Prices.

Our Purchase Order prices are fixed prices and are quoted in Euros, free to the point of use stated by us and inclusive of sales tax, customs duties and charges and also packaging and freight costs.

## 4. Processing, delivery and packaging.

- 4.1. Delivery call-offs are binding with regard to the type and quantity of the goods called off and also the delivery time. Advance and partial deliveries require our consent.
- 4.2. A Delivery Note with Delivery Note No. is to be enclosed with each delivery, and on it shall be stated our Purchase Order No. and also the description of the contents by type and quantity and the number of packages.
- 4.3. The goods delivered must be packaged according to normal commercial usage. The supplier is solely responsible for adhering precisely to the given dispatch and packaging regulations. The return of the packaging requires a separate written agreement.

## 5. Delivery time.

- 5.1. Agreed dates and periods, even those in delivery call-offs, are binding. The arrival of the goods at the point of use stated by us is decisive for adherence to this.
- 5.2. If adherence to the date or period is impossible for the supplier, he must inform us of this without delay. The supplier has to compensate us for damages which arise from his late notification. Further claims due to delivery defaults are unaffected by this.
- 5.3. In the event of a delivery default we are entitled to the statutory entitlements. After the fruitless expiry of a suitable period, we are particularly entitled to demand compensation for damages instead of performance and withdrawal.

## 6. Transfer of risk, acceptance, right of ownership

- 6.1. The supplier will bear the risk of the shipment until proper acceptance of the goods at the point of use stated by us.
- 6.2. For delivery with set-up or fitting the risk does not pass to us until our acceptance; putting into service or utilisation does not replace our declaration of acceptance.
- 6.3. The ownership of the delivered goods passes to us after payment. We do not accept extended or augmented reservations of ownership.

## 7. Invoices, payments.

- 7.1. The number of the Purchase Order and also the most important features of the Purchase Order text and - where it appears on the purchase order - a notified Cost Centre number, and also the name of our employee who gave the purchase order to the supplier, must be apparent from each invoice.
- 7.2. Payment will be made in 14 days, calculated from delivery and receipt of invoice, with 4% early payment discount, or 2 % within 30 days or net within 60 days, based on the assumption of proper receipt of goods in accordance with Purchase Order.
- 7.3. Payments do not mean any recognition that the delivery or the service is in accordance with the contract. Our right to complain and our material defect claims are not impaired by any payment already made.
- 7.4. The transfer of receivables from us to a third party by the supplier is ruled out.
- 7.5. The offsetting of counter claims against our receivables or the utilisation of the right to withhold is only permissible if the counter claim has been accepted by us in writing or has legal force.

## 8. Obligations to investigate and notify.

- 8.1. A goods inwards check by us only takes place in respect of externally discernible damage and deviations in identity and quantity recognisable from the outside. We will complain of such defects without delay. We retain the right to make further goods inwards checks. We will notify the supplier of other defects as soon as they have been found in accordance with the conditions of the normal course of business. The supplier waives the right to object to delayed defects complaints.
- 8.2. For goods intended for further processing, the period for complaints about defects, contrary to § 377 HGB, does not begin until the goods are processed by us or at our customers.
- 8.3. In the event of complaints we are entitled to send back the rejected goods at the supplier's expense.

## 9. Warranty.

- 9.1. The goods being supplied must be made from perfect material suitable for the purpose and must comply with the accepted rules of the technology, the safety regulations and the agreed technical details. The reference to technical standards is used for the purpose of specifying the performance and is to be taken as a guarantee of properties. The goods being supplied must be free from the rights of third parties.
- 9.2. At our choice the supplier has to re-deliver or repair defective deliveries without delay. In urgent cases - particularly when there is a risk to operational safety or to fend off extraordinarily high damages - we can, after consultation with the supplier, undertake the repair ourselves or have it carried out by a third party. The costs incurred by this will be borne by the supplier.

- 9.3. If re-delivery or repair are impossible for the supplier, he has already failed once in these, or he is in default with them, we can withdraw from the contract, send back the goods at the risk and the expense of the supplier and supply ourselves in some other way.
- 9.4. The statutory defect claims incidentally remain untouched and we are entitled to them without restriction. We also have a right to withdraw from the contract and to compensation for damages instead of the whole performance where there is only a negligible deviation from the agreed property or only an negligible impairment of the usability.
- 9.5. Our entitlements from material defects in accordance with § 438 Clause 1 No. 2 BGB and respectively § 634a Clause 1 No. 2 BGB (construction and respectively normal use for construction) and also warranty pledges become invalid within 6 years of the transfers of risk in accordance with item 6. This period also applies where the claims are not in connection with a defect. This did not include official periods of limitation such as the regulations in accordance with § 438 Clauses 4 and 5 and respectively § 634a Clauses 4 and 5, those on the start of limitation, suspension of the period, the suspension and restart of the periods. If parts of the delivery by the supplier, which are independent in themselves, are replaced with faultless parts or repaired in fulfillment of his warranty obligations, the period of limitation for the replaced parts begins to run afresh in each case with the establishment of the contractual state.
- 9.6. In each case the supplier, even if he is not at fault, has to be responsible for supplies and services procured by him, as he is for his own supplies or services. This applies particularly with respect to defects.

## 10. Exemption for material defects and defects of title.

- 10.1. The supplier will exempt us from all claims which third parties raise against us - no matter what the legal basis - on account of a material defect or defective title or another fault in the product delivered by the supplier, and will reimburse us for the costs necessary for asserting our legal rights with regard to this.
- 10.2. The supplier is obliged to exempt us from all claims which could for example arise from the impairment of the commercial trademark rights or copyright or from the impairment of other rights of third parties. This does not apply when our employees have contributed to bringing about these impairments deliberately or by gross negligence; in this case § 426 BGB shall apply for the settlement between the parties. The period of limitation for these claims is 10 years, beginning with the conclusion of the particular contract.
- 10.3. If the goods delivered by the supplier exhibit a product defect in the sense of the Product Liability Law, the supplier is also obliged to reimburse any expenditure which arises from or in connection with a recall campaign conducted by us. We shall inform the supplier - so far as is possible and reasonable - about the content and scope of the recall measures to be carried out and give him the opportunity to comment. Other legal entitlements remain unaffected.
- 10.4. The supplier will exempt us from all claims by our customers which our customers assert on the basis of advertising's statements by the supplier, by one of the supplier's sub-suppliers (as the manufacturer in the sense of § 4 Clause 1 or 2 Product Liability Law) or a sub-worker of one of those mentioned and which would not exist, or not exist in this manner or level, without the advertising statement. This arrangement applies regardless of whether the advertising statement was made before or after the conclusion of disagreement.

## 11. Technical documentation, drawings, tooling etc.

- 11.1. Technical documentation, drawings, tools, moulds, models and other documents or objects, which we provide to the supplier for carrying out the order, remain our property; all copyrights and rights of use remain with us. The above named objects are to be marked as our property.
- 11.2. The supplier must keep the above named objects carefully, maintain them free of charge and if necessary renew them. The objects named must only be used to carry out the orders placed by us; the supplier must not hand them over to unauthorised third parties or otherwise make them accessible. The copying or duplication of the objects named is only permissible in so far as it is necessary for carrying out the orders placed by us.
- 11.3. After the end of the order the above named objects are to be returned to us automatically; in this respect the supplier is not entitled to assert a right of retention.
- 11.4. If the supplier procures the objects named in item 11.1 at our expense then he will in each case make available to us, free of charge and automatically, two design drawings for all tools, patterns and models and hereby now immediately undertakes, after payment by us, to transfer the ownership in them to us. We hereby immediately declare that we will accept this transfer of ownership. With the acceptance of our order the supplier also undertakes to keep the objects procured at our expense for us are, free of charge, until we ask for their release. We hereby immediately accept this application for the conclusion of a safe keeping contract. The supplier is liable for the loss, damage or misuse of the objects named until they are properly returned.
- 11.5. If the supplier is in default with his services or should the services become impossible for him, we have the right to request back, without delay, the objects named above which are in our ownership. We are entitled to the same right when it can be assumed on reliable evidence that the supplier cannot properly fulfil his contractual service in line with the contract either punctually or in some other way e.g. due to strikes, lack of purchased material, production breakdown, lack of authorisation by the authorities, act of God etc. The supplier is also obliged to hand over the above named objects free of charge when price increases are requested which go over and above the extent of general rises in costs (tariff increase, demonstrable material price increases).
- 11.6. We are exclusively entitled to copyrights, rights of use and other rights to development suggestions and ideas defined by us or contributed in the course of negotiations and these must not be utilised without our express consent either for the supplier's own use nor to satisfy the requirements of third parties. Commercial trademark rights may only be obtained on them by us.

## 12. Provision of materials.

- 12.1. Material which we provide for the carrying out of our orders remains our property. It is to be expressly marked as our property immediately upon acceptance by the supplier, stored separately from materials of the same or similar types and is to be marked as our property in the accounts books. It may only be used as part of the manufacturing intended.
- 12.2. Complaints about damage to or incorrect quantities of the material provided must be asserted by the supplier immediately the material is handed over by the freight company.
- 12.3. The supplier will only undertake machining and processing of the material for us. We immediately become the owners of the new objects which arise from this. If our material is processed, combined, mixed or mingled with other goods which are not our property then we are entitled to a share of the joint ownership of the new object in the ratio of the value of our material to that of the other goods processed, at the time of processing,

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combining, mixing or mingling. If the supplier acquires sole ownership of the object then it is taken as agreed that the supplier will transfer joint ownership proportionally to us and will keep this for us free of charge.

- 12.4. We reserve the right to ownership of tooling; the supplier is obliged to use the tooling exclusively for the manufacture of the goods ordered by us. The supplier is obliged to insure the tooling belonging to us at new value at his own expense, against fire, water and theft damage. At the same time the supplier will transfer to us with immediate effect all compensation entitlements from this insurance and we hereby accept the transfer. The supplier is obliged to carry out any necessary maintenance and inspection work and also upkeep and repair work on our tooling at his own expense and in good time. He must inform us immediately of any breakdowns; if he culpably omits to do this, then claims for compensation remain unaffected. Alongside this the supplier is obliged to return the tooling to us immediately when the conditions of item 14 are present.
- 12.5. The supplier has to inform us without delay of any impending or implemented distraint on material which is in our ownership and also any other impairment of our rights.
- 12.6. The supplier is obliged to insure the material provided by us against all normal risks at his own expense.
- 13. Assembly, reconditioning and other work carried out.**  
If the supplier furnishes assembly, reconditioning and/or other work the following applies:
- 13.1. In the conduct of all work the supplier has to comply with all statutory and other types of regulation (e.g. the rules of his employer's liability insurance association and also the accident prevention regulations).
- 13.2. He bears sole responsibility and liability for all damage caused by him or his representatives or assistants. He will exempt us from all claims for damages which are asserted against us in connection with his contractually owed supplies or services.
- 13.3. The supplier and his representatives or assistants have to ensure for themselves the careful and safe keeping of their own property brought onto our site and into our operating facilities.  
We are only liable for the loss of employees' personal effects or their destruction in the case of grossly negligent behaviour by an employee of KfV Karl Fliether GmbH & Co. KG.
- 14. Special right of termination.**  
If the supplier suffers a financial collapse or if even insolvency proceedings are applied for against his assets we have the right to terminate the contract without notice. Our other contractual and legal rights of termination remain unaffected by this ruling.
- 15. Confidentiality.**
- 15.1. The supplier is obliged to treat as confidential information which he has received from us in connection with the purchase order and not to pass it on to third parties. This does not apply if the supplier can prove that the information was already known to him or was made available to him by a third party entitled to do so, without any obligation to confidentiality, or that it was generally accessible or subsequently became so, without him being responsible for this.
- 15.2. The use of our purchase orders for advertising purposes or as references is not permitted.
- 15.3. We would point out that we, and if necessary also the companies associated with us, store personal data which is associated with the business relationship with the supplier.
- 16. Place of fulfilment, court of jurisdiction, applicable law.**
- 16.1. In contracts with traders the place of use specified by us is agreed as the place of fulfilment for all rights and obligations arising from the supplies or services.
- 16.2. If the customer is a trader, legal person under public law or a separate estate under public law, the exclusive court of jurisdiction for disputes from this contract is our business headquarters.  
The same applies if the customer has no general court of jurisdiction in Germany or his place of residence or normal place of abode are not known at the time of the bringing of the lawsuit.
- 16.3. The law of the Federal Republic of Germany applies. The conditions of the UN Convention on the international sale of goods do not apply.