
General terms and conditions of purchase

I. Overriding General Terms and Conditions

All contracts between Kleemann GmbH (Buyer) and our Suppliers shall be exclusively subject to the following General Terms and Conditions of Kleemann GmbH. Any agreements between said parties, modifications and collateral agreements thereto shall only be valid if made in writing. Any reference by the Supplier to its own General Terms and Conditions shall herewith be expressly disregarded. Our terms of purchase shall apply even if we are aware of any conditions of the Supplier's that conflict with our terms of purchase and we accept delivery of products or services by the Supplier or pay for the same. Our terms of purchase shall also apply to all future deliveries and services by the Supplier until such time as our new terms of purchase should take effect.

II. Orders

1. Supply contracts (orders and acceptance) and call orders as well as additions and modifications thereto must be made in writing. Orders and call orders may be effected by telecommunication.
2. If the Supplier does not accept an order within three weeks of receipt, the Buyer shall be entitled to cancel the order. Call-off orders shall become binding, at the latest, if they are not refused by the Supplier within two weeks of receipt.
3. The Buyer may demand such modifications to the construction and design of the goods as may be reasonably expected of the Supplier, in which case an appropriate mutual arrangement shall be made to allow for the consequences thereof, particularly in respect of the increased or reduced costs involved and the time allowed for delivery.
4. Cost estimates and offers of any kind shall be binding and free of charge.

III. Payments

1. In case of acceptance of early deliveries, the due date for payment shall be based on the originally agreed delivery date.
2. In case of defective delivery the Buyer shall be entitled to withhold payment in proportion to the value of the defective delivery until the order has been properly fulfilled.
3. Without the Buyer's prior written consent, which may not be unfairly refused, the Supplier shall not be entitled to assign its accounts receivable from the Buyer or have third parties collect them. In case of extended reservation of title, said consent shall be deemed given.
4. Prices may not be changed without the Buyer's consent.
5. Unless otherwise provided, payments shall be effected by the Buyer at a 3% cash discount within 14 days of receipt of the goods or net within 30 days.
6. Unless otherwise provided, all prices shall apply DDP as per Incoterms 2000 and shall include packaging. The prices shall not include VAT. The Supplier shall bear the material risk until acceptance of the goods by us or our authorized recipient at the stipulated place of delivery.

IV. Notice of defects

The Buyer must notify the Supplier of any defects immediately and in writing as soon as they are detected under the prevailing conditions in the ordinary course of business. To this extent the Supplier waives any defence based on late notification of defects.

V. Secrecy

1. Unless and until such time as it may demonstrably become public knowledge, all business or technical information to which we provide access (including features that may be gleaned from objects, documentation or software provided, and any other know-how) shall be kept secret from third parties and may only be made available to persons at the Supplier's own facilities who must be involved in order to use such information for the purpose of supplying us and who shall be likewise enjoined to secrecy. We shall retain exclusive ownership of said information, which may not be reproduced or commercially used without our prior written consent except for the purpose of supplying us. If we so request, all information we have provided (including any copies made or records thereof) and any objects we have lent must be returned to us, immediately and in full, or destroyed. We reserve all rights to such information (including copyrights and the right to register industrial property rights, such as patents, utility models etc.). If the information has been made accessible to us by third parties, this reservation of rights shall also apply for the benefit of those third parties.
2. Products that are manufactured according to documents designed by us, such as drawings, models, forms, dies or the like, or according to our confidential information or using our tools or reproductions thereof, may not be used by the Supplier itself or offered or supplied to third parties. The same applies mutatis mutandis to our printing orders.
3. Subcontractors shall be enjoined accordingly.
4. The contracting parties may not make use of their mutual dealings for advertising purposes without the other's prior written consent.

VI. Delivery dates and deadlines

Stipulated dates and deadlines shall be binding. All delivery dates and deadlines refer to receipt of the goods, including all necessary documents, by the Buyer. If delivery "free works" is not stipulated, the Supplier must make the goods available in good time, taking the usual time of transportation into account.

The Supplier may be required to furnish proof of having effected delivery.

The Buyer reserves the right to send back goods that are delivered too early. Additional expenses thereby incurred shall be borne by the Supplier.

VII. Delayed delivery

1. The Supplier shall be liable to the Buyer for any losses due to late delivery.
2. The amount of damages shall depend on the extent of the delay. Unless otherwise provided, 1% of the order value shall be payable in damages for each week of delay that has commenced prior to delivery.
3. The Buyer reserves the right to claim greater proven damages.
4. If we accept late delivery or performance without reservation, that shall not be deemed a renunciation of any damages to which we are entitled for late delivery or performance.

VIII. Force majeure

In the event of force majeure, industrial disputes, civil unrest, official action or other unforeseeable, unavoidable and serious occurrences, the contracting parties shall be released from their obligations of performance for the duration of the disturbance and to the extent of its impact. This shall apply even if the party affected is already in default of performance when these events occur. As far as may be reasonably expected, the parties shall immediately furnish the necessary information and adjust their obligations to the altered circumstances in good faith.

If necessary, the Supplier must furnish proof of the impact of the force majeure on the order in question.

IX. Quality and documentation

1. In respect of its delivery, the Supplier must adhere to generally accepted engineering standards, regulations regarding safety, accident prevention and protection of employees, standards of industrial medicine, the stipulated technical specifications and consumer protection regulations. Certification of conformity to CE standards must be provided upon delivery with each part supplied if so required by current law (pro tem: EC directives). China Compulsory Certification (CCC) must be submitted once by each Supplier upon first delivery of each new article added to the product range if so required by international law (at present: China National Regulatory Commission for Certification and Accreditation – CNCA). All necessary safety regulations must be furnished in writing with each shipment. Modifications may not be made to the goods without the Buyer's prior written consent.
2. In the absence of any firm agreement between the Supplier and Buyer regarding the nature, means, methods and extent of testing, the Buyer is prepared, at the Supplier's request, to discuss the testing with the latter, to the extent of its know-how and capabilities, in order to determine the level of testing technology that needs to be applied to the goods in question.
3. With regard to the technical documentation, moreover, the Supplier must keep separate records as to when, in what manner and by whom the goods have been tested for the features requiring documentation and as to the results of the required quality tests. The test records must be kept for 10 years and submitted to the Buyer if required. The Supplier must make the same requirements of its own suppliers to the extent provided by law.
4. If the authorities should order an inspection of the Buyer's production sequences and its test records to check for conformity to certain requirements, the Supplier agrees, if so requested by the Buyer, to accord the authorities the same rights in its facilities and to provide all reasonable assistance.
5. The Supplier takes all necessary measures to ensure safety within the supply chain during the production, warehousing, loading and transport. This includes especially, but not limited to, safeguarding of the business promises, protection of the goods against unauthorized access and employment of trustworthy personnel.

X. Warranty

1. Acceptance of delivery shall be subject to reservation as to the results of an inspection to ensure that the shipment is free from defects and, in particular, accurate, complete and serviceable.
2. Unless otherwise provided hereinafter, the provisions of law regarding material defects and defects of title shall apply.
3. As a rule, in case of defective delivery the Buyer shall be entitled to demand subsequent performance in the form of its choice. The Supplier shall be entitled to reject our choice of subsequent performance in cases meeting the requirements of German Civil Code (BGB) Section 439(3).
4. If the Supplier does not begin remedying the defects immediately upon receipt of our request to do so, we shall be entitled in cases of urgency, particularly to avert imminent dangers or greater losses or damage, to remedy the defects ourselves or through third parties at the Supplier's expense. Claims for material defects shall become statute-barred 24 months after commissioning of the goods or installation of the spare parts in question or, at the latest, 30 months after delivery to the Buyer unless the goods have been utilized for a construction in accordance with their customary use and have caused the defectiveness thereof.

5. In case of defects of title, moreover, the Supplier shall indemnify us against any existing third-party claims. Claims for defects of title shall become statute-barred after 10 years.
6. For parts of the goods supplied that are repaired during the period of limitation for our claims for defects, the period of limitation shall begin to run anew from the point at which the Supplier has satisfied in full our claims for subsequent performance.
7. The Supplier shall bear any expenses we incur due to defective delivery of the contractual goods, particularly costs of shipping and transport, labour, materials or a more extensive than usual inspection of the incoming goods.
8. If, due to defects in the contractual goods supplied by the Supplier, we recall products we have manufactured and/or sold or if the purchase price we obtain is reduced or any other claims are asserted against us due to said defects, we reserve the right of recourse against the Supplier, in which case we need not allow the Supplier the period of time otherwise required to remedy the defects.
9. We shall be entitled to demand of the Supplier reimbursement of any expenses we have had to bear in our dealings with the customer in question because the latter has asserted a claim against us for reimbursement of expenses necessary for subsequent performance, particularly costs of shipping and transport, labour, materials and import/ export duties.
10. Notwithstanding clause X(4), our claims in cases as per clauses X(8) and X(9) shall become statute-barred not less than two months after we have satisfied the claims asserted against us by our customer, though not more than five years after delivery by the Supplier.
11. If a material defect appears within six months of the transfer of risk, it shall be presumed that the defect already existed at the time of the transfer of risk, unless this presumption is incompatible with the nature of the goods or defect in question.
12. If a sample is sent by the Supplier, the properties of the sample shall be deemed warranted. The goods delivered must be in conformity with the sample. If the goods are custom-made, e.g. based on drawings, the latter shall take precedence over the sample.
13. The Supplier shall maintain a quality assurance system, the nature and scope of which must be suitable and up to state-of-the-art standards, and shall furnish proof thereof upon request. The Supplier undertakes to satisfy in full the quality requirements specified in the supply contract in respect of the goods supplied, production methods and documentation.
14. If any claims under strict liability are raised against the Buyer under foreign law that is not subject to disposition in respect of third parties, the Supplier shall assume liability vis-à-vis the Buyer to such an extent as it would were it directly liable.

XI. Product liability and recall

1. The Supplier promises to take out public and product liability insurance with an adequate sum insured: the policy must also cover measures to remedy defects in parts, accessories or fixtures in motor or rail vehicles or watercraft if these products, when delivered by the Supplier or third parties acting on its orders, were manifestly intended for use or installation in motor or rail vehicles or watercraft. Any further claims for damages to which the Buyer is entitled shall not be thereby affected.
2. If any claims are asserted against us for infringement of official safety regulations or under German or foreign product liability rules or laws, the Supplier shall be required to indemnify us against such claims if and to the extent that the loss or damage was caused by a defect in the goods delivered by the Supplier. In cases of liability based on fault, however, this shall apply only if the Supplier is at fault. To the extent that the Supplier is responsible for the loss or damage it shall bear the burden of proof. In the foregoing cases the Supplier shall bear all costs and expenses, including the costs of any legal or recall action that the Buyer may take

upon due and proper consideration of the matter. This shall also apply if public authorities oblige the Buyer to undertake a such recall action or if such a recall action is undertaken by a third party on behalf of the Buyer. Except as otherwise provided in the foregoing, the pertinent provisions of law shall apply.

XII. Execution of work

Any persons who carry out work on the company premises in performance of the contract must observe the applicable company regulations. We accept no responsibility for any accidents that occur to these persons on said premises unless they are caused by intentional or grossly negligent dereliction of duty on the part of our statutory representatives or vicarious agents.

XIII. Provision of materials

Any materials, parts, containers or special packing we provide shall remain our property and may only be used for the purposes intended. The processing of materials and assembly of parts shall be carried out for us. It is agreed that, in the ratio of the value of the materials provided to the aggregate value of the product, we shall be co-owners of the products that are manufactured using our materials and parts, which products the Supplier shall hold in safekeeping for us.

XIV. Proprietary rights

1. Provided that the goods are used in accordance with the terms of the contract, the Supplier shall be liable for any claims for infringement of proprietary rights or of applications for the same (hereinafter subsumed under the term "proprietary rights").
2. The Supplier shall indemnify the Buyer and its customers against any and all claims resulting from the use of such proprietary rights.
3. The contracting parties undertake to notify each other immediately of any risks of infringement that should come to their knowledge and coordinate efforts to oppose any alleged claims for infringement.
4. Upon inquiry by the Buyer, the Supplier shall report the use of published and unpublished proprietary rights – of its own or licensed – in the goods and of applications for the same.
5. We shall be entitled to use any software appertaining to the products to be supplied, including the documentation for the same, to the extent permitted by law (German Copyright Act (UrhG) Sections 69a ff.) as well as to use it with the stipulated performance features and to the extent necessary for contractual use of the product. Copies may also be made for this purpose. We shall be allowed to make a backup copy even without any express agreement to that effect.

XV. Use of production materials and Buyer's confidential information

Models, matrices, stencils, patterns, tools and other production materials as well as confidential information that are provided to the Supplier by the Buyer or paid for in full by the latter may not be used to supply third parties without the Buyer's prior written consent.

XVI. General Non-discrimination Act (AGG)

The Supplier declares that all its employees who actually or possibly come into contact with Buyer's employees in the course of discharging present or future contractual obligations to Buyer have been obliged to comply with the provisions of the German General Non-discrimination Act (AGG). In particular, the Supplier's employees are aware that it is prohibited to disadvantage, generally or sexually harass the Buyer's employees on account of their race or ethnic origin, sex, religion or ideology, age, disability or sexual identity. Should any of the Supplier's employees violate any of the provisions of the AGG in relations with the Buyer's employees should these employees or third parties consequently assert claims for material or non-material damage against the Buyer, the Supplier shall herewith be obliged to hold the Buyer harmless, in their internal relations, from all claims for damages including the costs of legal action.



XVII. General provisions

1. If either contracting party should stop payments or file for bankruptcy or judicial court-supervised or out-of-court composition proceedings, the other party shall be entitled to rescind the as yet unimplemented part of the contract.
2. If any provisions of these General Terms and Conditions or of other agreements made by and between the parties should be or become invalid, the validity of the rest of the contract shall not be thereby affected. The contracting parties shall be obliged to replace the invalid provision with an arrangement that comes as close as possible to it in terms of its economic effects.
3. The contractual relations between the parties shall be exclusively governed by German law to the exclusion of conflicting law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. The place of performance shall be the Buyer's registered office. A different place of performance may be agreed for delivery.
5. The venue for any legal disputes arising directly or indirectly out of the contractual relations that are based on these terms of purchase shall be the court having jurisdiction over the Buyer's registered head office. We shall be entitled, moreover, at our option to sue the Supplier at the court having jurisdiction over its registered office, its branch or over the place of performance.