

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. General

Our General Terms and Conditions of Purchase apply to the business transactions with suppliers, service providers and their subcontractors. We shall only acknowledge the general terms and conditions of business of our business partners that are contrary to or vary from our terms and conditions of purchase insofar as we have expressly approved the validity of such conditions in writing. Acceptance and payment of the Supplier's goods or services do not constitute approval.

2. Contracts and contractual amendments

2.1. Orders, delivery call-ups and contracts – as well as the amendment of these – are generally subject to the written form.

2.2. Verbal agreements are subject to written confirmation by KRACHT GmbH in order to be deemed valid.

2.3. The written form shall also be deemed satisfied by way of long-distance data transmission, e-mail or fax.

2.4. Cost estimates and offers are binding and free of charge unless something to the contrary has been agreed.

2.5. Orders are to be confirmed within 48 hours. We shall be entitled to cancel orders if the Supplier does not accept these within one week of receipt. Failure to provide confirmation of order shall result in a negative supplier assessment.

2.6. Release orders as part of order and call-off planning shall acquire binding force if the Supplier does not object within two workdays of receipt.

3. Delivery / consequences of date variations

3.1. Variations from our contracts and orders are only permitted by way of our prior, written, approval.

3.2. Agreed dates and delivery periods have binding force. Receipt of the goods or completion of the service at our premises or the commissioned place of destination shall be authoritative in respect of compliance with the delivery date or the delivery period.

The Supplier is to make available in due time goods that do not fall under the "DDP", "DAT" or "DAP" clause of Incoterms 2010, taking into account the time for loading and dispatch to be harmonised with the forwarding agent.

3.3. Subject to regulations to the contrary, all the necessary incidental costs such as travelling expenses, provision of the tool and disbursements for services (set up/assembly) shall be borne by the Supplier.

3.4. The statutory requirements apply to agreed deadlines that are not met. Circumstances that render compliance impossible or delay it are to be communicated directly and without delay to the KRACHT Purchasing Department.

3.5. The unconditional acceptance of a delayed delivery or performance does not constitute any waiving of claims for damages to which we are entitled regarding the delayed delivery or performance. This applies up until payment in full of the amount payable by us for the affected delivery or service.

3.6. Partial deliveries are subject to timely and prior written approval by the Buyer.

3.7. Subject to proof to the contrary, the values determined by us during incoming goods checks shall be deemed authoritative with regard to quantities, weights and measures.

3.8. The Buyer shall be granted the right to use software, including the agreed performance features, that is part of the scope of delivery, and the respective documentation, and to the extent necessary for the contractual use of the software or to the extent permitted by law (Sections 69a et seq. UrhG (German Copyright Law)).

3.9. The Supplier shall check the software for viruses, Trojans and other computer malware by way of current, commercially available, virus protection programs before it is supplied or installed on a system of the Buyer or its end customers.

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4. Force majeure

Force majeure, interruption of operations for which we are not responsible, industrial action, unrest, administrative measures and other unavoidable events shall release us for the duration of their existence from the obligation to accept in good time. During such events and within two weeks after they end, we shall be entitled – irrespective of the other rights – to wholly or partially withdraw from the contract provided these events last for a considerable period and our requirement falls considerably as a result of the other procurement that becomes necessary.

5. Notification of shipping and invoice

The details in our orders and deliveries and release orders apply. Invoices are to be sent in single copy to the respective printed address, stating the invoice number and other allocation features. It must not be enclosed with the consignments.

6. Pricing and passing of risk

If no special agreement has been entered into, the prices are to be understood as delivered to the stated place (DDP according to Incoterms 2010), including packaging. The Supplier shall bear the material risk until acceptance of the goods by us or our agent at the place to which the goods are to be delivered in accordance with the order. This does not include the statutory value added tax.

7. Terms and conditions of payment

Unless otherwise agreed, payment of the invoice is to be made either within 14 days at a 3% discount or within 60 days without a discount from the due date of the payment claim and receipt of both the invoice and the goods or rendering of the service. Payment is to be made subject to a review of the invoice.

8. Warranty claims and recourse

8.1. Acceptance shall be subject to an inspection to ensure deliveries are fault-free and, in particular, that they are also correct and complete, insofar and as soon as this is feasible in the ordinary course of business. We shall provide notification of defects without delay once they are identified. Insofar, the Supplier waives objecting to delayed notification of defects.

8.2. In the event of a material defect or defect in title, the Buyer shall be entitled to the statutory claims for defects in full insofar as another agreement is not entered into.

8.3. As a matter of principle, KRACHT GmbH has the right to choose the type of subsequent performance. The Supplier may reject the type of subsequent performance chosen by us if this is only possible by way of disproportionate effort and costs.

8.4. If the Supplier does not commence with the contractual subsequent performance, i.e. rectification of a defect or replacement delivery, without delay after being requested to do so by the Buyer, the Buyer shall be entitled, in urgent cases, in particular to avert danger or for the purpose of preventing/mitigating damage, carry out the type of subsequent performance chosen by the Buyer itself or have it carried out by third parties at the Supplier's expense. The Buyer shall have the same right in the event of failure or refusal to rectify defects or provide a replacement delivery.

8.5. If a third-party brings an action against the Buyer because third-party rights have been violated in conjunction with the Supplier's delivery/performance, the Supplier undertakes to render the Buyer exempt from such claims at the first written request.

8.6. Warranty claims shall fall under the statute of limitations - apart from cases of fraudulent intent - in 36 months unless the item has been used for a building in line with its customary intended use and has caused the defect. The statute of limitations commences upon delivery of the subject matter of contract (passing of risk).

8.7. If the Supplier honours its obligation to provide subsequent performance by way of a replacement delivery, the limitation period shall start anew for the goods delivered as a replacement once such goods have been delivered.

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8.8. The Supplier undertakes to bear the installation and removal costs incurred by the Buyer as a result of the defect as well as the transport costs to/from the place of use in those cases in which the faulty delivery/service demonstrably results in such costs. The Buyer therefore recommends that the Supplier take out special liability insurance for installation and removal costs as well as transport costs to/from the place of use. The sum insured in this respect should be at least € 150,000.00 for each individual case.

9. Quality assurance

9.1. The Supplier undertakes to guarantee permanent quality assurance of its goods by using a suitable quality assurance system, e.g. DIN EN ISO 9001 et seq. or equivalent, or as specified by the Buyer, during and after production of its goods.

9.2. The Buyer shall have the right to request proof of the Supplier's quality assurance system and satisfy itself as to the manner in which the tests and inspections are performed on site, if necessary also at subcontractors' premises, and conduct an audit at the Supplier's company.

9.3. The Supplier shall notify the Buyer without delay, and without being requested to do so, of any changes in the composition of the processed material or the constructive design of its supplies or services. Changes shall be subject to the Buyer's written approval.

9.4. The Buyer's quality assurance guidelines or quality assurance agreements, which the Buyer discloses to the Supplier, are optional components of the contract.

10. Withdrawal and termination rights

10.1. In addition to the statutory withdrawal rights, we shall be entitled to withdraw from or terminate the contract with immediate effect if

- The Supplier has discontinued the supply of its customers,
- A significant deterioration in the financial circumstances of the Supplier occurs or threatens to occur and as a result honouring a delivery obligation to us is jeopardised,
- The Supplier becomes insolvent or overindebted, or
- The Supplier discontinues its payments.

10.2. We shall also be entitled to withdraw from or terminate the contract if the Supplier applies for the institution of insolvency proceedings or comparable proceedings for the settlement of debts in respect of its assets.

10.3. If the Supplier has provided partial performance, we shall only be entitled to withdraw from the entire contract if we have no interest in the partial performance.

10.4. If we withdraw from or terminate the contract based on the aforementioned contractual rights of withdrawal or termination, the Supplier shall compensate us for the damage incurred as a result unless it is not responsible for the situation in which the withdrawal or termination rights are applicable.

10.5. Statutory rights and claims shall not be limited by the provisions stated in this sub-section 10.

11. Performing work

Persons performing work on the factory premises in executing the contract are to comply with the provisions of our company regulations. Liability for damage caused by these persons on the company premises shall be excluded unless such damage was caused by an intentional or gross negligent breach of duty by us, our legal representatives or our vicarious agents. The above limitations on liability shall not apply and we shall similarly be liable for negligence in the event of loss of life, physical injury or detrimental effects on health or if an essential contractual obligation has been violated. Material contractual obligations are those the honouring of which is essential for the proper execution of the contract and the observance of which the Supplier regularly relies on and may rely on. In the event of violation of a key contractual obligation, the claims for damages shall be limited to the foreseeable, typical occurring damage. Furthermore, in addition to the statutory regulations, the "External company instructions for occupational safety and environmental protection" of KRACHT GmbH apply to external companies on our company premises. These must be countersigned by external companies before they perform their activities.

12. Provision

Materials, parts, containers and special packaging provided by us shall remain our property. These may only be used as agreed. Materials shall be processed and parts assembled on our behalf. It is agreed that we are co-owners of the products manufactured using our materials and parts in the proportion of the value of materials provided to the value of the overall product, which the Supplier insofar holds in safe custody on our behalf.

13. Documents and secrecy

13.1. All business or technical information made available by us (including features which may be inferred from items, documents or software handed over and other knowledge or experience) must be kept secret from third parties as long as and to the extent that it is not proven to be public knowledge and may only be made available in the Supplier's own company to those persons who need to be referred to us to use such information for the delivery purpose and who are similarly placed under obligation to maintain secrecy. This information shall remain our exclusive property.

Such information may not be duplicated or used commercially without our prior, written, consent - except for deliveries to us. At our request, all information originating from us (including any copies or records made, if applicable) and items provided on loan are to be returned to us without delay 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 and utility models etc.). Insofar as such information has been made available to us by third parties, this legal reservation shall also apply in favour of such third parties.

13.2. Products that are manufactured according to documents designed by us, such as drawings, models and the like, or according to our confidential information or with our tools or copied tools, may neither be used by the Supplier itself nor offered or delivered to third parties.

14. Product liability

14.1. Insofar as the Supplier is responsible for damage that extends beyond the supplied goods, and legal action is taken against the Buyer as a result of the statutory product liability, the Supplier undertakes to render the Buyer exempt from third party claims for damages on the first demand insofar as the cause of the damage lies in the Supplier's area of responsibility and the Supplier itself is liable in external dealings.

14.2. As part of its liability in accordance with Section 14.1, the Supplier also undertakes to reimburse the Buyer's expenses that may arise from or in conjunction with a warning issued or recall campaign implemented by the Buyer. The Buyer shall inform the Supplier of the content and scope of the measures to be adopted - insofar as this is possible and reasonable - or harmonise matters with the Supplier.

14.3. KRACHT GmbH recommends that the Supplier maintain a product liability insurance policy to cover the risks set out in sub-sections 14.1 and 14.2. The amount of coverage should be at least € 1 million (one million euros) for each case of damage.

15. Export control and customs duties

The Supplier undertakes to inform us via its business documents of any licensing requirements for (re-)exports of its goods in accordance with German, European, US export and customs regulations as well as the export and customs regulations of the country of origin of its goods. To that end the Supplier shall make available the following information for the relevant goods items at least in its offers, order confirmations and invoices:

- The export list number in accordance with Annex AL to the German Foreign Trade and Payments Regulation or comparable list items of relevant export lists,
- The ECCN (Export Control Classification Number) in accordance with the US Export Administration Regulations (EAR) for US goods,
- The commercial origin of its goods and the components of its goods, including technology and software, whether the goods were transported through the US, manufactured or stored in the US, or manufactured using US technology.
- The statistical product reference code (HS code) of its goods, as well as a contact person at its company for clarification of any queries by us.

15.1. At our request, the Supplier undertakes to make available to us in writing all additional foreign trade data regarding its goods and their components and notify us in writing without delay (prior to delivery of corresponding goods affected by this) of all changes to the aforementioned data.

16. Code of conduct / occupational safety / environmental protection

16.1. As part of its entrepreneurial responsibility, the Supplier undertakes to ensure that, during or in conjunction with the manufacture and distribution of its goods or the rendering of its services, the statutory provisions, including the laws on the protection of the environment, are complied with, labour law provisions and laws in respect of the health of its employees are observed and child labour and forced labour are not tolerated. By accepting the order, the Supplier also confirms that it will neither engage in nor tolerate any form of bribery or corruption.

16.2. Furthermore, the Supplier shall ensure that its deliveries and services comply with the environmental protection, accident prevention and occupational health and safety regulations and other safety-related/relevant rules applicable at the Buyer's premises or other place of performance - insofar as notified in advance by the Buyer - so that adverse effects on people and the environment are prevented or reduced. To that end we recommend that the Supplier establish and further develop a management system, e.g. in accordance with DIN EN ISO 14001 or equivalent.

16.3. The relevant regulations in respect of handling and placing on the market hazardous substances, which are set out, for example, in the European Chemicals Regulation (REACH), the Chemicals Act and the Hazardous Substances Ordinance, must be complied with and applied.

16.4. If necessary, the Buyer shall have the right to demand proof of the operated management system or audit the Supplier in this case.

16.5. In the event that a Supplier repeatedly, and/or despite appropriate notice, behaves in a manner contrary to the law and fails to furnish proof that the breach of the law has been remedied as far as possible and that appropriate precautions have been taken to avoid breaches of the law in the future, we reserve the right to withdraw from existing contracts or terminate them without notice.

17. Place of performance

The place at which goods are to be delivered in accordance with the order or at which the service is to be rendered is deemed the place of performance.

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18. General provisions

18.1. In the event that a provision of these conditions and the additional agreements that are entered into is or becomes invalid, this shall not affect the validity of the conditions in other respects. The contracting parties undertake to replace the invalid provision with a regulation that comes closest to its economic success.

18.2. German law applies exclusively to the contractual relations by way of exclusion of the conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG).

18.3. The Altena Local Court or, depending on the amount in dispute, the Hagen Regional Court, shall be deemed the place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships based on these Terms and Conditions of Purchase. We are further entitled to bring legal action against the Supplier at our discretion at the court for its registered office or branch or at the court for the place of performance.