# Conditions of Purchase

## I. Scope of Application

1. These Conditions of Purchase apply exclusively; we do not recognise any terms and conditions of the supplier that conflict with or deviate from our Conditions of Purchase unless we have expressly agreed to their validity in writing. Our Conditions of Purchase shall also apply if we accept the supplier's delivery without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from our Conditions of Purchase.
2. These Conditions of Purchase only apply to entrepreneurs within the meaning of § 310 BGB.
3. These Conditions of Purchase also apply in their current version as a framework agreement for all future transactions of the same type with the supplier, without us having to refer to them again in each individual case; in this case we shall inform the supplier of any changes immediately.

## II. Order Confirmation, Contract Conclusion

1. Only our written orders are binding. We may revoke the order if the supplier does not confirm it in writing (order confirmation) within two weeks (or any other period specified in the order).
2. Any deviation of the order confirmation from our order, oral agreements before, during or after the conclusion of the contract and deviations from these terms and conditions of purchase requires our written consent and confirmation in order to be effective.
3. We shall only pay for offers, plans, drafts, etc. if expressly agreed in writing.

## III. Templates, Samples, Provided Materials

1. Templates, samples, tools, material etc. provided by us remain our property and are not to be passed on to third parties or used for purposes other than those agreed without our written consent. They must be secured against unauthorized use and inspection and, like the information provided by us, must be treated with strict confidentiality.
2. The ownership of templates, drawings, samples, tools, etc., which the supplier produces by agreement, including all rights of use, will pass to us upon payment of the agreed remuneration.
3. The supplier is obliged not to use the templates, drawings, samples, tools, materials etc. provided by us with the aim of obtaining, observing, examining, dismantling or testing our trade secrets.

## IV. Time of Performance, Contractual Penalty for Breach of Contract, Procurement risk

1. The agreed delivery dates are binding and must be strictly adhered to. The timeliness of deliveries or services is determined by their receipt at the place of receipt specified in the order; in case of contracts for work and services, deliveries with assembly and services, their acceptance. We must be informed immediately of foreseeable delays in delivery, performance or supplementary performance, without prejudice to our claims. The notification also includes the reason and the expected duration of the delay in delivery. Notification of a possible delay in delivery shall not change the binding nature of the agreed delivery date. The supplier shall bear the unrestricted procurement risk with regard to the services required for the delivery irrespective of fault (full assumption of the procurement risk).
2. If the delivery/performance date is exceeded for reasons for which the supplier is responsible, we are entitled to demand a contractual penalty in the amount of 0.3 % for each commenced working day of the delay, but not more than a total of 5 % of the order value, unless the supplier proves that we suffered less damage or no damage at all; our further specific claims (damages and withdrawal) - however, with the contractual penalty being offset - remain unaffected. If the acceptance of deliveries, services or subsequent performance is not subject to the reservation of the contractual penalty, the contractual penalty may nevertheless be claimed until the final invoice.
3. If the delivery/performance date is exceeded due to force majeure or the acceptance/acceptance of the delivery/performance is prevented, we may, after unsuccessful setting of a deadline, at our discretion withdraw from the contract in whole or in part or extend the deadline without the supplier having any claims for damages etc. in these cases.

## V. Place of Receipt, Shipment, Transfer of Risk, Invoices

1. In case of contracts for work, deliveries with assembly and services, the risk shall pass to us upon acceptance, in case of other deliveries upon receipt at the place of receipt specified in the order; unless otherwise agreed, "delivery duty paid" (= DDP, Incoterm 2020) place of receipt Zum Welplager Moor 8, 49163 Bohmte-Hunteburg, Federal Republic of Germany, including packaging, is considered agreed.
2. Simultaneous with loading, the supplier will send us for each order (or, if it is called off in several partial deliveries, for each call) a dispatch note by fax or e-mail (to our employee named as addressee in the order), in which among other things the order number, call number, actually delivered quantity and time of delivery are stated.

3. A delivery note, the necessary material certificates and, if applicable, the complete contractually owed documentation is to be attached to the delivery.
4. In case of delivery of goods in silo vehicles, we reserve the right to prepare a weighing record of a calibrated, alternatively public truck scale. Damage to the original packaging of delivered goods or the sealing of silo vehicles, which gives rise to doubts about the intactness or authenticity of the goods, entitles us to reject such goods.
5. Invoices shall be sent (including the duplicate to be marked as a duplicate) quoting our order number and the numbers of the individual items and shall only be due for payment if these details are complete.

## VI. Payments

1. Unless otherwise agreed, invoices are payable with 3 % discount within 14 days or net cash within 30 days after receipt of the invoice and goods/services. The payment period shall commence as soon as the delivery or service has been fully performed and a correct invoice has been submitted. We shall be in default if we do not pay in response to a reminder from the supplier after the due date and no objections or defences are raised.
2. Payments are not considered as acceptance of the delivery or service as being in accordance with the contract and are made subject to the reservation of invoice verification.
   The supplier only has the right of set-off and retention if his counterclaims have been legally established, are undisputed or acknowledged by us, or if a counterclaim resulting from the contractual relationship is affected, in particular if the counterclaim is based on a claim for payment which entitles the supplier to refuse performance. The supplier is only entitled to exercise a right of retention insofar as his counterclaim originates from the same contractual relationship.

## VII. Quality, Work Safety, Environmental Protection and Documentation

1. The supplier must comply with the currently recognised rules of technology, the regulations on safety and the protection of the environment and the agreed technical data for his services. Changes to the delivery item require our prior written consent. The supplier must set up and provide evidence of a management system that complies with the recognised rules (e.g. DIN EN ISO 9000 ff, DIN EN ISO 45001, SCC, SCP or similar). Additionally, the supplier must take into account the recognized rules of technology, the respectively valid legal and official regulations and operational rules and regulations of the customer. In particular, the supplier must observe the regulations and rules of the employers' liability insurance association, the "Principles of Prevention" (DGUV Regulation 1) and the generally recognised safety and occupational medicine rules. The supplier must comply with the contents of the German Occupational Safety Act (Arbeitsschutzgesetz) and the German Industrial Safety Ordinance (Betriebssicherheitsverordnung). This includes in particular the preparation of risk assessments for the activities to be performed and the work equipment used.
2. We reserve the right to assure ourselves of the effectiveness of the quality management system on site, e.g. according to VDA Volume 6 "QS - System Audit". Changes to the specified product features or the production process influencing them must be notified to us or discussed with us.
3. The supplier must constantly check the quality of the delivery items. The parties to the contract shall inform each other about the possibilities of quality improvement of the system, the processes and the products.
4. If the type and scope of the tests as well as the test equipment and methods have not been firmly agreed between the supplier and us, we are willing, at the supplier's request, to discuss the tests with the supplier within the scope of his knowledge and experience.
5. In case of features specially marked in the technical documents, the supplier must also record in special records when, in what way and by whom the delivery items have been tested with regard to these features and the results of these tests. The supplier must ensure compliance with the required specifications on an ongoing basis by means of suitable measures (e.g. product tests, process safeguards, etc.). The product and process characteristics that must be monitored, the safety measures, the test equipment and test methods, the associated quality certificates are determined by the supplier on his own responsibility. The supplier must comply with any specifications we may have given (e.g. regarding characteristics, safety measures, test equipment and test methods).
6. At our request, the supplier has to enclose appropriate quality certificates for the deliveries to prove that the required specifications are met.
7. Traceability of the material used and of the production process for the specially marked features must be ensured by means of appropriate marking.
8. The test documents have to be stored for ten years and presented to us if required. This applies in particular to characteristics requiring documentation in order to comply with the respective valid legal regulations. The supplier must place pre-suppliers under the same obligation to the same extent within the framework of the legal possibilities.

## VIII. Inspection of Received Goods, Liability for Defects

1. § 377 HGB (German Commercial Code) applies in such a way that we have to give notice of defects or transport damage that are externally visible within 10 working days from delivery, hidden defects within 10 working days from discovery. If the goods are forwarded or redirected, the start of the inspection period is considered postponed until arrival at the new destination. The costs for justified returns, replacement deliveries and rectification of defects are borne by the supplier.
2. The supplier guarantees that the goods to be delivered comply with German and EU law as well as all legal regulations for the protection of life, health and safety applicable at the place of delivery, insofar as applicable in each case.
3. The limitation period for our claims for defects according to § 437 No. 1 and 3 BGB (German Civil Code) is three years, in deviation from § 438 para. 1 No. 3 BGB; otherwise the statutory limitation periods and regulations apply.
4. We choose the type of subsequent performance; the right of the supplier according to § 439 para. 4 BGB remains unaffected.
5. If the item or service is defective as it is in breach of a guarantee given by the supplier, the supplier shall always be liable for damages regardless of culpability. If the item is defective without a guarantee being given, the supplier can only discharge himself from our claim for damages or compensation for futile expenses if he proves that the non-fulfilment of his obligations is due to an impediment beyond his control and that he could not reasonably be expected to consider the impediment when concluding the contract or to avoid or overcome the impediment or its consequences; if the supplier used the services of a third party, he can only relieve himself if he himself is exempt in accordance with these conditions and if the third party itself would also be exempt in accordance with these conditions if these conditions applied to him.
6. If the delivery or service is defective, the exercise of our rights due to the defects does not require a deadline to be set, in particular also if the supplier delivered after the occurrence of the delay or if we have a special interest in the immediate exercise of our rights to avoid our own delay vis-à-vis our customers or other urgency. If the supplier delivers completely or substantially new goods or repairs them to this extent within the scope of subsequent performance, the periods of limitation for the claims for defects will start anew.
7. The supplier guarantees that the delivery or service is free from industrial property rights of third parties, in particular that these do not conflict with the contractually intended use at the place of performance or a contractually agreed destination.
8. The supplier is obliged to employ in the execution of our orders only such personnel that possess the necessary official approvals and further undertakes to indemnify us against all claims in the event of an infringement.

## IX. Property Rights of Third Parties, Observation of Legal Regulations

1. The supplier warrants that no patents or other industrial property rights of third parties in Germany or abroad are infringed by his delivery/service and its utilisation. Insofar as the delivery or service performed by the supplier infringes third-party industrial property rights, the supplier indemnifies us against claims of the holders of such rights, insofar as the supplier is responsible for such infringement.
2. If the use of the delivery/service is restricted by existing third party industrial property rights, the supplier must either obtain the corresponding licence at his own expense or change or exchange the affected parts of the delivery/service in such a way that the use is no longer restricted by third party industrial property rights and at the same time complies with the contractual agreements.

## X. Confidentiality

1. The supplier is obliged to treat all information provided by us within the framework of the contractual relationship as confidential and to use said information exclusively for the purposes of the respective order processing. The supplier is not allowed to pass on or make this information available to third parties, except for the passing on of this information to employees, agents and consultants who are involved with the processes and who absolutely need the confidential information for their work. The supplier guarantees and warrants that this agreement will also be observed by these persons; he will oblige them to the same extent.
2. Confidential information within the meaning of these Conditions of Purchase are all information, notes, documents, data carriers, drawings, samples and other documents, regardless of whether they are transmitted orally, in writing, electronically or in any other way, which the supplier receives with regard to the business relationship with us and its initiation as well as the respective order processing, as well as all written or other information, documents and records containing information on principles, working methods, production, new developments, improvements, ideas, objectives, customer data and other details and information from and about us. In addition, confidential information includes information about the business relationship between the parties, its scope and its concrete form.

3. The confidentiality agreement does not apply to such information which

3.1 at the time of disclosure
- are generally known;
- are published;
- are part of general professional knowledge
- are generally state of the technical art;
- are individually known to the supplier. The supplier will inform us about such prior individual knowledge in writing;

3.2 after the time of disclosure
- become generally known without any involvement on the part of the supplier that violates the confidentiality agreement;
- become individually known to the supplier by third parties without such third parties violating a confidentiality obligation regarding the confidential information;
- are recognized or developed by the supplier independently of the confidential information;
- are disclosed by us to the public in writing;
- must be disclosed in accordance with mandatory legal provisions.

4. If the supplier should be legally obliged to disclose confidential information to third parties, he will notify us in advance, immediately after he himself has become aware of this obligation. The supplier will only pass on or publish that part of the confidential information to third parties which the supplier is obliged to pass on or publish according to the relevant legal regulations.
5. Documents and other records containing confidential information which are handed over to the supplier must be returned upon first request. This also applies to copies of all kinds. Documents prepared or further processed by the supplier containing such confidential information must be destroyed on request and the completeness of return and destruction must be confirmed in writing.
6. The obligation of confidentiality remains in force even after termination of the cooperation or the order as long as the information received has not become obvious through no fault of the supplier, his employees, consultants or other persons commissioned by the supplier in any way, for which the supplier bears the burden of proof.
7. For each case of culpable violation of the aforementioned confidentiality obligations, the supplier is obliged to pay a contractual penalty to be determined by us at our reasonable discretion and, in the event of a dispute, to be reviewed by the competent court. The assertion of further damages, but with full crediting of the contractual penalty, remains unaffected.

## XI. Withdrawal from the Contract due to an Important Reason

In the event that the supplier ceases to make payments, appoints a temporary insolvency administrator or insolvency proceedings are opened against the supplier's assets, we are entitled to withdraw from the contract in whole or in part with immediate effect. In the event of withdrawal, we are entitled to make use of existing facilities and previous deliveries and services of the supplier in exchange for appropriate remuneration in order to continue work.

## XII. Choice of Law, Place of Jurisdiction, Place of Performance, Language

1. The law of the Federal Republic of Germany applies with the exclusion of the reference norms of the German International Private Law and the UN-Convention of the International Sale of Goods (CISG).
2. The place of jurisdiction for all disputes with merchants is 49163 Bohmte-Hunteburg, Federal Republic of Germany.
3. Place of performance for contracts for work and services, deliveries with assembly and services is the place of acceptance determined by us, for deliveries the place of receipt specified in the order.
4. Order confirmation, dispatch note, delivery note, invoice and other documents to be provided by the supplier are to be sent in German, unless otherwise agreed.

**Keil Anlagenbau GmbH & Co. KG**
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