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- 1. General Terms and Conditions of Purchase**
- 1.1 The delivery and services that are provided by the supplier and contractor (hereafter called the 'Seller') to the company Hans-Jürgen Keil Anlagenbau GmbH & Co. KG (hereafter called the 'Purchaser') shall be subject to and exclusively incorporate the following terms and conditions of purchase. Any conflicting terms of purchase or deviating conditions of the supplier, contractor or service provider etc. shall be expressly excluded. Neither the silence on the part of the Purchaser as a response to the dispatch of the terms and conditions of the Seller nor the missing objections on the part of the Seller shall signify an acceptance of the Seller's general terms and conditions of sale.
- 1.2 Any contractual modifications, amendments or supplementary oral agreements shall only apply if the Purchaser explicitly agrees to the contractual modifications, amendments or additions or to their parts in writing.
- 1.3 These terms and conditions of purchase shall also apply for all further business relations with the Seller even if no particular reference is made to this fact.
- 2. Inquiry / Order**
- 2.1 All inquiries are generally not binding.  
2.2 All quotations must be submitted free of charge.  
2.3 Orders, conclusions of contract and delivery schedules as well as their modifications and supplements may only be made in writing and exclusively with regard to the individual case in question. Only written orders with binding signatures shall be considered as valid. Any oral agreements, either prior to or after a contract conclusion, shall not be valid until after our confirmation in writing.  
2.4 Orders placed by means of data transmission, automatically readable data carrier mediums, Internet or e-mails can only be processed after a prior separate and written agreement.  
2.5 The Seller is obligated to accept the order by the Purchaser in writing within a time limit of one week.  
2.6 The Seller may only place orders with sub-contractors upon our prior agreement.  
2.7 The items to be delivered shall be ordered according to the Seller's range of products and services or according to the Purchaser's specifications. The Seller has to make sure it has the order specifications available for processing and must request these later if required. The Seller must make sure that the material stated in the order is adequate for the purpose. Should the Seller raise any concerns about the applicability, the Purchaser is to be informed without delay.  
The Purchaser is entitled to require an amendment of the delivery item after a conclusion of the contract if reasonable. Any impact arising from an amended or increased or decreased costs and the delivery time are to be agreed upon amicably.
- 3. Price / Conditions of Delivery**
- 3.1 The price stated in the order is binding. If no deviating written agreement is available, the price shall include the delivery as delivered and duty paid, DDP (Incoterms 2000) with the packing. Should the Parties agree upon a free delivery deviating from this, the Seller shall bear the risk until the item has been delivered to the Purchaser or until it has reached the receipt point denominated by the Purchaser; the Seller shall bear the full costs incurred by the delivery of the items including the customs fees and the taxes.  
3.2 A delivery note is to be attached to each delivery. This delivery note has to indicate the accurate denotation of the item to be delivered, the quantity to be delivered as well as item and order number stated by the Purchaser. The data previously mentioned are to be stated in all bills of lading, accompanying documents, customs documents as well as any further documents specified in the purchase order. Increased processing costs incurred by any incorrect or missing reference notation as well as the consequences of the delays due to the increased handling efforts shall be borne by the Seller.
- 4. Packing**
- 4.1 The goods shall be sufficiently packed to avoid any damage during the transport. Adequate packing material in the required scope shall be used for this purpose only. If required by the Purchaser, all resulting secondary, transport and sales packaging are to be collected by the Seller at the place of performance at the Seller's expense, or to be collected by a Third Party.
- 5. Delivery Date**
- 5.1 The delivery date stated in the purchase order shall be binding. The date of delivery or period of delivery mentioned in the purchase order refers to the arrival of the delivery at the Purchaser's facility or at the receipt point specified by the Purchaser. The Seller shall not be entitled to any changes of the delivery date without the Purchaser's explicit and written agreement. In case the deliveries should take place prior to the delivery date stated in the purchase order, the Purchaser shall reserve the right to store the goods at its premises or a forwarding company agreed upon shall provide the storage until the delivery date stipulated in the purchase order at the Seller's expense.  
5.2 The Seller shall give the Purchaser notice in writing of any prospective failure to deliver the goods by the delivery date. In compliance with the commercial duty of care, the Seller shall notify the Purchaser without delay of any such circumstances leading to a delayed delivery date.  
5.3 If the Seller fails to deliver the products or services in accordance with the contract, or fails to deliver by the delivery date, the Seller shall pay to the Purchaser liquidated damages calculated at the rate of 1% but not exceeding 5% of the price of the respective purchase order starting of the date of default. The Seller is entitled to claim the penalty during the performance of the contract.
- 5.4 Independent of negligence, the Seller shall be responsible for an unlimited procurement of the products and services required for its delivery and services.  
5.5 The Seller's failure to comply with the delivery date in accordance with the contract shall entitle the Purchaser to further statutory claims such as compensation for the damage due to delay in time during the performance of the contract, liquidated damages instead of performance, or cancellation of the contract without notice of default and grace period notification.
- 6. Quality and Documentation**
- 6.1 The Seller warrants that all products and services supplied shall comply with the approved technical rules, safety regulations and the technical data agreed upon. A prior written agreement by the Purchaser is required for any changes or modifications of the supplied items. The Seller shall arrange for and prove a quality management system according to the approved regulations (e.g. DIN EN ISO 9000 pp., VDA 6 (Federation of German Automobile Manufacturers) or similar).  
6.2 The Purchaser reserves the right to satisfy itself on-site of the Seller's measurement for the effectiveness quality management system, e.g. according to VDA volume 6 "QS Systemaudit". The Purchaser is to be notified of any changes in the specified product characteristics or of the manufacturing process affecting these and a prior consultation with the Purchaser is required.  
6.3 The Seller shall be required to inspect the quality of its delivery items on a continual basis. The contractual parties shall inform each other of any possibilities to improve the quality at the system, at the processes and of the products and services.  
6.4 If the type and the scope of the tests as well as test mediums and methods have not been previously fixed between the Seller and the Purchaser, the Purchaser shall agree to discuss the tests within the framework of its knowledge, experience and possibilities with the Seller at the request by the same.  
6.5 The characteristics especially indicated in the technical documents are to be registered by the Seller, and they are to be recorded as to the manner and person of testing with regard to these characteristics and the test results are to be on the record. The Seller shall make sure that its compliance with the specific requirements is kept continuously by means of suitable measures (e.g. product tests, process validation etc.). The product and process characteristics, the measures of protection, the testing mediums and methods and the respective quality assessments to be monitored shall be determined at the Seller's own responsibility. The Purchaser's specifications of characteristics, measures of protections and testing mediums and methods are to be observed and complied with by the Seller.  
6.6 The Seller shall attach corresponding proofs of quality compliance concerning the required specifications to the products and services supplied.  
6.7 The traceability with regard to the material used and to the manufacturing process concerning the characteristics especially indicated is to be marked by means of a suitable identification.  
6.8 The test reports are to be kept for ten years from the date of testing and shall be presented to the Purchaser at its request. This applies especially for the compulsory documentation of the characteristics' test results and for all characteristics requiring current statutory compliance. The Seller shall commit its sub-contractors to the statutory compliance within the framework of the possibilities regulated by law in the same scope.
- 7. Invoices and Payment**
- 7.1 Invoices are to be submitted to the Purchaser under separate cover after each delivery in the proper form. Each invoice shall indicate the exact denotation, quantity and material of the products or services supplied, the Purchaser's order number and the customs tariff number as well as the weight of the product. Should the Seller fail to provide this information, the Purchaser shall not assume responsibility for any processing delay.  
7.2 The statutory value added tax is to be reflected separately.  
7.3 Payments shall be settled after receipt of invoice when the delivery of the products or services has arrived and according to the terms and conditions stated in the purchase order.  
7.4 Unless otherwise stipulated, the Purchaser shall pay the price within 14 days with a cash discount of 3 per cent or within 45 days net after delivery/services and receipt of invoice. The Purchaser shall be entitled to withhold any payments for reasons of deficiency and after notification of defects until the claim has been settled.  
7.5 The Seller is not entitled to assign its claims to us or authorize Third Parties to collect without the Purchaser's prior written consent whereat such acceptance is not to be unreasonably withheld.
- 8. Material Defect Claims**
- 8.1 The Seller shall guarantee that its products or services are flawless and that characteristics agreed upon are available. Moreover, the Seller shall be fully liable for the state of the art of all products and services and guarantee that all its products and services shall correspond to the requirements of generally approved technical specifications and occupational health and safety provisions by the authorities, professional and trade associations and in full compliance with the current statutory regulations.  
8.2 The Seller shall use environment-friendly products and implement nonpolluting processes for its deliveries and services including those of its subcontracting Third Parties providing any supplies or auxiliary services with regard to their economic and technical feasibility.  
8.3 The Seller shall be held responsible for the environmental safety of the products to be delivered including the packing material. The Seller shall be liable for all consequential losses caused by any violation of its statutory duties concerning proper disposal of waste.

Hans-Jürgen Keil Anlagenbau GmbH & Co. KG  
Amtsgericht Osnabrück, HRA 5805

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Es gelten unsere allgemeinen  
Geschäftsbedingungen

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- 8.4 The Seller shall guarantee that each delivery item shall comply with the item ordered by the Purchaser within the warranty period of 36 months and is free from any defects that will diminish the delivery item value or its suitability or rescind its intended use or usual purpose. The Seller shall also guarantee that the delivered goods or the use of the delivered goods do not breach Third Party property rights, especially any patent or proprietary rights.
- 8.5 Unless otherwise agreed, the delivered goods will be checked for defects within a reasonable period of time by the Purchaser. The Seller shall be immediately notified upon detection of any defects. Unless a longer period of time is required due to special circumstances, the notification shall be deemed as immediate when the Seller receives it within 10 days from the date of delivery. The Purchaser shall have the right to object to any defects that are not detected until the delivered item has been put to use or at the point of commissioning, directly after having detected such faults. In this case, the Seller shall waive its right to object late notification.
- 8.6 If the Seller fails to repair the defect within the period granted for that purpose, or if an immediate need for urgency should persist or in case of a delay in repairing the defects on the part of the Seller, the Purchaser shall have the right, without granting any additional period of time, to effect the repairs at the Seller's expense; the substituted performance will be carried out by the Purchaser himself or, the Purchaser is entitled to have a subcontractor perform the repair work according at its own option.
- 8.7 The Purchaser's right to claim damages shall be unabridged. If a defect is detected within the statutory limitation period, it shall be assumed that the defect has already been present during the transfer of perils unless this assumption is deemed to be inconsistent with the nature of the defect. The Seller shall handle the its supplementary performance according to the operational interests of the Purchaser. If the supplementary performance is not effected by the Seller within a reasonable period of time, it shall be deemed to have been failed, or if the period of time is found to be expendable, the Purchaser shall have the right to claim its subsequent statutory damages. The Purchaser shall expressly reserve its rights as to its other statutory provisions as well as to any guarantees it is entitled to.
- 8.8 Unless otherwise agreed, the statutory period of limitation shall be 36 months, calculated from the time of delivery or the commissioning, or from the point of time when the delivery item has been put to use. For those items that have been overhauled or repaired within the statutory period of limitation, the period of limitation shall commence anew at that point of time when the Seller has fully satisfied the Purchaser's requirements.
- 8.9 The Seller shall be liable for the delivery of any goods or services by its subcontractors in equal scope of goods and services as delivered by the Seller directly.
- 8.10 If the Seller repeatedly delivers goods with defects, the Purchaser shall have the right to terminate the contract without notice.
- 9. Liability**
- 9.1 The Seller shall be liable according to the statutory provisions.
- 9.2 If the Seller be responsible for a product defect, it shall on first demand indemnify and hold the Purchaser harmless against the claims of Third Parties to the extent that the cause of the damage lies in the Seller's power or field of organization and the Seller itself puts the external relationship at risk. The Seller shall be obligated to maintain a product liability insurance at its own expense, covering a reasonable amount of coverage customary in a trade, however EURO 5.000.000,00 (five million Euros only) as a minimum coverage, and present this liability insurance to the Purchaser at its request. Any other claims for damages by the Purchaser shall remain unaffected.
- 9.3 The Seller shall bear all the costs and expenses incurred to the Purchaser in connection with special activities by the Purchaser such as public warnings or recall campaigns. The Purchaser shall inform the Seller immediately of such performance as well as of the contents and the scope of the measures to be carried out.
- 9.4 The Seller shall be obligated to indemnify and hold the Seller fully harmless against any damage claims of Third Parties.
- 10. Rescission of Contract**
- 10.1 Upon good cause, the Purchaser shall have the right to rescind the purchase order at any time (§433 German Civil Code).
- Insolvency proceedings or a settlement petition by the Seller shall be especially deemed as a good cause, or if the conditions for insolvency proceedings or a settlement petition by the Seller have been met, or if the Seller fails to carry out its supplementary performance within a reasonable period of time, previously presented to the Seller by the Purchaser in written form.
- 11. Confidentiality**
- 11.1 The Seller is obligated to treat all non-public commercial and technical details that are disclosed to it during the business relationship as strictly confidential. The Seller shall especially treat production means and methods of the Purchaser as well as its inquiries, purchase orders, goods and services as a trade secret.
- 11.2 All information and documents handed over to the Seller by the Purchaser or those that the Seller compiles according to the Purchaser's information, such as drawings, illustrations, calculations, models, templates, samples or other documents, are to be strictly confidential by the Seller. They shall not be made accessible or handed over to Third Parties unless by the Purchaser's express
- prior written consent. The confidentiality agreement shall also apply upon completion of the contract.
- 11.3 The subcontractors are to be made aware of the confidential nature of the confidential information and of the obligations under this agreement on the Seller.
- 11.4 In its communication to any Third Parties, the Seller shall be allowed to refer to the present business relation with the Purchaser according to a prior written consent on the part of the Purchaser only.
- 12. Defects of Title**
- 12.1 The Seller shall ensure that no intellectual property rights or other national or international proprietary rights of Third Parties are violated in connection with its delivered items.
- 12.2 If the Purchaser is accessed by a Third Party as to an infringement or any other breach of contract in connection with the production, erection or use of the delivery item, the Seller shall be obligated to indemnify the Purchaser at its first request.
- 12.3 The Seller's indemnity obligation relates to all expenses necessarily incurred by the Purchaser arising from or in connection the recourse claimed by a Third Party.
- 13. Reservation of Title**
- 13.1 The Seller's regulations concerning the retention of title shall not be accepted by the Purchaser.
- 13.2 If prepayment is made by the Purchaser upon placing an order for new delivery items, the Seller shall waive its right to retention to title, the amount of which shall correspond to the prepayment of the delivery item in the current production process, and it shall especially be meant for the material and / or construction or single components.
- 13.3 If parts or materials are placed at the Seller's disposal by the Purchaser, the Purchaser shall retain title. The delivery items shall be processed and transformed by the Seller for the Purchaser.
- 13.4 If the object, placed by the Purchaser to the Seller's disposal for the production of the delivery item, is inseparably mixed or combined with some other items not belonging to the Purchaser, the Purchaser shall acquire the co-ownership of the new item in relation of the reserved item's value to the other mixed or combined objects at the point of time when the objects were mixed or combined. In case the object is processed in such a manner that the Seller's item is considered as the main delivery item, it shall be regarded as agreed that the Seller assign proportional co-ownership to the Purchaser. The Seller shall hold the sole property or the co-property in safe custody for the Purchaser.
- 13.5 All tools shall be and remain the property of the Purchaser. The Seller is obliged to use the tools exclusively for the production of the goods ordered by the Purchaser. The Seller is further obliged to insure the Seller's tools against damage by fire, water and theft at its own expense. The Seller is obliged to have the required maintenance and inspection work to be carried out in due time and at its own expense. Events of faults are to be reported to the Purchaser immediately. Failure to meet the obligations shall lead to a claim for damages.
- 14. Place of Jurisdiction, Applicable Law**
- 14.1 The place of performance and jurisdiction shall be either Osnabrück or the Seller's general place of jurisdiction at the Purchaser's option in the event of any and all legal disputes arising indirectly or directly form this contractual relation between the two parties.
- 14.2 The contractual relationship shall be subject to the law of the Federal Republic of Germany.
- 14.3 The UN convention dealing with contracts for international trade of goods of April 11, 1980, [CISG] as well as the German law covering international conflict of laws shall not be applicable.
- 14.4 The Seller shall agree that the Purchaser will process and treat the Seller's personal data, acquired within the scope or in the connection with the business relationship, in accordance with the legislation and in particular with the German Federal Data Protection Law .
- 14.5 Should any of the contractual provisions pertaining to these "General Terms and Conditions of Purchase" be or become partly invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions. In this case, the Seller and the Purchaser are obliged to replace the void provision with another provision permitting as closely as possible the same economic success.
- 12. Validity of Conditions of the Contract**
- 12.1 The English version of the "General Terms and Conditions of Purchase" is a convenience translation of the original German version. The German version is legally binding. (Issue date: 06 / 2010)
- Registered office of the company: D-49163 Bohmte-Hunteburg  
Registration office: Local court Osnabrück  
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Hans-Jürgen Keil Anlagenbau GmbH & Co. KG  
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Es gelten unsere allgemeinen  
Geschäftsbedingungen

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