

General Terms and Conditions of Purchasing and Ordering of Kupferrheydt GmbH

(Version: October 2016)

I. Scope

1. These General Terms and Conditions of Purchasing and Ordering (hereinafter: "*General Purchase Conditions*") shall apply to all orders and enquiries of Kupferrheydt GmbH (hereinafter referred to as the "*Purchaser*"). They shall form part of all contracts, which the Purchaser concludes with its contracting parties (hereinafter referred to as the "*Supplier*") regarding the delivery of goods and services. They shall also apply to all future contracts, even if they are not again separately agreed. The latest version of these General Purchase Conditions shall apply.
2. The General Purchase Conditions shall apply exclusively. Any terms and conditions of the Supplier in conflict with or deviating from the General Purchase Conditions - even if the contract is performed without reservation - shall not be accepted by the Purchaser unless the Purchaser has expressly agreed to their validity in writing. Differing agreements shall only apply to a particular contract and not to future contracts unless otherwise explicitly agreed in writing.

II. Offers submitted by Supplier

Offers and cost estimates submitted by the Supplier shall be provided free of charge for the Purchaser and shall be binding on the Supplier. The Supplier must strictly adhere to the Purchaser's enquiry in terms of quantity and quality when preparing its offer and /or cost estimate and, in the event of any deviations, explicitly indicate such to the Purchaser in writing.

III. Orders

1. Orders shall only be binding on the Purchaser if they are placed in writing. Agreements, ancillary agreements or changes made orally or by telephone shall require written confirmation from the Purchaser to be binding. This shall also apply to any additionally agreed goods or services. Silence on the part of the Purchaser with respect to proposals, claims etc. of the Supplier shall not under any circumstances constitute consent.
2. Each order, which the Supplier wishes to accept, must be confirmed in writing by the Supplier. The Purchaser shall be entitled to freely cancel the order until the relevant order confirmation is received from the Supplier.
3. An order confirmation from the Supplier that deviates from the order shall not be accepted by the Purchaser, even if the Purchaser does not explicitly object to it, unless the Purchaser expressly states in writing that it agrees to the Supplier's new offer contained therein.
4. If the Supplier comes to realise based on its expertise that an order is incomplete or the purpose of the order cannot be achieved by the good or service offered, it must immediately and fully inform the Purchaser in writing.
5. The Purchaser shall be entitled to request the Supplier to make changes to the goods or services and the delivery and service period (delivery and service dates/deadlines) even after the conclusion of the contract, insofar as this is reasonable for the Supplier taking due account of the interests of both parties. The impact of such changes on both parties, especially with regard to additional or reduced costs, shall be appropriately taken into account.
6. Orders shall be treated confidentially. The Supplier may only name the Purchaser as a reference vis-à-vis third parties with the latter's prior written consent.

IV. Delivery/service period

1. The delivery/service dates and deadlines shall be binding unless the Supplier has expressly rejected these in writing or the Purchaser has agreed different delivery/service dates or deadlines with the Supplier in writing. In the event that delivery/service dates or deadlines are not specified in an order, the delivery/service dates or deadlines specified by the Supplier shall be binding. Receipt of the goods at the shipping address or place of unloading designated by the Purchaser or - if formal acceptance is required - the date of the successful acceptance, otherwise the date on which the service is rendered, shall determine adherence to the agreed delivery/service dates or deadlines. Unless otherwise explicitly agreed in writing, the delivery and service deadlines shall commence on the day the order confirmation is received at the Purchaser, but at the latest after all details necessary to effect the delivery or render the service are clarified.

2. The Supplier shall only be entitled to make partial deliveries or render partial services with the prior written consent of the Purchaser. Acceptance of excess deliveries or services and - if formal acceptance is required - their acceptance shall be at the Purchaser's sole discretion.
3. If the Supplier realises that the delivery/service dates and deadlines agreed upon cannot be met, it must immediately notify the Purchaser of this stating the reasons and duration of the delay. The Supplier's obligation to deliver goods and render services in a timely manner shall remain unaffected by this. In the event that the Supplier culpably fails to comply with this notification requirement and the Purchaser sustains a loss as a result, the Purchaser shall be entitled to claim compensation. The Supplier may not claim that it is not responsible for the delay.
4. Acceptance of a late delivery or service by the Purchaser shall not constitute any waiver of rights and remedies to which the Purchaser is entitled.
5. If the agreed delivery /service dates or deadlines are not met due to circumstances for which the Supplier is responsible, the Purchaser shall be entitled to demand from the Supplier in addition to performance under the contract a contractual penalty of 0.3% of the net order value for each started working day of the delay, subject however to a total maximum amount of 5% of the net order value. Assertion of damages in excess of this remains unaffected; the contractual penalty will be set against any claim for compensation for damages due to delayed performance. If the Purchaser accepts a delayed delivery or service, it must assert the contractual penalty at the latest at the time of the final payment.

Furthermore, in the event of a delay for which the Supplier is responsible, the Purchaser is entitled after the expiry of an appropriate grace period set by it to at its discretion claim compensation instead of performance under the contract and to procure replacement goods/services from a third party and/or withdraw from the contract. In the event of repeated delivery delays the Purchaser is also entitled after prior written warning to withdraw from all orders not yet fulfilled by the Supplier at that time with immediate effect.

6. If the Supplier is unable to meet the agreed delivery/service dates or deadlines due to force majeure (e.g. natural disasters, riots, war, fire, flooding) or other disruptions to production at its own facilities that cannot be foreseen or avoided by it, the delivery/service period is extended by the period of the disruption. This does not apply to transactions where the delivery date is of the essence. The Supplier may only rely on the above-mentioned reasons if it immediately notifies the Purchaser in writing of the disruption and its probable duration. If the disruption is not of a temporary nature and acceptance is unreasonable for the Purchaser as a result of the delay, the latter is entitled to withdraw from the contract with respect to the part of the contract not yet fulfilled. In the event of partial performance the Purchaser is entitled to withdraw from the entire contract if it has no interest in the partial performance.
7. Furthermore, the statutory provisions apply with regard to the Supplier's liability for delays.

V. Prices, shipping, packaging, transfer of risk and title

1. Prices agreed with the Supplier are fixed prices; costs for packaging, freight and shipping to the shipping address or place of unloading designated by the Purchaser are normally included in these prices. Insofar as the Purchaser is to bear the shipping costs in accordance with the agreement reached with the Supplier, the least expensive form of transportation for the Purchaser is to be chosen for the delivery.
2. If, after the order has been confirmed, the Supplier generally lowers its prices for the contractual items by the delivery or service date, the lower prices valid as at the delivery or service date shall apply instead of the originally agreed prices.
3. Unless otherwise explicitly agreed with the Supplier, all deliveries shall be made DDP (delivery duty paid) in accordance with Incoterms® 2010 to the place of unloading designated by the Purchaser. The Supplier shall state the order number of the Purchaser as well as item numbers and quantities delivered on all transport documents (delivery notes, etc.). If the Supplier fails to do so, this may result in processing delays for which the Purchaser is not liable.
4. The Supplier shall be responsible for suitable packaging. The Supplier shall comply with the Purchaser's packaging regulations and is liable for any damages incurred by the Purchaser as a result of culpable non-compliance with these packaging regulations. Furthermore, the Supplier shall be obliged to avoid any unnecessary packaging and thereby minimize the costs incurred by the Purchaser in disposing of the packaging.
5. The risk of any deterioration, including the risk of accidental loss, shall remain with the Supplier until delivery to the shipping address or place of unloading designated by the Purchaser. The Supplier shall comply with regulations regarding the delivery process at the Purchaser's plants.
6. Title to the goods delivered by the Supplier shall pass to the Purchaser upon the goods being handed over. Any extended or prolonged retention of title [*verlängerter/erweiterter Eigentumsvorbehalt*] on the part of the Supplier shall not be accepted by the Purchaser.

7. If the Supplier has undertaken to install or assemble the delivered item, it shall bear - unless otherwise explicitly agreed with the Purchaser - all associated additional costs.

VI. Warranty and liability

1. The Supplier's warranty and liability shall be governed by the statutory provisions unless otherwise specified in the General Purchase Conditions or agreed in writing between the Purchaser and Supplier.
2. The Supplier shall ensure that all items delivered and services rendered by it conform to the latest state of the art and relevant legal (under national as well European law) provisions (in particular but not exclusively the applicable requirements regarding technical safety, occupational safety, health and environmental protection, accident and fire prevention). This shall also apply accordingly to compliance with all data and quality standards specified in orders, drawings and/or delivery specifications, by means of which the nominal condition of the delivery item or the service to be provided by the Supplier is determined. If deviations from this are required in individual cases, the Supplier must obtain the Purchaser's prior written consent. The Supplier's warranty obligation shall not be affected by this consent. If the Supplier has reservations regarding the manner of execution requested by the Purchaser, it must immediately disclose these to the Purchaser in writing. This shall also apply to any improvements or changes proposed by the Supplier with regard to the delivery or service ordered by the Purchaser.

Insofar as the Purchaser does not reach any agreements to the contrary with the Supplier regarding the nominal condition of the items to be delivered or the services to be provided by it, the Supplier's product specifications or its specifications of the service to be provided by it (e.g. in catalogues) shall be deemed to be agreed as minimum specifications. Notwithstanding the above, the Supplier shall be responsible for ensuring that the goods or services to be provided by it are suitable for the purpose provided for in the contract.

3. The Purchaser shall only be obliged to check the items delivered by the Supplier and lodge complaints regarding defects after the delivery is made in full and only with regard to any variances in terms of identity and quantity as well as externally visible transportation damage. Furthermore, the Purchaser shall only be obliged to carry out technical function tests and other tests in the form of random sampling. Insofar as there is an obligation to notify a defect in a specific case, such notification shall be deemed to be given in good time if it is received by the Supplier within 5 working days after delivery for visible defects and within 5 working days for hidden defects after such a defect was identified or detected during a proper inspection. If the Purchaser has otherwise agreed with the Supplier with regard to this, e.g. as part of a quality assurance agreement, the provisions contained therein shall take precedence.
4. The Supplier shall rectify defects in the goods or services performed, which also includes non-compliance with guaranteed data and absence of assured features or agreed qualities, of which notice is given during the warranty period, at the option of the Purchaser by replacing the defective parts or remanufacturing or repairing the defect immediately and free of charge. The Supplier shall bear all costs incurred in this connection (e.g. shipping, travel, labour, dismantling, and installation costs), particularly those arising as a result of the intended shipment of the goods to a location other than the place of performance. Defective goods shall be returned to the Supplier at its own cost and risk. Further legal claims, in particular the right of withdrawal, reduction of the purchase price and/or claims for compensation shall remain unaffected.
5. If the Supplier is culpable in not meeting its warranty obligation within an appropriate deadline set by the Purchaser, the Purchaser may itself take the necessary measures at the Supplier's cost and risk without prejudicing the latter's warranty obligation. In urgent cases the Purchaser may in consultation with the Supplier directly undertake the subsequent improvement itself or have this carried out by a third party at the Supplier's cost. Minor defects may be rectified by the Purchaser itself in the interests of timely performance vis-a-vis its customers without prior consultation and without this affecting the Supplier's warranty obligation. This shall also apply where there is a threat of exceptionally high losses.
6. The warranty period shall be 36 months unless otherwise explicitly agreed with the Supplier or the law provides for a longer warranty period regarding the items to be delivered or the services to be provided by the Supplier. The warranty period shall commence at the earliest upon delivery to the Purchaser or a third party designated by the Purchaser at the shipping address or place of unloading designated by the Purchaser. Insofar as the Purchaser's acceptance is required, this must be done formally; the warranty period commences in such a case on the acceptance date stated in the declaration of acceptance. The warranty periods shall be extended by the period in which the defective delivered goods or services cannot be used as intended due to the defect. In the event of subsequent performance, the original warranty period shall begin again for the replacement or newly delivered parts or for the newly manufactured product.

7. Insofar as claims are made against the Purchaser by third parties due to a defect or a product defect requiring replacement in an item delivered by the Supplier, the Supplier shall hold the Purchaser harmless from all claims resulting from this. The Purchaser shall also be entitled to demand compensation for any damage or loss suffered including reasonable legal costs. This damage or loss shall also include the costs for a precautionary product recall, if this is appropriate in the interests of the Purchaser's customers or for the protection of third parties in accordance with the Purchaser's professional judgement.
8. The Supplier is not entitled without the prior written agreement of the Purchaser to change the goods ordered by the Purchaser after the conclusion of the contract or during the delivery period. This shall also apply to the most minor changes and even if the specifications, measurements, analyses, manufacturing methods etc. stipulated in detail by the Purchaser remain unchanged. If the Supplier is culpable in not meeting this obligation, it shall pay all costs incurred by the Purchaser or third parties as a result of this breach of an obligation (e.g. for follow-up inspections, reports, after-treatment etc.).
9. The Supplier shall insure itself at its own cost against all product liability risks in an appropriate amount, but at least in the amount of EUR 5 million for personal injury, property damage and financial losses (including recall costs) for each individual claim and provide the Purchaser with appropriate proof of insurance upon request. The insurance cover must be maintained at least for the warranty period based on the last delivery made to the Purchaser.

VII. Third-party rights

1. The Supplier warrants that the items delivered by him are free from any third-party rights and that no patents or other intellectual property rights of third parties are infringed by the delivery or contractual use of the items also in combination or interaction with other items.
2. If intellectual property rights of third parties are violated due to delivery or performance of services by the Supplier, the Supplier's overriding obligation shall be to ensure that the infringement of the right does not persist either by obtaining the corresponding rights or by modifying the supplied goods or services - insofar as this is acceptable for the Purchaser.

Notwithstanding the above, the Supplier shall be obliged to hold the Purchaser harmless from any third party claims due to infringements of patents or other intellectual property rights as well as from any expenses incurred in the context of such claims and to bear all costs arising for the Purchaser in this context. This obligation shall not exist, insofar as the Supplier is not responsible for the infringement of the intellectual property right or the Purchaser makes arrangements with the third party relating to its claims, in particular reaches a settlement, without the Supplier's consent.

VIII. Invoices and payments

1. The Supplier shall prepare the invoice at the earliest at the time of delivery of the goods including all documentation relevant under the contract and/or - if acceptance is required - at the time of formal acceptance of the service, or otherwise at the time of performance of the service.
2. Invoices shall be sent to the Purchaser separately by post or alternatively - at the request of the Purchaser - in electronic form; they may not be included in a shipment. The Supplier shall state all information relevant for invoice processing, such as the respective purchase order number of the Purchaser as well as item numbers and delivered quantities. Any excess services provided or goods delivered shall be stated separately with reference to the Purchaser's corresponding purchase order. Invoices that do not meet these requirements shall be deemed not to have been received and will not be settled by the Purchaser.
3. Unless otherwise agreed by the Parties in writing, payments shall be made at the Purchaser's option within 30 days net without deductions or within 14 days with a discount of 3%, provided that no complaints concerning the goods or services. These payment deadlines are determined on receipt by the Purchaser of a proper invoice including all necessary documentation (e.g. material test certificate). When the payment is made determines whether a payment was made on time.
4. In the case of a payment default, the Purchaser shall owe default interest in the amount of 5 percentage points above the base rate.
5. Also, insofar as the Purchaser should have been aware of any defects concerning the goods delivered or services provided at the time of payment, payment of the invoice shall not be construed as a waiver of claims of the Purchaser due to defects of the goods or services.
6. The Purchaser shall be entitled to offset claims of the Supplier against claims of the Purchaser's affiliated companies. The Supplier may only offset own claims, if and insofar as the counterclaims have been determined by a court in a final and binding manner, are undisputed or acknowledged by the Purchaser. The Purchaser shall only be entitled to make use of a right of retention insofar as its counterclaim is based on the same contractual relationship and is due and payable.

7. The Supplier shall not be entitled to assign its claims against the Purchaser to third parties or to have them collected by third parties, without the prior written consent of the Purchaser, which the Purchaser may not unreasonably refuse to grant. If the Supplier itself is supplied with goods under an extended retention of title [*verlängerter Eigentumsvorbehalt*] consent within the meaning of the sentence above shall be deemed to be granted. In the event that the Supplier assigns its claims against the Purchaser to a third party without the latter's consent, the assignment shall be valid nevertheless. The Purchaser may however deliver the goods or services at its own discretion either to the Supplier or the third party thus discharging its contractual obligation.

IX. Goods, tools and other manufacturing equipment provided by the Purchaser

1. The Supplier shall inspect any goods provided by the Purchaser immediately upon them being handed over by the Purchaser or its pre-suppliers for defects and if any defect is apparent shall inform the Purchaser in writing about the defect without delay. Should such a defect become apparent later, it shall be reported immediately after its detection. Should the Supplier not fulfil these obligations, the Supplier shall be liable to compensate the Purchaser for all and any damage resulting from this (e.g. due to the loss of warranty claims against its pre-suppliers). Furthermore, the Supplier shall be liable for any defects of the product delivered by the Supplier to the Purchaser if the Supplier is in breach of its duties of inspection and notification, also with regard to defects attributable to defects in the goods provided by the Supplier.
2. The Supplier shall mark the goods provided by the Purchaser as the Purchaser's property and shall store it separately from other items, so that it is possible to definitely identify the goods as goods provided by the Supplier during the whole period of storage and - as far as technically possible and as far as reasonable for the Supplier - also at any processing stage. The Supplier shall be liable for damage or loss of goods provided by the Purchaser in accordance with the statutory provisions. The Supplier shall take out insurance cover for the goods provided by the Purchaser in the amount of the fair value of the goods at least against fire, water, theft and similar loss events at its own cost. The Purchaser shall be immediately informed in writing regarding any legal or actual impairment of the goods provided by the Purchaser.
3. The goods provided by the Purchaser are processed on behalf of the Purchaser and remain the property of the Purchaser at any processing stage. The Parties agree that the Purchaser shall be the co-owner of the products manufactured using the substances or parts provided by the Purchaser in the ratio of the value of the goods provided to the value of the final product. The same applies if the Purchaser should lose its title of ownership due to the fact that the goods he owned are mixed or combined with other goods.
4. Tools and other manufacturing equipment provided by the Purchaser to the Supplier for the purpose of manufacturing the items to be delivered to the Purchaser remain the property of the Purchaser. They shall be handled and stored by the Supplier with due care. Furthermore, care and maintenance of these tools and other manufacturing equipment shall be governed by the agreements made between the Purchaser and Supplier. Insofar as the Supplier produces or procures tools or other manufacturing equipment required specifically for the manufacturing of the items to be delivered to the Purchaser, fully or partially at the cost of the Purchaser, possession of and title of ownership to these shall pass to the Purchaser at the time of the corresponding payment. In this regard, it is agreed that the Supplier holds the tools and manufacturing equipment on behalf of the Purchaser as a borrower. The Supplier shall not have any right of retention regarding these. The tools and other manufacturing equipment owned by the Purchaser shall be labelled as his property in a suitable and clearly visible manner. The Supplier shall insure these at his own expense at their replacement value against fire, water, theft and similar loss events. The Purchaser shall be immediately informed in writing of any legal or actual impairment of the tools and other manufacturing equipment provided by the Purchaser.
5. The Supplier is obliged to use the tools and other manufacturing equipment mentioned in Clause IX (4) above solely for the manufacturing of the items to be delivered to the Purchaser. They may only be scrapped or made accessible to third parties with the Purchaser's prior written consent.

X. Drawings/documentation, industrial property rights

1. All documentation, drawings, patterns etc. provided by the Purchaser to the Supplier for him to make an offer in connection with the implementation of the contract shall remain the property of the Purchaser. Copyrights as well as other industrial property rights pertaining to these are reserved by the Purchaser. The Supplier shall not be entitled to use information, ideas or other know-how contained therein for purposes other than the preparation of an offer or implementation of the contract. The relevant documentation, drawings, patterns, etc. shall be returned to the Purchaser at his request - provided no order is placed or after termination of the contract - without delay, including all copies and reproductions. The Supplier shall not have any right of retention regarding these.

2. The Supplier shall treat the documentation specified in Clause X (1) above as well as all other information received in connection with an order or the implementation of the contract - also after termination of the contract - as trade secrets and accordingly treat them confidentially. They shall only be disclosed to third parties with the Purchaser's prior written consent. The Purchaser shall treat all documentation and information that the Purchaser receives from the Supplier in connection with an order or the implementation of the contract as trade secrets, provided it was expressly informed of the necessity to treat this documentation and information confidentially. The duty of confidentiality does not apply, if the documentation contains fact that are already in the public domain or enter the public domain later - without this being based on a breach of duty on the part of a party obliged to maintain confidentiality.
3. The Supplier shall submit all drawings and documentation to the Purchaser that are necessary to discuss the technical details of the delivery item or service together with its offer. Such a discussion or other kind of involvement of the Purchaser in design work etc. does not release the Supplier from its sole liability for the delivery item and/or services to be provided as well as any resulting warranty and other obligations.
4. The Supplier is obliged to make available all drawings and documentation that the Purchase requires for setting up, operating, maintaining and repairing the delivery item, in good time without request and free of charge - at the latest at the time of delivery.

XI. Certificates of origin and supporting documents for VAT purposes

1. The Supplier shall provide at its own cost all certificates of origin required in the individual case together with all necessary data in signed form at the latest at the time of delivery. The same applies accordingly to supporting documents required in individual cases for VAT purposes for international or intra-Community supplies.
2. The Supplier shall immediately inform the Purchaser, if a delivery in whole or in part is subject to export restrictions under German or other applicable law. Insofar as an export license is required for the delivery, the Supplier shall be responsible for obtaining it.

XII. Miscellaneous

1. These General Purchase Conditions and all legal relationships between the Purchaser and the Supplier shall be governed by the material law of the Federal Republic of Germany; to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Insofar as these General Purchase Condition stipulate that declarations of intent or notifications must be given in writing, the use of the text form, i.e. fax or e-mail, shall also comply with the written form requirement.
3. The partial or full subcontracting of deliveries and services by the Supplier to subcontractors shall not be permitted without the Purchaser's prior written consent.
4. Place of performance for all contractual obligations is the place of the registered office of the Purchaser or the shipping address or place of unloading designated by the Purchaser.
5. Insofar as the Supplier is a merchant [*Kaufmann*] as defined in the German Commercial Code, exclusive place of jurisdiction for all disputes resulting directly or indirectly from this contractual relationship shall be the place of the registered office of the Purchaser. However, the Purchaser shall also be entitled to file an action against the Supplier at another place of jurisdiction.
6. Should individual provisions of these General Purchase Conditions or individual provisions within the framework of other agreements be or become legally ineffective or impracticable, this shall not affect the effectiveness of the remaining provisions. In such an event the Parties will try to replace the ineffective or impracticable provisions by mutual agreement by an effective or practicable provision that comes closest to the economic intent of the Parties at the time the contract was entered into. The same applies accordingly to a gap in the contract.