

KNIPPING KUNSTSTOFFTECHNIK GESSMANN GMBH

Terms and Conditions of Purchase

Last updated 09/2015

1. Agreed terms

(1) We place orders in business dealings with entrepreneurs (*Unternehmer*) as defined in Sec. 14 of the German Civil Code (BGB) exclusively on the basis of the terms and conditions of purchase set out below.

(2) Any Supplier terms and conditions of sale, which we reject in advance, shall not become part of the content of the contract. When our order is executed, our terms and conditions of purchase are acknowledged for this and all subsequent orders, even if an order confirmation, delivery slip, invoice, or other written material from the Supplier should refer to the Supplier's own terms and conditions.

2. Order; framework order

(1) Orders are binding only if issued in writing or by fax. Orders or additions to orders communicated by phone or orally require our confirmation in writing or by fax.

(2) If the Supplier does not object within five working days after receipt of the order, the order is considered to have been accepted.

(3) The Supplier must communicate any objections to our desired manner of execution of the order without delay and, for evidentiary purposes, in writing.

(4) Framework orders reflect only the price on a binding basis and are intended to enable the Supplier to engage in materials planning. There is no obligation to take delivery of the forecast quantity unless it has been expressly affirmed. Sec. 9 (2) hereof does not apply. A price adjustment shall be performed only if the quantity exceeds or falls short of the forecast quantities by a significant amount (> 20%).

(5) Release orders placed within the scope are binding with regard to the release quantity to the extent that the delivery dates lie in the next four (4) weeks after the order date. For delivery dates up to the eighth week after the order date, procurement of the raw materials is approved. Further delivery dates are non-binding forecasts and serve merely for purposes of capacity planning.

(6) Release orders beyond the fourth week shall become binding with regard to the release quantities with the passage of time unless the Supplier receives a change notification from us. The same applies to the obligation to take delivery of raw materials in the case of release orders beyond the eighth week. In this way, the period for which this is binding is always four weeks for the obligation to take delivery of the quantities released and eight weeks for the raw materials.

3. Confidentiality

(1) Each and every order and contract entered into with us must be treated as confidential. The Supplier is not permitted to make reference to business relations with us unless we have given our express consent beforehand. This also applies after termination of the contractual relationship.

(2) Each Party agrees to treat all commercial and/or technical details that are not public knowledge and become known to it regarding the other Party within the scope of the business relationship as trade secrets.

4. Performance obligation

(1) We are not obligated to take delivery of partial deliveries or of deliveries of additional or lower quantities that have not been agreed on.

(2) In case of *force majeure*, we are entitled to rescind the contract in whole or in part. The Supplier has no claim to damages in these cases.

(3) With regard to unit quantities, weights, and measures, the values determined by us when checking the goods upon receipt are the determining factors.

(4) Each delivery must be accompanied by a delivery slip; our order number and the date of the order must be stated, along with the further information that is necessary, in this slip and in invoices and other correspondence. Each item must be labeled clearly with the quantity and order number. In the case of tool deliveries, the project number, the exact designation of the part on which the tool is to be used, including the drawing number, and our dictation reference must be stated in addition.

(5) Partial deliveries or deliveries of remaining quantities must be specifically designated as such.

(6) If a delivery does not contain the necessary labeling and designation pursuant to paragraphs 4 and/or 5 above, it may be sent back for a fee.

(7) We are permitted to make changes in the content of performance provided that the change is reasonable for the Supplier.

(8) Where certifications regarding material inspections or testing have been agreed on, these are essential elements of performance. We are not obligated to take delivery of the goods without a certification.

(9) Our orders must not be awarded to subcontractors without our express prior consent.

(10) Rights of retention must not be exercised if we offer adequate security for the stated reason for retention until such time as final clarification has been achieved. Security can be provided in the form of an absolute, unlimited-term bank guarantee. If the reason stated proves not to be justified, the Supplier is obligated to bear the costs of providing security.

5. Packaging and shipping

(1) Our shipping specifications must be observed precisely; any additional costs or losses arising from non-compliance shall be at the Supplier's expense. The Supplier is liable for damage to the goods that is caused as a result of defective packaging, even after the passage of risk.

(2) The costs of packaging and shipping to the place of use (place of performance) stated by us in the order shall be borne by the Supplier. These are included in the order prices. Deliveries shall be made DDP (Incoterms 2000).

(3) The obligation to take back the packaging is in accordance with the statutory provisions. If packaging costs have been agreed additionally in the individual case, the packaging that has been sent back must be credited at the full value charged.

6. Passage of risk

(1) The delivery takes place at the Supplier's risk. The risk associated with shipping terminates upon completion of delivery to the recipient (DDP Incoterms 2000).

7. Period of performance

(1) If the delivery dates/time limits stated in the order are not objected to within five (5) days after receipt of the order, the dates mentioned by us shall be viewed as binding. In the case of subsequent changes in performance, a new delivery date shall be agreed on a binding basis.

(2) The agreed delivery times are binding. Deliveries must not be made too early or too late. An early delivery does not cause the delivery price to fall due earlier and may be either returned or placed in storage until the delivery date, at the Supplier's option and expense.

(3) Deliveries must be sent in such a way that they are available at the place of performance as of the delivery date.

(4) If a delivery or agreed partial delivery does not take place as of the agreed date either in whole or in part, we are entitled to rescind the contract and demand compensation for expenses as well as damages in lieu of performance after a reasonable time limit elapses without producing the desired result. There is no need to set a time limit if a fixed delivery date ("just in time"/"just in sequence") was agreed and the Supplier cannot offer any measures suitable to avert the harm caused by downtime (e.g., making special trips for supply purposes, etc.).

(5) Our claim to compensation for any damage and/or loss occurring due to delay or default is not affected by a late delivery or the exercise of the rights arising from paragraph 4 hereof.

(6) Where an unavoidable delay in the delivery is expected, the Supplier agrees to notify us thereof without delay, offering at the same time a new delivery date. If this delivery date is more than two weeks after the agreed delivery date, we are entitled to rescind the contract.

(7) If there is a threat that the delivery date will be exceeded for reasons for which the Supplier is not responsible, the delivery period shall be extended accordingly unless the Supplier had guaranteed a fixed date. The Supplier agrees to make every reasonable effort to influence the events that are temporarily preventing performance and to respond in a manner that accelerates matters. Additional costs associated with acceleration must be coordinated with us.

(8) If the impediment pursuant to paragraph 7 hereof lasts longer than two months, we are entitled to rescind the contract. The same applies if we are no longer able to comply in due time with our own obligations of performance due to the delay. In the event of rescission pursuant to this provision, both Parties shall be released without further consequences from their reciprocal obligations of performance under the portion of the contract that has not yet been fulfilled.

(9) The Supplier shall bear the procurement risk. Supply problems constitute an impediment pursuant to paragraph 7 only if the substances or services required in order to fulfill the obligation of delivery are unavailable worldwide.

8. Place of performance, place of fulfillment

(1) The place of performance is the place of use as stated in the order.

(2) The place of fulfillment for the performance obligation is the place of use as stated in the order. The place of fulfillment for our obligations is 74211 Leingarten.

9. Prices

(1) The prices stated in the order are fixed prices. If the prices have not yet been fixed at the time when the order is placed, the Supplier must enter them in the copy of the order that is to be returned. A contract does not come into existence unless and until we have accepted the prices.

(2) If the content of performance is amended after the fact, the price shall, in principle, be adjusted on the original basis used for calculation of the order prices. In the case of changes in the scope of performance (additional or lower quantities), the price shall be adjusted. The Supplier is required to disclose the original calculation in order to calculate lower costs (typically in the case of higher quantities) or as grounds for additional costs (typically in the case of lower quantities) to the extent that this calculation was not in our possession at the time of entry into the contract.

10. Invoices and payment terms; right of retention in case of defects

(1) Invoices must be issued in duplicate and must contain all of the information from the delivery slip. Invoices that do not contain this information may be returned in the normal course of business, and in any event within eight (8) days after receipt of the invoice, for the information to be added; the invoiced amount will not fall due for payment in this case.

(2) Payments shall be remitted with a 3% prompt payment discount within twenty (20) days after receipt of the invoice, 2% within forty-five (45) days after receipt of the invoice, or net within ninety (90) days after receipt of the invoice.

(3) Agreed advance payments or down payments shall be remitted against simultaneous and commensurate provision of security. The Supplier is also permitted to provide the security through an absolute, unlimited-term bank bond. Advance payments create an entitlement to further deduction of a prompt payment discount. This discount amounts to 1% for each month between payment and delivery of the goods or acceptance of the service. The deduction of the prompt payment discount pursuant to paragraphs 2 and 3 together is limited to a maximum of 5%.

(4) In the event of defects or missing quantities, we are entitled to retain three times the amount that must be spent to remedy the defects or procure replacements for the missing quantity. The right of retention is not restricted to the specific contractual relationship in question.

(5) The claim to payment cannot be assigned to third parties without our consent.

11. Guarantees; quality management; complaints regarding defects and warranty; legal defects; industrial property rights

(1) The Supplier warrants that all deliveries and services are in keeping with the state of the art, the relevant legal provisions, and the stipulations and guidelines of authorities, institutions for statutory accident insurance and prevention (*Berufsgenossenschaften*) and professional and trade associations. It warrants that at the time of delivery, the goods have the stated characteristics and those expressly or tacitly presupposed pursuant to the contract and do not suffer from any defects that adversely affect their use, consumption, or processing.

(2) Material certificates in accordance with DIN 50.049/3.1B must be enclosed with every delivery. Inserted parts must, as a basic principle, be free of shavings or chips and other contamination. Quality certificates needed to this end shall be prepared upon request and also enclosed with the deliveries. The Supplier warrants that it uses perfect materials, the processing is accurate within the scope of the agreed tolerances or those applicable according to the state of the art, and the packaging and means of transportation are suitable.

(3) The Supplier affirms that it has established for its products a valid quality assurance system for quality checks of end products and will maintain this system at all times. Unless otherwise agreed, the quality assurance system must meet at least the requirements of DIN EN ISO 9001 in the then most recent version thereof; efforts shall be made toward further development pursuant to VDA 6.1 and QS 9000.

(4) Based on the final checks set up by the Supplier, we are not obligated to inspect the goods delivered. We will complain without delay of any obvious defects or damage having occurred in transit. There is no further obligation to perform tests or inspections or submit complaints.

(5) In the case of "just in time" or "just in sequence" deliveries, the goods delivered enter further processing right away, without any possibility of performing checks. Complaints must be submitted without delay after we become aware of the defect in question.

(6) Without prejudice to the rights of recovery pursuant to Sec. 478 et seq. BGB, the Supplier furnishes a warranty for goods that are not delivered as agreed or are defective as follows: We have the right to choose between a replacement delivery and a cure even if the defect does not emerge until during processing. In lieu of a cure, we are entitled, in the cases stipulated by law and to avert consequential damage and/or losses, to remedy the defects ourselves, or to have them remedied by others, at the Supplier's expense, without prejudice to our other claims. The same applies if the Supplier has not remedied the defect complained of by effecting a cure or supplying a replacement within a reasonable time limit. If the Supplier allows a time limit of two weeks set in the complaint regarding the defect to elapse unused, we are entitled to rescind the contract and demand compensation for expenses as well as damages in lieu of performance. We are no longer obligated to accept the cure after this time limit expires.

(7) In the case of deliveries made "just in time" or "just in sequence," we are immediately entitled to take the measures necessary to maintain production operations within our organization or that of our customer at the Supplier's expense. The Supplier shall be notified of the steps taken without delay and must perform the further measures involved in effecting a cure

and eliminating damage and/or losses in such a way that the production sequence can take place without interruptions or disruptions.

(8) The limitation period for claims regarding defects is three (3) years. It commences upon delivery at the place of performance or upon acceptance of the service. The time limit for any portion of the delivery or service that was defective commences again upon receipt of the replacement or acceptance of the cure, as the case may be.

(9) The Supplier warrants that the goods delivered are free of third-party rights. References to such rights, reservations for the benefit of third parties, and similar are irrelevant with respect to this guarantee obligation even if they arise from invoices, delivery slips, confirmation letters, etc., and even if we do not expressly object thereto. If claims are asserted against us by third parties either directly or indirectly via our customers due to the infringement of industrial property rights, the Supplier is obligated to indemnify us and hold us harmless from and against all claims and to reimburse the costs of the legal dispute. We are moreover entitled to procure, at the Supplier's expense, the third party's consent to the use of the delivered items or services in question.

12. Liability (product liability, liability for the consequences of defects, damage and/or losses due to default, other breach of contract)

(1) The Supplier is responsible for ensuring that the products it delivers are free of defects. Should claims be asserted against us within the scope of product liability due to defects and these be attributable to root causes established by the Supplier, the Supplier shall indemnify us and hold us harmless within the internal relationship between them. The claim for damages also encompasses the costs of product monitoring or of a precautionary recall if we are obligated to engage in such a recall based on a law, case law, decision by a government agency, or the instructions of our product liability insurer.

(2) The Supplier shall maintain, and furnish proof upon request of, product liability insurance that meets the requirements of the purpose for which the goods are to be used as apparent to the Supplier. The Supplier is entitled to receive the information needed to gauge the risk from us.

(3) The Supplier is responsible for ensuring that the products it delivers are free of defects. The Supplier shall provide compensation without limitation for any and all damage and/or losses sustained by us, our customers, or subcontractors due to a product defect. In particular, the Supplier is also liable for costs of determination, sorting, special trips, removing the defective delivery and reinstalling the replacement that is free of defects, and the costs of urgent measures pursuant to Sec. 11 (7) hereof. Where negative effects on the production sequence are unavoidable, the Supplier is obligated to provide compensation for the additional costs caused by the defects and for the damage and/or losses arising as a result of the downtime caused.

(4) The Supplier is liable for damage and/or losses due to default within the statutory scope. We are entitled to charge 15% of the agreed net purchase price for the late portion of the delivery, without being obligated to provide any proof thereof. Proof that no damage and/or loss was sustained, or that the amount thereof was lower than as above, is permissible; the Supplier is responsible for this.

(5) Liability for claims for damages arising from breach of contract shall be as governed by the statutory provisions. Based on the guarantees provided and the quality assurance system established, the Supplier shall be presumed to be at fault in the event of damage and/or loss. Provision of exculpatory evidence is permitted.

13. Setoff

(1) We are entitled to offset claims of our own against those of the Supplier even if the due dates for the claims on each side are different or if different modes of payment were agreed.

(2) We are also entitled to offset claims of our affiliates against the Supplier. In the event of insolvency on the Supplier's part, this applies only if the claims to be offset arose prior to the opening of insolvency proceedings.

14. Models, samples, plans, documents

(1) Models, samples, drawings, standard sheets, drafts, information provided and the like that are provided to the Supplier within the scope of an order must not be used for any purpose lying outside our orders, duplicated, or made accessible to third parties.

(2) The same applies to models, samples, drawings, standard sheets, drafts, and the like that the Supplier prepares according to information provided by us.

(3) The Supplier is obligated to view such documents and materials as trade secrets and to treat them as confidential. The Supplier assumes liability for damage and/or losses sustained by us as a result of violation of this obligation.

(4) The Supplier declares that it is willing to surrender all documents made accessible to it and reproductions thereof to us by sending them to us at its own expense at any time at our request. The same applies, without any particular request being required, if the order is not performed. Unlawful use shall give rise to damages.

(5) The delivery of identical parts to other customers of the Supplier requires our written approval.

(6) All models, samples, drawings, standard sheets, and drafts remain our property. All physical objects and documents produced for us become our property. The Supplier assigns all copyrights and ownership of the physical objects and documents produced, as well as copies made thereof, for all conceivable uses for unlimited and exclusive use.

15. Tools, parts supplied

(1) If we provide tools, these remain our property. The Supplier is the custodian thereof and is obligated to treat the tools properly and with care and to maintain them at its own expense. The tools must be used exclusively for our orders. In the event of non-compliance, or after termination of the contractual relationship, we are entitled to demand that the tools be turned over to us. Rights of retention on the Supplier's part with regard to tools are expressly ruled out.

(2) If the Supplier acquires the tool or produces it at our expense, the Parties hereby agree that ownership of the tool is transferred to us. The same applies to any expectancies and claims to procurement of title, including possible ancillary rights and claims. Transfer thereof is replaced by the custodial relationship described above as anticipated possession.

(3) Materials provided by us must be checked in terms of quantity and confirmed without delay upon receipt. The materials provided remain our property. Processing or alteration always take place for us as the manufacturer, but without any obligation against us. If the goods are processed together with items, substances, or other external assets that do not belong to us, including for a third party as manufacturer, we become the co-owner of the new item in proportion to the value of our goods to that of the external assets at the time of processing.

(4) If our ownership (or co-ownership) lapses due to items being combined, it is hereby agreed that the Supplier's ownership (or co-ownership) of the uniform item shall pass to us in accordance with the proportional value (invoiced value). The Supplier shall keep the property (or shared property) in safekeeping at no charge. The Supplier is, as the custodian thereof, obligated in particular to insure the goods properly, treat them with care, and ensure in the process that no risk to persons or property is possible. The possible risks must be properly covered by insurance policies.

16. Right of rescission in special cases

(1) In the event that insolvency proceedings are applied for or opened with regard to the Supplier's assets, in case of protests of bills of exchange or checks, in case of discontinuation of payment or payment difficulties or if an out-of-court settlement procedure (moratorium) is sought, we are entitled to rescind the contract, even if the contract has already been fulfilled in whole or in part by us or the Supplier or both, but the Supplier's warranty obligations have not yet expired.

17. Place of jurisdiction; applicable law

(1) This contractual relationship is governed exclusively by German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). Should the Supplier, by way of exception, not be an entrepreneur as defined in Sec. 14 BGB, the statutory provisions apply instead of our terms and conditions of purchase.

(2) The place of jurisdiction, including for proceedings concerning bills of exchange, checks, or documents, is 74072 Heilbronn/Neckar.