



KINDSWATER

General Terms and Conditions of Procurement of Kindswater AG, Giengener Str. 35, 89428 Syrgenstein

§ 1 General, scope of application

- (1) Our General Terms and Conditions of Procurement (Terms) only apply towards entrepreneurs (§ 14 German Civil Code), public-law entities or public-law funds.
- (2) Our terms shall apply exclusively; deviating, contradictory or supplementary terms and conditions of business of our supplier shall only be acknowledged if we have expressly approved their validity in writing. This requirement of approval shall also apply if we unconditionally accept its deliveries despite knowledge of its general terms and conditions.
- (3) Our terms shall also apply to all future conclusions of business with Purchaser, even if they are not separately agreed once again.

§ 2 Conclusion of contract

- (1) To the extent that our quotations (hereinafter referred to as: Order) do not expressly contain a binding period, we shall be bound by them for two weeks after the date of the quotation. The decisive thing for punctual acceptance shall be receipt of the order confirmation by us.
- (2) Delayed acceptance shall be deemed a new quotation and shall require acceptance by us.

§ 3 Delivery period, arrears in delivery

- (1) The delivery time stated by us in the order (delivery date or period) shall be binding. Supplier shall be obliged to notify us without delay in writing if it prospectively cannot comply with agreed delivery times - whatever the reasons.
- (2) In the event of arrears in delivery, the statutory claims shall accrue to us without limitation, including the right to withdrawal and the claim to damages in lieu of performance following a fruitless expiry of a suitable period of grace. The regulations in sub-section 3 shall remain unaffected.
- (3) If Supplier is in arrears, we can - alongside further-reaching statutory claims - demand liquidated arrears damages to the amount of 2% of the net price per complete calendar week, albeit no more than 10% of the net price of the goods delivered in arrears. We reserve the right to prove that we have incurred higher damages. The right to prove that no or considerably lower damages have been incurred by us shall remain reserved for Supplier.

§ 4 Delivery, destination, passage of risk

- (1) Supplier shall not be entitled to make part deliveries without our prior written approval.
- (2) In the absence of a deviating written agreement, a delivery note stating the date (issue and dispatch), contents of the delivery (article number and quantity) as well as our order identification (date and number) shall be enclosed with the delivery. If the delivery note is missing or incomplete, we shall not be answerable for delays in the processing and payment resulting from this.
- (3) Even if dispatch has been agreed, the risk of chance destruction and chance deterioration shall only pass to us when the goods are handed over to us at the destination stated in the order. If the destination has not been stated and nothing to the contrary has been agreed, delivery shall be made to our headquarters in 89428 Syrgenstein, Giengener Str. 35. To the extent that acceptance has been agreed, it shall be decisive for the passage of risk. The statutory directives of the law of contracts for work and services shall apply accordingly to acceptance.

§ 5 Prices, payment terms, statements on the invoice

- (1) The price stated in the order shall be binding. All prices shall be understood inclusive of statutory turnover tax if the latter is not stated separately. In the absence of a deviating written agreement, the price shall include delivery and transport to the destination, inclusive of packaging.
- (2) The agreed price shall be due for payment within 30 calendar days of complete delivery and service (including any agreed acceptance) as well as receipt of a proper invoice. If we pay within 14 calendar days, Supplier shall grant us 3% discount on the net amount of the invoice. In the event of bank transfer, receipt of our transfer order by our bank shall be sufficient for punctuality.



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(3) The contents of the delivery (article number and quantity), order identification (date and number) and delivery address shall be stated on all invoices. If one or more of these statements is/are missing and processing is delayed as a result within the framework of normal business dealings, the payment periods stated in subsection 2 shall be extended by the duration of the delay.

(4) Rights of offset and retention and the objection of unfulfilled contract shall accrue to us to the statutory extent. We shall in particular be entitled to withhold due payments as long as claims from incomplete or defective deliveries accrue to us.

(5) Supplier shall only have a right of offset on account of legally effective or undisputed counterclaims. A right of retention shall only accrue to Supplier to the extent that it is based on counterclaims resulting from the same contractual relationship.

§ 6 Securing of ownership

(1) We reserve ownership and copyrights to the templates, samples, plans, drawings, calculations, implementation instructions, product descriptions and other documents provided to Supplier by us. These documents are exclusively to be used for the contractual service and to be returned to us following completion of the contract. Copies produced by Supplier shall be destroyed, electronic data completely deleted in such a case. The documents are to be kept secret towards third parties, also after the ending of the agreement. The non-disclosure duty shall only expire if and insofar as the knowledge contained in the documents provided has become public domain.

(2) Moulds which we provide to Supplier or which are produced for contractual purposes and are charged separately to us by Supplier shall remain our property or shall pass into our ownership. They shall be identified as our property, kept carefully, insured against fire, water and theft damage and only be used for purposes of the contract by Supplier. Supplier shall be obliged to carry out necessary inspection, maintenance and repair work in good time at its own expense and shall notify us without delay of all damage or disruptions.

(3) Substances and materials which we provide to Supplier for production of the object of delivery shall remain our property as long as they are not processed and shall be kept separate and insured to a suitable extent against fire, water and theft damage at Supplier's expense. Processing or re-shaping of these substances and materials by Supplier shall be done on our behalf. If the objects provided by us are inseparably blended or combined with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value which the objects had at the time of the blending or combining. If blending or combining is done such that Supplier's object is to be regarded as the main object, it shall be deemed agreed that Supplier assigns co-ownership to us pro rata. Supplier shall keep the sole or co-ownership on our behalf on trust.

§ 7 Retention of title

Assignment of the goods to us shall be unconditional and without regard for payment of the price. But if we accept an offer of Supplier for assignment conditional to payment of the price, Supplier's right of retention shall expire no later than payment of the purchase price for the goods supplied. We shall also remain authorised to resale of the goods in the ordinary course of business before payment of the purchase price with advance assignment of the claim resulting therefrom to Supplier by way of security. Thus, all other forms of retention of title have been ruled out, in particular extended retention of title and retention of title extended to further processing.

§ 8 Defective delivery

(1) The statutory directives shall apply without limitation to our rights from defects in quality and title of the goods (including wrong and short delivery as well as improper assembly, defective assembly, operating or use instructions).

(2) The statutory directives (§§ 377, 381 German Commercial Code) shall apply to the commercial examination and notification duty with the proviso that notifications (of defects) shall be deemed without delay and punctual to the extent that they reach Supplier within a period of 14 working days.

(3) As a result of acceptance or approval of samples or specimens presented, we do not waive our claims from warranty.



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§ 9 Manufacturer's liability

(1) Supplier shall be responsible for all claims made by third parties on account of personal or property damage to be put down to a defective product supplied by it and shall be obliged to indemnify us against the liability resulting therefrom, including all expenditure connected therewith.

(2) If we are obliged to carry out a recall action towards third parties due to a defect in a product supplied by Supplier, Supplier shall bear all the costs connected with the recall action. To the extent possible and reasonable, we shall notify Supplier of the contents and scope of recall measures and give it an opportunity of making comments.

(3) Supplier shall be obliged to maintain product third-party liability insurance with a lump-sum insured of no less than 3 mill. € per personal/property damage at its own expense. Upon request at any time, Supplier shall send us a copy of the liability insurance policy.

§ 10 Protective rights

(1) Pursuant to the provisions of sub-section 2, Supplier shall vouch for the fact that no third-party protective rights are breached in countries of the European Union or other countries in which it manufactures products or has them manufactured as a result of products supplied by it.

(2) Supplier shall be obliged to indemnify us against all claims made against us by third parties on account of the breach of commercial protective rights stated in sub-section 1 and to reimburse all necessary expenditure in connection with such claims. This claim shall exist independent of Supplier's culpability.

(3) Our further-reaching statutory claims on accounts of defects in title of products supplied to us shall remain unaffected.

§ 11 Barring

(1) The contracting parties' mutual claims shall be barred according to the statutory provisions to the extent not determined to the contrary below.

(2) As a deviation from § 438 sub-section 1 no. 3 German Civil Code, the general period of barring for claims from defects shall be 3 years from passage of risk. To the extent that acceptance has been agreed, barring shall commence upon acceptance. The 3-year period of barring shall also apply accordingly to claims from defects in title. although the statutory period of barring for in rem third-party claims to return (§ 438 sub-section 1 no. 1 German Civil Code) shall remain unaffected; claims from defects in title shall not be barred over and above this in any case as long as the third party shall still make the claim against us - in particular in the absence of barring.

(3) The barring periods of purchase law, including the above extension, shall apply to the statutory extent to all contractual claims from defects. To the extent that extra-contractual claims to damages also accrue to us, the regular statutory barring (§§ 195, 199 German Civil Code) shall apply, unless application of the barring periods of purchase law leads to a longer barring period.

§ 12 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall govern these terms and all legal relationships between us and Supplier, ruling out international standardised law, in particular UN purchasing law. The preconditions and effects of the retention of title shall be subject to the law at the location of the object in question, to the extent that the choice of law made in favour of German law is inadmissible or ineffective according to it.

(2) If Supplier is a merchant within the meaning of the German Commercial Code, public-law entity or public-law fund, the exclusive - also international - place of jurisdiction for all disputes directly or indirectly resulting from the contractual relationship shall be Dillingen or Augsburg. However, we shall also be entitled to initiate proceedings at Supplier's general place of jurisdiction.