

## **Purchasing Terms and Conditions** **KTI - Plersch Kältetechnik GmbH**

Applicable in business dealings with entrepreneurs, juridical persons under public law and special foundations under public law.

### **1. General**

Our Purchasing Terms and Conditions shall apply exclusively; we shall recognise any of the Supplier's opposing General Business Terms and Conditions or its General Business Terms and Conditions which deviate from our Purchasing Terms and Conditions only insofar as we have made express approval of them to you in writing. The acceptance of the Supplier's goods or services (hereafter: Contractual Goods) or any related payments for them shall constitute no approval at other conditions.

### **2. Contractual conclusion and contractual amendments**

- 2.1 Any orders, conclusions of contractual agreements and call-off delivery orders as well as their amendments and supplements must be in writing.
- 2.2 We must make written confirmation of any oral agreements of any kind – including any subsequent amendments of and supplements to our Purchasing Terms and Conditions – in order for them to be valid.
- 2.3 The written form requirement shall also be fulfilled by long-distance data transmissions or telefax.
- 2.4 Cost estimates shall be binding and be provided upon a free of charge basis unless something to the contrary has been expressly agreed.
- 2.5 If the Supplier does not accept the order within two weeks after its receipt, then we shall be entitled to cancel it.
- 2.6 Call-off deliveries within the parameters of order and call-off order planning shall become binding if the Supplier does not object to them within two working days since their receipt.
- 2.7 The "Qualitätssicherungs-Leitlinie für Lieferanten" [Quality Assurance Guidelines for Suppliers] (QSL) as well as the incoming delivery and packaging directives of KTI Plersch Kältetechnik GmbH shall become a component of the agreement.

### **3. Delivery**

- 3.1 Deviations from our contractual agreements and orders are permitted only after having received our prior written approval.
- 3.2 Agreed timeframes and deadlines shall be binding. The point in time when we receive the goods shall be prevailing for the adherence to the delivery timeframe or delivery deadline. If "free factory" delivery (DDU or DDP in accordance with Incoterms 2000) has been agreed, the Supplier must promptly provide the goods subject to the consideration of the time for loading and shipment that is to be agreed with the carrier.
- 3.3 If the Supplier is responsible for the erection or mounting work and nothing to the contrary has been agreed, then the Supplier shall, subject to any deviating provisions, assume all required ancillary costs such as travel costs, provision of tools as well as any related releases.
- 3.4 If the agreed timeframes are not adhered to, then the statutory directives shall apply. If the Supplier anticipates that there will be difficulties with regards to production, procurement of raw materials, adherence to delivery timeframes or similar sets of circumstances which could prevent it from making prompt delivery or delivery in the agreed quality, then the Supply must promptly notify our Ordering Division of this.
- 3.5 The unconditional acceptance of late deliveries or services shall constitute no waiver upon our part of the damage compensation claims to which we are entitled owing to the late delivery or service; this shall be valid until payment in full is made of the fee which we owe for the affected delivery or service.
- 3.6 In principle, partial deliveries are not permitted unless we have expressly approved them or they are reasonable for us.
- 3.7 Subject to documentation to the contrary, the values which our Incoming Goods Control Centre determines for unit figures, weights and measurements shall be prevailing.

3.8 We shall have the right to use the software included in the scope of product delivery, including its documentation, in the scope which is permitted by law (§§ 69a ff. UrhG [German Copyright Act]).

3.9 We shall also have the right to use such software, including documentation, with the agreed quality features and in the scope which is required for contractual use of the product. We may also create backup copies without express approval being required.

### **4. Force majeure**

Force majeure, labour struggles, operational disruptions for which we are not at fault, civil unrest, governmental directives and other unavoidable events shall release us from making prompt delivery acceptance for the duration of their existence. During the course of such events as well as within two weeks after their end, we shall – notwithstanding our other rights – be entitled to, in whole or in part, to withdraw from the agreement insofar as these events are of a long-term duration and substantially reduce our ordering requirements owing to the fact that we are thus required to procure them from other sources.

### **5. Notification of readiness for shipment and invoicing**

The information on our orders and call-off orders shall be prevailing. The invoice must be sent to the address specified upon it as a simple copy subject to the indication of the invoice no. and other classification related information; it may not be enclosed with the shipments.

### **6. Pricing and transfer of risk**

If no special agreement has been concluded, the prices shall be understood to be free factory with duty paid (DDP in accordance with Incoterms 2000) including packaging. The VAT is not included. The Supplier shall assume the material risk until we or our authorised representatives have made delivery acceptance of the goods at the delivery destination specified on the order.

### **7. Payment conditions**

Insofar as no special agreement has been concluded, the settlement of the invoice shall be made either within 20 days subject to the deduction of a 3 % discount or within 30 days without any discounts after the payment claim comes due and the receipt of both the invoice as well as also the goods or rendering of the service. The payment shall be made subject to the reviewing of the invoice.

### **8. Claims for defects and recourse**

- 8.1 Delivery acceptance shall be made subject to the reservation of the right to examine the goods for the absence of defects, particularly also for correctness and completeness, insofar and as soon as this is feasible in accordance with customary business practices. We shall make a prompt notification of defects upon their discovery. In this regard, the Supplier shall waive the defence of a belated notification of defects.
- 8.2 The statutory directives related to material and legal defects shall be valid insofar as nothing to the contrary is stipulated in the following.
- 8.3 We shall have a fundamental right to select the manner of subsequent performance. The Supplier may refuse to render the subsequent performance option we have selected only if it is possible only with disproportionate costs.
- 8.4 In the event that the Supplier should not promptly begin to eliminate the defect upon our request to do so, then we shall be entitled in urgent cases, particularly in order to ward off acute dangers or to avoid more extensive damages, to eliminate the defects ourselves or to have them eliminated by third parties at the Supplier's expense.
- 8.5 In the event of legal defects, the Supplier shall also be required to indemnify us from any third-party claims unless it is not responsible for the legal defect.
- 8.6 Claims for defects shall become statute-barred – except in cases of malice – in three years' time unless the object has been used for a building structure based upon its customary usage and which has caused its defectiveness. The statute of limitations

shall begin to run upon the delivery of the contractual object (transfer of risk)

- 8.7 If the Supplier fulfils its subsequent performance obligation by making a replacement delivery, then the statute of limitations shall begin to run anew for the replacement goods upon their delivery unless the Supplier has, expressly and relevantly, reserved the right with regards to subsequent performance to make a replacement delivery only owing to goodwill, in order to avoid disputes or in the interest of the continuation of the supplier relationship.
- 8.8 In the event that we incur costs, particularly transport, infrastructure, labour, materials costs or other costs for incoming goods control which exceed the customary scope owing to the flawed delivery of the contractual object, the Supplier must assume these costs.

## 9. Product liability

- 9.1 In the event that we, owing to product liability, have claims asserted against us, the Supplier shall be obliged to indemnify us from any such claims insofar and to the extent that the damages have been caused by a defect of the delivery object supplied by the Supplier. In cases of fault-based liability, however, this shall apply only if the Supplier is at fault. Insofar as the cause of the damages lies in the sphere of responsibility of the Supplier, it shall bear the burden of proof in this regard.
- 9.2 In the cases specified in Sub-clause 9.1, the Supplier shall pay all costs and expenditures, including those of any legal defence.
- 9.3 Otherwise, the statutory directives shall apply.
- 9.4 We shall notify the Supplier of any recall campaign which results, in whole or in part, from the defect to the contractual object supplied by the Supplier, give it the opportunity to cooperate and consult with it regarding efficient implementation unless the notification or involvement of the Supplier is not possible owing to a particular urgency. Insofar as a recall campaign is the result of a defect to the contractual object supplied by the Supplier, then the Supplier shall assume the costs of the recall campaign.

## 10. Rendering of work

Persons who carry out work in the fulfilment of the agreement on our company's premises must follow the respective factory directives. The liability for accidents which these persons suffer upon our company's premises shall be excluded insofar as they have not been caused by intentional wrongdoing or gross negligence upon the part of our legal representatives or vicarious agents.

## 11. Provision of supplies

Any materials, parts, containers and special packaging we provide shall remain our property. They may be used only in accordance with the contractual provisions. The processing of materials and the assembly of parts shall be made upon our behalf. It has been mutually agreed that we, based upon the proportional value of the supplies provided to the value of the overall product created, shall become co-owners of the products created through the use of our materials and parts which shall be stored by the Supplier in this regard upon our behalf.

## 12. Documents and confidentiality

- 12.1 All commercial or technical information we disclose (including quality features specified on objects, documents or software that have been provided and any other knowledge or expertise) must be kept confidential from third parties as long as and insofar as it has not been made public against documentation and may only be provided to such persons in the Supplier's own company who have been authorised to use it for the purpose of making the delivery to us and who have likewise been obligated to maintain confidentiality; such information shall remain our exclusive property. Without our prior written approval, such information may not be reproduced or used commercially – except for deliveries to us. Upon our request, all information we have provided (where applicable, including any copies or records) and any objects provided on loan must be promptly and completely returned to us or destroyed. We reserve all rights to such information (including copyrights and the right to apply for protection of industrial property rights such as patents, registered

designs, semi-conductor protection, etc.). Insofar as they have been provided to us by third parties, this reservation of rights shall also apply upon behalf of third parties.

- 12.2 Products which have been manufactured based upon documents we have drafted such as drawings, models and the like or based upon our contractual information or with our tools or tools which have been created based upon our tools, may neither be used by the Supplier for its own benefit nor offered or supplied to third parties. This shall also apply accordingly for our print orders.

## 13. Export control and customs duties

The Supplier shall be obliged to notify us of any obligations to obtain approvals for (re-)exports of its goods in accordance with German, European, U.S. exporting and customs directives as well as the exporting and customs directives of the country of origin of its goods in its commercial documents. In this regard, the Supplier shall provide the following information in its offers and on its order confirmations and invoices for the affected items.

- The export no. specified on Anlage [Schedule] AL with regards to the German foreign trading directives or comparable items including export lists,
- For U.S. goods, the ECCN (Export Control Classification Number) in accordance with the U.S. Export Administration Regulations (EAR),
- The trading-related origin of its goods and the components of its goods, including the technology and software,
- Whether the goods have been transported through the USA, manufactured or stored in the USA, or manufactured with the assistance of U.S. technology,
- The statistical good numbers (HS code) of its goods as well as
- A contact person at its company for the clarification of any inquiries we make.

Upon our request, the Supplier shall be obliged to submit to us all additional foreign trading data about its goods and their components as well as to promptly (before the delivery of any correspondingly affected goods) notify us of all modifications of the existing data in writing.

## 14. Place of performance

The place of performance shall be the delivery destination or the location where service is to be rendered which is specified upon the order. Insofar as nothing to the contrary is agreed, this place of performance shall be Balzheim.

## 15. General provisions

- 15.1 In the event that a provision of these terms and conditions and the affected additional agreements should be or become invalid, then the validity of the remaining terms and conditions shall not be affected. The contractual partners shall be obliged to replace the invalid provision with a valid provision which most closely corresponds to the commercial intent of the invalid provision.
- 15.2 Exclusively German law shall be valid for the contractual relationships subject to the exclusion of the conflict of laws directives and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.3 The legal venue for all legal disputes which arise, directly or indirectly, from the contractual relationships for which these Purchasing Terms and Conditions form the basis, shall be Ulm. Furthermore, we shall be entitled to take legal action against the Supplier at our discretion either in the court which holds jurisdiction for its commercial residence or its branch office or the court which holds jurisdiction for the place of performance.

Balzheim in January 2009

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