

Terms and Conditions of Purchase for KM Packaging GmbH, and its subsidiaries Kunststoffwerk Kutterer GmbH & Co KG in Karlsruhe, Kunststoffwerk Mauer Thüringen GmbH & Co KG in Drei Gleichen, Formenbau Mauer GmbH in Ubstadt-Weiher, Mauer + Partner in Kittsee, Austria and Mauer Spolka in Trzebiel, Poland

§ 1 General – Scope of Application

1. This contract is subject to the law of the Federal Republic of Germany. The UN CISG, dated 11.04.1980 does not apply.
2. All purchasing orders are made exclusively on the basis of these Terms and Conditions (T&Cs). Other terms and conditions, especially the supplier's terms and conditions of sale or delivery shall not form the content of the contract, even if the customer does not explicitly reject such. These T&Cs therefore also apply to all subsequent orders or contractual relationships between the supplier and customer.
3. If the customer's order is not confirmed in writing within 5 working days of receipt, the customer shall be entitled to cancel the order.
4. Only written orders are binding. Orders made orally or by phone require retroactive confirmation in the form of a written confirmation by the customer in order to be valid. Oral ancillary agreements and amendments to the contract also require written confirmation.

§ 2 Quotes – Conclusion of contract

1. In his quotes, the supplier shall comply with the orders, tenders, and any drawings stipulated or approved by the customer with respect to quantity, quality, and execution. The supplier shall notify the customer explicitly in writing of any intended or existing deviations. Deviations require the written consent of the customer.

§ 3 Prices, shipping, packaging

1. The prices agreed are fixed prices and include additional charges of all kinds. Costs for packaging and transport, and for customs and customs formalities, are included in these prices. Insofar as the production costs for the supplier change by more than 10%, and the parties were unable to foresee this, each party is entitled to demand renegotiation of the prices. However, the customer shall not be obliged to accept new prices, in particular higher prices, unless the grounds for interference with the basis of the transaction are applicable (§ 313a BGB (German Civil Code)).
2. Dispatch notes, bills of lading, invoices, and all correspondence shall include the customer's order number.
3. Shipping is made at the expense and at the risk of the supplier delivery duty paid to the agreed place of delivery.
4. The obligation to accept return of packaging is in line with the statutory provisions.

§ 4 Invoices and payment

1. In the absence of any other agreement, invoices shall be submitted after delivery has been made with all standard agreed information and documents. Improper invoices are only considered received from such time as they have been corrected for the customer.
2. Payment shall be made per the industry standard and up to 14 days after delivery/performance and receipt of invoice with a 3% cash discount, or within 30 days net. The later time as applicable determines the start of the payment term. For payments by check, payment is considered made upon receipt of the check by the supplier.

§ 5 Delivery times, delivery delays and force majeure

1. The agreed delivery times are binding and shall be observed by the supplier precisely. Time of delivery is determined by such time as goods are received at the agreed place of delivery.
2. If a delay in delivery becomes apparent, the supplier shall inform the customer of the grounds for this and of the foreseeable duration immediately. This notwithstanding, failure to comply with a delivery time shall trigger the consequences of a delay. In urgent cases, in particular in order to avoid production downtime or with respect to a party's own delivery obligations, the customer is entitled to source elsewhere without further notice at the expense of the supplier.
3. Force majeure, including epidemics, pandemics and infectious diseases, and labor disputes, shall release the contract partners from their performance obligations for the duration of the disruption. The contract partners are obliged to provide the necessary information immediately, as far as reasonable, and to adapt their mutual obligations to the change in circumstances in good faith. Should the customer no longer be interested in the delivery on account of the delay, the customer shall be entitled to withdraw from the contract subject to prior notice.
4. In the event of a delay in delivery, the customer is entitled to claim damages and/or withdraw from the contract in accordance with the statutory provisions.
5. If delivery is made earlier than agreed, the customer reserves the right to return the delivery to the supplier. If goods that are delivered early are not returned, the goods shall be stored with the customer until the delivery time at the expense and at the risk of the supplier. Only the agreed delivery date applies with respect to payment terms.
6. Partial deliveries shall only be accepted subject to explicit agreement.

§ 6 Liability for defects

1. Obvious defects in the delivery, namely incorrect quantities and obvious transport damages, must be reported by the customer as soon as such are identified according to the facts of ordinary business. A complaint shall be considered timely if it is made within a period of 5 working days after delivery. Other defects shall be complained of within 5 working days of being discovered.
2. The parties are in agreement that a complaint is considered properly made under the terms of the UN CISG if the customer informs the supplier that the product is defective. However, upon request by the supplier, the customer shall provide a comprehensive presentation of the grounds for non-usability within an appropriate period of time.
3. The supplier guarantees that his products are of the agreed quality, in particular with respect to the specifications required by the customer. Modifications and deviations generally require prior agreement.
4. Statutory claims on the grounds of defects, including claims for damages and reimbursement of expenses, are due to the customer in full.
5. If the supplier fails to comply with the demand to remedy defects or deliver a replacement product within 10 working days, remedy shall be considered to have failed, in which case the customer shall be entitled to withdraw from the contract without further delay and to demand damages in lieu of performance.
6. Insofar as the products delivered are used in an end product that is sold to a consumer, the customer shall be due a right of recourse in the event that his customers bring claims against him on the grounds of § 478, § 479 BGB, whereby these regulations shall apply against the supplier accordingly. § 478, § 479 BGB apply accordingly with respect to scope, content and limitation period.

§ 7 Product liability and liability insurance

1. Insofar as the supplier is responsible for damages to a product, he shall be obliged to indemnify the customer upon first request of any third-party claims for damages.
2. Within this context, the supplier shall also be obliged to reimburse any expenses pursuant to § 683, § 670 BGB which arise from or in connection with a recall campaign conducted by the customer. The supplier undertakes to take out recall insurance with a sum insured of €5 million. The customer shall inform the supplier – as far as possible and reasonable – of the content and scope of the recall to be conducted and shall give him opportunity to give an opinion.
3. The supplier undertakes to maintain product liability insurance with a sum insured of €5 million per claim for personal injury/property damage – fixed sum; where the customer is due further claims to damages, these shall not be affected.

§ 8 Industrial property rights and liability for defects of title

1. The supplier assures that all deliveries are free of third-party rights and in particular that the delivery and use of the delivered products shall not infringe on patents, licenses, or other third-party property rights in the country of the agreed place of delivery and – insofar as the supplier is aware of such – the intended country of use.
2. The supplier shall indemnify the customer and his customers of third-party claims arising from any violations of property rights, and shall bear all costs which the customer incurs in this regard.
3. Otherwise, liability for defects pursuant to § 6 of this contract shall apply to other claims due to defects of title.

§ 9 Retention of title – Provision – Tools - Confidentiality

1. Insofar as we provide parts to the supplier (hereinafter referred to as reserved goods), we reserve the title to such. Processing or transformation by the supplier is always made for the customer. If our reserved goods are processed together with other articles that do not belong to us, we shall acquire joint ownership of the new item at the ratio of the value of our item to the other processed articles at time of processing.
2. If our reserved goods are inseparably mixed with other articles that do not belong to us, we shall acquire joint ownership of the new item at the ratio of the value of reserved goods to the other mixed articles at time of mixing. If this mixing is performed in such a way that the item of the supplier shall be regarded as the main item, then it is agreed that the supplier shall transfer to us proportionate joint ownership; the supplier shall grant sole ownership or joint ownership for us.
3. We reserve the title to tools; the supplier is obliged to use the tools exclusively for manufacturing the goods we have ordered. The supplier is obliged to insure the tools that belong to us according to their value as new.

4. He is obliged to conduct any necessary maintenance and inspection works in good time at his own expense. He shall notify us of any incidents immediately; if he culpably omits to do such, our right to claim damages shall be unaffected.
5. The supplier is obliged to keep all figures, drawings, calculations, and other documents and information which he receives strictly confidential. Such may be disclosed to third parties with our explicit consent only. This obligation to observe confidentiality shall persist after the execution of this contract; it expires when and insofar as the manufacturing knowledge contained in the figures, drawings, calculations, and other documents provided becomes public knowledge.

§ 10 Final provisions

1. These T&Cs apply to legal transactions with entrepreneurs.
2. Should individual parts of these T&Cs be or become legally ineffective, this shall not affect the validity of the remaining provisions.
3. The supplier is not entitled to pass on the order or significant parts of the order to third parties without prior written consent, or to assign receivables outside of any extended retention of title.
4. If the supplier ceases payments, insolvency proceedings are applied for or initiated against his assets, or if extra-judicial debt settlement proceedings are launched against the assets of the supplier, the customer shall be entitled to terminate the agreement without notice, unless the application is withdrawn within 4 weeks.
5. Place of performance and place of jurisdiction is the registered office of the customer unless otherwise stated in the order confirmation.
6. German law applies exclusively to all legal relationships between the parties.
7. The contract language is German. Insofar as another language is used in addition, the German wording takes precedence.

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