

# General Terms and Conditions of Purchase for Supplies and Services to KMPT AG

## 1. Scope of Application

Purchase orders of goods or services placed by KMPT AG and the companies affiliated to it within the meaning of the German Companies Act (hereinafter referred to as "KMPT" on behalf of the respective purchaser) shall always be subject to the present Terms and Conditions of Purchase. Vendor will upon request receive a list of the said companies. Any General Terms and Conditions of Business of Vendor are hereby rejected. Such terms and conditions will also not be accepted by receipt of the good/services or payment.

## 2. Scope of Order

The scope of order will be governed by the purchase order issued by KMPT (incl. annexes) even if not signed by Vendor.

Any subsequent verbal/telephone additions will not be effective unless confirmed in writing by KMPT as provided below.

## 3. Order Confirmation

The purchase order shall be countersigned in unchanged form by Vendor and returned to KMPT. KMPT reserves the right to revoke the purchase order issued, if the countersigned order letter does not reach KMPT within 14 days of the order date.

## 4. Prices and Terms of Payment

4.1 The agreed prices are fixed net prices and, at the option of KMPT, shall be payable net within 60 days or 30 days with 3 % discount, counted from the date of receipt of invoice/certificate of origin and delivery/performance of service in full at KMPT, unless any other terms of payment set forth in the purchase order are agreed.

Payments shall not constitute any acknowledgement that the supply/service is in compliance with the agreement.

4.2 KMPT is entitled to make the payment of agreed down payments dependent on the provision of an absolute bank guarantee payable at the first request and covering the amount of the down payment.

4.3 KMPT shall be authorised to set off all claims, to which KMPT or another of the companies referred to under Sec. 1 are entitled against Vendor.

## 5. Deadlines and Late Delivery / Penalty

5.1 The dates of delivery and services stated in the purchase order shall be binding.

5.2 If Vendor finds that the agreed dates cannot be complied with, it will immediately notify KMPT by telefax stating the reason for and the duration of the delay. To compensate for each and every delay, KMPT can require Vendor to choose the fastest possible method of dispatch without any surcharge.

5.3 If a penalty is agreed in case of default, this will not affect any further statutory claims vested in KMPT, such as the claim to performance. KMPT is entitled to demand the penalty until final payment is made. Vendor reserves the right to provide evidence of no damage or lower damage having been incurred.

## 6. Delivery and Dispatch

6.1 Delivery shall be made at the expense of Vendor carriage paid to the place of receipt and free of all expenses. Each and every dispatch shall be notified forthwith to KMPT. Notification of dispatch and delivery note must bear the KMPT Order and Ref. No. and the internal order no., as well as the weight and the type of packaging. KMPT is entitled to reject any consignments not dispatched/notified properly at the expense of Vendor.

6.2 Deliveries shall be made only from 8 a.m. – 4 p.m Monday to Friday (except on public holidays and days when the company is closed).

## 7. Invoices and Certificates of Origin

7.1 One invoice may not cover several purchase orders and must contain the KMPT Order and Ref. No.

7.2 Vendor shall present the certificates of origin required by KMPT, such as for example fully completed and signed vendor's declarations and goods transportation certificates, no later than on submission of the invoice. The same shall apply to supporting documentation required for VAT purposes for supplies/services to foreign countries/EU countries.

7.3 The deadline for payment will not start to run if incorrect/incomplete invoices and certificates of origin are submitted.

## 8. Transfer of Title and Risk

8.1 The risk of accidental destruction and accidental deterioration of the goods shall be borne by Vendor until completion of unloading at the place of receipt. If the goods are returned under warranty, the risk shall revert to Vendor upon completion of loading of the returned goods.

8.2 Title shall pass to KMPT upon completion of unloading at the place of receipt and upon handing over the delivery note.

## 9. Packaging

Packaging shall be charged at cost price and be returned. If it is returned by KMPT, the latter will be credited with at least 2/3rds of the value charged. The type of packaging shall be selected according to the goods to be transported and the means of transport, to ensure safe transportation and delivery without any damage.

## 10. Outgoing and Incoming Inspections, Period for Claiming Defects

Vendor is required to inspect outgoing goods before their delivery to KMPT. Vendor explicitly exonerates KMPT from the statutory obligation to examine and object to defects (incoming goods inspection) in accordance with Articles 377ff HGB (German Commercial Code); such provisions shall be deemed excluded in this respect.

## 11. Warranty for Defects

11.1 Vendor warrants that the supply/service is free of defects. Its suitability for the purpose stated in the purchase order and the characteristics listed in the purchase order are agreed features. In the case of parts subject to wear and tear, it is agreed that such parts shall withstand at least the customary number of operating hours without defect. Moreover, it is agreed that the supply/service must comply with the state of the art, the provisions and guidelines regarding workmanship, accident prevention and environmental protection issued by the legislator, the supervisory authorities and accident prevention and insurance institutions and the VDE and that Vendor has successfully completed all the environmental impact inspections prescribed for the type of product in question

11.2 The warranty period amounts to 36 months from transfer of risk or acceptance of the service.

11.3 The warranty period shall be extended by such standstill times of the KMPT product as are incurred as a result of defects and the remediation of defects. For any parts fitted/work carried out in the course of repairs the warranty period amounts to 24 months from completion of the repair work.

11.4 The notification of defects shall interrupt the limitation period for the notified defects.

11.5 If KMPT claims the statutory right to subsequent performance under the warranty, it will not be entitled to require the free replacement of a spare part for merchandise not made individually for KMPT. Any and all costs incurred by the repair/replacement, incl. costs of assembly and disassembly on the KMPT product, transport and disposal costs, shall be borne by Vendor.

11.6 In those cases regulated by law (in particular in case of urgency, unsuccessful expiry of a reasonable period intended for subsequent performance, refusal by Vendor to immediately undertake the repair) KMPT will be authorised to remedy the defects itself at the cost of Vendor. Where possible and reasonable, KMPT will inform Vendor in advance and request its presence.

11.7 Any other statutory claims by KMPT will remain unaffected by Sec. 11.5 and Sec. 11.6.

## 12. Spare Parts

Vendor guarantees the availability of all assemblies and spare parts of material importance to the function of the supply/service for a period of 10 years from delivery. If Vendor violates this obligation, KMPT shall be entitled to reproduce the part no longer available at the cost of Vendor. Vendor shall assist KMPT in every respect, for example by providing production drawings and procuring any necessary property rights.

## 13. Product Liability

13.1 Vendor will indemnify KMPT against any damage claims against KMPT on account of a product defect (also) attributable to Vendor and will upon request furnish KMPT with evidence of the existence of a product liability insurance providing adequate cover.

13.2 If no such evidence is furnished or Vendor refuses to increase the insurance cover by a reasonable amount proposed by KMPT, then KMPT will be entitled to withdraw from the agreement and claim damages or, at the option of KMPT, to effect a corresponding insurance and have the costs refunded by Vendor.

## 14. Industrial Property Rights

Vendor warrants to KMPT that the item delivered is free and clear of any third-party rights. In the event of violation of industrial property rights of third parties, Vendor shall be obliged to reimburse KMPT for any and all damages resulting therefrom incl. the costs of legal defence. KMPT shall also be entitled to obtain any and all necessary exploitation rights at the expense of Vendor.

## 15. Drawings, Documentation, Secrecy

15.1 Drawings, models and all other documentation handed over to Vendor for preparation and implementation of the order as well as the know-how embodied therein shall remain the sole ownership of KMPT. KMPT reserves all rights to drawings and products made to its specifications. Ownership of tools and other means of production, for which KMPT has paid, shall pass to KMPT upon payment.

15.2 The items / information referred to in Sec. 15.1 as well as all other information notified to Vendor by KMPT within the scope of the purchase order shall be treated strictly confidentially and may not be made accessible to third parties for production purposes unless their prior consent has been obtained. They may be used by Vendor solely to implement the respective order and shall be returned immediately upon request by KMPT. They shall be looked after with care, kept in safe custody and adequately insured by Vendor. Vendor will make the items/information accessible/known only to such employees/servants or agents as need to know for the purpose of performing the purchase order and are bound to appropriate secrecy.

## 16. Miscellaneous

16.1 The assignment of financial claims arising from this agreement shall be subject to the prior consent of KMPT.

16.2 The engagement of subcontractors or suppliers shall be subject to the prior consent of KMPT. Any such consent shall not effect the responsibility prescribed by law.

16.3 KMPT shall save the data needed for processing the order by EDP means.

16.4 Vendor may not refer to this order for promotional purposes unless the prior approval of KMPT has been obtained.

16.5 KMPT is entitled to check the production status at any time within the normal business hours of Vendor and to require information on the status of processing. Vendor is required to grant KMPT free access accordingly for the purpose of checking the production status.

16.6 Vendor will inform KMPT without delay, if all or part of a supply/service is subject to export restrictions under German law.

16.7 These terms shall be construed in accordance with INCOTERMS, as valid at the time of conclusion of the agreement.

16.8 The place of performance for the supplies and services shall be the place of use.

16.9 These Terms and Conditions shall be governed by German law, to the exclusion of UN purchase law. The place of jurisdiction shall be Munich. KMPT is entitled to also institute legal proceedings at the registered office of Vendor.

16.10 If any individual provisions of this agreement should be invalid, the other provisions will remain binding.

Status: April 2009