



## General Conditions of Purchase

General conditions of purchase of Klingelberg AG (KL), Zurich (1209)

### 1. General - Scope of validity

- 1.1 These conditions of purchase apply exclusively for all orders on the part of KL. Deviant or conditions of the Supplier contradictory to these conditions are not subject matters of contract unless KL has explicitly approved conditions of the Supplier which are to the contrary or which deviate from these conditions of purchase in writing. These conditions of purchase also apply if KL unconditionally accepts the Supplier's delivery while aware of conditions of the Supplier which are to the contrary or which deviate from these conditions of purchase.
- 1.2 All agreements reached between KL and the Supplier must be put into writing in the respective supply agreement.
- 1.3 These conditions of purchase also apply for all future dealings with the Supplier.
- 1.4 Should a provision of these conditions of purchase be either wholly or partially invalid, the other provisions are not affected by this. The invalid provision must be replaced by a valid provision, the content of which comes as close as possible to that of the invalid provision.

### 2. Order documentation - Nondisclosure

- 2.1 KL reserves the ownership and intellectual property rights to all construction drawings, illustrations, drawings, calculations, parts lists, models, etc. Third parties may not be granted access to these without the express written permission of KL. They may only be used for production on the basis of KL's order and must be returned to KL unprompted after execution (including all copies, construction plans, etc.). Their content and/or properties must be kept secret from third parties.

### 3. Prices - Payment conditions

- 3.1 The price shown in the order is binding for the Supplier. It includes delivery free domicile including packaging.
- 3.2 The statutory value added tax is included in the price.
- 3.3 KL will only make payments in foreign currencies if this is explicitly provided for in the order.
- 3.4 Invoices must be submitted separately with the delivery and in duplicate; they may not be attached to the shipment. KL will only process invoices if they include the order number stated in the order.
- 3.5 Unless otherwise agreed in writing, KL shall make payment, counted from receipt of the delivery and invoice, for receipt in the time from  
1st to 10th of a month on 20th of the month,  
from 11th to 20th of a month on 30th of the month,  
from 21st to 31st of a month on 10th of the following month,  
in each case with the agreed discount or else with 2% discount. Method of payment at KL's choice. The payment by note does not exclude cash discount deduction.
- 3.6 KL reserves the rights to set-off and detain to the extent permitted by law.



#### 4. Delivery time

- 4.1 The delivery time specified in the order is binding.
- 4.2 The Supplier is obligated to inform KL immediately and in writing if circumstances occur or become noticeable to him which mean that the specified delivery time cannot be met.
- 4.3 In case of delayed delivery, KL is entitled to assert legal claims. In particular, after the fruitless expiry of an appropriate extension period, KL may demand damages for non-performance.

#### 5. Delivery and shipping instructions

- 5.1 Unless otherwise agreed in writing, delivery shall take place free domicile.
- 5.2 The Supplier is obligated to quote the KL order number on all shipping documents and delivery notes; if he fails to do so, KL shall not be responsible for the resulting delays in processing.
- 5.3 A supplier delivering machines within the meaning of the EC machine directives (2006/42/EC, as amended from time to time) must include with the delivery an EC certificate of conformity or installer's/manufacture's declaration which fulfils the prerequisites for affixing the "CE" symbol.

#### 6. Inspection for defects - Warranty

- 6.1 For the rights in case of defects as to quality and defects of title of the goods (including wrong delivery and short delivery, as well as incorrect assembly and inadequate assembly and operating instructions) and in case of other breaches of duty by the Supplier, the statutory provisions apply unless agreed otherwise in the following.
- 6.2 According to the statutory provisions, the Supplier is liable in particular for ensuring that the goods have the agreed properties upon transfer of the risk to KL.

The product descriptions which, in particular through designation or reference in the order from KL, are the subject matter of the respective agreement, or which were incorporated into the agreement in the same way as these conditions of purchase, are regarded as an agreement as to the properties in each case. For this, it makes no difference whether the product description originates from KL, from the Supplier or from the Manufacturer.

- 6.3 If the properties have not been agreed on, a defect as to quality exists if the goods are not suitable for the use intended in the agreement. For the remainder, a defect as to quality also exists in addition to the statutory provisions if the goods do not possess the characteristics which KL can expect in accordance with the product descriptions given by the Supplier or the Manufacturer; for this it is sufficient if the product description was surrendered to KL after conclusion of the agreement (e.g. together with the goods).
- 6.4 KL is also entitled to claim for defects without restriction if the defect was known to KL upon conclusion of the agreement or remained unknown as a result of gross negligence.
- 6.5 For the commercial duty to inspect and to give notice of defects, the statutory provisions apply with the following proviso:

KL's duty to inspect is limited to defects which come to light during incoming goods inspection through external survey including the shipping documents, as well as during quality control by KL using a sampling procedure (e.g. transport damage, wrong delivery and short delivery). The inspection activities will be carried out within 30 days from receipt of the delivery; there are no further time limits for inspecting delivered goods. If acceptance has been agreed, no duty to inspect exists.

KL's duty to give notice of defects for defects discovered later remains unaffected. In all cases, notification of a defect by KL is regarded as being without delay and in time if it is received by the Supplier within thirty working days after discovery of the defect.

KL can assert rights arising from product defects within ten years from receipt of the delivery. If acceptance has been agreed, the limitation period begins with the acceptance.



- 6.6 If the Supplier does not honor his obligation to supplementary performance, either by remedying the defect (subsequent improvement) or by supplying an item which is free from defects (replacement) at KL's option, within an appropriate time limit set by KL, KL can remedy the defect himself and demand reimbursement of the costs required to do this or an appropriate advance payment from the Supplier. If supplementary performance by the Supplier has failed or is unreasonable for KL (e.g. because of particular urgency, endangerment of the operating reliability or the imminent occurrence of disproportionate damages), no time limit need be set. The Supplier must be informed without delay, as far as possible in advance.
- 6.7 For the rest, KL is entitled to reduction of the purchase price in case of a defect as to quality or to withdrawal from the agreement. Furthermore, KL has an entitlement to damages and reimbursement of expenses; this also applies explicitly in cases of consequential harm caused by a defect.
- 6.8 For parts of the delivery which are reconditioned or repaired within the limitation period applicable for KL's right to claim damages for defects, the same rights arising from product defects exist as for goods delivered for the first time from the point in time at which KL's claims for supplementary performance have been met in full by the Supplier.
- 6.9 If costs are incurred by KL as a result of the defective delivery, in particular travel and transport, labor and material costs or costs for reception inspection beyond the usual extent, the Supplier shall reimburse KL for these costs.
- 6.10 If KL or a customer of KL takes back products which they have produced and/or sold themselves as a result of the defectiveness of the subject matter of the agreement delivered by the Supplier or if the purchase price paid to KL was reduced or if claims were made on KL in any other way for this reason, KL reserves the right to withdraw from the agreement with the Supplier without needing to set a deadline. KL has an entitlement to damages and reimbursement of expenses; this also applies explicitly in cases of consequential harm caused by a defect.
- 6.11 KL is entitled to demand compensation from the Supplier for costs which KL had to bear in relation to his customer because the customer had a claim against KL to compensation of the costs required for the purposes of supplementary performance, in particular travel, transport, labor and material costs.
- 6.12 The limitation period in cases of 6.10 and 6.11 commences at the earliest three months after the point in time when KL has met the claims of the customer addressed to KL, but at the latest ten years after delivery by the Supplier.

## 7. Software, rights, defects of title

- 7.1 If the Supplier's delivery contains software, rights or other objects, the use of which is only permitted based on corresponding rights of use (licenses), the required rights of use (particularly including the right to grant the rights of use to third parties) will be transferred to KL with the delivery without a surcharge. The Supplier is liable for the existence, the assignability and the enforceability of the rights of use.
- 7.2 Furthermore, the Supplier is liable for ensuring that industrial property rights (e.g. patents, utility models, design patents, trademarks), as well as copyrights and other rights of third parties are not infringed by his delivery. If claims are made against KL by a third party by reason of an asserted breach, the Supplier is obligated to release KL from these claims at the first request. A limitation period of ten years applies to the right to release. Within the scope of this duty to release, the Supplier shall reimburse all costs which result from or in connection with a claim from a third party. KL shall inform the Supplier about the content and amount of possible costs as far as this is possible and reasonable and shall give him the opportunity to make a statement.

In the case of a breach by a third party, the Supplier undertakes to take legal action at his own expense. The Supplier undertakes to earnestly check respective notifications from KL and to inform KL if no action is to be taken, stating the reasons. KL undertakes to provide all necessary information to the Supplier.

- 7.3 Irrespective of the aforementioned obligation to release, the provisions of these conditions of purchase apply to the liability of the Supplier in the case of defects of title (in particular sections 6.5, 8 and 10 with the following proviso:
- 7.3.1 A defect of title exists if third parties are able to assert claims against KL with regard to the subject matter of the agreement, which KL does not have to accept according to the arrangements with the Supplier. If a



right is the subject matter of the agreement, the same also applies for its existence, assignability and enforceability.

- 7.3.2 If a defect of title exists, the Supplier is obligated to provide the right to unrestricted further use (rectification of defects) or, at KL's option, to modify the subject matter of the agreement in a way that is reasonable for KL such that the defect of title no longer exists (replacement).
- 7.3.3 The Supplier is also liable for the compensation of damage and reimbursement of expenses if he was not aware of the defect of title or is not responsible. KL's statutory right to reduce the purchase price or to withdraw from the agreement remains unaffected.

## 8. Supplier recourse

- 8.1 As well as the claims for defects, KL is entitled in particular to demand precisely the type of supplementary performance (rectification of defects or replacement) from the Supplier which KL owes to the Customer in the individual case. KL's rights arising from product defects are not restricted by this.
- 8.2 This also applies in the case that the delivery item has been converted by KL or a third party. KL is entitled to these claims irrespective of whether the third party or the end customer is a consumer or a contractor, and irrespective of whether delivery of the goods to an end customer has taken place.
- 8.3 Before KL recognizes or fulfils a claim for defects asserted by a customer of KL (including reimbursement of expenses and consequential harm caused by a defect), KL will inform the Supplier and, giving a brief description of the facts of the case, will request a written statement. If the statement is not made within an appropriate period and if no amicable solution is precipitated, the claim for defects effectively allowed by KL is regarded as owing to the respective customer; in this case, the Supplier is responsible for supplying counter evidence.

## 9. Product liability - Release - Insurance cover - QA

- 9.1 If the Supplier is responsible for a product defect, he must release KL from claims for damages from third parties at the first request insofar as the cause set in within his sphere of influence and organization and he is himself liable in the legal relationship with third parties.
- 9.2 In cases of fig 9.1, the Supplier is also obligated to recompense KL for all costs resulting from or in connection with a product recall by KL or by a customer of KL. KL will inform the Supplier about the content and extent of the product recall in good time, as far as is possible and reasonable.
- 9.3 The Supplier is obligated to maintain product liability insurance with a limit of indemnity of €2.5 for personal injury/property damage (lump-sum), without this resulting in the exclusion of further claims for damages on the part of KL.
- 9.4 The Supplier is obligated to operate quality assurance within the framework of DIN/EN/ISO 9000 ff for his products.

## 10. Supply - Tools

- 10.1 KL reserves the right to ownership of the parts supplied. Conversion or alteration by the Supplier take place for KL. If the KL reserved goods are converted using other objects not belonging to KL, KL acquires the joint ownership to the new item proportional to the value of the KL item to that of the other converted objects at the time of the conversion.
- 10.2 If the parts supplied by KL are inextricably combined with other objects not belonging to KL, KL acquires the joint ownership to the new item proportional to the value of the reserved goods to that of the other combined objects at the time of the combining. If combining takes place in such a way that the Supplier's item is to be regarded as the main item, it applies as agreed that KL acquires proportional joint ownership. The Supplier holds the KL sole ownership or joint ownership for KL.
- 10.3 Supplied tools, etc. remain the property of KL. The Supplier may only use the tools, etc. to manufacture the objects ordered by KL. The Supplier must insure the tools etc. belonging to KL at replacement value against fire, water, and theft at his own expense. He must report failures to KL immediately and carry out possible required maintenance and inspection work at his own expense and in good time.



## 11. Limitation

- 11.1 The reciprocal claims of the contractual parties become time-barred after 10 years, unless agreed otherwise.
- 11.2 The aforementioned provision applies without restriction for all claims resulting from defects as to quality, defective titles or product defects, either contractual or non-contractual. Furthermore, claims resulting from defective titles do not become time-barred at all, as long as the third party can still assert the right against KL, particularly in the absence of limitation.

## 12. Place of fulfillment - Place of jurisdiction - Applicable law

- 12.1 Unless otherwise agreed in the order, KL's place of business is the place of fulfillment.
- 12.2 The place of jurisdiction is KL's place of business. KL can, however, also bring an action against the Supplier in his own general jurisdiction.
- 12.3 Unless otherwise stipulated in the order, Swiss law applies.