



General Terms & Conditions of Purchasing of KLEBCHEMIE M. G. Becker GmbH & Co. KG

1. Applicability

All and any purchase orders and other agreements (whether placed or made now or in future) will exclusively be based on these Terms & Conditions stipulated by Purchaser and which shall be deemed acknowledged even if not expressly confirmed upon acceptance of a purchase order; they shall also apply in cases where Purchaser unconditionally accepts any deliveries knowing that Supplier's terms and conditions are in any way whatsoever inconsistent herewith. Any deviating acknowledgements of order, agreements or business terms and conditions of Supplier shall require Purchaser's explicit prior written consent to take effect.

2. Offers, Orders

- 2.1 Offers shall be made in writing (unless otherwise agreed), free of charge and without obligation.
- 2.2 Only a written purchase order ("P/O") will be valid. Any verbal results of meetings and arrangements by phone shall be confirmed in writing.
- 2.3 Each and every P/O shall be acknowledged in writing by Supplier, duly stating Purchaser's P/O number. Unless so acknowledged within a fortnight after the P/O's issuance, Purchaser will no longer be bound thereby. By acknowledging the order, any drawings and other documents enclosed with, will become an integral part of the P/O by reference. Purchaser's P/O number (as well as P/O date and, where applicable, item number) shall be quoted in all correspondence, invoices and shipping documents. On request, the place of unloading shall be indicated, too. In the event that goods are misrouted for lack of such data, Supplier will be liable for any costs and expenses thus incurred.
- 2.4 Purchaser reserves title to, and ownership of, all and any illustrations, drawings, computations and other documents underlying a purchase order (the "Order Documents"). Without first obtaining Purchaser's written approval, any such Order Document shall not be disclosed or made available to, and duly be kept secret from, a third party. Order Documents shall solely be used for P/O-based manufacture or production; upon final execution of the purchase order, the Order Documents shall be returned to Purchaser without prior request to such effect.

3. Delivery time/period

- 3.1 The delivery time stated in the P/O is binding.
- 3.2 The period of delivery will be counted from P/O date. If and when Supplier becomes aware of his potential inability to execute a P/O in due time (whether wholly or in part, and irrespective of the cause of such delay), Supplier shall forthwith give notice in writing, duly stating the reasons and anticipated duration of delay. If given in time, Purchaser will grant Supplier a reasonable period. Failure by Supplier to give timely notice of delay will deprive Supplier of his right to invoke an obstacle to performance; in any such cases, including any delivery delayed for reasons beyond Supplier's control, Purchaser will have the right to cancel or rescind the contract or any part thereof, without granting a period. In addition, the provisions of law shall apply. In no event will part deliveries already made be deemed independent transactions.

4. Packing, shipment

- 4.1 All goods shall be pack(ed) properly to avoid any damage in transit. If pack(ing) is charged separately, such charges (acceptable at cost prices only) shall be quoted in a separate line both in the offer and the invoice.
- 4.2 Shipment shall be made as specified by Purchaser. Unless otherwise agreed, goods shall be delivered free destination. Purchaser will not prepay any freight charges. Unless otherwise agreed, transport insurance will be Purchaser's responsibility.
- 4.3 Supplier will be liable to Purchaser for the due and proper labeling/marketing of all consignments requiring so. Such labeling/marketing shall also be repeated in confirmations of order and all shipping documents.
- 4.4 Each consignment shall be accompanied by a delivery slip if delivered by vehicle, forwarding agent or mail. For rail transport, the delivery slip shall be mailed on the day of shipment. All shipping documents and delivery slips shall evidence Purchaser's exact P/O number. Invoices will not be deemed delivery slips.
- 4.5 Purchaser has the right to require that, on or before the date of the goods' dispatch, Supplier separately produces detailed shipping notes in triplicate for each consignment, howsoever shipped and invoiced.

5. Passing of risk

Risk shall in all cases pass to Purchaser only when the goods have been accepted. Time and place of acceptance will be as stipulated in the P/O; if not specified separately, acceptance will be performed immediately upon arrival or receipt of the shipment at the agreed place of destination.

6. Liability for defects

- 6.1 The obligation to examine the goods for, and give notice of, apparent defects or variations in quantity will generally not commence until after arrival of the goods at Purchaser's plant and due receipt of the underlying shipping note, even in cases where title to the consignment may already have passed to Purchaser or the consignment been delivered to Purchaser's forwarding agent, carrier or other authorized agent. A notice of defect shall be deemed given in time if received by Supplier within a period of seven workdays (for apparent defects) or fourteen days (for hidden defects), as applicable. Extended notification periods under specific agreements will remain unaffected hereby.
- 6.2 For a period of three years from acceptance or, concerning machinery, for a period of 13,200 operating hours (where applicable, after elimination of defects, whether notified in due time or reported late), Supplier shall warrant the product delivered (the "Product") to be free from defects that would impair its use or operation, and to show the characteristics contractually required.
- 6.3 Supplier shall in particular also be liable for the output, performance and consumption data specified; this liability shall include any such parts as Supplier may have sourced from his subcontractors or vendors.
- 6.4 Supplier warrants and represents that the Product conforms with generally accepted rules of the art and trade, with accident prevention and occupational safety and health regulations, as well as with the generally accepted rules of safety engineering and industrial medicine.
- 6.5 In the event that the Product shows a defect or becomes defective during the limitation period, Purchaser may at its discretion demand that the defect be remedied within a reasonable period of time or a replacement free from any defects be supplied and delivered. Purchaser shall be entitled to further claims and rights provided that Purchaser has fixed a reasonable period unless fixing a period was not necessary with due consideration for the circumstances of the particular case. Within the scope of his statutory obligations, Supplier shall indemnify Purchaser for any loss or damage occasioned to Purchaser as a result of the delivery of such defective Product if and to the extent Supplier does not prove that this loss or damage is not due to his fault. Failure by Supplier to deliver a replacement product or remedy a defect as aforesaid within the additionally granted period of time will entitle Purchaser to remedy, or have remedied by a third party, any such defect(s) at Supplier's cost and expense. Purchaser has the right to offset the costs and expenses incurred for eliminating a defect.
- 6.6 Replacement products or removal of defects work shall be subject to the same extent of liability by Supplier as the underlying item originally delivered; the limitation period of replacement will recommence to run at the date of delivery.
- 6.7 Supplier shall be liable for a period of ten years, starting at the date of delivery of the Products, that the delivery, use and operation of the Product does not infringe any third-party patents or other property rights. Supplier shall indemnify and hold Purchaser harmless for any third-party claims filed or lodged against Purchaser for infringement of any such property rights.

- 6.8 Supplier will indemnify and hold Purchaser harmless for any third-party product liability claims based on the German Product Liability Act or other regulations, provided and to the extent that the fault or defect giving rise to such liability is attributable to Supplier or within his control.

7. Drawings and supporting documents

Drawings and supporting documents, especially those which Purchaser may need to install, operate, maintain or repair the product, shall be provided by Supplier free of charge in due course and without prior request.

8. Invoices and payment terms

- 8.1 Unless otherwise agreed, separate invoices for each P/O shall be mailed to Purchaser in duplicate and may not be enclosed with the underlying consignments. Part deliveries or partial performance shall be designated as such in invoices. In accordance with the P/O stipulations, invoices shall evidence the P/O number therein stated and be sent to the addressee named by Purchaser. Supplier will be held liable for any consequences ensuing from noncompliance with this obligation.
- 8.2 Payments will be made in accordance with the terms agreed from time to time. If a product or service ordered is claimed nonconforming, Purchaser shall be entitled to the defence of lack of performance of the contract and the right of retention.
- 8.3 Without prejudice to Supplier's right of assignment according to § 354 a German Commercial Code (HGB) any assignment by Supplier of the purchase price claim shall require Purchaser's prior approval, which shall not be unreasonably withheld by Purchaser.

9. Technical capital goods

After ordering capital goods for technical uses, Purchaser may at any time check the execution of the underlying purchase order at Supplier's or his subcontractors'/vendors' plants or premises. The equipment, auxiliaries, supplies and services required for such inspection shall be provided by Supplier free of charge. No such inspection shall release Supplier from his warranty obligations, nor will it constitute a waiver of Purchaser's right to raise claims for defects identified subsequently. In the event that Supplier will not manufacture the Product substantially within Supplier's enterprise, he shall promptly notify Purchaser thereof prior to commencing manufacture and obtain Purchaser's approval.

10. Final clause

- 10.1 Any capitalization by Supplier on the business relationship with Purchaser for advertising/promotion purposes shall require Purchaser's permission in writing.
- 10.2 The present or future invalidity or ineffectiveness of any provision of the subject Terms & Conditions or of a contract based on these shall not affect the validity or effectiveness of the remaining provisions. The Parties undertake to agree on a new clause which will come closest to the invalid or ineffective one's originally intended purposes.
- 10.3 To the legally permissible extent and unless otherwise agreed, Karlsruhe, Germany, shall be exclusive place of performance for all and any obligations or liabilities arising from the subject Terms & Conditions, and exclusive place of jurisdiction for all disputes arising in connection with transactions based on these Terms & Conditions and/or with summary proceedings with entire reliance by plaintiff on documentary evidence.
- 10.4 The relations between Purchaser and Supplier shall exclusively be governed by the laws of the Federal Republic of Germany. Expressly excluded hereby is any application of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Stand: 05/2004