

## General Terms and Conditions of Purchase

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### § 1 Validity:

(1) All deliveries, services and offers of our Suppliers are made solely on the basis of the following General Terms and Conditions of Purchase. Conflicting or deviating terms and conditions of business of our Suppliers or third parties shall not apply, even when we do not separately object to their applicability in individual cases. Even in the event of reference being made by us to a letter containing or referring to the terms and conditions of the Supplier or a third party, this shall not constitute agreement with the validity of those terms and conditions. Third-party conditions shall only become part of the contract when their inclusion is expressly agreed to by us in writing.

(2) Our Terms and Conditions of Purchase shall also apply to all future deliveries, services or offers to us, even when they are not separately agreed to once again.

(3) Our Terms and Conditions of Purchase shall only apply to companies within the meaning of § 310 par. 1 German Civil Code (BGB).

(4) When, in addition to the General Terms and Conditions of Purchase, a (work) supply/purchase contract etc. that is concluded between the parties exists and deviates from the following provisions, the provisions of the (work) supply/purchase contract etc. shall take precedence.

### § 2 Offer - Offer documents:

(1) Orders placed by us are to be accepted by the Supplier within a period of four working days after receipt of the order. This is to be done by written declaration of acceptance. Regardless of this, any action taken by the Supplier to fulfil an order shall constitute acceptance of the order.

(2) Orders placed by us shall only be binding when they have been placed in text form (e-mail, fax, letter, EDI, electronic document, etc.).

(3) Receipt of the declaration of acceptance by us shall be decisive for the timely acceptance by the Supplier. When no declaration is received by the Supplier within the acceptance period, we are entitled, but not obliged, to declare the order invalid. This will not result in any claims arising from this for the Supplier.

(4) We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties without our express written consent. They are to be used solely for production on the basis of our order; they are to be returned to us unsolicited and free of charge following completion of the order. The Supplier has no right of retention to these documents. Confidentiality is to be retained with regard to third parties in this respect and the provision of § 10 (5) also applies.

### § 3 Prices - Terms of payment:

(1) Prices are quoted in EUR, the statutory value-added tax is included in the price.

(2) Prices are agreed before the order. The price stated in the order is binding. Unless otherwise agreed in writing, the price includes delivery "free domicile", including packaging as well as all associated parts and work. Increases and reductions must be confirmed in writing by both parties.

(3) When, in exceptional cases, prices are not fixed in advance, they must be stated bindingly at the latest upon order acceptance. This represents a new offer by the Supplier, which must be expressly accepted by us.

(4) Unilateral price increases by the Supplier are excluded.

(5) We can only process invoices when - in accordance with the specifications in our order - they state the order number shown there and are sent to our invoice email address [invoice@kessel.de](mailto:invoice@kessel.de) by means of an electronic PDF; the Supplier is responsible for all consequences arising from non-compliance with this obligation, unless he proves that he is not responsible for them.

(6) Unless otherwise agreed in writing, we shall pay the purchase price within 45 days, calculated from delivery and receipt of invoice, with 3% discount; after 60 days with 2% discount, or within 90 days net after delivery and receipt of invoice. Should acceptance be necessary, the periods shall not begin before acceptance or before any act replacing it.

(7) We are entitled to set-off and retention rights to the extent permitted by law.

### § 4 Assignment of claims:

Claims against us may only be assigned with our written consent.

### § 5 Termination of the supply contract and/or framework delivery contract:

(1) When no other, deviating agreements have been stipulated between the parties, a regular termination shall be possible with a period of notice of 4 weeks to the end of the month.

(2) The right to terminate without notice for cause remains unaffected by this. Important reasons are, for example (the following list is not exhaustive)

1. filing for insolvency proceedings against the assets or insolvency of the contractual partner, or

2. the termination of a system customer or customer from the supply chain, up to and including the first customer, or

3. a breach of the supply contract by the Supplier that cannot be remedied, or

4. a breach of the supply contract by the Supplier that can be remedied (e.g. defectiveness of the product, delay in delivery, etc.), but which the Supplier does not remedy within a reasonable period as of receipt of the request, despite a corresponding request for remedy by us, or

5. a violation of legal regulations by the Supplier and when continuation of the cooperation is unreasonable for us due to the severity of the violation under consideration of all circumstances and mutual interests, or

6. a breach of the confidentiality agreement, or

7. in the event of well-founded suspicion of criminal offences. Without prejudice to other rights, we are entitled to terminate the contract if the Supplier has reasonable grounds for suspecting criminal acts, in particular fraud, bribery, etc. In order to exercise the right of termination, it is in any case sufficient to initiate investigation proceedings against the Supplier or his executive bodies or executives, in the latter case only when the investigation proceedings are connected with the Supplier's activities.

(3) Claims arising from § 649 German Civil Code (BGB), if applicable at all, are excluded in the event of termination by us for cause in any case.

### § 6 Delivery time:

(1) The delivery time stated in the order or in the contract shall be binding. In the event of premature delivery by the Supplier, we are not obliged but entitled to accept them.

(2) When the delivery period is one day, one week, one month or one quarter, the Supplier shall be in default of delivery on the first day of the following period without the need for a reminder.

(3) The Supplier is obliged to inform us immediately in writing when circumstances arise or become apparent to him that indicate that the agreed delivery time cannot be satisfied.

(4) In the event of a delay in delivery, we are entitled to the statutory claims. In particular, we are entitled to claim damages instead of performance and rescission after a reasonable period has expired without result. When we claim for damages, the Supplier shall be entitled to prove to us that he is not responsible for the breach of duty.

(5) In the event of a delay in delivery, we shall be entitled to demand flat-rate damage caused by delay in the amount of 1% of the delivery value per full week, but not more than 5% of the delivery value. We reserve the right to assert further legal claims (withdrawal and damages instead of performance). The Supplier shall have the right to prove to us that no or substantially lower damage has been incurred as a result of the delay.

(6) We are entitled, in consultation with the Supplier, to be informed regarding the progress of the work of the subject matter of the contract. In this respect, we are also entitled to inspect the finished delivery items prior to dispatch during the usual business hours at the manufacturing plant so as to verify conformity with the delivery order as regards design, manufacture, material, functionality and operational safety. The Supplier shall provide the equipment, tools, auxiliary materials, and materials as well as the required personnel in order to carry out a detailed inspection and shall provide all parts of the delivery items to be inspected in a clearly arranged manner.

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### § 7 Transfer of Risk - Documents:

(1) Unless otherwise agreed in writing, delivery shall be free domicile. Delivery "free domicile" in the sense of "DDP" of INCOTERMS is meant.

(2) If delivery clauses have been agreed with the Supplier in deviation from § 6 par. 1 of the Conditions of Purchase, the INCOTERMS of 2010 of the International Chamber of Commerce shall apply. The Ingolstadt-Nord station is the place of delivery for rail shipments.

(3) The Supplier is obliged to state our exact order number and part number on all shipping documents and delivery notes and to ensure proper addressing. Failure to do so shall result in us not being responsible for the resulting delays in processing. The Supplier shall bear any additional costs arising from this. When the packaging used for shipping the goods is invoiced separately in deviation from § 3 par. 2, we shall be free to make it available again to the Supplier in a usable condition, carriage paid, and by crediting the invoiced value.

### § 8 Defects investigation

We shall be obliged to inspect the goods for any deviations in quality and quantity within a reasonable period of time; the complaint shall be deemed timely when received by the Supplier within a period of 5 working days as calculated from receipt of the goods or, in the case of hidden defects, as of time of discovery.

### § 9 Warranty:

(1) The Supplier guarantees that the products are free of defects in accordance with the statutory warranty rights and in particular regarding the suitability of the products for the use stipulated in the respective contract. Furthermore, the Supplier guarantees that the products comply with all laws and regulations applicable to them in the relevant sales markets, in particular VDE, GS, RoHS or REACH, etc., and are state-of-the-art.

(2) When a quality agreement or guarantee declaration exists that is applicable to the respective order from us, this agreement/declaration shall take precedence.

(3) If the product is a special product within the meaning of § 3 par. 2 of the Law on Technical Work Equipment of 24.06.1968 (Machine Protection Act), the Supplier is responsible for compliance with the safety regulations of § 3 par. 1 of this law. If this is not possible, the Supplier must point this out to us.

(4) In the case of warranty, we are entitled to demand remedy of defects or delivery of a new item from the Supplier at our discretion. The right to damages, in particular to damages in lieu of performance, is expressly reserved.

(5) We are entitled to remedy defects ourselves, at the Supplier's expense, when the Supplier is in default with subsequent performance.

(6) Our warranty claims include all costs associated with the rectification of defects, including removal, return transport and similar costs. The return of rejected deliveries shall be at the Supplier's risk and expense. A lump sum of EUR 100.00 will be charged as reimbursement of administrative expenses for the processing of complaints. The Supplier reserves the right to prove a lower expenditure.

(7) When rights of third parties are infringed by the Supplier, and we are therefore held liable, the Supplier must indemnify us from these claims and support us in defending these claims in every form. At our request, the Supplier shall conduct the legal dispute on his own responsibility and at his own expense.

(8) The limitation period for claims for defects is 36 months as calculated from the transfer of risk or acceptance, unless longer warranty periods are provided for by law or the mandatory provisions of §§ 478, 479 German Civil Code (BGB) do not apply.

(9) In the case of a sale of consumer goods, the provisions of §§ 478, 479 German Civil Code (BGB) remain unaffected.

### § 10 Product Liability - Indemnification -Liability Insurance Cover

(1) Insofar as the Supplier is responsible for a product defect, he is obliged to indemnify us against claims for damages by third parties at our first request, provided the cause lies within his sphere of control and organisation, and he himself is liable in the external relationship.

(2) When we further process or considerably modify the defective product delivered by the Supplier, and when the defective product delivered by the Supplier is an obvious defect that is easily recognisable to us, or when it was not recognised by us as part of the production process, due to gross negligence, our claim under paragraph (1) shall be reduced by our pro-rata causation contribution.

(3) Within the scope of his own (pro rata) liability for cases of damage within the meaning of paragraph (1), the Supplier is also obliged to reimburse us for any expenses pursuant to §§ 683, 670 German Civil Code (BGB) or §§ 830, 840, 426 German Civil Code (BGB) resulting from or in connection with a recall action legally carried out by us, taking into account paragraph (2) if applicable. We will - as far as possible and reasonable - inform the Supplier in advance of the content and scope of such a recall measure and give him the opportunity to comment.

(4) The Supplier undertakes to maintain product liability insurance with an appropriate insured sum; when we are entitled to further claims for damages, these shall remain unaffected.

### § 11 Property rights:

(1) The Supplier guarantees that no rights of third parties within the Federal Republic of Germany are infringed in connection with his delivery.

(2) If claims are therefore made against us by a third party, the Supplier is obliged to indemnify us against these claims upon our first written request. In the event of claims for damages by the third party, the Supplier shall retain the right to prove that he is not responsible for the infringement of the rights of the third party.

(3) We are not entitled to make any agreements with the third party - without the Supplier's consent - and here, in particular, to conclude a settlement.

(4) The Supplier's obligation to indemnify us relates to all expenses incurred by us as a result of or in connection with claims by a third party.

(5) The period of limitation is 36 months, calculated from the transfer of risk or acceptance.

### § 12 Retention of title - Provision of materials - Tools - Confidentiality:

(1) When we provide parts to the Supplier, we reserve title thereto. Processing or transformation by the Supplier shall be carried out for us. If our reserved goods are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of our item (purchase price plus VAT) to the other processed items at the time of processing.

(2) When the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved item (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the Supplier's item is to be regarded as the main item, it shall be deemed agreed that the Supplier assigns us proportionate co-ownership: the Supplier shall hold the sole ownership or co-ownership for us.

(3) We reserve title to tools; additionally, the Supplier is obliged to use the tools solely for manufacturing the goods ordered by us. The Supplier is obliged to insure the tools belonging to us at replacement value against fire, water and theft and at his own expense. At the same time, the Supplier hereby assigns to us all claims for compensation arising from this insurance; we hereby accept the assignment. The Supplier is obliged to carry out any necessary maintenance and inspection work on our tools as well as all maintenance and repair work at his own expense in good time. He shall notify us immediately of any malfunctions; if he culpably fails to do so, claims for damages shall remain unaffected.

(4) Insofar as the security interests to which we are entitled pursuant to (1) and/or (2) exceed the purchase price of all our reserved goods not yet paid for by more than 10%, we shall be obliged to release the security rights at our discretion at the request of the Suppliers.

(5) The Supplier is obliged to keep all illustrations, drawings, calculations, data, knowledge and other documents and infor-

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mation received strictly confidential. They may only be disclosed directly or indirectly to third parties with our express consent and are to be used solely for the purpose of the order. The Supplier shall impose corresponding confidentiality obligations in writing on its employees, agents and vicarious agents involved in the performance of this order. At our request, the Supplier is obliged to present the agreements concluded with his employees, agents and vicarious agents. The obligation of secrecy shall also apply after the execution of this contract. However, it shall apply if and to the extent that the production knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known or the Supplier was demonstrably already aware of it at the time of notification within the meaning of sentence 1.

### § 13 Export controls and customs:

(1) As early as possible prior to the delivery date, the Supplier is obliged to inform us in writing regarding possibly applicable information and/or approval obligations pertaining to his goods, as well as regarding all other restrictions and prohibitions in accordance with the respective applicable German, European (EU) and US-American customs, export and foreign trade legislation as well as in accordance with the export, customs and foreign trade legislation of the country of origin (e.g. Dual-Use).  
(2) For this purpose, the Supplier has to provide the following information and make available the originals of the corresponding documents:

- a) the customs tariff number in accordance with the Harmonised System (HS);
- b) the country of origin (commercial/non-preferential origin);
- c) legally compliant, meaningful proof of origin and preference for the goods, e.g. a long-term supplier's declaration as proof of preferential origin in accordance with Implementing Regulation (EU) No. 2015/2447;
- d) the export list number in accordance with Annex AL to the German Foreign Trade and Payments Regulation or comparable list items of other relevant export lists;
- e) if goods are subject to the US Export Administration Regulations (EAR), the Export Control Classification Number (ECCN) according to the Commerce Control List (CCL), with sub-number;
- f) all other information and data which we require for export and import as well as in the case of resale for re-export of the goods.

(3) Immediately upon becoming aware of any changes to the above information and data, the Supplier shall be obliged to inform us of this in writing, and he shall be obliged to provide us with the relevant documents, e.g. notification of changes to the long-term supplier's declaration.

(4) Should the Supplier violate his obligations according to §13 of these General Terms and Conditions of Purchase, he shall bear all expenses and damages as well as all other disadvantages (e.g. additional claims for foreign import duties, fines) that may result from this. This shall not apply if the Supplier is not responsible for the breach of duty.

(5) The performance of the contract is subject to the proviso that no restrictions, prohibitions or other hindrances/measures of national and/or international export control law stand in the way of the transaction.

### § 14 Data Processing / Data Privacy:

(1) KESSEL collects, processes and uses personal data (e.g. name, delivery address, invoice address, telephone number, tax number etc.) that has become known within the scope of contractual relationships and is necessary for order processing. KESSEL also processes data of third parties (end customers/consumers) that is transmitted by the buyers/customers in the context of the orders for processing. KESSEL processes personal data inside and outside the KESSEL organisation and takes appropriate measures to ensure data protection-compliant processing. For its part, the SUPPLIER is responsible for processing the data in accordance with general data protection regulations (GDPR) and the Federal Data Protection Act within the meaning of these laws.

(2) During processing, the SUPPLIER is obliged to ensure that the legitimate concerns of KESSEL/Dealers/End Customers/Consumers are not impaired, and the regulations of the

GDPR and Federal Data Protection Act are observed, in particular that a legal basis for the processing exists, and that the information obligations are complied with.

### § 15 Social responsibility:

(1) The Supplier undertakes to comply with the relevant statutory regulations with regard to occupational safety, environmental protection and employees and, by means of its activities, to avoid negative effects on people and the environment to the greatest possible extent. In addition, the Supplier undertakes to respect fundamental principles such as the protection of international human rights, the abolition of forced and child labour, the right to collective bargaining, the abolition of discrimination against employees, responsibility for the environment and the prevention of corruption.

(2) When, despite a request by us to refrain from this, the Supplier repeatedly behaves illegally and/or takes no appropriate precautions to avoid the violations, we reserve the right to terminate the contract without notice or to withdraw from it.

### § 16 Choice of law - Place of jurisdiction - Place of performance:

(1) The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods is excluded by us.

(2) When the Supplier is a merchant, our place of business shall be the place of jurisdiction; however, we are also entitled to sue the Supplier at his court of residence.

(3) Unless otherwise stated in the order, our place of business shall be the place of performance.

### § 17 Partial nullity:

Should a provision of the contract or this condition be or become invalid, this shall not affect the validity of the contract or these conditions in other respects. However, the contracting parties shall be obliged to replace, in good faith, the invalid provision with a provision that comes closest to its economic intention within the bounds of what is reasonable, provided that this does not result in a material amendment of the contract.

Status of these Conditions of Purchase: 27.07.2018  
KESSEL AG, Bahnhofstr. 31, 85101 Lenting