

General purchasing conditions of Klaus Kuhn Edelstahlgiesserei GmbH and Klaus Kuhn GmbH & Co. KG

1 General points

Clause 1.1
All our orders are subject exclusively to these purchasing conditions. No part of the supplier's term and conditions shall form part of the business relationship without our express written authorisation to the effect, even if we fail to express our opposition to such inclusion in individual cases.

Clause 1.2
Our conditions of purchase apply only to companies within the meaning of article 14 of the German Civil Code (BGB), where the agreement covers the conducting of business, and to private legal entities or special legal entities under public law.

Clause 1.3
Our purchasing conditions, updated as appropriate, likewise apply to all future transactions and agreements with the supplier.

Clause 1.4
The contractual language is German.

Clause 1.5
All correspondence relating to the agreement shall be addressed to the Purchasing Department of our above-mentioned company, with indication of the corresponding order number and/or commissioning details.

2 The submitting and completion of orders

Clause 2.1
Our orders shall be accepted by no later than two weeks after despatch of the order concerned. The scope and extent of the transaction shall be defined by our order (including attachments and appendices), even if it has not been countersigned by the supplier.

Clause 2.2
Orders submitted verbally or by telephone must be confirmed by the supplier in writing.

Clause 2.3
We may, within reasonable limits on the part of the supplier, ask the supplier to carry out changes to the design and configuration of the items supplied. The effects of such action are to be dealt with appropriately and by agreement, with particular reference to increases and decreases in cost or changed delivery schedules.

Clause 2.4
The transmission of orders to third parties and/or the engaging of subcontractors shall be permitted only with our written consent. The granting of such consent shall immediately define the third party concerned as the supplier's appointed agent or representative.

Clause 2.5
If we become aware, after placing an order, of circumstances which give rise to serious doubts concerning the proper completion of our order by the supplier, we shall be entitled, without any liability for compensation, to withdraw from the agreement with regard to still-outstanding deliveries of goods or services.

Clause 2.6
The use of our enquiries, orders and/or related correspondence for advertising or promotional purposes is prohibited.

Clause 2.7
If the supplier carries out work on our premises in connection with the completion of the order, it undertakes to observe all applicable regulations, standards and legislation covering employee health and safety, accident prevention and the avoidance of material damage, and limits on harmful emissions. The supplier shall indemnify and hold us harmless from any and all public and private legal-liability claims that may be asserted against us as a result of any infringement of these provisions.

Clause 2.8
The supplier shall, in the case of contract work and with particular reference to the machining of castings, apply utmost care and due diligence, adhere strictly to our instructions and ensure that it consults with us in the event of any doubt or uncertainty. The supplier confirms, by accepting a contract work order from us, that it has at its disposal the mechanical engineering resources required to meet our requirements in this respect.

Clause 2.9
Product modifications or changes to the supplier's production methods which lead to amended specifications, drawings or quality standards that are in any way likely to result in or otherwise have an impact on the quality, operational safety or function of our products are not permitted without our prior written consent.

Clause 2.10
We shall be entitled to verify those of the supplier's procedures that are used in the production of items made on our behalf, and we may access the supplier's premises for this purpose during normal working hours. This provision shall in no way affect the supplier's undertaking and sole responsibility to supply contractually compliant and defect-free goods and services.

3 Prices, invoicing and terms of payment

Clause 3.1
The prices indicated in the order are binding, to the exclusion of additional claims of any kind.
Prices are net and regarded as carriage free, including packing.

Clause 3.2
Invoices shall be issued, in single-copy format conforming to applicable tax regulations and with all accompanying documents and details, after successful delivery of the goods and/or service concerned.

Clause 3.3
We settle at fourteen days with 3% discount, or net at thirty days. Payment shall be settled subject to delivery and invoicing being correct. If a payment falls due during one of our company-holiday shutdown periods, the deadline shall be extended accordingly. If and insofar as material test certificates (including but not limited to work certificates, measurement reports and records of heat treatments) have been agreed on, these shall form an integral part of the agreement, and are to accompany the corresponding shipment to us.

Clause 3.4
The payment period shall begin at the earliest with the receipt of a proper invoice, but not before the arrival and technical and definitive acceptance of the ordered goods or service and accompanying documentation. The date of receipt of the invoice shall be as shown by our entry stamp. If a delivery is accepted early, the delivery date originally agreed shall be regarded as the date of receipt.

Clause 3.5
Our payments are settled via an IT-supported system and at weekly intervals.

Clause 3.6
Discounting shall also be permissible if the customer offsets or withholds payment to a reasonable extent as a result of defects. The payment period shall then begin once the defects concerned are rectified in full. Payment shall not be construed as or imply contractual acceptance of the goods or services concerned.

Clause 3.7
If we are to make advance payments, these advance payments shall not fall due before the presentation to us of security in the form of an immediately enforceable guarantee, payable on first demand and issued by a major German commercial or savings bank or mutual organisation for an amount corresponding to the advance payments concerned, including value added tax (VAT).

Clause 3.8
We are to be notified in writing, at least six weeks before their entry into effect, of any and all price increases that might arise, with a full explanation of the reasons. The method of pricing shall not affect the agreed place of performance. Price increases shall come into force only after the issuing of our written consent to the effect.

Clause 3.9
Orders not subject to price agreements shall be settled at the supplier's lowest price in force on the day. If the order does not contain prices, these must be specified in the order confirmation. They shall however require our consent in any case. Our implied consent for such prices may be assumed if we fail to express any objection within ten working days, unless the prices concerned are subsequently revealed as being false. The prices of quotations submitted to us are likewise valid without specific reference to the effect.

Clause 3.10
The supplier shall be liable for all charges such as (but not limited to) taxes, customs and stamp duties.

Clause 3.11
Items priced by weight shall be billed according to their official weight or, failing that, our own weight calculations.

Clause 3.12
We shall be free to choose the means of payment at our discretion.

Clause 3.13
The supplier shall only assign its claims against us if it has our written consent to do so. The collection of such claims by third parties is excluded. We shall be entitled to offset the supplier's claims against us. If and insofar as we have outstanding claims against other companies that belong to the same group as the supplier, we shall be entitled to withhold payment until our claims against that other member of the group are settled.

4 Delivery time and delivery; contractual penalties

Clause 4.1
The delivery deadline or delivery times listed in the order are binding. The delivery time counts down from the moment in which the supplier receives the order. Fulfilment of a delivery date or schedule shall depend on the date of receipt on our premises or at a place designated by us. If a delivery time is a particular day, week, month or quarter, the supplier shall be regarded as being in arrears from the first day following its failure to deliver on time, subject to clauses 4.5 and 4.6, without any need to issue a reminder to the effect.

Clause 4.2
If the agreed delivery time is not met or the agreed deadline is exceeded, we shall at our discretion be entitled, upon the expiry of a reasonable additional period of grace, to withdraw from the agreement and claim for loss and damage due to non-fulfilment, including the costs of any covering transaction. Delays attributable to a subcontractor of the supplier shall be treated as a delay on the part of the supplier.

Clause 4.3
We shall have no obligation to accept early or partial deliveries. We may return early, partial, short or excess deliveries to the supplier at the supplier's expense. Clause 5.5 shall otherwise apply.

Clause 4.4
If an agreed delivery date or deadline is defined as 'envisaged', 'approximately' or similar, the supplier shall have a maximum margin of five working days in which to fulfil the contract.

Clause 4.5
The supplier may only attribute a missed deadline to force majeure, labour disputes, public unrest or similar causes if it informs us in writing immediately after the situation concerned becomes apparent. If, as a result of a delay in such circumstances, the delivery is no longer of interest to us, we shall be entitled - upon the expiry of a reasonable additional period of grace - to withdraw from the corresponding agreement.

Clause 4.6
The supplier undertakes to inform us, immediately and in writing, in the event of circumstances arising or becoming known that are likely to result in the agreed delivery date or deadline being delayed.

Clause 4.7
If documents or additional materials are to be provided by us, the supplier may only demand outstanding items if it has issued a corresponding reminder and still not received the items concerned within a reasonable time.

Clause 4.8
We shall be entitled, in the event of delayed delivery, to charge a contractual penalty amounting to 0.5% of the value of the delivery per week or part thereof, subject to a maximum of 5% of the value of that delivery. We reserve the right to charge contractual penalties while likewise enforcing the conditions of performance and of loss and damage arising from delay.

5 Transfer of risk, despatch

Clause 5.1
The terms of delivery are, unless otherwise agreed in writing, carriage free with insurance and packing costs included. Risk shall not be transferred to us, even if shipment has been agreed, until the delivery concerned has been handed over to us at the specified place of receipt. In the case of deliveries that include installation or assembly, and also services, transfer shall take place at the moment in which the installation, assembly work or service is accepted.

Clause 5.2
In the case of items priced 'ex-works', 'ex-warehouse' or similar, the supplier undertakes to despatch at the lowest cost in each case, unless we have stipulated a specific method of transport.

Clause 5.3
Our specific packing and shipping instructions must be observed in each case. The supplier shall be liable for any and all additional costs arising from failure to comply with these provisions or from the incorrect completion of waybills. The supplier shall likewise be liable for any and all additional costs of express delivery for the purposes of meeting a delivery deadline.

Clause 5.4
Goods destined for shipping are to be correctly packed. The supplier shall be liable for loss and damage arising from inadequate packing. If the supplier fails to observe our packing and/or shipping instructions, we may refuse to accept delivery, without this supposing delayed acceptance on our part.

Clause 5.5
We shall not be obliged to accept partial deliveries without specific agreement to the effect. This provision shall also apply if the delivery arrives before the agreed date. We shall then be entitled, as required and at the supplier's expense and risk, to return the goods or store them on the premises of a third party.

6 Claims for defects, Goods IN inspection

Clause 6.1
Incoming deliveries shall be immediately inspected in accordance with article 377 of the German Commercial Code (HGB), and the supplier shall be notified of any obvious defects. The definition of 'immediately' shall be fulfilled if inspection takes place within ten days of delivery and defects are reported within fourteen days of being detected. The supplier shall to this extent have no right to object to late claims.

Clause 6.2
Concealed defects are to be notified to the supplier within fourteen days of detection. We shall not be otherwise obliged to inspect incoming deliveries for concealed defects, or to carry out laboratory testing or similar procedures.

Clause 6.3
We shall be entitled to demand from the supplier, at our discretion, rectification of the defect or the delivery of a replacement item. The supplier undertakes in such cases to bear all costs arising from the repair procedure or replacement delivery concerned. If there is a likelihood of delay, we may take our own steps to rectify the defect at the supplier's expense. We expressly reserve the right to seek compensation for loss or damage, with particular reference but not limited to that arising from failure to fulfil the agreement.

Clause 6.4
If rectification work carried out by the supplier involves welding or the use of filler material, the procedures concerned shall require our express, written approval in advance.

7 Drawings and models

Clause 7.1
Documents and/or production aids of all kinds, including but not limited to samples, drawings, models, tools and technical instructions, which we provide or pay for, shall only be used for the purpose of supplying us. Neither they nor any items produced on their basis shall be passed on to any third party or parties or used for the supplier's own purposes. The copying of such items is permitted only in the context of operational requirements and subject to the corresponding copyright provisions.

Clause 7.2
The supplier shall, within seven days of completion of the order and on demand, return to us all the documents and materials mentioned in clause 7.1. The supplier undertakes to return the items concerned in perfect condition, and not to retain any copies or individual items. All rights of retention are hereby excluded.

Clause 7.3
All and any amendment to the documents and production aids mentioned in clause 7.1 shall require our written consent to the effect. It is agreed that legal title to all finished and semi-finished items manufactured on the basis of indications, drawings and/or models, etc. supplied by us shall be transferred to us at the moment in which these items are produced. The supplier is entrusted with their safekeeping free of charge. The same shall apply to special items of equipment, such as casting moulds, which might be required for production purposes, even if they are manufactured or acquired at the supplier's expense.



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8 Materials provided

Clause 8.1

Material provided by us shall only be used in the completion of our orders.

Clause 8.2

If such material contains defects that should have been detected in the course of normal inspection, the supplier shall have no entitlement to submit any claim once the material concerned has been processed. The provision of material by us does not in any way release the supplier from its guarantee or warranty obligations. If there are any anomalies affecting such materials (such as mismatches between samples and drawings), the supplier must report the anomalies concerned to us in writing before production begins.

Clause 8.3

The supplier shall be liable for all loss of or damage to materials provided, and shall immediately notify us in writing of such loss or damage. The supplier must likewise notify us if material provided is impounded or seized, or if there is a likelihood of such impounding or seizure or any other impending threat. The supplier shall arrange, at its own expense, for the provision of adequate insurance cover.

Clause 8.4

The material provided shall remain our property throughout each stage of its processing. All processing or modification carried out by the supplier in this respect shall be for our benefit. If our material is processed along with other items not belonging to us, we shall then acquire part-ownership of the new item so resulting, in proportion to the value of our material relative to that of the other items at the moment of processing.

Clause 8.5

If material provided by us is irretrievably mixed with other items not belonging to us, we shall likewise acquire part-ownership of the resulting end-product, in proportion to the value of our material relative to that of the other items with which it is mixed, at the moment in which they are combined. If the mixing is such that the supplier's item is then to be regarded as the main item, we shall have shared legal title to the ordered goods in a proportion equal to any advance payment made. The supplier shall safeguard our rights to shared title free of charge.

Clause 8.6

If the supplier is provided with tools on loan, it must ensure that they are used and stored with due care and kept ready for use in accordance with the latest versions of the corresponding drawings. These tools shall be used exclusively for the production of items ordered by us. The supplier shall arrange at its own expense for the tools to be insured against theft, fire and other damage.

Clause 8.7

Order-related production aids manufactured or acquired by the supplier at our expense shall become our property upon payment, and shall be handed over to us accordingly. The supplier shall safeguard these production aids free of charge on our behalf until they are handed over.

9 Commercial and patent rights

Clause 9.1

The supplier shall be liable for all loss and damage incurred by us as a result of infringement of third-party rights arising from the processing, resale, use or installation of the goods supplied.

Clause 9.2

The supplier is responsible for ensuring that the delivery of its goods or services does not infringe the rights of third parties. If any patent, utility-model or other third-party rights are infringed, the supplier undertakes to acquire the corresponding licences at its own expense, and to indemnify and hold us harmless from third party claims.

Clause 9.3

We shall immediately notify the supplier of any third-party claim that might be made against us as a result of alleged or actual infringement of commercial or patent rights. The supplier shall be given the opportunity to counter such claims, subject to mutual agreement.

10 Liability for defects and compensation for loss and damage; liability insurance

Clause 10.1

Neither purchase-price payments settling before the detection of defects nor the acceptance or approval of submitted drawings shall constitute any waiving of liability for proper performance, defects or claims for loss and damage.

Clause 10.2

The supplier guarantees that the goods will fulfil their assured general and quality specifications, that they are not subject to any third party-rights, and that they fulfil the legal and regulatory requirements applicable to their sale and use. The agreed quality specifications shall be subject in particular to article 434, section 1, subsection 1 of the German Civil Code (BGB), which establishes that the goods and services provided by the supplier must fulfil recognised technical standards and statutory requirements (including but not limited to those concerning health and safety and environmental protection).

Clause 10.3

The supplier shall indemnify and hold us harmless from all end-user liability claims or claims for loss and damage based on defects in goods delivered by the supplier. This shall apply in particular, without being limited, to product-liability claims arising from items delivered by the supplier. The supplier shall meet all costs and expenses in such cases, including those that might arise from legal action or product recalls. This is in addition to all and any other legislative provisions that might apply. The supplier must provide us on demand with evidence of product liability insurance with flat-rate coverage of ~5 million (five million euros) per personal-injury or material-damage claim, including a special provision covering the risk of product recall. This shall not affect our right to claim for further loss and damage.

Clause 10.4

The statutory regulations covering material and legal defects shall otherwise apply.

Clause 10.5

If a defect is detected within six months of transfer of risk taking place, it shall be assumed that the defect was already present at the moment of transfer of risk. The supplier shall be free to provide evidence to the contrary.

Clause 10.6

The supplier undertakes to provide evidence, on demand, of the rectification of defects. The supplier shall be solely responsible for the cost of rectifying defects. The supplier undertakes to arrange for the immediate collection, upon request on our part, of items that do not fulfil the agreement. The supplier shall meet the cost of storing such items.

Clause 10.7

We reserve the right, in the event of a defect being detected, to withhold payment until the defect concerned has been satisfactorily rectified.

Clause 10.8

This shall not affect our right to enforce further claims arising from defective goods, with particular reference but not limited to termination and price-reduction rights and claims for loss, damage and/or reimbursement of expenses.

11 Expiry

Clause 11.1

Our claims shall in any case be subject, regardless of their legal grounds, to a time limit of two years. This shall not affect any longer statutory limitation periods that might apply.

12 Scrap clause

Clause 12.1

Certification of scrap suppliers: We assure that scrap materials supplied by us have been examined for the presence of explosives, suspect explosive devices, enclosed hollow objects and radioactivity; thereby fulfilling our obligations under the terms of the REACH regulation. We can declare, as a result of such examination, that the scrap material supplied is to the best of our knowledge free of explosives, suspect explosive devices and enclosed hollow objects, and that there is no radioactive contamination exceeding natural background levels. Providers of scrap undertake to pass on the above obligations to their own suppliers.

13 Transfer of title, cancellation in the event of insolvency

Clause 13.1

We shall acquire absolute legal title to goods as they are delivered, unless there is express written agreement to the contrary. If advance payments form part of the agreement, shared title to the ordered goods shall be transferred to us in proportion to advance payment made. The supplier shall safeguard our rights to shared title free of charge. The supplier shall not sell, pledge or otherwise dispose of items that are subject to shared title on our part. We are to be notified immediately of any impounding or seizure.

Clause 13.2

If the supplier's assets are subject to an application for or the instigation of insolvency, settlement or bankruptcy proceedings, or if such proceedings are abandoned on account of their being insufficient assets to recover, or if a bill of exchange or cheque issued by the supplier is returned unpaid, or if payments are suspended, we shall be entitled to terminate the agreement, even if the agreement has already been fulfilled, in whole or in part, by us or by the supplier, albeit without affecting the time limits of the supplier's guarantee and warranty obligations.

14 Confidentiality

Clause 14.1

The supplier undertakes to maintain the strict confidentiality of all images, drawings, calculations, and other documents and information received. These items may only be revealed to third parties if our express, written consent to the effect is first obtained. The obligation to maintain confidentiality also extends to personal data. This confidentiality clause shall remain in force even after the agreement has terminated on whatever grounds, and shall expire only if or insofar as the images, drawings, calculations and other documents supplied enter the public domain. This obligation shall likewise apply to subcontractors.

Clause 14.2

The supplier undertakes not to reveal that it has entered into the agreement, and may only cite us as a reference for third parties if it first obtains our express written consent to the effect.

Clause 14.3

The supplier undertakes to notify us immediately of any confidential information that might come into the possession of an unauthorised third party or parties and/or in the event of any confidential document being mislaid or lost.

15 Data protection in accordance with article 33, sect. 1 of the German federal data protection law (BDSG) and article 4 of the data protection regulations applying to telecommunications companies (TDSV)

Clause 15.1

Your trust is important to us. We therefore respect your privacy and undertake to inform you regarding the data collected and stored, and your rights to access, rectification, blocking and deletion.

Clause 15.2

The obtaining and storage of data. When a user visits a web page, the web browser transmits basic information on the browser type and version, the user's operating system, referrer URL, IP address, file name and access status; along with the amount of data transferred and the date and time of the corresponding server request. These data are not personally identifiable or assignable to other data sources. They are initially saved and then deleted after evaluation.

Clause 15.3

Cookies. Your web browser saves small files known as 'cookies'. These are designed to improve the browsing experience and make the Internet more user-friendly. You can configure your web browser's settings to block the saving of cookies.

Clause 15.4

Information, authorisation, blocking and deletion. Data assignable to a particular company or person are saved only for the processing of queries, the completion of agreements, general correspondence and technical administration. They are not accessible to any third party. Data will only be passed on to third parties for the purpose of completing orders and with your consent, which you can withdraw at any time. These data shall not be sold or otherwise passed on to any third party. You can at any time demand information on saved data, the purpose for which it is being stored and its origin. The corresponding statutory regulations likewise entitle you to correct, block and delete the data concerned. All requests and queries regarding the correction, blocking and deletion of data should be submitted using the contact details published on the website.

16 Jurisdiction, place of performance, applicable law and safeguard clause

Clause 16.1

If the supplier is a registered merchant the exclusive place of jurisdiction is Cologne, Germany. We nevertheless reserve the right to take legal action against the supplier at its registered place of business.

Clause 16.2

This agreement is subject exclusively to the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). If the supplier's registered place of business is outside Germany, we shall be entitled to ask for disputes to be heard before an arbitration tribunal based in Cologne, Germany, instead of before an ordinary court. German shall be the language of such proceedings, in accordance with the Arbitration and Conciliation Rules of the ICC (International Chamber of Commerce). The decision of the arbitration tribunal shall be final and binding.

Clause 16.3

If there is no specific agreement to the contrary in the order, the place of performance is our registered place of business.

Clause 16.4

If any provision contained in these conditions and further agreements made as a result should be invalid or subsequently become so, this shall have no effect on the legality of the remaining conditions. Telephone enquiries and orders are likewise subject to our purchasing conditions, providing their receipt on the part of the supplier can be confirmed. The customer and supplier undertake to substitute any ineffective provision with a substitute that fulfils, as far as possible, the joint economic purpose of the original.