

Purchase Terms of Keller & Kalmbach GmbH

I. General - Scope

- 1) Orders for supplies and services are placed on the basis of these Purchase Terms exclusively. We shall not accept any conditions of the supplier inconsistent with or deviating from our Purchase Terms, unless we expressly agree in writing to the validity thereof. Our Purchase Terms are valid also if we accept the delivery of the supplier without reservation in knowledge of the supplier's conditions which are inconsistent with or deviate from our Purchase Terms.
- 2) These Purchase Terms also apply to all future transactions with the supplier insofar as these concern similar business transactions.
- 3) Our Transport and Delivery Conditions (available at www.keller-kalmbach.com) are valid for the transport and delivery of the goods ordered. Compliance with these is essential.

II. Offer - Offer documents

- 1) The supplier is obliged to accept our order within a period of two weeks. After the expiry of this period we may revoke orders.
- 2) The supplier is obliged to adhere exactly to the inquiry of Keller & Kalmbach when preparing its offer. If it deviates from the inquiry, it must expressly point out the deviations.
- 3) Amendments or supplements to an order become effective only if we have approved these in writing. Payments made by us and our acceptance of supplies and services shall not be deemed our approval.
- 4) We reserve rights of ownership and copyright to illustrations, drawings, calculations, other documents and materials provided to the supplier to prepare the offer; they may not be made accessible to third parties without our express written approval. They shall be used solely for production based on our order; after processing the order they shall be returned to us unrequested. They shall be kept secret from third parties.

III. Delivery dates and delay in delivery

- 1) The delivery dates stated in our orders are binding.
- 2) The receipt at the receiving point named by us is authoritative for determining whether supplies and services are punctual.
- 3) The supplier is obliged to immediately notify us in writing if circumstances occur or become evident to it which reveal that the specified delivery time cannot be observed. At the same time the reasons and the expected duration of the delay shall be stated.
- 4) Should the supplier be at fault for being in delay as a result of exceeding the delivery period, we may demand a contractual penalty of 0.2%, however a maximum of 10%, of the value of the goods in delay, for each workday of the delay commenced irrespective of our other rights. The supplier has the burden of proof for not being at fault.
- 5) If the right to claim the contractual penalty is not reserved upon acceptance of a delayed supply or service, this can nevertheless be claimed up until final payment.
- 6) In case of a delay in delivery, we are also entitled to legal claims. In particular, we are entitled to demand damages instead of performance and rescission after the lapse of a reasonable period of time, taking into account the contractual penalty incurred. If we claim damages, the supplier has the right to furnish proof to us that it is not responsible for the breach of duty. In case of a delay in delivery we are entitled to withdraw from the contract after a reasonable period granted by us has passed even if the supplier is not at fault in this connection. The requirement of granting an additional period of time ceases to apply if it is evident that the supplier will be unable to observe the period.
- 7) In case of an excess delivery of more than 10%, Keller & Kalmbach reserves the right to refuse to accept the whole delivery. Return deliveries are sent at the expense of the supplier.
- 8) In case of premature delivery, Keller & Kalmbach reserves the right to return the goods at the expense of the supplier or to refuse acceptance of the goods. If Keller & Kalmbach accepts the goods, it shall store them until the agreed delivery date at the expense and risk of the supplier.
- 9) Should the goods be delivered more than 15 days prior to the date of delivery stated in our order, we reserve the right to specify that the terms of payment apply only from the date of delivery stated by us.
- 10) Deliveries of shortages (in particular partial quantities, unless expressly demanded or accepted by us), wrong deliveries, defective or damaged goods, accounting errors and other failures require additional effort on our part and cause us additional costs. We shall invoice these costs to the supplier at lump sums for our additional efforts of € 30.00 to € 130.00, depending on the effort entailed. We reserve the right to assert greater expense or damage. The supplier is entitled to furnish proof of less effort or damage.

IV. Transfer of the risk and dispatch

- 1) The risk is transferred only upon delivery and after unloading at the receiving point named by us.
- 2) Unless otherwise agreed, dispatch and packing costs, costs of transport insurance, fees, taxes and other charges are for the account of the supplier. If goods are delivered ex works or ex sales depot of the supplier, the goods must be dispatched at the lowest costs.
- 3) Accompanying documents must be enclosed with all deliveries in accordance with our delivery regulations. We may reject deliveries which are not accompanied by the required documents. If we accept such deliveries, we are entitled to invoice the additional effort entailed in processing these to the supplier.

V. Invoicing and terms of payment

- 1) The price shown in the order is binding. Unless otherwise agreed in writing, the price shall include delivery "franco domicile" including packaging. The return of the packaging must be agreed separately.
- 2) The statutory value added tax is included in the price.
- 3) We can only process invoices if according to the particulars given in our order or in our delivery conditions - these show the order number stated therein and any other purchase order references; for any and all consequences arising due to non-compliance with this duty (such as a delay in payment) the supplier is responsible, unless it furnishes proof that it is not responsible for this.
- 4) Payments are made on the 25th of the month following delivery and after complete delivery / acceptance and receipt of the invoice with 3% discount or net after 90 days. A discount may be deducted even if Keller & Kalmbach offsets counterclaims or withholds payments due to defects.
- 5) Payments are made by sending crossed cheques or by transfer to a bank account at the option of Keller & Kalmbach. The incoming post stamp or the receipt of the payment instructions at the bank or post office is authoritative for determining whether payment is punctual.
- 6) If the supplier is an entrepreneur, the buyer shall be in arrears with payment if it does not pay after receiving a reminder from the supplier, which shall be sent after payment has fallen due.
- 7) We are entitled to offsetting rights and rights of retention to the extent specified by law without restriction.

VI. Warranty

- 1) The supplier warrants that the supplies and services comply with the agreed or customary specification and the relevant legal provisions as well as the stipulations of the authorities or a trade association. In particular, the supplier warrants that the goods delivered by it are free from prohibited substances according to the Appendix to Section 1 of the Directive on Prohibitions and Restrictions of the Marketing of Dangerous Substances, Preparations and Products [*Verordnung über Verbote und Beschränkungen des Inverkehr-Bringens gefährlicher Stoffe, Zubereitungen und Erzeugnissen*] based on the Toxic Substances Act [*Chemikaliengesetz*] as amended. For the delivery of surface-refined, high tensile parts, the supplier warrants that the goods delivered to us were manufactured in compliance with DIN EN ISO 4042 and inspected by it.
- 2) The supplier warrants that the delivered goods are free from defects of title, in particular from third-party rights.
- 3) The supplier is obliged to set up and maintain a state-of-the-art quality assurance system in compliance with DIN EN ISO 9001:2000 and to furnish proof thereof to Keller & Kalmbach upon demand. If the supplier delivers parts to Keller & Kalmbach which are used according to contract or typically in the automotive industry, the supplier shall set up, maintain and, upon request furnish proof of, a quality assurance system in compliance with VDA 6.1 (manufacturer) or 6.2 (dealer) or ISO/TS 16949:2002. If necessary, the supplier and the buyer shall conclude separate quality assurance agreements.
- 4) Incoming deliveries shall be inspected either by the buyer or in the case of transfer orders, by its buyer, as to whether they comply with the quantity and the type ordered and whether externally visible transport damage or externally visible faults can be detected. Notice of the defects discovered in such a manner is given in due time if it is dispatched within five days after delivery of the delivery item. We reserve the right to carry out inspections exceeding that described in sentence 1 and to notify defects accordingly even after the expiry of the five-day period. We shall notify the supplier of hidden defects immediately after discovery thereof.
- 5) In case of defects in the goods, we are entitled in particular to demand rectification of the defects discovered or to demand a substitute delivery at our option irrespective of our other legal warranty rights. If the supplier refuses such subsequent performance or in case of imminent danger, Keller & Kalmbach can have the discovered defects rectified or obtain a replacement at the expense of the supplier. In cases which are not urgent, Keller & Kalmbach undertakes to discuss and agree on the rectification measures with the supplier. Keller & Kalmbach has the right to choose the subsequent performance even for contracts for work and services.
- 6) The limitation period for defects of title and defects of quality is 36 months and begins when the risk is transferred.
- 7) If the supplier provides a replacement or carries out repairs in the course of its subsequent performance, the

limitation period named in para. 5). begins to run anew, unless the supplier expressly and accurately reserved the right to provide subsequent performance only for reasons of accommodation or in order to avoid disputes. The limitation period in relation to the defect notified always begins anew both for new goods delivered and in the case of defective subsequent rectification.

8) The supplier pays the costs and bears the risk of sending back defective delivery items.

VII. Liability

The supplier is liable for all breaches of contract in compliance with legal provisions, unless otherwise provided in these terms.

VIII. Product liability - Indemnification - Liability insurance cover

1) If the supplier is responsible for product damage, it is obliged to indemnify us from claims for damages filed by third parties upon our first request if the cause stems from an area under its dominion or organisation and it is liable itself externally.

2) Within the scope of its liability for cases of damage as defined by para. 1), the supplier is also obliged to reimburse any expenses pursuant to sections 683 and 670 of the German Civil Code [*BGB - Bürgerliches Gesetzbuch*] or pursuant to sections 830, 840 and 426 of the German Civil Code which arise under or in connection with a recall campaign carried out by us. We shall inform the supplier of the contents and scope of the recall measures to be carried out as far as possible and reasonable and give it the opportunity to give its opinion. Any legal rights remain unaffected.

3) The supplier undertakes to maintain a product liability insurance for a sum insured of € 1.5 million per case of personal injury/property damage as a lump sum; if we are entitled to further claims for damages, these remain unaffected. The product liability insurance must cover both the increased product risk including damage abroad, recall passenger car campaigns and the risk of waiving the plea of a delayed notification of defects.

IX. Assignment of claims / Subcontracts

1) The assignment of receivables owed by Keller & Kalmbach is permitted only with our written consent.

2) The disclosure of a purchase order or of essential parts thereof to third parties is not permitted without the written consent of the customer and entitles it to withdraw from the contract in whole or in part or to claim damages.

X. Right of special termination

If there are specific indications that the supplier will not provide performance completely or in due time, in particular because an insolvency administrator has been appointed or the assets of the supplier have been subjected to insolvency proceedings, we are entitled to withdraw from the contract in whole or in part.

XI. Miscellaneous

1) The supplier may only advertise our business connection with our written consent.

2) Keller & Kalmbach shall treat the personal data of the supplier in compliance with the German Federal Data Protection Act [*Bundesdatenschutzgesetz*].

3) For the purposes of these terms e-mails and faxes meet the written form requirement.

XII. Applicable law, arbitration, place of jurisdiction

1) The laws of the Federal Republic of Germany shall govern the relationships with suppliers who have their official business location in the Federal Republic of Germany to the exclusion of UN Sales Convention. The laws of the United Nations Convention on Contracts for the International Sale of Goods (CISG dated 11 April 1980) shall govern relationships with suppliers who have their official business location outside the Federal Republic of Germany. If the UN Sales Convention does not contain any relevant provisions, the laws of the Federal Republic of Germany shall apply.

2) In case of any and all disputes arising under the contract, if the supplier has its official business location in the Federal Republic of Germany and is a merchant, the legal action shall be brought before the court competent for the headquarters of Keller & Kalmbach. Keller & Kalmbach is, however, also entitled to take legal action against the supplier at any other admissible location.

3) All disputes arising in connection with these conditions or the validity thereof or with contracts on which these Terms are based and which exist with a supplier who has its official business location outside the Federal Republic of Germany shall be finally decided by one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC). Recourse to the general courts of law is finally excluded. However, Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure remains admissible.

XIII. Special provision for foreign transactions

The language of the contract is German. If the contracting parties use another language in addition, the German wording has priority.

Keller & Kalmbach GmbH
Siemensstraße 19
85716 Unterschleißheim

Managing Directors: Dr. Florian Seidl (having sole power of representation), Rudolf Karl, Thomas Obermeyer (authorised to represent together with a proxy) – Court of Registry Munich, HRB 54200

Status as at: 08/2008