

General Terms and Conditions of Sale and Payment of the Kesseböhmer Group

Last Revised 08/2010

I. Scope of Application

We conclude any and all contracts solely and exclusively on the basis of the following Terms and Conditions. Deviations from the Terms and Conditions below shall not be effective unless we have confirmed their application in writing. Customer's terms and conditions of business, which we have not accepted in writing shall not be binding on us even if we have not expressly objected to their application. These Terms and Conditions also apply to all future orders even if their application is not expressly agreed again. The written form within the sense of these Terms and Conditions shall be deemed observed by e-mails and fax letters.

II. Offers

- Our offers are subject to change. Any orders placed with us do not become binding with respect to type and scope until we have issued an order confirmation. Modifications of and amendments to any order shall not be binding unless in writing.
- Any and all documents which are attached to our orders such as pictures and drawings, weight, colour and dimension data, samples and information provided in brochures are only approximately authoritative unless we have expressly designated them as binding. We reserve rights of title and copyright to any and all documents sent with offers or otherwise handed over to the Customer. Any such documents may not be passed on, reproduced or disclosed to third parties without our consent.
- Support services (e.g., installation, training or advising) will be billed separately on a time and material basis.

III. Prices and Terms and Conditions of Payment

- Unless otherwise indicated in our order confirmation, prices are shown ex works, excluding packaging and the VAT applicable on the day of the issue of the invoice. Changes in material prices and wages, which occur four months after conclusion of the contract entitle us to adjust prices accordingly. The deduction of cash discounts is subject to separate written agreement.
- Unless otherwise indicated in our order confirmation, the purchase price is due and payable without deductions within 30 days. In the event of default of payment, statutory regulations apply.
- If circumstances become discernible after the conclusion of the contract that our payment claim is in jeopardy due to the lack of the Customer's ability to perform his obligations (e.g., in the event of non-compliance with terms and conditions of payments), we may refuse to carry out our performance and may set a deadline for the Customer for delivery versus payment or provision of security. In the event of the fruitless lapse of the deadline, any and all unpaid claims shall become due and payable and we are entitled to cancel the contract and request payment of damage compensation. Setting of a deadline is not necessary if and when the Customer definitely refuses payment or his inability to perform his obligations is obvious.
- Cheques and bills of exchange are accepted only on account of performance. Any related costs shall be borne by the Customer. The offsetting of counterclaims or the assertion of rights of retention is permissible only if and when the Customer's claims are undisputed or have been finally determined by a court of law.

IV. Moulds and Tools

We retain ownership of any and all moulds and tools manufactured on our behalf and which we use to manufacture products for the Customer even if and when the Customer has paid for them, in whole or in part. However, said moulds and tools will be used solely and exclusively for this Customer's orders, provided that he fulfils his payment and acceptance obligations. Our obligation to maintain the tools and moulds shall lapse two years after the last delivery of products produced using the mould or tool.

V. Delivery Period

- The commencement of the delivery period stipulated in our order confirmation or otherwise agreed with the Customer is subject to the clarification of any and all technical questions and the proper performance of the Customer's obligations in good time (e.g., agreed advance payments, handover of required documents, adequate provision of materials in good time). If the prerequisites are not fulfilled in good time, the period shall be extended for the duration of the delay. The above provisions are without prejudice for the defence of non-performance of contract. Partial deliveries in a scope reasonable for the Customer and deviation in order quantities of +/-10% are permissible. The delivery period has been properly observed if the report or readiness for dispatch is in due time.
- If and when we are prevented from the performance of our obligations by unforeseen, unusual circumstances which we cannot avert despite reasonable diligence on our part (e.g., operational disruption, strike, lock-out, official intervention, delays in the supply of essential raw and construction materials), the delivery period shall be extended (provided that the delivery or service does not become impossible to perform) by the duration of the hindrance, regardless of whether said circumstances occur in our plant or in our supplier's plant. If and when the delivery or service becomes impossible to perform, we will be released from our performance obligation. If and when the delivery period is extended by more than two months, the Customer is entitled to cancel the contract. The assertion of any and all damage compensation claims is excluded.
- We are liable in accordance with statutory provisions if and when the default of performance is the consequence of a wilful or grossly negligent breach of contract for which we are accountable; any culpability on the part of our representatives or vicarious agents shall be attributed to us. If and when the default of performance is not the consequence of a wilful breach of contract for which we are accountable, our liability for damage compensation shall be limited to 0.5% of the value of that part of the performance which we have not carried out within a reasonable subsequent period which has been set for us for each and every full week of default, but to a maximum of 5% in the aggregate. In any and every case, our liability for damage compensation shall be limited to the foreseeable damage or loss which typically occurs.
- If and when the Customer is in default of acceptance, or if he is culpably in breach of any other cooperation obligations, we are entitled to request compensation for any and all losses or damage, including additional expenses, which result for us as a consequence. The risk of accidental loss or accidental worsening of the merchandise shall transfer to the Customer at the moment in which the latter is in default of acceptance or default of the debtor.
- If and when the dispatch or delivery is delayed at the Customer's request, we may, after submitting notification of readiness for shipping, charge a storage fee in the amount of 0.5% of the net invoice value for each and every month or part thereof, but not exceeding 5% in the aggregate. The above provisions are without prejudice for assertion of more extensive claims.

VI. Liability for Defects

- We must be notified without delay in writing and in understandable form, including any

information useful for ascertaining the defects, of any defects which are determined.

- In the event of legitimate complaint of defects, we have the right, at our discretion, to perform subsequent improvement or substitute delivery within a reasonable period of no less than 14 days. If the subsequent performance fails, the Customer is entitled, at his discretion, to rescind the contract or request reduction of the price.
- We are liable in accordance with statutory provisions if and when the Customer asserts damage compensation claims based on wilfulness or gross negligence, including wilfulness or gross negligence of our representatives or vicarious agents, or on the breach of major contractual obligations.

The above provisions are without prejudice for liability resulting from culpable injury to life, body or health; this provision also applies in the event of mandatory liability pursuant to the Product Liability Act.

VII. Liability Limitations

- Any and all liability for damage compensation more extensive than that provided in Clause VI is excluded, regardless of the legal nature of the asserted claim. The above provision applies in particular to damage compensation claims based on culpa in contrahendo or on other breaches of obligation or to claims for compensation of material damage due to actions in tort pursuant to Section 823 BGB (German Civil Code). If and when we are liable for subsequent damage or loss due to defects (solely in cases of wilfulness, gross negligence and breach of major contractual obligations), the liability shall be limited to the foreseeable damage or loss which typically occurs.
- The limitation period for claims due to defects is 12 months, commencing as of the transfer of risk. The above provision is without prejudice for the limitation period in the event of delivery recourse pursuant to Sections 478, 479 BGB. The reduction of the limitation period shall not apply if and when we are culpable of gross negligence or in the event of injury to body or health or the loss of life of the Customer or his vicarious agents which is attributable to us.
- If and when our liability for damage compensation is excluded or limited, the exclusion or limitation also applies to the personal liability for damage compensation of our employees, representatives and vicarious agents.

VIII. Retention of title

- The delivered goods shall remain our property until such time as the agreed price has been paid, including all of our receivables from the business relationship and future receivables, and any drafts and cheques, which have been cashed in. The retention of title secures the balance claim if there is a current account relationship between the customer and us.
- If the client pays by cheque and we issue a refinancing bill for this, then the retention of title shall expire only after it becomes impossible for claims to be made against us from this bill.
- Within the scope of the proper conduct of business, the customer shall be entitled to resell the goods. The customer has already assigned his claim from the resale of the conditional merchandise to us, in particular, the right to payment from his customers. We hereby accept this assignment. The customer shall be obliged to inform his debtors of the assignment if we request it. We shall be informed of the claims and names of the customer's debtors.
- The customer shall be entitled to collect the claims resulting from the resale. In the event of a delay in payment or if we become aware of circumstances that are, according to the best business estimation, suited to lower the creditworthiness of the customer we shall be entitled to revoke the collection right.
- For us as the manufacturer, the machining and processing of the conditional merchandise shall be carried out as defined in Section 950 of the German Civil Code (BGB). If the conditional merchandise is processed or mixed with other items that do not belong to us, we shall acquire joint ownership in the new item in proportion of the invoiced value of the conditional merchandise to the invoiced value of the other goods used at the time of processing or mixing.
- The use of goods belonging to us as collateral is not permitted. In the event that third parties seize the conditional merchandise, in particular in the event of an attachment, the customer shall inform the third party of our title retention and inform us immediately while sending us a copy of the attachment order.
- In case of a breach of contract by the customer, we shall be entitled to withdraw from the contract and demand that the conditional merchandise be returned. This shall not affect any damage claims. In the event of a lack of performance by the customer, we shall be entitled to revoke reselling rights or the right to further processing.
- If the realizable value of the provided collateral exceeds our claims by more than 20 %, then we agree, upon request by the customer and at our discretion, to transfer back or release the collateral.

IX. Intellectual Property Rights

- If and when we are required to manufacture or produce merchandise in accordance with drawings, models or samples or by using parts supplied to us by the Customer, the Customer hereby warrants that such manufacture will not violate any third-party intellectual property rights. The Customer shall indemnify and hold us harmless from and against any and all third-party claims and compensate us for any loss or damage we may suffer. If and when we are prohibited from carrying out the production or delivery by a third party who refers to his intellectual property rights, we may suspend the work without previously reviewing the legal situation and request compensation for expenses and damage or loss from the Customer. Upon the Customer's request, we will return at his expense any drawing and models which have not resulted in an order. We are entitled to destroy such documents if and when the Customer does not request their return within three months after submission of the offer.
- The Customer acknowledges the industrial property rights for the delivered merchandise and any drawings and documents we have handed over to which we are entitled; he will respect said rights and, in consultation with us, defend them against third parties.

X. Final Provisions

- Place of performance for any and all obligations arising from the contractual relationship is the headquarters of our company.
- If and when the Customer is a merchant, a legal entity under public law or a public-law special fund, any and all disputes arising from the contractual relationship shall be subject to the jurisdiction of the courts at the company's headquarters or of the courts at the site of the branch conducting the delivery. However, we are entitled at our discretion to bring action at the courts having jurisdiction at the Customer's headquarters. Proper law of the contract shall be solely German law, excluding application of the UN Convention on the International Sale of Goods (CISG).
- Should one of the above terms and conditions be legally invalid or be declared legally invalid, the validity of the remaining terms and conditions shall not be affected. The statutory regulation shall apply in lieu of the term or condition, which is invalid or declared invalid.

General Terms and Conditions of Purchasing of the Kesseböhmer Group

Last Revised 08/2010

The following Terms and Conditions become a component of any and all contracts concluded with our suppliers and contractors (hereinafter: "Suppliers"), extending to and including as well current or future business relationships. Deviating agreements, in particular, but not limited to, contrary terms and conditions of business of our Suppliers, will not become components of the contracts unless we give our express, written, prior consent.

1. Offer and Conclusion of Contract

- 1.1 In preparing his offers, the Supplier shall conform with our query/tender specifications with regard to quantity, characteristics and design; he shall expressly point out any deviations.
- 1.2 Orders and statements will be binding on us solely if and when we have submitted them in writing.

2. Prices

The agreed prices are fixed prices, excluding value-added tax. They include the compensation for any and all deliveries and services (including transport costs, insurance, customs duties and packaging) assigned to the Supplier and are shown free to the destination we have specified in the order (place of performance).

3. Products

- 3.1 Our order is authoritative for the content, type and scope of the delivery or service.
- 3.2 Any drawings, descriptions, etc. belonging to the order are binding on the Supplier; however, he shall examine them for any inconsistencies and immediately point out to us in writing any errors which he discovers or suspects. The Supplier remains solely and exclusively responsible for any and all drawings, plans and calculations which he has prepared, even if we have released them.

4. Provided Materials

- 4.1 The Supplier is liable for the loss of or damage to any materials we have provided and shall notify us without delay of any legal or material impairment of such products.
- 4.2 Materials and substances we have provided are worked and processed on our behalf, and we retain title to them at each and every stage of working and processing. In the event of their processing in combination with other products which do not belong to us, we are entitled to co-ownership in the ratio of the value of the materials we have provided to the value of all of the products used in the manufacture and of the Supplier's expenditures for the processing. In this respect, the Supplier also stores the products safely on our behalf at no charge to us.

5. Documents / Production Means / Confidentiality

- 5.1 Any and all work documentation (e.g. drawings, samples, models, etc.) and data provided to the Supplier or which he has prepared in accordance with our specifications may be used by the Supplier solely for the execution of the offer and the performance of the ordered delivery. He shall safeguard them with the greatest possible care and protect them from access by third parties. They shall automatically be returned to us — including any and all copies or reproductions — without delay upon the completion of our order or after performance of the ordered delivery.
- 5.2 The work documentation and data may not be used by the Supplier for any other purpose, be reproduced or be disclosed to third parties. If and when drawings or other documents must be handed over to third parties or business secrets must be disclosed to third parties within the framework of the execution of the order, the Supplier is responsible for ensuring that the third party also complies with the above provisions.
- 5.3 Production means (e.g. models, samples, dies, tools, etc.) which we have provided to the Supplier or which he has prepared in accordance with our specifications may not be sold, pledged or otherwise passed on to third parties nor used in any way on behalf of third parties without our consent. The above provision also applies to any items manufactured with the aid of these production means. They may be delivered solely and exclusively to us unless we have expressly declared our agreement with other uses. All of the production means which we have provided or which have been prepared for our account shall automatically be returned to us upon the completion of our order. Products which we have developed or developed further in collaboration with the Supplier may be delivered solely and exclusively to us.

6. Production Inspections / Final Inspections

- 6.1 We reserve the right to inspect the quality of the materials used, measurement and quantity precision and other quality criteria of the manufactured parts as well as compliance with any other specifications of our order on the Supplier's premises and on the premises of his pre-suppliers. Material costs for production inspections and final inspections will be charged to the Supplier if and when we have had reason to believe that such inspections were necessary.
- 6.2 The production inspections and the final inspections do not release the Supplier from his fulfilment and warranty obligations.

7. Deadlines and Periods

- 7.1 Agreed delivery periods commence upon conclusion of the contract.
- 7.2 The day on which the ordered products and the shipment papers arrive at the place of performance shall be deemed the day of delivery.
- 7.3 If and when it becomes clear that compliance with the delivery deadline will not be possible, the Supplier shall notify us in writing immediately of the cause and of the presumed duration of the delay. Regardless of the notification, failure to comply with the delivery period leads to the statutory consequences of default.
- 7.4 The Supplier shall comply exactly with so-called fixed delivery dates, i.e. dates which we have defined as "fixed" or as a specific point in time or a specific period, or if circumstances clearly indicate to the Supplier that the success or failure of the transaction is contingent upon compliance with the agreed delivery dates. Failure to comply with such dates entitles us to rescind the contract immediately and to claim damage compensation.
- 7.5 We are not obligated to accept partial, surplus or shortfall deliveries to which we have not agreed or premature delivery. The values for quantities, dimensions and weights which we determine during the incoming goods inspection are authoritative. In the event of culpable default of the Supplier, we are entitled to request payment of a contractual penalty in the amount of 0.5% of the net price agreed for the pertinent consignment per business day, but not exceeding 5% in the aggregate; this provision is without prejudice to the statutory consequences for default and the rights to which we are entitled pursuant to such statutes.

8. Packaging / Shipping / Acceptance

- 8.1 The Supplier shall provide secure packaging of the products within the framework of what is customary in trade.

- 8.2 Delivery shall be made to the address we have stipulated in the order (place of performance). Risk transfers to us upon the handover of the product at the place of performance.

- 8.3 Notification of shipment shall be submitted immediately on the day of shipment. A delivery note which does not contain prices shall accompany each and every consignment. The delivery note must contain the product name, date of manufacture, quantity, Kesseböhmer document number and Kesseböhmer identification number.

- 8.4 We may refuse acceptance of the products if and when an event of force majeure or other circumstances beyond our control, including industrial action, temporarily make our acceptance of the products impossible or unreasonable. In such cases, the Supplier shall store the products at his expense and risk.

9. Invoices and Payments

- 9.1 Invoices which include our order and parts numbers shall be sent to us.
- 9.2 We effect payments to the Suppliers after receipt of the defect-free products at the place of receipt/utilisation we have specified in each case and after receipt of an auditable invoice, either subject to deduction of a cash discount of 3% within 30 days of the receipt of the invoice or net within 60 days of receipt of the invoice.

10. Assignment / Offset and Retention

- 10.1 The Supplier is not entitled, without our written consent, to assign his contractually owed performances, in whole or in part, to third parties or to engage third parties to carry them out. The Supplier remains liable for the fulfilment of the contract even if we have given such consent.
- 10.2 The assignment of claims arising from deliveries by the Supplier is subject to our written consent.
- 10.3 The Supplier is not authorised to offset our claims against any counterclaims unless such counterclaims are undisputed or have been finally determined by a court of law. Rights of retention may be asserted solely if and when they are based on counterclaims which are undisputed or have been finally determined by a court of law.
- 10.4 We are entitled to transfer at any time any order placed with the Supplier, including any and all rights and obligations, to a company affiliated with us. We remain liable for fulfilment of the contract in such cases.

11. Complaint of Defects / Warranty / Liability

- 11.1 The Supplier is liable pursuant to statutory provisions; in particular, he warrants the delivery of the products in the agreed quality and, if and when statutory or technical standards or other protective provisions such as DIN, VDE, VDI or the provisions of the Machinery and Product Safety Act are relevant, in conformity with any such provisions and standards.
- 11.2 The warranty period amounts to 36 months, beginning upon delivery to the place of performance. This limitation period commences anew for any replacement parts provided within the framework of a warranty.
- 11.3 Our incoming goods inspection is limited strictly to the determination of any obvious defects and transport damage to the consignment. The Supplier is obligated to document his functional and quality inspections, to archive these documents for a period of 15 years and to allow us to view the documents at any time upon request. Application of the inspection and complaint periods pursuant to Section 377 HGB (German Commercial Code) is expressly excluded.
- 11.4 Immediately after being notified of defects, the Supplier shall, at his expense and at our discretion, subsequently improve the defective products or replace them with defect-free products. The above provision also applies in the event that the product is no longer located at the place of performance. We expressly reserve any rights to reduction of the price, damage compensation and/or rescission to which we are entitled. In urgent cases in which especially significant damage or loss is imminent, we are entitled, at the Supplier's risk and expense, to remedy the defects ourselves or to have them remedied by third parties or to procure replacement from another source.
- 11.5 The Supplier also warrants that there are no infringements on third-party rights, in particular, but not limited to, patent rights or other industrial property rights, as a consequence of the delivery or utilisation of the delivered product. The limitation period for any claims of infringement on third-party industrial property rights does not begin until such claims have been asserted against us.
- 11.6 If and when third-party claims are asserted against us on the basis of a defect of any kind for which the Supplier is accountable, the Supplier is obligated to indemnify and hold us harmless upon our first request. This provision applies especially, but is not limited to, product damage. Should recall measures be or become necessary as a consequence, we are entitled to carry out the measures after notifying the Supplier.

12. Rescission

We are entitled to rescind the contract immediately or to terminate it without notice if and when a petition for the initiation of bankruptcy proceedings against the Supplier's assets has been filed, such proceedings have been initiated or have been dismissed due to lack of assets or the Supplier suspends payments, and after we have announced to the Supplier our intention to rescind or terminate the contract and he has not provided to us a guarantee of performance for any and all services to which he is obligated under the contract within a period of 5 business days, beginning upon receipt of the announcement.

13. Data Protection

The Supplier is in agreement that his data which we require within the framework of the business relationship will be saved and utilised by us.

14. Final Provisions

- 14.1 Venue is that of the place of performance. However, we are entitled to file legal actions at our registered office or at the Supplier's registered office as well. Applicable law is the law of Germany. The application of the United Nations Convention on the Sale of International Goods (CISG) and of German law regarding international private law is excluded. Should any provision of these Terms and Conditions of Purchasing be, or become, invalid or unenforceable, the applicability of the remaining Terms and Conditions of Purchasing will not be affected.