

# Purchasing Terms

## 1. Contractual content:

1.1 The contractual content is determined after conclusion of the binding contractual negotiations based on our sent order form and its content that represent an essential part of these terms of purchase. The same holds true for orders by telephone or fax. Other general terms and conditions will not be considered part of the contract even if we have not expressly negated them at whatever time, except when we confirm provisions that state otherwise. Our terms of purchase are part of the contract even when they are not separately agreed for each business transaction.

1.2 Notwithstanding the binding nature of the granted order, the supplier is responsible for immediately reviewing the granted order for both sides and then returning the copy of the order to us as a confirmation. If the supplier does not return the confirmation of the contract to us within two weeks or returns it with deviating contents that the supplier directly referred to us, we are entitled to terminate the contract and demand damages.

1.3 Our approval of drawings, sketches and other documents does not release the supplier from its responsibility even when we have placed them at its disposal. Our legal claims remain thereby unaffected. The supplier guarantees that all the deliveries and services meet the latest standards of science and technology as well as regulations pertaining to accident prevention.

## 2. Delivery deadlines and acceptance:

2.1 The agreed delivery deadlines are binding and refer to their arrival at Klauke. The supplier is not entitled to exemption due to interruptions of any kind arising from its own delivery and production system, self-deliveries, or warehousing. This does not hold true for interruptions due to an act of God, official regulations except if the supplier is responsible for their being issued, or labor disputes affecting the supplier's area and branch of businesses. The supplier must immediately notify us in writing of such interruptions or the threat of such interruptions, and is responsible for proving that they actually exist. If a delivery is not on schedule, we retain all pertinent rights.

2.2 The goods shall be transported to the delivery address that we indicate at the supplier's own cost and risk. The supplier is responsible for maintaining all shipping instructions that we provide apart from his own conventional precautions. Defects in the shipment and packaging are considered defects in the goods.

2.3 If we are prevented from accepting the shipment due to an act of God, strike, official regulations or other circumstances for which we are not responsible, we are not in default of acceptance and retain our legal rights. The return of objectionable goods is at the supplier's own risk and cost including out-of-pocket expenses.

2.4. The values calculated in our incoming goods inspection are binding for numbers of items, dimensions and weights. Multiple deliveries require our express approval.

## 3. Default of delivery:

3.1. The supplier is responsible for reimbursing Klauke for the cost of the delay.

3.2. If the supplier is responsible for missing the delivery deadline, Klauke can, for each week of delay, demand damages of 0.5% however a maximum of 5% of the price for the part of the delivery or service affected by the delay. The parties may demonstrate substantially lower or higher damage. The acceptance of a delayed delivery does not affect any reimbursement claims for delay damages.

3.3 If the supplier does not meet the extended deadline within the period set by Klauke, Klauke is entitled to withdraw from the contract. If the supplier is in violation of its responsibilities, Klauke is entitled to demand reimbursement for damages from the delay, or damages instead of the service.

3.4. If the transaction was a fixed transaction as defined by § 376 German Commercial Code, an extension does not have to be set to withdraw from the contract and assert claims for damages.

3.5. If the supplier claims "circumstances that free from obligations", especially acts of God, the supplier must immediately notify Klauke in writing. If the supplier violates the notification requirement, it is no longer entitled to claim said circumstances.

## 4. Invoicing:

4.1 Invoices, noting the order number and supplier number must always be submitted to us in duplicate immediately after the goods are shipped. In addition to the legal requirements in accordance with §§ 14, 14a UStG (VAT Act), every invoice must include the service provided and a date.

4.2. The Supplier will confirm on every invoice that he and any sub-contractors employed, have used for the billed services only employees who have received the minimum wage in accordance with § 1 MiLoG (and/or according to the transfer rule of § 24 MiLoG). If these details are missing, the payment delay will not occur until the preconditions are clarified.

4.3. Partial invoices and invoices for payment on account are permitted only after prior written agreement and must be marked as such.

4.4. If the order has to be billed at cost, the receipted documents must be attached to the invoices.

If delays should arise due to a different way of shipping the invoices, we retain our relevant rights, especially those pertaining to discounts.

## 5. Payments:

5.1. The agreed prices are net carriage paid. The applicable sales tax must be listed separately.

5.2. The agreed prices are fixed prices. Any clauses in the contract are expressly rejected that enable the supplier to unilaterally increase the prices listed in the order. If the supplier's raw materials or manufacturing costs become more expensive, this is covered by the price risk. The supplier is neither entitled to increase prices and tie the delivery of goods to Klauke's approval of the higher prices, nor to withdraw for the contract. Any other provision to the contrary shall only express the legal consequences of violating the law as defined by § 313 German Civil Code.

5.3. All deliveries, including partial deliveries expressly permitted by Klauke, must be accompanied by a delivery note that indicates the precise description of the articles and the respective quantity of the goods.

5.4 Assuming the proper provision of goods and services, payment will be made with a 3% cash discount 14 days after receipt of invoice, with a 2% cash discount 30 days after receipt of invoice, and without discount 60 days after receipt of invoice according to the payment method of our choice. Payment will be made by transfer or check.

5.5. Deadlines are not longer binding when justifiable complaints exist about the supplier's services. If prepayments have been made, we are entitled to demand collateral or the supplementation to existing collateral. Bank guarantees must be provided upon first request without an authorization to deposit and are irrevocable. The supplier must bear the guarantee costs.

5.6 We are entitled, at any time and without limit, to offset the requested purchase price or any other of the supplier's claims with any counterclaim against the supplier that is due to us for whatever legal reason.

5.7 Claims against Klauke can be offset within the Textron Group with claims against the supplier.

5.8. Without prior written approval by the ordering party which may not be unjustifiably refused, the supplier is not entitled to assign its claims or have them collected by a third party. If reservation of title is extended, approval will be held to be granted.

## 6. Material deficiencies:

6.1. Klauke's business-related inspection requirement is satisfied by random inspections of the shipped goods that are customary in the trade.

6.2. Complaints are timely when Klauke sends a written complaint to the supplier within 5 days after discovery of the defect. If the defects are obvious, the written notice of complaint will be sent within 14 days after receipt of the goods.

6.3. If a defect appears within six months of the date on which risk passed, it is presumed that the thing was already defective when risk passed unless that presumption is incompatible with the nature of the thing or of the defect.

6.4. If a complaint is justified, Klauke is entitled to choose rectification (elimination of the defect) or a subsequent delivery (replacement delivery). A demand for the entire delivery to be resent can be made even when only part of the delivery is flawed. The expenditures arising from the subsequent performance shall be borne by the supplier.

6.5. If the supplier is unable to do this, does not perform within the demanded period, the subsequent performance is unsuccessful, or a grace period does not have to be set, Klauke can reduce the purchase price, withdraw from the contract and, if the supplier is responsible for the defect, demand damages. This includes the costs of procurement a possible replacement or the costs of rectification by a third party.

The compensatory damages include all damages arising from the defective item for which there is an adequate causal relationship.

6.7. If the defect is not identifiable beforehand in suitable material inspections, and if the defect in the item is hence only discovered during production, the supplier, to the extent that it is responsible for the item's defect, is liable for all damages arising from stopping and delaying production as well as for fruitless expenses.

6.8 The compensatory damages also include damages that result from installations or additions yielding to a defective product. The compensatory damages therefore include all damages and expenditures in individual cases for which Klauke is responsible under the statutory warranty requirement and liability to recourse (§§ 478 et seq. German Civil Code).

6.9. There is a material deficiency period of two years for the product delivered by the supplier or the contract executed by the supplier, except if the statutory warranty period would extend the warranty period. In this case, the statutory warranty periods apply including regulations on the liability to recourse (§§ 438, 479 German Civil Code) and the statutory suspension of expiration in accordance with § 479 paragraph 2 German Civil Code). If a subsequent delivery is made, a new warranty period starts when the new goods are delivered instead of the defective ones.

## **7. Product liability:**

7.1. If the goods are defective due to the supplier's fault, Klauke and if necessary Klauke's customers are released from the subsequent product liability upon the first request to the extent that the supplier would be directly liable.

7.2. The supplier is obligated to undertake all necessary measures pertaining to product monitoring upon Klauke's request. This includes in particular warning and recall campaigns. The supplier must reimburse Klauke for all costs that Klauke incurs from recalls.

7.3. The supplier must take out sufficient insurance against the risks of product liability. Upon request, the supplier must provide corresponding proof of insurance.

## **8. Confidentiality:**

8.1 The drawings, descriptions, drafts and models and other documents as well as information given to the supplier are secret and must be treated with strict confidentiality. Copying and passing on to third parties is impermissible.

8.2. All documents and information remain our unrestricted property. The documents must be returned to us at any time upon request, and with the last delivery at the latest. Any right of retention is excluded.

8.3 The documents and information may only be used for manufacturing the goods that we order. Goods may not be manufactured for the suppliers own use or third parties, and/or may not be sold to third parties.

8.4 Subcontractors must be bound to the same requirements.

8.5. If confidentiality requirements are violated, even by the supplier's employees or temporary workers, we can demand reimbursement for our direct and/or indirect damages. More extensive legal claims remain thereby unaffected.

## **9. Proprietary rights:**

The supplier provides its assurance that all deliveries to us are free of third-party rights. If claims are asserted against us by third parties due to the violation of proprietary rights, especially patent rights, copyrights, or utility model rights, the supplier must exempt us from all third-party claims and the arising costs of defence and reimburse us for expenditures. The supplier must provide us with all the information and documents immediately and free of cost that we feel are necessary to mount a defence against such claims. When third parties assert claims, the deadline for the supplier's own claims will be postponed until the matter is legally resolved.

## **10. General provisions:**

10.1 The place of performance for the services of both parties is the delivery address indicated in each case, and Remscheid as a substitute.

10.2 The legal venue for disputes including those that affect the validity of this contract or its terms of purchase is Remscheid.

We are also entitled to bring action against the supplier in its own legal place of venue.

10.3 The legal relationships between us and the supplier are governed solely to the laws of the Federal Republic of Germany.

10.4 Changes and supplements to these provisions or their elimination must be in writing. This also applies to the written form requirement. Verbal additional agreements are ineffective.

10.5 The supplier may assert rights of retention only with claims recognised by us or with lawful claims. The supplier is not entitled to assign its claims ensuing from the contractual relationship to third parties. This does not apply for monetary claims.

10.6 Should a provision of these conditions be or become invalid, the validity of the other provisions remain unaffected. Should a provision be invalid, a valid provision shall be agreed upon that most closely legally and economically approximates the invalid one. Invalid provisions or omissions cannot be replaced with the supplier's general terms and conditions under any circumstances.

**Gustav Klauke GmbH**

Remscheid, 01.03.2016