

General Terms and Conditions of Purchase of the KUNDO XT GmbH, St. Georgen

1. Scope

- 1.1 The following General Terms and Conditions of Purchase shall apply to all orders placed by KUNDO XT GmbH commencing on 15 February 2011. Any trade terms and conditions worded differently or any confirmation by supplier which differs therefrom are not binding on us, even though we may not have expressly objected to them. They shall only apply if we have expressly agreed to them in writing. Specifically, the acceptance of deliveries or services without express objection shall not be considered as an acknowledgement of the supplier's terms and conditions or as consent thereto.
- 1.2 The General Terms and Conditions shall also apply to all future transactions between the supplier and the buyer.
- 1.3 The General Terms and Conditions only apply vis-à-vis companies, legal entities under public law or special funds under public law according to §§ 14, 310 para. 1 BGB (German Civil Code).

2. Subject matter

- Our business relationship with the supplier is exclusively regulated by the written purchase contract, including these General Terms and Conditions. The purchase contract contains the entire agreement between the parties with regard to the subject matter hereof. Any oral agreements concluded between the parties shall be replaced by the written contract, unless they explicitly provide that they should stay in force and effect.

3. Deliveries

- 3.1 The agreed delivery times (delivery periods and deadlines) are binding upon the supplier. The observance of the delivery period is determined by the date of entry of the goods at the place of reception or place of use specified by us.
- 3.2 Part deliveries or part performance by the supplier are only authorized if we have given our consent.
- 3.3 Delivery notes, order confirmations and invoices must contain our order data. We shall not be liable for any delay in examining the goods delivered if incorrect order data have been given.
- 3.4 The place of delivery for all deliveries is the head office of KUNDO XT GmbH. The supplier shall bear the risk of shipping and transport.
- 3.5 In case of a delay in delivery, we shall be authorized to request a lump sum payment of 0.5% for the damage caused by delay for each full week of delay in delivery, but no more than 5% of the delivery price in total. Both parties have the right to bring forth evidence that a higher or lower amount of damage has been produced. The right to claim for damages caused by the delay in delivery or to rescind the contract in accordance with the legal provisions remains unaffected therefrom.
- 3.6 If KUNDO XT GmbH is obliged under the provisions of the contract to make advance payment for goods prior to their delivery, and if it appears after conclusion of the contract that the quality of goods to be delivered will derogate materially from the contract, or that there will be other impediments to performance, KUNDO XT GmbH shall be entitled to refuse to make advance payment, unless and until the supplier has first performed, or provided security to KUNDO XT GmbH for performance in an adequate amount

4. Prices and payments

- 4.1 The agreed prices are understood free of charge to the delivery address and include custom charges and duties, shipping costs, the costs for returning or disposing of the packaging material, costs for transport and insurance.
- 4.2 Invoices are payable within 30 days after delivery and receipt of the goods. If we authorize payment within 14 days after receipt of the invoice, the supplier shall grant us a cash discount of 3%.
- 4.3 We reserve the right to choose the mode of payment. When paying by cheque or money transfer, payment is deemed to be in time if the cheque or money transfer arrives at the recipient or the bank within the period of payment.
- 4.4 If the goods delivered are defective, we are authorized to hold back a portion of the payment that is reasonable in view of the seriousness of the defect until proper removal of the defect.
- 4.5 The supplier is authorized to transfer claims from our business relationship to third parties only after prior consent given by us in writing.

- 4.6 The supplier shall have no right of set-off or retention, unless and except to the extent that the counterclaim has not been disputed by us, or been determined by a final and binding court decision.

5. Reservation of title

- The supplier shall be entitled to make the transfer of ownership of any goods supplied dependent on payment of the purchase price for the product. Notwithstanding, we shall be entitled to process, modify, dispose of or resell the goods purchased in the ordinary course of business. The supplier shall not disclose a possible cession (*Vorausabtretung*) of its claims to our customers, unless and until its claim is undisputed, or has been finally determined by a binding court decision, and payment has not been made despite of a reminder having been provided, and a period of at least four weeks having elapsed.

6. Warranty for defects in quality

- 6.1 The supplier shall warrant that the delivered object is free of defects, in particular with regard to the product description given by him. The warranty also covers the production processes and materials used by the supplier for the manufacture of the goods delivered. The supplier shall also warrant that the delivered goods comply with the current state of the art and the current technical regulations, e.g. DIN, EN, CE, VDE, and the Accident Prevention Regulations. Modifying the production processes and materials used for manufacturing the goods delivered is only allowed after prior consultation with us.
- 6.2 Our products are tested and certified in accordance with ISO standards 9000 to 9004. Accordingly, the supplier is obliged to manufacture the goods delivered to us in accordance with ISO standards 9000 to 9004 and to test the goods prior to delivery as to their compliance with these standards even if he has not been certified according to ISO. The supplier shall be in charge of the quality assurance documentation.
- 6.3 The supplier shall calibrate the products delivered to us before delivering them to us. Recalibration shall be carried out at the beginning of each calendar year.
- 6.4 Our rights in case of a defect or any other breach of a duty by the supplier shall be governed by the statutory provisions, unless otherwise specified in these General Terms and Conditions.
- 6.5 Notwithstanding § 438 BGB (German Civil Code), all claims relating to defects shall prescribe after three years, commencing on the passing of the risk. Lengthier statutory prescription periods shall not be affected by the foregoing.

7. Third party property rights

- 7.1 Unless anything else has been contractually agreed, the supplier shall warrant that no rights of a third party, in particular no industrial and intellectual property rights, are violated in connection with or by his deliveries.
- 7.2 If any claims for violation of property rights are raised against us by a third party in connection with a delivery, the supplier shall be obliged to indemnify us against any such claims upon our first written request. We shall inform the supplier immediately about the existence of such claims and co-ordinate all further action against the claimant with the supplier.
- 7.3 The supplier's obligation for indemnification pursuant to section 7.2 shall comprise all expenses which we necessarily incur because of or in connection with the claims raised against us by a third party.
- 7.4 Such claims shall prescribe after three years, calculated from the moment of the passing of the risk. Lengthier statutory prescription periods shall not be affected by the foregoing.

8. Product liability

- 8.1 The supplier shall inform us comprehensively about the products supplied by him, in particular about the hazards that may occur during further processing of the delivered products by providing us with data sheets, documentations, etc. If the delivered product is subject to changes as a result of its exposure to gas, air or water or chemical influences, the supplier shall submit a checklist to us detailing the safety measures that have to be taken.
- 8.2 In so far as claims are made against us by third parties on the basis of product liability or other statutory regulations, the supplier has the obligation to release us from all claims on first demand, in so far and to the extent that as he has caused the damage. In case of a joint and several liability under tort law, the supplier has the obligation to release us from such liability on first demand to the extent of the compensatory claims that we are entitled to. The above release obligations shall also apply to any other expenses and costs that may be incurred as a result of required product recall actions, including in particular those for recall actions under the provisions of the product safety law.
- 8.3 The supplier shall maintain, for the duration of the agreement, a product liability insurance whose insured amount is such as is customary for the type of the delivered products. We are entitled to request from the supplier an appropriate confirmation of the insured amount issued by the insurer.

9. Tools

- If we provide the supplier with tools for executing our orders, the contractual relationships between the supplier and us are governed by the tool hire agreement. The supplier does not have a right of retention against handing over the tool.

10. Confidentiality

- 10.1 Any information, drawing, draft, model or any other document or object which we have handed over to the supplier for submitting a tender or implementing an agreement, remain in our possession and must not be used for other purposes, copied or made available to third parties. This does not apply to generally known information etc. if its disclosure was not caused by an infringement of the agreement on the part of the supplier.
- 10.2 The supplier shall oblige his personnel working on the submission of the offer or the implementation of the agreement to secrecy in writing, unless his personnel have already signed a confidentiality agreement. The duty to observe secrecy also includes any knowledge obtained during the cooperation of our organizational and development structures and the contents of our orders, in particular prices, quantities and conditions.

11. Final provisions

- 11.1 The relationships between the contractual parties are governed exclusively by the law of the Federal Republic of Germany, excluding the United Nation Convention on Contracts for the International Sale of Goods.
- 11.2 If the supplier is a corporation, limited liability company, commercial partnership or otherwise operates a commercial business, i.e. "Kaufmann" within the meaning of Sec. 1 (1) of the German Commercial Code, or if the supplier is a legal entity or special fund organized under public law, the exclusive place of jurisdiction for all disputes arising out or in connection with the contract is the registered seat of KUNDO XT GmbH. This also applies to certificates, bill of exchange transactions and cheque operations. Notwithstanding, KUNDO XT GmbH also has the right to sue the supplier at any other place of jurisdiction.
- 11.3 The legal ineffectiveness of individual provisions of these Terms and Conditions shall not affect the legal effectiveness of the other provisions. An ineffective provision shall be replaced by effective provision that comes closest to the ineffective provision as regards its economic result.