

Terms and Conditions of Purchase of RKW SE

1.0 Conclusion of agreement, cancellation, written form, confidentiality, amendments, certificates of origin, official authorizations

1.1

We place orders on the basis of these General Terms and Conditions of Purchase. No other terms and conditions shall form part of the contract, even if they are not expressly excluded by us. Under no circumstances can it be inferred from the acceptance of the supply/service without express objection that we have acknowledged your terms and conditions.

1.2

All offers must be binding and free of charge. They must meet our requirements. Alternatives are also requested. Any deviations from our requests must be clearly marked. Expenses for visits or the development of offers, projects, drafts and samples shall not be reimbursed.

1.3

If you fail to accept our order in writing within 10 calendar days of receipt, we shall be entitled to cancel. If you accept our order with deviations, you must make clear reference to these deviations. A contract shall only exist if we have approved these deviations in writing.

Delivery calls shall be binding if you fail to object in writing within 2 calendar days of delivery at the latest.

1.4

Orders that are placed verbally or by telephone must be subsequently confirmed in writing to be legally valid. This also applies to verbal agreements and contractual amendments.

Orders, order confirmations, delivery calls, goods inwards documents and invoices can also be issued in electronic format.

1.5

Drawings, samples, models and so on that are supplied to you in order for the preparation of any offer or otherwise within the framework of this cooperation or that you create according to our requests, shall remain our property and must be returned when requested.

1.6

You must treat all requests, resulting offers and the conclusion of contracts as confidential and may only make reference to business associations with us in all publications, e.g. in advertising materials and reference lists, once approved in writing by us.

You undertake to treat all private commercial or technical details disclosed to you during the execution of the order or the business relationship as strictly confidential and to refrain from making any such details accessible to third parties. Subcontractors must agree to abide by the same obligations. Employees who are appointed by you for the execution of our order must adhere to the same confidentiality obligations. They must be instructed with regards to §§ 17 and 18 of the German Unfair Competition Act.

1.7

We can request amendments to the delivery item even after the contract has been concluded, if this is reasonable for you. The effects of any amendments on both parties must be taken into account, particularly in terms of any additional or reduced costs and lead times.

1.8

You must ensure that any certificates of origin that are requested by us contain all of the required details and are correctly signed and supplied by the requested date. This also applies to certificates required under turnover tax laws for foreign and intra-Community services. These documents must be submitted to us at least 10 calendar days before the delivery date.

By accepting this order, you agree to arrange for the review of certificates of origin and delivery declarations by customs administration and to provide any information required as well as to supply any official authorizations that are required (information sheets).

Furthermore, you undertake to compensate us for any damages caused as a result of the declared origin not being recognized by the responsible authorities.

You must notify us immediately if a delivery or part of a delivery is subject to export restrictions under German or any other law.

1.9

You must clarify the necessary official authorizations and reporting obligations for the import and sale of the delivery items.

2.0 Price, scope of delivery, certificates, invoice, payment, excess and short deliveries

2.1

The price for the full scope of delivery is quoted, unless otherwise agreed in writing, delivered at place (DAP according to Incoterms 2010).

2.2

The scope of delivery includes all raw and process materials agreed in the contract as well as all documentation, drawings, quality and testing certificates, service manuals, spare parts lists and other handbooks.

In terms of technical equipment of all kinds, the scope of delivery also includes comprehensive system displays as well as ready-to-use assembly and operating instructions and complete system and user documentation for software products.

In the case of software that is developed exclusively for use by us, the delivery obligation is only deemed to have been met if we have also received the source code.

2.3

If material testing certificates or other documentation is agreed, these shall form an integral part of the supply and must be sent to us with the delivery.

However, these must be sent to use no later than 10 calendar days of receipt of the invoice. The term of payment for invoices shall not start before the agreed certificates or documentation is received.

2.4

If you have provided services for us, the invoice must be accompanied by a certificate of performance, timesheet, etc. confirmed by our appointed inspector.

2.5

The invoice must be sent in duplicate only to us. The invoice must not be included with the goods.

2.6

Unless otherwise agreed, payment shall be made once the goods have been received by us or the agreed service has been performed and once the invoice has been issued as follows: subject to a 3% discount within 14 calendar days of receipt of invoice or net 30 days after receipt of invoice. A prerequisite for any payments is the supply of goods free from defects or the provision of services free from defects.

2.7

If delivery is incorrect or incomplete, we are entitled to withhold payment proportionately until performance is complete and without losing entitlement to any rebates, discounts or similar concessions. If payments have been made defective deliveries, we are entitled to withhold other payments due up to the value of the payments made.

3.0 Shipping, postponement, packaging, transfer of ownership, transport insurance

3.1

Shipping regulations, particularly delivery addresses, must be observed as strictly as possible. Costs that are incurred as a result of any failure to comply with the shipping regulations, must be borne by you.

Shipping advices, delivery notes, consignment notes, invoices and all correspondence with us must clear-

ly state the agreed delivery date, order and item numbers and the date. You are responsible for all consequences arising from the failure to comply with this obligation.

3.2

Shipping is carried out at your risk. You must bear the risk of any deterioration, including any sudden loss, until delivery is made to the agreed delivery address or point of use.

We are not obliged to prepare truck loads before the delivery documents are received.

3.3

Ownership of the delivered goods shall be transferred to us on handover. This shall not apply if you hold a simple retention of title.

The method of pricing used shall not change the agreement concerning the place of performance.

If the ownership of the products to be supplied is transferred to us on the basis of a contractual agreement at the point in time at which the products are stored with you, you must indicate in accordance with our rules on ownership to store these separately and to compensate us for all losses, damages and third party claims.

3.4

Transport must be guaranteed to the agreed destination. We shall not pay any fees charged by forwarding agents.

4.0 Lead times, delivery delays, force majeure, early delivery, part deliveries

4.1

The agreed lead times are binding and must be observed as closely as possible. Observance of the delivery date or lead time is based on the proper receipt of goods or the proper performance of services and the handover of documentation at the point of receipt or use specified by us or the timeliness of successful acceptance.

If the lead time is referred to or confirmed by you as "expected", "approximate", "subject to normal conditions", the maximum time between the stated deadline and the actual date of delivery must not exceed 8 calendar days.

The unreserved acceptance of a late delivery does not waive the right to make claims for compensation.

4.2

If you recognize that an agreed deadline cannot be met for whatever reason, you must notify us immediately in writing stating the reasons and the expected duration of the delay.

4.3

If delivery is delayed, we shall be entitled to make statutory claims.

4.4

You may only invoke the absence of the documents to be supplied by us, if you have sent a written reminder in relation to the documents and have not received the documents within an appropriate period.

4.5

Force majeure and industrial disputes shall exempt the contracting parties for the duration of the disruption and depending on their effect from performance obligations. The contracting parties are bound to supply the information required as far as possible and to adapt their obligations to the situation in good faith. We shall be exempt from the obligation to accept the requested supply/service in full or in part and in this respect shall be entitled to withdraw from the contract, if the supply/service is not longer economically reasonable as a result of the delay caused by force majeure or industrial dispute.

If such obstacles persist more than three months, each contracting party is entitled to withdraw from the contract without further action.

4.6

We will only accept part deliveries by special arrangement. These must be indicated in the shipping documents or invoices. The remaining quantities must also be stated.

If we agree to a part delivery, the dates agreed for the complete delivery/complete service shall continue to apply and as such the supply/service shall only be deemed to have been performed once completed in full.

5.0 Warranty, safety datasheets, deadline for complaints, remedy, redelivery, withdrawal, price reduction, compensation for damages, production errors, right of self-remedy

5.1

All supplies/services must be supplied to us free of all defects in title or quality. They must conform to the agreed specifications and the state-of-the-art, relevant European and German statutory provisions and the regulations and guidelines of authorities, professional and trade associations. The supplies/services must also be suitable for the purpose set out in the contract or, if no such contract exists, for the relevant intended use.

All goods must conform to the latest safety regulations and must be accepted on handover to the relevant testing authorities and for use for the intended use. The supplies/services must in particular meet all applicable occupational health and safety regulations, the requirements of the Equipment and Product Safety Act, accident prevention and fire protection regulations and environmental regulations. When supplying machinery/equipment you consider their energy efficiency and prefer solutions with high energy efficiency. In particular, the items supplied must meet the requirements of § 2 (1) (1) of the accident prevention regulations of chemical trade associations. Any necessary protective equipment must be included with the delivery. In the case of new installations and larger modifications, you are bound to supply a CE declaration of conformity.

5.2

If a deviation from these provisions is required, you must obtain our written approval. Your liability for defects will not be restricted by this approval.

If you have any concerns regarding the nature of the performance required by us, you must notify us immediately in writing.

5.3

If you intentionally make a supply/performance a service that is not free of third-party rights in Germany or, if you are informed of this, in the country of destination, you shall be liable for all financial disadvantages that result for us.

5.4

You undertake to use environmentally-friendly or ecological products and procedures within the boundaries of financial and technical capabilities for your supplies/services and for the subcontracted supplies or ancillary supplies of third parties.

5.5

Defects to supplies/services reported during the warranty period, including the failure to achieve guaranteed data and the omission of promised characteristics, must be remedied immediately when requested by us and free of charge, including all ancillary costs, either by subsequent performance or replacement of the defective parts or redelivery/reproduction at our discretion.

If immediate subsequent performance is not possible, you must find a remedy in agreement with us as soon as possible.

You must pay all expenses arising in relation to the diagnosis and remedy of the defect, even if incurred by us, in particular investigation costs, removal and installation costs, labor and material costs as well as transport and other costs when replacing defective parts. This also applies if the expenses increase because the delivery item was brought to a location other than the place of performance, but not if disproportionate costs are incurred.

You must take remedial actions or make redeliveries/reproductions if necessary by working in multi-shift operation or overtime or public holidays, if this is necessary and reasonable on urgent commercial grounds.

An agreed period for remedy shall have the same legal effects as a deadline set by us.

If we are entitled to withdraw from the contract, this can be limited to a defined part of the service whilst continuing the contract, as long as non-performance or defective performance is limited to said part.

Defective goods must be returned at own cost.

We reserve the right to make claims for damages in all cases.

5.6

If similar defects occur in more than 2% of the parts/goods supplied (production errors), we are entitled to reject the entire delivery quantity as defective and to assert claims of defect for these under the law and under the contract.

5.7

If you fail to meet your obligations with regards to liability for defects within an appropriate period set by us, we may carry out the necessary measures at your cost and risk or arrange for a third party to carry out such measures. We shall charge for any work carried out by us at standard market prices.

In urgent cases, we can take remedial action ourselves or arrange for a third party to provide remedial action as agreed with you. Small defects may be remedied by us without prior agreement, in accordance with our obligation to limit damage or in accordance with any agreements made in this respect, without in any way limiting your obligations with regards to liability for defects. We can then charge you for the necessary expenses.

This also applies if unusually high damages are suddenly threatened or other special circumstances occur, which justify immediate remedy by us in the interests of both parties.

In all other cases, the contract of work shall apply as set out in § 637 of the German Civil Code.

6.0 Warranty period, postponement, leave to appeal

6.1

The warranty period for liabilities of defect and quality shall be three years unless otherwise expressly agreed. This also applies to multi-shift operation. This shall commence on handover of the delivery item to us or those of appointed third parties to the point of receipt or use stipulated by us. In the case of equipment, machines, installations and services the warranty period shall commence on the date of acceptance as stated in our written statement of acceptance. If acceptance is delayed without culpability on your part, the warranty period shall be three years from the date of provision of the delivery item for acceptance.

The warranty period for structures and building materials shall be based on statutory provisions, unless otherwise expressly agreed. For spare parts this shall be three years from the date of installation/operation and shall end five years following delivery.

6.2

If the validity of our complaint is being negotiated, the warranty period for the installation/parts of the installation affected shall be restricted from the date of reporting the malfunction to the conclusion of negotiations or until repair work is complete and acceptance has taken place.

If you offer a replacement as remedy, the limitation period for the replacement part shall restart on the date of its installation/acceptance. If a part is repaired, the limitation period shall commence on completion/acceptance of the remedy or installation/reconstruction of the remedied part.

This regulation shall not apply if only a minor defect that occurs in a part supplied as a replacement or as remedy can be remedied without noticeable expenditure in terms of time and costs.

This shall furthermore not apply if the replacement delivery or remedy undisputedly occurred out of goodwill or for the amicable settlement of a dispute or in the interests of the continuation of business relations.

Acceptance must be applied to us in writing as necessary. The deadline shall not end, however, before the expiry of the limitation periods for liabilities of defect or quality for the original supply or service.

7.0 Quality assurance, product liability

7.1

You must carry out corresponding quality assurance that is appropriate in terms of nature and scope and the state-of-the-art and must provide proof when requested. You must conclude a corresponding quality assurance agreement with us if we deem this to be necessary.

7.2

Your factory inspections must ensure that your supplies meet our technical terms and conditions of delivery. You undertake to keep records of the inspections carried out, drawings and all test, measurement and control results for a minimum of 10 years. We are entitled to review these documents at any time and to prepare copies thereof.

7.3

Unless otherwise agreed, you must label the delivery items so that they are permanently recognizable as your products.

7.4

If claims are made against us as a result of an infringement of official safety regulations or due to domestic or foreign product liability regulations or laws that result from a defect in our products, which is caused by your goods, then we shall be entitled to demand compensation from you for any damages caused by the products supplied by you.

Such damages shall also include the costs of a precautionary recall campaign. We shall notify you, as far as possible and reasonable, regarding the content and scope of the recall measures being carried out and shall give you an opportunity to comment.

7.5

You undertake to obtain product liability insurance with an insured sum of EUR 10 million for each personal injury or damage to property in a lump sum. If we are entitled to make further claims for damages, these shall remain unaffected.

You provide us with a copy of said insurance policy for review when requested.

7.6

If you are responsible for a product defect, you shall be bound to hold us harmless in this respect for third-party claims for damages on first demand.

8.0 Protective rights, rights of use

8.1

You shall not be entitled to make use of our trading names, logos, trademarks or industrial property rights for your own use or for use by third parties. You may not use these individually or in conjunction with your own trading names, trademarks or logos without our prior written agreement.

If we approve such use, you must agree to abide strictly by our guidelines regarding the size, positioning and layout of trading names, trademarks or logos.

8.2

You shall be responsible for ensuring that all supplies are free of third-party protective rights and in particular that the supply and use of the delivery items does not in any way infringe patents, licenses or other protective rights of third parties.

8.3

The parties agree to notify each other immediately in writing if claims are made against the other party due to the infringement of the protective rights related to this agreement.

8.4

If you intentionally fail to meet any of these obligations, you must hold us and our customers harmless from third party claims relating to infringements of protective rights and must bear all costs incurred by us in this respect, including costs for legal proceedings and recall campaigns. Your obligation covers all expenses incurred by us in relation to a claim by third parties.

8.5

If the contractual use of the delivery/service item is compromised by third-party protective rights, you shall be bound – irrespective of any other contractual obligations – to secure the right at own cost from the party authorized by the protective right to ensure that the delivery/service item can continue to be used by us

without restrictions and without additional costs for us in accordance with the contract.

You are also entitled to amend the parts of your supply/service covered by the protective rights such that they fall outside the protective area, but still adhere to the contractual provisions agreed between the parties.

8.6

If your efforts under paragraph 8.5 are not successful, we are entitled to obtain approval for the use of the delivery items and services concerned from the authorized parties in agreement with you and for a transitional period of no more than six months at cost to you.

If the efforts fail in accordance with paragraph 8.5 or 8.6, then you must remove the installation at cost to you and must reimburse any payments made by us in addition to bank interest. We reserve the right to make further legal claims.

8.7

If you supply an item that is protected by copyrights, we must receive from you a single, unlimited right of use for all types of use.

9.0 Transfer of contract, ban on assignment, offsetting, right of retention, language of contract, correspondence

9.1

You are not permitted to transfer the contract or significant parts of the contract to third parties without our prior written approval. If approval is given, you shall remain jointly and severally liable for damages.

9.2

You are not permitted to assign your claims against us, either in full or in part, or to arrange for their collection by a third party without our prior written approval.

If you assign a claim against us to a third party without our approval, the assignment shall continue to apply. We can then make payment to you or the third party at our discretion with exonerative effect.

9.3

You may only set off these claims against undisputed or valid claims.

9.4

You shall only be entitled to rights of retention if these are based on the same contractual relationship.

9.5

The language of contract is German. All correspondence and all other documents must be prepared in German. This also applies to all other documentation, e.g. for advance payment and performance guarantees. By way of derogation, we are entitled to demand all documents and related communication in English.

If the contracting parties use another language, the German version shall take precedence.

10.0 Cessation of payment, insolvency

If you cease your payments, a temporary administrator shall be appointed to initiate bankruptcy proceedings in relation to your assets, or if bills of exchange or protested checks exist against you, we shall be entitled

to withdraw from the contract or to terminate the contract with immediate effect in full or in part without notice, without deriving any claims from this.

If the contract is terminated by us, the services performed up to that date shall be invoiced at the contractual prices as long as such services can be properly used by us. The damages arising for us shall be taken into account when invoicing.

11.0 Place of performance

Unless otherwise expressly agreed, the place of performance for the delivery/service item shall be the delivery address or point of use specified by us; for all other obligations on both parties, the place of performance shall be Frankenthal.

12.0 Jurisdiction, applicable law

12.1

The exclusive jurisdiction for all present and future claims arising from business relations with tradesmen including receivables from bills of exchange and checks is Frankenthal or the competent court for Frankenthal.

12.2

The same place of jurisdiction applies if you have no general place of jurisdiction in your home country, if after conclusion of the contract your place of residence or habitual abode moves from your home country or if your place of residence or habitual abode is not known at the time of the dispute being lodged. However, we reserve the right to assert our claims at any other permissible place of jurisdiction.

12.3

Furthermore, the law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on the International Sale of Goods of 11 April 1980.

13.0 Code of Conduct

Our economic activity complies with GKV's Code of Conduct, which can be viewed on the Internet at <http://www.rkw-group.com/code-of-conduct.html>. You undertake to make your economic activity likewise subject to this Code of Conduct. If you have a comparable code of conduct in place at your company, you and we acknowledge the two codes as being of equal value, and waive submitting by way of a contractual agreement to the code of conduct of the respective other party.